

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

PAT SONGER,

Appellant

v.

RAYMOND DELUCCHI and TOMMY HOLLIS,

Respondents.

Electronically Filed  
Mar 10 2015 11:20 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
No. Supreme Ct. No. 67414  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

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 26 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 Fifth Judicial Department 1  
County Nye Judge Kimberly A. Wanker  
District Ct. Case No. CV35969

**2. Attorney filing this docketing statement:**

Attorney Joseph P. Garin Telephone (702) 382-1500  
Firm Lipson, Neilson, Cole, Seltzer & Garin, P.C.  
Address 9900 Covington Cross Drive  
Suite #120  
Las Vegas, Nevada 89144

Client(s) Pat Songer

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Adam Levine Telephone (702) 386-6812  
Firm Law Offices of Daniel Marks  
Address 610 South Ninth Street  
Las Vegas, NV 89101

Client(s) Raymond Delucchi and Tommy Hollis

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:                          |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                   | <input checked="" type="checkbox"/> Failure to state a claim            |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ 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:

Supreme Court No. 66858

**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:

None.

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

This case arises from an anti-SLAPP litigation under NRS § 41.660. After Plaintiffs served Mr. Songer with the Complaint on July 4, 2014, Mr. Songer promptly moved to dismiss the matter based on Nevada's laws regarding strategic lawsuits against public participation ("SLAPP") on July 24, 2014. Nevada has a no tolerance policy for a SLAPP. Nevada provides complete immunity from civil liability for a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern.

The district court agreed, and granted Mr. Songer's Motion to Dismiss pursuant NRS § 41.660. As a result, Mr. Songer was entitled to reasonable costs and attorney's fees pursuant to NRS § 41.670(1). Mr. Songer argued that he was entitled to reasonable attorney's fees at the prevailing market rate, and not simply to the amount billed. The fact that Lipson Neilson negotiated rates in advance with the particular insurer involved in the matter, does not diminish the quality of the work and the fact that defense counsel ultimately prevailed. Mr. Songer requested an award of reasonable attorney's fees of \$32,885.50, which reflected the prevailing market rate for similar services in the Southern Nevada market. The district court denied the request at the prevailing market rate and only awarded the amounts billed.

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

- 1) Whether the district court erred in awarding fees for the amounts billed rather than setting Mr. Songer's reasonable attorney's fees at the prevailing market rate?

**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:

No.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee 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?

☐ 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 decisions

☐ A ballot question

If so, explain:

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

Was it a bench or jury trial? \_\_\_\_\_

**14. 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

15. Date of entry of written judgment or order appealed from December 29 2014.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served December 30, 2014.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

(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 \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

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. \_\_\_\_, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed January 29, 2015.

If more than one party has 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:

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

NRAP 4(a)

### SUBSTANTIVE APPEALABILITY

20. 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(b)(8)

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

NRAP(b)(8) provides authority for an appeal of "A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment."

The district court's order granting fees and costs pursuant to NRS 41.670(1)(a), was a special order entered after the motion to dismiss was granted.

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

(a) Parties:

Raymond Delucchi

Tommy Hollis

Pat Songer

ERICKSON, THORPE & SWAINSTON, LTD.

(b) If all 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:

ERICKSON, THORPE & SWAINSTON, LTD. is a co-defendant in the district court case, and the fees were awarded against Plaintiffs Delucchi and Hollis only.

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

Plaintiffs: defamation and intentional infliction of emotional distress. Claims dismissed under NRS 41.660 on September 17, 2014, and November 19, 2014.

**23. 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

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

(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

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, 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, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## 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.

