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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendant.	Case No.: A-17-765257-C Dept. No.: XX **PLAINTIFFS' NOTICE OF APPEAL**

Plaintiffs, OLYMPIA COMPANIES, LLC and GARRY V. GOETT, by and through their attorneys of record, hereby appeal to the Supreme Court of Nevada from the Decision and Order Granting Defendant's Motion to Dismiss Pursuant to NRS 41.660, entered on July 27, 2021, a true and correct copy of which is attached hereto as **Exhibit 1**, as well as all orders, rulings, or decisions relating thereto, and any other orders or decisions made appealable thereby.

DATED this 18th day of August, 2021.

KEMP JONES, LLP

/s/ Nathanael Rulis
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2021, I served a true and correct copy of the foregoing **PLAINTIFFS' NOTICE OF APPEAL** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/Alison Augustine
An Employee of KEMP JONES LLP

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Exhibit 1

NOED
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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: 20 **NOTICE OF ENTRY OF DECISION AND ORDER**

YOU WILL PLEASE TAKE NOTICE that the Decision and Order was entered in the above-entitled matter on the 19th day of July, 2021, a copy of which is attached hereto.

BARRON & PRUITT, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July, 2021, I served the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

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☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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/s/ MaryAnn Dillard
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No. A-17-765257-C Dept. No. XX **DECISION AND ORDER**

THIS MATTER came before the Court on May 5, 2021, with J. Randall Jones, Esq. of Kemp Jones LLP appearing on behalf of Plaintiffs and William H. Pruitt, Esq. and Joseph R. Meservy, Esq. of Barron & Pruitt LLP appearing on behalf of Defendant on Defendant Michaeil Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the motion and the related opposition and reply and supplemental briefs and replies, the parties' exhibits, and having heard the arguments of counsel, with good cause appearing, enters the following findings, conclusions and Order.

INTRODUCTION AND SUMMARY OF LITIGATION

Olympia Companies, LLC, and its President and CEO, Garry V. Goett (collectively Plaintiffs) filed a defamation action against Defendant Michael Kosor. Defendant is a homeowner in Southern Highlands, a residential community, which Plaintiffs developed and manage. Plaintiffs' lawsuit is

Case Number: A-17-765257-C

premised on Defendant's criticisms of Plaintiffs' actions in relation to certain aspects of their development and management of Southern Highlands.

After filing an answer, Defendant filed a motion to dismiss under NRS 41.660, Nevada's Anti-SLAPP statute. "Nevada's anti-SLAPP statutes are intended to protect individuals from lawsuits typically targeting and discouraging good-faith speech on important public matters." *Kosor v. Olympia Companies, LLC*, 136 Nev. Adv. Op. 83, 478 P.3d 390, 393 (2020) (citing *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748 (2019)). If a party prevails on his motion to dismiss, then the case is dismissed in the early stages of the litigation and the party is entitled to recovery of attorney fees incurred in defending the action. *See* NRS 41.660; NRS 41.670. To establish a prima facie case for anti-SLAPP protection, the defendant must demonstrate "by a preponderance of the evidence, that [the underlying defamation] claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637 defines qualifying communications to include a [c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, . . . which is truthful or is made without knowledge of its falsehood."

In earlier litigation on Defendant's Motion, Plaintiffs argued Defendant's alleged defamatory statements fell outside the anti-SLAPP statute's protected categories of speech. Specifically, they argued Defendant's statements were not "made in direct connection with an issue of public interest in a place open to the public or in a public forum." NRS 41.637(4). The district court previously responsible for this case held Defendant did not meet his burden of showing a prima facie case that his statements were all made in public forums on matters of public interest. The previous court entered an order denying the Motion. Defendant appealed pursuant to NRS 41.670(4), which provides a right of interlocutory appeal from a district court order denying a special motion to dismiss under NRS 41.660.

Subsequently, the Nevada Supreme Court reversed the prior district court's decision, finding the Defendant had "met his prima facie burden to demonstrate that the statements in question were all made in public forums on a matter of public interest." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. The high Court remanded the case to this Court with instructions to "consider whether Kosor made his communications in 'good faith,' in light of all the supporting evidence provided by Kosor." *Id.*

Of relevance to this Court in evaluating Defendant's good faith in making his challenged statements, the Nevada Supreme Court specifically found Defendant's "statements were also directly tied to the public interest…; that is, the appropriate governance of Southern Highlands. Kosor's questions and criticisms of Olympia and the HOA board were made in the context of his attempts to encourage homeowner participation in and oversight of the governance of their community. Finally, the subject matter of Kosor's statements makes evident that his 'focus' in making them was not to prosecute any private grievance against Olympia…Rather, his statements 'concerned the very manner in which this group…would be governed—an inherently political question of vital importance to each individual and to the community as a whole.'" *Id.* at 394 (quoting *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 481, 102 Cal. Rptr. 2d 205, 214 (2000). The Court "easily conclude[s] that all of the complained-of statements concerned matters of public interest under NRS 41.637(4)." *Id.*

The high Court also concluded homeowners' associations open meetings are public forums as such associations play "'a critical role in making and enforcing rules affecting the daily lives of [community] residents.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13). The Court found the Southern Highlands Community Association (hereinafter SHCA) is a "'quasi-government entity'" "'paralleling in almost every case the powers, duties, and responsibilities of a municipal government.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13 (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal.App.3d 642, 191 Cal. Rptr. 209, 214 (1983))). The Nevada Supreme Court concluded "the HOA meetings at which Kosor made certain of the statements at issue were 'public forums' for the purposes of our anti-

SLAPP statutes, because the meetings were 'open to all interested parties, and…a place where members could communicate their ideas. Further, the…meetings served a function similar to that of a governmental body." *Id.* at 394-95 (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13).

I. The Court Will Treat Plaintiffs as Having Standing for Purposes of This Motion

Defendant argues Plaintiffs lack standing to assert defamation for several of his challenged statements because he does not specifically reference either Plaintiff by name in the statements. Rather, in these statements Defendant references the SHCA Board or the Southern Highlands community. Plaintiffs respond they have standing to challenge these statements as "it is apparent that Mr. Kosor's statements, read in context, are directed at Mr. Goett, the owner of the Southern Highlands' Developer, and his company, Olympia Companies, LLC which comprises the developer and the management company that oversees the Southern Highlands community, including the homeowners' association ("HOA")." Plaintiffs Supp. Reply of April 23, 2021, at 2-3 (hereinafter Plaint. Reply). To establish a claim of defamation, the Plaintiffs must prove a false and defamatory statement was made concerning the Plaintiffs. *Berry v. Safer*, 293 F. Supp. 2d 694, 698 (S.D. Miss. 2003). To be actionable "the statements made must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). If a statement contains no reflection on any particular individual, then no averment or innuendo can make it defamatory. Innuendo cannot be used to make certain a statement which is uncertain in identifying its subject. *Fiske v. Stockton*, 171 Ga. App. 601, 602–03, 320 S.E.2d 590, 592–93 (1984). The Court questions whether a reader or listener of Defendant's communications, which do not specifically identify Plaintiffs as those committing certain actions, would clearly recognize the statements concern Plaintiffs' conduct. With that said, the Court accepts Plaintiffs' position for the purposes of deciding this motion and will treat Plaintiffs as having standing to pursue the allegations in their Complaint.

II. Plaintiffs Are Limited-Purpose Public Figures

In deciding this Motion, this Court also concludes Plaintiffs at least constitute limited-purpose public figures. Whether a plaintiff is a public figure or a limited-purpose public figure is a question of law. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) (citing *Schwartz v. Am. Coll. of Emergency Physicians*, 215 F.3d 1140, 1145 (10th Cir.2000)). The U.S. Supreme Court has defined two categories of public figures. The first category, a "public figure," includes "[t]hose who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention…and those who hold governmental office." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The second category, a "limited-purpose public figure," includes an individual "who voluntarily injects himself or is thrust into a particular public controversy or public concern, and thereby becomes a public figure for a limited range of issues." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002). In determining whether a person becomes a limited-purpose public figure, the Court "examin[es] the 'nature and extent of an individual's participation in the particular controversy giving rise to the defamation.'" *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445 (quoting *Gertz*, 418 U.S. at 352). "The test for determining whether someone is a limited public figure includes examining whether a person's role in a matter of public concern is voluntary and prominent." *Pegasus*, 118 Nev. at 720, 57 P.3d at 91 (citing *Gertz*, 418 U.S. at 351–52).

Defendant argues Plaintiffs are limited-purpose public figures, but a good argument can be made they are public figures under the Supreme Court's analysis as they are arguably on par with "those who hold governmental office." As noted above, the Nevada Supreme Court has found the SHCA Board to be in the nature of a quasi-government entity largely paralleling the powers, duties, and responsibilities of a municipal entity and its meetings similar in function to a governmental body. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at394. In effect, Southern Highlands could be described as an approximately 8,000 homes small city or town. While Plaintiffs, the Developer and the property

management company he controls, are not formal SHCA Board members, they admittedly equate themselves to the Board as the real entities controlling the quasi-governmental entity that is SHCA. The Developer appoints the majority of the Board and the property management company runs what would be considered all the quasi-governmental functions of the community. In asserting their standing to claim they have been defamed by Defendant's statements directed to actions of the SHCA Board or the Southern Highland community, Plaintiffs argue Defendant is referring to their conduct when Defendant is degrading SHCA governance. In discussing the characteristics of someone who should be considered a public figure, the U.S. Supreme Court explained "[p]ublic officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Gertz*, 418 U.S. at 344. Because of their control of the Board and SHCA's governing functions, Plaintiffs do have communication channels to counteract statements they contend are false.

At minimum then, Plaintiffs are limited-purpose public figures in that they have voluntarily injected themselves into the public concern of governance of the Southern Highland community. The decisions they make by their control of the Board and the SHCA's quasi-governmental functions affect the entire Southern Highlands community. As the Nevada Supreme Court found, the issues Defendant raised involve efforts to encourage homeowner participation in and oversight of the governance of Southern Highlands, "an inherently political question of vital importance to each individual and to the community as a whole." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at 394.

Plaintiffs argue they "have neither voluntarily injected themselves nor have they thrust themselves to the forefront of this supposed public controversy." Plaintiffs' Reply, at 4. They contend to the degree any public controversy exists it was created by Defendant and not them. The Court's impression at this stage of the litigation is Plaintiffs did not create the "controversy" Defendant has raised and want nothing to do with it. However, Plaintiffs have voluntarily injected themselves into the

public concern which is the subject of the controversy defendant raises, to wit: the proper governance of Southern Highlands. In *Pegasus*, the Nevada Supreme Court held a restaurant as a public accommodation, "voluntarily inject[s] itself into the public concern for the limited purpose of reporting on its goods and services" and in doing so, becomes a limited public figure for newspaper food reviews. *Pegasus*, 118 Nev. at 721, 57 P.3d at 92. By voluntarily choosing to make decisions for Southern Highlands which impact thousands of residents, Plaintiffs are limited-purpose public figures for purposes of those decisions and whatever controversy or criticism they draw.

III. Defendant Satisfies the First Prong of the Anti-SLAPP Statutes in that His Challenged Statements Were Made in Good Faith

To satisfy the first prong of the Anti-SLAPP statutes, Defendant must show (1) "the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637" and (2) "the communication 'is truthful or is made without knowledge of its falsehood.'" *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). As noted above, the Nevada Supreme Court has determined Defendant's comments are protected communications in NRS 41.637. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. This Court now considers "whether the moving party has established, by a preponderance of the evidence," that he made the protected communication in good faith. NRS 41.660(3)(a); *see also Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). A communication is made in good faith when it "is truthful or is made without knowledge of its falsehood." NRS 41.637; *see also Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017). A court in determining good faith must consider all of the evidence a defendant submits in support of his anti-SLAPP motion. *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019). If the movant meets this burden, the Court then moves to prong two and evaluates "whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." *See* NRS 41.660(3)(b).

The Nevada Supreme Court has explained that in determining whether a statement is either "truthful or is made without knowledge of its falsehood" this Court should "not parse the individual

words to determine the truthfulness of a statement; rather, we ask 'whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true.'" *Rosen*, 135 Nev. at 441, 453 P.3d at 1224 (quoting *Pegasus*, 118 Nev. at 715 n.17, 57 P.3d at 88 n.17). In a defamation action, "it is not the literal truth of 'each word or detail used in a statement which determines whether or not it is defamatory; rather, the determinative question is whether the "gist or sting" of the statement is true or false.'" *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F. Supp.3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal.App.4th 1165, 96 Cal. Rptr. 2d 136, 150 (2000)). Additionally, statements of opinion cannot be false. *See Abrams v. Sanson*, 136 Nev. 83, 89-90, 458 P.3d 1062, 1068-69 (2020); *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021) (defendant's statement characterizing plaintiff's "behavior as misogynistic bullying is an opinion incapable of being false."); *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements that convey "the publisher's judgment as to the quality of another's behavior" are evaluative opinions). A statement which under most circumstances would be considered one of fact "may become a statement of opinion when uttered in the political context. *Desert Sun Publ'g Co. v. Superior Ct.*, 97 Cal. App. 3d 49, 52, 158 Cal. Rptr. 519, 521 (Ct. App. 1979). "An allegedly defamatory statement may constitute a fact in one context but an opinion in another, depending upon the nature and content of the communication taken as a whole." *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672, 680, 150 Cal.Rptr. 258, 261, 586 P.2d 572, 575.

This Court has gone through Plaintiff's Complaint to identify Defendant's Statements which Plaintiff's allege are defamatory. To be frank, Plaintiffs' Complaint is sparse when it comes to specificity and completeness of those statements they challenge. This is concerning to the Court because, as noted above, to be actionable, a claimed defamatory "statement must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). Without specificity or without

the complete statement and its context, this Court cannot determine if the statement is false and clearly directed at Plaintiffs. However, recognizing Plaintiffs' potential for seeking to amend their Complaint, for purposes of deciding this motion the Court has sought to incorporate Defendant's alleged statements that Plaintiffs contend are defamatory in their briefings of this matter. The Court has considered the following statements Plaintiffs claim are defamatory.

1. Plaintiffs Spoke with County Commissioners in a "Dark Room"

In their Complaint, Plaintiffs take issue with two statements Defendant made during a December 17, 2015 meeting of the Christopher Communities Association ("CCA") Board. These statements appear to concern tax credits Clark County had given Plaintiffs at or near the beginning of the Southern Highlands project in exchange for the Plaintiffs building parks within the development, including a large sports park which was to be completed by 2008. However, by 2015, the sports park remained unbuilt. Plaintiffs represent this was due in large part to the financial crisis which occurred in or about 2008. In 2015, a County audit disclosed Plaintiffs' failure to complete the parks and the County briefly stopped issuing permits to the Developer. The County subsequently reinstated the Developer's ability to obtain permits. Later, from at least Kosor's perspective, the County also approved a reduction of the planned infrastructure for the sports park. As Defendant expressed at his deposition, he felt neither the County nor the community homeowners benefited from the extension of tax credits, the delay in the construction of the sports park or the reduction in the sports park infrastructure and only the Plaintiffs/Developer benefited from these actions. Kosor Deposition of March 11, 2021, at 185-87 (herein after Depo.).

Plaintiff's Complaint alleges "Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a 'dark room' and coerced them to act or vote in a certain manner." Complaint, at ¶ 6. Specifically, at the December 17, 2015 CCA Board meeting, Kosor stated:

> "The audit report was quickly glossed over and the Country Commission was worried about, they [the County Commission] were apologizing to the Developer, Goett, who was there, about

> the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioners aside in a dark room or someplace and read them the riot act. And they were most—except for the two new ones—and they were pretty outspoken anyhow. They wanted to know why no bond. So, I've gotta go, that's why I'm going at 3 o'clock. I'm going to go ask, find out what's going on here. 'Cause I'm really upset at what really was happening here."

Defendant's Motion to Dismiss of January 29, 2018, Ex. G at 1:20:45–1:21:01 (hereinafter Motion).

This statement was a strongly-held belief and opinion of Defendant. Under oath, Defendant clarified his rhetorical use of "read them the riot act" as a familiar idiom meaning, "you take someone aside, and you chew them out." Depo. at 125-26. This is the Court's clear interpretation of Defendant's use of the phrase in the instant context. Kosor also explained his rhetorical use of "dark room" meant he believed the Plaintiff/Developer chewed out the Commissioners "somewhere off the main stage, out of the bright lights." *Id.*

Defendant's statement that the Plaintiff/Developer probably got the Commissioners aside in a "dark room or someplace" clearly indicated that he was expressing his opinion as to the Plaintiff/ Developer's use of his influence over the Commissioners. His statement did not suggest to a reasonable person he was personally present in the "dark room or someplace." This point was further emphasized when Defendant expressed that two commissioners wanted to know why no bond was required and he was going to go and find out what was going on. Kosor explained he based his opinion "on the videotape of the county commission meeting that I saw, it appeared like they had been chewed out . . . one of the comments that Commissioner Sisolak said in the meeting was, don't worry, Mr. Goett, I've got your back . . . clearly there had been discussions on this topic previously." *Id.* at 128.

The Court does not concur with Plaintiffs' assertion Defendant's statement implicitly suggested the Plaintiffs were engaging in racketeering or some other crime. The public is well aware of lobbyists and others, who through their positions and/or through who they represent, arguably have influence with those charged with making political decisions. Defendant clarified in statements during the meeting his opinion was not that anyone had done anything illegal, commenting: "[a]nd, was it illegal for

them to do what they did? No!" Motion, Exh. G at 1:09:40-1:10:04. In his deposition, Defendant continued to maintain the Developer did not act criminally, but rather asserted his influence with the Commission. Depo., at 183.

Plaintiffs correctly argue that while opinions are generally not actionable, statements implying false assertions of fact are actionable. However, the Court does not believe Kosor's statement of his opinion implies a false assertion of fact. He did not specifically accuse Plaintiffs of engaging in criminal conduct, he used language clearly indicating he was making assumptions based on his observations, and he used common hyperbole to convey his point. He expressed he did not know the facts of what went on with the Commission's actions, but was going to go and find out.

2. Plaintiffs Are Lining Their Pockets to the Detriment of Homeowners

Plaintiffs' Complaint alleges Defendant defamed them by suggesting at a CCA Board meeting they were "lining [their] pockets to the detriment of the Southern Highlands homeowners." Complaint, at ¶ 6. Plaintiffs contend Defendant's statement suggests they are misappropriating homeowner funds and getting rich in the process, all the while harming SHCA homeowners. Specifically, at the December 17, 2015 CCA meeting, Defendant stated, "[Mr. Goett, President of Olympia Companies, LLC.] is basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands. And that's why I have to talk to, um . . . I, I want to know what political shenanigans were going on here, when they approved that park." Motion, Exh. G at 1:19:09-1:19:25.

The Court finds Defendant was expressing an opinion and not an implied assertion of an untrue fact. First, Kosor makes clear in his statement he is expressing an opinion. While this is not ultimately determinative, Defendant's comment adds to the total context of the statement. He feels "political shenanigans" are going on with the Commission's approval of the reduced sports park. He does not assert any facts as part of his opinion beyond arguably the County's agreement to allow Plaintiffs/ Developer to reduce the park, which appears to the Court to be true. He indicates he does not know

what went on politically with the park plan and he wants to talk and find out what may have occurred between the Plaintiffs/Developer and Commission concerning approval of the reduced sports park plan.

When considered in the context of Defendant's subsequent remarks at the meeting concerning the Commission allowing the Developer to continue to receive permits despite not building the promised parks, Kosor's use of the term "basically lining his own pockets" was merely hyperbole or an idiom expressing his evaluative opinion the Developer had benefited financially from receiving tax credits for building parks, delaying building parks and then getting approval to build a smaller sports park. This, in his opinion, was all to the alleged detriment of the homeowners, whom he believes received less of a park than promised years later.

Defendant's statement that the Plaintiffs/Developer were lining their pockets was clearly a reflection of his opinion weighing what he perceived as the advantages and disadvantages of the parties involved in the building of the parks. While Plaintiffs feel their conduct was appropriate due to the 2008 financial crisis and the financial difficulties it created, Plaintiffs' opinion, like Defendant's, is evaluative, and ultimately not capable of being proven false. Defendant's opinion Plaintiffs/Developer gained an inappropriate financial advantage in how they handled the building of the parks was not provably false or made in bad faith.

