

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FORE STARS, LTD; et al,

Appellants,

vs.

DANIEL OMERZA, et al,

Respondents.

No. 87354

DOCKETING Elizabeth A. Brown
CIVIL APPEALS Clerk of Supreme Court

Electronically Filed
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GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department XIX
County Clark Judge Hon. Crystal Eller
District Ct. Case No. A-18-771224-C

2. Attorney filing this docketing statement:

Attorney Lisa A. Rasmussen Telephone 702-222-0007
Firm The Law Offices of Kristina Wildeveld & Associates
Address 550 E. Charleston Blvd., Suite A
Las Vegas, NV 89104

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

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

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

Attorney Mitchell Langberg Telephone (702) 464-7098
Firm Brownstein Hyatt Farber Schreck, LLP
Address 100 North City Parkway, Suite 1600
Las Vegas, NV 89106

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

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Atty Fee Awards</u> |

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

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

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

Prior:

Omerza, et al v. Fore Stars, et al	Dkt No. 76273
Fore Stars, et al v. Omerza, et al	Dkt No. 82338
Fore Stars, et al v. Omerza, et al	Dkt No. 82880 (consolidated with 82338)
Fore Stars, et al v. Omerza, et al	Dkt No. 85542 (dismissed as premature)

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

N/A

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

This is an appeal of two orders awarding attorney's fees in excess of \$400,000 pursuant to NRS 41.635 and the denial of a motion for reconsideration of the order awarding attorney's fees.

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

This appeal addresses an order awarding attorney's fees totaling over \$362,000; an order awarding supplemental fees totaling over \$42,000, and the denial of a motion to reconsider.

Appellants made several challenges to these attorney fee applications, including but not limited to the fact that the fees were excessive, that no valid contingency fee agreement supported the award, that no party was ever obligated to pay the fees, and that the firm who initiated the conduct was seeking to benefit from the wrongful conduct it induced respondents to undertake. The district court did not address these issues.

Appellants believe these are issues of first impression.

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

Appellants are not aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain: Appellant believes this appeal raises issues of first impression that likely impact public policy regarding whether attorney's fees must be awarded to successful anti-SLAPP defendants under NRS 41.635, even though those defendants had no valid written contingency fee agreement, were never obligated to pay the attorney's fees and in fact, paid no attorney's fees at all, and the firm who initiated the conduct was seeking to benefit from the wrongful conduct it induced respondents to undertake.

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

Appellant believes it is proper for the Supreme Court to retain jurisdiction because this appeal comes after the Supreme Court remanded to the District Court on the attorney fee issue. Additionally, this appeal raises issues of first impression that likely impact public policy, as set forth above.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? _____

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

Appellants do not intend to file a motion to disqualify but note that various Justices have, at various times, filed voluntary recusals from litigation involving these appellants, including cases involving these same parties. See Dkt. 76273.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 9/19/22 & 9/19/2023

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

17. Date written notice of entry of judgment or order was served 9/19/22 & 9/19/23

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing Motion for Reconsideration 10/03/22

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

(b) Date of entry of written order resolving tolling motion 9/18/23

(c) Date written notice of entry of order resolving tolling motion was served 9/19/23

Was service by:

☒ Delivery

☐ Mail

19. Date notice of appeal filed 9/22/23 and amended on 10/12/23

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

N/A

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 41.635, et seq.</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's orders granting attorney's fees is a final order. One was entered on 9/19/22 and it was tolled by virtue of a Motion to Reconsider filed on 10/03/22. The tolling motion was resolved on 9/18/23 with written notice of entry on 9/19/23. The second order, for supplemental fees was resolved as a final order on 9/18/23 with written notice of entry on 9/19/23.

Additionally, the order granting attorney's fees was specifically permitted pursuant to NRS 41.635, which provides the right to appeal by statute.

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

(a) Parties:

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

Daniel Omerza, Darren Breese and Steve Caria Respondents/Appellees.

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

N/A

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

Appellants Claims: Defamation, Slander, Interference with Contracts and Economic Relations and Civil Conspiracy.

Respondent's Claims: Attorney's fees and costs pursuant to Nevada's Anti-Slapp.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The orders are independently appealable under NRAP 3A(b) and NRS 41.635, et seq.

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

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

VERIFICATION

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

Fore Stars, 180 Land Co., Seventy Acres
Name of appellant

Lisa A. Rasmussen
Name of counsel of record

10/19/2023
Date

Lisa A. Rasmussen
Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of October, 2023, I served a copy of this completed docketing statement upon all counsel of record:

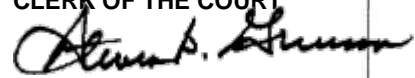
☒ By personally serving it upon him/her; or

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

Via EFlex: Mr. Mitchell Langberg, Esq., counsel for Appellees.

Dated this 19th day of October, 2023

/s/ Lisa Rasmussen
Signature



COMP

James J. Jimmerson, Esq. # 000264
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Attorneys for Plaintiffs Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC,

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-18-771224-C

DEPT. NO: Department 31

COMPLAINT

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

PARTIES

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

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

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

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

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

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

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

Jurisdiction and Venue

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

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

3 **Allegations Common To All Claims**

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

7
8 10. On May 20, 1996, Nevada Legacy 14, LLC recorded a Master Declaration of
9 Covenants, Conditions, Restrictions and Easements for Queensridge, which was later amended and
10 restated, (“Queensridge Master Declaration”) with the Clark County Recorder in order to establish
11 the common interest community known as “Queensridge.” Queensridge was created and organized
12 under the provisions of NRS 116.

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

19
20 12. The Purchase Agreement (“PSA”), that was executed by Defendant Omerza, and by
21 Defendant Bresee, and by Defendant Caria, contains certain very specific disclosures and
22 acknowledgements with respect to the Land , including but not limited to notice via the respective
23 CC&Rs and other documentation that the Land is developable. Depending on the location of the
24 lot/home, Defendants acknowledged receipt of documents, including but not limited to, some or all
25 of the following:
26

27 ///

- 1 a. PSA Addendum “1” to PSA, wherein Defendants initialed that they received:
- 2 i. A public offering statement which disclosed that the adjacent Land (then a
- 3 golf course) is not a part of Queensridge.
- 4 ii. The Queensridge Master Declaration, which disclosed that the adjacent Land
- 5 (then a golf course) is not a part of Queensridge (and a comparable Master Declaration for
- 6 Queensridge Towers); and
- 7 iii. A Notice of Zoning Designation of Adjoining Lot (as attachment “C” to the
- 8 PSA). The Adjoining Lot was the Land and the zoning disclosed was RPD-7.
- 9
- 10 b. PSA Addendum “1” – Additional Disclosures Section 4 – No Golf Course
- 11 or Membership Privileges. Purchaser shall not acquire any rights, privileges, interest, or
- 12 membership in the Badlands Gold Course or any other golf course, public or private, or any
- 13 country club membership by virtue of its purchase of the Lot.
- 14
- 15 c. PSA Addendum “1” – Additional Disclosures Section 7 – Views/Location
- 16 Advantages. The Lot may have a view or location advantage at the present time. The view
- 17 may at present or in the future include, without limitation, adjacent or nearby single-family
- 18 homes, multiple-family residential structures, commercial structures, utility facilities,
- 19 landscaping, and other items. The Applicable Declarations may or may not regulate future
- 20 construction of improvements and landscaping in the Planned Community that could affect
- 21 the views of other property owners. Moreover, depending on the location of the Lot,
- 22 adjacent or nearby residential dwellings or other structures, whether within the Planned
- 23 Community or outside the Planned Community, could potentially be constructed or modified
- 24 in a manner that could block or impair all or part of the view from the Lot and/or diminish
- 25 the location advantages of the Lot, if any. Purchaser acknowledges that Seller has not made
- 26 any representations, warranties, covenants, or agreement to or with Purchaser concerning
- 27
- 28

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

7
8 d. As to the Queensridge Towers, the Public Offering Statement also
9 specifically disclosed (1) that the zoning to the south was R-PD7, "Residential up to 7 du;"
10 (2) that "As to those properties contiguous to the Condominium Property, Developer makes
11 no representation that development will follow the above plan, assumes no responsibility for
12 errors or omissions in the information provided and makes no representations as to the
13 development of such properties. As to the property to be submitted to the Condominium
14 pursuant to the Declaration, Developer reserves the right to make changes In the proposed
15 land use,"; and (3) Developer makes no representations as to the desirability or existence of
16 any view from the Unit. The anticipated or currently existing view from the Unit may be
17 changed at any time, either due to action taken by Developer, affiliates of the Developer or
18 any third party." Additionally, the PSA for Queensridge Towers specifically stated: "Seller
19 makes no representations as to the subdivision, use or development of any adjoining or
20 neighboring land (including land that may be withdrawn from the Condominium according
21 to the terms of the Declaration). Without limiting the generality of the foregoing, views from
22 the Unit may be obstructed by future development of adjoining or neighboring land and
23 Seller disclaims any representation that views from the U it will not be altered or obstructed
24 by development of neighboring land;" and "Without limiting the generality of the foregoing
25 or any disclosures in the POS, Purchaser acknowledges that affiliates of Seller control land
26
27
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1 neighboring or in the vicinity of the Property. Neither Seller nor its affiliates make any
2 representation whatsoever relating to the future development of neighboring or adjacent land
3 and expressly reserve the right to develop this land in any manner that Seller or Seller's
4 affiliates determine in their sole discretion."

