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2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

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

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

INTRODUCTION AND SUMMARY OF LITIGATION

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

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

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

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

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

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

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

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

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

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

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II. Plaintiffs Are Limited-Purpose Public Figures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Plaintiffs Act Like a "Foreign Government"

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

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

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

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

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

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

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

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

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

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

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

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

Depo., at 154.

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

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

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

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

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

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

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

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

7. Kosor's Pamphlet Grossly Overstates Legal Expenses

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

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

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

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

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

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

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

Depo., at 122.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

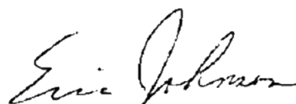
The Court concludes Defendant’s statements that Plaintiffs contend are defamatory are, for the most part, statements of evaluative opinions and premised on facts which are true or substantially true or those of which Defendant did not have knowledge of their falsehood. Consequently, Defendant made the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

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

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

DATED this _____ day of July, 2021.

Dated this 19th day of July, 2021



ERIC JOHNSON
DISTRICT COURT JUDGE

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Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

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