

IN THE SUPREME COURT OF THE STATE OF NEVADA

OLYMPIA COMPANIES, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
GARRY V. GOETT, A NEVADA
RESIDENT,

Appellants,

vs.

MICHAEL KOSOR, JR., A NEVADA
RESIDENT

Respondent.

No. 83403 Electronically Filed
Sep 15 2021 04:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Docketing Statement

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District: Eighth Department: 20
County: Clark Judge: Hon. Eric Johnson

District Ct. Case No.: A-17-765257-C

2. Attorneys filing this docketing statement:

Attorneys: J. Randall Jones
Nathanael R. Rulis
Madison S. Florance

Telephone: (702) 385-6000

Firm Address: KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Client(s): OLYMPIA COMPANIES, LLC, a Nevada Limited Liability
Company; GARRY V. GOETT, a Nevada Resident.

3. Attorneys representing respondents:

Attorneys: William H. Pruitt
Joseph R. Meservy

Telephone: (702) 870-3940

Firm Address: Barron & Pruitt, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031

Client(s): MICHAEL KOSOR, JR., A Nevada Resident.

///

///

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of injunction
- ☐ Grant/denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☒ Other (specify): granting Defendant Michael Kosor, Jr.'s Special Motion to Dismiss Pursuant to NRS 41.660
- ☐ Divorce decree
 - ☐ Original ☐ Modification
- ☐ Other disposition (specify):

5. Does this appeal raise issues concerning any of the following: No.

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

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

Michael Kosor, Jr., a Nevada Resident, Appellant, vs. Olympia Companies, LLC, a Nevada Limited Liability Company; Garry V. Goett, a Nevada Resident, Respondents; Supreme Court No. 75669.

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

N/A

/ / /

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

On November 29, 2017, Appellant filed a complaint against Respondent for defamation and defamation per se after Respondent made false and disparaging statements against Appellant. Respondent filed a Special 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 Respondent's Special 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.

On August 18, 2021, Olympia Companies, LLC and Garry V. Goett, timely filed a Notice of the Appeal of the District Court's Decision and Order to dismiss Appellants' action against Respondent.

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

- Whether the District Court made an error of law in granting Defendant's Special Motion to Dismiss Pursuant to NRS 41.660, and any award of attorney's fees, costs or statutory damages, if any are awarded.

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

Unknown

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

☒ N/A

☐ Yes

☐ No,

If not, explain:

// //

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

N/A

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
- ☐ A ballot question

If so, explain: This appeal involves more than one substantial issue of first impression, including but not limited to:

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

This matter should be assigned to the Court of Appeals under NRAP 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

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

No.

///

///

///

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment on order appealed from: July 27, 2021

17. Date written notice of entry or order was served: July 27, 2021.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

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

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

- ☐ NRCP 50(b) Date of filing: N/A
- ☐ NRCP 52(b) Date of filing: N/A
- ☐ NRCP 59 Date of filing: N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served:
N/A

Was service by:

- ☐ Delivery
- ☐ Mail/electronic/fax

19. Date notice of appeal filed:

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

Appellants filed their Notice of Appeal on August 18, 2021.

/ //

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

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify): NRAP 3A(b)(8)

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

NRAP 3(A)(b)(1) allows an appeal from a final judgment. The Decision and Order Granting Defendant Michael Kosor's Special Motion to Dismiss Pursuant to NRS 41.660 is a final judgment.

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

(a) Parties:

- Plaintiffs OLYMPIA COMPANIES, LLC, a Nevada Limited Liability Company; GARRY V. GOETT, a Nevada Resident.
- Defendant MICHAEL KOSOR, JR., a Nevada Resident.

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

N/A

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

- (a) Plaintiffs' Claims: Plaintiffs' Complaint alleges claims for the following relief: (i) Defamation; and (ii) Defamation Per Se. Plaintiffs' claims for Defamation and Defamation Per Se were dismissed by the district court on July 19, 2021, in the District Court's Decision and Order Granting Defendant's Special Motion to Dismiss Pursuant to NRS 41.660. The Notice of Entry of Order was filed on July 27, 2021.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below: N/A

(b) Specify the parties remaining below: N/A

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

- The latest-filed complaint, counterclaims, crossclaims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim counterclaims, crossclaims, and/or third-party claims asserted in the action
- Any other order challenged on appeal
- Notices of entry for each attached order

See Documents attached hereto.

VERIFICATION

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

Olympia Companies, LLC and Garry V. Goett
Name of Appellants

J. Randall Jones, Esq.
Name of counsel of record

September 15, 2021
Date

/s/J. Randall Jones
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2021, I served a copy of this completed Docketing Statement upon all counsel of record via electronic service:

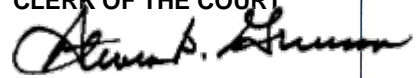
Barron & Pruitt, LLP
William H. Pruitt
Joseph M. Meservy

Dated this 15th day of September, 2021.

/s/ Ali Augustine

An employee of Kemp Jones, LLP

Exhibit 1



J. Randall Jones, Esq. (#1927)
jrj@kempjones.com
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Cara D. Brumfield, Esq., (#14175)
c.brumfield@kempjones.com
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Attorneys for Plaintiffs

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.: Department 12

COMPLAINT

Arbitration Exemption Claimed:

*Action Seeking Damages in Excess of
\$50,000.00*

COME NOW Plaintiffs Olympia Companies, LLC ("Olympia") and Garry V. Goett, ("Mr. Goett") (collectively "Plaintiffs"), by and through counsel, J. Randall Jones, Esq., Nathanael R. Rulis, Esq., and Cara D. Brumfield, Esq. of KEMP, JONES & COULTHARD, LLP, and for their claims for relief against the Defendant herein, assert and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Olympia is a Nevada limited liability company licensed to do business in the State of Nevada.
2. Mr. Goett is, and at all times relevant hereto has been, a resident of Clark County, State of Nevada.
3. Defendant Michael Kosor, Jr. ("Kosor") is, and at all times relevant hereto has been, a resident of Clark County, State of Nevada.

1 4. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 Defendant herein designated as DOES I through V, and ROES VI through X, are Defendant
3 individuals, corporations, partnerships and other business entities unknown to Plaintiffs at this time,
4 who therefore sue said Defendant by such fictitious names. Plaintiffs are informed and believe and
5 thereon allege that each Defendant is responsible in some manner for the events and happenings and
6 proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend this
7 Complaint to allege their true names and capacities when ascertained, and will further ask leave to join
8 said Defendants in these proceedings.
9

10 5. The Eighth Judicial District Court is the proper venue for this matter in that this action involves a
11 dispute in which all events took place in Clark County, Nevada.
12

FACTUAL ALLEGATIONS

13 5. Since 1996, Mr. Goett, Olympia Companies, and related/subsidiary entities have been in the
14 business of developing and thereafter managing the Southern Highlands community in Clark County,
15 Nevada.
16

17 6. Going as far back as December of 2015, Kosor has made various, specious defamatory
18 statements against Olympia and Mr. Goett. At that time, Kosor made comments that Olympia and Mr.
19 Goett spoke with Clark County Commissioners in a “dark room” and coerced them to act or vote in a
20 certain manner; and that Olympia is “lining its pockets” to the detriment of the Southern Highlands
21 homeowners.
22

23 7. In response to those comments made by Kosor, Olympia sent him a cease and desist letter,
24 requesting that he immediately stop from any further defamatory conduct toward Olympia, its
25 subsidiaries, Mr. Goett and his employees.
26

27 8. Kosor’s conduct directed toward Olympia and Mr. Goett has not ceased. He has continued to
28 speak at the meetings of the Southern Highlands Community Association and has stated that Olympia

1 and its employees have violated the law and breached their fiduciary duty to the owners of the
2 community.