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

7 14. The Queensridge Master Declaration established Custom Home Estate Design
8 Guidelines included as Exhibit 1 (page 1-3) an Illustrative Site Plan depicting the portion of the
9 Land adjacent to the Lot purchased by Defendants as a neighborhood of single family homes, and
10 as Exhibit 2 (page 1-4) designating the portion of the Land adjacent to the Lot purchased by
11 Defendants as "Future Development."
12

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

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

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

20 18. Upon information and belief, a deed was recorded evidencing the Defendant Bresee's
21 acquisition of this real property.
22

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

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

27 ///

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

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

7 23. In or about March 2018, the Defendants and Does 1-1000, and perhaps others,
8 reached an agreement between themselves and engaged in a scheme to attempt to improperly
9 influence and/or pressure the Plaintiffs to give over to Defendants and/or their co-conspirators a
10 portion of their real estate and/or a portion of their project and to improperly influence and/or
11 pressure public officials including, but not limited to, the City of Las Vegas Planning Commission
12 and the Las Vegas City Council to delay or deny Plaintiff's land rights to develop their property.
13 This scheme and agreement between Defendants and their co-conspirators included, but not limited
14 to, the preparation, promulgation, solicitation and execution of a statement and/or declaration
15 (hereinafter "Declaration") aimed to be sent or delivered to the City of Las Vegas that each of the
16 signatories, "The undersigned purchased a residence/lot in Queensridge which is located within the
17 Peccole Ranch Master Planned Community" and that "The undersigned made such purchase in
18 reliance upon the fact that the open space/natural drainage system could not be developed pursuant
19 to the City's Approval in 1990 of the Peccole Ranch Master Plan and subsequent formal actions
20 designating the open space/natural drainage system in its General Plan as Park Recreations – Open
21 Space which land use designation does not permit the building of residential units." And finally,
22 that "At the time of purchase, the undersigned paid a significant lot premium to the original
23 developer as consideration for the open space/natural drainage system." Said Declaration is attached
24 hereto as Exhibit 1.
25
26
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1 24. That said declaration or statement is false.

2 25. That said declaration or statement, being false, is being intentionally prepared,
3 circulated, executed, and delivered to the City of Las Vegas for the improper purposes of attempting
4 to delay or deny Plaintiffs' development of their land rights and their property, and is intended to
5 do so, by falsely and intentionally misrepresenting facts, as stated therein that the Defendants, and
6 their co-conspirators, made their purchase of their real property in reliance upon the fact that the
7 open space/natural drainage system would not be developed "pursuant to the City's Approval in
8 1990 of the Peccole Ranch Master Plan and subsequent formal actions designating the open
9 space/natural drainage system in its General Plan as Park Recreations – Open Space which land use
10 designation does not permit the building of residential units" as those words are used within the
11 Declaration prepared, promulgated, solicited and/or executed by the Defendants and their co-
12 conspirators.
13

14 26. That the actions of the Defendants and their co-conspirators to knowingly and
15 intentionally sign the knowingly false Declaration were wrongful. The declaration is false, and it is
16 intended to cause third-parties, including the City of Las Vegas, who detrimentally relied thereon,
17 to take action against Plaintiffs. These actions of Defendants and their co-conspirators, in order to
18 further their improper scheme and agreement, has caused irreparable injury to the Plaintiffs for
19 which there is no adequate remedy of law.
20

21 27. The efforts of Defendants and their co-conspirators, are improper, and are an attempt
22 to achieve something that is socially or morally improper or illegal, or out of balance from normal
23 societal expectations of behavior.
24

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

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

6 29. That attached hereto as Exhibits 2 and 3 are true and correct copies of two (2) Court
7 Orders that are public record before the Eighth Judicial District Court. The Court Orders arise from
8 the case of Fore Stars, et al v. Peccole, et al, Case Number A-16-739654-C. The Court Orders are
9 dated November 30, 2016; and, Exhibit 2 dated January 31, 2017. Said Findings of Fact,
10 Conclusions of Law, and Order and Judgments are included by reference within this Complaint as
11 if fully set forth herein. Also attached hereto as Exhibit 4 is a true and correct copy of a Court Order
12 filed May 2, 2017 that is a public record before the Eighth Judicial District Court. The Court Order
13 arises from the case of Binion et al v. Fore Stars, et al Case Number A-17-729053, and specifically
14 found that Plaintiffs therein failed to state a claim upon which relief may be granted in seeking an
15 order "declaring that NRS Chapter 278A applies to the Queenridge/Badlands development and that
16 no modifications may be made to the Peccole Ranch Master Plan without the consent of property
17 owners" and "enjoining Defendants from taking any action (iii) without complying with the
18 provisions of NRS Chapter 278A," and that "as a matter of law NRS Chapter 278A does not apply
19 to common interest communities. NRS 116.1201 (4)." Said Findings of Fact, Conclusions of Law,
20 and Order are included by reference within this Complaint as if fully set forth herein.
21
22

23 30. The actions of the Defendants, and their co-conspirators, are intended by them, to
24 harm the Plaintiffs and Plaintiffs' land rights, and are being prepared, circulated and solicited to be
25 signed by Defendants, and their co-conspirators solely for the purposes of harassing and maliciously
26 attacking the reputation and character of Plaintiffs, their property rights to develop their property,
27
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1 to cause economic damage and harm to Plaintiffs, and to slander the title of the property owned by
2 the Plaintiffs referenced herein under the guise of seeking to petition members of the City of Las
3 Vegas and/or its legislative branches, the Planning Commission and/or City Council, amongst
4 others, that despite this guise and the campaign to cause delay and damage by the Defendants and
5 their co-conspirators to the Plaintiffs and to the development of Plaintiffs' land, has caused Plaintiffs
6 irreparable injury.

7
8 31. The action of the Defendants, in addition to causing irreparable injury to the
9 Plaintiffs, has also caused the Plaintiffs substantial money damages in a sum in excess of \$15,000
10 all to be proven at the time of trial.

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

13 **FIRST CLAIM FOR RELIEF**
14 **(Equitable and Injunctive Relief)**

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

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

21
22 35. That the actions of the Defendants and their co-conspirators, are repetitive, and
23 continuing, and in accordance with the Nevada Supreme Court decision of *Chisholm v. Redfield*,
24 347 P.2d 523 (1959) and other related cases, the repeated repugnant and tortious actions of the
25 Defendants and their co-conspirators to essentially suborn the assertion of facts that are false and
26 which are misrepresentations of facts, has irreparably damaged the Plaintiffs.

27
28 36. That the actions of the Defendants and their co-conspirators, have caused the

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

7
8 37. As a result of the Defendants' and their co-conspirators' actions, the Plaintiffs have
9 no adequate remedy law and they are entitled to preliminary and permanent injunction against the
10 Defendants and each of them, including against DOES 1 through 1000, in temporarily and
11 permanently enjoining them from preparing, soliciting, and obtaining false signatures from
12 homeowners through use of misrepresentation of facts and other sorted means, all to Plaintiffs'
13 damage and detriment.

14
15 38. Plaintiffs are entitled to equitable relief as set forth herein enjoining and otherwise
16 protecting Plaintiffs from the actions of Defendants and each of them.

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

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

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

24 41. Defendants, and DOES, knew, or should have known, that Plaintiffs would be
25 developing the Land with third parties, and would be working with the City of Las Vegas to cause
26 the same to occur.
27
28

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

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

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

16 45. Defendants' and DOES' wrongful conduct is a substantial factor in causing
17 Plaintiffs, and each of them, substantial harm and money damages.
18

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

21 47. The actions of Defendants and DOES were malicious, oppressive and/or fraudulent,
22 for which Plaintiffs are entitled to an award of punitive damages in an amount to be determined at
23 the time of Trial.
24

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

27 48. Plaintiffs incorporate paragraphs 1 through 47 above as if fully set forth herein.
28

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

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

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

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

17 53. The actions of Defendants and DOES were not privileged or otherwise protected.
18

19 54. The actions of Defendants and DOES were intended to disrupt the Plaintiffs'
20 business and the development of their real estate.
21

22 55. As a result of Defendants' and DOES' negligent interference with Plaintiffs'
23 prospective economic relations, the Plaintiffs have been damaged in a sum in excess of \$15,000.
24

25 **FOURTH CLAIM FOR RELIEF**
26 **(Conspiracy)**

27 56. Plaintiffs incorporate paragraphs 1 through 55 as if fully set forth herein.
28

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

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

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

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

27 ///

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

4 **FIFTH CLAIM FOR RELIEF**
5 **(Intentional Misrepresentation)**

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

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

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

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

17 **SIXTH CLAIM FOR RELIEF**
18 **(Negligent Misrepresentation)**

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

20 67. Pled in the alternative pursuant to NRCP 8, Defendants had an obligation to the
21 Plaintiffs not to defame slander or otherwise harm the Plaintiffs, and their property rights.
22

23 68. That Defendants owed the Plaintiffs a duty of care, which they breached by virtue of
24 their actions which were at the very least negligent, and the representations that they made, were
25 negligently, if not intentionally asserted, proximately causing the Plaintiffs damages in a sum in
26 excess of Fifteen Thousand Dollars (\$15,000).
27
28

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

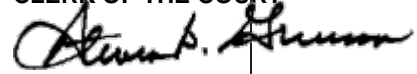
- 3 1. Compensatory Damages in a sum in excess of Fifteen Thousand Dollars (\$15,000);
- 4 2. Punitive Damages in a sum in excess of Fifteen Thousand Dollars (\$15,000);
- 5 3. Equitable relief and preliminary and permanent injunctive relief as prayed for herein;
- 6 4. An award of reasonable attorney's fees and costs; and
- 7 5. Such other and further relief as the Court deems proper in the premises.

