

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3  
4   FORE STARS, LTD., a Nevada Limited  
5   Liability Company; 180 Land Co., LLC,  
6   A Nevada Limited Liability Company;  
7   and SEVENTY ACRES, LLC, a Nevada  
8   Limited Liability Company,

9                                   Appellants,

10                               v.

11   DANIEL OMERZA; DARREN  
12   BRESEE; AND STEVE CARIA,

13                               Respondents.

Supreme Court No. 87354 Electronically Filed  
Mar 15 2024 03:43 PM  
District Court Case No. A771224  
Elizabeth A. Brown  
Clerk of Supreme Court

14                                   **JOINT APPENDIX**

15                                   **VOLUME 11**

16                                   **PAGES 1592-1666**

17                                   SKLAR WILLIAMS PLLC  
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23                                   and

24                                   THE LAW OFFICES OF KRISTINA  
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11	Notice of Entry of Order Granting Attorney's Fees	9/19/22	<b>1657-1666</b>
12	Motion to Reconsider Order Granting Attorney's Fees	10/3/22	<b>1667-1865</b>
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25				
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A-18-771224-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**January 25, 2021**

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

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**January 25, 2021      3:00 AM      Motion For  
Reconsideration**

**HEARD BY:** Eller, Crystal

**COURTROOM:** Chambers

**COURT CLERK:**

Dauriana Simpson

**JOURNAL ENTRIES**

- The Court DENIES Plaintiffs' Motion for Reconsideration for lack of jurisdiction.

"[A] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in [the Supreme Court]." Rust v. Clark Cty. Sch. Dist., 103 Nev. 686, 688 (1987). However, "where the issue is 'entirely collateral to and independent from that part of the case taken up by appeal, and in no way affected the merits of the appeal,'" this Court may proceed with hearing the matter. Kantor v. Kantor, 116 Nev. 886, 895 (2000). Here, Plaintiffs seek reconsideration of this Court's December 10, 2020 Order. However, on January 8, 2021, Plaintiffs appealed that very same Order to the Nevada Supreme Court. As the matters in Plaintiffs' motion and on appeal are identical, and neither "collateral to" not "independent from" each other, this Court lacks jurisdiction to hear Plaintiffs' motion.

Defendant shall prepare and submit the Order, pursuant to the electronic submission requirements of AOs 20-17 and 20-24.

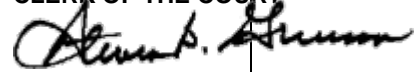
CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Dauriana Simpson, to all registered parties for Odyssey File and Serve. 1/29/2021/ds

PRINT DATE: 01/29/2021

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Minutes Date: January 25, 2021

APP 1592



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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 MINUTE  
ORDER RULING RE: MOTION TO  
RECONSIDER (ANTI-SLAPP)**

**HEARING NOT REQUESTED**

COME NOW the Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC,  
by and through their counsel, Lisa A. Rasmussen, Esq., and ask this Court to reconsider the minute  
order ruling it entered on January 25, 2021 and filed and served on January 29, 2021. The basis

MOTION TO RECONSIDER MINUTE ORDER RULING RE: MOTION TO RECONSIDER (ANTI-  
SLAPP) HEARING NOT REQUESTED - 1



1 for this Motion is as follows:

2 The Minute Order states that this Court denies the Plaintiffs' Motion for Reconsideration  
3 for "lack of jurisdiction." It references a 1987 case and a 2000 case (Rust v. Clark Cty School  
4 District, 103 Nev. 686, 688 (1987) and Kantor v. Kantor, 116 Nev. 886, 895 (2000) respectively.  
5 Further, the Defendant was prepared to prepare the order.

6 In January 2019, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate  
7 Procedure were revised.

8 NRCP Rule 62.1 states:

9 **Indicative Ruling on a Motion for Relief that is Barred by a Pending Appeal**

10 (a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks  
11 authority to grant because of an appeal that has been docketed and is pending, the court  
12 may:

- 13 (1) defer considering the motion;  
14 (2) deny the motion; or  
15 (3) state either that it would grant the motion if the appellate court remands for that  
16 purpose or that the motion raises a substantial issue.

17 (b) **Notice to the Appellate Court.** The movant must promptly notify the clerk of the  
18 supreme court under NRAP 12A if the district court states that it would grant the motion  
19 or that the motion raises a substantial issue.

20 (c) **Remand.** The district court may decide the motion if the appellate court remands for  
21 that purpose.

22 The advisory committee notes to this 2019 amendment state that the new rule was modeled  
23 after FRCP 62.1 and works in conjunction with the new NRAP 12A. The notes further state that  
24 Rule 62.1 does not attempt to define the circumstances in which a pending appeal limits or defeats  
25 the district court's authority to act. Rather, the amendment was intended to provide a procedure  
26 to follow when a party seeks relief in the district court from an order or judgment that the district  
27 MOTION TO RECONSIDER MINUTE ORDER RULING RE: MOTION TO RECONSIDER (ANTI-  
28 SLAPP) HEARING NOT REQUESTED - 2

1 court has lost jurisdiction over due to a pending appeal of the order or judgment, consistent with  
2 Huneycutt v. Huneycutt, 94 Nev. 79 (1978) and its progeny.

3 Nevada Rule of Appellate Procedure Rule 12A is the corollary to this amendment. It states:

4 **Remand After an Indicative Ruling by the District Court on a Motion for Relief**  
5 **That is Barred by a Pending Appeal.**

6 (a) **Notice to the Appellate Court.** If a timely motion is made in the district court for  
7 relief that it lacks authority to grant because of an appeal that has been docketed and is  
8 pending, the movant must promptly notify the clerk of the Supreme Court if the district  
9 court states either that it would grant the motion or that the motion raises a substantial  
10 issue.

11 (b) **Remand After an Indicative Ruling.** If the district court states that it would grant the  
12 motion or that the motion raises a substantial issue, the Supreme Court or the Court of  
13 Appeals may remand for further proceedings but the appellate court retains jurisdiction  
14 unless it expressly dismisses the appeal. If the appellate court remands but retains  
15 jurisdiction, the parties must promptly notify the clerk of the Supreme Court when the  
16 district court has decided the motion on remand.

17  
18  
19 This Court's minute order simply states that it lacks jurisdiction. The newly enacted rules  
20 provide the district court the ability to (1) defer considering the motion; (2) deny the motion; or  
21 (3) state that it would grant the motion if the appellate court remanded for that purpose or that the  
22 motion raises a substantial issue. For the purpose of the pending appeal, it would be helpful to  
23 both parties if this Court entered a determination based upon one of the available options under  
24 NRCP 62.1, rather than stating simply that it lacks jurisdiction. This would help avoid additional  
25 appellate issues based merely on a procedural misunderstanding that this Court did not likely  
26 intend.