3 9. On or around September 11, 2017, Mr. Kosor posted a statement on a social media accusing
4 Olympia of obtaining a “lucrative agreement” with Clark County by cost-shifting expenses for the
5 maintenance of public parks to the Southern Highlands owners.

6
7 10. On or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing
8 Olympia and its employees of, among other things, acting like a foreign government that deprives people
9 of essential rights. In other parts of his website, Mr. Kosor continues to reference sweetheart deals,
10 statutory violations, breaches of fiduciary duty, and improper cost shifting of “millions of dollars”, even
11 though such statements are untrue and defamatory.

12 11. On or about November 17, 2017, homeowners throughout the Southern Highlands community
13 received a written pamphlet from Kosor. Within Kosor’s written pamphlet was the statement that
14 Olympia/Developer breached its fiduciary duties to the Southern Highlands community and Developer’s
15 actions have “already cost the homeowners millions.” In addition, he grossly overstates the Southern
16 Highlands Community Association’s 2016 legal expenses.

17
18 12. All of the above statements by Kosor were made as statements of fact, without qualification, and
19 not as expressions of his opinion.

20 13. That Kosor made his false and defamatory statements with malice, and the intent to convince
21 other homeowners throughout the Southern Highlands community of the bad character of the Plaintiffs.

22
23 14. Kosor’s false and defamatory statements were made with reckless disregard of the accuracy and
24 truth of the statements made in an attempt to harm the reputation of Mr. Goett and Olympia throughout
25 the southern Nevada community.

26 15. In addition to the publications set forth above, Plaintiffs reasonably believe that Kosor may have
27 engaged in additional and other publications of defamatory and libelous information about them, of
28

1 which they are not yet aware but which may as well be injurious and harmful, or constitute *defamation*
2 *per se*, and which will be the subject of discovery in this action.

3 **FIRST CLAIM FOR RELIEF**
4 **(Defamation)**

5 16. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained
6 within the paragraphs above.

7 17. Kosor knowingly made false and defamatory statements about Plaintiffs.

8 18. The publications by Kosor were not privileged. Alternatively, if any privilege attached to any of
9 the communications by the Kosor, Kosor exceeded the privilege by his wrongful actions.

10 19. Kosor's statements were published, at a minimum, to other homeowners throughout the Southern
11 Highlands community.

12 20. The aforementioned accusations and statements made by Kosor would normally tend to lower
13 the reputation of Plaintiffs in the community, and in the profession and business or industry in which
14 Plaintiffs worked, and would excite derogatory opinions about Plaintiffs.

15 21. Kosor was at least negligent in making the statements.

16 22. As a direct and proximate cause of Kosor's conduct, as described above, Plaintiffs have been
17 damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000).

18 23. Kosor's false and defamatory statements were made in reckless disregard of the rights of
19 Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual or implied malice
20 giving rise of a claim for punitive and exemplary damages in excess of Fifteen Thousand Dollars
21 (\$15,000).

22 **SECOND CLAIM FOR RELIEF**
23 **(Defamation Per Se)**

24 24. Plaintiffs re-alleges and incorporates herein by reference each and every allegation contained
25 within the paragraphs above.
26
27
28

1 25. Kosor's statements constitute defamation or slander per se in that they impute to the Plaintiffs the
2 commission of a crime (racketeering), and tend to injure Plaintiffs in its trade, business and profession.

3 26. As a direct and proximate cause of Kosor's conduct, as described above, Plaintiffs suffered
4 general damages in an amount in excess of Fifteen Thousand Dollars (\$15,000).

5 27. Kosor's false and defamatory statements were made in reckless disregard of the rights of
6 Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual or implied malice
7 giving rise of a claim for punitive and exemplary damages in excess of Fifteen Thousand Dollars
8 (\$15,000).
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby requests a jury trial for all issues so triable.

12 **WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

- 13 1. General and special damages in an amount in excess of \$15,000.00;
14 2. Punitive and exemplary damages in excess of \$15,000.00;
15 3. Attorney's fees and costs; and
16 4. For such other relief that the Court deems just and proper.
17

18 DATED this 27 day of November, 2017

19 KEMP, JONES & COULTHARD, LLP


20 
21 _____
22 J. Randall Jones, Esq. (#1927)
23 Nathanael R. Rulis, Esq. (#11259)
24 Cara D. Brumfield, Esq. (#14175)
25 3800 Howard Hughes Parkway, 17th Floor
26 Las Vegas, NV 89169
27 *Attorneys for Plaintiffs*
28

Exhibit 2

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 OLYMPIA COMPANIES, LLC, a Nevada
6 limited liability company; GARRY V. GOETT,
7 a Nevada resident

8 Plaintiffs,

9 vs.

10 MICHAEL KOSOR, JR., a Nevada resident;
11 and DOES I through X, inclusive
12 Defendants.

Case No. A-17-765257-C

Dept. No. XX

DECISION AND ORDER

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

INTRODUCTION AND SUMMARY OF LITIGATION

20 Olympia Companies, LLC, and its President and CEO, Garry V. Goett (collectively Plaintiffs)
21 filed a defamation action against Defendant Michael Kosor. Defendant is a homeowner in Southern
22 Highlands, a residential community, which Plaintiffs developed and manage. Plaintiffs' lawsuit is
23
24

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

3 After filing an answer, Defendant filed a motion to dismiss under NRS 41.660, Nevada's Anti-
4 SLAPP statute. "Nevada's anti-SLAPP statutes are intended to protect individuals from lawsuits
5 typically targeting and discouraging good-faith speech on important public matters." *Kosor v. Olympia*
6 *Companies, LLC*, 136 Nev. Adv. Op. 83, 478 P.3d 390, 393 (2020) (citing *Coker v. Sassone*, 135 Nev. 8, 10,
7 432 P.3d 746, 748 (2019)). If a party prevails on his motion to dismiss, then the case is dismissed in the
8 early stages of the litigation and the party is entitled to recovery of attorney fees incurred in defending
9 the action. *See* NRS 41.660; NRS 41.670. To establish a prima facie case for anti-SLAPP protection, the
10 defendant must demonstrate "by a preponderance of the evidence, that [the underlying defamation]
11 claim is based upon a good faith communication in furtherance of the right to petition or the right to
12 free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637
13 defines qualifying communications to include a [c]ommunication made in direct connection with an
14 issue of public interest in a place open to the public or in a public forum, . . . which is truthful or is
15 made without knowledge of its falsehood."