8
9 Dated: March 15, 2018.

10 THE JIMMERSON LAW FIRM, P.C.

11
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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: XIX

**MOTION TO RECONSIDER ORDER
GRANTING ATTORNEY'S FEES
POST-REMAND**

1 **I. INTRODUCTION AND BACKGROUND.**

2 Plaintiffs Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC (collectively
3 “Plaintiffs” or “Landowners”) respectfully seek reconsideration of the Court’s attorney fees award
4 for three important reasons. *First*, Defendants Daniel Omerza (“Omerza”), Darren Bresee
5 (“Bresee”), and Steve Caria (“Caria”) (collectively “Defendants” or “Residents”) were awarded
6 attorney fees pursuant to a *contingency fee agreement* with their counsel. Defense counsel has
7 never produced the alleged contingency fee agreement and requests that it be produced were
8 forbidden by defense counsel. Nevada’s Rules of Professional Conduct require that contingency
9 fee agreements be in writing, and an attorney fees award in the absence of such a written agreement
10 is improper¹. *Second*, undisputed facts regarding the wrongful conduct by the defendants’ counsel
11 should have been considered as relevant to the reasonableness of the attorney fee request under the
12 factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349 (1969).

13 As the Court may recall, the Defendants promulgated, solicited, circulated, and executed
14 false declarations to their Queensridge neighbors in March 2018. *See Complaint, 1-90*. The
15 Defendants did so at the behest of Frank Schreck (“Schreck”), a neighbor and local attorney, who
16 prepared the contents of the declaration based on a district court order that was later reversed by
17 the Supreme Court of Nevada and then lobbied them to circulate and solicit signatures on copies
18 of the declaration as part of a plan to sabotage the Landowners’ development of their Land.² *See*
19 *id.* p. 2-16, *See also Exhibit F*, attached hereto. Upon filing of the complaint, co-conspirator
20 Schreck engaged his firm, Brownstein Hyatt Farber & Schreck LLP, to defend the Defendants on
21

22
23
24 ¹ It is suspicious, to say the least, to have a contingency fee agreement for a defendant who has
25 no claims against the plaintiff, and this is particularly true where the actions of a member of the
26 firm, Frank Schreck, generated the conduct of the defendants which in turn led to the allegations
in the Complaint.

27 ² The Landowners sought to develop approximately 250 acres of land they own and control
28 in Las Vegas, Nevada formerly known as the Badlands Golf Course property (hereinafter the
“Land”).

1 a contingency basis even though there were no counterclaims or other affirmative basis for
2 recovery. *See* Defs' Mot. for Atty Fees p. 3. Since then, Schreck's firm has purportedly spent
3 nearly 650 hours working on the case at hourly rates upwards of \$500 and up to \$875. *See id.*, and
4 Exhibit 3 to the Motion for Attorney's Fees. Although ***the Defendants have not incurred any***
5 ***attorney fees*** because Schreck and his firm defended them on a contingency basis in a case he
6 instigated and against claims in which he was a co-conspirator, he nevertheless now stands to get
7 paid an exorbitant amount of attorney fees for his own wrongdoing. *See* Pltfs' Opp. to Mot. for
8 Atty Fees p. 4-30. All of this is undisputed yet it was never evaluated under the *Brunzell* factors.
9 Given these facts, the attorney fees request screams of extortion. At best, it is unreasonable and a
10 gross aberration of the legislative purpose behind the anti-SLAPP statutes. Attorney fees in anti-
11 SLAPP cases are supposed to reimburse *attorney fees incurred by defendants* improperly sued for
12 exercising their First Amendment rights. *See, e.g., Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th
13 Cir. 2014) (legislative purpose of anti-SLAPP statutes is to reimburse the prevailing defendant for
14 expenses incurred in extracting itself from a baseless lawsuit); *see also Shapiro v. Welt*, 133 Nev.
15 ___, 389 P.3d 262, 268 (2017) (looking to California law for guidance because California's and
16 Nevada's anti-SLAPP statutes are similar in purpose and language). They are not intended to
17 reward wrongdoers such as Schreck with a windfall of over \$350,000 in attorney fees for his
18 misconduct³. *See id.*

19
20 *Third*, this Court did not resolve, post-remand, the host of other issues Plaintiffs raised in
21 their Opposition to the award of attorney's fees. A broad outline of those unresolved challenges
22 are as follows:
23
24
25
26

27
28 ³ Schreck boasted to others how he had been successful in "prolonging the agony of the
developer". *See Exhibit G*, attached hereto. *See also Exhibits H, I, J and K* attached hereto.
MOTION TO RECONSIDER ORDER GRANTING ATTORNEY'S FEES POST-REMAND - 3

1. The number of hours counsel alleges to have spent and the hourly rates charged are not reasonable and are instead part of a strategy to increase the amount of money defense counsel would receive for working on this case. Opposition, Page 12.
2. Entire entries are blocked billed and it is impossible to determine how much time was spent on individual tasks. Opposition, Page 12.
3. Defendants are only entitled to their fees related to the Motion to Strike (anti-SLAPP motion), not all other defense efforts. Opposition, Page 13.
4. An unreasonable inflated fee request may be a reason to deny it in its entirety. Id., Page 13.
5. Due to block billing, the Court cannot easily separate out efforts for the 12(b)(5) motion, fees for which they are not entitled to recover, and the court should deny any such fees or make further inquiry. Id., Page 14.
6. Schreck did not provide legal analysis, he provided facts (he is a witness) and he billed at \$875 per hour for a total of \$19,775 for being a witness. Id., Page 14.
7. Defendants provided no evidence that their prevailing rates in the community for similar work by attorneys of comparable skill are appropriate. Id., Page 15.
8. Plaintiffs incurred approximately \$132,000 for the same amount of work that Defendants seek \$347,000 for. Id., Page 15
9. Defendants billed 241 hours of their total 650 billable hours for preparing and briefing a Nevada Supreme Court appeal. Id., Page 15.
10. Langberg's rate is \$190 higher than Ms. Rasmussen's and Schreck's rate is \$375 higher than Ms. Rasmussen's for providing "facts." Id., Page 15.
11. Specific examples of how three attorneys billed a total of over \$14,500 for reviewing and analyzing the complaint. Id., page 16.
12. Defendants' counsel billed a total of approximately \$60,000 for preparing the Anti-SLAPP motion. This is a total of 116 hours and the Nevada District Court has found much lesser sums unreasonable for filing the same motion to dismiss. Plaintiffs spent

only \$9100 responding to the Motion, and that included filing an amendment for comparative purposes. Id., page 17.

13. Plaintiffs spent 91.7 hours drafting a Reply to the Opposition. The opposition was 22 pages and the Reply was 16 pages. The Nevada District Court has found 51 hours spent on a Reply at \$450 unreasonable, and this far exceeds amounts previously determined to be unreasonable. Id., Page 18.

14. As to the Supplements filed, Plaintiffs, who had the burden, billed 9.8 hours and Defendants billed 23.4 hours responding to it. Id., Page 18.

15. Defendants spent \$40,000 for a denied writ on the denial of their 12(b)(5) motion which should not be considered as part of their award. Id., Pages 18-19. They are not awarded attorney's fees by statute on these amounts.

16. There are numerous other disparities provided by Plaintiffs on pages 19-20 of the Opposition that this Court has not addressed. For example, Langberg billed 1.4 for a hearing that Rasmussen billed at 1.0. It was the same hearing and both parties attended via Blue Jeans.

17. Defendants engaged in multiple unnecessary filings. For example, they filed a "request for clarification" which was really a motion to reconsider, and they moved for a protective order because they still thought that 15 interrogatories was "too much." Id., Pages 20-21.

18. Defendants billed over \$4000 providing cookie cutter responses to the very limited discovery requests (15 in total). Id., Page 22.

19. Defendants filed a motion to strike that was denied and that generated fees totaling \$6,000. Plaintiffs were forced to incur \$2,500 in fees just to respond to the frivolous motion that was not granted. Id., page 22.