27 For each of these reasons, it is respectfully requested that this Court reconsider its January  
28 MOTION TO RECONSIDER MINUTE ORDER RULING RE: MOTION TO RECONSIDER (ANTI-  
SLAPP) HEARING NOT REQUESTED - 3

1 29, 2021 minute order and make its determination in a manner consistent with the available options  
2 under NRCP 62.1. Rule 62.1 indeed provides discretionary options for the district court, but for  
3 the purpose of appeal, the undersigned believes it would be best to frame this Court's ultimate  
4 decision within that framework.

5 Dated this 2<sup>nd</sup> day of February 2021.

6  
7 **The Law Offices of Kristina Wildeveld & Associates,**  
8 */s/ Lisa Rasmussen*

9 \_\_\_\_\_  
10 LISA A. RASMUSSEN, ESQ.  
11 Nevada Bar No. 7491  
12 Attorneys for Plaintiffs

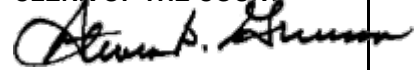
13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that I served a copy of the foregoing Motion to Reconsider,  
15 upon all persons registered for Electronic Service in the above-entitled case, upon the  
16 following persons on this 2<sup>nd</sup> day of February 2021:

17 Mr. Mitchell Langberg, Esq.

18  
19 */s/ Lisa A. Rasmussen*

20 \_\_\_\_\_  
21 LISA A. RASMUSSEN, ESQ.



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7 Telephone: 702.382.2101

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10 DANIEL OMERZA, DARREN BRESEE, and

11 STEVE CARIA

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

24 Defendants,

CASE NO.: A-18-771224-C

DEPT NO.: 19

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

**ELECTRONIC FILING CASE**

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

27 ...

28 ...

...

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

3 DATED this 4th day of February, 2021.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5 BY: /s/ Mitchell J. Langberg

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

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

8 100 North City Parkway, Suite 1600

9 Las Vegas, NV 89106-4614

10 Telephone: 702.382.2101

11 Facsimile: 702.382.8135

12 *Counsel for Defendants*

13 DANIEL OMERZA, DARREN BRESEE, and

14 STEVE CARIA

**CERTIFICATE OF SERVICE**

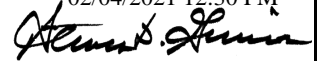
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED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

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

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

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

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



CLERK OF THE COURT

**ORDER**

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

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C

DEPT. NO.: ~~11~~

19

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

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

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

...

...

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

DATED this \_\_\_\_ day of February, 2021. Dated this 4th day of February, 2021



DISTRICT COURT JUDGE

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

Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Mitchell J. Langberg  
MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
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Las Vegas, Nevada 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

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

Approved as to form:

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

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



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

Hi Mitch,

You may add my signature to the signature line.

Thank you,

Lisa

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

Sent from [Mail](#) for Windows 10

---

**From:** [Langberg, Mitchell](#)  
**Sent:** Wednesday, February 3, 2021 3:30 PM  
**To:** [Lisa Rasmussen](#)  
**Subject:** draft order

Lisa,

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

Mitch

**Mitchell J. Langberg**  
**Brownstein Hyatt Farber Schreck, LLP**  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106  
702.464.7098 tel  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly

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

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Fore Stars, Ltd., Plaintiff(s) CASE NO: A-18-771224-C  
7 vs. DEPT. NO. Department 19  
8 Daniel Omerza, Defendant(s)  
9

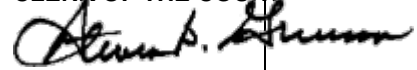
10 **AUTOMATED CERTIFICATE OF SERVICE**

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: 2/4/2021

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 Lisa Rasmussen	Lisa@Veldlaw.com
23 Lisa Rasmussen	Lisa@Veldlaw.com
24 Mitchell Langberg	mlangberg@bfhs.com

25  
26  
27  
28



1 Lisa A. Rasmussen, Esq.  
Nevada Bar No. 7491  
2 **The Law Offices of Kristina**  
**Wildeveld & Associates**  
3 550 E Charleston Blvd. Suite A  
Las Vegas, NV 89104  
4 Tel. (702) 222-0007  
Fax. (702) 222-0001  
[Lisa@Veldlaw.com](mailto:Lisa@Veldlaw.com)

5 Attorneys for Plaintiffs  
6 Fore Stars, 180 Land Co,  
and Seventy Acres

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 FORE STARS, LTD., a Nevada limited  
11 liability company; 180 LAND CO., LLC; A  
12 NEVADA LIMITED LIABILITY  
13 COMPANY; SEVENTY ACRES, LLC, a  
Nevada limited liability company,

14 Plaintiffs,

15 vs.

16 DANIEL OMERZA, DARREN BRESEE,  
STEVE CARIA, and DOES 1 THROUGH  
17 100,

18 Defendants.

DC Case No.: A-18-771224-C

Dept No. XIX

**DECLARATION OF LISA  
RASMUSSEN IN SUPPLEMENT TO  
PLAINTIFFS' OPPOSITION TO  
MOTION FOR ATTORNEY'S FEES**

19  
20 I, LISA A. RASMUSSEN, hereby declare, under penalty of perjury of the laws of the  
21 State of Nevada as follows:

22 1. I am counsel of record for Plaintiffs in the above-entitled case and I am an  
23 attorney admitted to practice in all courts in the States of California and Nevada.  
24

1           2.       I write this Declaration because opposing counsel brought to my attention what  
2 he believes in an inconsistency in my hourly rate and I made this declaration to clarify that  
3 issue.

4           3.       Plaintiffs filed their Supplemental Opposition to the Defendant's Motion to  
5 Dismiss (Anti-SLAPP) in October 2020. Almost immediately thereafter, Defendants filed a  
6 Motion to Strike the Supplement averring that it somehow veered outside the confines of what  
7 they believed the court "allowed" in a Supplement.

8           4.       In response to that Motion to Strike, which I believed was inappropriately filed, I  
9 filed an Opposition and at the end of that opposition I noted that I had spent five hours on the  
10 Opposition and that Plaintiffs should be compensated for having to respond to the Motion to  
11 Strike, which I believed was improperly filed and lacking in merit.

12           5.       In that Opposition, I not only noted that I had spent five hours devoted to the  
13 Opposition, but I also asked that the Court award attorney's fees for my time writing that  
14 opposition and stated "at the undersigned's hourly rate of \$600 for a total amount of \$3,000."