16 In earlier litigation on Defendant's Motion, Plaintiffs argued Defendant's alleged defamatory
17 statements fell outside the anti-SLAPP statute's protected categories of speech. Specifically, they argued
18 Defendant's statements were not "made in direct connection with an issue of public interest in a place
19 open to the public or in a public forum." NRS 41.637(4). The district court previously responsible for
20 this case held Defendant did not meet his burden of showing a prima facie case that his statements were
21 all made in public forums on matters of public interest. The previous court entered an order denying
22 the Motion. Defendant appealed pursuant to NRS 41.670(4), which provides a right of interlocutory
23 appeal from a district court order denying a special motion to dismiss under NRS 41.660.
24

1 Subsequently, the Nevada Supreme Court reversed the prior district court's decision, finding the
2 Defendant had "met his prima facie burden to demonstrate that the statements in question were all
3 made in public forums on a matter of public interest." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at 398.
4 The high Court remanded the case to this Court with instructions to "consider whether Kosor made his
5 communications in 'good faith,' in light of all the supporting evidence provided by Kosor." *Id.*

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

17 The high Court also concluded homeowners' associations open meetings are public forums as
18 such associations play "a critical role in making and enforcing rules affecting the daily lives of
19 [community] residents." *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13). The Court found the
20 Southern Highlands Community Association (hereinafter SHCA) is a "quasi-government entity"
21 "paralleling in almost every case the powers, duties, and responsibilities of a municipal government."
22 *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13 (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal.App.3d
23 642, 191 Cal. Rptr. 209, 214 (1983))). The Nevada Supreme Court concluded "the HOA meetings at
24 which Kosor made certain of the statements at issue were 'public forums' for the purposes of our anti-

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

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

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

1 II. Plaintiffs Are Limited-Purpose Public Figures

2 In deciding this Motion, this Court also concludes Plaintiffs at least constitute limited-purpose
3 public figures. Whether a plaintiff is a public figure or a limited-purpose public figure is a question of
4 law. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) (citing *Schwartz v. Am. Coll. of*
5 *Emergency Physicians*, 215 F.3d 1140, 1145 (10th Cir.2000)). The U.S. Supreme Court has defined two
6 categories of public figures. The first category, a “public figure,” includes “[t]hose who, by reason of
7 the notoriety of their achievements or the vigor and success with which they seek the public’s
8 attention...and those who hold governmental office.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342
9 (1974). The second category, a “limited-purpose public figure,” includes an individual “who voluntarily
10 injects himself or is thrust into a particular public controversy or public concern, and thereby becomes a
11 public figure for a limited range of issues.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82,
12 91 (2002). In determining whether a person becomes a limited-purpose public figure, the Court
13 “examin[es] the ‘nature and extent of an individual’s participation in the particular controversy giving
14 rise to the defamation.’” *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445 (quoting *Gertz*, 418 U.S. at 352). “The
15 test for determining whether someone is a limited public figure includes examining whether a person’s
16 role in a matter of public concern is voluntary and prominent.” *Pegasus*, 118 Nev. at 720, 57 P.3d at 91
17 (citing *Gertz*, 418 U.S. at 351–52).

18 Defendant argues Plaintiffs are limited-purpose public figures, but a good argument can be
19 made they are public figures under the Supreme Court’s analysis as they are arguably on par with “those
20 who hold governmental office.” As noted above, the Nevada Supreme Court has found the SHCA
21 Board to be in the nature of a quasi-government entity largely paralleling the powers, duties, and
22 responsibilities of a municipal entity and its meetings similar in function to a governmental body. *Kasor*,
23 136 Nev. Adv. Op. 83, 478 P.3d at 394. In effect, Southern Highlands could be described as an
24 approximately 8,000 homes small city or town. While Plaintiffs, the Developer and the property

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

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

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

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

8 **III. Defendant Satisfies the First Prong of the Anti-SLAPP Statutes in that His** 9 **Challenged Statements Were Made in Good Faith**

10 To satisfy the first prong of the Anti-SLAPP statutes, Defendant must show (1) “the comments
11 at issue fall into one of the four categories of protected communications enumerated in NRS 41.637”
12 and (2) “the communication ‘is truthful or is made without knowledge of its falsehood.’” *Stark v. Lackey*,
13 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). As noted above, the Nevada Supreme
14 Court has determined Defendant’s comments are protected communications in NRS 41.637. *Kosor*, 136
15 Nev. Adv. Op. 83, 478 P.3d at 398. This Court now considers “whether the moving party has
16 established, by a preponderance of the evidence,” that he made the protected communication in good
17 faith. NRS 41.660(3)(a); *see also Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). A
18 communication is made in good faith when it “is truthful or is made without knowledge of its
19 falsehood.” NRS 41.637; *see also Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017). A court
20 in determining good faith must consider all of the evidence a defendant submits in support of his anti-
21 SLAPP motion. *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019). If the movant
22 meets this burden, the Court then moves to prong two and evaluates “whether the plaintiff has
23 demonstrated with prima facie evidence a probability of prevailing on the claim.” *See* NRS 41.660(3)(b).

24 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

1 words to determine the truthfulness of a statement; rather, we ask ‘whether a preponderance of the
2 evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the
3 [statement], is true.’” *Rosen*, 135 Nev. at 441, 453 P.3d at 1224 (quoting *Pegasus*, 118 Nev. at 715 n.17, 57
4 P.3d at 88 n.17). In a defamation action, “it is not the literal truth of ‘each word or detail used in a
5 statement which determines whether or not it is defamatory; rather, the determinative question is
6 whether the “gist or sting” of the statement is true or false.’” *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F.
7 Supp.3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal.App.4th 1165, 96
8 Cal. Rptr. 2d 136, 150 (2000)). Additionally, statements of opinion cannot be false. *See Abrams v. Sanson*,
9 136 Nev. 83, 89-90, 458 P.3d 1062, 1068-69 (2020); *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021)
10 (defendant’s statement characterizing plaintiff’s “behavior as misogynistic bullying is an opinion
11 incapable of being false.”); *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements that
12 convey “the publisher’s judgment as to the quality of another’s behavior” are evaluative opinions). A
13 statement which under most circumstances would be considered one of fact “may become a statement
14 of opinion when uttered in the political context. *Desert Sun Publ’g Co. v. Superior Ct.*, 97 Cal. App. 3d 49,
15 52, 158 Cal. Rptr. 519, 521 (Ct. App. 1979). “An allegedly defamatory statement may constitute a fact in
16 one context but an opinion in another, depending upon the nature and content of the communication
17 taken as a whole.” *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672, 680, 150
18 Cal.Rptr. 258, 261, 586 P.2d 572, 575.

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

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

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

7 In their Complaint, Plaintiffs take issue with two statements Defendant made during a
8 December 17, 2015 meeting of the Christopher Communities Association ("CCA") Board. These
9 statements appear to concern tax credits Clark County had given Plaintiffs at or near the beginning of
10 the Southern Highlands project in exchange for the Plaintiffs building parks within the development,
11 including a large sports park which was to be completed by 2008. However, by 2015, the sports park
12 remained unbuilt. Plaintiffs represent this was due in large part to the financial crisis which occurred in
13 or about 2008. In 2015, a County audit disclosed Plaintiffs' failure to complete the parks and the
14 County briefly stopped issuing permits to the Developer. The County subsequently reinstated the
15 Developer's ability to obtain permits. Later, from at least Kosor's perspective, the County also approved
16 a reduction of the planned infrastructure for the sports park. As Defendant expressed at his deposition,
17 he felt neither the County nor the community homeowners benefited from the extension of tax credits,
18 the delay in the construction of the sports park or the reduction in the sports park infrastructure and
19 only the Plaintiffs/Developer benefited from these actions. Kosor Deposition of March 11, 2021, at
20 185-87 (herein after Depo.).

