

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 03:44 PM
District Court Case No. A771224
Elizabeth A. Brown
Clerk of Supreme Court

14 **JOINT APPENDIX**

15 **VOLUME 13**

16 **PAGES 1866-1908**

17 SKLAR WILLIAMS PLLC
18 Stephen R. Hackett, Esq., Bar No. 5010
19 410 South Rampart Boulevard, Suite 350
20 Las Vegas, Nevada 89145
21 Telephone: (702) 360-6000
22 shackett@sklar-law.com

23 and

24 THE LAW OFFICES OF KRISTINA
25 WILDEVELD & ASSOCIATES
26 Lisa A. Rasmussen, Esq., Bar No. 007491
27 550 East Charleston Blvd., Suite A
28 Las Vegas, Nevada 89104
 lisa@lrasmussenlaw.com

Attorney for Appellants

CHRONOLOGICAL INDEX

Vol.	Description	Date	Bates No.
1	Complaint with Exhibits	3/15/18	1-95
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	96-147
2	Motion to Dismiss 12(b)(5)	4/13/18	148-162
2	Special Motion to Dismiss	4/13/18	163-197
2	Opposition to Special MTD	5/4/18	198-219
2	Opposition to MTD 12(b)(5)	5/7/18	220-235
2	Reply to Special Motion to Dismiss	5/9/18	236-251
2	Reply to MTD 12(b)(5)	5/9/18	252-262
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	263-300
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	301-305
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	306-327
3	Defendants' Supplement in Support of MTD	5/23/18	328-365

3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	366-425
4	Plaintiffs' Errata to Complaint	6/11/18	426-523
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	524-537
4	Notice of Appeal to FFCOL	6/27/18	538-572
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	573-631
5	Defendants' Opposition to Mtn for Discovery	10/1/18	632-639
5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	640-664
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	665-670
5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	671-679
5	Minutes and Order from Discovery Commissioner	10/19/18	680-681
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	682-688
5	Plaintiffs' Response to Objections to R&R	1/30/19	689-712
5	Order Denying Mtn for Discovery	4/11/19	713-715

5	Nevada Supreme Court Order on remand	1/23/20	716-728
6	Nevada Supreme Court Order on Rehearing	2/27/20	729-730
6	Supplemental brief for limited discovery	5/6/20	731-737
6	Opposition to request for discovery	5/11/20	738-748
6	May 29, 2020, Minute Order		749
6	Defendants' Request for Clarification	5/29/20	750-752
6	Minute Order on Request for Clarification	6/5/20	753
6	Defendants' Motion for protective order	7/2/20	754-799
6	Plaintiff' response to motion for protective order	7/7/20	800-815
6	Reply in support of protective order	7/9/20	816-821
6	July 21. 2020 Minute order	7/21/20	822
6	Order granting protective order	8/3/20	823-829
7	Plaintiffs' Supplemental opposition to Motion to Dismiss (Part 1)	10/14/20	830-995
8	Plaintiffs' Supplemental opposition to Motion to Dismiss (Part 2)	10/14/20	996-1216

9	Errata to Supplemental opposition to Motion to Dismiss	10/14/20	1217-1222
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	1223-1254
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	1255-1257
9	November 9, 2020, Minute Order	11/9/20	1258-1259
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	1260-1272
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	1273-1286
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	1287-1302
9	Motion to Reconsider Order Granting Special MTD	12/24/20	1302-1356
9	Motion for Attorneys Fees and Costs	12/31/20	1357-1420
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	1421-1428
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	1429-1440

1	10	Errata to Reply to Mtn Reconsider	1/14/21	1441-1477
2				
3	10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	1478-1591
4				
5	11	Minute Order Denying Motion to Reconsider	1/25/21	1592
6				
7	11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	1593-1596
8				
9	11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	1597-1604
10				
11	11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	1605-1607
12				
13	11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	1608-1614
14				
15	11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	1615-1620
16				
17	11	Notice of Appeal Case No. 82338	1/8/21	1621-1639
18				
19	11	Notice of Appeal Case No. 82880	5/5/21	1640-1650
20				
21	11	NSC Order Remanding on Attorney Fee Issue	4/21/22	1651-1656
22				
23	11	Notice of Entry of Order Granting Attorney's Fees	9/19/22	1657-1666
24				
25	12	Motion to Reconsider Order Granting Attorney's Fees	10/3/22	1667-1865
26				
27	13	Opposition to Motion to Reconsider	10/17/22	1866-1875
28				

13	Notice of Appeal to Order Granting Attorney's Fees	10/17/22	1876-1888
13	Reply to Motion to Reconsider Order Granting Attorney's Fees	10/28/22	1889-1895
13	Supplemental Motion for Attorney's Fees	11/23/22	1896-1908
14	Opposition to Supplemental Motion for Attorney's Fees	12/23/22	1909-2089
15	NSC Order to Show Cause as to Why Appeal Should Not Be Dismissed	1/4/23	2090-2091
15	Reply to Opposition to Supplemental Motion for Attorney's Fees	1/6/23	2092-2099
15	Motion for Leave to File Sur-Reply	1/17/23	2100-2108
15	Appellant's Response to NSC Order to Show Cause	2/3/23	2109-2112
15	NSC Order Dismissing Appeal	3/8/23	2113-2114
15	Notice of Entry of Order Denying Motion to Reconsider Attorney Fee Order	9/19/23	2115-2125
15	Notice of Entry of Order Granting Supplemental Attorney's Fees	9/19/23	2126-2139
15	Notice of Appeal	9/22/23	2140-2152
15	Amended Notice of Appeal	10/12/23	2153-2179

15	Reporter's Transcript of Hearing on Motion for Attorney's Fees	3/31/21	2180-2202
15	Docket	3/15/24	2203-2248

APHABETICAL INDEX

Vol.	Description	Date	Bates No.
15	Amended Notice of Appeal	10/12/23	2153-2179
15	Appellant's Response to NSC Order to Show Cause	2/3/23	2109-2112
1	Complaint with Exhibits	3/15/18	1-95
11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	1605-1607
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	1255-1257
6	Defendants' Motion for protective order	7/2/20	754-799
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	682-688
5	Defendants' Opposition to Mtn for Discovery	10/1/18	632-639
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	1421-1428
6	Defendants' Request for Clarification	5/29/20	750-752
3	Defendants' Supplement in Support of MTD	5/23/18	328-365
5	Defendants' Supplemental Exhibits in Further Support of	10/18/18	671-679

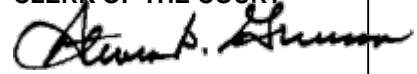
	Opposition to Mtn for Discovery		
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	1223-1254
15	Docket	3/15/24	2203-2248
10	Errata to Reply to Mtn Reconsider	1/14/21	1441-1477
9	Errata to Supplemental opposition to Motion to Dismiss	10/14/20	1217-1222
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	1260-1272
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	524-537
6	July 21. 2020 Minute order	7/21/20	822
6	May 29, 2020, Minute Order		749
11	Minute Order Denying Motion to Reconsider	1/25/21	1592
6	Minute Order on Request for Clarification	6/5/20	753
5	Minutes and Order from Discovery Commissioner	10/19/18	680-681
9	Motion for Attorneys Fees and Costs	12/31/20	1357-1420
15	Motion for Leave to File Sur- Reply	1/17/23	2100-2108
2	Motion to Dismiss 12(b)(5)	4/13/18	148-162