15           6.       The Court did not grant the Defendants' Motion to Strike, noted that there was in  
16 fact no limitation to the Supplement Plaintiffs were permitted to file, but declined to award  
17 attorney's fees to Plaintiffs as requested.

18           7.       In the Plaintiffs' Opposition to Defendants' Motion for Attorney's Fees, it is  
19 clear that the undersigned's hourly rate in this case is \$500 per hour based on the billing  
20 statements the undersigned's office attached to that Opposition. We also discussed my \$500 per  
21 hour billing rate in the substantive comparisons in the Opposition.

22           8.       My current default billing rate is, and was in October 2020, \$600 per hour. In  
23 this case, however, and pursuant to negotiation with this/these clients, I have billed at a rate of  
24 \$500 per hour. That is evident in the pleadings submitted and the billing statements my law firm  
attached to the Opposition to the Motion for Attorney's Fees. As is often the case for most law  
firms, we reserve the right to bill an hourly rate on a case by case basis and there are often times  
when, based on prior relationships with clients, we bill a different rate.

1 9. Additionally, the undersigned takes appointments in indigent defendant cases  
2 and those rates are also different than the undersigned's default hourly rate of \$600. For  
3 example, the State of Nevada pays \$100 per hour for non-capital cases and \$125 per hour for  
4 capital cases, while the federal CJA rates are presently \$155 per hour (effective January 4,  
5 2021) in appointed cases.

6 10. Thus, I bill at a variety of rates depending on the case. My default rate is \$600  
7 per hour, my hourly rate in this case is \$500 per hour, and I have certain cases where I bill at  
8 substantially less than that because the rates are governed by prior contract, by NRS 7.125 or by  
9 18 USC 3006A, the Criminal Justice Act of 1964.

Executed in Las Vegas, Nevada on this 12<sup>th</sup> day of February, 2021.

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.  
NV Bar No. 7491

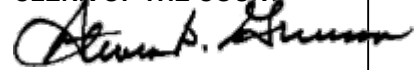
### **CERTIFICATE OF SERVICE**

16 I hereby certify that I served a copy of the foregoing DECLARATION OF LISA A.  
17 RASMUSSEN, SUBMITTED AS A SUPPLEMENT TO THE PLAINTIFFS' OPPOSITION  
18 TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES via this court's EFile and Serve  
19 program on all parties receiving service in this case on this 12<sup>th</sup> day of February 2021,  
20 including but not limited to:

Mr. Mitchell Langberg, Esq.

/s/ Lisa A. Rasmussen

Lisa A. Rasmussen, Esq.



**RPLY**

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

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS' REPLY TO PLAINTIFFS'  
RESPONSE IN OPPOSITION TO MOTION  
FOR ATTORNEYS' FEES AND  
ADDITIONAL MONETARY RELIEF  
PURSUANT TO NRS 41.670 AND NRS  
18.010(2)**

Defendants DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA (collectively  
“Defendants”), by and through its counsel of record Mitchell J. Langberg, Esq. of the law office  
of Brownstein Hyatt Farber Schreck, LLP, hereby submit this Reply to Plaintiffs’ Response in  
Opposition to Motion for Attorneys’ Fees and Additional Monetary Relief Pursuant to NRS  
41.670 and NRS 18.010(2).

...

...

...

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiffs opposition reads as if they did not review Defendants' moving papers. For instance, they argue things that are already acknowledged in the moving papers.<sup>1</sup> As another example, they cite to out-of-state authority to contradict rules for which there is binding Nevada authority (cited in the moving papers) right on point. Plaintiffs' "throw everything at the wall and see what sticks" practice of pleading their complaint, preparing briefs, and litigating this case required extra work—a lot of extra work—in response. They should not be allowed to avoid paying for the extra expense they caused.

Plaintiffs seem to forget that *they* filed a lawsuit that the Court deemed to be meritless, *they* tried to initiate discovery when there was a statutory stay in place, *they* requested extra briefing after the Nevada Supreme Court reversed the initial ruling on this case, *they* demanded discovery, after the Court granted limited discovery *they* exceeded the permissible scope which required even more briefing, *they* filed a motion for reconsideration, and so much more.

Almost everything Defendants counsel did in this case was in response to what *Plaintiffs* did to run up the litigation costs in this case. That was their intent. Plaintiffs goal was to beat defendants into submission. Now, after Plaintiffs called on competent experienced counsel to defend them, Defendants want to avoid the statutory consequences of their meritless lawsuit.

Perhaps worse than all of that, Plaintiffs' opposition is misleading on two critical issues are outcome determinative:

**Reasonable rates** – The opposition trumpets an argument that Ms. Rasmussen's rate is only \$500 per hour. The moving papers showed that lead Mr. Langberg's rates (\$655-\$690) were similar to the rate Ms. Rasmussen previously told this court she charged in this case (\$600) and the marginal difference was justified by Mr. Langberg's experience in the relevant areas of law. The opposition and Ms. Rasmussen's supplemental declaration prove that her regular rate is \$600

---

<sup>1</sup> For example, they argue that there should be no fee enhancement on fees for work performed *after* the anti-SLAPP motion was granted (Opposition, 11:8-13) even though the moving papers cited that very point and authority noting that there is no fee enhancement for the work on this motion (Motion, 17:21-23).



(though she now explains she reduced based on prior relationship with these Plaintiffs) and *initial lead counsel's rate in this case* was \$595 per hour. Unless those attorneys are admitting that they charge unreasonable rates, these facts are dispositive of the issue. Similarly, the opposition shows that initial lead counsel was support by a class of 2012 attorney who billed at \$400 per hour. So, rates of \$485 for a class of 1990 attorney and \$450 for a class of 2004 attorney are also not out-of-line with the reasonable rates Plaintiffs were being charged.

**Reasonable hours** – Plaintiff again are misleading. The Court will note that Plaintiffs' in-house counsel, Elizabeth Ham, is also of record in this case. The Court will also note that the billing records submitted with the opposition show that Ms. Ham was actively involved in the case. References on 4/23/18, 5/4/18, 9/10/18, and 11/26/18 show that Ms. Ham was involved in drafting all of the substantive briefs on the anti-SLAPP and appeal. Moreover, Ms. Ham attended and, in part, *conducted* some of the depositions in this case. She also participated in hearings. *Yet, not one hour of her time is accounted for.* Of course, in-house counsel does not bill her client. But, in an exercise of comparing the number of hours each side devoted to this case (Opposition, 20:9-13) in order to evaluate the reasonableness of the hours, it amounts to an inexcusable breach of the duty of candor to leave out the substantial work performed by an attorney with 20 years of experience. More on the reasonableness of hours is below.