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

24 "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

1 the conduct of the audit committee and all the audit committee did was do their job. But they
2 were, he was upset and angry and probably got the Commissioners aside in a dark room or
3 someplace and read them the riot act. And they were most—except for the two new ones—and
4 they were pretty outspoken anyhow. They wanted to know why no bond. So, I’ve gotta go,
5 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
6 really upset at what really was happening here.”

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

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

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

23 The Court does not concur with Plaintiffs’ assertion Defendant’s statement implicitly suggested
24 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

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

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

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

11 Plaintiffs’ Complaint alleges Defendant defamed them by suggesting at a CCA Board meeting
12 they were “lining [their] pockets to the detriment of the Southern Highlands homeowners.” Complaint,
13 at ¶ 6. Plaintiffs contend Defendant’s statement suggests they are misappropriating homeowner funds
14 and getting rich in the process, all the while harming SHCA homeowners. Specifically, at the December
15 17, 2015 CCA meeting, Defendant stated, “[Mr. Goett, President of Olympia Companies, LLC.] is
16 basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands.
17 And that’s why I have to talk to, um . . . I, I want to know what political shenanigans were going on
18 here, when they approved that park.” Motion, Exh. G at 1:19:09-1:19:25.

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

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

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

11 Defendant's statement that the Plaintiffs/Developer were lining their pockets was clearly a
12 reflection of his opinion weighing what he perceived as the advantages and disadvantages of the parties
13 involved in the building of the parks. While Plaintiffs feel their conduct was appropriate due to the
14 2008 financial crisis and the financial difficulties it created, Plaintiffs' opinion, like Defendant's, is
15 evaluative, and ultimately not capable of being proven false. Defendant's opinion Plaintiffs/Developer
16 gained an inappropriate financial advantage in how they handled the building of the parks was not
17 provably false or made in bad faith.

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

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

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

4 Following Defendant's statements at the December 2015 CCA meeting, Kosor's use of "obtain
5 a lucrative agreement" and "sweet heart (sic) deal" reflected his ongoing opinion the
6 Plaintiffs/Developer had received a significant financial benefit from the tax credits to build the parks in
7 the Southern Highlands development. Defendant's use of the term "lucrative" to describe this
8 agreement was an expression of his opinion and hyperbole. While the size of the benefit, represented as
9 \$5.2 million, can be debated as lucrative or not, the use of the term "lucrative" was clearly one of
10 evaluative opinion and not in bad faith. In *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021), the Nevada
11 Supreme Court considered in a similar context a defendant's statement characterizing plaintiff's
12 "behavior as misogynistic bullying." The high Court ultimately concluded the use of the term
13 constituted "an opinion incapable of being false." Likewise, as for Defendant's reference to the
14 Plaintiffs/Developer's arrangement with the County as to the parks being a "sweetheart deal,"
15 Defendant's statement was again opinion and hyperbole. Whether the Developer's delay in building the
16 parks and the County's agreement to reduce the size of the sports park constitute a "sweetheart deal" is
17 likewise open to debate. However, like the Defendant's use of the term "misogynistic bullying" in
18 *Zilverberg*, Defendant in the instant case was clearly expressing an opinion incapable of being proved
19 false and not in bad faith.

20 **4. Plaintiffs Act Like a "Foreign Government"**

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

1 derogatory opinions about Plaintiffs. Specifically, Defendant when running for the SHCA Board in
2 2017 created a campaign website. On the website he expressed one of his objectives if elected would be
3 to end Plaintiffs/Declarant's control of a majority of seats on the Board. In that regard, Defendant
4 stated he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those
5 that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand
6 the negative implications. I do not like the idea the community I now look to spend my retirement has
7 denied me this central and important right." Motion, Exh. H.

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

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

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

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

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

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

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

- 9 1. In a condominium or planned community, portions of the common elements may be conveyed or
10 subjected to a security interest by the association if persons entitled to cast at least a majority of the
11 votes in the association, including a majority of the votes allocated to units not owned by a declarant,
12 or any larger percentage the declaration specifies, agree to that action; but all owners of units to
13 which any limited common element is allocated must agree in order to convey that limited common
14 element or subject it to a security interest. The declaration may specify a smaller percentage only if all
15 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.

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

17 [B]efore the association can assume a responsibility that's not directly specific—that's not stated
18 as a requirement of common element of the association, that it must get an approval of the—in
19 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.

20 Depo., at 154.

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

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

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

15 **6. Pamphlet Says Plaintiffs Breached Fiduciary Duties and Have “Cost**
16 **Homeowners Millions”**

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

23 In his 2017 campaign materials, Defendant states as his objectives if elected: “[f]irst and
24 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

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

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

1 **7. Kosor's Pamphlet Grossly Overstates Legal Expenses**

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

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

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

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

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

23 The Association did not spend \$88k in General Counsel services in 2016. The sum you refer to is an annualized
24 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.

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

7 Depo., at 122.

8 In the context of a political campaign, Defendant was not unreasonable in relying on the
9 annualized budget amounts in making his statement. A budget is, after all, an estimate of an entity's
10 income and expenditures for a period of time. Defendant relied on SHCA's own estimate of its
11 litigation costs. Defendant explained he reached his \$1.4 million figure by adding approximately the
12 \$88,000 annualized budget figure for general counsel fees to the \$1.22 million annualized litigation
13 budget figure and rounding up. Depo., at 123-24. The Court does not find Defendant's conduct and
14 comments in the context of his campaign were substantially untrue or in bad faith. *See Pegasus*, 118 Nev.
15 at 715. 57 P.3d at 88.

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

25 **IV. Under the Second Prong, Plaintiffs Have Failed to Meet Their Burden to Show 26 Prima Facie Evidence of a Probability of Prevailing on Their Claims**

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

1 probability of prevailing on their claims. To prevail on their defamation and defamation per se claims,
2 the Plaintiffs must show: “(1) a false and defamatory statement by [a] defendant concerning the plaintiff;
3 (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)
4 actual or presumed damages.” *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. If the plaintiff is a public figure,
5 plaintiff must also provide prima facie evidence the defendant made the statements with “actual malice.”
6 *Id.* at 718-19, 57 P.3d at 90-91.² “Actual malice (or more appropriately, constitutional malice) is defined
7 as knowledge of the falsity of the statement or a reckless disregard for the truth.” *Nev. Indep. Broad. Corp.*
8 *v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983). A person shows “[r]eckless disregard for the truth”
9 when the person has “a high degree of awareness of [the] probable falsity [of the statement].” *Id.* (citing
10 *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)).