Pat Songer


Name of appellant

Joseph P. Garin

Name of counsel of record

3/9/15

Date

  
Signature of counsel of record

Las Vegas, Clark County

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 10th day of March, 2015, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Daniel Marks, Esq.  
Adam Levine, Esq.  
Law Offices of Daniel Marks  
610 S. Ninth St.  
Las Vegas, NV 89101  
Attorneys for Plaintiffs

Judge Carolyn Worrell  
4236 Furgerson Ranch Rd.  
Carson, NV 89701

Todd R. Alexander, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St. 3rd Flr.  
Reno, NV 89519

Dated this 10th day of March, 2015

  
Signature

ORIGINAL  
**In the Fifth Judicial District Court**

NYE COUNTY, NEVADA

ISSUED

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV35969  
Dept. No. 1

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

**SUMMONS**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT:** A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

**ERICKSON, THORPE & SWAINSTON, LTD.**

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at direction of:

CLERK OF THE COURT

By: Pete Costello 06-04-2014

DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiff

Deputy Clerk  
District Court  
1520 E. Basin Avenue  
Pahrump, Nevada 89060

Date

**NOTE:** When service is by publication, add a brief statement of the object of the action.  
See Rules of Civil Procedure, Rule 4(b).

STATE OF NEVADA )

)

ss. AFFIDAVIT OF SERVICE

COUNTY OF CLARK )

\_\_\_\_\_ being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint, \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by:

(affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant \_\_\_\_\_ at (state address) \_\_\_\_\_.
2. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the defendant's usual place of abode located at: (state address) \_\_\_\_\_.

(Use paragraph 3 for service upon agent, completing A or B)

3. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_.
  - a. with \_\_\_\_\_ as an agent lawfully designated by statute to accept service of process;
  - b. with \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

\_\_\_\_\_ ordinary mail  
\_\_\_\_\_ certified mail, return receipt requested  
\_\_\_\_\_ registered mail, return receipt requested

addressed to the defendant \_\_\_\_\_ at the defendant's last known address which is (state address) \_\_\_\_\_.

SUBSCRIBED AND SWORN to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
NOTARY PUBLIC in and for said County and State

My commission expires: \_\_\_\_\_

(SEAL)

1 COMP  
2 LAW OFFICE OF DANIEL MARKS  
3 DANIEL MARKS, ESQ.  
4 Nevada State Bar No. 002003  
5 ADAM LEVINE, ESQ.  
6 Nevada State Bar No. 004673  
7 610 South Ninth Street  
8 Las Vegas, Nevada 89101  
9 (702) 386-0536; FAX (702) 386-6812  
10 *Attorneys for Plaintiffs*

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUN 04 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY PC

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8  
9 IN AND FOR THE COUNTY OF NYE

9 RAYMOND DELUCCHI and  
10 TOMMY HOLLIS,  
11  
12 Plaintiffs,

Case No. C1135969  
Dept. No. /

11 v.

JURY TRIAL DEMANDED

12 PAT SONGER and ERICKSON,  
13 THORPE & SWAINSTON, LTD.,  
14  
15 Defendants.

16 COMPLAINT

17 COMES NOW Plaintiffs Raymond Delucchi and Tommy Hollis by and through undersigned  
18 counsel Adam Levine, Esq. of the Law Office of Daniel Marks and for their causes of action against  
19 the Defendants herein alleges as follows:

- 20 1. At all times material hereto, Plaintiff RAYMOND DELUCCHI, was and is a resident of  
21 Clark County, Nevada.  
22 2. At all times material hereto, Plaintiff TOMMY HOLLIS, was and is a resident of the  
23 Nye County, Nevada.  
24 3. At all times material hereto, Defendant PAT SONGER (hereinafter referred to as  
25 "SONGER"), was and is a resident of Humboldt County, Nevada.

1 4. At all times material hereto, Defendant ERICKSON, THORPE & SWAINSTON, LTD.,  
2 (hereinafter referred to as "ETS") was a Nevada domestic limited-liability company  
3 organized and existing under the laws of the State of Nevada and doing business in Nye  
4 County, Nevada.

5 5. That Defendants caused events to occur in the State of Nevada, County of Nye out of  
6 which Plaintiffs' claims herein arise. The jurisdictional amount for filing these claims is  
7 satisfied and exceeds \$10,000.