## II. ARGUMENT

The moving papers address nearly everything Plaintiffs argue. Therefore, Defendants will not re-address every item set out in the opposition. But, several points merit response.

### A. The Nevada Supreme Court Acknowledges That Fee Enhancements May Be Awarded In Contingency Cases

Writing off California cases allowing for fee enhancements in anti-SLAPP cases, "Plaintiffs find the United States Supreme Court's precedent more persuasive." Opposition, 5:20. They then cite to a United States Supreme Court case rejecting enhancement for contingency fees for fee awards under a federal statute.

What Plaintiffs find persuasive is of no moment. Binding Nevada Supreme Court authority makes clear that, in Nevada, in considering fees using the lodestar method:

the district court must first multiply the number of hours reasonably spent on the case by a reasonable hourly rate. Following determination of this “lodestar” amount, we leave it to the sound discretion of the district court to adjust this fee award based upon...(6) whether the fee is fixed or contingent....

*Hsu v. Cty. of Clark*, 123 Nev. 625, 637 (2007). Rule of Professional Conduct 1.5 is in accord, expressly stating that whether a fee is fixed or contingent is one of the factors to consider when determining whether a fee is reasonable.

Therefore, it is within this Court’s discretion to determine whether a firm that takes on the *defense* of a case brought by a powerful and wealthy developer to silence its three individuals who were exercising the First Amendment rights of free speech and petition deserves to be compensated for the risk it took on by making fees contingent.

#### **B. The Rates Are Reasonable**

As shown in detail above, the rates charged by Defendants’ counsel are inline with those charged by initial lead counsel and the regular hourly rate current counsel charges. They are certainly not permitted to charge their clients an unreasonable fee. Therefore, both counsel and their client have effectively admitted that the rates in this case are reasonable. “What is good for the goose...” is a fair consideration in this case. That Plaintiffs should be willing to pay their lead attorney \$595 per hour but then complaint that Defendants paid their attorney only slightly more is the epitome of chutzpah.

#### **C. The Complaint About Block Billing Is Unmeritorious**

Plaintiffs claim that the nature of Defendants’ counsel’s work is “oblique” because of improper block billing. Defendants have provide extensive detail and analysis of the work performed. Billing records are not even required. *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019)(unpublished), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020). “In determining the amount of fees to award, the court is not limited to one specific approach.” *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864 (2005).

Here, the Court has the time sheets, the description of the work done, and a categorization by tasks. This is sufficient.

**D. Defendants Are Entitled To Fees For All Work Done On The Case**

Defendants will not repeat the authority in the moving papers that makes clear that when Defendant is successful at dismissing the entire case, *fees for the entire case are awardable*.

Beyond that, Plaintiffs correctly note a difference in the statutory language between the California and Nevada anti-SLAPP statute. In California, “a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs.” Cal. Civ. Proc. Code § 425.16 (emphasis added). The statute only makes reference to the special motion to strike. On the other hand, in Nevada, NRS 41.670(1)(a) provides that “If the court grants a special motion to dismiss filed pursuant to NRS 41.660 ... [t]he court shall award reasonable costs and attorney’s fees to the person *against whom the action was brought*.” (emphasis added). The clear statutory language suggests that fees are awarded for the entire action.

**E. The Number Of Hours Worked Are Reasonable**

Again, it is absurd that Plaintiffs challenge the number of hours worked by Defendants counsel in light of their own admissions. Plaintiffs admit that their counsel spent 481.50 hours on this case. They compare that to 650 hours Defendants billed. Of course, this representation is *dishonest* because they do not include any of the hours Ms. Ham worked. They also complain about the number of attorneys working on the case. Yet, they ignore that the billing statements they submitted reveal that as many as four attorneys (plus Ms. Ham) worked on various aspects of the case. Those records also show that, sometimes, two attorneys (not including Ms. Ham) appeared a hearings. Yet the complaint about the same thing.

*What they also do not tell the Court* is that for the critical work, Defendants had to submit more briefs than Plaintiffs. For the initial anti-SLAPP motion, Defendants filed moving papers AND a reply. On appeal, Defendants filed an opening brief AND a reply. Remarkably, the hours spent on those two briefs almost exactly match the difference between the total hours billed by Plaintiffs’ counsel and the hours billed by Defendants’ counsel. In other words, the hours are roughly equivalent in light of the additional briefing required of Defendants.

**F. The Additional Award To Defendants Is Appropriate**

The fee award will compensate the law firm for its investment. But the additional

monetary award is appropriate to partially compensate Defendants for being subjected to 2 1/2 years of harassing litigation. It is well-known in the community that Plaintiffs have pursued vindictive litigation against judges, the City, and individuals. The way this lawsuit was litigated reflected a complete disregard for these individual Defendants. They are entitled to compensation.

### III. POST ANTI-SLAPP FEES

Defendants' counsel has been required to work on this motion and to oppose Plaintiffs reconsideration motion. Total fees for these motions are \$23,467. These fees should be added to the overall fee award. No enhancement is appropriate for these fees.

### IV. CONCLUSION

Because Defendants prevailed on their anti-SLAPP motion and because the fees requested are reasonable, Defendants respectfully request that this Court award all requested fees and the additional monetary amounts allowed by the anti-SLAPP statute.

DATED this 12th day of February, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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

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

**CERTIFICATE OF SERVICE**

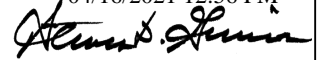
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 12th day of February, 2021, to the following:

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

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

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

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

  
CLERK OF THE COURT

**ORDR**

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

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

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

**ORDER RE: DEFENDANTS' MOTION  
FOR ATTORNEYS' FEES AND  
ADDITIONAL MONETARY RELIEF  
PURSUANT TO NRS 41.670 AND NRS  
18.010(2)**

Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant To NRS 41.670 and NRS 18.010(2) ("Motion") came on for hearing before this Court on March 31, 2021.

Having considered the Motion, the opposition and reply thereto, all papers related thereto, oral argument, and the papers and pleadings on file herein, the Court find:

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

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

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

2           4.       In the Motion, Defendants seek attorneys' fees based on the Lodestar method (rate  
3 multiplied by hours) in the amount of and an enhancement because Defendants' counsel agreed to  
4 prosecute the anti-SLAPP motion on a contingency basis;

5           5.       Defendants also seek an additional monetary award of \$10,000 per Defendant  
6 pursuant to NRS 41.670;

7           6.       For the reasons stated by the Court on the record (NRCP 52(a)(3)), the Court finds  
8 that the hourly rates and the hours requested by Defendants for attorneys' fees are reasonable and  
9 that the Lodestar fees based on those reasonable rates and hours are \$363,244.00;

10          7.       For the reasons stated by the Court on the record, the Court also finds that a fee  
11 enhancement, as requested by Defendants, is not appropriate in this matter;

12          8.       For the reasons stated by the Court on the record, the Court also finds that an  
13 additional monetary award to Defendants pursuant to NRS 41.670 is not appropriate in this matter,

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

15           1.       Defendants' Motion is GRANTED; and

16           2.       Plaintiffs are hereby jointly and severally ORDERED to pay to Defendants  
17 attorneys' fees in the amount of \$363,244.00.