None of these issues were addressed, post-remand, in this Court's order. For each of these reasons, it is respectfully requested that this Court reconsider its order.

...

...

...

1 **II. ARGUMENT.**

2 **A. Reconsideration Standard.**

3 “A party seeking reconsideration of a ruling of the court, other than any order which may
4 be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief
5 within 10 days after service of written notice of the order or judgment unless the time is shortened
6 or enlarged by order.” EDCR 2.24(b). Here, the judgment sought to be reheard is the Order
7 Granting Defendants’ Motion for Attorneys’ Fees and Additional Monetary Relief Pursuant to
8 NRS 41.670 and NRS 18.010(2). *See Exhibit A*, attached hereto. The written notice of entry of
9 that order was served on September 19, 2022. *See Exhibit B*, attached hereto. Thus, the
10 Landowners’ motion for reconsideration is timely and should be considered by the Court. *See id.*;
11 *see also* EDCR 2.24(b).

12 Reconsideration is warranted when “new issues of fact or law are raised supporting a ruling
13 contrary to the ruling already reached.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d
14 244, 246 (1976); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d
15 668, 672 n.3 (2011). A party seeking reconsideration of a ruling of the district court must do so
16 pursuant to EDCR 2.24(b). In this case, the Defendants were awarded attorney fees pursuant to a
17 contingency fee arrangement with their counsel. *See Exhibit A*. Despite numerous requests by
18 the Landowners to produce a written agreement, the Defendants have never done so which
19 suggests that one does not exist. *See Declaration of Lisa Rasmussen*. Nevada Rule of Professional
20 Conduct (NRPC) 1.5 requires that contingency fee agreements be in writing, and an attorney fees
21 award in the absence of such a written agreement is improper. This issue of fact and law was not
22 considered by the Court in its evaluation of the *Brunzell* factors. The motion for reconsideration
23 should be granted accordingly.

24 **B. Any Award Of Attorney Fees Is Improper In The Absence Of A Written**
25 **Contingency Fee Agreement.**

26 Again, Nevada’s Rules of Professional Conduct requires that contingency fee agreements
27 be in writing. *See* NRPC 1.5(c). A violation of this rule – or any other Rule of Professional
28

1 Conduct – constitutes professional misconduct. *See* NRPC 8.4 (professional misconduct). In
2 addition to triggering prosecution and/or disciplinary proceedings, a lawyer’s misconduct can
3 reduce or eliminate the fee that the lawyer may reasonably charge. *See Hawkins v. Eighth Jud.*
4 *Dist. Ct.*, 133 Nev. 900, 407 P.3d 766 (2017). Indeed, the Restatement (Third) of the Law
5 Governing Lawyers provides for complete denial of fees for some ethical violations even where
6 no harm is proved. *See* Restatement (Third) of the Law Governing Lawyers § 37 cmt. a (2000)
7 (forfeiture of attorney fees is justified for clear and serious violations). The Restatement also
8 includes factors for the Court to consider in analyzing whether violation of duty warrants fee
9 forfeiture. *See id.*, § 37 cmt. d. The factors are: (1) the extent of the misconduct; (2) whether the
10 breach involved knowing violation or conscious disloyalty to a client; (3) whether forfeiture is
11 proportionate to the seriousness of the offense; and (4) the adequacy of other remedies. *See id.*;
12 *see also Hawkins*, 133 Nev. at 903-04, 407 P.3d at 770 (payment of attorney fees is not due for
13 services not properly performed). Importantly, the Supreme Court of Nevada recently indicated
14 that it would be improper to award a contingency fee without a written agreement. *See Gonzales*
15 *v. Campbell & Williams*, 2021 WL 4988154, at *8 (Nev. Oct. 26, 2021) (unpublished disposition).⁴

17 Likewise, it would be improper to award attorney fees in this case given the lack of a
18 written contingency fee agreement. The Rules of Professional Conduct unambiguously require
19 such an agreement to be in writing, and counsels’ failure to comply is a clear and serious ethical
20 violation particularly given the underlying facts of Schreck’s involvement here, none of which the
21 Defendants or their counsel have ever disputed.⁵ *See* NRPC 1.5(c); *see also Hawkins*, 133 Nev.

24 ⁴ *See also* NRAP 36(c)(3) (unpublished dispositions issued by the Supreme Court of
25 Nevada after January 1, 2016 may be cited for their persuasive value).

26 ⁵ In addition to violating NRPC 1.5, Schreck arguably violated NRPC 1.7 (conflict of
27 interest) and NRPC 3.5 (impartiality), and his conflict of interest may be imputed to his firm under
28 NRPC 1.10 (imputation of conflicts of interest).

1 at 903-04, 407 P.3d at 770. Given the years of experience and purported expertise touted by the
2 Defendants' counsel, the lack of a written agreement is certainly a knowing violation warranting
3 the forfeiture of fees. Anything less than a complete denial of fees would result in a windfall to
4 Schreck for a situation entirely of his doing⁶. As such, any other remedy is inadequate, especially
5 since there is no evidence that the Defendants have actually incurred any attorney fees whatsoever.
6 Alternatively, this Court can and should require the Defendants to present their contingency fee
7 agreement illustrating that they are in any way actually responsible for attorney's fees. In the
8 absence of such, this is just exactly what it appears: Schreck leading the Defendants astray and
9 then agreeing to defend them at no cost because of his conduct.
10

11 **C. Given The Undisputed Facts Regarding Schreck's Involvement, The Attorney**
12 **Fee Award Is Not Reasonable Under The *Brunzell* Factors.**

13 As noted in the Court's order, the *Brunzell* factors to be considered in determining whether
14 the requested amount of attorney fees is reasonable are: 1) the qualities of the advocate; 2) the
15 character of the work to be done; 3) the work actually performed; and 4) the results achieved. *See*
16 *id.* at 349, 455 P.2d at 33. In evaluating those factors, the undisputed facts regarding Schreck's
17 actions as a co-conspirator in this case should have been considered because they are relevant to
18 the reasonableness of the award under *Brunzell* and the second factor in particular, i.e., the
19 character of the work to be done or the nature of the litigation, its difficulty and intricacy. *See id.*
20 Although it acknowledges the contingency fee arrangement between the Defendants and counsel,
21 the order does not otherwise indicate that Schreck's involvement as a co-conspirator was
22 considered in the analysis of the *Brunzell* factors. *See Exhibit A*, attached hereto. Further, there
23 is no evidence that a contingency fee agreement exists, and it would in fact be most unusual to
24 defend someone on a "contingency basis."

25 Specifically, the order concludes that the "character of the work [was] extremely significant"

26
27
28 ⁶ *See Exhibits F, G, H, I, and J*, emails promulgating the petitions, directing City Council on its
course of action, bragging about the "agony" caused to the neighbors, etc.

1 because “a developer with expansive financial resources attempt[ed] to silence its opposition in
2 their attempts to have their concerns heard by the City Counsel.” *See id.*, p. 4. Respectfully,
3 nothing could be further from the truth.⁷ In reality, co-conspirator Schreck is a partner at
4 Brownstein Hyatt Farber & Schreck LLP, the law firm representing the Defendants in this
5 litigation. *See* Defs’ Mot. for Atty Fees p. 3. Moreover, neither the Defendants or their counsel
6 dispute Schreck’s role in this case, namely, that he prepared the contents of the declarations,
7 including the false statements therein, and lobbied Omerza, Bresee, and Caria to circulate and
8 solicit signatures on copies of that declaration as part of a plan to sabotage development of the
9 Land and ruin the Landowners’ business interests. *See* Pltfs’ Opp. to Mot. for Atty Fees p. 4-30;
10 *see also* Defs’ Reply to Mot. for Atty Fees p. 2-6. Thereafter, Schreck engaged his firm to *defend*
11 the Defendants on a “*contingency basis*” in a case he instigated with no counterclaims or other
12 affirmative basis for recovery. *See* Pltfs’ Opp. to Mot. for Atty Fees p. 14. Attorneys and clients
13 typically use this fee arrangement in cases where money is being sought and there is a reasonable
14 likelihood of recovery – most often in cases involving personal injury or workers’ compensation.
15 The atypical fee arrangement further suggests something nefarious here, i.e., Schreck is covering
16 his tracks as a conspirator because his behind-the-scenes actions were shady or unethical, and/or
17 he thought his co-conspirators could feign ignorance and get away with their improper actions,
18 and then he could use NRS 41.670 to collect a windfall in attorney fees for a situation entirely of
19

20
21
22 ⁷ Indeed, it was Schreck who assembled a “powerful group” against development and attempted
23 to extort the Landowners to “hand over” the land, threatening that if they did not do so, he was
24 well connected and would make it difficult for the Landowners. Schreck made good on his
25 threat when he invoked the aid of City Council who repeated this threat to the Landowners. *See*
26 Exhibit H. Not only is this uncontested, such actions have resulted in liability against the City for
27 the taking of the Landowners Property. Throughout the matter, Schreck bragged that he was
28 successful in prolonging the agony of the developer. *See* Exhibit G. Such misconduct by an
attorney also implicates SCR 8.4(c) and (e) It is professional misconduct for a lawyer to:
[e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation; (e) State or imply
an ability to influence improperly a government agency or official or to achieve results by means
that violate the Rules of Professional Conduct or other law.