12	Motion to Reconsider Order Granting Attorney's Fees	10/3/22	1667-1865
9	Motion to Reconsider Order Granting Special MTD	12/24/20	1302-1356
11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	1593-1596
6	Nevada Supreme Court Order on Rehearing	2/27/20	729-730
5	Nevada Supreme Court Order on remand	1/23/20	716-728
15	Notice of Appeal	9/22/23	2140-2152
11	Notice of Appeal Case No. 82338	1/8/21	1621-1639
11	Notice of Appeal Case No. 82880	5/5/21	1640-1650
4	Notice of Appeal to FFCOL	6/27/18	538-572
13	Notice of Appeal to Order Granting Attorney's Fees	10/17/22	1876-1888
15	Notice of Entry of Order Denying Motion to Reconsider Attorney Fee Order	9/19/23	2115-2125
11	Notice of Entry of Order Granting Attorney's Fees	9/19/22	1657-1666
15	Notice of Entry of Order Granting Supplemental Attorney's Fees	9/19/23	2126-2139
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	1287-1302

9	November 9, 2020, Minute Order	11/9/20	1258-1259
15	NSC Order Dismissing Appeal	3/8/23	2113-2114
11	NSC Order Remanding on Attorney Fee Issue	4/21/22	1651-1656
15	NSC Order to Show Cause as to Why Appeal Should Not Be Dismissed	1/4/23	2090-2091
10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	1478-1591
13	Opposition to Motion to Reconsider	10/17/22	1866-1875
2	Opposition to MTD 12(b)(5)	5/7/18	220-235
6	Opposition to request for discovery	5/11/20	738-748
2	Opposition to Special MTD	5/4/18	198-219
14	Opposition to Supplemental Motion for Attorney's Fees	12/23/22	1909-2089
5	Order Denying Mtn for Discovery	4/11/19	713-715
11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	1597-1604
11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	1615-1620
6	Order granting protective order	8/3/20	823-829
6	Plaintiff's response to motion for protective order	7/7/20	800-815

2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	301-305
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	306-327
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	366-425
4	Plaintiffs' Errata to Complaint	6/11/18	426-523
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	573-631
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	1273-1286
5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	640-664
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	1429-1440
5	Plaintiffs' Response to Objections to R&R	1/30/19	689-712
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	665-670
7	Plaintiffs' Supplemental opposition to Motion to Dismiss (Part 1)	10/14/20	830-995
8	Plaintiffs' Supplemental opposition to Motion to Dismiss (Part 2)	10/14/20	996-1216

11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	1608-1614
6	Reply in support of protective order	7/9/20	816-821
13	Reply to Motion to Reconsider Order Granting Attorney's Fees	10/28/22	1889-1895
2	Reply to MTD 12(b)(5)	5/9/18	252-262
15	Reply to Opposition to Supplemental Motion for Attorney's Fees	1/6/23	2092-2099
2	Reply to Special Motion to Dismiss	5/9/18	236-251
15	Reporter's Transcript of Hearing on Motion for Attorney's Fees	3/31/21	2180-2202
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	263-300
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	96-147
2	Special Motion to Dismiss	4/13/18	163-197
6	Supplemental brief for limited discovery	5/6/20	731-737
13	Supplemental Motion for Attorney's Fees	11/23/22	1896-1908



OPPS

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

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

DATE: November 9, 2022
Time: Chambers

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 Opposition to Motion To
Reconsider Order Granting Attorney's Fees Post Remand.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Nevada Supreme Court instructed this Court to reconsider the amount of its fee award in order to apply the *Brunzell* factors. Now Plaintiffs ask this Court to reconsider the reconsideration—yet Plaintiffs offer no new facts or law. They simply do not like the result.

We have now entered the legal *Twilight Zone* where Yohan Lowie¹ repeatedly multiplies these proceedings (this time by filing a frivolous motion in his meritless lawsuit²) and then complains that Defendants’ counsel is running up the fees. Far from supporting Plaintiffs’ request for reconsideration, these tactics merit severe rebuke.

What’s worse, Plaintiffs attempt to justify their reconsideration request with a series of misrepresentations about the facts and law. For example:

- Plaintiffs ***claim*** that fees can only be awarded for the anti-SLAPP motion itself, and not the entire action,³ relying solely on California authority. ***In truth***, the Nevada Supreme Court has made clear that a prevailing defendant is entitled to an award of “all reasonable fees and costs incurred from the inception of the litigation...” *Smith v. Zilverberg*, 137 Nev. 65, 73 (2021). As that Court expressly held, a prevailing defendant is entitled “to recover reasonable attorney fees and costs incurred in the entire action, not just those incurred litigating the anti-SLAPP

¹ Lowie is the principal of the plaintiff entitles.

² This lawsuit is meritless by definition because the Nevada Supreme Court affirmed dismissal under the anti-SLAPP statute. “Nevada’s anti-SLAPP statutes provide defendants with a procedural mechanism to dismiss ***meritless*** lawsuits before incurring the costs of litigation.” *Taylor v. Colon*, 136 Nev. Adv. Op. 50, 482 P.3d 1212, 1215 (2020) (emphasis added) (cleaned up). The delays and costs Lowie has imposed in this case show that his SLAPP suit has accomplished its intended purpose. SLAPP plaintiffs do not care whether they will win their suits. They are filed for delay and distraction. They seek to punish opponents for voicing dissent. They seek to prevent people from exercising their First Amendment rights and to harm those who do. Those who file SLAPP suits (like Lowie) accomplish their purpose by forcing defendants to devote time and energy in combating the lawsuit so they cannot combat the plaintiff in the political or legal arena. *See Dixon v. Superior Court* 30 Cal. App. 4th 733 (1994); *Wilcox v. Superior Court*, 27 Cal. App. 4th 809, 815 (1994). That is not to say that a defendant must prove that a plaintiff had such an ill intent, but only that lawsuits like Lowie’s are exactly why anti-SLAPP statutes are enacted. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002).

³ Motion, 11:9-19.

special motion to dismiss.” *Id.* at 75. Plaintiffs’ counsel certainly knew about this controlling authority. It was cited at the hearing on the original fee motion.

Further, ***Plaintiffs have cited the same case in their own appellate briefing.*** See Motion, Ex. C.⁴

- Throughout their motion, Plaintiffs ***claim*** that it is “undisputed” that Frank Schreck engaged in wrongdoing and is a co-conspirator who launched a tortious campaign in which Defendants participated. ***In truth***, the Nevada Supreme Court expressly found “that [Plaintiffs] did not show with prima facie evidence an agreement to accomplish an unlawful objective for the purpose of harming [Plaintiffs], and that [Plaintiffs] suffered damages as a result, which are necessary elements of their conspiracy claim. *Fore Stars, Ltd. v. Omerza*, 508 P.3d 885 (Nev. 2022).
- Plaintiffs ***claim*** that Defendants circulated false declarations regarding Plaintiffs’ development plans. ***In truth***, the Nevada Supreme Court has already determined that Defendants “met their burden of showing by a preponderance of the evidence that their communications were truthful or made without knowledge of their falsehood...” *Omerza v. Fore Stars, Ltd*, 455 P.3d 841 (Nev. 2020).