18               IT IS SO ORDERED

19  
20       Dated: \_\_\_\_\_

Dated this 16th day of April, 2021



\_\_\_\_\_  
DISTRICT COURT JUDGE

8B9 93E EFF3 0F62  
Crystal Eller  
District Court Judge

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- SIGNATURES ON NEXT PAGE -

1 Respectfully Submitted By:

2 BROWNSTEIN HYATT FARBER SCHRECK, LLP

3  
4 By: /s/ Mitchell J. Langberg

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

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*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

10  
11 Approved as to form:

12 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

13  
14 By: /s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ., Bar No. 7491

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Facsimile: 702.222.0001

*Counsel for Plaintiffs*

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

SEVENTY ACRES, LLC



**Cosby, Wendy C.**

---

**From:** Lisa Rasmussen <Lisa@Veldlaw.com>  
**Sent:** Friday, April 16, 2021 8:55 AM  
**To:** Langberg, Mitchell  
**Subject:** RE: Draft order re fees

Okay to add my signature.

Lisa

Sent from [Mail](#) for Windows 10

---

**From:** [Langberg, Mitchell](#)  
**Sent:** Friday, April 16, 2021 7:22 AM  
**To:** [Lisa@Veldlaw.com](#)  
**Subject:** Draft order re fees

Lisa,

Attached is a draft order regarding fees. Please let me know if I may /s/ sign for you.

Thanks,

Mitch

**Mitchell J. Langberg**  
**Brownstein Hyatt Farber Schreck, LLP**  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106  
702.464.7098 tel  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Fore Stars, Ltd., Plaintiff(s) CASE NO: A-18-771224-C  
7 vs. DEPT. NO. Department 19  
8 Daniel Omerza, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

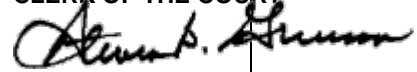
11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/16/2021

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 Lisa Rasmussen	Lisa@Veldlaw.com
23 Lisa Rasmussen	Lisa@Veldlaw.com
24 Mitchell Langberg	mlangberg@bfhs.com
25 Samuel Reyes	Sam@veldlaw.com

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Lisa A. Rasmussen, Esq.  
Nevada Bar No. 7491  
**The Law Offices of Kristina  
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Las Vegas, NV 89104  
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Email: [Lisa@LRasmussenLaw.com](mailto:Lisa@LRasmussenLaw.com)

Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FORE STARS, LTD., a Nevada limited  
liability company; 180 LAND CO., LLC; A  
NEVADA LIMITED LIABILITY  
COMPANY; SEVENTY ACRES, LLC, a  
Nevada limited liability company,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept: II

**NOTICE OF APPEAL**

The Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, by  
and through their counsel, hereby file this Notice of Appeal to the District Court's  
Order granting the Defendants' Special Motion to Dismiss pursuant to NRS 41.635, et  
seq., entered on December 10, 2020, the Notice of Entry of Order having been entered  
NOTICE OF APPEAL - 1

1 the same date. A true and correct copy of the Notice of Entry of Order, which includes  
2 the order itself, is attached hereto as Exhibit 1.

3 DATED: January 8, 2021. Respectfully submitted,

4 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

5  
6 */s/ Lisa A. Rasmussen*

7 LISA A. RASMUSSEN, ESQ.

8 NEVADA BAR NO. 7491

9 ATTORNEYS FOR PLAINTIFFS

10  
11 **CERTIFICATE OF SERVICE**

12  
13 I hereby certify that I served a copy of the foregoing via this court's Efile and  
14 Serve program on all parties receiving service in this case on this 8<sup>th</sup> day of January,  
15 2021, including, but not limited to:  
16

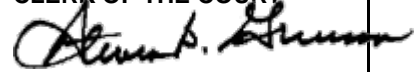
17 Mr. Mitchell Langberg, Esq.  
18 Counsel for the Defendants

19 */s/ Lisa A. Rasmussen*

20 Lisa A. Rasmussen, Esq.

# Exhibit 1

# Exhibit 1



1 **NEOJ**  
2 MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
3 [mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
4 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
5 100 North City Parkway, Suite 1600  
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7 Telephone: 702.382.2101  
8 Facsimile: 702.382.8135

9 *Counsel for Defendants,*  
10 DANIEL OMERZA, DARREN BRESEE, and  
11 STEVE CARIA

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

24 Defendants,

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

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

**ELECTRONIC FILING CASE**

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

27 ...

28 ...

...

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

3 DATED this 10th day of December, 2020.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5 BY: /s/ Mitchell J. Langberg

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

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

8 100 North City Parkway, Suite 1600

9 Las Vegas, NV 89106-4614

10 Telephone: 702.382.2101

11 Facsimile: 702.382.8135

12 *Counsel for Defendants*

13 DANIEL OMERZA, DARREN BRESEE, and

14 STEVE CARIA



**CERTIFICATE OF SERVICE**

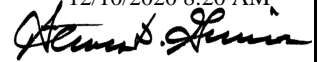
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER** be submitted electronically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

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

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

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

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

  
CLERK OF THE COURT

**FFCL**

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

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

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Telephone: 702.382.2101

Facsimile: 702.382.8135

*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE,  
and STEVE CARIA

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C

DEPT NO.: II

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

Date of Hearing: November 9, 2020

Time of Hearing: 9:30 am

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

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

**FINDINGS OF FACT**

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

1 ("Plaintiffs") filed a complaint against Daniel Omerza, Darren Bresse, and Steve Caria on March  
2 15, 2018 (the "Complaint").

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

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

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

14 5. After extensive briefing and oral argument, the Court denied the anti-SLAPP  
15 Motion for various reasons as set forth in the record, including that Defendants did not  
16 demonstrate that they met their initial burden of establishing "by a preponderance of the evidence,  
17 that the claim is based upon a good faith communication in furtherance of the right to petition or  
18 the right to free speech in direct connection with an issue of public concern," pursuant to NRS  
19 41.660(3)(a) ("Prong 1").

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

24 7. Defendants filed a timely notice of appeal.

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

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

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

1 under Prong 2.