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

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

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

3 The two underlying facts of Defendant's opinions that the Court finds are arguably false are: 1)
4 Defendant's statement of law claiming the SHCA Board in accepting Plaintiffs' transfer of parks to
5 SCHCA required homeowner approval of the transfer under Nevada statutes; and 2) Defendant's
6 statement SCHCA's expenditure for legal costs in 2016 was \$1.4 million when the budgeted outlay was
7 approximately \$1.32 million and the actual spending was approximately \$969,000.²

8 As to the first false statement, the Court previously found Defendant's interpretation of NRS
9 116.3112 is not unreasonable, especially for a lay person, and made in good faith. Defendant's

10 ² Plaintiffs spend significant time discussing in their briefings Defendant knew or should have known Plaintiffs' acted
11 within Nevada statutes and the applicable CC&Rs in not transferring Declarant control of the SHCA Board and allowing
12 homeowners' elections of all Board members. The Court, in reviewing the Complaint and expanding it with the briefing
13 papers, has not found Plaintiffs to have identified any specific statement of Defendant wherein he stated in a defamatory
14 manner in a public forum that Plaintiffs had illegally acted in failing to transfer Declarant control. Plaintiffs contend
15 "Mr. Kosor still argues that the Declarant control is improper and continues to make statements degrading Plaintiffs'
16 ability to do its job based on this false belief." However, they provide no specifics. Plaintiffs discuss Defendant's
17 multiple filings with and lawsuit against Nevada Real Estate Division (hereinafter NRED) in arguing Defendant should
18 have known his contention concerning Declarant control was wrong, but does not identify them or specific statement in
19 them as defamatory. Plaintiffs only point out as defamatory Defendant's statement he "spent 24 years as an Air Force
20 officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens
21 did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to
22 spend my retirement has denied me this central and important right." This statement does not suggest Plaintiffs have
23 violated any law or CC&Rs in not transferring Declarant control. As noted above, this statement is an evaluative
24 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.

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

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

19 ³ Plaintiffs extensively discuss and document in their briefing papers the propriety of the procedure used to transfer the
20 parks to the SHCA. As the Court has noted, the primary point of Defendant’s specifically alleged defamatory statements
21 is not that the transfer was illegal but that it should not have occurred and the parks should have been transferred to the
22 County for maintenance. Plaintiffs take umbrage at Defendant’s related statements that Declarant initially in starting the
23 Southern Highlands development anticipated transferring the parks to the County. However, Defendant in his
24 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.

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

13 **CONCLUSION**

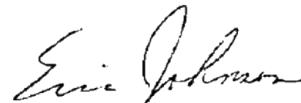
14 The Court concludes Defendant’s statements that Plaintiffs contend are defamatory are, for the
15 most part, statements of evaluative opinions and premised on facts which are true or substantially true
16 or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant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

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

1 whom the action was brought.” NRS 41.670 (1)(a). Plaintiff further asks the Court pursuant to NRS
2 41.670(1)(b) to “award, in addition to reasonable costs and attorney's fees awarded . . . an amount of up
3 to \$10,000 to [Defendant] against whom the action was brought.” NRS 41.670(1)(b). Defendant shall
4 provide an accounting of costs and attorney fees incurred in defending Plaintiff's Complaint, along with
5 billing statements or other documentation for the Court to determine the reasonableness of such fees
6 and costs within 14 days of the date of this order. Defendant may request additional time to provide
7 such fees and costs. Defendant's counsel in providing attorney fees shall also provide the Court with an
8 evaluation of those fees under the analysis of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d
9 31 (Nev. 1969). Plaintiff may file an opposition to the reasonableness of Defendant's attorney fees and
10 costs within 14 days of Defendant's filing. Plaintiff shall respond in writing to Defendant's request for
11 an award of \$10,000 under NRS 41.670(1)(b) within 14 days of this order. Defendant may file a
12 response within 14 days of Plaintiffs' response. Argument on Defendant's request for a \$10,000 award
13 shall be set approximately two weeks after Defendant's filing.

14
15 DATED this _____ day of July, 2021.

Dated this 19th day of July, 2021

16
17 

18 ERIC JOHNSON
19 DISTRICT COURT JUDGE

20 **67A 8E0 C5A9 46E7**
21 **Eric Johnson**
22 **District Court Judge**
23
24

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Olympia Companies, LLC,
7 Plaintiff(s)

CASE NO: A-17-765257-C

8 vs.

DEPT. NO. Department 20

9 Michael Kosor, Jr., Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 7/19/2021

15 Jon Jones r.jones@kempjones.com

16 Ali Augustine a.augustine@kempjones.com

17 Nathanael Rulis n.rulis@kempjones.com

18 Mary Ann Dillard mdillard@lvnvlaw.com

19 Joseph Meservy jmeservy@lvnvlaw.com

20 William Pruitt bpruitt@lvnvlaw.com

21 Luz Macias lmacias@lvnvlaw.com

22 Erica Bennett e.bennett@kempjones.com

23 Pamela Montgomery p.montgomery@kempjones.com

24 Deb Sagert dsagert@lvnvlaw.com

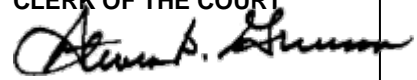
25

26

27

28

Exhibit 3



1 **NOED**
2 **WILLIAM H. PRUITT, ESQ.**
3 Nevada Bar No. 6783
4 **JOSEPH R. MESERVY, ESQ.**
5 Nevada Bar No. 14088
6 **BARRON & PRUITT, LLP**
7 3890 West Ann Road
8 North Las Vegas, Nevada 89031
9 Telephone: (702) 870-3940
10 Facsimile: (702)870-3950
11 E-Mail: jmeservy@lvnvlaw.com
12 *Attorneys for Defendant*
13 *Michael Kosor, Jr.*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 OLYMPIA COMPANIES, LLC a Nevada limited
11 liability company; GARRY V. GOETT, a Nevada
12 Resident,

12 Plaintiff,

12 vs.

13 MICHAEL KOSOR, JR., a Nevada resident; DOES
14 I through X, inclusive,

15 Defendants.

Case No: A-17-765257-C

Dept. No: 20

**NOTICE OF ENTRY OF DECISION AND
ORDER**

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

19 BARRON & PRUITT, LLP

21 /s/ William H. Pruitt
22 WILLIAM H. PRUITT, ESQ.
23 Nevada Bar No. 6783
24 JOSEPH R. MESERVY, ESQ.
25 Nevada Bar No. 14088
26 3890 West Ann Road
27 North Las Vegas, NV 89031
28 *Attorneys for Defendant*
Michael Kosor, Jr.

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

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.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ 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:

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorney for Plaintiffs

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 OLYMPIA COMPANIES, LLC, a Nevada
6 limited liability company; GARRY V. GOETT,
7 a Nevada resident

8 Plaintiffs,

9 vs.

10 MICHAEL KOSOR, JR., a Nevada resident;
11 and DOES I through X, inclusive
12 Defendants.

Case No. A-17-765257-C

Dept. No. XX

DECISION AND ORDER

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

INTRODUCTION AND SUMMARY OF LITIGATION

20 Olympia Companies, LLC, and its President and CEO, Garry V. Goett (collectively Plaintiffs)
21 filed a defamation action against Defendant Michael Kosor. Defendant is a homeowner in Southern
22 Highlands, a residential community, which Plaintiffs developed and manage. Plaintiffs' lawsuit is
23
24

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

3 After filing an answer, Defendant filed a motion to dismiss under NRS 41.660, Nevada's Anti-
4 SLAPP statute. "Nevada's anti-SLAPP statutes are intended to protect individuals from lawsuits
5 typically targeting and discouraging good-faith speech on important public matters." *Kosor v. Olympia*
6 *Companies, LLC*, 136 Nev. Adv. Op. 83, 478 P.3d 390, 393 (2020) (citing *Coker v. Sassone*, 135 Nev. 8, 10,
7 432 P.3d 746, 748 (2019)). If a party prevails on his motion to dismiss, then the case is dismissed in the
8 early stages of the litigation and the party is entitled to recovery of attorney fees incurred in defending
9 the action. *See* NRS 41.660; NRS 41.670. To establish a prima facie case for anti-SLAPP protection, the
10 defendant must demonstrate "by a preponderance of the evidence, that [the underlying defamation]
11 claim is based upon a good faith communication in furtherance of the right to petition or the right to
12 free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637
13 defines qualifying communications to include a [c]ommunication made in direct connection with an
14 issue of public interest in a place open to the public or in a public forum, . . . which is truthful or is
15 made without knowledge of its falsehood."

16 In earlier litigation on Defendant's Motion, Plaintiffs argued Defendant's alleged defamatory
17 statements fell outside the anti-SLAPP statute's protected categories of speech. Specifically, they argued
18 Defendant's statements were not "made in direct connection with an issue of public interest in a place
19 open to the public or in a public forum." NRS 41.637(4). The district court previously responsible for
20 this case held Defendant did not meet his burden of showing a prima facie case that his statements were
21 all made in public forums on matters of public interest. The previous court entered an order denying
22 the Motion. Defendant appealed pursuant to NRS 41.670(4), which provides a right of interlocutory
23 appeal from a district court order denying a special motion to dismiss under NRS 41.660.
24

1 Subsequently, the Nevada Supreme Court reversed the prior district court's decision, finding the
2 Defendant had "met his prima facie burden to demonstrate that the statements in question were all
3 made in public forums on a matter of public interest." *Kosor*, 136 Nev. Adv. Op. 83, 478 P.3d at 398.
4 The high Court remanded the case to this Court with instructions to "consider whether Kosor made his
5 communications in 'good faith,' in light of all the supporting evidence provided by Kosor." *Id.*

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

17 The high Court also concluded homeowners' associations open meetings are public forums as
18 such associations play "a critical role in making and enforcing rules affecting the daily lives of
19 [community] residents." *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13). The Court found the
20 Southern Highlands Community Association (hereinafter SHCA) is a "quasi-government entity"
21 "paralleling in almost every case the powers, duties, and responsibilities of a municipal government."
22 *Id.* (quoting *Damon*, 102 Cal. Rptr. 2d at 212-13 (quoting *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal.App.3d
23 642, 191 Cal. Rptr. 209, 214 (1983))). The Nevada Supreme Court concluded "the HOA meetings at
24 which Kosor made certain of the statements at issue were 'public forums' for the purposes of our anti-

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

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

5 Defendant argues Plaintiffs lack standing to assert defamation for several of his challenged
6 statements because he does not specifically reference either Plaintiff by name in the statements. Rather,
7 in these statements Defendant references the SHCA Board or the Southern Highlands community.
8 Plaintiffs respond they have standing to challenge these statements as “it is apparent that Mr. Kosor’s
9 statements, read in context, are directed at Mr. Goett, the owner of the Southern Highlands’ Developer,
10 and his company, Olympia Companies, LLC which comprises the developer and the management
11 company that oversees the Southern Highlands community, including the homeowners’ association
12 (“HOA”).” Plaintiffs Supp. Reply of April 23, 2021, at 2-3 (hereinafter Plaint. Reply). To establish a
13 claim of defamation, the Plaintiffs must prove a false and defamatory statement was made concerning
14 the Plaintiffs. *Berry v. Safer*, 293 F. Supp. 2d 694, 698 (S.D. Miss. 2003). To be actionable “the
15 statements made must be false and must be clearly directed toward and be ‘of and concerning [the]
16 plaintiff.’” *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D.Miss.1988) (quoting *Ferguson v.*
17 *Watkins*, 448 So.2d 271 (Miss.1984)). If a statement contains no reflection on any particular individual,
18 then no averment or innuendo can make it defamatory. Innuendo cannot be used to make certain a
19 statement which is uncertain in identifying its subject. *Fiske v. Stockton*, 171 Ga. App. 601, 602–03, 320
20 S.E.2d 590, 592–93 (1984). The Court questions whether a reader or listener of Defendant’s
21 communications, which do not specifically identify Plaintiffs as those committing certain actions, would
22 clearly recognize the statements concern Plaintiffs’ conduct. With that said, the Court accepts Plaintiffs’
23 position for the purposes of deciding this motion and will treat Plaintiffs as having standing to pursue
24 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. *Kasor*, 136 Nev. Adv. Op. 83, 478 P.3d at 394. In effect, Southern Highlands could be described as an approximately 8,000 homes small city or town. While Plaintiffs, the Developer and the property

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

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

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

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

8 **III. Defendant Satisfies the First Prong of the Anti-SLAPP Statutes in that His** 9 **Challenged Statements Were Made in Good Faith**

10 To satisfy the first prong of the Anti-SLAPP statutes, Defendant must show (1) “the comments
11 at issue fall into one of the four categories of protected communications enumerated in NRS 41.637”
12 and (2) “the communication ‘is truthful or is made without knowledge of its falsehood.’” *Stark v. Lackey*,
13 136 Nev. 38, 40, 458 P.3d 342, 345 (2020) (quoting NRS 41.637). As noted above, the Nevada Supreme
14 Court has determined Defendant’s comments are protected communications in NRS 41.637. *Kosor*, 136
15 Nev. Adv. Op. 83, 478 P.3d at 398. This Court now considers “whether the moving party has
16 established, by a preponderance of the evidence,” that he made the protected communication in good
17 faith. NRS 41.660(3)(a); *see also Coker v. Sassone*, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). A
18 communication is made in good faith when it “is truthful or is made without knowledge of its
19 falsehood.” NRS 41.637; *see also Delucchi v. Songer*, 133 Nev. 290, 300, 396 P.3d 826, 833 (2017). A court
20 in determining good faith must consider all of the evidence a defendant submits in support of his anti-
21 SLAPP motion. *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019). If the movant
22 meets this burden, the Court then moves to prong two and evaluates “whether the plaintiff has
23 demonstrated with prima facie evidence a probability of prevailing on the claim.” *See* NRS 41.660(3)(b).

24 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

1 words to determine the truthfulness of a statement; rather, we ask ‘whether a preponderance of the
2 evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the
3 [statement], is true.’” *Rosen*, 135 Nev. at 441, 453 P.3d at 1224 (quoting *Pegasus*, 118 Nev. at 715 n.17, 57
4 P.3d at 88 n.17). In a defamation action, “it is not the literal truth of ‘each word or detail used in a
5 statement which determines whether or not it is defamatory; rather, the determinative question is
6 whether the “gist or sting” of the statement is true or false.’” *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F.
7 Supp.3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. Inc. v. Md. Cas. Co.*, 80 Cal.App.4th 1165, 96
8 Cal. Rptr. 2d 136, 150 (2000)). Additionally, statements of opinion cannot be false. *See Abrams v. Sanson*,
9 136 Nev. 83, 89-90, 458 P.3d 1062, 1068-69 (2020); *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021)
10 (defendant’s statement characterizing plaintiff’s “behavior as misogynistic bullying is an opinion
11 incapable of being false.”); *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001) (statements that
12 convey “the publisher’s judgment as to the quality of another’s behavior” are evaluative opinions). A
13 statement which under most circumstances would be considered one of fact “may become a statement
14 of opinion when uttered in the political context. *Desert Sun Publ’g Co. v. Superior Ct.*, 97 Cal. App. 3d 49,
15 52, 158 Cal. Rptr. 519, 521 (Ct. App. 1979). “An allegedly defamatory statement may constitute a fact in
16 one context but an opinion in another, depending upon the nature and content of the communication
17 taken as a whole.” *Good Government Group of Seal Beach, Inc. v. Superior Court*, 22 Cal.3d 672, 680, 150
18 Cal.Rptr. 258, 261, 586 P.2d 572, 575.

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

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

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

7 In their Complaint, Plaintiffs take issue with two statements Defendant made during a
8 December 17, 2015 meeting of the Christopher Communities Association ("CCA") Board. These
9 statements appear to concern tax credits Clark County had given Plaintiffs at or near the beginning of
10 the Southern Highlands project in exchange for the Plaintiffs building parks within the development,
11 including a large sports park which was to be completed by 2008. However, by 2015, the sports park
12 remained unbuilt. Plaintiffs represent this was due in large part to the financial crisis which occurred in
13 or about 2008. In 2015, a County audit disclosed Plaintiffs' failure to complete the parks and the
14 County briefly stopped issuing permits to the Developer. The County subsequently reinstated the
15 Developer's ability to obtain permits. Later, from at least Kosor's perspective, the County also approved
16 a reduction of the planned infrastructure for the sports park. As Defendant expressed at his deposition,
17 he felt neither the County nor the community homeowners benefited from the extension of tax credits,
18 the delay in the construction of the sports park or the reduction in the sports park infrastructure and
19 only the Plaintiffs/Developer benefited from these actions. Kosor Deposition of March 11, 2021, at
20 185-87 (herein after Depo.).

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

24 "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

1 the conduct of the audit committee and all the audit committee did was do their job. But they
2 were, he was upset and angry and probably got the Commissioners aside in a dark room or
3 someplace and read them the riot act. And they were most—except for the two new ones—and
4 they were pretty outspoken anyhow. They wanted to know why no bond. So, I’ve gotta go,
5 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
6 really upset at what really was happening here.”

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

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

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

23 The Court does not concur with Plaintiffs’ assertion Defendant’s statement implicitly suggested
24 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

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

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

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

11 Plaintiffs’ Complaint alleges Defendant defamed them by suggesting at a CCA Board meeting
12 they were “lining [their] pockets to the detriment of the Southern Highlands homeowners.” Complaint,
13 at ¶ 6. Plaintiffs contend Defendant’s statement suggests they are misappropriating homeowner funds
14 and getting rich in the process, all the while harming SHCA homeowners. Specifically, at the December
15 17, 2015 CCA meeting, Defendant stated, “[Mr. Goett, President of Olympia Companies, LLC.] is
16 basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands.
17 And that’s why I have to talk to, um . . . I, I want to know what political shenanigans were going on
18 here, when they approved that park.” Motion, Exh. G at 1:19:09-1:19:25.

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

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

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

11 Defendant's statement that the Plaintiffs/Developer were lining their pockets was clearly a
12 reflection of his opinion weighing what he perceived as the advantages and disadvantages of the parties
13 involved in the building of the parks. While Plaintiffs feel their conduct was appropriate due to the
14 2008 financial crisis and the financial difficulties it created, Plaintiffs' opinion, like Defendant's, is
15 evaluative, and ultimately not capable of being proven false. Defendant's opinion Plaintiffs/Developer
16 gained an inappropriate financial advantage in how they handled the building of the parks was not
17 provably false or made in bad faith.

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

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

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

4 Following Defendant's statements at the December 2015 CCA meeting, Kosor's use of "obtain
5 a lucrative agreement" and "sweet heart (sic) deal" reflected his ongoing opinion the
6 Plaintiffs/Developer had received a significant financial benefit from the tax credits to build the parks in
7 the Southern Highlands development. Defendant's use of the term "lucrative" to describe this
8 agreement was an expression of his opinion and hyperbole. While the size of the benefit, represented as
9 \$5.2 million, can be debated as lucrative or not, the use of the term "lucrative" was clearly one of
10 evaluative opinion and not in bad faith. In *Smith v. Zilverberg*, 481 P.3d 1222 (Nev. 2021), the Nevada
11 Supreme Court considered in a similar context a defendant's statement characterizing plaintiff's
12 "behavior as misogynistic bullying." The high Court ultimately concluded the use of the term
13 constituted "an opinion incapable of being false." Likewise, as for Defendant's reference to the
14 Plaintiffs/Developer's arrangement with the County as to the parks being a "sweetheart deal,"
15 Defendant's statement was again opinion and hyperbole. Whether the Developer's delay in building the
16 parks and the County's agreement to reduce the size of the sports park constitute a "sweetheart deal" is
17 likewise open to debate. However, like the Defendant's use of the term "misogynistic bullying" in
18 *Zilverberg*, Defendant in the instant case was clearly expressing an opinion incapable of being proved
19 false and not in bad faith.

20 **4. Plaintiffs Act Like a "Foreign Government"**

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

1 derogatory opinions about Plaintiffs. Specifically, Defendant when running for the SHCA Board in
2 2017 created a campaign website. On the website he expressed one of his objectives if elected would be
3 to end Plaintiffs/Declarant's control of a majority of seats on the Board. In that regard, Defendant
4 stated he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those
5 that represent us. I lived in foreign countries where citizens did not have this right and saw first-hand
6 the negative implications. I do not like the idea the community I now look to spend my retirement has
7 denied me this central and important right." Motion, Exh. H.

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

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

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

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

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

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

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

- 9 1. In a condominium or planned community, portions of the common elements may be conveyed or
10 subjected to a security interest by the association if persons entitled to cast at least a majority of the
11 votes in the association, including a majority of the votes allocated to units not owned by a declarant,
12 or any larger percentage the declaration specifies, agree to that action; but all owners of units to
13 which any limited common element is allocated must agree in order to convey that limited common
14 element or subject it to a security interest. The declaration may specify a smaller percentage only if all
15 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.

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

17 [B]efore the association can assume a responsibility that's not directly specific—that's not stated
18 as a requirement of common element of the association, that it must get an approval of the—in
19 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.

20 Depo., at 154.

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

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

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

15 **6. Pamphlet Says Plaintiffs Breached Fiduciary Duties and Have “Cost**
16 **Homeowners Millions”**

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

23 In his 2017 campaign materials, Defendant states as his objectives if elected: “[f]irst and
24 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

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

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

1 **7. Kosor's Pamphlet Grossly Overstates Legal Expenses**

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

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

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

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

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

23 The Association did not spend \$88k in General Counsel services in 2016. The sum you refer to is an annualized
24 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.

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

7 Depo., at 122.

8 In the context of a political campaign, Defendant was not unreasonable in relying on the
9 annualized budget amounts in making his statement. A budget is, after all, an estimate of an entity's
10 income and expenditures for a period of time. Defendant relied on SHCA's own estimate of its
11 litigation costs. Defendant explained he reached his \$1.4 million figure by adding approximately the
12 \$88,000 annualized budget figure for general counsel fees to the \$1.22 million annualized litigation
13 budget figure and rounding up. Depo., at 123-24. The Court does not find Defendant's conduct and
14 comments in the context of his campaign were substantially untrue or in bad faith. *See Pegasus*, 118 Nev.
15 at 715. 57 P.3d at 88.

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

25 **IV. Under the Second Prong, Plaintiffs Have Failed to Meet Their Burden to Show 26 Prima Facie Evidence of a Probability of Prevailing on Their Claims**

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

1 probability of prevailing on their claims. To prevail on their defamation and defamation per se claims,
2 the Plaintiffs must show: “(1) a false and defamatory statement by [a] defendant concerning the plaintiff;
3 (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4)
4 actual or presumed damages.” *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. If the plaintiff is a public figure,
5 plaintiff must also provide prima facie evidence the defendant made the statements with “actual malice.”
6 *Id.* at 718-19, 57 P.3d at 90-91.² “Actual malice (or more appropriately, constitutional malice) is defined
7 as knowledge of the falsity of the statement or a reckless disregard for the truth.” *Nev. Indep. Broad. Corp.*
8 *v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983). A person shows “[r]eckless disregard for the truth”
9 when the person has “a high degree of awareness of [the] probable falsity [of the statement].” *Id.* (citing
10 *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)).

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

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

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

3 The two underlying facts of Defendant's opinions that the Court finds are arguably false are: 1)
4 Defendant's statement of law claiming the SHCA Board in accepting Plaintiffs' transfer of parks to
5 SCHCA required homeowner approval of the transfer under Nevada statutes; and 2) Defendant's
6 statement SCHCA's expenditure for legal costs in 2016 was \$1.4 million when the budgeted outlay was
7 approximately \$1.32 million and the actual spending was approximately \$969,000.²

8 As to the first false statement, the Court previously found Defendant's interpretation of NRS
9 116.3112 is not unreasonable, especially for a lay person, and made in good faith. Defendant's

10 ² Plaintiffs spend significant time discussing in their briefings Defendant knew or should have known Plaintiffs' acted
11 within Nevada statutes and the applicable CC&Rs in not transferring Declarant control of the SHCA Board and allowing
12 homeowners' elections of all Board members. The Court, in reviewing the Complaint and expanding it with the briefing
13 papers, has not found Plaintiffs to have identified any specific statement of Defendant wherein he stated in a defamatory
14 manner in a public forum that Plaintiffs had illegally acted in failing to transfer Declarant control. Plaintiffs contend
15 "Mr. Kosor still argues that the Declarant control is improper and continues to make statements degrading Plaintiffs'
16 ability to do its job based on this false belief." However, they provide no specifics. Plaintiffs discuss Defendant's
17 multiple filings with and lawsuit against Nevada Real Estate Division (hereinafter NRED) in arguing Defendant should
18 have known his contention concerning Declarant control was wrong, but does not identify them or specific statement in
19 them as defamatory. Plaintiffs only point out as defamatory Defendant's statement he "spent 24 years as an Air Force
20 officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens
21 did not have this right and saw first-hand the negative implications. I do not like the idea the community I now look to
22 spend my retirement has denied me this central and important right." This statement does not suggest Plaintiffs have
23 violated any law or CC&Rs in not transferring Declarant control. As noted above, this statement is an evaluative
24 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.

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

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

19 ³ Plaintiffs extensively discuss and document in their briefing papers the propriety of the procedure used to transfer the
20 parks to the SHCA. As the Court has noted, the primary point of Defendant’s specifically alleged defamatory statements
21 is not that the transfer was illegal but that it should not have occurred and the parks should have been transferred to the
22 County for maintenance. Plaintiffs take umbrage at Defendant’s related statements that Declarant initially in starting the
23 Southern Highlands development anticipated transferring the parks to the County. However, Defendant in his
24 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.

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

13 **CONCLUSION**

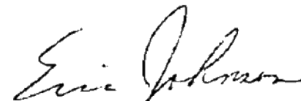
14 The Court concludes Defendant’s statements that Plaintiffs contend are defamatory are, for the
15 most part, statements of evaluative opinions and premised on facts which are true or substantially true
16 or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant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

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

1 whom the action was brought.” NRS 41.670 (1)(a). Plaintiff further asks the Court pursuant to NRS
2 41.670(1)(b) to “award, in addition to reasonable costs and attorney's fees awarded . . . an amount of up
3 to \$10,000 to [Defendant] against whom the action was brought.” NRS 41.670(1)(b). Defendant shall
4 provide an accounting of costs and attorney fees incurred in defending Plaintiff's Complaint, along with
5 billing statements or other documentation for the Court to determine the reasonableness of such fees
6 and costs within 14 days of the date of this order. Defendant may request additional time to provide
7 such fees and costs. Defendant's counsel in providing attorney fees shall also provide the Court with an
8 evaluation of those fees under the analysis of *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d
9 31 (Nev. 1969). Plaintiff may file an opposition to the reasonableness of Defendant's attorney fees and
10 costs within 14 days of Defendant's filing. Plaintiff shall respond in writing to Defendant's request for
11 an award of \$10,000 under NRS 41.670(1)(b) within 14 days of this order. Defendant may file a
12 response within 14 days of Plaintiff's response. Argument on Defendant's request for a \$10,000 award
13 shall be set approximately two weeks after Defendant's filing.

14
15 DATED this ____ day of July, 2021.

Dated this 19th day of July, 2021

16
17 

18 ERIC JOHNSON
19 DISTRICT COURT JUDGE

20 67A 8E0 C5A9 46E7
21 Eric Johnson
22 District Court Judge
23
24

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Olympia Companies, LLC,
7 Plaintiff(s)

CASE NO: A-17-765257-C

8 vs.

DEPT. NO. Department 20

9 Michael Kosor, Jr., Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 7/19/2021

15 Jon Jones r.jones@kempjones.com

16 Ali Augustine a.augustine@kempjones.com

17 Nathanael Rulis n.rulis@kempjones.com

18 Mary Ann Dillard mdillard@lvnvlaw.com

19 Joseph Meservy jmeservy@lvnvlaw.com

20 William Pruitt bpruitt@lvnvlaw.com

21 Luz Macias lmacias@lvnvlaw.com

22 Erica Bennett e.bennett@kempjones.com

23 Pamela Montgomery p.montgomery@kempjones.com

24 Deb Sagert dsagert@lvnvlaw.com

25

26

27

28