3. Plaintiffs Obtained a "Lucrative Agreement" with the County

Plaintiff's Complaint alleges Defendant on or around September 11, 2017 posted on a social media website a defamatory statement about their obtaining a "lucrative agreement." Complaint, at ¶ 6. Specifically, in September 2017, Defendant posted a statement on the Nextdoor.com website stating: 'To obtain a lucrative agreement with the County the Developer committed to constructing the above Sports Park using private money… the County would in the fall of 2015 inexplicably relieving [sic] the Developer of its original commitment only to then approve spending $7M in public tax dollars for a

similar complex in Mountain's Edge. – WHY?"' Defendant also described the agreement as a "massive and inexplicable sweet heart (sic) deal the Commissioners gave our developer related to the yet to be delivered Sports Park[.]" Motion, Exh. F.

Following Defendant's statements at the December 2015 CCA meeting, Kosor's use of "obtain a lucrative agreement" and "sweet heart (sic) deal" reflected his ongoing opinion the Plaintiffs/Developer had received a significant financial benefit from the tax credits to build the parks in the Southern Highlands development. Defendant's use of the term "lucrative" to describe this agreement was an expression of his opinion and hyperbole. While the size of the benefit, represented as $5.2 million, can be debated as lucrative or not, the use of the term "lucrative" was clearly one of evaluative opinion and not in bad faith. In *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021), the Nevada Supreme Court considered in a similar context a defendant's statement characterizing plaintiff's "behavior as misogynistic bullying." The high Court ultimately concluded the use of the term constituted "an opinion incapable of being false." Likewise, as for Defendant's reference to the Plaintiffs/Developer's arrangement with the County as to the parks being a "sweetheart deal," Defendant's statement was again opinion and hyperbole. Whether the Developer's delay in building the parks and the County's agreement to reduce the size of the sports park constitute a "sweetheart deal" is likewise open to debate. However, like the Defendant's use of the term "misogynistic bullying" in *Zilverberg*, Defendant in the instant case was clearly expressing an opinion incapable of being proved false and not in bad faith.

4. Plaintiffs Act Like a "Foreign Government"

Plaintiffs' Complaint alleges "[o]n or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, 'acting like a foreign government that deprives people of essential rights.'" Complaint, at ¶ 10. Plaintiffs contend comparing them to a "foreign government" tends to lower Plaintiffs in the estimation of the community and excite

derogatory opinions about Plaintiffs. Specifically, Defendant when running for the SHCA Board in 2017 created a campaign website. On the website he expressed one of his objectives if elected would be to end Plaintiffs/Declarant's control of a majority of seats on the Board. In that regard, Defendant stated he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." Motion, Exh. H.

The Court finds this statement was an opinion about the SHCA's governing structure which allows the Declarant to maintain control over the Board pending automatic termination of such control pursuant to statutes and the CC&Rs. As Defendant notes in his briefings, the SHCA has never held an election for all its Board seats as a majority of the seats are reserved for board members appointed by the Plaintiffs/Declarant. The homeowners did not elect these members. Consequently, if elected Board members ever had a disagreement with the Plaintiffs/Declarant, the Declarant's members would be able to outvote the homeowners' elected members. To the degree Defendant's statement implies these facts, these assertions appear to be true. While arguably an overstatement, one can make an evaluative comparison between the SHCA and a foreign government controlled by a minority party without full free elections and feel this is not in the best interests of the majority which, in this case, is the homeowners. *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements of the defendant's "judgment as to the quality of another's behavior" are evaluative opinions).

Like Defendant's assertions Plaintiffs received "lucrative" "sweet heart" deals, Defendant's expression Plaintiffs are like some foreign government which denies its citizens the right to choose their representatives is not an assertion of fact which can be proved false, especially since the Plaintiffs/Declarant have never allowed the election of the majority of the SHCA Board. This comment does not suggest Plaintiffs have done anything illegal in not allowing such elections, just as a

foreign government of a sovereign nation does not do anything "illegal" in not holding open elections. He may not think that it is right or the best form of governing, but ultimately that is Defendant's opinion. Defendant's use of the term in the context of his political campaign was merely hyperbole in expressing an evaluative opinion.

5. Kosor's Website Asserts Wrongful Transfer of Parks to SHCA

Defendant's website complains the "County and Developer coordinated [an] agreement that would permanently and wrongfully obligate the HOA to maintain the 'public' parks in our community." Motion, Exh. H. Defendant further expressed his belief that "Clark County's 'cost-shifting' of park maintenance expenses to our HOA" "has cost our community millions of dollars." *Id.* Accordingly, Defendant also stated "I see no HOA advantage in paying the entire park maintenance costs . . . These are public parks . . . The County does a good job with maintenance . . . It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks." *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and imply Defendant has knowledge of facts showing "Plaintiffs are deceptive, greedy, and disregard the needs of the homeowners for their own benefit." Plaintiff's Supplemental Brief of March 31, 2021, at 17 (hereinafter Plaint. Supp.)

Plaintiffs focus on Defendant's use of the term "wrongful" in describing the transfer of the parks to the SHCA and argue the transfer was properly performed in accordance with the CC&Rs and Nevada statutes. However, the gist or sting of Defendant's statements is that it was wrong for the County and the Plaintiffs/Developer to have the parks transferred to the SHCA because in Defendant's opinion it was not in the best interests of the homeowners to assume responsibility for the significant costs maintaining the parks. The Plaintiffs may have followed proper procedure and legally transferred the parks to SHCA, but in Defendant's opinion, "I see no HOA advantage in paying the entire park maintenance costs." Motion, Exh. H. As opinion, Defendant's statements are not actionable.

Plaintiffs also complain Kosor's website claimed the SHCA Board accepted the conveyance of the parks to the SHCA in contravention of Nevada law. Defendant stated "the Agreement [to transfer the parks] was done without satisfying necessary owner acceptance provisions in the statutes. A technical 'loophole' allows it to do so. However, per NRS 116.3112 par 4. '…the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3 (a majority vote of the owners).'" *Id.* Plaintiffs explain NRS 116.3112 only requires a majority vote of the HOA homeowners if the SHCA Board is conveying property belonging to the SHCA, not if it is accepting property. The relevant portions of NRS 116.3112 provide:

> 1. In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least a majority of the votes in the association, including a majority of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. . .
> 4. The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

NRS 116.3112. In his deposition, Defendant explained his view of NRS 116.3112:

> [B]efore the association can assume a responsibility that's not directly specific—that's not stated as a requirement of common element of the association, that it must get an approval of the—in other words, an association can't just assume responsibility, if you're an amusement park that happens to be adjacent to it, just because it's given to them by the developer. There has to be a vote of the homeowners, as I understand the statute, to accept responsibility for the amusement park.

Depo., at 154.

The Court finds this statement of Defendant is factual and can be determined as untrue. The Court agrees with Plaintiffs' interpretation of NRS 116.3112 that homeowners' approval is required only for conveyance of HOA property. However, the Court finds Defendant's interpretation not unreasonable, especially for a lay person, and in good faith. Defendant apparently reads "convey" in the

statute to include both conveyances from and to the SHCA and "common elements," such as parks, cannot be conveyed without homeowners' approval. In his opinion, the statute's allowing of the SHCA Board to act to make a conveyance before homeowner approval is a "loophole" that legally allows the Board to do what it did in accepting the parks, but such an action is ultimately voidable until homeowner approval is obtained.

Defendant does not assert Plaintiffs did anything illegal. While he clearly indicates he believes a majority vote of the homeowners was required to fully accept the transfer of the parks and consequently the transfer of the parks may be voidable, he does note a legal technicality allowed the transfer. The thrust of Defendant's contention is not SHCA did anything illegal, but SHCA should not have accepted the parks and the expense of maintaining the parks without approval of the homeowners who bear the financial responsibility for them. In Defendant's view this only benefited the Plaintiffs, and not the homeowners. While a factual legal conclusion in discussing his position was wrong, its falsity did not alter the gist of Defendant's point that SCHA Board's acceptance of the parks was not in the best interests of the homeowners. Again, this is an opinion the Defendant has a right to express.

6. Pamphlet Says Plaintiffs Breached Fiduciary Duties and Have "Cost Homeowners Millions"

Plaintiffs' Complaint alleges Defendant's November 17, 2017 campaign pamphlet claims the "Developer's actions have 'already cost the homeowners millions.'" Complaint, at ¶ 11. Additionally, Plaintiffs point out Defendant also made references in his campaign materials about "the general failure of our Association Board to advance the interests of Southern Highlands homeowners" and "the SCHA Board's recurring failure to engage on behalf of homeowners" *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and are more than mere opinions.

In his 2017 campaign materials, Defendant states as his objectives if elected: "[f]irst and foremost, I will work to end the Developer's control of our HOA Board. . . . With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of

board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. All SHCA [b]oard members should be owner elected and loyal only to the homeowners that elected them." Motion, Exh. H. The campaign material also accuses the SHCA Board of "repeatedly fail[ing] to act in the best interest of homeowners with government agencies, defaulting to the Interests of the Developer." *Id.*

Again, while Plaintiffs are correct Defendant's statements about his opinions of Plaintiffs' management of SHCA clearly challenge and disparage Plaintiffs' administration, they are clearly statements of Defendant's opinions. Defendant does not believe Plaintiffs have always acted in the best interests of the homeowners, which, if correct, would be a potential breach of their fiduciary duties. However, in the context of a political campaign, this is Defendant's opinion, expressed with recognizable hyperbole and some exaggeration. In Defendant's view, the continued close relation of the Plaintiffs, Developer and management company, and the lack of SHCA Board autonomy creates the potential for conflicts of interest and failed fiduciary oversight. Plaintiffs may disagree with Defendant, feel he is unfair, and believe they always act in the best interests of SHCA homeowners, but Defendant is expressing his opinion as to issues relevant to the governance of Southern Highlands. Defendant does state he "believe[s] this has cost our community millions[.]" *Id.* But again, Defendant clearly indicates this is his opinion based on what he assumes were the costs resulting from Plaintiffs not always acting in the best interests of the community. Plaintiffs argue Defendant's opinions are not protected as they suggest undisclosed facts. However, Plaintiffs do not suggest what those facts may be. Defendant's opinion as to lost costs largely appears from his campaign materials to be built upon his other opinions as to Plaintiffs' conduct. Defendant does identify what he believes some of those lost costs involve, such as parks maintenance and legal fees. If his opinions concerning those costs being unreasonably foisted on the homeowners are accepted, then the costs do potentially add up into millions of dollars.

7. Kosor's Pamphlet Grossly Overstates Legal Expenses

Plaintiffs' Complaint alleges Defendant's 2017 campaign pamphlet for the SHCA Board, as well as his website, "grossly overstates the Southern Highlands Community Association's 2016 legal expenses." Complaint, at ¶ 11. In his campaign literature for the SHCA Board, Defendant states "[W]e can significantly lower expenses, get assessments under control, and do so without sacrificing quality. . . We need to . . . refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size)." Motion, Exh. H. Plaintiff argues this statement is a false accusation suggesting Plaintiffs' "lack of fitness for their business or profession."

Defendant explained at his deposition, he made his reference in his campaign materials to $1.4 million in legal expenses based on the 2017 budget for the SHCA. This budget showed a budgeted expenditure amount of $1.22 million. Defendant stated he understood the 2017 budget represented an annualized figure based on spending patterns from a portion of 2016 and not the actual spending figures for 2016 which he believed would not have been available at the time of he published his campaign pamphlet. Depo., at 117-24. Plaintiff emphasizes Defendant knew the annualized budget figure was not the actual amount expended for legal expenses.[1] They also state they would have shown Defendant the actual figure if he had asked them for the specific information.

However, Defendant did not identify in his campaign materials the $1.4 million figure was either an actual or annualized budgeted amount. He identified it has a cost which he felt was potentially wasteful. As Defendant at his deposition explained:

> So my point -- the point that I was trying to make in the homeowners -- in this campaign effort was that I felt like legal expenses were just off the charts. And as I looked at the legal expenses,

[1] On July 30, 2017, Olympia responded to an email request from Defendant, stating:

> The Association did not spend $88k in General Counsel services in 2016. The sum you refer to is an annualized amount based on payments to-date at the time the 2017 budget was prepared. The Association utilizes the retainer services of several law firms. The purpose is to provide legal counsel and advice for varying legal matters from time-to-time, other than litigation. There is not one firm as suggested by the question. Fees are billed on matters in a "general" heading by each firm when the work does not relate to a specific case. In 2016, numerous firms billed the Association for legal counsel.

> they were 250,000 one year, and now 1.2 million the following year being projected. That's a four-fold increase. And my point was, what the heck is going on here? Are we being too litigious? Is that the best spend for a homeowner? That would account for about 20 percent of the total budget for the association. It was a big deal. And so the association needed to know that, hey, are we getting full disclosure as to why we're spending all of this money? Is it being spent properly? I mean, it was a campaign.

Depo., at 122.

In the context of a political campaign, Defendant was not unreasonable in relying on the annualized budget amounts in making his statement. A budget is, after all, an estimate of an entity's income and expenditures for a period of time. Defendant relied on SHCA's own estimate of its litigation costs. Defendant explained he reached his $1.4 million figure by adding approximately the $88,000 annualized budget figure for general counsel fees to the $1.22 million annualized litigation budget figure and rounding up. Depo., at 123-24. The Court does not find Defendant's conduct and comments in the context of his campaign were substantially untrue or in bad faith. *See Pegasus*, 118 Nev. at 715. 57 P.3d at 88.

Plaintiff notes the actual legal fees for 2016 were $880,967.72. When that number is added to the annualized budgeted general counsel fees (the actual figure for general counsel costs is not noted in any briefings), SHCA spent about $969,000 in legal costs for the year. Plaintiffs do not explain how the distinction between close to $1,000,000 and $1.4 million in legal expenses in the context of political campaign literature materially impacted on homeowners' perception of the legal costs being expended by the Board under Plaintiffs' control. The gist or sting of Defendant's comments was he believed the Plaintiffs, through SHCA, were spending a significant amount of money on litigation which possibly should be cut. This gist was Defendant's opinion. While his figures may have been to some degree wrong, the point expressed was nevertheless an opinion made in good faith.

IV. Under the Second Prong, Plaintiffs Have Failed to Meet Their Burden to Show Prima Facie Evidence of a Probability of Prevailing on Their Claims

Because the Court finds Defendant has satisfied prong one of the anti-SLAPP analysis, the Court must determine under prong two whether Plaintiffs have presented prima facie evidence of a

probability of prevailing on their claims. To prevail on their defamation and defamation per se claims, the Plaintiffs must show: "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. If the plaintiff is a public figure, plaintiff must also provide prima facie evidence the defendant made the statements with "actual malice." *Id.* at 718-19, 57 P.3d at 90-91.[2] "Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth." *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983). A person shows "[r]eckless disregard for the truth" when the person has "a high degree of awareness of [the] probable falsity [of the statement]." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)).

This added hurdle is intended "[t]o promote free criticism of public officials, and avoid any chilling effect from the threat of a defamation action." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. A political campaign speech made without knowledge of falsity or actual malice is protected under the First Amendment of the U.S. Constitution. Such circumstances require dismissal of a defamation suit because the remedy for unknowingly making factually incorrect criticism of a political opponent is competing speech, rather than a lawsuit. *See Brown v. Hartlage*, 456 U.S. 45, 61 (1982) ("In a political campaign, a candidate's factual blunder is unlikely to escape the notice of, and correction by, the erring candidate's political opponent.").

The Court finds Defendant's statements at issue are largely opinions. With the exception of two factual assertions discussed below, to the extent the statements state or imply certain underlying proofs, those facts are true or substantially true. To the degree Defendant has made arguably false factual statements, Plaintiffs have failed to demonstrate a prima facie case of actual malice. The Court finds Defendant did not act with knowledge of the falsity of any statements or a reckless disregard for their truth. Consequently, Plaintiffs have failed to present prima facie evidence of a probability of prevailing

on their claims and Defendant's motion to dismiss must be granted. *Rosen*, 135 Nev. at 442-43, 453 P.3d at 1225-26.

The two underlying facts of Defendant's opinions that the Court finds are arguably false are: 1) Defendant's statement of law claiming the SHCA Board in accepting Plaintiffs' transfer of parks to SCHA required homeowner approval of the transfer under Nevada statutes; and 2) Defendant's statement SCHA's expenditure for legal costs in 2016 was $1.4 million when the budgeted outlay was approximately $1.32 million and the actual spending was approximately $969,000.[2]

As to the first false statement, the Court previously found Defendant's interpretation of NRS 116.3112 is not unreasonable, especially for a lay person, and made in good faith. Defendant's

[2] Plaintiffs spend significant time discussing in their briefings Defendant knew or should have known Plaintiffs' acted within Nevada statutes and the applicable CC&Rs in not transferring Declarant control of the SHCA Board and allowing homeowners' elections of all Board members. The Court, in reviewing the Complaint and expanding it with the briefing papers, has not found Plaintiffs to have identified any specific statement of Defendant wherein he stated in a defamatory manner in a public forum that Plaintiffs had illegally acted in failing to transfer Declarant control. Plaintiffs contend "Mr. Kosor still argues that the Declarant control is improper and continues to make statements degrading Plaintiffs' ability to do its job based on this false belief." However, they provide no specifics. Plaintiffs discuss Defendant's multiple filings with and lawsuit against Nevada Real Estate Division (hereinafter NRED) in arguing Defendant should have known his contention concerning Declarant control was wrong, but does not identify them or specific statement in them as defamatory. Plaintiffs only point out as defamatory Defendant's statement he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." This statement does not suggest Plaintiffs have violated any law or CC&Rs in not transferring Declarant control. As noted above, this statement is an evaluative opinion of Defendant presumptively based on the true fact Plaintiffs controlled the selection of the majority of the SHCA Board. To the extent Plaintiffs suggest Defendant made defamatory statements with his NRED filings and lawsuit, the Court finds they have failed to present evidence to establish a prima facie case he acted with actual malice. Again, the Court notes Plaintiffs have failed to point to any specific statements in the Complaint, briefs or related materials they contend as defamatory. The Court has considered the materials the parties have provided regarding Defendant's filings with NRED and the Nevada Attorney General. Defendant contends the original unit count in the Southern Highlands CC&Rs was 9000 units and Nevada statutes precluded the Declarant from raising the number to 10,400 units in the 2005 amendments to the CC&Rs. Prior to 2015, Nevada statutes provided for transfer of declarant control when 75 percent of the total units count were sold. The Nevada legislature changed this in 2015 to require transfer of control when 90 percent of the total units count are sold. Defendant argues if the 9000 unit number remained the proper unit number for determining declarant transfer of control, then according to SHCA budget figures for 2014, 75 percent of the total 9000 units had been sold by that time and declarant transfer of control should have occurred by that year. Defendant filed two complaints with NRED asserting this contention. These complaints were dismissed. The Attorney General's office in a 2018 memorandum, found the statutory time for bringing a legal action to challenge the 2005 CC&Rs amendments increasing the unit count from 9000 to 10,400 had passed after one year from passage of the amendments and could not be challenged now. The Office concluded using the total 10,400 unit number the 75 percent units sold had not been reached in 2014 and had not been subsequently attained. The Court has reviewed Defendant's deposition concerning his complaints regarding Declarant transfer of control and does not find a prima facie case Defendant acted with actual malice. Defendant had a legal theory concerning when Declarant had to transfer control. The theory was not irrational or "reckless," especially for a lay person, and Defendant had a First Amendment right to go to NRED, a government entity, to petition for his grievances concerning Declarant control. Plaintiffs' evidence does not make a prima facie showing Defendant acted knowing the falsity of his position or in reckless disregard of the falsity of his position.

interpretation of the statute to preclude an HOA from accepting a conveyance of a common element without homeowner approval is not such a reckless reading of the statute as to suggest Defendant was acting with actual malice, that is "a high degree of awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. As discussed above, Defendant in his challenged statement admits a "loophole" in the statute allows the SHCA Board to accept a conveyance pending homeowners' approval. Consequently, he does not say Plaintiffs did anything illegal. Also as noted above, the underlying factual gist of Defendant's statement was the SHCA Board had accepted the conveyance of public parks from Plaintiffs and now the homeowners were responsible for the costs of the parks' maintenance. Whether this transfer was ultimately voidable without homeowners' approval does not undermine the gist or sting of Defendant's statement. Defendant's gist was the transfer of the parks resulted in a financial burden that should not have been placed on homeowners, but should have been assumed by the County. This was an evaluative opinion based on Defendant's perspective of true or substantially true facts.[3]

As to the second statement, the Court has previously found Defendant could reasonably rely on SHCA's own budgetary estimates to state SHCA legal costs were $1.4 million in 2016. The budgetary estimates for litigation and general counsel costs when added together came to $1.32 million which the Court concludes is substantially true, especially in the context of the political campaign in which the figure was stated. Plaintiff do not make a showing of proof suggesting Defendant had "a high degree of

[3] Plaintiffs extensively discuss and document in their briefing papers the propriety of the procedure used to transfer the parks to the SHCA. As the Court has noted, the primary point of Defendant's specifically alleged defamatory statements is not that the transfer was illegal but that it should not have occurred and the parks should have been transferred to the County for maintenance. Plaintiffs take umbrage at Defendant's related statements that Declarant initially in starting the Southern Highlands development anticipated transferring the parks to the County. However, Defendant in his Supplemental Briefing does provide some 2005 documentation suggesting Plaintiffs/Declarant at least at the start of the development considered transferring parks to the County, and at least discussed this course with the County. *See* Defendant Supp. Reply of March 31, 2021, at 13-14. Plaintiffs, however, dismiss these documents as being "superseded by the Second Amendment to the Development Agreement, which set forth the specific parks that would be dedicated to the County." Plaintiffs contend whatever documentation Defendant had was "no longer applicable after the Second Amendment to the Development Agreement was executed." Plaint. Supp., at 6. Once again, Plaintiffs focus on their procedural propriety. But Defendant's point was Plaintiffs should have continued with their initial thoughts to work with the County to transfer the parks to that governmental entity and not to the SHCA for maintenance.

awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. Defendant in his alleged defamatory statement does not specify if his $1.4 million figure is an annualized budget estimate or actual expenditure amount. Plaintiffs claim they would have provided Defendant with the actual amount which would have been approximately $969,000. However, even accepting Plaintiffs' representations and the actual figures were available to Defendant, the Court does not find evidence Defendant's conduct was reckless. The gist of Defendant's statement was SHCA was spending a lot of money on litigation and he questioned whether this cost was one that could be cut for homeowners. Plaintiffs fail to explain how the numerical difference between the actual and annualized budget estimates undermines the factual premise underlying the gist of Defendant's opinion, SHCA had significant legal cost that possibly could be reduced. Even looking at actual expenditure amounts, the Court finds Plaintiffs have failed to show a prima facie case of probable success of showing actual malice on this point.