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

4 12. Therefore, the Nevada Supreme Court remanded the matter back to this Court with  
5 express direction: "Accordingly, for the reasons set forth above, we vacate the portion of the  
6 district court's order denying appellants anti-SLAPP special motion to dismiss and remand to the  
7 district court for it to determine whether respondents are entitled to discovery under NRS  
8 41.660(4)."

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

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

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

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

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

1 Court's ruling."

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

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

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

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

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

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

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

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

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

27 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

33. Pursuant to NRS 41.600(4), "[u]pon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information."

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

2 47. Moreover, Plaintiffs admitted it was a quasi-judicial proceeding at a May 9, 2018  
3 hearing before the City Council. *See*, Defendants' Request for Judicial Notice filed on May 9,  
4 2018, Exh. 1, p. 16, lines 415-420 (Mr. Hutchison (as counsel for these Developers) explaining  
5 that the proceeding are quasi-judicial).

6 48. The absolute litigation privilege applies without regard to how Plaintiffs styled  
7 their claims. "An absolute privilege bars any civil litigation based on the underlying  
8 communication." *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002), overruled in part  
9 on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d  
10 670, 672 n.6 (2008).

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

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

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

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

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

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

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

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

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

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

25 58. The evidence must be "of an explicit or tacit agreement between the alleged  
26 conspirators." *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d 190,  
27 198 (2014) (upholding district court's grant of summary judgment where plaintiff "has presented  
28 no circumstantial evidence from which to infer an agreement between [defendants] to harm"

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

3 59. A conspiracy claim also fails where the plaintiff cannot show that he suffered any  
4 actual harm. *Sutherland v. Gross*, 105 Nev. 192, 197 (1989); *see also Aldabe v. Adams*, 81 Nev.  
5 280, 286 (1965), overruled on other grounds by *Siragusa v. Brown*, 114 Nev. 1384 (1998) (“The  
6 damage for which recovery may be had in a civil action is not the conspiracy itself but the injury  
7 to the plaintiff produced by specific overt acts.”).

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

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

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

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

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

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

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

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

**ORDER**

WHEREFORE, IT IS HEREBY ORDERED that:

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

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

Dated this 10th day of December, 2020



DATED: \_\_\_\_\_

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

*Respectfully Submitted:*


*Approved as to form and content:*

DATED this 2nd day of December, 2020.

DATED this \_\_\_\_ day of December, 2020.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

LAW OFFICES OF KRISTINA  
WILDEVELD & ASSOCIATES  
**Counsel have disagreements regarding the  
contents of this order.**

BY:   
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NV Bar No. 10118  
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Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

BY: \_\_\_\_\_  
LISA A. RASMUSSEN, ESQ.  
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Las Vegas, NV 89104  
Telephone: 702.222.0007  
Facsimile: 702.222.0001

*Counsel for Defendants Daniel Omerza,  
Darren Bresee and Steve Caria*

*Counsel for Plaintiffs  
Fore Stars, Ltd., 180 Land Co., LLC,  
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 2  
8 Daniel Omerza, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

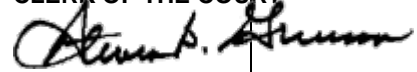
14 Service Date: 12/10/2020

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Patricia Berg

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Lisa A. Rasmussen, Esq.  
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Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FORE STARS, LTD., a Nevada limited  
liability company; 180 LAND CO., LLC; A  
NEVADA LIMITED LIABILITY  
COMPANY; SEVENTY ACRES, LLC, a  
Nevada limited liability company,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept: XIX

**NOTICE OF APPEAL**

NOTICE OF APPEAL - 1

APP 1640

1 The Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, by  
2 and through their counsel, hereby file this Notice of Appeal to the District Court's  
3 Order granting the Defendants' Motion for Attorney's Fees and Costs, entered on April  
4 16, 2021.

5 A true and correct copy of the Notice of Entry of Order, which includes the order  
6 itself, is attached hereto as Exhibit 1.

7 DATED: May 5, 2021.

8 Respectfully submitted,

9 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

10 /s/ Lisa A. Rasmussen

11 LISA A. RASMUSSEN, ESQ.  
12 NEVADA BAR NO. 7491  
13 ATTORNEYS FOR PLAINTIFFS

14  
15 **CERTIFICATE OF SERVICE**

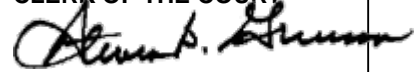
16  
17 I hereby certify that I served a copy of the foregoing Notice of Appeal via this  
18 court's Efile and Serve program on all parties receiving service in this case on this 5<sup>th</sup>  
19 day of May, 2021, including, but not limited to:

20  
21 Mr. Mitchell Langberg, Esq.  
22 Counsel for the Defendants

23 /s/ Lisa A. Rasmussen

24 Lisa A. Rasmussen, Esq.





NEOJ

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

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

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*Counsel for Defendants,*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C

DEPT NO.: 19

**NOTICE OF ENTRY OF ORDER RE:  
DEFENDANTS' MOTION FOR ATTORNEYS'  
FEES AND ADDITIONAL MONETARY  
RELIEF PURSUANT TO NRS 41.670 AND  
NRS 18.010(2)**

PLEASE TAKE NOTICE that the Order Re: Defendants' Motion for Attorneys' Fees and  
Additional Monetary Relief Pursuant to NRS 41.060 and NRS 18.010(2) was entered on April 16,  
2021.

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

DATED this 16th day of April, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

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

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

100 North City Parkway, Suite 1600

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Telephone: 702.382.2101

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*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

**CERTIFICATE OF SERVICE**

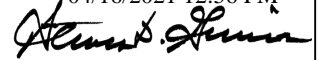
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 16th day of April, 2021, to the following:

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

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

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

/s/ Wendy Cosby  
an employee of Brownstein Hyatt Farber Schreck, LLP

  
CLERK OF THE COURT

**ORDR**

MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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Telephone: 702.382.2101  
Facsimile: 702.382.8135

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

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

**ORDER RE: DEFENDANTS' MOTION  
FOR ATTORNEYS' FEES AND  
ADDITIONAL MONETARY RELIEF  
PURSUANT TO NRS 41.670 AND NRS  
18.010(2)**

Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant To NRS 41.670 and NRS 18.010(2) ("Motion") came on for hearing before this Court on March 31, 2021.