1 his doing. At best, Schreck used the Defendants – unbeknownst to them – to do his bidding and
2 was thereafter obligated to defend them to avoid accountability. Again, the Defendants have not
3 incurred any attorney fees given their contingency fee arrangement and Schreck now stands to
4 get paid for his wrongdoing. At a minimum, these undisputed facts contradict the order's
5 conclusion regarding the second *Brunzell* factor. In other words, the character of the work or
6 nature of the litigation is not significant, difficult, or intricate as a matter of law if it is merely the
7 result of counsel's misconduct. As such, the attorney fee award is not reasonable under *Brunzell*
8 and reconsideration is therefore warranted.⁸
9

10 **D. This Court's Order Does Not Resolve the Challenges to The Billing Entries**
11 **Raised by Plaintiffs.**

12 Finally, even if an attorney fee award is reasonable, which it is not, the enumerated list set
13 forth in Section I, pages 3-5, *supra*, is unaddressed by this Court in its order. It is not sufficient to
14 simply determine that Mr. Langberg's fee is reasonable because of his schooling, the actual
15 character of the work performed must be examined and the challenges to that work must be
16 resolved by the Court. The attorney's fees sought must still be reasonable and they must be those
17 authorized by statute. This much is required by the *Brunzell* analysis the court must make.
18 Additionally, the Landowners did not simply object across the board to the Defendants' attorney's
19 fees, they actually provided itemized objections, something required by this Court. The purpose
20 of doing that was for the court to make an informed decision based on the specific objections.
21 Accordingly, reasonableness is still a factor the Court must consider. See NRS 18.010.
22
23
24
25

26 ⁸ Given the Court's *sua sponte* order, the Landowners respectfully reserve all rights and
27 incorporate by reference herein all their previous pleadings and arguments, including those in
28 Docket Nos. 82338 and 82880, regarding the *Brunzell* factors and the reasonableness of the
attorney fees award based thereon. See Exhibits C, D and E, attached hereto.
MOTION TO RECONSIDER ORDER GRANTING ATTORNEY'S FEES POST-REMAND - 10

1 In resolving ambiguities in anti-SLAPP legislation, Nevada courts often look to California
2 law for guidance because each state's anti-SLAPP statute is "similar in purpose and language,"
3 absent any language to the contrary. *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017).
4 The analogous California provision states, "a prevailing defendant on a special motion to strike
5 shall be entitled to recover his or her attorney's fees and costs." Cal. Civ. Proc. Code § 425.16
6 (West). NRS 41.670(1)(a) similarly states, "[t]he court shall award reasonable costs and attorney's
7 fees to the person against whom the action was brought."

8
9 The California Supreme Court interpreted their anti-SLAPP attorney's fees provision as
10 applying "only to the motion to strike, and not to the entire action." *S. B. Beach Properties v.*
11 *Berti*, 138 P.3d 713, 717 (Cal. 2006); *Christian Research Inst. v. Alnor*, 165 Cal. App. 4th 1315,
12 1318, 81 Cal. Rptr. 3d 866, 869 (Cal. App. Ct. 2008) (reducing the number of hours for an anti-
13 SLAPP award from 600 hours to 71 hours due to block billing and vague entries). Moreover, an
14 "unreasonably inflated" fee request may be grounds for ***denying a fee award in its entirety***.
15 *Ketchum v. Moses*, 17 P.3d 735, 745 (Cal. 2001). This has found support in Nevada's federal
16 courts and there is no directly contradicting authority. *Banerjee v. Cont'l Inc., Inc.*, No.
17 217CV00466APGGWF, 2018 WL 4469006, at *1 (D. Nev. Sept. 17, 2018) (denying an award
18 for attorneys' hours that were block-billed and obscured the time spent on the anti-SLAPP
19 motion and the time spent on a separate motion to dismiss; reducing for excessive billing).

20 If the Court decides to follow this reasoning, Defendants unreasonable and inflated fee
21 request may be denied in part, or in its entirety. However, even if this Court chooses not to outright
22 deny the Motion, Plaintiffs have attached entries which should be denied in their entirety including,
23 inter alia, initial client interviews, initial case reviews, and for other matters unrelated to the anti-
24 SLAPP Motion and appeal. See pages 3-5, Section I, *supra*.

25 **III. CONCLUSION**

26 Based on the foregoing, it is respectfully requested that this Court grant the Landowners'
27 motion for reconsideration in its entirety.

1 DATED: October 3, 2022.

2 Respectfully submitted,

3 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

4 /s/ Lisa A. Rasmussen

5 LISA A. RASMUSSEN, ESQ.

6 NEVADA BAR NO. 7491

7 ATTORNEYS FOR PLAINTIFFS

8
9
10
11
12 **DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR**
13 **RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION**
14 **FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF**
15 **PURSUANT TO NRS 41.670 AND NRS 18.010(2)**

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

17 1. I am counsel of record in the above-captioned matter. I am over eighteen years of
18 age, an attorney duly-licensed to practice law in the State of Nevada since December 2000, and I
19 am employed as a senior attorney at the Law Offices of Kristina Wildeveld & Associates.

20 2. I make this Declaration in support of Plaintiffs' Motion for Reconsideration of
21 Order Granting Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant
22 to NRS 41.670 and NRS 18.010(2).

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

25 4. On April 29, 2022, the Supreme Court of Nevada issued an Order Affirming
26 (Docket No. 82338) and Vacating and Remanding (Docket No. 82880) which vacated the
27 Defendants' attorney fees award. On remand, this Court entered an Order Granting Defendants'
28 MOTION TO RECONSIDER ORDER GRANTING ATTORNEY'S FEES POST-REMAND - 12

1 Motion for Attorneys' Fees and Additional Monetary Relief Pursuant to NRS 41.670 and NRS
2 18.010(2) on September 19, 2022. The written notice of entry of that order was served on
3 September 19, 2022. True and correct copies of this Court's order and the notice of entry are
4 maintained within my office's files and attached hereto as **Exhibits A and B.**

5
6 4. During the discovery phase of this litigation, Plaintiffs sought to ask the Defendants'
7 about their attorney fee arrangement with their counsel. These questions were disallowed by
8 counsel for the Defendants. It is unknown whether any contingency fee agreement exists and this
9 Court ought to request it from defense counsel as it is extremely rare for a firm to defend a party
10 on a contingency fee basis, particularly where there is no counterclaim or no actual claim for
11 monetary recovery.

12 5. As part of the appeals in Docket Nos. 82338 and 82880, the parties filed opening,
13 answering, and reply briefs. Like their district court pleadings, the Defendants have never disputed
14 Frank Schreck's involvement as a co-conspirator in this case or his wrongdoing. True and correct
15 copies of the appellate briefs are maintained within my office's files and attached hereto as
16 **Exhibits C, D, and E.**

17 6. **Exhibit F** is a true and correct copy of letters distributed to Residents asking that
18 the false declarations be signed and returned to Schreck.

19
20 7. **Exhibit G** is a true and correct copy of a November 2, 2016 email from Schreck,
21 promising to "prolong the agony" of the Plaintiffs/Developer.

22 8. **Exhibit H** is a true and correct copy of a Declaration of Vickie DeHart filed in a
23 related case.

24 9. **Exhibit I** is a true and correct copy of an email chain between Seroka, Schreck and
25 Thompson.

26
27 10. **Exhibit J** is a true and correct copy of emails between Seroka and Schreck.

1 11. **Exhibit K** is a true and correct copy of a January 2018 email from Schreck to
2 multiple parties.

3
4 Executed this 3rd day of October, 2022, at Las Vegas, Nevada.

5 /s/ Lisa A. Rasmussen

6 _____
7 LISA A. RASMUSSEN, ESQ.

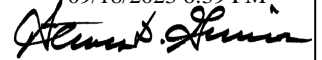
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9
10
11 **CERTIFICATE OF SERVICE**

12
13 I hereby certify that I served a copy of the foregoing MOTION TO
14 RECONSIDER via this court's Efile and Serve program on all parties receiving service
15 in this case on this 3rd day of October 2022, including, but not limited to:
16

17
18 Mr. Mitchell Langberg, Esq.
19 Counsel for the Defendants

20 /s/ Lisa A. Rasmussen

21 _____
22 Lisa A. Rasmussen, Esq.


CLERK OF THE COURT

ORDR

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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BROWNSTEIN HYATT FARBER SCHRECK, LLP
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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.: ~~18~~ 19

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER ORDER
GRANTING ATTORNEY'S FEES POST-
REMAND**

Plaintiffs' Motion to Reconsider Order Granting Attorney's Fees Post-Remand (the
"Motion") came on for chambers hearing before this Court on June 2, 2023.