CONCLUSION

The Court concludes Defendant's statements that Plaintiffs contend are defamatory are, for the most part, statements of evaluative opinions and premised on facts which are true or substantially true or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant made the statements in good faith and met his burden under the first prong of the anti-SLAPP analysis. The Court further concludes Plaintiffs have not presented prima facie evidence of a probability of prevailing on their claims. Again, Defendant's statements Plaintiffs challenge are largely opinions premised on true facts and not actionable. To the degree they are premised on or involve any false factual statements, Plaintiffs failed to make a prima facie case of actual malice by Defendant. Defendant's Motion to Dismiss is granted.

As Defendant notes in his motion, if a court grants a special motion to dismiss brought pursuant to NRS 41.660(1)(a), the court "shall award reasonable costs and attorney's fees to the person against

whom the action was brought." NRS 41.670 (1)(a). Plaintiff further asks the Court pursuant to NRS 41.670(1)(b) to "award, in addition to reasonable costs and attorney's fees awarded . . . an amount of up to $10,000 to [Defendant] against whom the action was brought." NRS 41.670(1)(b). Defendant shall provide an accounting of costs and attorney fees incurred in defending Plaintiff's Complaint, along with billing statements or other documentation for the Court to determine the reasonableness of such fees and costs within 14 days of the date of this order. Defendant may request additional time to provide such fees and costs. Defendant's counsel in providing attorney fees shall also provide the Court with an evaluation of those fees under the analysis of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (Nev. 1969). Plaintiff may file an opposition to the reasonableness of Defendant's attorney fees and costs within 14 days of Defendant's filing. Plaintiff shall respond in writing to Defendant's request for an award of $10,000 under NRS 41.670(1)(b) within 14 days of this order. Defendant may file a response within 14 days of Plaintiffs' response. Argument on Defendant's request for a $10,000 award shall be set approximately two weeks after Defendant's filing.

DATED this _____ day of July, 2021.

Dated this 19th day of July, 2021

ERIC JOHNSON
DISTRICT COURT JUDGE

67A 8E0 C5A9 46E7
Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Olympia Companies, LLC, Plaintiff(s) vs. Michael Kosor, Jr., Defendant(s)	CASE NO: A-17-765257-C DEPT. NO. Department 20

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendant.	Case No.: A-17-765257-C Dept. No.: XX **PLAINTIFFS' CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

Olympia Companies, LLC and Garry V. Goett.

2. Identify the judge issuing the decision, judgment, or order appealed from:

District Court Judge Eric Johnson of Department XX.

3. Identify each appellant and the name and address of counsel for each appellant.

Appellants are Olympia Companies, LLC and Garry V. Goett. Their counsel are Randall Jones, Esq. (Nevada Bar No. 1927) and Nathanael R. Rulis, Esq. (Nevada Bar No. 11259) of KEMP JONES, LLP, located 3800 Howard Hughes Parkway, 17th Floor, Las Vegas, Nevada 89169.

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

Respondent is Michael Kosor, Jr. His counsel is William H. Pruitt, Esq. (Nevada Bar No. 6783) and Joseph R. Meservy, Esq. (Nevada Bar No. 14088) of BARRON & PRUITT, LLP, located at 3890 West Ann Road, North Las Vegas, Nevada 89031.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada:

All appellate counsel are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court.

Appellants were represented by retained counsel in the District Court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal.

Appellants are represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis:

Appellants are not proceeding in forma pauperis.

9. Indicate the date the proceedings commenced in the district court:

The proceedings in the case commenced in the District Court on November 29, 2017.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

On November 29, 2017, Appellant filed a complaint against Defendant for defamation and defamation per se after Defendant made false and disparaging statements against Appellant. Respondent filed a Motion to Dismiss Pursuant to NRS 41.660, which was originally denied, but was reversed and remanded on appeal. After the case was remanded back to the District Court, Judge Eric Johnson of Department XX granted Defendant's Motion to Dismiss Pursuant to NRS 41.660, ordering an award of attorney's fees, to be determined, and potential statutory award, to be determined. The Decision and Order was entered on July 27, 2021. Appellants hereby appeal this Decision and Order to dismiss Appellants' action against Respondent.

/ / /

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court, and if so, the caption and Supreme Court docket number of the prior proceeding:

Yes. This case has been the subject of an appeal in the Supreme Court of Nevada. The caption and docket number of the prior proceedings are as follows:

(1) The docket number: Supreme Court No. 75669.

(2) The caption in the prior proceedings: Michael Kosor, Jr., a Nevada resident, Appellant, vs. Olympia Companies, LLC, a Nevada limited liability company; Garry V. Goett, a Nevada resident, Respondents.

12. Indicate whether this appeal involves child custody or visitation:

No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Yes.

DATED this 18th day of August, 2021.

KEMP JONES, LLP

/s/ Nathanael Rulis
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2021, I served a true and correct copy of the foregoing **PLAINTIFFS' CASE APPEAL STATEMENT** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/Alison Augustine
An Employee of KEMP JONES LLP

KEMP JONES, LLP
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Las Vegas, Nevada 89169
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-765257-C

Olympia Companies, LLC, Plaintiff(s)	§	Location:	**Department 20**
vs.	§	Judicial Officer:	**Johnson, Eric**
Michael Kosor, Jr., Defendant(s)	§	Filed on:	**11/29/2017**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A765257**
	§	Supreme Court No.:	**75669**

CASE INFORMATION

Case Type: **Intentional Misconduct**

Case Status: **11/29/2017 Open**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-17-765257-C
Court	Department 20
Date Assigned	07/02/2018
Judicial Officer	Johnson, Eric

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Goett, Garry V**	**Jones, Jon Randall** *Retained* 7023856000(W)
	Olympia Companies, LLC	**Jones, Jon Randall** *Retained* 7023856000(W)
Defendant	**Kosor, Michael, Jr.**	**Pruitt, William H.** *Retained* 7028703940(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

11/29/2017 Complaint
Filed By: Plaintiff Olympia Companies, LLC; Plaintiff Goett, Garry V
[1] Complaint

11/29/2017 Initial Appearance Fee Disclosure
Filed By: Plaintiff Goett, Garry V
[2] Initial Appearance Fee Disclosure

11/29/2017 Summons Electronically Issued - Service Pending
[3] Summons

11/30/2017 Summons
[4] Summons

01/05/2018 Answer to Complaint
Filed by: Defendant Kosor, Michael, Jr.

[5] Defendant Michael Kosor, Jr. s Answer to Complaint

01/05/2018 Demand for Jury Trial
Filed By: Defendant Kosor, Michael, Jr.
[6] Demand for Jury Trial

01/05/2018 Initial Appearance Fee Disclosure
[7] Initial Appearance Fee Disclosure (NRS Chapter 19)

01/16/2018 Notice of Early Case Conference
[8] Notice of Early Case Conference

01/29/2018 Declaration
Filed By: Defendant Kosor, Michael, Jr.
[9] Declaration of Robert B. Smith, Esq., In Support of Defendant Mic

01/29/2018 Motion to Dismiss
Filed By: Defendant Kosor, Michael, Jr.
[10] Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660

01/31/2018 Notice of Hearing
Filed By: Defendant Kosor, Michael, Jr.
[11] Notice of Hearing

02/15/2018 Commissioners Decision on Request for Exemption - Granted
[12] Commissioner's Decision on Request for Exemption - Granted

02/16/2018 Opposition to Motion to Dismiss
Filed By: Plaintiff Olympia Companies, LLC; Plaintiff Goett, Garry V
[14] PLAINTIFFS OPPOSITION TO DEFENDANT MICHAEL KOSOR S MOTION TO DISMISS PURSUANT TO NRS 41.660

02/20/2018 Declaration
[13] Declaration of Angela Rock, Esq. in Support of Plaintiffs' Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660

02/24/2018 Arbitration File
[15] Arbitration File

02/26/2018 Reply to Opposition
Filed by: Defendant Kosor, Michael, Jr.
[16] Defendant s Reply To Plaintiff s Opposition To Defendant s Motion To Dismiss Pursuant To NRS 41.600

03/16/2018 Amended Notice of Early Case Conference
[17] Second Amended Notice of Early Case Conference

03/20/2018 Order Denying Motion
[18] Order Denying Defendant Michael Kosors' Motion To Dismiss Pursuant to NRS 41.660

03/21/2018 Notice of Entry of Order
[19] Notice of Entry of Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660

04/06/2018 Substitution of Attorney
Filed by: Defendant Kosor, Michael, Jr.
[20] Substitution of Attorneys

04/19/2018 Notice of Appeal
Filed By: Defendant Kosor, Michael, Jr.
[21] Notice of Appeal

04/19/2018 Case Appeal Statement
Filed By: Defendant Kosor, Michael, Jr.
[22] Case Appeal Statement

04/20/2018 Stipulation and Order
Filed by: Defendant Kosor, Michael, Jr.
[23] Stipulation and Order to Enlarge the Time for Defendant Michael Kosor to Seek Reconsideration of His Motion to Dismiss Pursuant to NRS 41.6660

04/20/2018 Notice of Entry of Stipulation and Order
Filed By: Defendant Kosor, Michael, Jr.
[24] Notice of Entry of Stipulation and Order to Enlarge the Time for Defendant Michael Kosor to Seek Reconsideration of His Motion to Dismiss Pursuant to NRS 41.6660

04/23/2018 Motion to Reconsider
Filed By: Defendant Kosor, Michael, Jr.
[25] Defendant's Motion for Reconsideration of Court's March 20, 2018 Order

04/25/2018 Errata
Filed By: Defendant Kosor, Michael, Jr.
[26] Errata to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order

04/25/2018 Exhibits
Filed By: Defendant Kosor, Michael, Jr.
[27] Exhibits to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order

05/04/2018 Recorders Transcript of Hearing
[28] Transcript of Proceedings: Defendant's Motion to Dismiss, Monday, March 5, 2018

05/10/2018 Opposition to Motion
[29] Plaintiffs' Opposition to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order

05/29/2018 Reply
Filed by: Defendant Kosor, Michael, Jr.
[30] Defendant's Reply in Support of Motion for Reconsideration of Court's March 20, 2018 Order

06/22/2018 Order Denying Motion
Filed By: Plaintiff Olympia Companies, LLC
[31] Order Denying Motion for Reconsideration

06/25/2018 Notice of Entry
[32] Notice of Entry of Order Denying Defendant's Motion for Reconsideration of Court's March 20,2018 Order

07/02/2018	Case Reassigned to Department 20 *Reassigned From Judge Leavitt - Dept 12*
10/11/2018	Recorders Transcript of Hearing *[33] Recorder's Transcript Re: Defendant's Motion for Reconsideration of Court's March 20, 2018, Order, Monday, June 11, 2018*
01/26/2021	NV Supreme Court Clerks Certificate/Judgment - Reversed *[34] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand*
01/29/2021	Notice of Hearing *[35] Notice of Hearing*
02/22/2021	Stipulation and Order Filed by: Defendant Kosor, Michael, Jr. *[36] Stipulation and Order to Extend Time for Limited Discovery and Briefing Allowed by Court*
02/22/2021	Notice of Entry of Stipulation and Order Filed By: Defendant Kosor, Michael, Jr. *[37] Notice of Entry of Stipulation and Order to Extend Time for Limited Discovery & Briefing Allowed by Court*
03/08/2021	Recorders Transcript of Hearing *[38] Recorder's Transcript of Hearing: Status Check: Supreme Court Order of Reversal and Remand, February 3, 2021*
03/22/2021	Stipulation and Order Filed by: Defendant Kosor, Michael, Jr. *[39] Stipulation and Order To Extend Briefing Deadlines and Move Hearing Date*
03/22/2021	Notice of Entry of Stipulation and Order Filed By: Defendant Kosor, Michael, Jr. *[40] Notice of Entry of Stipulation and Order to Extend Briefing Deadlines and Move Hearing Date*
03/29/2021	Stipulation and Order Filed by: Defendant Kosor, Michael, Jr. *[41] Stipulation and Order to Extend Briefing Deadlines and Hearing Date (Second Request)*
03/31/2021	Supplemental Brief *[42] Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660*
03/31/2021	Appendix *[43] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 1 of 15)*
03/31/2021	Appendix *[44] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 2 of 15)*
03/31/2021	Appendix *[45] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 3 of 15)*

03/31/2021	Appendix *[46] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 4 of 15)*
03/31/2021	Appendix *[47] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 5 of 15)*
03/31/2021	Appendix *[48] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 6 of 15)*
03/31/2021	Appendix *[49] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 7 of 15)*
03/31/2021	Appendix *[50] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 15 of 15)*
03/31/2021	Appendix *[51] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 8 of 15)*
03/31/2021	Appendix *[52] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 9 of 15)*
03/31/2021	Appendix *[53] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 10 of 15)*
03/31/2021	Appendix *[54] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 11 of 15)*
03/31/2021	Appendix *[55] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 12 of 15)*
03/31/2021	Appendix *[56] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 13 of 15)*
03/31/2021	Appendix *[57] Appendix of Exhibits in Support of Plaintiffs' Supplemental Brief in Support of Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660 (Vol. 14 of 15)*
03/31/2021	Supplemental Brief Filed By: Defendant Kosor, Michael, Jr. *[58] Kosor's Supplemental Briefing in Support of Special Motion to Dismiss Pursuant to NRS 41.660*
03/31/2021	

	Appendix Filed By: Defendant Kosor, Michael, Jr. *[59] Kosor Appendix of Exhibits to Supplemental Briefing in Support of Special Motion to Dismiss Pursuant to NRS 41.660*
03/31/2021	Exhibits *[60] Exhibit A*
03/31/2021	Exhibits *[61] Exhibit B*
03/31/2021	Exhibits *[62] Exhibit C*
03/31/2021	Exhibits *[63] Exhibit D*
03/31/2021	Exhibits *[64] Exhibit E*
03/31/2021	Exhibits *[65] Exhibit F*
03/31/2021	Exhibits *[66] Exhibit G*
03/31/2021	Exhibits *[67] Exhibit H*
03/31/2021	Exhibits *[68] Exhibit I*
03/31/2021	Exhibits *[69] Exhibit J*
03/31/2021	Exhibits *[70] Exhibit K*
04/14/2021	Stipulation and Order Filed by: Defendant Kosor, Michael, Jr. *[71] Stipulation and Order to Extend Briefing Deadlines and Hearing Date (Third Request)*
04/14/2021	Notice of Entry of Stipulation and Order Filed By: Defendant Kosor, Michael, Jr. *[72] Notice of Entry of Stipulation and Order to Extend Briefing Schedule and Hearing Date (Third Request)*
04/23/2021	Supplemental Brief Filed By: Plaintiff Olympia Companies, LLC; Plaintiff Goett, Garry V *[73] Plaintiffs' Supplemental Reply Brief in Support of Their Opposition to Kosor's Motion to Dismiss Pursuant to NRS 41.660*
04/23/2021	

	Reply Filed by: Defendant Kosor, Michael, Jr. *[74] Kosor's Reply to Plaintiffs' Supplemental Brief*
06/07/2021	Recorders Transcript of Hearing *[75] Recorder's Transcript Re: Hearing, May 05, 2021*
07/19/2021	Order *[76] Decision and Order*
07/27/2021	Notice of Entry of Decision and Order Filed By: Defendant Kosor, Michael, Jr. *[77] Notice of Entry of Decision and Order*
08/02/2021	Response Filed by: Plaintiff Olympia Companies, LLC; Plaintiff Goett, Garry V *[78] Plaintiffs' Response and Opposition to Defendant's Request for Statutory Fees*
08/02/2021	Motion to Extend *[79] Defendant Kosor's Motion to Enlarge Time to File Motion for Attorney Fees and Costs*
08/02/2021	Clerk's Notice of Hearing *[80] Notice of Hearing*
08/16/2021	Motion to Extend *[81] Kosor's Second Motion to Enlarge Time to file Motin for Attorneys Fees and Costs and Reply to Plaintiff's Response and Opposition to Defendant's Request for Statutory Fees*
08/17/2021	Clerk's Notice of Hearing *[82] Notice of Hearing*
08/18/2021	Notice of Appeal *[83] Plaintiffs' Notice of Appeal*
08/18/2021	Case Appeal Statement *[84] Plaintiffs' Case Appeal Statement*

DISPOSITIONS

01/26/2021	**Clerk's Certificate** (Judicial Officer: Johnson, Eric) Debtors: Olympia Companies, LLC (Plaintiff), Garry V Goett (Plaintiff) Creditors: Michael Kosor, JR. (Defendant) Judgment: 01/26/2021, Docketed: 01/26/2021 Comment: Supreme Court No 75669 - "APPEAL REVERSED AND REMANDED"
07/19/2021	**Order of Dismissal** (Judicial Officer: Johnson, Eric) Debtors: Michael Kosor, JR. (Defendant) Creditors: Olympia Companies, LLC (Plaintiff), Garry V Goett (Plaintiff) Judgment: 07/19/2021, Docketed: 07/20/2021

HEARINGS

03/05/2018	**Motion to Dismiss** (9:30 AM) (Judicial Officer: Leavitt, Michelle) *Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660* Denied; Journal Entry Details:

Mr. Smith argued in support of dismissal; and further argued as to Plaintiff seeking to seal Deft's speech. Additional arguments as to developments, proposals, company having paid to operate community, budget having been spent on things Deft. believes should not have be spent, motion having been made in good faith, issue being public concern, and decisions having been made since the motion was filed. Discussions as to status of real estate division. Mr. Smith further argued as to NRS 116.2117, validity, adoption of recorded document, and Plaintiff wanting to accuse Deft. of defamement. Further arguments regarding pamphlet attached to website, there being significant financial interest on keeping Deft. quiet, preponderance of evidence, statement made by Deft, and Adelson case. Court asked why this is an issue with public interest; and stated it appears to be limited. Further arguments by counsel as to California case law cited in the pleadings, case law from Macias and Damon matters, there having been no control over HOA, Welding case relying on California law, forms having been put together for community, public interest and public forum, first part of statute having been met by Deft, context of statements having been laid out, statements not being defamatory, the statements having been statements of opinion, Darkroom context, KOSOR website, lucrative deals, no election of five members of community by Deft, violation of statute claims by Plaintiff, budget issue, use of HOA fees, statements having been made two years ago before the Complaint was filed, background of issue being important, there being no financial benefits or motives, and NRS 116.2122. Mr. Jones opposed; and argued the problem is Deft. has right to speak his mind, however, he does not have the right to defame or slam or libel. Mr. Jones further argued regarding this case having unusual circumstance, issue having noting to do with context of history, and Deft. being on a quixotic mission. Mr. Jones added Deft. had gone on the website to say defamatory things, and Plaintiff is not going to continue to put up with defamatory statements. Mr. Jones argued Deft. can complain to the HOA, however, he needs to do it pursuant to statute and NRS rules. Further arguments by Mr. Jones regarding agreement, Deft's feelings towards the Plaintiff and development company, there being no grounds to support the relief Deft. is seeking, and NRS 41.660. Mr. Jones added if defense does not meet the standards, Deft. does not meet the case. Further arguments regarding good faith legal definition, questions needing to be answered by a jury, Darkroom context meetings, there being question of fact, and innuendo being clear. Upon Court's inquiry, Mr. Jones confirmed he does not believe Deft. met the burden of the statute to invoke Anti-SLAPP. Court stated its issue is whether there is an issue of public concern if the statute is invoked. Further arguments by Mr. Jones as to Talega case from 2004, and Keebler vs. Fontana case. Additional arguments as to case law from Weinberg and Hailstone. Mr. Jones argued the case law favors Plaintiff's position. Discussions as to Anti- SLAPP statute, NRS 41.637, NRS 41.660, and Court needing to consider five factors. Further arguments by Mr. Smith. COURT ORDERED, Motion DENIED, as Deft. did not meet the burden to invoke the Anti-SLAPP statute. Mr. Jones to prepare the order and run it by opposing counsel.;