Having considered the Motion, the opposition and reply thereto, all papers related thereto, oral argument, and the papers and pleadings on file herein, the Court find:

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

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

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

2           4.       In the Motion, Defendants seek attorneys' fees based on the Lodestar method (rate  
3 multiplied by hours) in the amount of and an enhancement because Defendants' counsel agreed to  
4 prosecute the anti-SLAPP motion on a contingency basis;

5           5.       Defendants also seek an additional monetary award of \$10,000 per Defendant  
6 pursuant to NRS 41.670;

7           6.       For the reasons stated by the Court on the record (NRCP 52(a)(3)), the Court finds  
8 that the hourly rates and the hours requested by Defendants for attorneys' fees are reasonable and  
9 that the Lodestar fees based on those reasonable rates and hours are \$363,244.00;

10          7.       For the reasons stated by the Court on the record, the Court also finds that a fee  
11 enhancement, as requested by Defendants, is not appropriate in this matter;

12          8.       For the reasons stated by the Court on the record, the Court also finds that an  
13 additional monetary award to Defendants pursuant to NRS 41.670 is not appropriate in this matter,

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

15           1.       Defendants' Motion is GRANTED; and

16           2.       Plaintiffs are hereby jointly and severally ORDERED to pay to Defendants  
17 attorneys' fees in the amount of \$363,244.00.

18               IT IS SO ORDERED

19  
20          Dated: \_\_\_\_\_

Dated this 16th day of April, 2021



\_\_\_\_\_  
DISTRICT COURT JUDGE

8B9 93E EFF3 0F62  
Crystal Eller  
District Court Judge

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- SIGNATURES ON NEXT PAGE -

1 Respectfully Submitted By:

2 BROWNSTEIN HYATT FARBER SCHRECK, LLP

3  
4 By: /s/ Mitchell J. Langberg

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

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

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Las Vegas, Nevada 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

10  
11 Approved as to form:

12 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

13  
14 By: /s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ., Bar No. 7491

[lisa@lasmussenlaw.com](mailto:lisa@lasmussenlaw.com)

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Telephone: 702.222.0007

Facsimile: 702.222.0001

*Counsel for Plaintiffs*

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

SEVENTY ACRES, LLC

**Cosby, Wendy C.**

---

**From:** Lisa Rasmussen <Lisa@Veldlaw.com>  
**Sent:** Friday, April 16, 2021 8:55 AM  
**To:** Langberg, Mitchell  
**Subject:** RE: Draft order re fees

Okay to add my signature.

Lisa

Sent from [Mail](#) for Windows 10

---

**From:** [Langberg, Mitchell](#)  
**Sent:** Friday, April 16, 2021 7:22 AM  
**To:** [Lisa@Veldlaw.com](#)  
**Subject:** Draft order re fees

Lisa,

Attached is a draft order regarding fees. Please let me know if I may /s/ sign for you.

Thanks,

Mitch

**Mitchell J. Langberg**  
**Brownstein Hyatt Farber Schreck, LLP**  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106  
702.464.7098 tel  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)

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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: 4/16/2021

15 Elizabeth Ham	EHam@ehbcompanies.com
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21 Mitchell Langberg	mlangberg@bhfs.com
22 Lisa Rasmussen	Lisa@Veldlaw.com
23 Lisa Rasmussen	Lisa@Veldlaw.com
24 Mitchell Langberg	mlangberg@bfhs.com
25 Samuel Reyes	Sam@veldlaw.com

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IN THE SUPREME COURT OF THE STATE OF NEVADA

FORE STARS, LTD., A NEVADA  
LIMITED LIABILITY COMPANY; 180  
LAND CO., LLC, A NEVADA LIMITED  
LIABILITY COMPANY; AND SEVENTY  
ACRES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY,

Appellants,

vs.

DANIEL OMERZA; DARREN BRESEE;  
AND STEVE CARIA,

Respondents.

FORE STARS, LTD., A NEVADA  
LIMITED LIABILITY COMPANY; 180  
LAND CO., LLC, A NEVADA LIMITED  
LIABILITY COMPANY; AND SEVENTY  
ACRES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY,

Appellants,

vs.

DANIEL OMERZA; DARREN BRESEE;  
AND STEVE CARIA,

Respondents.

No. 82338

**FILED**

APR 29 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 82880

*ORDER AFFIRMING (DOCKET NO. 82338) AND  
VACATING AND REMANDING (DOCKET NO. 82880)*

These are consolidated appeals from district court orders dismissing a tort complaint and awarding attorney fees.<sup>1</sup> Eighth Judicial District Court, Clark County; Richard Scotti, Judge (No. 82338) and Crystal Eller, Judge (No. 82880).

Appellants are landowners planning to build residential housing on former golf course land adjacent to a community in which

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

respondents are homeowners. Appellants filed a complaint for damages under various tort theories and for injunctive relief, generally alleging that respondents signed a form declaration containing false statements to present to the City of Las Vegas for the purpose of wrongly forestalling the landowners' plans, and that they circulated the form declaration in the community for more signatures. Respondents filed an anti-SLAPP special motion to dismiss, which the district court denied. On appeal, this court vacated and remanded, concluding that respondents had met their burden under step one of the anti-SLAPP analytical framework by showing that the declarations were good faith communications in furtherance of their right to petition or to free speech in direct connection with an issue of public concern. On remand, the district court granted appellants' request for limited discovery as to their step-two burden to show a reasonable probability of prevailing on their claims. After briefing and a hearing, the district court granted respondents' special motion to dismiss and their motion for roughly \$363,000 in attorney fees. These appeals followed.

Appellants first argue that the district court improperly limited discovery, but the record shows that the court permitted discovery consistent with NRS 41.660(4) and with appellants' discovery request as briefed on remand. Thus, we perceive no reversible error based on the scope of discovery allowed.<sup>2</sup>

---

<sup>2</sup>Appellants also argue that respondents provided inadequate discovery responses, but appellants did not move for an order compelling discovery. Thus, appellants argument in this regard does not warrant relief on appeal. *Cf. Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011) (concluding that waiver applies when a party fails to timely raise a discovery dispute with the discovery commissioner and observing that one purpose of the waiver "rule is to allow the lower tribunal the first opportunity to decide the issue").