8 **COUNT ONE**  
9 **(Defamation)**

10 6. Plaintiff Delucchi is a Firefighter/Paramedic employed by Pahrump Valley Fire &  
11 Rescue Service ("PVFRS"). Plaintiff Hollis is a Firefighter/Emergency Medical  
12 Technician (Intermediate) employed by PVFRS.

13 7. Defendant ETS is a law firm which contracts with The Nevada Public Agency  
14 Insurance Pool and Public Agency Compensation Trust ("POOL/PACT") to provide  
15 legal services.

16 8. On or about May 25, 2012 at 1:00 AM Plaintiffs were driving a PVFRS medical unit on  
17 Nevada State Highway 160 when they encountered unknown person(s) operating an  
18 unknown motor vehicle who was acting erratically. After pulling the medical unit off  
19 the side of the highway, Plaintiffs offered to transport either the driver and/or the  
20 passenger of the vehicle to Desert View Hospital in Pahrump, Nevada. The driver of the  
21 vehicle rejected the offer by dropping his vehicle into gear and speeding off leaving  
22 Plaintiffs by the side of Highway 160 (hereafter "the Incident").

23 9. On or about May 30, 2012 the occupants of the vehicle, later identified as James and  
24 Brittanie Choyce, and/or their relatives, called the Chief of PVFRS regarding the  
25 Incident.

10. On or about June 27, 2012 one or more attorneys from ETS hired and/or arranged for Defendant Songer to review the facts and conduct interviews relating to the Incident.
11. Attorney Rebecca Bruch, who was employed by ETS within the course and scope of her employment, was designated as the person to direct the investigation and to whom Songer would report.
12. On August 2, 2012 Rebecca Bruch e-mailed Songer asking him to call her before Songer wrote his report.
13. Songer and Bruch co-authored a report which was prepared for Plaintiffs' employer regarding the Incident. Portions written by Songer were edited by Bruch. Other paragraphs were written directly by Bruch and directed to be incorporated into the report. Several pages of the "Conclusions" portion of the report stated it was "confidential attorney work product".
14. The report prepared by Songer and Bruch was submitted to Plaintiffs' employer by Songer and/or Bruch. Following submission of the report Songer and Bruch orally reiterated the contents in a telephone conversation with the Town Manager of Pahrump.
15. The report contained multiple false statements of fact, and/or statements of opinion which implied facts to be true, with regard to the Incident which were defamatory in nature. These statements include, but are not necessarily limited to:
  - a. That Plaintiffs engaged in conduct unbecoming employees of the Pahrump Valley Fire & Rescue Service and/or were discourteous to members of the public;
  - b. That Plaintiffs falsified reports and/or made material omissions to reports;
  - c. That Plaintiffs engaged in actual or threatened physical violence against the Choyces including "intimidation";
  - d. That Plaintiffs violated PVFRS policies for failing to report each other's violations of rules and protocols;

- e. That Plaintiffs repeatedly violated their chain of command on multiple issues;
  - f. That Plaintiffs disrupted the PVFRS morale;
  - g. That Plaintiffs attempted to suppress, modify or interfere with written communications of PVFRS;
  - h. That Plaintiffs used profane or indecent language and/or terms of endearment such as "Honey, sweetie etc";
  - i. That Plaintiffs failed to maintain a professional attitude as well as appropriate hygiene while on duty.
  - j. That there was patient contact within the meaning of the law and that Plaintiffs neglected their duties in connection therewith;
  - k. That Plaintiffs refused to transport the Choyces to an "appropriate hospital destination" for their own convenience; and
  - l. That Plaintiff Hollis did not properly supervise the activity of the ambulance in violation of national standards of care.
16. ETS is vicariously liable for the actions of its agents Songer and Bruch.
  17. The statements of the Defendants as set forth above constitute libel and/or slander *per se*.
  18. As a direct and proximate result of the libel and/or slander *per se* by the Defendants, Plaintiffs suffered and/or incurred loss of employment, loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to regain their employment; loss of their homes; and emotional distress.
  19. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to warrant the imposition of punitive damages under NRS 42.005.