06/11/2018 **Motion For Reconsideration** (9:30 AM) (Judicial Officer: Leavitt, Michelle)

Defendant's Motion For Reconsideration Of Court's March 20, 2018 Order

Denied;

Journal Entry Details:

Court stated it may not have jurisdiction if the matter is before Nevada Supreme Court. Arguments by Mr. Pruitt in support of reconsideration of Court's order. Further arguments as to protection of statements, and Anti-Slapp statute. Discussions as to California cases cited in pleadings. Further arguments by counsel. Mr. Jones opposed reconsideration; and argued Plaintiff disagrees with Defendant's points, nothing changed on the pleadings, the motion is not appropriate, and Plaintiff would request the case to proceed forward. Mr. Jones added there is no basis for Court to reconsider its decision. Mr. Pruitt argued there was plenty of reason to bring the motion before the Court. Further arguments as to personal vendetta claim statements. COURT ORDERED, Motion DENIED. Mr. Jones to prepare the order and to run it by opposing counsel. ;

02/03/2021 **Status Check** (8:30 AM) (Judicial Officer: Johnson, Eric)

Status Check: Supreme Court Order of Reversal and Remand

Matter Heard;

Journal Entry Details:

Court noted this matter was reversed and remanded by the Appellant Court. Upon Court's inquiry, Mr. Rulis requested the Court re-open discovery in order to provide the Court with additional briefing. Mr. Pruitt advised he believes the matter has been fully briefed and would like to have an expedited decision. Mr. Rulis advised he is seeking to take the deposition of Defendant Kosor and those few people he made those statements to. COURT ORDERED, Plaintiff shall have until 3/05/2021 to take the three depositions, supplemental briefing shall be due on or before 3/12/2021; supplemental reply shall be due on or before 3/19/2021 and

matter SET for Hearing. 3/31/2021 10:30 AM HEARING;

05/05/2021 **Hearing** (9:00 AM) (Judicial Officer: Johnson, Eric)

Matter Heard;
Journal Entry Details:
Court stated the issue at stake was whether the statements made by the Defendant were in good faith. Court noted its inclination was to accept the Supreme Court's decision. Arguments by counsel. COURT stated it would take the matter UNDER ADVISEMENT and issue a minute order with its decision.;

08/03/2021 **Minute Order** (9:50 AM) (Judicial Officer: Johnson, Eric)

Minute Order - No Hearing Held;
Journal Entry Details:
Defendant Kosor filed a Motion to Enlarge Time to File Motion for Attorneys Fees and Costs on August 2, 2021. The matter was subsequently scheduled for hearing on September 8, 2021. In the Court s July 27, 2021 Decision and Order granting Defendant Kosor s Special Motion to Dismiss the Court ordered Defendant Kosor to provide an accounting of costs and attorneys fees within 14 days of the Order, noting the Defendant may request additional time to provide such fees and costs. Accordingly, the Court GRANTS the Motion enlarging the time to file his motion for attorney fees and costs to Monday, August 16, 2021. The Court hereby VACATES the September 8, 2021 hearing. Counsel for Defendant Kosor is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. Counsel is directed to email a word and pdf copy of the proposed order to dc20inbox@clarkcountycourts.us. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. khm;

09/08/2021 *CANCELED* **Motion** (8:30 AM) (Judicial Officer: Johnson, Eric)

Vacated - per Law Clerk
[79] Defendant Kosor's Motion to Enlarge Time to File Motion for Attorney Fees and Costs

09/29/2021 **Motion** (10:30 AM) (Judicial Officer: Johnson, Eric)

Kosor's Second Motion to Enlarge Time to file Motin for Attorneys Fees and Costs and Reply to Plaintiff's Response and Opposition to Defendant's Request for Statutory Fees

DATE	FINANCIAL INFORMATION	
	Defendant Kosor, Michael, Jr.	
	Total Charges	247.00
	Total Payments and Credits	247.00
	Balance Due as of 8/20/2021	**0.00**
	Plaintiff Olympia Companies, LLC	
	Total Charges	387.00
	Total Payments and Credits	387.00
	Balance Due as of 8/20/2021	**0.00**
	Defendant Kosor, Michael, JR	
	Appeal Bond Balance as of 8/20/2021	**500.00**

Department 12

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. .....
(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Olympia Companies, LLC	Michael Kosor, Jr.
Attorney (name/address/phone):	Attorney (name/address/phone):
KEMP, JONES & COULTHARD, LLP	
3800 Howard Hughes Parkway, 17th Flor	
Las Vegas, NV 89169	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ■ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

11/27/17
Date

Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
07/19/2021 8:13 PM
CLERK OF THE COURT

ORDR

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No. A-17-765257-C Dept. No. XX **DECISION AND ORDER**

THIS MATTER came before the Court on May 5, 2021, with J. Randall Jones, Esq. of Kemp Jones LLP appearing on behalf of Plaintiffs and William H. Pruitt, Esq. and Joseph R. Meservy, Esq. of Barron & Pruitt LLP appearing on behalf of Defendant on Defendant Michaeil Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the motion and the related opposition and reply and supplemental briefs and replies, the parties' exhibits, and having heard the arguments of counsel, with good cause appearing, enters the following findings, conclusions and Order.

INTRODUCTION AND SUMMARY OF LITIGATION

Olympia Companies, LLC, and its President and CEO, Garry V. Goett (collectively Plaintiffs) filed a defamation action against Defendant Michael Kosor. Defendant is a homeowner in Southern Highlands, a residential community, which Plaintiffs developed and manage. Plaintiffs' lawsuit is

premised on Defendant's criticisms of Plaintiffs' actions in relation to certain aspects of their development and management of Southern Highlands.

After filing an answer, Defendant filed a motion to dismiss under NRS 41.660, Nevada's Anti-SLAPP statute. "Nevada's anti-SLAPP statutes are intended to protect individuals from lawsuits typically targeting and discouraging good-faith speech on important public matters." *Kosor v. Olympia Companies, LLC*, 136 Nev. Adv. Op. 83, 478 P.3d 390, 393 (2020) (citing *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748 (2019)). If a party prevails on his motion to dismiss, then the case is dismissed in the early stages of the litigation and the party is entitled to recovery of attorney fees incurred in defending the action. *See* NRS 41.660; NRS 41.670. To establish a prima facie case for anti-SLAPP protection, the defendant must demonstrate "by a preponderance of the evidence, that [the underlying defamation] claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637 defines qualifying communications to include a [c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, . . . which is truthful or is made without knowledge of its falsehood."

In earlier litigation on Defendant's Motion, Plaintiffs argued Defendant's alleged defamatory statements fell outside the anti-SLAPP statute's protected categories of speech. Specifically, they argued Defendant's statements were not "made in direct connection with an issue of public interest in a place open to the public or in a public forum." NRS 41.637(4). The district court previously responsible for this case held Defendant did not meet his burden of showing a prima facie case that his statements were all made in public forums on matters of public interest. The previous court entered an order denying the Motion. Defendant appealed pursuant to NRS 41.670(4), which provides a right of interlocutory appeal from a district court order denying a special motion to dismiss under NRS 41.660.

Subsequently, the Nevada Supreme Court reversed the prior district court's decision, finding the Defendant had "met his prima facie burden to demonstrate that the statements in question were all made in public forums on a matter of public interest." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. The high Court remanded the case to this Court with instructions to "consider whether Kosor made his communications in 'good faith,' in light of all the supporting evidence provided by Kosor." *Id.*

Of relevance to this Court in evaluating Defendant's good faith in making his challenged statements, the Nevada Supreme Court specifically found Defendant's "statements were also directly tied to the public interest…; that is, the appropriate governance of Southern Highlands. Kosor's questions and criticisms of Olympia and the HOA board were made in the context of his attempts to encourage homeowner participation in and oversight of the governance of their community. Finally, the subject matter of Kosor's statements makes evident that his 'focus' in making them was not to prosecute any private grievance against Olympia…Rather, his statements 'concerned the very manner in which this group…would be governed—an inherently political question of vital importance to each individual and to the community as a whole.'" *Id.* at 394 (quoting *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 481, 102 Cal. Rptr. 2d 205, 214 (2000). The Court "easily conclude[s] that all of the complained-of statements concerned matters of public interest under NRS 41.637(4)." *Id.*

The high Court also concluded homeowners' associations open meetings are public forums as such associations play "'a critical role in making and enforcing rules affecting the daily lives of [community] residents.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13). The Court found the Southern Highlands Community Association (hereinafter SHCA) is a "'quasi-government entity'" "'paralleling in almost every case the powers, duties, and responsibilities of a municipal government.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13 (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal.App.3d 642, 191 Cal. Rptr. 209, 214 (1983))). The Nevada Supreme Court concluded "the HOA meetings at which Kosor made certain of the statements at issue were 'public forums' for the purposes of our anti-

SLAPP statutes, because the meetings were 'open to all interested parties, and…a place where members could communicate their ideas. Further, the…meetings served a function similar to that of a governmental body." *Id.* at 394-95 (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13).

I. The Court Will Treat Plaintiffs as Having Standing for Purposes of This Motion

Defendant argues Plaintiffs lack standing to assert defamation for several of his challenged statements because he does not specifically reference either Plaintiff by name in the statements. Rather, in these statements Defendant references the SHCA Board or the Southern Highlands community. Plaintiffs respond they have standing to challenge these statements as "it is apparent that Mr. Kosor's statements, read in context, are directed at Mr. Goett, the owner of the Southern Highlands' Developer, and his company, Olympia Companies, LLC which comprises the developer and the management company that oversees the Southern Highlands community, including the homeowners' association ("HOA")." Plaintiffs Supp. Reply of April 23, 2021, at 2-3 (hereinafter Plaint. Reply). To establish a claim of defamation, the Plaintiffs must prove a false and defamatory statement was made concerning the Plaintiffs. *Berry v. Safer*, 293 F. Supp. 2d 694, 698 (S.D. Miss. 2003). To be actionable "the statements made must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). If a statement contains no reflection on any particular individual, then no averment or innuendo can make it defamatory. Innuendo cannot be used to make certain a statement which is uncertain in identifying its subject. *Fiske v. Stockton*, 171 Ga. App. 601, 602–03, 320 S.E.2d 590, 592–93 (1984). The Court questions whether a reader or listener of Defendant's communications, which do not specifically identify Plaintiffs as those committing certain actions, would clearly recognize the statements concern Plaintiffs' conduct. With that said, the Court accepts Plaintiffs' position for the purposes of deciding this motion and will treat Plaintiffs as having standing to pursue the allegations in their Complaint.

II. Plaintiffs Are Limited-Purpose Public Figures

In deciding this Motion, this Court also concludes Plaintiffs at least constitute limited-purpose public figures. Whether a plaintiff is a public figure or a limited-purpose public figure is a question of law. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) (citing *Schwartz v. Am. Coll. of Emergency Physicians*, 215 F.3d 1140, 1145 (10th Cir.2000)). The U.S. Supreme Court has defined two categories of public figures. The first category, a "public figure," includes "[t]hose who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention…and those who hold governmental office." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The second category, a "limited-purpose public figure," includes an individual "who voluntarily injects himself or is thrust into a particular public controversy or public concern, and thereby becomes a public figure for a limited range of issues." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002). In determining whether a person becomes a limited-purpose public figure, the Court "examin[es] the 'nature and extent of an individual's participation in the particular controversy giving rise to the defamation.'" *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445 (quoting *Gertz*, 418 U.S. at 352). "The test for determining whether someone is a limited public figure includes examining whether a person's role in a matter of public concern is voluntary and prominent." *Pegasus*, 118 Nev. at 720, 57 P.3d at 91 (citing *Gertz*, 418 U.S. at 351–52).

Defendant argues Plaintiffs are limited-purpose public figures, but a good argument can be made they are public figures under the Supreme Court's analysis as they are arguably on par with "those who hold governmental office." As noted above, the Nevada Supreme Court has found the SHCA Board to be in the nature of a quasi-government entity largely paralleling the powers, duties, and responsibilities of a municipal entity and its meetings similar in function to a governmental body. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at394. In effect, Southern Highlands could be described as an approximately 8,000 homes small city or town. While Plaintiffs, the Developer and the property

management company he controls, are not formal SHCA Board members, they admittedly equate themselves to the Board as the real entities controlling the quasi-governmental entity that is SHCA. The Developer appoints the majority of the Board and the property management company runs what would be considered all the quasi-governmental functions of the community. In asserting their standing to claim they have been defamed by Defendant's statements directed to actions of the SHCA Board or the Southern Highland community, Plaintiffs argue Defendant is referring to their conduct when Defendant is degrading SHCA governance. In discussing the characteristics of someone who should be considered a public figure, the U.S. Supreme Court explained "[p]ublic officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Gertz*, 418 U.S. at 344. Because of their control of the Board and SHCA's governing functions, Plaintiffs do have communication channels to counteract statements they contend are false.

At minimum then, Plaintiffs are limited-purpose public figures in that they have voluntarily injected themselves into the public concern of governance of the Southern Highland community. The decisions they make by their control of the Board and the SHCA's quasi-governmental functions affect the entire Southern Highlands community. As the Nevada Supreme Court found, the issues Defendant raised involve efforts to encourage homeowner participation in and oversight of the governance of Southern Highlands, "an inherently political question of vital importance to each individual and to the community as a whole." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at 394.

Plaintiffs argue they "have neither voluntarily injected themselves nor have they thrust themselves to the forefront of this supposed public controversy." Plaintiffs' Reply, at 4. They contend to the degree any public controversy exists it was created by Defendant and not them. The Court's impression at this stage of the litigation is Plaintiffs did not create the "controversy" Defendant has raised and want nothing to do with it. However, Plaintiffs have voluntarily injected themselves into the

public concern which is the subject of the controversy defendant raises, to wit: the proper governance of Southern Highlands. In *Pegasus*, the Nevada Supreme Court held a restaurant as a public accommodation, "voluntarily inject[s] itself into the public concern for the limited purpose of reporting on its goods and services" and in doing so, becomes a limited public figure for newspaper food reviews. *Pegasus*, 118 Nev. at 721, 57 P.3d at 92. By voluntarily choosing to make decisions for Southern Highlands which impact thousands of residents, Plaintiffs are limited-purpose public figures for purposes of those decisions and whatever controversy or criticism they draw.

III. Defendant Satisfies the First Prong of the Anti-SLAPP Statutes in that His Challenged Statements Were Made in Good Faith

To satisfy the first prong of the Anti-SLAPP statutes, Defendant must show (1) "the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637" and (2) "the communication 'is truthful or is made without knowledge of its falsehood.'" *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). As noted above, the Nevada Supreme Court has determined Defendant's comments are protected communications in NRS 41.637. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. This Court now considers "whether the moving party has established, by a preponderance of the evidence," that he made the protected communication in good faith. NRS 41.660(3)(a); *see also Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). A communication is made in good faith when it "is truthful or is made without knowledge of its falsehood." NRS 41.637; *see also Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017). A court in determining good faith must consider all of the evidence a defendant submits in support of his anti-SLAPP motion. *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019). If the movant meets this burden, the Court then moves to prong two and evaluates "whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." *See* NRS 41.660(3)(b).

The Nevada Supreme Court has explained that in determining whether a statement is either "truthful or is made without knowledge of its falsehood" this Court should "not parse the individual

words to determine the truthfulness of a statement; rather, we ask 'whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true.'" *Rosen*, 135 Nev. at 441, 453 P.3d at 1224 (quoting *Pegasus*, 118 Nev. at 715 n.17, 57 P.3d at 88 n.17). In a defamation action, "it is not the literal truth of 'each word or detail used in a statement which determines whether or not it is defamatory; rather, the determinative question is whether the "gist or sting" of the statement is true or false.'" *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F. Supp.3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal.App.4th 1165, 96 Cal. Rptr. 2d 136, 150 (2000)). Additionally, statements of opinion cannot be false. *See Abrams v. Sanson*, 136 Nev. 83, 89-90, 458 P.3d 1062, 1068-69 (2020); *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021) (defendant's statement characterizing plaintiff's "behavior as misogynistic bullying is an opinion incapable of being false."); *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements that convey "the publisher's judgment as to the quality of another's behavior" are evaluative opinions). A statement which under most circumstances would be considered one of fact "may become a statement of opinion when uttered in the political context. *Desert Sun Publ'g Co. v. Superior Ct.*, 97 Cal. App. 3d 49, 52, 158 Cal. Rptr. 519, 521 (Ct. App. 1979). "An allegedly defamatory statement may constitute a fact in one context but an opinion in another, depending upon the nature and content of the communication taken as a whole." *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672, 680, 150 Cal.Rptr. 258, 261, 586 P.2d 572, 575.

This Court has gone through Plaintiff's Complaint to identify Defendant's Statements which Plaintiff's allege are defamatory. To be frank, Plaintiffs' Complaint is sparse when it comes to specificity and completeness of those statements they challenge. This is concerning to the Court because, as noted above, to be actionable, a claimed defamatory "statement must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). Without specificity or without

the complete statement and its context, this Court cannot determine if the statement is false and clearly directed at Plaintiffs. However, recognizing Plaintiffs' potential for seeking to amend their Complaint, for purposes of deciding this motion the Court has sought to incorporate Defendant's alleged statements that Plaintiffs contend are defamatory in their briefings of this matter. The Court has considered the following statements Plaintiffs claim are defamatory.

1. Plaintiffs Spoke with County Commissioners in a "Dark Room"

In their Complaint, Plaintiffs take issue with two statements Defendant made during a December 17, 2015 meeting of the Christopher Communities Association ("CCA") Board. These statements appear to concern tax credits Clark County had given Plaintiffs at or near the beginning of the Southern Highlands project in exchange for the Plaintiffs building parks within the development, including a large sports park which was to be completed by 2008. However, by 2015, the sports park remained unbuilt. Plaintiffs represent this was due in large part to the financial crisis which occurred in or about 2008. In 2015, a County audit disclosed Plaintiffs' failure to complete the parks and the County briefly stopped issuing permits to the Developer. The County subsequently reinstated the Developer's ability to obtain permits. Later, from at least Kosor's perspective, the County also approved a reduction of the planned infrastructure for the sports park. As Defendant expressed at his deposition, he felt neither the County nor the community homeowners benefited from the extension of tax credits, the delay in the construction of the sports park or the reduction in the sports park infrastructure and only the Plaintiffs/Developer benefited from these actions. Kosor Deposition of March 11, 2021, at 185-87 (herein after Depo.).

Plaintiff's Complaint alleges "Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a 'dark room' and coerced them to act or vote in a certain manner." Complaint, at ¶ 6. Specifically, at the December 17, 2015 CCA Board meeting, Kosor stated:

> "The audit report was quickly glossed over and the Country Commission was worried about, they [the County Commission] were apologizing to the Developer, Goett, who was there, about

> the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioners aside in a dark room or someplace and read them the riot act. And they were most—except for the two new ones—and they were pretty outspoken anyhow. They wanted to know why no bond. So, I've gotta go, that's why I'm going at 3 o'clock. I'm going to go ask, find out what's going on here. 'Cause I'm really upset at what really was happening here."

Defendant's Motion to Dismiss of January 29, 2018, Ex. G at 1:20:45–1:21:01 (hereinafter Motion).