After considering the Motion, the opposition thereto, and the reply in support thereof, the
Court will deny the motion:

1. On October 3, 2022, Plaintiffs filed their Motion seeking reconsideration of this
Court's September 19, 2022, Order Granting Defendants' Motion for Attorneys' Fees and
Additional Monetary Relief Pursuant to NRS 41.670 and NRS 18.010(2) (the "Fee Motion").
2. Defendants filed their opposition to the Motion on October 17, 2022.
3. Plaintiffs filed their reply in support of the Motion on October 28, 2022.

1 4. EDCR 2.24 provides that “[n]o motions once heard and disposed of may be
2 renewed in the same cause, nor may the same matters therein embraced be reheard, unless by
3 leave of the court granted upon motion therefor, after notice of such motion to the adverse
4 parties.” “[A] court may correct a clerical mistake or a mistake arising from oversight or omission
5 whenever one is found in a judgment, order, or other part of the record.” NRCP 60(a). This may
6 be done by the court sua sponte or on a timely motion from the parties, and does not require
7 notice by the court. *Id.*

8 5. To prevail on a motion for reconsideration, the moving party must establish that
9 there was an error of law, substantially new evidence discovered, or that the Court’s decision was
10 clearly erroneous. *See Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga, & Wirth,*
11 *Ltd.*, 113 Nev. 737, 741 (1997).

12 6. “A finding is ‘clearly erroneous’ when although there is evidence to support it, the
13 reviewing court on the entire evidence is left with the definite and firm conviction that a mistake
14 has been committed.” *U.S. v. Gypsum*, 333 U.S. 364, 395 (1948).

15 7. Finally, any “[p]oints or contentions not raised in the original hearing cannot be
16 maintained or considered on rehearing.” *Achrem v. Expressway Plaza Ltd. P’ship*, 112 Nev. 737,
17 742 (1996).

18 8. Plaintiffs have failed to establish that there was an error of law, substantially new
19 evidence discovered, or that the Court’s decision was clearly erroneous.

20 9. Defendants are correct in that the Nevada Supreme Court remanded this matter to
21 the District Court for the sole purpose of considering the *Brunzell* factors in granting Defendants’
22 request for attorney’s fees. Specifically, the Nevada Supreme Court Ordered, “Consistent with
23 the foregoing, we affirm the district court’s order granting respondents’ special motion to dismiss
24 in Docket No. 82338, and we vacate the order awarding attorney fees in Docket 82880, and
25 remand for the court to consider the *Brunzell* factors and make the necessary findings to support
26 the fee amount awarded.”

1 10. This Court considered the *Brunzell* factors and issued its own Order on the matter,
2 filed on September 19, 2022 [Docket #132], which articulated the factors this Court considered
3 and necessary findings to support its decision in granting Defendants’ Motion for attorney’s fees.

4 11. Plaintiffs’ new argument that reasonable fees must include fees for which the
5 Defendants are liable is not a basis for reconsideration.

6 12. The Court does not need to resolve these issues. As noted above, when an anti-
7 SLAPP motion is granted, the Court “shall award reasonable costs and attorney’s fees.” NRS
8 41.670(1)(a). The Nevada Supreme Court has repeatedly directed that application of the *Brunzell*
9 factors are the method by which a reasonable fee is determined and this Court interprets this to
10 mean that only the Brunzell factors shall be analyzed and that it shall award fees that are
11 reasonable pursuant to *Brunzell*.

12 13. Thus, whether the Court is considering:

- 13 (a) A traditional hourly arrangement;
- 14 (b) fees paid by a third party (*Macias v. Hartwell*, 55 Cal. App. 4th 669, 674-
15 75 (1997)—anti-SLAPP fees awarded even if third party, not defendant,
16 paid fee);
- 17 (c) a pro bono relationship (*See Rosenaur v. Scherer*, 88 Cal. App. 4th 260,
18 281-287 (2001), as modified (Apr. 5, 2001)—anti-SLAPP fees on pro bono
19 matter)
- 20 (d) a contingency fee arrangement (*See Ketchum v. Moses*, 24 Cal. 4th 1122,
21 1132-33 (2001) - granting fees to contingency fee counsel on anti-SLAPP
22 motion); or
- 23 (e) a contingency fee arrangement without a written agreement that could
24 somehow be challenged by third parties such as Plaintiffs (Restatement
25 (Third) of the Law Governing Lawyers § 39 (2000)—lawyer entitled to
26 reasonable fee even where there is no valid contract),

27 the Court’s task is the same: to determine and award reasonable attorneys’ fees. That is exactly
28 what the Court did.

14. Thus, there was no basis for reconsideration.

Therefore, it is hereby ORDERED that Plaintiffs' Motion to Reconsider Order Granting Attorney's Fees Post-Remand is DENIED.

Dated this 18th day of September, 2023



4FD 36E 8E78 ED4B
Crystal Eller
District Court Judge

Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Mitchell J. Langberg
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Counsel for Defendants
DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

Approved as to form:

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

By: /s/ Lisa A. Rsmussen
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Counsel for Plaintiffs
FORE STARS, LTD., 180 LAND CO., LLC; and
SEVENTY ACRES, LLC

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Fore Stars, Ltd., Plaintiff(s)	CASE NO: A-18-771224-C
7	vs.	DEPT. NO. Department 19
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 foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/18/2023

15 Elizabeth Ham	EHam@ehbcompanies.com
16 Todd Davis	tdavis@ehbcompanies.com
17 Jennifer Knighton	jknighton@ehbcompanies.com
18 Mitchell Langberg	mlangberg@bhfs.com
19 Lisa Rasmussen	Lisa@Veldlaw.com
20 Kristina Wildeveld	Kristina@Veldlaw.com
21 Mitchell Langberg	mlangberg@bhfs.com
22 Mitchell Langberg	mlangberg@bfhs.com
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Veld Law	Efile@veldlaw.com
Lisa Rasmussen	Lisa@Veldlaw.com
Lisa Rasmussen	Lisa@Veldlaw.com

1 **ORDR**

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

5 FORE STARS, LTD., a Nevada Limited
6 Liability Company; 180 LAND CO., LLC; a
7 Nevada limited liability company; SEVENTY
8 ACRES, LLC, a Nevada Limited liability
9 company,

10 Plaintiff(s),

11 vs.

12 DANIEL OMERZA, DARREN BRESEE,
13 STEVE CARIA, and DOES 1 THROUGH 100,
14 Defendant(s).

Case No.: A-18-771224-C
Dept. No.: 19

15 **ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS'**
16 **FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS**
17 **41.670 AND NRS 18.010(2)**

18 This matter came before the Court on Defendants' Motion for Attorneys' Fees and
19 Additional Monetary Relief Pursuant to NRS 41.670 and NRS 18.010(2) on March 31, 2021.
20 Thereafter, Plaintiffs filed their Notice of Appeal on May 5, 2021. The Nevada Supreme Court
21 Ordered: (1) the District Court's order granting [Defendants'] special motion to dismiss is
22 affirmed; (2) the District Court's order awarding attorney fees is vacated; and (3) the matter is
23 remanded back to the District Court to consider the Brunzell factors and make the necessary
24 findings to support the fee amount awarded.¹

25 Having considered the Motion, Opposition and Reply, all papers related thereto, oral
26 argument, and the papers and pleadings on file herein, the Court finds:

27 1. Defendants' anti-SLAPP Motion to Dismiss filed pursuant to NRS 41.635, et. seq. was
28 granted in full and all of Plaintiffs' claims were dismissed by way of the Findings of Fact,
Conclusions of Law, and Order entered on December 10, 2020;

¹ See Supreme Court Order Affirming (Docket No. 82338) and Vacating and Remanding (Docket No. 82880)
dated April 29, 2022.

1 2. Defendants' filed a timely motion seeking attorneys' fees and additional monetary relief
2 pursuant to NRS 41.670 and NRS 18.010(2);

3 3. Plaintiffs filed a timely opposition to the Motion and Defendants filed a timely reply;

4 4. In the Motion, Defendants seek attorneys' fees based on the Lodestar method (rate
5 multiplied by hours) in the amount of \$363,244.00.

6 5. However, once that amount is determined, a court must also consider the
7 reasonableness in light of the Brunzell factors." Id. Those factors are:

8 (1) the qualities of the advocate: his ability, his training, education, experience,
9 professional standing and skill; (2) the character of the work to be done: its difficulty, its
10 intricacy, its importance, time and skill required, the responsibility imposed and the
11 prominence and character of the parties where they affect the importance of the litigation; (3)
12 the work actually performed by the lawyer: the skill, time and attention given to the work;
13 (4) the result: whether the attorney was successful and what benefits were derived *Brunzell v.*
14 *Golden Gate Nat. Bank*, 85 Nev. 345, 349 (1969).