Appellants next argue that the district court erroneously concluded that they failed to meet their step-two burden under NRS 41.660(3)(b) to demonstrate with prima facie evidence a probability of prevailing on their conspiracy claim,<sup>3</sup> and it thus erred in granting the motion to dismiss. We disagree, as the record supports the district court's conclusion that appellants did not show with prima facie evidence an agreement to accomplish an unlawful objective for the purpose of harming appellants, and that appellants suffered damages as a result, which are necessary elements of their conspiracy claim.<sup>4</sup> *Smith v. Zilverberg*, 137 Nev., Adv. Op. 7, 481 P.3d 1222, 1226 (2021) (reviewing de novo an order resolving an anti-SLAPP special motion to dismiss); *Abrams v. Sanson*, 136 Nev. 83, 92, 458 P.3d 1062, 1070 (2020) (concluding that plaintiffs must present prima facie evidence supporting the elements of their claims to satisfy the minimal merit standard under the anti-SLAPP step-two burden); *Bikkina v. Mahadevan*, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015) (recognizing that on the second step of the inquiry, the plaintiff must show that "the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if plaintiff's evidence is credited" (internal quotation marks omitted)); see *Consolidated*

---

<sup>3</sup>Appellants' complaint asserted several other tort-based claims and sought equitable and injunctive relief, but the record supports the district court's conclusion that, in seeking limited discovery and briefing and arguing against the special motion to dismiss on remand, appellants only addressed the conspiracy claim and did not argue that they met their burden on the remaining claims. We therefore do not address those claims.

<sup>4</sup>The record does not support appellants' argument that the district court applied an incorrect standard on remand in analyzing the motion to dismiss and determining whether appellants met their step-two burden.



*Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (describing the elements of “[a]n actionable civil conspiracy claim”); *Aldabe v. Adams*, 81 Nev. 280, 286, 402 P.2d 34, 37 (1965) (“The damage for which recovery may be had in a civil action is not the conspiracy itself but the injury to the plaintiff produced by specific overt acts.” (internal quotation marks omitted)), *overruled on other grounds by Siragusa v. Brown*, 114 Nev. 1384 (1998).

As to the damages element, although appellants assert that “it is public knowledge that [they] have lost economic opportunities to develop the Land and that it remains undeveloped today,” and ask that we consider this assertion as a “matter[ ] of public record,” they do not point to any evidence in the record or a public record supporting that statement. Even if we credited the statement as true, appellants did not present evidence that *respondents’ actions* that are challenged in this case caused any such damages, and appellants acknowledge that they prevailed in litigation in which other parties challenged the City’s approval of appellants’ land use applications. Thus, the district court properly determined that appellants failed to meet their step-two burden of demonstrating with *prima facie* evidence a probability of prevailing on their claims.<sup>5</sup>

Appellants lastly challenge the district court’s attorney fee award as unsupported and excessive. As to that issue, the district court’s order does not include an express analysis of the four factors listed in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (requiring that the district court consider (1) the attorney’s professional qualities and experience, (2) the complexity and nature of the

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<sup>5</sup>In light of this conclusion, we need not address the district court’s alternative basis for dismissing appellants’ complaint.

litigation, (3) the work performed by the attorney, and (4) the result), and it is not clear from the record that the district court meaningfully considered all the factors in granting the full amount of fees respondents requested.<sup>6</sup> See *Logan v. Abe*, 131 Nev. 260, 266-67, 350 P.3d 1139, 1143 (2015) (observing that when the “district court demonstrate[s] that it considered the [relevant] factors, its award of attorney fees will be upheld if it is supported by substantial evidence”). While the district court has discretion in determining a reasonable award of attorney fees, it did not make the required findings to support the amount awarded here. *Id.* at 266, 350 P.3d at 1143 (reviewing an attorney fee award for an abuse of discretion); *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (providing that “the court must evaluate the factors set forth in *Brunzell*” when exercising its discretion to determine a reasonable amount of attorney fees to award under a statute); see also *Beattie v. Thomas*, 99 Nev. 579, 589, 668 P.2d 268, 274 (1983) (concluding that a district court abuses its discretion if it awards the full amount of attorney fees requested without making “findings based on evidence that the attorney’s fees sought are reasonable and justified”). Thus, we agree with appellants that the district court abused its discretion by awarding attorney fees without making the required findings.

Consistent with the foregoing, we affirm the district court’s order granting respondents’ special motion to dismiss in Docket No. 82338, and we vacate the order awarding attorney fees in Docket No. 82880, and

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<sup>6</sup>The district court awarded the full amount of fees requested except for fee enhancements respondents sought.

remand for the court to consider the *Brunzell* factors and make the necessary findings to support the fee amount awarded.<sup>7</sup>

It is so ORDERED.<sup>8</sup>

  
Parraguirre, C.J.

  
Cadish, J.

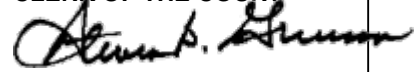
  
Gibbons, Sr.J.

cc: Chief Judge, Eighth Judicial District Court  
Department 2, Eighth Judicial District Court  
Department 19, Eighth Judicial District Court  
Paul M. Haire, Settlement Judge  
EHB Companies, LLC  
The Law Office of Kristina Wildeveld & Associates  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Eighth District Court Clerk

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<sup>7</sup>We have considered appellants' remaining arguments on appeal and conclude that they were either not raised in district court, *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), or do not warrant additional relief.

<sup>8</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.



1 **NEOJ**

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

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9 *Counsel for Defendants,*

10 DANIEL OMERZA, DARREN BRESEE, and

11 STEVE CARIA

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

24 Defendants,

CASE NO.: A-18-771224-C

DEPT NO.: 19

**NOTICE OF ENTRY OF ORDER GRANTING  
DEFENDANTS' MOTION FOR ATTORNEYS'  
FEES AND ADDITIONAL MONETARY  
RELIEF PURSUANT TO NRS 41.670 AND  
NRS 18.010(2)**

25 PLEASE TAKE NOTICE that the Order Granting Defendants' Motion for Attorneys' Fees  
26 and Additional Monetary Relief Pursuant to NRS 41.060 and NRS 18.010(2) was entered on  
27 September 19, 2022.

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

DATED this 19th day of September, 2022.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

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*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and  
STEVE CARIA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 19th day of September, 2022, to the following:

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

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9755 West Charleston Boulevard  
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*Attorneys for Plaintiffs*  
FORE STARS, LTD., 180 LAND CO., LLC;  
and SEVENTY ACRES, LLC

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

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.<sup>1</sup>

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;

<sup>1</sup> 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  
21 **A. Quality of the Advocate**

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

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  
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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.

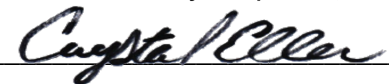
11 10. The Court also finds that an additional monetary award to Defendants pursuant to  
12 NRS 41.670 is not appropriate in this matter. This additional award can be used to  
13 compensate defendants who have had to endure the stress of ongoing litigation and the  
14 expenditure of attorney fees. 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

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: 9/19/2022

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
21 Mitchell Langberg	mlangberg@bhfs.com
22 Mitchell Langberg	mlangberg@bhfs.com
23 Samuel Reyes	Sam@veldlaw.com
24 Diana B	diana@veldlaw.com
25 Lisa Rasmussen	Lisa@Veldlaw.com

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