This statement was a strongly-held belief and opinion of Defendant. Under oath, Defendant clarified his rhetorical use of "read them the riot act" as a familiar idiom meaning, "you take someone aside, and you chew them out." Depo. at 125-26. This is the Court's clear interpretation of Defendant's use of the phrase in the instant context. Kosor also explained his rhetorical use of "dark room" meant he believed the Plaintiff/Developer chewed out the Commissioners "somewhere off the main stage, out of the bright lights." *Id.*

Defendant's statement that the Plaintiff/Developer probably got the Commissioners aside in a "dark room or someplace" clearly indicated that he was expressing his opinion as to the Plaintiff/ Developer's use of his influence over the Commissioners. His statement did not suggest to a reasonable person he was personally present in the "dark room or someplace." This point was further emphasized when Defendant expressed that two commissioners wanted to know why no bond was required and he was going to go and find out what was going on. Kosor explained he based his opinion "on the videotape of the county commission meeting that I saw, it appeared like they had been chewed out . . . one of the comments that Commissioner Sisolak said in the meeting was, don't worry, Mr. Goett, I've got your back . . . clearly there had been discussions on this topic previously." *Id.* at 128.

The Court does not concur with Plaintiffs' assertion Defendant's statement implicitly suggested the Plaintiffs were engaging in racketeering or some other crime. The public is well aware of lobbyists and others, who through their positions and/or through who they represent, arguably have influence with those charged with making political decisions. Defendant clarified in statements during the meeting his opinion was not that anyone had done anything illegal, commenting: "[a]nd, was it illegal for

them to do what they did? No!" Motion, Exh. G at 1:09:40-1:10:04. In his deposition, Defendant continued to maintain the Developer did not act criminally, but rather asserted his influence with the Commission. Depo., at 183.

Plaintiffs correctly argue that while opinions are generally not actionable, statements implying false assertions of fact are actionable. However, the Court does not believe Kosor's statement of his opinion implies a false assertion of fact. He did not specifically accuse Plaintiffs of engaging in criminal conduct, he used language clearly indicating he was making assumptions based on his observations, and he used common hyperbole to convey his point. He expressed he did not know the facts of what went on with the Commission's actions, but was going to go and find out.

2. Plaintiffs Are Lining Their Pockets to the Detriment of Homeowners

Plaintiffs' Complaint alleges Defendant defamed them by suggesting at a CCA Board meeting they were "lining [their] pockets to the detriment of the Southern Highlands homeowners." Complaint, at ¶ 6. Plaintiffs contend Defendant's statement suggests they are misappropriating homeowner funds and getting rich in the process, all the while harming SHCA homeowners. Specifically, at the December 17, 2015 CCA meeting, Defendant stated, "[Mr. Goett, President of Olympia Companies, LLC.] is basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands. And that's why I have to talk to, um . . . I, I want to know what political shenanigans were going on here, when they approved that park." Motion, Exh. G at 1:19:09-1:19:25.

The Court finds Defendant was expressing an opinion and not an implied assertion of an untrue fact. First, Kosor makes clear in his statement he is expressing an opinion. While this is not ultimately determinative, Defendant's comment adds to the total context of the statement. He feels "political shenanigans" are going on with the Commission's approval of the reduced sports park. He does not assert any facts as part of his opinion beyond arguably the County's agreement to allow Plaintiffs/ Developer to reduce the park, which appears to the Court to be true. He indicates he does not know

what went on politically with the park plan and he wants to talk and find out what may have occurred between the Plaintiffs/Developer and Commission concerning approval of the reduced sports park plan.

When considered in the context of Defendant's subsequent remarks at the meeting concerning the Commission allowing the Developer to continue to receive permits despite not building the promised parks, Kosor's use of the term "basically lining his own pockets" was merely hyperbole or an idiom expressing his evaluative opinion the Developer had benefited financially from receiving tax credits for building parks, delaying building parks and then getting approval to build a smaller sports park. This, in his opinion, was all to the alleged detriment of the homeowners, whom he believes received less of a park than promised years later.

Defendant's statement that the Plaintiffs/Developer were lining their pockets was clearly a reflection of his opinion weighing what he perceived as the advantages and disadvantages of the parties involved in the building of the parks. While Plaintiffs feel their conduct was appropriate due to the 2008 financial crisis and the financial difficulties it created, Plaintiffs' opinion, like Defendant's, is evaluative, and ultimately not capable of being proven false. Defendant's opinion Plaintiffs/Developer gained an inappropriate financial advantage in how they handled the building of the parks was not provably false or made in bad faith.

3. Plaintiffs Obtained a "Lucrative Agreement" with the County

Plaintiff's Complaint alleges Defendant on or around September 11, 2017 posted on a social media website a defamatory statement about their obtaining a "lucrative agreement." Complaint, at ¶ 6. Specifically, in September 2017, Defendant posted a statement on the Nextdoor.com website stating: 'To obtain a lucrative agreement with the County the Developer committed to constructing the above Sports Park using private money… the County would in the fall of 2015 inexplicably relieving [sic] the Developer of its original commitment only to then approve spending $7M in public tax dollars for a

similar complex in Mountain's Edge. – WHY?"' Defendant also described the agreement as a "massive and inexplicable sweet heart (sic) deal the Commissioners gave our developer related to the yet to be delivered Sports Park[.]" Motion, Exh. F.

Following Defendant's statements at the December 2015 CCA meeting, Kosor's use of "obtain a lucrative agreement" and "sweet heart (sic) deal" reflected his ongoing opinion the Plaintiffs/Developer had received a significant financial benefit from the tax credits to build the parks in the Southern Highlands development. Defendant's use of the term "lucrative" to describe this agreement was an expression of his opinion and hyperbole. While the size of the benefit, represented as $5.2 million, can be debated as lucrative or not, the use of the term "lucrative" was clearly one of evaluative opinion and not in bad faith. In *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021), the Nevada Supreme Court considered in a similar context a defendant's statement characterizing plaintiff's "behavior as misogynistic bullying." The high Court ultimately concluded the use of the term constituted "an opinion incapable of being false." Likewise, as for Defendant's reference to the Plaintiffs/Developer's arrangement with the County as to the parks being a "sweetheart deal," Defendant's statement was again opinion and hyperbole. Whether the Developer's delay in building the parks and the County's agreement to reduce the size of the sports park constitute a "sweetheart deal" is likewise open to debate. However, like the Defendant's use of the term "misogynistic bullying" in *Zilverberg*, Defendant in the instant case was clearly expressing an opinion incapable of being proved false and not in bad faith.

4. Plaintiffs Act Like a "Foreign Government"

Plaintiffs' Complaint alleges "[o]n or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, 'acting like a foreign government that deprives people of essential rights.'" Complaint, at ¶ 10. Plaintiffs contend comparing them to a "foreign government" tends to lower Plaintiffs in the estimation of the community and excite

derogatory opinions about Plaintiffs. Specifically, Defendant when running for the SHCA Board in 2017 created a campaign website. On the website he expressed one of his objectives if elected would be to end Plaintiffs/Declarant's control of a majority of seats on the Board. In that regard, Defendant stated he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." Motion, Exh. H.

The Court finds this statement was an opinion about the SHCA's governing structure which allows the Declarant to maintain control over the Board pending automatic termination of such control pursuant to statutes and the CC&Rs. As Defendant notes in his briefings, the SHCA has never held an election for all its Board seats as a majority of the seats are reserved for board members appointed by the Plaintiffs/Declarant. The homeowners did not elect these members. Consequently, if elected Board members ever had a disagreement with the Plaintiffs/Declarant, the Declarant's members would be able to outvote the homeowners' elected members. To the degree Defendant's statement implies these facts, these assertions appear to be true. While arguably an overstatement, one can make an evaluative comparison between the SHCA and a foreign government controlled by a minority party without full free elections and feel this is not in the best interests of the majority which, in this case, is the homeowners. *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements of the defendant's "judgment as to the quality of another's behavior" are evaluative opinions).

Like Defendant's assertions Plaintiffs received "lucrative" "sweet heart" deals, Defendant's expression Plaintiffs are like some foreign government which denies its citizens the right to choose their representatives is not an assertion of fact which can be proved false, especially since the Plaintiffs/Declarant have never allowed the election of the majority of the SHCA Board. This comment does not suggest Plaintiffs have done anything illegal in not allowing such elections, just as a

foreign government of a sovereign nation does not do anything "illegal" in not holding open elections. He may not think that it is right or the best form of governing, but ultimately that is Defendant's opinion. Defendant's use of the term in the context of his political campaign was merely hyperbole in expressing an evaluative opinion.

5. Kosor's Website Asserts Wrongful Transfer of Parks to SHCA

Defendant's website complains the "County and Developer coordinated [an] agreement that would permanently and wrongfully obligate the HOA to maintain the 'public' parks in our community." Motion, Exh. H. Defendant further expressed his belief that "Clark County's 'cost-shifting' of park maintenance expenses to our HOA" "has cost our community millions of dollars." *Id.* Accordingly, Defendant also stated "I see no HOA advantage in paying the entire park maintenance costs . . . These are public parks . . . The County does a good job with maintenance . . . It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks." *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and imply Defendant has knowledge of facts showing "Plaintiffs are deceptive, greedy, and disregard the needs of the homeowners for their own benefit." Plaintiff's Supplemental Brief of March 31, 2021, at 17 (hereinafter Plaint. Supp.)

Plaintiffs focus on Defendant's use of the term "wrongful" in describing the transfer of the parks to the SHCA and argue the transfer was properly performed in accordance with the CC&Rs and Nevada statutes. However, the gist or sting of Defendant's statements is that it was wrong for the County and the Plaintiffs/Developer to have the parks transferred to the SHCA because in Defendant's opinion it was not in the best interests of the homeowners to assume responsibility for the significant costs maintaining the parks. The Plaintiffs may have followed proper procedure and legally transferred the parks to SHCA, but in Defendant's opinion, "I see no HOA advantage in paying the entire park maintenance costs." Motion, Exh. H. As opinion, Defendant's statements are not actionable.

Plaintiffs also complain Kosor's website claimed the SHCA Board accepted the conveyance of the parks to the SHCA in contravention of Nevada law. Defendant stated "the Agreement [to transfer the parks] was done without satisfying necessary owner acceptance provisions in the statutes. A technical 'loophole' allows it to do so. However, per NRS 116.3112 par 4. '…the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3 (a majority vote of the owners).'" *Id.* Plaintiffs explain NRS 116.3112 only requires a majority vote of the HOA homeowners if the SHCA Board is conveying property belonging to the SHCA, not if it is accepting property. The relevant portions of NRS 116.3112 provide:

> 1. In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least a majority of the votes in the association, including a majority of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. . .
> 4. The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

NRS 116.3112. In his deposition, Defendant explained his view of NRS 116.3112:

> [B]efore the association can assume a responsibility that's not directly specific—that's not stated as a requirement of common element of the association, that it must get an approval of the—in other words, an association can't just assume responsibility, if you're an amusement park that happens to be adjacent to it, just because it's given to them by the developer. There has to be a vote of the homeowners, as I understand the statute, to accept responsibility for the amusement park.

Depo., at 154.

The Court finds this statement of Defendant is factual and can be determined as untrue. The Court agrees with Plaintiffs' interpretation of NRS 116.3112 that homeowners' approval is required only for conveyance of HOA property. However, the Court finds Defendant's interpretation not unreasonable, especially for a lay person, and in good faith. Defendant apparently reads "convey" in the

statute to include both conveyances from and to the SHCA and "common elements," such as parks, cannot be conveyed without homeowners' approval. In his opinion, the statute's allowing of the SHCA Board to act to make a conveyance before homeowner approval is a "loophole" that legally allows the Board to do what it did in accepting the parks, but such an action is ultimately voidable until homeowner approval is obtained.

Defendant does not assert Plaintiffs did anything illegal. While he clearly indicates he believes a majority vote of the homeowners was required to fully accept the transfer of the parks and consequently the transfer of the parks may be voidable, he does note a legal technicality allowed the transfer. The thrust of Defendant's contention is not SHCA did anything illegal, but SHCA should not have accepted the parks and the expense of maintaining the parks without approval of the homeowners who bear the financial responsibility for them. In Defendant's view this only benefited the Plaintiffs, and not the homeowners. While a factual legal conclusion in discussing his position was wrong, its falsity did not alter the gist of Defendant's point that SCHA Board's acceptance of the parks was not in the best interests of the homeowners. Again, this is an opinion the Defendant has a right to express.

6. Pamphlet Says Plaintiffs Breached Fiduciary Duties and Have "Cost Homeowners Millions"

Plaintiffs' Complaint alleges Defendant's November 17, 2017 campaign pamphlet claims the "Developer's actions have 'already cost the homeowners millions.'" Complaint, at ¶ 11. Additionally, Plaintiffs point out Defendant also made references in his campaign materials about "the general failure of our Association Board to advance the interests of Southern Highlands homeowners" and "the SCHA Board's recurring failure to engage on behalf of homeowners" *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and are more than mere opinions.

In his 2017 campaign materials, Defendant states as his objectives if elected: "[f]irst and foremost, I will work to end the Developer's control of our HOA Board. . . . With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of

board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. All SHCA [b]oard members should be owner elected and loyal only to the homeowners that elected them." Motion, Exh. H. The campaign material also accuses the SHCA Board of "repeatedly fail[ing] to act in the best interest of homeowners with government agencies, defaulting to the Interests of the Developer." *Id.*

Again, while Plaintiffs are correct Defendant's statements about his opinions of Plaintiffs' management of SHCA clearly challenge and disparage Plaintiffs' administration, they are clearly statements of Defendant's opinions. Defendant does not believe Plaintiffs have always acted in the best interests of the homeowners, which, if correct, would be a potential breach of their fiduciary duties. However, in the context of a political campaign, this is Defendant's opinion, expressed with recognizable hyperbole and some exaggeration. In Defendant's view, the continued close relation of the Plaintiffs, Developer and management company, and the lack of SHCA Board autonomy creates the potential for conflicts of interest and failed fiduciary oversight. Plaintiffs may disagree with Defendant, feel he is unfair, and believe they always act in the best interests of SHCA homeowners, but Defendant is expressing his opinion as to issues relevant to the governance of Southern Highlands. Defendant does state he "believe[s] this has cost our community millions[.]" *Id.* But again, Defendant clearly indicates this is his opinion based on what he assumes were the costs resulting from Plaintiffs not always acting in the best interests of the community. Plaintiffs argue Defendant's opinions are not protected as they suggest undisclosed facts. However, Plaintiffs do not suggest what those facts may be. Defendant's opinion as to lost costs largely appears from his campaign materials to be built upon his other opinions as to Plaintiffs' conduct. Defendant does identify what he believes some of those lost costs involve, such as parks maintenance and legal fees. If his opinions concerning those costs being unreasonably foisted on the homeowners are accepted, then the costs do potentially add up into millions of dollars.

7. Kosor's Pamphlet Grossly Overstates Legal Expenses

Plaintiffs' Complaint alleges Defendant's 2017 campaign pamphlet for the SHCA Board, as well as his website, "grossly overstates the Southern Highlands Community Association's 2016 legal expenses." Complaint, at ¶ 11. In his campaign literature for the SHCA Board, Defendant states "[W]e can significantly lower expenses, get assessments under control, and do so without sacrificing quality. . . We need to . . . refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size)." Motion, Exh. H. Plaintiff argues this statement is a false accusation suggesting Plaintiffs' "lack of fitness for their business or profession."

Defendant explained at his deposition, he made his reference in his campaign materials to $1.4 million in legal expenses based on the 2017 budget for the SHCA. This budget showed a budgeted expenditure amount of $1.22 million. Defendant stated he understood the 2017 budget represented an annualized figure based on spending patterns from a portion of 2016 and not the actual spending figures for 2016 which he believed would not have been available at the time of he published his campaign pamphlet. Depo., at 117-24. Plaintiff emphasizes Defendant knew the annualized budget figure was not the actual amount expended for legal expenses.[1] They also state they would have shown Defendant the actual figure if he had asked them for the specific information.

However, Defendant did not identify in his campaign materials the $1.4 million figure was either an actual or annualized budgeted amount. He identified it has a cost which he felt was potentially wasteful. As Defendant at his deposition explained:

> So my point -- the point that I was trying to make in the homeowners -- in this campaign effort was that I felt like legal expenses were just off the charts. And as I looked at the legal expenses,

[1] On July 30, 2017, Olympia responded to an email request from Defendant, stating:

> The Association did not spend $88k in General Counsel services in 2016. The sum you refer to is an annualized amount based on payments to-date at the time the 2017 budget was prepared. The Association utilizes the retainer services of several law firms. The purpose is to provide legal counsel and advice for varying legal matters from time-to-time, other than litigation. There is not one firm as suggested by the question. Fees are billed on matters in a "general" heading by each firm when the work does not relate to a specific case. In 2016, numerous firms billed the Association for legal counsel.

> they were 250,000 one year, and now 1.2 million the following year being projected. That's a four-fold increase. And my point was, what the heck is going on here? Are we being too litigious? Is that the best spend for a homeowner? That would account for about 20 percent of the total budget for the association. It was a big deal. And so the association needed to know that, hey, are we getting full disclosure as to why we're spending all of this money? Is it being spent properly? I mean, it was a campaign.

Depo., at 122.

In the context of a political campaign, Defendant was not unreasonable in relying on the annualized budget amounts in making his statement. A budget is, after all, an estimate of an entity's income and expenditures for a period of time. Defendant relied on SHCA's own estimate of its litigation costs. Defendant explained he reached his $1.4 million figure by adding approximately the $88,000 annualized budget figure for general counsel fees to the $1.22 million annualized litigation budget figure and rounding up. Depo., at 123-24. The Court does not find Defendant's conduct and comments in the context of his campaign were substantially untrue or in bad faith. *See Pegasus*, 118 Nev. at 715. 57 P.3d at 88.

Plaintiff notes the actual legal fees for 2016 were $880,967.72. When that number is added to the annualized budgeted general counsel fees (the actual figure for general counsel costs is not noted in any briefings), SHCA spent about $969,000 in legal costs for the year. Plaintiffs do not explain how the distinction between close to $1,000,000 and $1.4 million in legal expenses in the context of political campaign literature materially impacted on homeowners' perception of the legal costs being expended by the Board under Plaintiffs' control. The gist or sting of Defendant's comments was he believed the Plaintiffs, through SHCA, were spending a significant amount of money on litigation which possibly should be cut. This gist was Defendant's opinion. While his figures may have been to some degree wrong, the point expressed was nevertheless an opinion made in good faith.

IV. Under the Second Prong, Plaintiffs Have Failed to Meet Their Burden to Show Prima Facie Evidence of a Probability of Prevailing on Their Claims

Because the Court finds Defendant has satisfied prong one of the anti-SLAPP analysis, the Court must determine under prong two whether Plaintiffs have presented prima facie evidence of a

probability of prevailing on their claims. To prevail on their defamation and defamation per se claims, the Plaintiffs must show: "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. If the plaintiff is a public figure, plaintiff must also provide prima facie evidence the defendant made the statements with "actual malice." *Id.* at 718-19, 57 P.3d at 90-91.[2] "Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth." *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983). A person shows "[r]eckless disregard for the truth" when the person has "a high degree of awareness of [the] probable falsity [of the statement]." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)).

This added hurdle is intended "[t]o promote free criticism of public officials, and avoid any chilling effect from the threat of a defamation action." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. A political campaign speech made without knowledge of falsity or actual malice is protected under the First Amendment of the U.S. Constitution. Such circumstances require dismissal of a defamation suit because the remedy for unknowingly making factually incorrect criticism of a political opponent is competing speech, rather than a lawsuit. *See Brown v. Hartlage*, 456 U.S. 45, 61 (1982) ("In a political campaign, a candidate's factual blunder is unlikely to escape the notice of, and correction by, the erring candidate's political opponent.").

The Court finds Defendant's statements at issue are largely opinions. With the exception of two factual assertions discussed below, to the extent the statements state or imply certain underlying proofs, those facts are true or substantially true. To the degree Defendant has made arguably false factual statements, Plaintiffs have failed to demonstrate a prima facie case of actual malice. The Court finds Defendant did not act with knowledge of the falsity of any statements or a reckless disregard for their truth. Consequently, Plaintiffs have failed to present prima facie evidence of a probability of prevailing

on their claims and Defendant's motion to dismiss must be granted. *Rosen*, 135 Nev. at 442-43, 453 P.3d at 1225-26.