Plaintiffs’ duplicity on other issues is repeated in their current motion even though it was revealed (and refuted) during the prior briefing on attorneys’ fees. The deception includes Plaintiffs’ efforts to show disparity between their counsel’s rates and the rates of defense counsel. But Plaintiffs’ counsel appears to forget that she previously submitted a declaration stating one rate for her services in this case (when she was seeking a fee award) and then later clarified that, on this case, she was giving her client a reduced rate (when she was opposing a fee award). This duplicity extends to Plaintiffs’ attempt to compare the number of hours their counsel have spent on this case to the time spent by defense counsel—claiming that Plaintiffs spent substantially

⁴ This is a inexplicable violation of the duty of candor to this Court under Nevada Rule of Professional Conduct 3.3. And, as Plaintiffs’ admit on Page 7 of their motion, under Rule 8.4, their counsels’ violation constitutes professional misconduct.

fewer hours on the case than Defendants did. Yet, in another breach of the duty of candor, Plaintiffs' counsel does not disclose that attorney Elizabeth Ham participated in this case but did not count her hours in the calculation. She is co-counsel of record and participated substantively (including in drafting papers and conducting depositions), but does not account for any of her time because she is in-house counsel for Plaintiffs.

In the end, the Nevada Supreme Court did not direct this Court to reconsider the anti-SLAPP motion, whether fees should be awarded, or even to reconsider all of the arguments that were made by Plaintiffs (and necessarily rejected by this Court) in their opposition to the original fee motion. The mandate was straightforward. The case was remanded with instructions that this Court "consider the *Brunzell* factors and make the necessary findings to support the fee amount awarded." *Fore Stars, Ltd.*, 508 P.3d 885, *2. This Court did just that. There is nothing worthy of reconsideration.

II. ARGUMENT

Most of the response to Plaintiffs' motion is already part of the docket in Defendants' fee motion papers. This includes all of the response to Plaintiffs' recycled arguments about rates, hours, billing practices, the nature of the work, etc. These arguments will not be rehashed here (but are incorporated by this reference).

A. Plaintiffs Do Not Demonstrate That Reconsideration Is Appropriate

Reconsideration is only proper in two primary circumstances. First, reconsideration may be granted if "the decision [was] clearly erroneous" as a matter of law. *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741 (1997) (reconsideration appropriate when "...the decision is clearly erroneous"). Second, reconsideration may be granted when "*substantially different* evidence is subsequently introduced" that warrants a contrary ruling. *Id.* (emphasis added).

Reconsideration is not available merely because a party does not like the initial result of a Court's decision. "Rehearings are not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v. McCown*, 64 Nev. 102, 108 (1947) (internal citations omitted). The Court may grant rehearing "[o]nly in very rare instances in which new issues of fact or law

1 are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing
2 be granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976).

3 Here, Plaintiffs do not offer any new facts or law that were not available to them when the
4 motion first was litigated. To be sure, they admit as much when they repeatedly cite to their
5 opposition to the fee motion. This Court was not required to reconsider every argument that
6 Plaintiffs made in their opposition. All the Nevada Supreme Court required was that this Court
7 consider the *Brunzell* factors to support the amount of the fee award.

8 Because Plaintiffs offer no news facts or law that were not available before,
9 reconsideration is inappropriate.

10 **B. Defendants Were Entitled To Fees For The Entire Case**

11 Plaintiffs argue that Defendants are entitled to a fee award *only* for the fees related to the
12 anti-SLAPP motion itself. For this proposition, they cite to California authority.

13 Without explanation, they do not cite to controlling Nevada Supreme Court authority that
14 makes clear that a successful anti-SLAPP defendant is entitled to fees and costs for the *entire*
15 case, not just for the anti-SLAPP motion, itself.⁵ *Smith*, 137 Nev. 75. In fact, while the Nevada
16 Supreme Court often looks to California cases when interpreting the anti-SLAPP statute, the
17 Court *expressly* held that whether fees are awarded for the entire case is one of the few issues on
18 which Nevada and California anti-SLAPP law diverge and *rejected* the application of California
19 law on this narrow issue. *See id.* at 74, fn. 8.

20 There is no excusable explanation for why this authority was excluded from Plaintiffs’
21 motion. Plaintiffs’ counsel was familiar with the case—it was cited for this proposition at the
22 hearing on the original attorneys’ fee motion.⁶ And, Defendants cited this same case to the
23 Nevada Supreme Court in their appeal.

24
25
26 ⁵ Contrary to Plaintiffs’ demand, the Court was not required to parse each task in the case and
27 reduce fees for unsuccessful motions or other efforts. “It is well-settled that a prevailing plaintiff
28 may be compensated for lost battles along the way to winning the war[.]” *Pierce v. Cnty. of*
Orange, 905 F. Supp. 2d 1017, 1032 (C.D. Cal. 2012).

⁶ The Nevada Supreme Court issued its decision after briefing was complete but before this Court
heard the fee motion.

1 **C. Plaintiffs Cannot Avoid A Fee Award Simply Because Defendants’ Counsel**
2 **Agreed To Make The Fees Contingent On The Outcome Of The Anti-SLAPP**
3 **Motion**

4 As set forth in the original motion for attorneys’ fees, counsel “agreed to represent
5 Defendants in this case on a contingency basis *for purposes of seeking to dismiss the lawsuit*
6 *through an anti-SLAPP motion and Motion to Dismiss.*”⁷ While not the most common
7 arrangement, handling anti-SLAPP motions on a contingent basis is not unheard of. *See Ketchum*
8 *v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001) (granting fee enhancement to counsel for prevailing
9 anti-SLAPP defendant because counsel handled on contingent basis).

10 Plaintiffs’ effort to turn the contingent nature of this defense into something nefarious
11 defies any reason. As they characterize it, Frank Schreck “instigated” this case⁸ so that he could
12 cause his law firm to defend the case on a contingency basis so that if Defendants prevailed after
13 multiple appeals by Plaintiffs, his law firm could make a motion to try to obtain an award of fees
14 for time that could have been spent billing other clients on an hourly basis in the first place.

15 Even were that convoluted theory true—which it is not—it would be of no moment. As
16 noted, nothing prevents counsel from taking an anti-SLAPP defense on a contingent basis. As
17 cited above, California courts even encourage such arrangements by provided a fee enhancement
18 for those who do so.

19 Equally unavailing is Plaintiffs’ argument that fees cannot be awarded on a contingency
20 matter because Defendants have not “incurred” any fees. For example, when a defendant’s fees
21 are paid by a third party, a losing plaintiff must still pay fees under the anti-SLAPP statute.
22 *Macias v. Hartwell*, 55 Cal. App. 4th 669, 674-75 (1997). The same is true when an attorney
23 agrees to represent an anti-SLAPP defendant on a *pro bono* basis. *See Rosenaur v. Scherer*, 88
24 Cal. App. 4th 260, 281-287 (2001), as modified (Apr. 5, 2001).

25 This is all consistent with the plain language of Nevada’s anti-SLAPP statute which
26 provides that when a defendant prevails on an anti-SLAPP motion, “[t]he court shall award
27 reasonable costs and attorneys’ fees to the person against whom the action was brought...” NRS

28 ⁷ Defendants’ Motion For Attorneys’ Fees, Filed 12/31/2020, 1:45 PM, Exh. 1, ¶ 2.

⁸ *See* Motion, 3:5-8.

1 41.670(1)(a). The award is mandatory and a consequence that a plaintiff must shoulder for
2 having filed a meritless lawsuit. Nothing in the language of the statute require that the fees had to
3 have been actually incurred by the defendant. *Simply, the court shall award reasonable costs*
4 *and fees.*

5 Finally, the statutory requirement that the Court award reasonable fees and costs only
6 underscores how preposterous Plaintiffs' efforts to avoid such an award are. Plaintiffs are not
7 entitled to discovery relating to Defendants' fee arrangement. With respect to whether Plaintiffs
8 must pay fees, it does not matter whether Defendants' financial relationship with their counsel is
9 based on hourly rates, is *pro bono*, or is contingent in nature. It does not even matter whether
10 there is a fee agreement at all or whether Defendants could have a fee agreement deemed
11 unenforceable. All that matters is whether the fees requested are reasonable (as determined by
12 the application of the *Brunzell* factors pursuant to the Nevada Supreme Court's directive in this
13 case). That is because the statute requires a court to award reasonable fees and costs.

14 In their final effort to avoid attorneys' fee liability for their meritless case, Plaintiffs
15 theorize that if Defendants' fee agreement with their counsel was not in writing⁹ and, therefore, it
16 would not be enforceable under the rules providing that contingency agreements should be in
17 writing. Plaintiffs are grasping at straws. Beyond ignoring their express obligation to pay
18 reasonable fees and costs for their meritless lawsuit, they also ignore the general law as it relates
19 to fees. They start by failing to identify any authority to support their contention that an adverse
20 party has the right to challenge the validity of their opponent's fee arrangement with counsel.
21 Worse, they are again misleading when they cite to Restatement (Third) of the Law Governing
22 Lawyers. While they cite to one section, they withhold from the Court the rule cited in Section
23 39. That section provides: "If a client and lawyer have not made a valid contract providing for
24 another measure of compensation, a client owes a lawyer who has performed legal services for
25 the client the fair value of the lawyer's services." Restatement (Third) of the Law Governing
26 Lawyers § 39 (2000). As Comment (e) to Section 39 makes clear, "should a fee contract be

27 _____
28 ⁹ "Plaintiff cites no law requiring disclosure of the defendant's fee agreement before an award of
fees." *Beach v. Wal-Mart Stores, Inc.*, 958 F. Supp. 2d 1165, 1170 (D. Nev. 2013)

unenforceable a lawyer can obtain quantum meruit recovery under this Section” unless the lawyer has engaged in misconduct that warrants forfeiture. Thus, *even if* defense counsel’s fee arrangement was unenforceable and *even if* Plaintiffs had standing to assert that claim, defense counsel would still be entitled to the reasonable value of their services under quantum meruit, which is all the anti-SLAPP statute authorizes the Court to award in the first place—the reasonable fees and costs.

Certainly, despite repeating their allegations over and over, Plaintiffs have not shown any misconduct by defense counsel. Indeed, the Nevada Supreme Court has found that Plaintiffs could not make even a *prima facie* showing of the conspiracy they allege. A cursory review of Section 37 (and comments) of the Restatement make clear there is no basis for a fee forfeiture here.

The only parties that have been found to have done anything wrongful are Plaintiffs, who filed a meritless lawsuit and are required by statute to pay fees.

D. This Court Should Issue EDCR 7.60(b) Sanctions Against All Of Plaintiffs’ Current Counsel Of Record

This frivolous motion is just the latest act by Plaintiffs designed to multiply the proceedings so as to increase the costs unreasonably and vexatiously. Plaintiffs do not care about the rules or the merits of their motions as they attempt to cause delay after delay. The amounts at issue are a pittance to them. That is their motivation behind this entire meritless lawsuit.

But, candidly, Plaintiffs can only accomplish their goals in this SLAPP suit if they have members of the bar willing to do their bidding. As it relates to this frivolous motion, Plaintiffs’ counsel of record did so and, in the process, breached their duties of candor by withholding controlling authority and misrepresenting facts. Considering the entire history of this case and the repeated improper tactics, this Court should take strong action to dissuade future misconduct as this case progresses to an inevitable appeal.

EDCR 7.60(b) allows this court to impose on an attorney “fines, costs or attorney’s fees” when an attorney “presents a motion that is obviously frivolous, unnecessary or unwarranted” or “so multiples the proceedings in a case as to increase costs unreasonably and vexatiously.”

Presumably, defense counsel will receive its fees for this motion in a supplement fee motion that covers the prior appeal and this briefing. But meaningful sanctions are still appropriate in an amount commensurate to the unnecessary expenses Plaintiffs' counsel has caused and the burden on the Court. Perhaps \$5,000 per current counsel of record payable to the Court would be impactful enough to put an end to these shenanigans.

III. CONCLUSION

Defendants and their counsel have spent enough time and resources in their initial briefing on attorneys' fees to respond to Plaintiffs' unpersuasive arguments regarding hours, rates, billing style, total fees, etc. Plaintiffs' reconsideration motion adds nothing new other than misrepresentations of fact and law. There is no basis to reconsider this Court's fee award. Instead, Plaintiffs' counsel should be sanctioned for engaging in prohibited litigation tactics under EDCR 7.60.

DATED this 17th day of October, 2022.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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

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

CERTIFICATE OF SERVICE

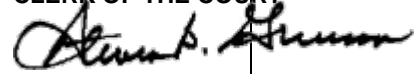
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO MOTION TO RECONSIDER GRANTING ATTORNEY'S FEES POST-REMAND** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 17th day of October, 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

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



Lisa A. Rasmussen, Esq.
Nevada Bar No. 7491
**The Law Offices of Kristina
Wildeveld & Associates**
550 E Charleston Blvd. Suite A
Las Vegas, NV 89104
Tel. (702) 222-0007
Fax. (702) 222-0001

Email: Lisa@LRasmussenLaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited
liability company; 180 LAND CO., LLC; A
NEVADA LIMITED 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' Motion for Attorney's Fees, entered post-remand on
September 19, 2022, the Notice of Entry of Order having been entered the same date. A
NOTICE OF APPEAL - 1

APP 1876

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

3 DATED: October 17, 2022. 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 17th day of October,
15 2022, including, but not limited to:
16

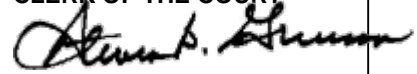
17 Mr. Mitchell Langberg, Esq.
18 Counsel for the Defendants

19 /s/ Lisa A. Rasmussen

20 Lisa A. Rasmussen, Esq.
21
22
23
24
25
26
27
28

Exhibit 1

Exhibit 1



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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

**NOTICE OF ENTRY OF ORDER GRANTING
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 Granting Defendants' Motion for Attorneys' Fees
and Additional Monetary Relief Pursuant to NRS 41.060 and NRS 18.010(2) was entered on
September 19, 2022.

...

...

...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

mlangberg@bhfs.com

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

Counsel for Defendants

DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

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

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

1 **ORDR**

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

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

10 Plaintiff(s),

11 vs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **A. Quality of the Advocate**

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

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

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

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

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

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

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

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

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

6 **C. The Work Actually Performed**

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

18 **D. The Result**

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

1 For the reasons stated by the Court on the record (NRCF 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.

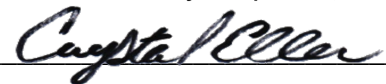
11 10. The Court also finds that an additional monetary award to Defendants pursuant to
12 NRS 41.670 is not appropriate in this matter. This additional award can be used to
13 compensate defendants who have had to endure the stress of ongoing litigation and the
14 expenditure of attorney fees. The award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

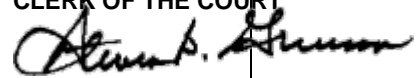
15 Elizabeth Ham	EHam@ehbcompanies.com
16 Todd Davis	tdavis@ehbcompanies.com
17 Jennifer Knighton	jknighton@ehbcompanies.com
18 Mitchell Langberg	mlangberg@bhfs.com
19 Lisa Rasmussen	Lisa@Veldlaw.com
20 Kristina Wildeveld	Kristina@Veldlaw.com
21 Mitchell Langberg	mlangberg@bhfs.com
22 Mitchell Langberg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

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lisa Rasmussen

Lisa@Veldlaw.com



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

Elizabeth G. Ham, Esq.
Nevada Bar No. 6987
EHB Companies
1215 S. Ft. Apache Road, Suite 120
Las Vegas, NV 89117
(702) 940-6930
Email: EHam@ehbcompanies.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: XIX

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATION
OF ORDER GRANTING DEFENDANTS'
MOTION FOR ATTORNEYS' FEES AND
ADDITIONAL MONETARY RELIEF
PURSUANT TO NRS 41.670 AND NRS
18.010(2)**

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER GRANTING
DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT
TO NRS 41.670 AND NRS 18.010(2) - 1

1 **I. INTRODUCTION.**

2 Rather than simply produce a written contingency fee agreement, counsel for Defendants
3 Daniel Omerza (“Omerza”), Darren Bresee (“Bresee”), and Steve Caria (“Caria”) (collectively
4 “Defendants”) once again resort to disparaging Plaintiffs Fore Stars, Ltd., 180 Land Co., LLC, and
5 Seventy Acres, LLC (collectively “Plaintiffs” or “Landowners”) and their principals, presumably
6 to distract the Court from the relevant inquiry as well as their law partner’s misconduct. The only
7 reasonable explanation for their evasiveness is that a written agreement doesn’t exist and
8 Defendants are therefore not entitled to any attorney fees whatsoever. Nevada’s Rules of
9 Professional Conduct require that contingency fee agreements be in writing, and an attorney fees
10 award in the absence of such a written agreement is improper.

11 Even if one does exist, the wrongful conduct of Defendants’ counsel, Frank Schreck
12 (“Schreck”), cannot be ignored and should have been considered as relevant to the reasonableness
13 of the attorney fees request under the factors set forth in *Brunzell v. Golden Gate National Bank*,
14 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). That the Landowners’ lawsuit was ultimately dismissed
15 does not exonerate Schreck or necessarily demonstrate the reasonableness of the attorney fees.
16 Contrary to Defendants’ contention, the Supreme Court of Nevada’s remand order directed this
17 Court to consider the *Brunzell* factors not merely rubber stamp Defendants’ attorney fees request.
18 Simply stated, Defendants’ counsel are not entitled to their fees for the entire case because they
19 are unreasonable under *Brunzell*.

20
21 Finally, Defendants’ request for sanctions should be summarily denied. This Court
22 previously considered and rejected Defendants’ similar request in the initial attorney fees award,
23 and the Supreme Court of Nevada has affirmed that part of the decision. Again, Defendants are
24 just trying to divert attention from their counsel’s wrongdoing by accusing the Landowners of the
25 very same “shenanigans” they have engaged in throughout these proceedings. Reconsideration,
26 not sanctions, is therefore warranted.

1
2 **II. ARGUMENT**

3 **A. The Attorney Fees Award Is Clearly Erroneous Because There Is No Evidence**
4 **Of A Written Contingency Fee Agreement.**

5 Defendants concede that reconsideration is proper if a decision is clearly erroneous. *See*
6 *Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489
7 (1997). Defendants also concede that reconsideration is warranted when “new issues of fact or
8 law are raised supporting a ruling contrary to the ruling already reached.” *Moore v. City of Las*
9 *Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976); *see also Powell v. Liberty Mut. Fire Ins. Co.*,
10 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011). Nevada Rule of Professional Conduct
11 (NRPC) 1.5 expressly requires that contingency fee agreements be in writing, and an attorney fees
12 award in the absence of such a written agreement is clearly erroneous. Here, there is no evidence
13 of a written contingency fee agreement, and its existence (or lack thereof) was not considered by
14 the Court in its evaluation of the *Brunzell* factors. Reconsideration should be granted accordingly.

15 To date, Defendants have never produced the alleged contingency fee agreement and
16 requests that it be produced were forbidden by their counsel. Indeed, Defendants once again
17 sidestep the issue in their opposition papers, refusing to produce a written agreement or even
18 confirm its existence. To be clear, the issue is the lack of any written agreement not the purported
19 contingent nature of Defendants’ fee arrangement with their counsel, although such an
20 arrangement is suspicious in a case with no counterclaims or other affirmative basis for recovery
21 and given Schreck’s underlying involvement as a co-conspirator. Defendants acknowledge as
22 much, admitting that a contingency arrangement under such circumstances is uncommon. *See*
23 *Defs’ Opp.* p. 6. In other words, the nature of Defendants’ fee arrangement does matter since
24 Nevada law prohibits counsel from receiving attorney fees without a written contingency fee
25 agreement. *See, e.g., Gonzales v. Campbell & Williams*, 2021 WL 4988154, at *8 (Nev. Oct. 26,
26 2021) (awarding a contingency fee without a written agreement is clearly erroneous) (unpublished)
27 PLAINTIFFS’ REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER GRANTING
28 DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES AND ADDITIONAL MONETARY RELIEF PURSUANT
TO NRS 41.670 AND NRS 18.010(2) - 3

disposition).¹ Quite simply, any award of attorney fees is improper unless Defendants can produce a written contingency fee agreement.²

Moreover, attorney fees in anti-SLAPP cases are supposed to reimburse attorney fees incurred by defendants improperly sued for exercising their First Amendment rights. *See, e.g., Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014) (legislative purpose of anti-SLAPP statutes is to reimburse the prevailing defendant for expenses incurred in extracting itself from a baseless lawsuit); *see also Shapiro v. Welt*, 133 Nev. ___, 389 P.3d 262, 268 (2017) (looking to California law for guidance because California's and Nevada's anti-SLAPP statutes are similar in purpose and language). They are not intended to reward wrongdoers such as Schreck with a windfall of over \$300,000 in attorney fees for his misconduct. *See id.* Thus, it is implicit that an attorney fees award under NRS 41.670 must be limited to those fees *incurred* by the person against whom the action was brought despite Defendants' erroneous assertion otherwise. Because Defendants have not incurred any attorney fees whatsoever, anything less than a complete denial of fees would be an improper windfall to Schreck for a situation entirely of his doing.

B. The Attorney Fee Award Is Not Reasonable Under The Brunzell Factors.

Ultimately, Defendants concede that their contingency arrangement is unenforceable if not in writing but claim they are still entitled to attorney fees under *quantum meruit*. In doing so, however, Defendants disregard Nevada law compelling fee forfeiture for attorney misconduct. *See*

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

² Defendants inappropriately rely on *Beach v. Wal-Mart Stores, Inc.*, 958 F.Supp.2d 1165 (D. Nev. 2013), for the proposition that disclosure of their fee agreement is not required. Not only is the case inapposite because it does not involve a contingency fee agreement or attorney misconduct but awarding attorney fees without a written contingency fee agreement is clearly erroneous under Nevada law. *See Gonzales*, 2021 WL 4988154, at *8. Thus, Defendants must disclose the written agreement or otherwise prove its existence, or their counsel is not entitled to any attorney fees.

1 *Hawkins v. Eighth Jud. Dist. Ct.*, 133 Nev. 900, 903-04, 407 P.3d 766, 770 (2017) (“A party should
2 not be awarded attorney fees that ultimately are not due the attorney. Payment is not due for
3 services not properly performed.”); *see also* Restatement (Third) of the Law Governing Lawyers
4 § 37 cmt. a (2000) (forfeiture of attorney fees justified for some ethical violations even where no
5 harm is proved). Importantly, the Restatement expressly prohibits even *quantum meruit* recovery
6 when a lawyer has engaged in misconduct. *See id.*, § 37 cmt. e. Other than a cursory denial for
7 the first time in their most recent opposition papers, Defendants have never disputed Schreck’s
8 misdeeds as part of a plan to sabotage development of the Land and ruin the Landowners’ business
9 interests. *See* Pltfs’ Opp. to Mot. for Atty Fees p. 4-30; *see also* Defs’ Reply to Mot. for Atty Fees
10 p. 2-6; Exhibits C-J.³ Defendants likewise ignore the evidence of Schreck’s wrongdoing,
11 including that attached to the Landowners’ motion for reconsideration, all of which indisputably
12 prohibits their counsel from recovering any attorney fees, including *quantum meruit* fees. *See id.*

13
14 At minimum, Schreck’s actions as a co-conspirator in this case should have been
15 considered because they are relevant to the reasonableness of the award under *Brunzell* and the
16 second factor in particular, i.e., the character of the work to be done or the nature of the litigation,
17 its difficulty and intricacy. *See id.*, 85 Nev. at 349, 455 P.2d at 33. Indeed, the undisputed facts
18 and evidence of Schreck’s wrongdoing directly contradict the order’s conclusion that the
19 “character of the work [was] extremely significant” Exhibit A p. 4. Even if Schreck used the
20 Defendants – unbeknownst to them – to do his bidding and was thereafter obligated to defend them
21 to avoid accountability, the character of the work or nature of the litigation is not significant,
22 difficult, or intricate as a matter of law if it is merely the result of counsel’s misconduct. As such,
23 the attorney fee award is not reasonable under *Brunzell* and should be reconsidered.

24
25
26 ³ The exhibits cited herein are those attached to the declaration of Lisa Rasmussen, Esq.,
27 submitted in support of the Landowners’ motion for reconsideration.
28 PLAINTIFFS’ REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER GRANTING
DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES AND ADDITIONAL MONETARY RELIEF PURSUANT
TO NRS 41.670 AND NRS 18.010(2) - 5

1 **C. Reconsideration, Not Sanctions, Is Warranted.**

2 Finally, the Court has already considered and rejected Defendants' request for an
3 enhancement/additional monetary award/sanctions. *See* 04/16/2021 Order Re: Defs' Motion For
4 Atty Fees p. 2. In doing so, the Court likewise considered and rejected the Defendants' meritless
5 lawsuit and delay accusations, and the Supreme Court of Nevada has affirmed that part of the
6 decision. *See id.*; *see also* Exhibit A. For the same reasons, this latest request should be summarily
7 denied. It is Defendants' counsel who have delayed the case at every turn and racked up exorbitant,
8 unreasonable attorney fees all because their law partner instigated a plan to sabotage the
9 Landowners' development of their Land. Since then, the Landowners have been fighting for their
10 constitutionally protected land rights and the delays are causing them extreme financial hardship.
11 That this lawsuit was ultimately dismissed does not exonerate Schreck or necessarily demonstrate
12 the reasonableness of the attorney fees. And, the Supreme Court of Nevada's remand order
13 directed this Court to consider the *Brunzell* factors not merely rubber stamp Defendants' attorney
14 fees request as they erroneously contend. As set forth in the Landowners' motion for
15 reconsideration – as well as their initial opposition papers and appellate briefs – there are a host of
16 challenges to the reasonableness of the attorney fee award to be resolved here under *Brunzell*.⁴ If
17 the Defendants' attorney fees request is not denied in its entirety based on the lack of a written
18 contingency fee agreement (as it should be), the Landowners' respectfully request that
19 reconsideration be granted so that the Court can resolve the myriad of issues raised by the
20
21

22
23 ⁴ In the interests of efficiency and economy given the Court's *sua sponte* order, the
24 Landowners incorporated into the motion for reconsideration by reference all their previous
25 pleadings and arguments, including those in Docket Nos. 82338 and 82880, regarding the *Brunzell*
26 factors and the reasonableness of the attorney fees award based thereon. Defendants did as much
27 in their opposition papers as well making their claim that the Landowners did not cite all relevant
28 case law particularly disingenuous as is Defendants' mischaracterization of the Landowners'
challenges to the attorney fees award as a misstatement of the law. *See* Plts' Mot. p. 10 n. 8; *cf.*
Defs' Opp. pp. 4-5.

Landowners pursuant to the Supreme Court of Nevada's remand order.

III. CONCLUSION

Based on the foregoing, the Court should grant the Landowners' motion for reconsideration in its entirety. Defendants' request for sanctions, however, is meritless and should be summarily denied.

Dated this 28th day of October 2022.

The Law Offices of Kristina Wildeveld & Associates

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.

(Nevada Bar No. 7491)

On behalf of Plaintiffs

CERTIFICATE OF SERVICE

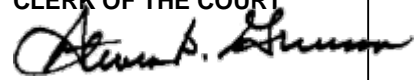
I HEREBY CERTIFY that I served a copy of the foregoing REPLY TO MOTION FOR RECONSIDERATION OF ORDER AWARDING ATTORNEYS' FEES upon the following persons using this Court's Efile & Serve Program on the 28th day of October 2022:

Mr. Mitchell Langberg
Counsel for Defendants

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2) - 7



SUPP

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

mlangberg@bhfs.com

BROWNSTEIN HYATT FARBER & SCHRECK LLP

100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106

Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys For Defendants

DANIEL OMERZA, DARREN BRESEE,

and STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO. A-18-771224-C

**DEFENDANTS' SUPPLEMENTAL
MOTION FOR ATTORNEYS' FEES**

HEARING REQUESTED

Defendants Daniel Omerza, Darren Bresee, and Steve Caria, by and through their counsel
of record Mitchell J. Langberg of BROWNSTEIN HYATT FARBER SCHRECK LLP, hereby
move for a supplemental award of attorneys' fees in the amount of \$40,500.50 from Plaintiffs
pursuant to NRS 41.670.

...

...

...

...

...

1 This Motion is made pursuant to NRS 41.670 and is based on the following Memorandum
2 of Points and Authorities, the supporting declaration and exhibits, the pleadings and papers on file
3 in this matter, as well as upon any oral argument the Court may entertain should this matter be set
4 for hearing by the Court.

5 DATED this 23rd day of November, 2022.

6 BROWNSTEIN HYATT FARBER SCHRECK, LLP

7
8 By: /s/ Mitchell J. Langberg
9 MITCHELL J. LANGBERG, ESQ. Bar No. 10118
10 mlangberg@bhfs.com
11 100 North City Parkway, Suite 1600
12 Las Vegas, NV 89106
13 Telephone: 702.382.2101
14 Facsimile: 702.382.8135

15 *Attorneys For Defendants Daniel Omerza,*
16 *Darren Bresee, and Steve Caria*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In March 2021, this Court awarded Defendants mandatory attorneys' fees under Nevada's anti-SLAPP statute because Plaintiffs' lawsuit had been dismissed as a meritless SLAPP suit.

Defendants make this supplemental request for fees that were not covered by their initial motion.

Since filing the initial motion, Defendants' have incurred fees opposing Plaintiffs' multiple motions for reconsideration and defending against Plaintiffs' appeal to the Nevada Supreme Court. The Court should award Defendants all of those fees because a prevailing defendant is entitled "to recover reasonable attorney fees and costs incurred in the entire action..." *Smith v. Zilverberg*, 137 Nev. 65, 73 (2021).

As this Court noted in its September 19, 2022, order, much of the work required in this case "was necessitated by Plaintiffs' litigation strategy." Indeed, as the Court stated in its order, "[t]here were several instances throughout the case where the process appeared to be extended by plaintiffs, requiring more legal work and corresponding increased fees." Plaintiffs' strategy and the exacerbation of fees has continued.

Defendants are entitled to a supplemental award of fees.

II. FACTS

At the time Defendants filed their initial fee motion on December 31, 2020, Defendants' anti-SLAPP motion had been granted and an order had been entered. Declaration of Mitchell J. Langberg ("Langberg Decl."), ¶ 2. While Plaintiffs had also filed a motion for reconsideration, Defendants had not yet performed any work opposing that motion. Langberg Decl., ¶ 3. Therefore, the prior motion for attorneys' fees covered all fees in the case through the preparation of the order granting the anti-SLAPP motion and the fees incurred in connection with the initial fee motion. Langberg Decl., ¶ 4.

Since that time, Defendants have incurred additional fees. Defendants have attached time entries for the work performed in this case as Exhibit 2. Langberg Decl., ¶5. A column for Task Codes has been added by counsel to generally assign each entry to one of 6 tasks performed in the case. Langberg Decl., ¶ 6. The following is a table defining those Task Codes and providing the

fees based on the applicable attorney rates multiplied by hours worked (Langberg Decl, ¶ 7):

Task Code	Description	Hours	Fees
A	Work related to Plaintiffs' motion to reconsider ruling on anti-SLAPP motion	7.00	4900.00
B	Work related to Plaintiffs' motion to reconsider ruling on prior motion to reconsider	1.00	700.00
C	Briefing and attendance at Supreme Court Settlement Conference	5.90	4130.00
D	Preparing order on Defendants' initial fee motion	1.10	770.00
E	Work on appeal administration and briefing	34.50	23740.50
F	Preparing supplemental fee motion	4.40	3080.00
G	Work related to Plaintiffs' motion to reconsider fee award	4.40	3080.00
TOTAL		58.30	\$40,400.50

Therefore, Defendants seek a supplemental fee award in the amount of \$40,400.50

III. ARGUMENT

Pursuant to NRS 41.670(1)(a), when a defendant successfully has claims dismissed by way of an anti-SLAPP motion, the court "shall award reasonable costs and attorney's fees to the person against whom the action was brought." NRS 41.670(1)(b). The fees awarded are not limited to the fees incurred in litigating the anti-SLAPP motion, itself. Rather, a prevailing defendant is entitled "to recover reasonable attorney fees and costs incurred in the entire action..." *Zilverberg*, 137 Nev. at 73.

Therefore, Defendants are entitled to an award of reasonable attorneys' fees for all work performed in the case that was not covered by the initial fee motion. In Nevada, the analysis starts with applying a method to determine a reasonable fee. One appropriate method is to start with the Lodestar amount (reasonable rate multiplied by reasonable hours). *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, fn. 99 (2005). Once that amount is determined, a court must also consider the reasonableness in light of the *Brunzell* factors." *Id.* Those factors are:

- (1) the qualities of the advocate: their ability, their training, education, experience, professional standing and skill;

(2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;

(3) the work actually performed by the lawyer: the skill, time and attention given to the work;

(4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349 (1969).

In light of all of the factors, which have already been considered by this Court, supplemental fees for the additional work performed in the amount of \$40,400.50 is reasonable.

A. The Reasonableness Of The Rates And The Quality Of The Advocate

The Lodestar factor of the reasonableness of the attorney rates and *Brunzell* factor of the quality of the advocate are clearly related. Therefore, they are addressed together in this section.

As set out in his declaration (Exh. 1), Mitchell Langberg has been lead counsel on this matter. For all of the work identified in Exhibit 2, he billed only 56.1 hours. Langberg Decl, ¶ 8. When he started the work on this case more than four years ago, his rate was \$655. Since that time, his standard rate has risen annually. He recently was approved at the rate of \$825 per hour on an anti-SLAPP motion in this district. However, for this motion, he is charging only \$700 per hour, less than 7% more than the initial rate four years ago. Langberg Decl, ¶ 9. As set forth in his declaration (Exh. 1), he graduated from the University of Southern California School of Law in 1994. During his 28 years of practice, one of his primary focuses has been on defamation and First Amendment litigation. He is recognized by Best Lawyers in the area of Media and First Amendment Law. He is recognized with a Preeminent AV rating from Martindale-Hubbell. Mr. Langberg has handled approximately 50 cases involving anti-SLAPP motions (on both sides). He testified as an expert in the Nevada Legislature when the current anti-SLAPP statute was debated in 2015. He has taught anti-SLAPP law, including most recently as a lecturer on the subject at the Colorado Judicial Conference. Langberg Decl, ¶ 10.

As further set out in the Langberg Declaration, Laura Langberg briefly assisted on this case. She billed 2.1 hours assisting with research on a discreet issue for the Nevada Supreme

1 Court answering brief. She billed at the rate of \$505 per hour in 2021, which was only 4% more
2 than the rate she charged on this matter in 2020. Mrs. Langberg is a 2007 J.D./M.B.A. graduate
3 of the Boyd School of Law. She has worked with Mr. Langberg on defamation cases since 2008
4 and has assisted with several anti-SLAPP motions and oppositions. Langberg Decl., ¶ 11.

5 **B. The Reasonableness Of The Number Of Hours Worked, The Character Of**
6 **The Work, And The Work Actually Performed**

7 The Lodestar factor of the reasonableness of the number of hours worked is closely
8 related to the *Brunzell* factors of the character of the work performed and actual work performed.
9 Therefore, they are discussed together in this section.

10 As a reference, Defendants have attached the time entries for the work performed in this
11 case (that was not part of the initial fee motion) as Exhibit 2. A column for “Task Codes” has
12 been added by counsel to generally assign each entry to one of six categories of tasks performed
13 The table in the fact sections defines those Task Codes and provides the fees and total attorney
14 hours for each task.

15 All of the work was necessitated by Plaintiffs’ relentless pursuit of claims that the Nevada
16 Supreme Court has now confirmed lacked all merit. Less than 60 hours to resist a motion for
17 reconsideration, draft a settlement conference statement, attend a mandatory settlement
18 conference in person, draft an appeal brief on the complicated issues in this case, and then resist
19 yet another motion for reconsideration is imminently reasonable. Plaintiffs did not surrender a
20 single issue—forcing Defendants to relitigate every aspect of this case over and over again.

21 What remains remarkable is that the sworn statements Defendants collected to provide to
22 the City Council (and which were the basis of Plaintiffs’ claims) were never used (as reflected in
23 the anti-SLAPP order from this Court). The City Council proceeding never occurred. The
24 decision blocking development was reversed. Nothing Defendants did had any impact on
25 Plaintiffs. As the Supreme Court noted, there is no evidence Plaintiffs were damaged by
26 Defendants, even if Plaintiffs had claims that were meritorious on the elements. Yet, they
27 persisted—out of spite.
28

Through all of this, Plaintiffs continued to seek damages of tens of millions of dollars. Defense counsel was successful, obtaining a complete victory on the substance of the claims and eliminating any legal or financial exposure to the Defendants. Nobody can dispute that the quality of the work was very high.

Considering the *Brunzell* factors of importance of the litigation, the skill, time and attention given to the work and other characteristics of the nature and scope of the work, the amounts are reasonable. As this Court already determined, the work itself implicated important First Amendment rights on issues that are of immense concern in this community—including matters of regulating development and resident input in that process. The anti-SLAPP statute, itself, is designed to identify meritless litigation arising from the exercise of First Amendment rights. The fact the Legislature has created a special procedure in these cases emphasizes the social importance of anti-SLAPP litigation. And, the context of a wealthy developer sparing no expense in an attempt to silence his opposition speaks volumes about the challenges in the case.

Therefore, when considering the importance of the issues, the quality of the work, and the outcome, there is no doubt that the total Lodestar fee calculation is also appropriate under *Brunzell*'s test for overall reasonableness.

IV. CONCLUSION

Because all of the work performed since the last fee motion was filed was necessitated by Plaintiffs as part of successfully resisting their meritless lawsuit under Nevada's anti-SLAPP statute and because the amounts requested are reasonable both under the Lodestar analysis and after considering the *Brunzell* factors, Defendants respectfully request that this Court award supplemental fees in the amount of \$40,400.50.

DATED this 23rd day of November, 2022.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By /s/ Mitchell J. Langberg
MITCHELL J. LANGBERG, ESQ. Bar No. 10118
mlangberg@bhfs.com

*Attorneys For Defendants Daniel Omerza,
Darren Bresee, and Steve Caria*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 23rd day of November, 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

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

EXHIBIT 1

EXHIBIT 1

DECLARATION OF MITCHELL J. LANGBERG

I, MITCHELL J. LANGBERG, hereby declare as follows:

1. I am an attorney at Brownstein Hyatt Farber Schreck, counsel for defendants Daniel Omerza, Darren Bresee and Steve Caria (collectively, the "Defendants") in the above-captioned action. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. At the time Defendants filed their initial fee motion on December 31, 2020, Defendants' anti-SLAPP motion had been granted and an order had been entered.

3. While Plaintiffs had also filed a motion for reconsideration, Defendants had not yet performed any work opposing that motion.

4. Therefore, the prior motion for attorneys' fees covered all fees in the case through the preparation of the order granting the anti-SLAPP motion and the fees incurred in connection with the initial fee motion.

5. Since that time, Defendants have incurred additional fees. Attached hereto as Exhibit 2 is a spreadsheet reflecting the time entries (date, attorney, hours, rate, amount, and description) for work performed in this case that was not covered by Defendants' prior fee motion. I personally accessed my firms time accounting system and downloaded the time entries for this matter and put them in this spreadsheet.

6. I have added a column for Task Codes to generally assign each entry to one of 6 tasks performed in the case.

7. The table in the fact section of Defendants' Supplemental Motion for Attorneys' Fees defines each of the Task Codes and also provides the number of attorneys' hours and amount of fees incurred for each of those tasks.

8. I am lead counsel on this matter. Not including this motion, I have worked 182.2 hours on this matter. For all of the work identified in Exhibit 2, I have billed only 56.1 hours.

9. When I started the work on this case more than four years ago, my discounted rate was \$655. Since that time, my standard rate has risen annually. I recently was approved at the

1 rate of \$825 per hour on an anti-SLAPP motion in this district. However, for this motion, I am
2 charging only \$700 per hour, less than 7% more than the initial rate four years ago.

3 10. I graduated from the University of Southern California School of Law in 1994.
4 During my 28 years of practice, one of my primary focuses has been on defamation and First
5 Amendment litigation. I am recognized by Best Lawyers in the area of Media and First
6 Amendment Law. I am recognized with a Preeminent AV rating from Martindale-Hubbell. I
7 have handled well over 50 cases involving anti-SLAPP motions (on both sides). I testified as an
8 expert in the Nevada Legislature when the current anti-SLAPP statute was debated in 2015. I
9 have taught anti-SLAPP law, including most recently as a lecturer on the subject at the Colorado
10 Judicial Conference.

11 11. Laura Langberg briefly assisted on this case. She billed 2.1 hours assisting with
12 research on a discreet issue for the Nevada Supreme Court answering brief. She billed at the rate
13 of \$505 per hour in 2021, which was only 4% more than the rate she charged on this matter in
14 2020. Mrs. Langberg is a 2007 J.D./M.B.A. graduate of the Boyd School of Law. She has
15 worked with me on defamation cases since 2008 and has assisted with several anti-SLAPP
16 motions and oppositions.

17 12. These rates are reasonable in the Eighth Judicial District for the experience of the
18 attorneys and the nature of the work. In fact, they are lower than some rates approved on anti-
19 SLAPP motions in this district.

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

22 Executed on this 23rd day of November, 2022, at Las Vegas, Nevada.

23
24
25 /s/ Mitchell J. Langberg
MITCHELL J. LANGBERG

EXHIBIT 2

EXHIBIT 2

Work Date	Timekeeper Name	Work Hours	Work Rate	Work Amount	Narrative	Task Code
1/7/2021	M. Langberg	6.60	700.00	4,620.00	Review motion for reconsideration; conduct research for opposition; draft opposition	A
1/14/2021	M. Langberg	0.40	700.00	280.00	Review reply in support of Motion for Reconsideration	A
2/3/2021	M. Langberg	0.50	700.00	350.00	Review motion for reconsideration; draft response	B
2/18/2021	M. Langberg	0.40	700.00	280.00	Conference with Supreme Court mediator	C
3/30/2021	M. Langberg	0.50	700.00	350.00	Prepare order on motion to reconsider prior motion to reconsider	B
4/16/2021	M. Langberg	1.10	700.00	770.00	Prepare order on attorneys' fee motion	D
5/7/2021	M. Langberg	1.50	700.00	1,050.00	Prepare Supreme Court settlement conference brief	C
5/10/2021	M. Langberg	4.00	700.00	2,800.00	Attend Supreme Court settlement conference	C
5/21/2021	M. Langberg	0.20	700.00	140.00	Email exchanges with opposing counsel re posting of appeal bond	E
10/11/2021	M. Langberg	0.70	700.00	490.00	Review and comment on joint appendix on appeal	E
10/12/2021	M. Langberg	1.30	700.00	910.00	Review opening appeal brief	E
11/21/2021	M. Langberg	4.60	700.00	3,220.00	Review opening brief on appeal, outline initial response theme; begin review of cited case	E
11/22/2021	M. Langberg	6.50	700.00	4,550.00	Continue to review cases cited in opening brief; conduct research including on wavier of arguments on appeal, contents of orders, appellate rules on fact statements; begin preparing counter-facts	E
11/23/2021	M. Langberg	6.30	700.00	4,410.00	Continue work on answering brief including various research, fact section, argument summary	E
11/23/2021	L. Langberg	2.10	505.00	1,060.50	Research state and federal district court fee orders	E
11/24/2021	M. Langberg	11.40	700.00	7,980.00	Continue to draft answering brief including review of citations to extensive deposition testimony in record; conduct additional research; review, revise, finalize brief	E
1/25/2022	M. Langberg	1.40	700.00	980.00	Review Plaintiffs' reply brief and research re potential motion to strike	E
8/30/2022	M. Langberg	2.20	700.00	1,540.00	Begin work supplemental motion for fees	F
10/16/2022	M. Langberg	4.40	700.00	3,080.00	Research and draft opposition to reconsideration motion	G
11/21/2022	M. Langberg	2.20	700.00	1540.00	Prepare analysis of work performed; draft motion for supplemental fees	F
TOTAL		58.30		40,400.50		