///

///



**COUNT TWO**  
**(Intentional Infliction Of Emotional Stress)**

20. Plaintiffs restate the allegations of paragraphs 1 through 19 and incorporate them herein by reference.
21. In addition to the defamatory statements contained within the report submitted by Songer and Bruch, the report made other statements which were false, and known to be false by the authors.
22. Defendant Songer interviewed both Plaintiffs and was informed that the Choyces sped off in their vehicle after an offer was made by the Plaintiffs to transport them to Desert View Hospital. Songer further reviewed audio recordings of earlier interviews with the Plaintiffs where PVFRS was informed of this fact.
23. Songer did not interview either James or Brittanie Choyce in connection with his investigation. Instead, he and Bruch authored a report which falsely suggested to any reader that he had in fact interviewed the Choyces and found their version of the incident to be more credible.
24. The report was written in a manner to falsely suggest to the reader that there had been statements by James and Brittanie Choyce recorded by Lieutenant Steven Moody of PVFRS. In fact there were no such recordings.
25. The report was written in a manner to falsely suggest to the reader that Brittanie Choyce met the standards for the definition of a "patient" when in fact she did not meet the definition of a patient within the meaning of the regulations adopted by the State of Nevada governing paramedics and emergency medical technicians.
26. The report stated that a reasonable person would believe that Plaintiffs Delucchi and Hollis were attempting to cover up the Incident when there was no credible evidence to suggest this.

1 27. The report was written in a manner to falsely suggest to the reader that Desert View  
2 Hospital was not an appropriate hospital to handle hypovolemic shock from loss of  
3 blood, and that an appropriate facility, Summerlin Hospital in Las Vegas, was only an  
4 additional two (2) miles further distance from the location of the Incident. The report  
5 concluded without any evidence that Plaintiffs decided not to transport to Summerlin  
6 Hospital for their own personal convenience.

7 28. In fact (1) Desert View Hospital was an appropriate location for Brittanie Choyces  
8 medical condition, (2) in order get to Summerlin Hospital the ambulance would have to  
9 travel approximately two (2) miles in the wrong direction before there was a break in  
10 the divided highway which would allow the medical unit to make a U-turn on Highway  
11 160, and (3) that Desert View Hospital could be reached quicker in any event because  
12 Highway 160 leading into Pahrump is two (2) lanes in each direction whereas it narrows  
13 in many places to one (1) lane as it passes through the mountains to go back to Las  
14 Vegas.

15 29. The report falsley stated that a "probability in actuarial analysis" was conducted which  
16 determined that Plaintiffs Delucchi and Hollis would commit future acts of misconduct  
17 and/or negligence when in fact no such analysis ever took place, and an actuarial  
18 analysis can never predict future conduct in any event.

19 30. The report and recommendations of the Defendants falsely asserted to the Medical  
20 Director for PVFRS that he had authority to revoke the Plaintiffs' licenses to operate as  
21 a paramedics and/or EMT's, and induced him to do so. In fact, a Medical Director does  
22 not have that authority under the law.

23 31. The report and recommendations of the Defendants were to terminate the Plaintiffs  
24 employment and induced Plaintiffs' employer to do so.

25 ///

1 32. The Defendants' creation and submission of a knowingly false report constitutes  
2 extreme and outrageous conduct exceeding all bounds usually tolerated by decent  
3 society, and was done intentionally and/or with reckless disregard for the emotional  
4 distress that it would cause the Plaintiffs.

5 33. As a direct and proximate result of the Defendants intentional infliction of emotional  
6 distress as set forth above, Plaintiffs have suffered an/or incurred loss of employment,  
7 loss of revenue and the use of revenue; attorney fees and litigation costs in seeking to  
8 regain their employment; loss of their homes; and emotional distress.


9 34. The actions of the Defendants were fraudulent, malicious and/or oppressive so as to  
10 warrant the imposition of punitive damages under NRS 42.005.

11 WHEREFORE Plaintiffs pray for judgment against the Defendants as follows:

- 12 1. For general damages in excess of \$10,000;  
13 2. For special damages in excess of \$10,000;  
14 3. For punitive damages in excess of \$10,000;  
15 4. For attorney's fees and litigation costs incurred;  
16 5. For pre-judgment interest;  
17 6. And for such other and further equitable and/or legal relief as the Court deems just  
18 and proper.