The two underlying facts of Defendant's opinions that the Court finds are arguably false are: 1) Defendant's statement of law claiming the SHCA Board in accepting Plaintiffs' transfer of parks to SCHA required homeowner approval of the transfer under Nevada statutes; and 2) Defendant's statement SCHA's expenditure for legal costs in 2016 was $1.4 million when the budgeted outlay was approximately $1.32 million and the actual spending was approximately $969,000.[2]

As to the first false statement, the Court previously found Defendant's interpretation of NRS 116.3112 is not unreasonable, especially for a lay person, and made in good faith. Defendant's

[2] Plaintiffs spend significant time discussing in their briefings Defendant knew or should have known Plaintiffs' acted within Nevada statutes and the applicable CC&Rs in not transferring Declarant control of the SHCA Board and allowing homeowners' elections of all Board members. The Court, in reviewing the Complaint and expanding it with the briefing papers, has not found Plaintiffs to have identified any specific statement of Defendant wherein he stated in a defamatory manner in a public forum that Plaintiffs had illegally acted in failing to transfer Declarant control. Plaintiffs contend "Mr. Kosor still argues that the Declarant control is improper and continues to make statements degrading Plaintiffs' ability to do its job based on this false belief." However, they provide no specifics. Plaintiffs discuss Defendant's multiple filings with and lawsuit against Nevada Real Estate Division (hereinafter NRED) in arguing Defendant should have known his contention concerning Declarant control was wrong, but does not identify them or specific statement in them as defamatory. Plaintiffs only point out as defamatory Defendant's statement he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." This statement does not suggest Plaintiffs have violated any law or CC&Rs in not transferring Declarant control. As noted above, this statement is an evaluative opinion of Defendant presumptively based on the true fact Plaintiffs controlled the selection of the majority of the SHCA Board. To the extent Plaintiffs suggest Defendant made defamatory statements with his NRED filings and lawsuit, the Court finds they have failed to present evidence to establish a prima facie case he acted with actual malice. Again, the Court notes Plaintiffs have failed to point to any specific statements in the Complaint, briefs or related materials they contend as defamatory. The Court has considered the materials the parties have provided regarding Defendant's filings with NRED and the Nevada Attorney General. Defendant contends the original unit count in the Southern Highlands CC&Rs was 9000 units and Nevada statutes precluded the Declarant from raising the number to 10,400 units in the 2005 amendments to the CC&Rs. Prior to 2015, Nevada statutes provided for transfer of declarant control when 75 percent of the total units count were sold. The Nevada legislature changed this in 2015 to require transfer of control when 90 percent of the total units count are sold. Defendant argues if the 9000 unit number remained the proper unit number for determining declarant transfer of control, then according to SHCA budget figures for 2014, 75 percent of the total 9000 units had been sold by that time and declarant transfer of control should have occurred by that year. Defendant filed two complaints with NRED asserting this contention. These complaints were dismissed. The Attorney General's office in a 2018 memorandum, found the statutory time for bringing a legal action to challenge the 2005 CC&Rs amendments increasing the unit count from 9000 to 10,400 had passed after one year from passage of the amendments and could not be challenged now. The Office concluded using the total 10,400 unit number the 75 percent units sold had not been reached in 2014 and had not been subsequently attained. The Court has reviewed Defendant's deposition concerning his complaints regarding Declarant transfer of control and does not find a prima facie case Defendant acted with actual malice. Defendant had a legal theory concerning when Declarant had to transfer control. The theory was not irrational or "reckless," especially for a lay person, and Defendant had a First Amendment right to go to NRED, a government entity, to petition for his grievances concerning Declarant control. Plaintiffs' evidence does not make a prima facie showing Defendant acted knowing the falsity of his position or in reckless disregard of the falsity of his position.

interpretation of the statute to preclude an HOA from accepting a conveyance of a common element without homeowner approval is not such a reckless reading of the statute as to suggest Defendant was acting with actual malice, that is "a high degree of awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. As discussed above, Defendant in his challenged statement admits a "loophole" in the statute allows the SHCA Board to accept a conveyance pending homeowners' approval. Consequently, he does not say Plaintiffs did anything illegal. Also as noted above, the underlying factual gist of Defendant's statement was the SHCA Board had accepted the conveyance of public parks from Plaintiffs and now the homeowners were responsible for the costs of the parks' maintenance. Whether this transfer was ultimately voidable without homeowners' approval does not undermine the gist or sting of Defendant's statement. Defendant's gist was the transfer of the parks resulted in a financial burden that should not have been placed on homeowners, but should have been assumed by the County. This was an evaluative opinion based on Defendant's perspective of true or substantially true facts.[3]

As to the second statement, the Court has previously found Defendant could reasonably rely on SHCA's own budgetary estimates to state SHCA legal costs were $1.4 million in 2016. The budgetary estimates for litigation and general counsel costs when added together came to $1.32 million which the Court concludes is substantially true, especially in the context of the political campaign in which the figure was stated. Plaintiff do not make a showing of proof suggesting Defendant had "a high degree of

[3] Plaintiffs extensively discuss and document in their briefing papers the propriety of the procedure used to transfer the parks to the SHCA. As the Court has noted, the primary point of Defendant's specifically alleged defamatory statements is not that the transfer was illegal but that it should not have occurred and the parks should have been transferred to the County for maintenance. Plaintiffs take umbrage at Defendant's related statements that Declarant initially in starting the Southern Highlands development anticipated transferring the parks to the County. However, Defendant in his Supplemental Briefing does provide some 2005 documentation suggesting Plaintiffs/Declarant at least at the start of the development considered transferring parks to the County, and at least discussed this course with the County. *See* Defendant Supp. Reply of March 31, 2021, at 13-14. Plaintiffs, however, dismiss these documents as being "superseded by the Second Amendment to the Development Agreement, which set forth the specific parks that would be dedicated to the County." Plaintiffs contend whatever documentation Defendant had was "no longer applicable after the Second Amendment to the Development Agreement was executed." Plaint. Supp., at 6. Once again, Plaintiffs focus on their procedural propriety. But Defendant's point was Plaintiffs should have continued with their initial thoughts to work with the County to transfer the parks to that governmental entity and not to the SHCA for maintenance.

awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. Defendant in his alleged defamatory statement does not specify if his $1.4 million figure is an annualized budget estimate or actual expenditure amount. Plaintiffs claim they would have provided Defendant with the actual amount which would have been approximately $969,000. However, even accepting Plaintiffs' representations and the actual figures were available to Defendant, the Court does not find evidence Defendant's conduct was reckless. The gist of Defendant's statement was SHCA was spending a lot of money on litigation and he questioned whether this cost was one that could be cut for homeowners. Plaintiffs fail to explain how the numerical difference between the actual and annualized budget estimates undermines the factual premise underlying the gist of Defendant's opinion, SHCA had significant legal cost that possibly could be reduced. Even looking at actual expenditure amounts, the Court finds Plaintiffs have failed to show a prima facie case of probable success of showing actual malice on this point.

CONCLUSION

The Court concludes Defendant's statements that Plaintiffs contend are defamatory are, for the most part, statements of evaluative opinions and premised on facts which are true or substantially true or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant made the statements in good faith and met his burden under the first prong of the anti-SLAPP analysis. The Court further concludes Plaintiffs have not presented prima facie evidence of a probability of prevailing on their claims. Again, Defendant's statements Plaintiffs challenge are largely opinions premised on true facts and not actionable. To the degree they are premised on or involve any false factual statements, Plaintiffs failed to make a prima facie case of actual malice by Defendant. Defendant's Motion to Dismiss is granted.

As Defendant notes in his motion, if a court grants a special motion to dismiss brought pursuant to NRS 41.660(1)(a), the court "shall award reasonable costs and attorney's fees to the person against

whom the action was brought." NRS 41.670 (1)(a). Plaintiff further asks the Court pursuant to NRS 41.670(1)(b) to "award, in addition to reasonable costs and attorney's fees awarded . . . an amount of up to $10,000 to [Defendant] against whom the action was brought." NRS 41.670(1)(b). Defendant shall provide an accounting of costs and attorney fees incurred in defending Plaintiff's Complaint, along with billing statements or other documentation for the Court to determine the reasonableness of such fees and costs within 14 days of the date of this order. Defendant may request additional time to provide such fees and costs. Defendant's counsel in providing attorney fees shall also provide the Court with an evaluation of those fees under the analysis of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (Nev. 1969). Plaintiff may file an opposition to the reasonableness of Defendant's attorney fees and costs within 14 days of Defendant's filing. Plaintiff shall respond in writing to Defendant's request for an award of $10,000 under NRS 41.670(1)(b) within 14 days of this order. Defendant may file a response within 14 days of Plaintiffs' response. Argument on Defendant's request for a $10,000 award shall be set approximately two weeks after Defendant's filing.

DATED this _____ day of July, 2021.

Dated this 19th day of July, 2021

ERIC JOHNSON
DISTRICT COURT JUDGE

67A 8E0 C5A9 46E7
Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Olympia Companies, LLC, Plaintiff(s) vs. Michael Kosor, Jr., Defendant(s)	CASE NO: A-17-765257-C DEPT. NO. Department 20

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: 20 **NOTICE OF ENTRY OF DECISION AND ORDER**

YOU WILL PLEASE TAKE NOTICE that the Decision and Order was entered in the above-entitled matter on the 19th day of July, 2021, a copy of which is attached hereto.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of July, 2021, I served the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** as follows:

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No. A-17-765257-C Dept. No. XX **DECISION AND ORDER**

THIS MATTER came before the Court on May 5, 2021, with J. Randall Jones, Esq. of Kemp Jones LLP appearing on behalf of Plaintiffs and William H. Pruitt, Esq. and Joseph R. Meservy, Esq. of Barron & Pruitt LLP appearing on behalf of Defendant on Defendant Michaeil Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the motion and the related opposition and reply and supplemental briefs and replies, the parties' exhibits, and having heard the arguments of counsel, with good cause appearing, enters the following findings, conclusions and Order.

INTRODUCTION AND SUMMARY OF LITIGATION

Olympia Companies, LLC, and its President and CEO, Garry V. Goett (collectively Plaintiffs) filed a defamation action against Defendant Michael Kosor. Defendant is a homeowner in Southern Highlands, a residential community, which Plaintiffs developed and manage. Plaintiffs' lawsuit is

Case Number: A-17-765257-C

premised on Defendant's criticisms of Plaintiffs' actions in relation to certain aspects of their development and management of Southern Highlands.

After filing an answer, Defendant filed a motion to dismiss under NRS 41.660, Nevada's Anti-SLAPP statute. "Nevada's anti-SLAPP statutes are intended to protect individuals from lawsuits typically targeting and discouraging good-faith speech on important public matters." *Kosor v. Olympia Companies, LLC*, 136 Nev. Adv. Op. 83, 478 P.3d 390, 393 (2020) (citing *Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 748 (2019)). If a party prevails on his motion to dismiss, then the case is dismissed in the early stages of the litigation and the party is entitled to recovery of attorney fees incurred in defending the action. *See* NRS 41.660; NRS 41.670. To establish a prima facie case for anti-SLAPP protection, the defendant must demonstrate "by a preponderance of the evidence, that [the underlying defamation] claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637 defines qualifying communications to include a [c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, . . . which is truthful or is made without knowledge of its falsehood."

In earlier litigation on Defendant's Motion, Plaintiffs argued Defendant's alleged defamatory statements fell outside the anti-SLAPP statute's protected categories of speech. Specifically, they argued Defendant's statements were not "made in direct connection with an issue of public interest in a place open to the public or in a public forum." NRS 41.637(4). The district court previously responsible for this case held Defendant did not meet his burden of showing a prima facie case that his statements were all made in public forums on matters of public interest. The previous court entered an order denying the Motion. Defendant appealed pursuant to NRS 41.670(4), which provides a right of interlocutory appeal from a district court order denying a special motion to dismiss under NRS 41.660.

Subsequently, the Nevada Supreme Court reversed the prior district court's decision, finding the Defendant had "met his prima facie burden to demonstrate that the statements in question were all made in public forums on a matter of public interest." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. The high Court remanded the case to this Court with instructions to "consider whether Kosor made his communications in 'good faith,' in light of all the supporting evidence provided by Kosor." *Id.*

Of relevance to this Court in evaluating Defendant's good faith in making his challenged statements, the Nevada Supreme Court specifically found Defendant's "statements were also directly tied to the public interest…; that is, the appropriate governance of Southern Highlands. Kosor's questions and criticisms of Olympia and the HOA board were made in the context of his attempts to encourage homeowner participation in and oversight of the governance of their community. Finally, the subject matter of Kosor's statements makes evident that his 'focus' in making them was not to prosecute any private grievance against Olympia…Rather, his statements 'concerned the very manner in which this group…would be governed—an inherently political question of vital importance to each individual and to the community as a whole.'" *Id.* at 394 (quoting *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 481, 102 Cal. Rptr. 2d 205, 214 (2000). The Court "easily conclude[s] that all of the complained-of statements concerned matters of public interest under NRS 41.637(4)." *Id.*

The high Court also concluded homeowners' associations open meetings are public forums as such associations play "'a critical role in making and enforcing rules affecting the daily lives of [community] residents.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13). The Court found the Southern Highlands Community Association (hereinafter SHCA) is a "'quasi-government entity'" "'paralleling in almost every case the powers, duties, and responsibilities of a municipal government.'" *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13 (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal.App.3d 642, 191 Cal. Rptr. 209, 214 (1983))). The Nevada Supreme Court concluded "the HOA meetings at which Kosor made certain of the statements at issue were 'public forums' for the purposes of our anti-

SLAPP statutes, because the meetings were 'open to all interested parties, and…a place where members could communicate their ideas. Further, the…meetings served a function similar to that of a governmental body." *Id.* at 394-95 (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13).

I. The Court Will Treat Plaintiffs as Having Standing for Purposes of This Motion

Defendant argues Plaintiffs lack standing to assert defamation for several of his challenged statements because he does not specifically reference either Plaintiff by name in the statements. Rather, in these statements Defendant references the SHCA Board or the Southern Highlands community. Plaintiffs respond they have standing to challenge these statements as "it is apparent that Mr. Kosor's statements, read in context, are directed at Mr. Goett, the owner of the Southern Highlands' Developer, and his company, Olympia Companies, LLC which comprises the developer and the management company that oversees the Southern Highlands community, including the homeowners' association ("HOA")." Plaintiffs Supp. Reply of April 23, 2021, at 2-3 (hereinafter Plaint. Reply). To establish a claim of defamation, the Plaintiffs must prove a false and defamatory statement was made concerning the Plaintiffs. *Berry v. Safer*, 293 F. Supp. 2d 694, 698 (S.D. Miss. 2003). To be actionable "the statements made must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). If a statement contains no reflection on any particular individual, then no averment or innuendo can make it defamatory. Innuendo cannot be used to make certain a statement which is uncertain in identifying its subject. *Fiske v. Stockton*, 171 Ga. App. 601, 602–03, 320 S.E.2d 590, 592–93 (1984). The Court questions whether a reader or listener of Defendant's communications, which do not specifically identify Plaintiffs as those committing certain actions, would clearly recognize the statements concern Plaintiffs' conduct. With that said, the Court accepts Plaintiffs' position for the purposes of deciding this motion and will treat Plaintiffs as having standing to pursue the allegations in their Complaint.

II. Plaintiffs Are Limited-Purpose Public Figures

In deciding this Motion, this Court also concludes Plaintiffs at least constitute limited-purpose public figures. Whether a plaintiff is a public figure or a limited-purpose public figure is a question of law. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) (citing *Schwartz v. Am. Coll. of Emergency Physicians*, 215 F.3d 1140, 1145 (10th Cir.2000)). The U.S. Supreme Court has defined two categories of public figures. The first category, a "public figure," includes "[t]hose who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention…and those who hold governmental office." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974). The second category, a "limited-purpose public figure," includes an individual "who voluntarily injects himself or is thrust into a particular public controversy or public concern, and thereby becomes a public figure for a limited range of issues." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002). In determining whether a person becomes a limited-purpose public figure, the Court "examin[es] the 'nature and extent of an individual's participation in the particular controversy giving rise to the defamation.'" *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445 (quoting *Gertz*, 418 U.S. at 352). "The test for determining whether someone is a limited public figure includes examining whether a person's role in a matter of public concern is voluntary and prominent." *Pegasus*, 118 Nev. at 720, 57 P.3d at 91 (citing *Gertz*, 418 U.S. at 351–52).

Defendant argues Plaintiffs are limited-purpose public figures, but a good argument can be made they are public figures under the Supreme Court's analysis as they are arguably on par with "those who hold governmental office." As noted above, the Nevada Supreme Court has found the SHCA Board to be in the nature of a quasi-government entity largely paralleling the powers, duties, and responsibilities of a municipal entity and its meetings similar in function to a governmental body. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at394. In effect, Southern Highlands could be described as an approximately 8,000 homes small city or town. While Plaintiffs, the Developer and the property

management company he controls, are not formal SHCA Board members, they admittedly equate themselves to the Board as the real entities controlling the quasi-governmental entity that is SHCA. The Developer appoints the majority of the Board and the property management company runs what would be considered all the quasi-governmental functions of the community. In asserting their standing to claim they have been defamed by Defendant's statements directed to actions of the SHCA Board or the Southern Highland community, Plaintiffs argue Defendant is referring to their conduct when Defendant is degrading SHCA governance. In discussing the characteristics of someone who should be considered a public figure, the U.S. Supreme Court explained "[p]ublic officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Gertz*, 418 U.S. at 344. Because of their control of the Board and SHCA's governing functions, Plaintiffs do have communication channels to counteract statements they contend are false.

At minimum then, Plaintiffs are limited-purpose public figures in that they have voluntarily injected themselves into the public concern of governance of the Southern Highland community. The decisions they make by their control of the Board and the SHCA's quasi-governmental functions affect the entire Southern Highlands community. As the Nevada Supreme Court found, the issues Defendant raised involve efforts to encourage homeowner participation in and oversight of the governance of Southern Highlands, "an inherently political question of vital importance to each individual and to the community as a whole." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at 394.

Plaintiffs argue they "have neither voluntarily injected themselves nor have they thrust themselves to the forefront of this supposed public controversy." Plaintiffs' Reply, at 4. They contend to the degree any public controversy exists it was created by Defendant and not them. The Court's impression at this stage of the litigation is Plaintiffs did not create the "controversy" Defendant has raised and want nothing to do with it. However, Plaintiffs have voluntarily injected themselves into the

public concern which is the subject of the controversy defendant raises, to wit: the proper governance of Southern Highlands. In *Pegasus*, the Nevada Supreme Court held a restaurant as a public accommodation, "voluntarily inject[s] itself into the public concern for the limited purpose of reporting on its goods and services" and in doing so, becomes a limited public figure for newspaper food reviews. *Pegasus*, 118 Nev. at 721, 57 P.3d at 92. By voluntarily choosing to make decisions for Southern Highlands which impact thousands of residents, Plaintiffs are limited-purpose public figures for purposes of those decisions and whatever controversy or criticism they draw.

III. Defendant Satisfies the First Prong of the Anti-SLAPP Statutes in that His Challenged Statements Were Made in Good Faith

To satisfy the first prong of the Anti-SLAPP statutes, Defendant must show (1) "the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637" and (2) "the communication 'is truthful or is made without knowledge of its falsehood.'" *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). As noted above, the Nevada Supreme Court has determined Defendant's comments are protected communications in NRS 41.637. *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at398. This Court now considers "whether the moving party has established, by a preponderance of the evidence," that he made the protected communication in good faith. NRS 41.660(3)(a); *see also Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). A communication is made in good faith when it "is truthful or is made without knowledge of its falsehood." NRS 41.637; *see also Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017). A court in determining good faith must consider all of the evidence a defendant submits in support of his anti-SLAPP motion. *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019). If the movant meets this burden, the Court then moves to prong two and evaluates "whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." *See* NRS 41.660(3)(b).

The Nevada Supreme Court has explained that in determining whether a statement is either "truthful or is made without knowledge of its falsehood" this Court should "not parse the individual

words to determine the truthfulness of a statement; rather, we ask 'whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true.'" *Rosen*, 135 Nev. at 441, 453 P.3d at 1224 (quoting *Pegasus*, 118 Nev. at 715 n.17, 57 P.3d at 88 n.17). In a defamation action, "it is not the literal truth of 'each word or detail used in a statement which determines whether or not it is defamatory; rather, the determinative question is whether the "gist or sting" of the statement is true or false.'" *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F. Supp.3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal.App.4th 1165, 96 Cal. Rptr. 2d 136, 150 (2000)). Additionally, statements of opinion cannot be false. *See Abrams v. Sanson*, 136 Nev. 83, 89-90, 458 P.3d 1062, 1068-69 (2020); *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021) (defendant's statement characterizing plaintiff's "behavior as misogynistic bullying is an opinion incapable of being false."); *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements that convey "the publisher's judgment as to the quality of another's behavior" are evaluative opinions). A statement which under most circumstances would be considered one of fact "may become a statement of opinion when uttered in the political context. *Desert Sun Publ'g Co. v. Superior Ct.*, 97 Cal. App. 3d 49, 52, 158 Cal. Rptr. 519, 521 (Ct. App. 1979). "An allegedly defamatory statement may constitute a fact in one context but an opinion in another, depending upon the nature and content of the communication taken as a whole." *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672, 680, 150 Cal.Rptr. 258, 261, 586 P.2d 572, 575.