15 6. Defendants also seek an enhancement because Defendants' counsel agreed to prosecute
16 the anti-SLAPP motion on a contingency basis;

17 7. Defendants further seek an additional monetary award of \$10,000 per Defendant
18 pursuant to NRS 41.670;

19 8. With regard to the "Brunzell factors" Id., the Court finds as follows:

20 **A. Quality of the Advocate**

21 Mitchell Langberg was lead counsel on this matter who worked 182.2 hours not including
22 the Motion for Attorney Fees. His initial rate was \$655 then increased over the 2 1/2 year
23 duration of the case, by only 5% to \$690.5. Per his declaration, he graduated from the
24 University of Southern California School of Law in 1994. During his 26 years of practice, one
25 of his primary focuses has been on defamation and First Amendment litigation. He is
26 recognized by Best Lawyers in the area of Media and First Amendment Law. He is recognized
27 with a Preeminent AV rating from Martindale-Hubbell. Mr. Langberg has handled
28

1 approximately 50 cases involving anti-SLAPP motions representing both plaintiffs and
2 defendants.

3 Aaron Hughes assisted Mr. Langberg until he left the Brownstein firm. He worked 306.9
4 hours on this matter at a rate of \$485. According to Mr. Langberg's Declaration, Mr. Hughes
5 is a 1990 graduate from the University of California at Berkeley School of Law and is an
6 experienced trial attorney working in a broad range of areas including intellectual property,
7 securities litigation, and antitrust. Per Mr. Langberg's Declaration, Mr. Hughes is well-
8 regarded for his skills as an appellate brief writer, having prepared winning briefs to the
9 United States Supreme Court and the Colorado Supreme Court. Further, Mr. Hughes
10 performed almost all of the brief writing, up to and including the successful briefing on
11 appeal.

12 Nancy Lee assisted Mr. Langberg and Mr. Hughes with research and brief writing. She
13 worked 97 hours on this matter. Her hourly rate was \$450 until she left the firm. Ms. Lee is a
14 2004 graduate from Loyola Laws School in Los Angeles with diverse experience in a host of
15 civil litigation matters. Ms. Lee previously worked at preeminent law firms including Stroock
16 & Stroock & Lavan, Buchalter Nemer, and Loeb & Loeb.

17 The three remaining billers (Frank Schreck – 22.6 hours, Laura Langberg – 6 hours,
18 William Nobriga – 5.5 hours) worked only 5.5% of total hours billed on various tasks. Most
19 of Mr. Schreck's time was spent participating in initial client interviews and providing facts
20 regarding underlying court cases and City Council proceedings that were critical to the anti-
21 SLAPP motion.

22 Based on the experience and quality of the advocates, the hourly rates were reasonable.
23

24 **B. Character of Work to be Done**

25 The work itself implicated important First Amendment rights on issues that are of
26 immense concern in this community—including matters of regulating development and
27 resident input in that process. The anti-SLAPP statute, itself, is designed to identify meritless
28 litigation arising from the exercise of First Amendment rights. The fact the Legislature has

1 created a special procedure in these cases emphasizes the social importance of anti-SLAPP
2 litigation. Further, when taken in the context of a developer with expansive financial
3 resources attempting to silence its opposition in their attempts to have their concerns heard by
4 the City Counsel, speaks volumes about the challenges in the case. Therefore, the character of
5 work extremely significant.

6 **C. The Work Actually Performed**

7 A review of the timeline, exhibits and information submitted by defendants, shows that
8 much of the required work was necessitated by Plaintiffs' litigation strategy in the matter. The
9 complaint alleged numerous tort claims against Defendants in retaliation to their efforts to
10 garner support to oppose a development in the City Council. The record shows that Plaintiffs
11 also made efforts to force discovery while the appeal was pending, even though the anti-
12 SLAPP statute created a mandatory stay. There were several instances throughout the case
13 where the process appeared to be extended by plaintiffs, requiring more legal work and
14 corresponding increased fees. Ultimately, an objective review of all of the work performed in
15 the case, including hundreds of pages of briefs, countless cites to legal authority, extensive
16 research efforts, and more, reveals that several hundred hours of attorney time were
17 reasonably required to defend the case.

18 **D. The Result**

19 Here, the Court initially determined the anti-SLAPP statute did not bar Plaintiffs' claims.
20 Defense counsel then successfully litigated an appeal, had the decision reversed, and on
21 remand persuaded the Court that the lawsuit must be dismissed pursuant to the anti-SLAPP
22 statute. Despite the contingent nature of the fees, counsel marshalled his skills and experience,
23 and devoted the extensive time and attention required to overcome the Court's initial rulings.
24 This work and effort culminated in a successful conclusion to the case in favor of the client.
25
26
27
28

1 For the reasons stated by the Court on the record (NRCp 52(a)(3)), as well as the Court's
2 above analysis of the "Brunzell factors," the Court finds that the hourly rates and the hours
3 requested by Defendants for attorneys' fees are reasonable and that the Lodestar fees based on
4 those reasonable rates and hours are \$363,244.00.

5 9. The Court also finds that a fee enhancement, as requested by Defendants, is not
6 appropriate in this matter. Although the legal work in this case was taken on a contingent fee
7 basis, which is rare in defense of a situation, the full extent of the risk of non-payment which
8 is normally associated with contingent fees, is not present in an "anti-SLAPP" defense. Under
9 NRS 41.635 attorneys' fees must be awarded to defendant if successful on the motion. This
10 diminished the risk attorneys must typically endure when handling a contingent fee case.

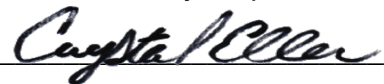
11 10. The Court also finds that an additional monetary award to Defendants pursuant to
12 NRS 41.670 is not appropriate in this matter. This additional award can be used to
13 compensate defendants who have had to endure the stress of ongoing litigation and the
14 expenditure of attorney fees. The award can also be a deterrent to plaintiffs from filing
15 lawsuits which violate the First Amendment protections. Here, however, defendants were not
16 subject to the excessive stress associated with paying attorney fees out of pocket to defend the
17 suit due to the contingent fee agreement. Further, the court does not find that Plaintiff brought
18 or maintained the case in bad faith so there is no reason to grant an additional money award to
19 deter Plaintiff.

20 Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that:

- 21 1. Defendants' Motion is GRANTED; and
22 2. Plaintiffs are hereby jointly and severally ORDERED to pay to Defendants attorneys'
23 fees in the amount of \$363,244.00.
24

25 **IT IS SO ORDERED.**

26 Dated this 19th day of September, 2022

27 

28 939 DF3 9D05 5404
Crystal Eller
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6	Fore Stars, Ltd., Plaintiff(s)	CASE NO: A-18-771224-C
7	vs.	DEPT. NO. Department 19
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 foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

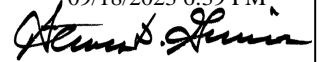
14 Service Date: 9/19/2022

15 Elizabeth Ham	EHam@ehbcompanies.com
16 Todd Davis	tdavis@ehbcompanies.com
17 Jennifer Knighton	jknighton@ehbcompanies.com
18 Mitchell Langberg	mlangberg@bhfs.com
19 Lisa Rasmussen	Lisa@Veldlaw.com
20 Kristina Wildeveld	Kristina@Veldlaw.com
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23 Samuel Reyes	Sam@veldlaw.com
24 Diana B	diana@veldlaw.com
25 Lisa Rasmussen	Lisa@Veldlaw.com
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Lisa Rasmussen

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CLERK OF THE COURT

ORDR

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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
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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.: ~~11~~ 19

**ORDER GRANTING , IN PART,
DEFENDANTS' SUPPLEMENTAL
MOTION FOR ATTORNEYS' FEES; AND**

**DENYING PLAINTIFFS' MOTION FOR
LEAVE TO FILE SUR-REPLY TO
DEFENDANTS' REPLY**

Defendants' Supplemental Motion for Attorneys' Fees (the " Supplemental Fee Motion")
and Plaintiff's Motion for Leave to File Sur-Reply to Defendants' Reply.(the "Sur-Reply Motion")
came on for chambers hearing before this Court on June 2, 2023.

After considering the Supplemental Fee Motion and the Sur-Reply Motion and all of the
papers filed in support of and in opposition to the motions, the Court makes the follow order
granting the Supplemental Fee Motion, in part, and denying the Sur-Reply Motion as moot:

1. Defendants' anti-SLAPP motion under NRS 41.670 was granted and substantively
affirmed by the Nevada Supreme Court. The Nevada Supreme Court reversed the initial
attorneys' fee award for reconsideration after further consideration of the *Brunzell* factors.

2. On remand, this Court issued a fee award.

3. On November 23, 2022, Defendants filed the Supplemental Fee Motion seeking fees for work that had not been addressed by this Court's prior fee award, including the fees related to the appeal.

4. Plaintiffs filed their opposition to the Supplemental Fee Motion on December 23, 2022.

5. Defendants filed their reply in support of the Supplemental Fee Motion on January 6, 2023.

6. Plaintiffs filed their Sur-Reply Motion on January 17, 2023.

7. In a case where claims have been successfully dismissed by way of an anti-SLAPP motion, NRS 41.670(1)(a) states that a court "shall award reasonable cost and attorney's fees to the person against whom the action was brought."