19 DATED this 14 day of May, 2014.

20 LAW OFFICE OF DANIEL MARKS

21   
22 DANIEL MARKS, ESQ.  
23 Nevada State Bar No. 002003  
24 ADAM LEVINE, ESQ.  
25 Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536: FAX (702) 386-6812  
*Attorneys for Plaintiffs*

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2 JOSEPH P. GARIN, ESQ.

3 NEVADA BAR NO. 6653

4 SIRIA L. GUTIERREZ, ESQ.

5 NEVADA BAR NO. 11981

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7 9900 Covington Cross Drive, Suite 120

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11 [jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)

12 [sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

13 *Attorneys for Defendant,*

14 PAT SONGER

15 IN THE FIFTH JUDICIAL DISTRICT COURT

16 NYE COUNTY, NEVADA

17 RAYMOND DELUCCHI and TOMMY  
18 HOLLIS,

19 Plaintiffs,

20 v.

21 PAT SONGER and ERICKSON, THORPE  
22 & SWAINSTON, LTD.,

23 Defendants.

CASE NO: CV35969

DEPT NO: 1

NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT PAT  
SONGER'S SPECIAL MOTION TO  
DISMISS PURSUANT TO NRS § 41.660

24 Please take notice that Defendant Pat Songer's Special Motion to Dismiss Pursuant  
25 to NRS §41.660, was entered on November 19, 2014. A copy of said Order is attached  
26 hereto and made part hereof.

27 DATED this 3<sup>rd</sup> day of December, 2014.

28 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

*Attorneys for Defendant,*

PAT SONGER

**CERTIFICATE OF SERVICE**


I hereby certify that on the 3<sup>rd</sup> day of December, 2014, service of the foregoing  
**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL  
MOTION TO DISMISS PURSUANT TO NRS § 41.660** was made by depositing a true and  
correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

Daniel Marks, Esq.  
Adam Levine, Esq.  
Law Offices of Daniel Marks  
610 South Ninth Street  
Las Vegas, NV 89101

*Attorneys for Plaintiffs*

Todd R. Alexander, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, 3<sup>rd</sup> Flr.  
Reno, NV 89519

*Attorneys for Defendant,  
Erickson, Thorpe & Swainston, Ltd.*



An Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

**ORDER**

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

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[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)*Attorneys for Defendant,*  
PAT SONGER**IN THE FIFTH JUDICIAL DISTRICT COURT****NYE COUNTY, NEVADA**RAYMOND DELUCCHI and TOMMY  
HOLLIS,

Plaintiffs,

v.

PAT SONGER and ERICKSON, THORPE  
& SWAINSTON, LTD.,

Defendants.

CASE NO: CV35969  
DEPT NO: 1**ORDER GRANTING  
DEFENDANT PAT SONGER'S  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NRS § 41.660**

Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez, Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and Todd Alexander, Esq., appearing on behalf of Defendant Erickson, Thorpe & Swainston, LTD., with Thomas Beko and Rebecca Bruch present; the Court having read the pleadings and papers on file, the motion, opposition, and supplemental briefing having heard argument thereon, and with good cause appearing therefore, find as follows:

**CONCLUSIONS OF LAW**

1. It is well settled in Nevada that "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of

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DEPUTY *Tammie Davis*

1 what the Legislature intended by the first statute." See *In re Estate of*  
2 *Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734,  
3 (1975).

4 2. When a statute's doubtful interpretation is made clear through subsequent  
5 legislation, we may consider the subsequent legislation persuasive evidence of  
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*  
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).

8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute  
9 in order to give meaning to the legislative intent.

10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.

11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the  
12 moving party must establish by a preponderance of the evidence, that the  
13 claim is based upon a good faith communication in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public  
15 concern.

16 6. Once the court determines that the moving party has met the burden, the  
17 plaintiff must established by clear and convincing evidence a probability of  
18 prevailing on the claim.