This Court has gone through Plaintiff's Complaint to identify Defendant's Statements which Plaintiff's allege are defamatory. To be frank, Plaintiffs' Complaint is sparse when it comes to specificity and completeness of those statements they challenge. This is concerning to the Court because, as noted above, to be actionable, a claimed defamatory "statement must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v. Watkins,* 448 So.2d 271 (Miss.1984)). Without specificity or without

the complete statement and its context, this Court cannot determine if the statement is false and clearly directed at Plaintiffs. However, recognizing Plaintiffs' potential for seeking to amend their Complaint, for purposes of deciding this motion the Court has sought to incorporate Defendant's alleged statements that Plaintiffs contend are defamatory in their briefings of this matter. The Court has considered the following statements Plaintiffs claim are defamatory.

1. Plaintiffs Spoke with County Commissioners in a "Dark Room"

In their Complaint, Plaintiffs take issue with two statements Defendant made during a December 17, 2015 meeting of the Christopher Communities Association ("CCA") Board. These statements appear to concern tax credits Clark County had given Plaintiffs at or near the beginning of the Southern Highlands project in exchange for the Plaintiffs building parks within the development, including a large sports park which was to be completed by 2008. However, by 2015, the sports park remained unbuilt. Plaintiffs represent this was due in large part to the financial crisis which occurred in or about 2008. In 2015, a County audit disclosed Plaintiffs' failure to complete the parks and the County briefly stopped issuing permits to the Developer. The County subsequently reinstated the Developer's ability to obtain permits. Later, from at least Kosor's perspective, the County also approved a reduction of the planned infrastructure for the sports park. As Defendant expressed at his deposition, he felt neither the County nor the community homeowners benefited from the extension of tax credits, the delay in the construction of the sports park or the reduction in the sports park infrastructure and only the Plaintiffs/Developer benefited from these actions. Kosor Deposition of March 11, 2021, at 185-87 (herein after Depo.).

Plaintiff's Complaint alleges "Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a 'dark room' and coerced them to act or vote in a certain manner." Complaint, at ¶ 6. Specifically, at the December 17, 2015 CCA Board meeting, Kosor stated:

> "The audit report was quickly glossed over and the Country Commission was worried about, they [the County Commission] were apologizing to the Developer, Goett, who was there, about

> the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioners aside in a dark room or someplace and read them the riot act. And they were most—except for the two new ones—and they were pretty outspoken anyhow. They wanted to know why no bond. So, I've gotta go, that's why I'm going at 3 o'clock. I'm going to go ask, find out what's going on here. 'Cause I'm really upset at what really was happening here."

Defendant's Motion to Dismiss of January 29, 2018, Ex. G at 1:20:45–1:21:01 (hereinafter Motion).

This statement was a strongly-held belief and opinion of Defendant. Under oath, Defendant clarified his rhetorical use of "read them the riot act" as a familiar idiom meaning, "you take someone aside, and you chew them out." Depo. at 125-26. This is the Court's clear interpretation of Defendant's use of the phrase in the instant context. Kosor also explained his rhetorical use of "dark room" meant he believed the Plaintiff/Developer chewed out the Commissioners "somewhere off the main stage, out of the bright lights." *Id.*

Defendant's statement that the Plaintiff/Developer probably got the Commissioners aside in a "dark room or someplace" clearly indicated that he was expressing his opinion as to the Plaintiff/ Developer's use of his influence over the Commissioners. His statement did not suggest to a reasonable person he was personally present in the "dark room or someplace." This point was further emphasized when Defendant expressed that two commissioners wanted to know why no bond was required and he was going to go and find out what was going on. Kosor explained he based his opinion "on the videotape of the county commission meeting that I saw, it appeared like they had been chewed out . . . one of the comments that Commissioner Sisolak said in the meeting was, don't worry, Mr. Goett, I've got your back . . . clearly there had been discussions on this topic previously." *Id.* at 128.

The Court does not concur with Plaintiffs' assertion Defendant's statement implicitly suggested the Plaintiffs were engaging in racketeering or some other crime. The public is well aware of lobbyists and others, who through their positions and/or through who they represent, arguably have influence with those charged with making political decisions. Defendant clarified in statements during the meeting his opinion was not that anyone had done anything illegal, commenting: "[a]nd, was it illegal for

them to do what they did? No!" Motion, Exh. G at 1:09:40-1:10:04. In his deposition, Defendant continued to maintain the Developer did not act criminally, but rather asserted his influence with the Commission. Depo., at 183.

Plaintiffs correctly argue that while opinions are generally not actionable, statements implying false assertions of fact are actionable. However, the Court does not believe Kosor's statement of his opinion implies a false assertion of fact. He did not specifically accuse Plaintiffs of engaging in criminal conduct, he used language clearly indicating he was making assumptions based on his observations, and he used common hyperbole to convey his point. He expressed he did not know the facts of what went on with the Commission's actions, but was going to go and find out.

2. Plaintiffs Are Lining Their Pockets to the Detriment of Homeowners

Plaintiffs' Complaint alleges Defendant defamed them by suggesting at a CCA Board meeting they were "lining [their] pockets to the detriment of the Southern Highlands homeowners." Complaint, at ¶ 6. Plaintiffs contend Defendant's statement suggests they are misappropriating homeowner funds and getting rich in the process, all the while harming SHCA homeowners. Specifically, at the December 17, 2015 CCA meeting, Defendant stated, "[Mr. Goett, President of Olympia Companies, LLC.] is basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands. And that's why I have to talk to, um . . . I, I want to know what political shenanigans were going on here, when they approved that park." Motion, Exh. G at 1:19:09-1:19:25.

The Court finds Defendant was expressing an opinion and not an implied assertion of an untrue fact. First, Kosor makes clear in his statement he is expressing an opinion. While this is not ultimately determinative, Defendant's comment adds to the total context of the statement. He feels "political shenanigans" are going on with the Commission's approval of the reduced sports park. He does not assert any facts as part of his opinion beyond arguably the County's agreement to allow Plaintiffs/ Developer to reduce the park, which appears to the Court to be true. He indicates he does not know

what went on politically with the park plan and he wants to talk and find out what may have occurred between the Plaintiffs/Developer and Commission concerning approval of the reduced sports park plan.

When considered in the context of Defendant's subsequent remarks at the meeting concerning the Commission allowing the Developer to continue to receive permits despite not building the promised parks, Kosor's use of the term "basically lining his own pockets" was merely hyperbole or an idiom expressing his evaluative opinion the Developer had benefited financially from receiving tax credits for building parks, delaying building parks and then getting approval to build a smaller sports park. This, in his opinion, was all to the alleged detriment of the homeowners, whom he believes received less of a park than promised years later.

Defendant's statement that the Plaintiffs/Developer were lining their pockets was clearly a reflection of his opinion weighing what he perceived as the advantages and disadvantages of the parties involved in the building of the parks. While Plaintiffs feel their conduct was appropriate due to the 2008 financial crisis and the financial difficulties it created, Plaintiffs' opinion, like Defendant's, is evaluative, and ultimately not capable of being proven false. Defendant's opinion Plaintiffs/Developer gained an inappropriate financial advantage in how they handled the building of the parks was not provably false or made in bad faith.

3. Plaintiffs Obtained a "Lucrative Agreement" with the County

Plaintiff's Complaint alleges Defendant on or around September 11, 2017 posted on a social media website a defamatory statement about their obtaining a "lucrative agreement." Complaint, at ¶ 6. Specifically, in September 2017, Defendant posted a statement on the Nextdoor.com website stating: 'To obtain a lucrative agreement with the County the Developer committed to constructing the above Sports Park using private money… the County would in the fall of 2015 inexplicably relieving [sic] the Developer of its original commitment only to then approve spending $7M in public tax dollars for a

similar complex in Mountain's Edge. – WHY?"' Defendant also described the agreement as a "massive and inexplicable sweet heart (sic) deal the Commissioners gave our developer related to the yet to be delivered Sports Park[.]" Motion, Exh. F.

Following Defendant's statements at the December 2015 CCA meeting, Kosor's use of "obtain a lucrative agreement" and "sweet heart (sic) deal" reflected his ongoing opinion the Plaintiffs/Developer had received a significant financial benefit from the tax credits to build the parks in the Southern Highlands development. Defendant's use of the term "lucrative" to describe this agreement was an expression of his opinion and hyperbole. While the size of the benefit, represented as $5.2 million, can be debated as lucrative or not, the use of the term "lucrative" was clearly one of evaluative opinion and not in bad faith. In *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021), the Nevada Supreme Court considered in a similar context a defendant's statement characterizing plaintiff's "behavior as misogynistic bullying." The high Court ultimately concluded the use of the term constituted "an opinion incapable of being false." Likewise, as for Defendant's reference to the Plaintiffs/Developer's arrangement with the County as to the parks being a "sweetheart deal," Defendant's statement was again opinion and hyperbole. Whether the Developer's delay in building the parks and the County's agreement to reduce the size of the sports park constitute a "sweetheart deal" is likewise open to debate. However, like the Defendant's use of the term "misogynistic bullying" in *Zilverberg*, Defendant in the instant case was clearly expressing an opinion incapable of being proved false and not in bad faith.

4. Plaintiffs Act Like a "Foreign Government"

Plaintiffs' Complaint alleges "[o]n or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, 'acting like a foreign government that deprives people of essential rights.'" Complaint, at ¶ 10. Plaintiffs contend comparing them to a "foreign government" tends to lower Plaintiffs in the estimation of the community and excite

derogatory opinions about Plaintiffs. Specifically, Defendant when running for the SHCA Board in 2017 created a campaign website. On the website he expressed one of his objectives if elected would be to end Plaintiffs/Declarant's control of a majority of seats on the Board. In that regard, Defendant stated he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." Motion, Exh. H.

The Court finds this statement was an opinion about the SHCA's governing structure which allows the Declarant to maintain control over the Board pending automatic termination of such control pursuant to statutes and the CC&Rs. As Defendant notes in his briefings, the SHCA has never held an election for all its Board seats as a majority of the seats are reserved for board members appointed by the Plaintiffs/Declarant. The homeowners did not elect these members. Consequently, if elected Board members ever had a disagreement with the Plaintiffs/Declarant, the Declarant's members would be able to outvote the homeowners' elected members. To the degree Defendant's statement implies these facts, these assertions appear to be true. While arguably an overstatement, one can make an evaluative comparison between the SHCA and a foreign government controlled by a minority party without full free elections and feel this is not in the best interests of the majority which, in this case, is the homeowners. *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements of the defendant's "judgment as to the quality of another's behavior" are evaluative opinions).

Like Defendant's assertions Plaintiffs received "lucrative" "sweet heart" deals, Defendant's expression Plaintiffs are like some foreign government which denies its citizens the right to choose their representatives is not an assertion of fact which can be proved false, especially since the Plaintiffs/Declarant have never allowed the election of the majority of the SHCA Board. This comment does not suggest Plaintiffs have done anything illegal in not allowing such elections, just as a

foreign government of a sovereign nation does not do anything "illegal" in not holding open elections. He may not think that it is right or the best form of governing, but ultimately that is Defendant's opinion. Defendant's use of the term in the context of his political campaign was merely hyperbole in expressing an evaluative opinion.

5. Kosor's Website Asserts Wrongful Transfer of Parks to SHCA

Defendant's website complains the "County and Developer coordinated [an] agreement that would permanently and wrongfully obligate the HOA to maintain the 'public' parks in our community." Motion, Exh. H. Defendant further expressed his belief that "Clark County's 'cost-shifting' of park maintenance expenses to our HOA" "has cost our community millions of dollars." *Id.* Accordingly, Defendant also stated "I see no HOA advantage in paying the entire park maintenance costs . . . These are public parks . . . The County does a good job with maintenance . . . It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks." *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and imply Defendant has knowledge of facts showing "Plaintiffs are deceptive, greedy, and disregard the needs of the homeowners for their own benefit." Plaintiff's Supplemental Brief of March 31, 2021, at 17 (hereinafter Plaint. Supp.)

Plaintiffs focus on Defendant's use of the term "wrongful" in describing the transfer of the parks to the SHCA and argue the transfer was properly performed in accordance with the CC&Rs and Nevada statutes. However, the gist or sting of Defendant's statements is that it was wrong for the County and the Plaintiffs/Developer to have the parks transferred to the SHCA because in Defendant's opinion it was not in the best interests of the homeowners to assume responsibility for the significant costs maintaining the parks. The Plaintiffs may have followed proper procedure and legally transferred the parks to SHCA, but in Defendant's opinion, "I see no HOA advantage in paying the entire park maintenance costs." Motion, Exh. H. As opinion, Defendant's statements are not actionable.

Plaintiffs also complain Kosor's website claimed the SHCA Board accepted the conveyance of the parks to the SHCA in contravention of Nevada law. Defendant stated "the Agreement [to transfer the parks] was done without satisfying necessary owner acceptance provisions in the statutes. A technical 'loophole' allows it to do so. However, per NRS 116.3112 par 4. '…the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3 (a majority vote of the owners).'" *Id.* Plaintiffs explain NRS 116.3112 only requires a majority vote of the HOA homeowners if the SHCA Board is conveying property belonging to the SHCA, not if it is accepting property. The relevant portions of NRS 116.3112 provide:

> 1. In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least a majority of the votes in the association, including a majority of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. . .
> 4. The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

NRS 116.3112. In his deposition, Defendant explained his view of NRS 116.3112:

> [B]efore the association can assume a responsibility that's not directly specific—that's not stated as a requirement of common element of the association, that it must get an approval of the—in other words, an association can't just assume responsibility, if you're an amusement park that happens to be adjacent to it, just because it's given to them by the developer. There has to be a vote of the homeowners, as I understand the statute, to accept responsibility for the amusement park.

Depo., at 154.

The Court finds this statement of Defendant is factual and can be determined as untrue. The Court agrees with Plaintiffs' interpretation of NRS 116.3112 that homeowners' approval is required only for conveyance of HOA property. However, the Court finds Defendant's interpretation not unreasonable, especially for a lay person, and in good faith. Defendant apparently reads "convey" in the

statute to include both conveyances from and to the SHCA and "common elements," such as parks, cannot be conveyed without homeowners' approval. In his opinion, the statute's allowing of the SHCA Board to act to make a conveyance before homeowner approval is a "loophole" that legally allows the Board to do what it did in accepting the parks, but such an action is ultimately voidable until homeowner approval is obtained.

Defendant does not assert Plaintiffs did anything illegal. While he clearly indicates he believes a majority vote of the homeowners was required to fully accept the transfer of the parks and consequently the transfer of the parks may be voidable, he does note a legal technicality allowed the transfer. The thrust of Defendant's contention is not SHCA did anything illegal, but SHCA should not have accepted the parks and the expense of maintaining the parks without approval of the homeowners who bear the financial responsibility for them. In Defendant's view this only benefited the Plaintiffs, and not the homeowners. While a factual legal conclusion in discussing his position was wrong, its falsity did not alter the gist of Defendant's point that SCHA Board's acceptance of the parks was not in the best interests of the homeowners. Again, this is an opinion the Defendant has a right to express.

6. Pamphlet Says Plaintiffs Breached Fiduciary Duties and Have "Cost Homeowners Millions"

Plaintiffs' Complaint alleges Defendant's November 17, 2017 campaign pamphlet claims the "Developer's actions have 'already cost the homeowners millions.'" Complaint, at ¶ 11. Additionally, Plaintiffs point out Defendant also made references in his campaign materials about "the general failure of our Association Board to advance the interests of Southern Highlands homeowners" and "the SCHA Board's recurring failure to engage on behalf of homeowners" *Id.* Plaintiffs contend these statements clearly suggest improper actions on the part of Plaintiffs and are more than mere opinions.

In his 2017 campaign materials, Defendant states as his objectives if elected: "[f]irst and foremost, I will work to end the Developer's control of our HOA Board. . . . With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of

board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. All SHCA [b]oard members should be owner elected and loyal only to the homeowners that elected them." Motion, Exh. H. The campaign material also accuses the SHCA Board of "repeatedly fail[ing] to act in the best interest of homeowners with government agencies, defaulting to the Interests of the Developer." *Id.*

Again, while Plaintiffs are correct Defendant's statements about his opinions of Plaintiffs' management of SHCA clearly challenge and disparage Plaintiffs' administration, they are clearly statements of Defendant's opinions. Defendant does not believe Plaintiffs have always acted in the best interests of the homeowners, which, if correct, would be a potential breach of their fiduciary duties. However, in the context of a political campaign, this is Defendant's opinion, expressed with recognizable hyperbole and some exaggeration. In Defendant's view, the continued close relation of the Plaintiffs, Developer and management company, and the lack of SHCA Board autonomy creates the potential for conflicts of interest and failed fiduciary oversight. Plaintiffs may disagree with Defendant, feel he is unfair, and believe they always act in the best interests of SHCA homeowners, but Defendant is expressing his opinion as to issues relevant to the governance of Southern Highlands. Defendant does state he "believe[s] this has cost our community millions[.]" *Id.* But again, Defendant clearly indicates this is his opinion based on what he assumes were the costs resulting from Plaintiffs not always acting in the best interests of the community. Plaintiffs argue Defendant's opinions are not protected as they suggest undisclosed facts. However, Plaintiffs do not suggest what those facts may be. Defendant's opinion as to lost costs largely appears from his campaign materials to be built upon his other opinions as to Plaintiffs' conduct. Defendant does identify what he believes some of those lost costs involve, such as parks maintenance and legal fees. If his opinions concerning those costs being unreasonably foisted on the homeowners are accepted, then the costs do potentially add up into millions of dollars.

7. Kosor's Pamphlet Grossly Overstates Legal Expenses

Plaintiffs' Complaint alleges Defendant's 2017 campaign pamphlet for the SHCA Board, as well as his website, "grossly overstates the Southern Highlands Community Association's 2016 legal expenses." Complaint, at ¶ 11. In his campaign literature for the SHCA Board, Defendant states "[W]e can significantly lower expenses, get assessments under control, and do so without sacrificing quality. . . We need to . . . refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size)." Motion, Exh. H. Plaintiff argues this statement is a false accusation suggesting Plaintiffs' "lack of fitness for their business or profession."

Defendant explained at his deposition, he made his reference in his campaign materials to $1.4 million in legal expenses based on the 2017 budget for the SHCA. This budget showed a budgeted expenditure amount of $1.22 million. Defendant stated he understood the 2017 budget represented an annualized figure based on spending patterns from a portion of 2016 and not the actual spending figures for 2016 which he believed would not have been available at the time of he published his campaign pamphlet. Depo., at 117-24. Plaintiff emphasizes Defendant knew the annualized budget figure was not the actual amount expended for legal expenses.[1] They also state they would have shown Defendant the actual figure if he had asked them for the specific information.

However, Defendant did not identify in his campaign materials the $1.4 million figure was either an actual or annualized budgeted amount. He identified it has a cost which he felt was potentially wasteful. As Defendant at his deposition explained:

> So my point -- the point that I was trying to make in the homeowners -- in this campaign effort was that I felt like legal expenses were just off the charts. And as I looked at the legal expenses,

[1] On July 30, 2017, Olympia responded to an email request from Defendant, stating:

> The Association did not spend $88k in General Counsel services in 2016. The sum you refer to is an annualized amount based on payments to-date at the time the 2017 budget was prepared. The Association utilizes the retainer services of several law firms. The purpose is to provide legal counsel and advice for varying legal matters from time-to-time, other than litigation. There is not one firm as suggested by the question. Fees are billed on matters in a "general" heading by each firm when the work does not relate to a specific case. In 2016, numerous firms billed the Association for legal counsel.

> they were 250,000 one year, and now 1.2 million the following year being projected. That's a four-fold increase. And my point was, what the heck is going on here? Are we being too litigious? Is that the best spend for a homeowner? That would account for about 20 percent of the total budget for the association. It was a big deal. And so the association needed to know that, hey, are we getting full disclosure as to why we're spending all of this money? Is it being spent properly? I mean, it was a campaign.

Depo., at 122.