8. An award of additional amounts, up to \$10,000, are also permitted under NRS 41.670(1)(b).

9. Further, where *all* claims are disposed of by the motion, fees incurred that are not directly related to the anti-SLAPP motion are recoverable. *See Goldman v. Clark Cty. Sch. Dist.*, 2020 WL 5633065, *1, *5 (Nev. Sept. 18, 2020)(affirming an award of fees and costs "because the facts and legal arguments in the NRCP 12(b)(5) motion were intrinsically intertwined with those in the anti-SLAPP motion").

10. Further, such fees shall include "all reasonable fees and costs incurred from the inception of the litigation..." *Smith v. Zilverberg*, 137 Nev. 65, 73 (2021). This means that a prevailing defendant is entitled "to recover reasonable attorney fees and costs incurred in the entire action, not just those incurred litigating the anti-SLAPP special motion to dismiss." *Id.* at 75.

11. Additionally, NRS 18.010 provides for an award of attorney's fees where: (1) authorized by a specific statute; (2) the prevailing party has not recovered more than \$20,000; or (3) notwithstanding the recovery sought, the court finds that a "claim, counterclaim, cross-claim

1 or third-party complaint or defense” was maintained without reasonable ground or to harass the
2 prevailing party.”

3 12. Additionally, the provisions of the statute are to be “liberally construe[d] ... in
4 favor of awarding attorney’s fees in all appropriate situations.” *Id.*

5 13. Further, such an award is also intended as a sanction to punish and deter frivolous
6 and vexatious claims, pursuant to NRCP 11. *Id.* “[A] claim is frivolous or groundless if there is
7 no credible evidence to support it.” *Capanna v. Orth*, 134 Nev. 888, 895 (2018).

8 14. Here, an award of fees is warranted. NRS 41.670(1)(a) is abundantly clear that the
9 Court “*shall* award” reasonable costs and fees.

10 15. In opposition to this motion and in other papers filed with this Court, Plaintiffs
11 have repeatedly argued that no fees can be awarded under the anti-SLAPP Statute unless
12 Defendants prove that are actually liable for, or have actually paid attorneys fees, or that they
13 provide a copy of a contingency agreement. Plaintiffs argue that in the absence of evidence that
14 the work performed by defense counsel created a legal obligation for defendants to pay, no fees
15 should be awarded because “[t]his is not a contingency case; it is a pro bono case.”

16 16. The Court does not need to resolve these issues. As noted above, when an anti-
17 SLAPP motion is granted, the Court “shall award reasonable costs and attorney’s fees.” NRS
18 41.670(1)(a). The Nevada Supreme Court has repeatedly directed that application of the *Brunzell*
19 factors are the method by which a reasonable fee is determined and this Court interprets this to
20 mean that only the Brunzell factors shall be analyzed and that it shall award fees that are
21 reasonable pursuant to *Brunzell*.

22 17. Thus, this Court is required to consider the *Brunzell* factors in considering
23 Defendants’ request for supplemental fees in the amount of \$43,620.50 which is the *Lodestar*
24 amount (rate multiplied by hours) requested by Defendants’ counsel.

25 18. The factors are (1) the qualities of the advocate: their ability, training, education,
26 experience, professional standing and skill; (2) the character of the work to be done: its difficulty,
27 its intricacy, its importance, time and skill required, the responsibility imposed and the
28 prominence and character of the parties where they affect the importance of the litigation; (3) the

1 work actually performed by the lawyer: the skill, time and attention given to the work; (4) the
2 result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden*
3 *Gate Nat. Bank*, 85 Nev. 345, 349 (1969).

4 19. As to the quality of the advocate, Mitchell Langberg performed the majority of the
5 work for the supplemental fees requested. The Court finds, as set out in his declaration, that
6 Mitchell Langberg has been lead counsel on this matter. He graduated from the University of
7 Southern California School of Law in 1994. During his 29 years of practice, one of his primary
8 focuses has been on defamation and First Amendment litigation. He is recognized by Best
9 Lawyers in the area of Media and First Amendment Law. He is recognized with a Preeminent
10 AV rating from Martindale-Hubbell. Mr. Langberg has handled approximately 50 cases
11 involving anti-SLAPP motions (on both sides). He testified as an expert in the Nevada
12 Legislature when the current anti-SLAPP statute was debated in 2015. He has taught anti-SLAPP
13 law, including most recently as a lecturer on the subject at the Colorado Judicial Conference. As
14 further set out in Mr. Langberg's declaration, Laura Langberg briefly assisted on this case. She is
15 a 2007 J.D./M.B.A. graduate of the Boyd School of Law. She has worked with Mr. Langberg on
16 defamation cases since 2008 and has assisted with several anti-SLAPP motions and oppositions.
17 Based on these undisputed facts, this Court finds that the quality of the advocates is very high.

18 20. As to the character of the work done, as this Court has previously found in this
19 case, the work itself implicated important First Amendment rights on issues that are of immense
20 concern in this community—including matters of regulating development and resident input in
21 that process. The anti-SLAPP statute, itself, is designed to identify meritless litigation arising
22 from the exercise of First Amendment rights. The fact the Legislature has created a special
23 procedure in these cases emphasizes the social importance of anti-SLAPP litigation. Further,
24 when taken in the context of a developer with expansive financial resources attempting to silence
25 its opposition in their attempts to have their concerns heard by the City Counsel, speaks volumes
26 about the challenges in the case. Therefore, the character of work is extremely significant.

27 21. As to the work actually performed, the Court has reviewed the charges provided
28 by Defendants setting out the work performed by category. All of the work was necessitated by

1 Plaintiffs' persistent pursuit of claims seeking damages of tens of millions of dollars in the
2 Nevada Supreme Court—claims that Court has confirmed lacked all merit. Defendants' counsel
3 spent less than 60 hours to resist a motion for reconsideration, draft a settlement conference
4 statement, attend a mandatory settlement conference in person, draft an appeal brief on the
5 complicated issues in this case, and then resist yet another motion for reconsideration. The Court
6 is directly familiar with all the work that was filed with this Court and, based on the Nevada
7 Supreme Court decision and the Court's own experience, understands the work that was required
8 for the settlement conference and the appellate briefing. Defendants' efforts were successful and
9 the quality of the work was clearly very good. The number of hours requested is very reasonable
10 in light of the work performed.

11 22. As to the result, Defendants were successful. The Nevada Supreme Court
12 affirmed the substantive grant of the anti-SLAPP motion. Remand was only for this Court to
13 reconsider the amount of fees and expressly articulate the application of the *Brunzell* factors in its
14 order. And, this Court issued an award of the full fees after again considering the *Brunzell*
15 factors.

16 23. The Court finds that the rates applied by counsel for the *Lodestar* analysis are
17 reasonable. When this case began several years ago, the rate of \$655 per hour Mr. Langberg
18 applied for this matter was less than his regular billable rate. In the more than four years since
19 then, Mr. Langberg's standard billable rate has increased annually, which is common in the legal
20 community. Another Court in this district has recently approved Mr. Langberg's rate of \$825 per
21 hour on an anti-SLAPP motion. For the work that is the subject of the Supplemental Fee Motion,
22 Mr. Langberg has requested only \$700 per hour, less than 7% more than his initial rate was more
23 than four years ago. The rate applied to Mrs. Langberg's limited work was \$505.

24 24. The Court is familiar with the rates charged in this community for complex or
25 specialty litigation such as First Amendment and anti-SLAPP litigation. The Court finds that the
26 rates applied are reasonable and appropriate for the nature and quality of the work performed. In
27 fact, they are lower than some rates approved on anti-SLAPP motions in this district.
28

25. The Court also finds that the total hours requested in the Supplemental Fee Motion (58.3 hours) and the reply in support of that motion (4.6 hours) is reasonable for all of the work performed.

26. Therefore, the Court finds that total fees in the amount of \$43,620.50 are reasonable and appropriate after consideration of the *Lodestar* and *Brunzell* factors.

27. In the reply in support of the Supplemental Fee Motion, Defendants requested that the Court make a referral to Bar Counsel pursuant to Nevada Rules of Professional Conduct 3.3. The Court will deny that request.

28. Therefore, Plaintiff's Motion for Leave to File a Sur-Reply will be denied as moot.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants' Supplemental Motion for Attorneys Fees is GRANTED in part and DENIED in part;

2. Defendants request for attorneys' fees is GRANTED and Defendants are awarded supplemental attorneys' fees (in addition to fees already awarded by the Court) as against Plaintiffs, and each of them, jointly and severally, in the total amount of \$43,620.50, and Plaintiffs are hereby ORDERED to pay such fees to Defendants within 60 days unless this fee award is stayed pursuant to statute, rule, or subsequent court order;

3. Defendants' request for referral to Bar Counsel is DENIED; and

4. Plaintiff's Motion for Leave to File Sur-Reply to Defendants' Reply is DENIED as moot.

Dated this 18th day of September, 2023



DF3 253 7696 0544
Crystal Eller
District Court Judge

1 Respectfully Submitted By:

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27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Fore Stars, Ltd., Plaintiff(s)	CASE NO: A-18-771224-C
7 vs.	DEPT. NO. Department 19
8 Daniel Omerza, Defendant(s)	
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10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/18/2023

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