19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the  
20 moving party is entitled to fees and costs.

21 8. A good faith communication in furtherance of the right to petition or the right  
22 to free speech in direct connection with an issue of public concern means  
23 any: (2) communication of information or a complaint to a Legislator, officer  
24 or employee of the Federal Government, this state or a political subdivision  
25 of this state, regarding a matter reasonably of concern to the respective  
26 governmental entity; (3) Written or oral statement made in direct connection  
27 with an issue under consideration by a legislative, executive or judicial body,  
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

### FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and Brittne Choyce.
11. The Choyce family alerted Lieutenant Steve Moody and Fire Chief Scott Lewis of the incident.
12. Lieutenant Steve Moody and Fire Chief Scott Lewis began an internal investigation, and eventually the Town of Pahrump hired Erickson, Thorpe & Swainston ("ETS") to conduct a third-party investigation.
13. ETS eventually retained Pat Songer, the Director of Emergency Services at Humboldt General Hospital in Winnemucca, Nevada, to conduct an investigation.
14. Mr. Songer has over 22 years of experience in emergency services.
15. Mr. Songer conducted his investigation and collected all relevant information that was reasonably available to him. However, he did not interview the Choyces.
16. Mr. Songer has shown by a preponderance of the evidence that his report is a good faith communication in furtherance of the right to free speech on an issue of public concern as defined by Nevada law.
17. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because it is a communication of information to the Town of Pahrump ("Town"), regarding a matter reasonably of concern to the Town based on the incident on Highway 160.
18. Mr. Songer's investigation report is a good faith communication in furtherance of the right to free speech on an issue of public concern because the report is a written statement made in direct connection with an issue



1 under consideration by the Town authorized by law in the disciplinary actions  
2 against Messrs. Delucchi and Hollis.

3 19. Mr. Songer's overall investigation was in good faith and there is no evidence  
4 of bad faith.

5 20. Plaintiffs failed to establish by clear and convincing evidence a likelihood of  
6 prevailing on their claims of defamation and intentional infliction of emotional  
7 distress.

8 21. Plaintiffs failed to establish by clear and convincing evidence that there was  
9 a genuine issue of material fact.

10 IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss  
11 Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice  
12 once the Court has awarded fees and costs. The Court will hold a hearing on Defendant  
13 Pat Songer's Motion for Fees and Costs on December 2, 2014, at 1:30 p.m.

14 DATED this 18<sup>th</sup> day of November, 2014.

15  
16   
DISTRICT COURT JUDGE

17 Submitted by:

18 LIPSON, NEILSON, COLE, SELTZER  
19 & GARIN, P.C.

20 By: 

21 JOSEPH P. GARIN, ESQ.

22 NEVADA BAR NO. 6653

23 SIRIA L. GUTIERREZ, ESQ.

24 NEVADA BAR NO. 11981

25 9900 Covington Cross Drive, Suite 120

26 Las Vegas, Nevada 89144

27 (702) 382-1500

28 *Attorneys for Defendant,*  
PAT SONGER

1 NEOJ  
LAW OFFICE OF DANIEL MARKS  
2 DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
3 ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
4 610 South Ninth Street  
Las Vegas, Nevada 89101  
5 (702) 386-0536; FAX (702) 386-6812  
*Attorneys for Plaintiffs*  
6

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF NYE  
9

10 RAYMOND DELUCCHI and  
11 TOMMY HOLLIS,

Case No. CV35969  
Dept. No. I

12 Plaintiffs,

13 v.

14 PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

15 Defendants.  
16 \_\_\_\_\_/

17 NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS

18 TO: PAT SONGER, Defendant;

19 TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;

20 TO: ERICKSON THORPE & SWAINSTON, LTD., Defendant, and

21 TO: TODD ALEXANDER, ESQ. Attorney for Defendant Erickson Thorpe & Swainston, Ltd.:

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23 ///

24 ///

25 ///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Awarding Fees  
2 and Costs was entered in the above entitled matter on the 29<sup>th</sup> day of December, 2014, a copy of which  
3 is attached hereto.

4 DATED this 30 day of December, 2014.

5 LAW OFFICE OF DANIEL MARKS

6   
7 DANIEL MARKS, ESQ.

8 Nevada State Bar No. 002003

9 ADAM LEVINE, ESQ.

10 Nevada State Bar No. 004673

610 South Ninth Street

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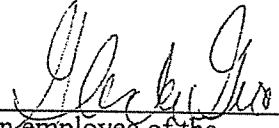
Attorneys for Plaintiffs

11 CERTIFICATE OF MAILING

12 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on  
13 the 30<sup>th</sup> day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,  
14 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the  
15 foregoing NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS, to the addresses as  
16 follows:

17 Todd Alexander, Esq.  
18 LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
19 Attorney for Defendant ETS

20 Siria L. Gutierrez, Esq.  
LIPSON, NEILSON, COLE, SELTZER GARIN  
9900 Covington Cross Drive, Suite 120  
21 Las Vegas, Nevada 89144  
Attorney for Defendant Pat Songer

22   
23 An employee of the  
24 LAW OFFICE OF DANIEL MARKS  
25

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DEPUTY  
Veronica Aguilar

LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
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*Attorneys for Plaintiffs*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Case No. CV35969  
Dept. No. I

Plaintiffs,

v.

PAT SONGER and ERICKSON,  
THORPE & SWAINSTON, LTD.,

Defendants.

ORDER AWARDING FEES AND COSTS

This matter having come on for hearing on the 2<sup>nd</sup> day of December, 2014 on Defendant Erickson Thorpe & Swainston's Motion for Costs Attorney's Fees, and Additional Compensation Pursuant to Nevada's ANTI-Slapp Statute (NRS 41.670), Defendant Pat Songer's Motion for Attorney's Fees and Costs, and Plaintiffs' Motion to Retax Costs, with Plaintiffs being represented by Adam Levine, Esq. of the Law Office of Daniel Marks, and Defendant Pat Songer being represented by Siria L. Gutierrez, Esq. of Lipson, Neilson, Cole, Seltzer, Garin, and Defendant Erickson, Thorpe & Swainston, Ltd., being represented by Todd Alexander, Esq. of Lemons, Grundy & Eisenberg; and the Court having reviewed the pleadings on file and having heard oral arguments of counsel;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that costs are re-taxed and awarded against the Plaintiffs jointly and severally as follows: \$702 in favor of Defendant Songer and \$709.38 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees are awarded against the Plaintiffs jointly and severally as follows: \$21,767.50 in favor of Defendant Songer and \$22,907.50 in favor of Defendant Erickson, Thorpe & Swainston, Ltd.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court declines to award any additional monies pursuant to NRS 41.670(3)(a) as the Court does not believe such an additional award appropriate under the facts of the case.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' request for a stay of execution on the award of fees and costs pending appeal is GRANTED. The court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue will provide adequate security for the attorney's fees and cost award in the event the judgment is affirmed on appeal. However,

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should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this 29<sup>th</sup> day of December, 2014.

KIMBERLY A. WANKER  
DISTRICT COURT JUDGE

Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN

DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
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Las Vegas, Nevada 89144  
*Attorneys for Defendant Pat Songer*

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

TODD ALEXANDER, ESQ.  
Nevada State Bar No. 010846  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
*Attorneys for Defendant ETS*

should the Plaintiffs leave their employment with Pahrump Valley Fire and Rescue for any reason, a continued stay will be conditioned upon each such Plaintiff posting a supersedeas bond in the amount of \$50,000.

DATED this \_\_\_\_ day of December, 2014.


DISTRICT COURT JUDGE

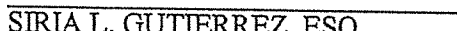
Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

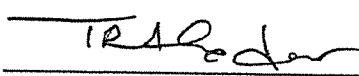
LIPSON, NEILSON, COLE, SELTZER, GARIN

  
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*Attorneys for Defendant Pat Songer*

Approved as to Form and Content:

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