In the context of a political campaign, Defendant was not unreasonable in relying on the annualized budget amounts in making his statement. A budget is, after all, an estimate of an entity's income and expenditures for a period of time. Defendant relied on SHCA's own estimate of its litigation costs. Defendant explained he reached his $1.4 million figure by adding approximately the $88,000 annualized budget figure for general counsel fees to the $1.22 million annualized litigation budget figure and rounding up. Depo., at 123-24. The Court does not find Defendant's conduct and comments in the context of his campaign were substantially untrue or in bad faith. *See Pegasus*, 118 Nev. at 715. 57 P.3d at 88.

Plaintiff notes the actual legal fees for 2016 were $880,967.72. When that number is added to the annualized budgeted general counsel fees (the actual figure for general counsel costs is not noted in any briefings), SHCA spent about $969,000 in legal costs for the year. Plaintiffs do not explain how the distinction between close to $1,000,000 and $1.4 million in legal expenses in the context of political campaign literature materially impacted on homeowners' perception of the legal costs being expended by the Board under Plaintiffs' control. The gist or sting of Defendant's comments was he believed the Plaintiffs, through SHCA, were spending a significant amount of money on litigation which possibly should be cut. This gist was Defendant's opinion. While his figures may have been to some degree wrong, the point expressed was nevertheless an opinion made in good faith.

IV. Under the Second Prong, Plaintiffs Have Failed to Meet Their Burden to Show Prima Facie Evidence of a Probability of Prevailing on Their Claims

Because the Court finds Defendant has satisfied prong one of the anti-SLAPP analysis, the Court must determine under prong two whether Plaintiffs have presented prima facie evidence of a

probability of prevailing on their claims. To prevail on their defamation and defamation per se claims, the Plaintiffs must show: "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. If the plaintiff is a public figure, plaintiff must also provide prima facie evidence the defendant made the statements with "actual malice." *Id.* at 718-19, 57 P.3d at 90-91.[2] "Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth." *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983). A person shows "[r]eckless disregard for the truth" when the person has "a high degree of awareness of [the] probable falsity [of the statement]." *Id.* (citing *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)).

This added hurdle is intended "[t]o promote free criticism of public officials, and avoid any chilling effect from the threat of a defamation action." *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. A political campaign speech made without knowledge of falsity or actual malice is protected under the First Amendment of the U.S. Constitution. Such circumstances require dismissal of a defamation suit because the remedy for unknowingly making factually incorrect criticism of a political opponent is competing speech, rather than a lawsuit. *See Brown v. Hartlage*, 456 U.S. 45, 61 (1982) ("In a political campaign, a candidate's factual blunder is unlikely to escape the notice of, and correction by, the erring candidate's political opponent.").

The Court finds Defendant's statements at issue are largely opinions. With the exception of two factual assertions discussed below, to the extent the statements state or imply certain underlying proofs, those facts are true or substantially true. To the degree Defendant has made arguably false factual statements, Plaintiffs have failed to demonstrate a prima facie case of actual malice. The Court finds Defendant did not act with knowledge of the falsity of any statements or a reckless disregard for their truth. Consequently, Plaintiffs have failed to present prima facie evidence of a probability of prevailing

on their claims and Defendant's motion to dismiss must be granted. *Rosen*, 135 Nev. at 442-43, 453 P.3d at 1225-26.

The two underlying facts of Defendant's opinions that the Court finds are arguably false are: 1) Defendant's statement of law claiming the SHCA Board in accepting Plaintiffs' transfer of parks to SCHA required homeowner approval of the transfer under Nevada statutes; and 2) Defendant's statement SCHA's expenditure for legal costs in 2016 was $1.4 million when the budgeted outlay was approximately $1.32 million and the actual spending was approximately $969,000.[2]

As to the first false statement, the Court previously found Defendant's interpretation of NRS 116.3112 is not unreasonable, especially for a lay person, and made in good faith. Defendant's

[2] Plaintiffs spend significant time discussing in their briefings Defendant knew or should have known Plaintiffs' acted within Nevada statutes and the applicable CC&Rs in not transferring Declarant control of the SHCA Board and allowing homeowners' elections of all Board members. The Court, in reviewing the Complaint and expanding it with the briefing papers, has not found Plaintiffs to have identified any specific statement of Defendant wherein he stated in a defamatory manner in a public forum that Plaintiffs had illegally acted in failing to transfer Declarant control. Plaintiffs contend "Mr. Kosor still argues that the Declarant control is improper and continues to make statements degrading Plaintiffs' ability to do its job based on this false belief." However, they provide no specifics. Plaintiffs discuss Defendant's multiple filings with and lawsuit against Nevada Real Estate Division (hereinafter NRED) in arguing Defendant should have known his contention concerning Declarant control was wrong, but does not identify them or specific statement in them as defamatory. Plaintiffs only point out as defamatory Defendant's statement he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right." This statement does not suggest Plaintiffs have violated any law or CC&Rs in not transferring Declarant control. As noted above, this statement is an evaluative opinion of Defendant presumptively based on the true fact Plaintiffs controlled the selection of the majority of the SHCA Board. To the extent Plaintiffs suggest Defendant made defamatory statements with his NRED filings and lawsuit, the Court finds they have failed to present evidence to establish a prima facie case he acted with actual malice. Again, the Court notes Plaintiffs have failed to point to any specific statements in the Complaint, briefs or related materials they contend as defamatory. The Court has considered the materials the parties have provided regarding Defendant's filings with NRED and the Nevada Attorney General. Defendant contends the original unit count in the Southern Highlands CC&Rs was 9000 units and Nevada statutes precluded the Declarant from raising the number to 10,400 units in the 2005 amendments to the CC&Rs. Prior to 2015, Nevada statutes provided for transfer of declarant control when 75 percent of the total units count were sold. The Nevada legislature changed this in 2015 to require transfer of control when 90 percent of the total units count are sold. Defendant argues if the 9000 unit number remained the proper unit number for determining declarant transfer of control, then according to SHCA budget figures for 2014, 75 percent of the total 9000 units had been sold by that time and declarant transfer of control should have occurred by that year. Defendant filed two complaints with NRED asserting this contention. These complaints were dismissed. The Attorney General's office in a 2018 memorandum, found the statutory time for bringing a legal action to challenge the 2005 CC&Rs amendments increasing the unit count from 9000 to 10,400 had passed after one year from passage of the amendments and could not be challenged now. The Office concluded using the total 10,400 unit number the 75 percent units sold had not been reached in 2014 and had not been subsequently attained. The Court has reviewed Defendant's deposition concerning his complaints regarding Declarant transfer of control and does not find a prima facie case Defendant acted with actual malice. Defendant had a legal theory concerning when Declarant had to transfer control. The theory was not irrational or "reckless," especially for a lay person, and Defendant had a First Amendment right to go to NRED, a government entity, to petition for his grievances concerning Declarant control. Plaintiffs' evidence does not make a prima facie showing Defendant acted knowing the falsity of his position or in reckless disregard of the falsity of his position.

interpretation of the statute to preclude an HOA from accepting a conveyance of a common element without homeowner approval is not such a reckless reading of the statute as to suggest Defendant was acting with actual malice, that is "a high degree of awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. As discussed above, Defendant in his challenged statement admits a "loophole" in the statute allows the SHCA Board to accept a conveyance pending homeowners' approval. Consequently, he does not say Plaintiffs did anything illegal. Also as noted above, the underlying factual gist of Defendant's statement was the SHCA Board had accepted the conveyance of public parks from Plaintiffs and now the homeowners were responsible for the costs of the parks' maintenance. Whether this transfer was ultimately voidable without homeowners' approval does not undermine the gist or sting of Defendant's statement. Defendant's gist was the transfer of the parks resulted in a financial burden that should not have been placed on homeowners, but should have been assumed by the County. This was an evaluative opinion based on Defendant's perspective of true or substantially true facts.[3]

As to the second statement, the Court has previously found Defendant could reasonably rely on SHCA's own budgetary estimates to state SHCA legal costs were $1.4 million in 2016. The budgetary estimates for litigation and general counsel costs when added together came to $1.32 million which the Court concludes is substantially true, especially in the context of the political campaign in which the figure was stated. Plaintiff do not make a showing of proof suggesting Defendant had "a high degree of

[3] Plaintiffs extensively discuss and document in their briefing papers the propriety of the procedure used to transfer the parks to the SHCA. As the Court has noted, the primary point of Defendant's specifically alleged defamatory statements is not that the transfer was illegal but that it should not have occurred and the parks should have been transferred to the County for maintenance. Plaintiffs take umbrage at Defendant's related statements that Declarant initially in starting the Southern Highlands development anticipated transferring the parks to the County. However, Defendant in his Supplemental Briefing does provide some 2005 documentation suggesting Plaintiffs/Declarant at least at the start of the development considered transferring parks to the County, and at least discussed this course with the County. *See* Defendant Supp. Reply of March 31, 2021, at 13-14. Plaintiffs, however, dismiss these documents as being "superseded by the Second Amendment to the Development Agreement, which set forth the specific parks that would be dedicated to the County." Plaintiffs contend whatever documentation Defendant had was "no longer applicable after the Second Amendment to the Development Agreement was executed." Plaint. Supp., at 6. Once again, Plaintiffs focus on their procedural propriety. But Defendant's point was Plaintiffs should have continued with their initial thoughts to work with the County to transfer the parks to that governmental entity and not to the SHCA for maintenance.

awareness of [the] probable falsity [of the statement]." *Nev. Indep. Broad. Corp.*, 99 Nev. at 414, 664 P.2d at 344. Defendant in his alleged defamatory statement does not specify if his $1.4 million figure is an annualized budget estimate or actual expenditure amount. Plaintiffs claim they would have provided Defendant with the actual amount which would have been approximately $969,000. However, even accepting Plaintiffs' representations and the actual figures were available to Defendant, the Court does not find evidence Defendant's conduct was reckless. The gist of Defendant's statement was SHCA was spending a lot of money on litigation and he questioned whether this cost was one that could be cut for homeowners. Plaintiffs fail to explain how the numerical difference between the actual and annualized budget estimates undermines the factual premise underlying the gist of Defendant's opinion, SHCA had significant legal cost that possibly could be reduced. Even looking at actual expenditure amounts, the Court finds Plaintiffs have failed to show a prima facie case of probable success of showing actual malice on this point.

CONCLUSION

The Court concludes Defendant's statements that Plaintiffs contend are defamatory are, for the most part, statements of evaluative opinions and premised on facts which are true or substantially true or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant made the statements in good faith and met his burden under the first prong of the anti-SLAPP analysis. The Court further concludes Plaintiffs have not presented prima facie evidence of a probability of prevailing on their claims. Again, Defendant's statements Plaintiffs challenge are largely opinions premised on true facts and not actionable. To the degree they are premised on or involve any false factual statements, Plaintiffs failed to make a prima facie case of actual malice by Defendant. Defendant's Motion to Dismiss is granted.

As Defendant notes in his motion, if a court grants a special motion to dismiss brought pursuant to NRS 41.660(1)(a), the court "shall award reasonable costs and attorney's fees to the person against

whom the action was brought." NRS 41.670 (1)(a). Plaintiff further asks the Court pursuant to NRS 41.670(1)(b) to "award, in addition to reasonable costs and attorney's fees awarded . . . an amount of up to $10,000 to [Defendant] against whom the action was brought." NRS 41.670(1)(b). Defendant shall provide an accounting of costs and attorney fees incurred in defending Plaintiff's Complaint, along with billing statements or other documentation for the Court to determine the reasonableness of such fees and costs within 14 days of the date of this order. Defendant may request additional time to provide such fees and costs. Defendant's counsel in providing attorney fees shall also provide the Court with an evaluation of those fees under the analysis of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (Nev. 1969). Plaintiff may file an opposition to the reasonableness of Defendant's attorney fees and costs within 14 days of Defendant's filing. Plaintiff shall respond in writing to Defendant's request for an award of $10,000 under NRS 41.670(1)(b) within 14 days of this order. Defendant may file a response within 14 days of Plaintiffs' response. Argument on Defendant's request for a $10,000 award shall be set approximately two weeks after Defendant's filing.

DATED this _____ day of July, 2021.

Dated this 19th day of July, 2021

ERIC JOHNSON
DISTRICT COURT JUDGE

67A 8E0 C5A9 46E7
Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Olympia Companies, LLC, Plaintiff(s) vs. Michael Kosor, Jr., Defendant(s)	CASE NO: A-17-765257-C DEPT. NO. Department 20

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/19/2021

Jon Jones	r.jones@kempjones.com
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DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **March 05, 2018**

A-17-765257-C Olympia Companies, LLC, Plaintiff(s)
vs.
Michael Kosor, Jr., Defendant(s)

March 05, 2018 **9:30 AM** **Motion to Dismiss**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart
Kimberly Estala

RECORDER: Kristine Santi

REPORTER:

PARTIES PRESENT:

Brumfield, Cara D.	Attorney
Jones, Jon Randall	Attorney
Kosor, Michael, Jr.	Defendant
Smith, Robert B.	Attorney

JOURNAL ENTRIES

- Mr. Smith argued in support of dismissal; and further argued as to Plaintiff seeking to seal Deft's speech. Additional arguments as to developments, proposals, company having paid to operate community, budget having been spent on things Deft. believes should not have be spent, motion having been made in good faith, issue being public concern, and decisions having been made since the motion was filed. Discussions as to status of real estate division. Mr. Smith further argued as to NRS 116.2117, validity, adoption of recorded document, and Plaintiff wanting to accuse Deft. of defamement. Further arguments regarding pamphlet attached to website, there being significant financial interest on keeping Deft. quiet, preponderance of evidence, statement made by Deft, and Adelson case. Court asked why this is an issue with public interest; and stated it appears to be limited. Further arguments by counsel as to California case law cited in the pleadings, case law from Macias and Damon matters, there having been no control over HOA, Welding case relying on California law, forms having been put together for community, public interest and public forum, first part of statute having been met by Deft, context of statements having been laid out, statements not being defamatory, the statements having been statements of opinion, Darkroom context, KOSOR

website, lucrative deals, no election of five members of community by Deft, violation of statute claims by Plaintiff, budget issue, use of HOA fees, statements having been made two years ago before the Complaint was filed, background of issue being important, there being no financial benefits or motives, and NRS 116.2122. Mr. Jones opposed; and argued the problem is Deft. has right to speak his mind, however, he does not have the right to defame or slam or libel. Mr. Jones further argued regarding this case having unusual circumstance, issue having noting to do with context of history, and Deft. being on a quixotic mission. Mr. Jones added Deft. had gone on the website to say defamatory things, and Plaintiff is not going to continue to put up with defamatory statements. Mr. Jones argued Deft. can complain to the HOA, however, he needs to do it pursuant to statute and NRS rules. Further arguments by Mr. Jones regarding agreement, Deft's feelings towards the Plaintiff and development company, there being no grounds to support the relief Deft. is seeking, and NRS 41.660. Mr. Jones added if defense does not meet the standards, Deft. does not meet the case. Further arguments regarding good faith legal definition, questions needing to be answered by a jury, Darkroom context meetings, there being question of fact, and innuendo being clear. Upon Court's inquiry, Mr. Jones confirmed he does not believe Deft. met the burden of the statute to invoke Anti-SLAPP. Court stated its issue is whether there is an issue of public concern if the statute is invoked. Further arguments by Mr. Jones as to Talega case from 2004, and Keebler vs. Fontana case. Additional arguments as to case law from Weinberg and Hailstone. Mr. Jones argued the case law favors Plaintiff's position. Discussions as to Anti- SLAPP statute, NRS 41.637, NRS 41.660, and Court needing to consider five factors. Further arguments by Mr. Smith. COURT ORDERED, Motion DENIED, as Deft. did not meet the burden to invoke the Anti-SLAPP statute. Mr. Jones to prepare the order and run it by opposing counsel.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **June 11, 2018**

A-17-765257-C Olympia Companies, LLC, Plaintiff(s)
vs.
Michael Kosor, Jr., Defendant(s)

June 11, 2018 **9:30 AM** **Motion For Reconsideration**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Trisha Garcia

REPORTER:

PARTIES PRESENT:

Jones, Jon Randall	Attorney
Kosor, Michael, Jr.	Defendant
Pruitt, William H.	Attorney
Rulis, Nathanael R., ESQ	Attorney

JOURNAL ENTRIES

- Court stated it may not have jurisdiction if the matter is before Nevada Supreme Court. Arguments by Mr. Pruitt in support of reconsideration of Court's order. Further arguments as to protection of statements, and Anti-Slapp statute. Discussions as to California cases cited in pleadings. Further arguments by counsel. Mr. Jones opposed reconsideration; and argued Plaintiff disagrees with Defendant's points, nothing changed on the pleadings, the motion is not appropriate, and Plaintiff would request the case to proceed forward. Mr. Jones added there is no basis for Court to reconsider its decision. Mr. Pruitt argued there was plenty of reason to bring the motion before the Court. Further arguments as to personal vendetta claim statements. COURT ORDERED, Motion DENIED. Mr. Jones to prepare the order and to run it by opposing counsel.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **February 03, 2021**

A-17-765257-C Olympia Companies, LLC, Plaintiff(s)
vs.
Michael Kosor, Jr., Defendant(s)

February 03, 2021 **8:30 AM** **Status Check**

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Tia Everett

RECORDER: Angie Calvillo

REPORTER:

PARTIES PRESENT:

Pruitt, William H.	Attorney
Rulis, Nathanael R., ESQ	Attorney

JOURNAL ENTRIES

- Court noted this matter was reversed and remanded by the Appellant Court. Upon Court's inquiry, Mr. Rulis requested the Court re-open discovery in order to provide the Court with additional briefing. Mr. Pruitt advised he believes the matter has been fully briefed and would like to have an expedited decision. Mr. Rulis advised he is seeking to take the deposition of Defendant Kosor and those few people he made those statements to. COURT ORDERED, Plaintiff shall have until 3/05/2021 to take the three depositions, supplemental briefing shall be due on or before 3/12/2021; supplemental reply shall be due on or before 3/19/2021 and matter SET for Hearing.

3/31/2021 10:30 AM HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct **COURT MINUTES** **May 05, 2021**

A-17-765257-C Olympia Companies, LLC, Plaintiff(s)
vs.
Michael Kosor, Jr., Defendant(s)

May 05, 2021 **9:00 AM** **Hearing**

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Kathryn Hansen-McDowell

RECORDER: Angie Calvillo

REPORTER:

PARTIES PRESENT:

Jones, Jon Randall	Attorney
Meservy, Joseph R.	Attorney
Pruitt, William H.	Attorney

JOURNAL ENTRIES

- Court stated the issue at stake was whether the statements made by the Defendant were in good faith. Court noted its inclination was to accept the Supreme Court's decision. Arguments by counsel. COURT stated it would take the matter UNDER ADVISEMENT and issue a minute order with its decision.

DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	**COURT MINUTES**	**August 03, 2021**

A-17-765257-C Olympia Companies, LLC, Plaintiff(s)
vs.
Michael Kosor, Jr., Defendant(s)

August 03, 2021 **9:50 AM** **Minute Order**

HEARD BY: Johnson, Eric **COURTROOM:** Chambers

COURT CLERK: Kathryn Hansen-McDowell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Defendant Kosor filed a Motion to Enlarge Time to File Motion for Attorneys Fees and Costs on August 2, 2021. The matter was subsequently scheduled for hearing on September 8, 2021. In the Court s July 27, 2021 Decision and Order granting Defendant Kosor s Special Motion to Dismiss the Court ordered Defendant Kosor to provide an accounting of costs and attorneys fees within 14 days of the Order, noting the Defendant may request additional time to provide such fees and costs. Accordingly, the Court GRANTS the Motion enlarging the time to file his motion for attorney fees and costs to Monday, August 16, 2021.

The Court hereby VACATES the September 8, 2021 hearing. Counsel for Defendant Kosor is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature. Counsel is directed to email a word and pdf copy of the proposed order to dc20inbox@clarkcountycourts.us.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. khm

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

J. RANDALL JONES, ESQ.
3800 HOWARD HUGHES PWKY.,
17TH FLOOR
LAS VEAS, NV 89169

DATE: August 20, 2021
CASE: A-17-765257-C

RE CASE: OLYMPIA COMPANIES, LLC; GARRY V. GOETT vs. MICHAEL KOSOR, JR.

NOTICE OF APPEAL FILED: August 18, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases
- *Previously paid Bonds are not transferable between appeals without an order of the District Court.*

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFFS' NOTICE OF APPEAL; PLAINTIFFS' CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

OLYMPIA COMPANIES, LLC; GARRY V. GOETT,

Plaintiff(s),

vs.

MICHAEL KOSOR, JR.,

Defendant(s),

Case No: A-17-765257-C

Dept No: XX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 20 day of August 2021.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk