

JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)

*Attorneys for Appellant,*  
PAT SONGER

Electronically Filed  
Jul 17 2015 02:54 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PAT SONGER,  
  
Appellant,  
  
v.  
  
RAYMOND DELUCCHI and TOMMY  
HOLLIS  
  
Respondents

CASE No.: 67414  
District Court Case No.: CV35969

**APPELLANT PAT SONGER'S  
MOTION FOR EXTENSION OF TIME  
FOR FILING OPENING BRIEF  
PURSUANT TO NRAP 26(b)(1)(B)**

**(Second Request)**

**Introduction**

Appellant timely filed this appeal on January 29, 2015, and, as a result, ADKT 501 and the amendments to Nevada's appellate procedure apply to this matter.

Appellant Songer requested and obtained a 14-day telephonic extension on July 6, 2015, making his opening brief due on July 20, 2015. This is Appellant Songer's second request for an extension.

Since obtaining the telephonic extension, the case has had significant changes, which present an extraordinary and compelling circumstance to grant a 90-day extension for Appellant Songer to file his Opening Brief on or before October 19, 2015.

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**Case background**

This case arises from the district court's denial of reasonable attorney's fees and costs at the prevailing market rate from a successful anti-SLAPP motion to dismiss. This appeal was subsequent to Respondents Delucchi and Hollis' (collectively "Respondents") appeal in case no. 66858 regarding the district court's granting of. Though subsequent in filing, the two appeals are related.

This Court dismissed Respondents' appeal on the grounds of a jurisdictional defect on appeal from a final judgment. See, Order Dismissing Appeal, dated June 1, 2015. Respondents failed to seek any further review from this Court, and, as a result, the Court issued its remittitur on June 26, 2015.

**Appellant Songer has extraordinary and compelling circumstances to grant his requested extension**

This Court has not had the opportunity to provide guidance on what constitutes "extraordinary and compelling circumstances." NRAP 26(b)(1)(2015). However, NRAP 31(b)(3)(B) requires a showing of good cause for an initial motion for extension and for an additional extension the party must show extraordinary circumstances and extreme need. NRAP 31(b)(3)(B).

Here, Appellant Songer has both good cause and can present an extraordinary circumstance and extreme need for the requested extension.

**Current Motion Practice in the district court**

Unsatisfied with this Court's dismissal of case no. 66858, Respondents filed a "Motion for Order of Final Dismissal" in the district court on June 26, 2015. See, attached Exhibit A. Appellant Songer filed an opposition to Respondents' motion on July 15, 2015. See, attached Exhibit B. The district court has set a hearing on September 1, 2015, regarding this pending

1 motion and whether the court will issue a duplicative final judgment, so that Respondents can  
2 revive their dismissed appeal in case no. 66858. See, Exhibit A.

3 Respondents' current motion practice to revive their dismissed appeal in case  
4 no. 66858 constitutes an extraordinary circumstance

5 Respondents' actions certainly present an extraordinary circumstance considering this  
6 Court "decline[d] to remand this matter to the district court for entry of an order of dismissal."  
7 See, Order Dismissing Appeal, dated June 1, 2015. Yet, Respondents have taken it upon  
8 themselves to seek a "Final Dismissal" anyways, in order to circumvent this Court's prior  
9 dismissal of their appeal and because the final judgment was already noticed on December  
10 30, 2014. Incidentally, this current appeal is from the final judgment in this matter.

11 As a result of the unusual and extraordinary circumstances of Respondents' current  
12 motion practice in the district court, Appellant Songer requests an extension of time of 90-  
13 days for filing his Opening Brief to allow the "Motion for Order of Final Dismissal" to be  
14 resolved. Appellant Songer needs to reevaluate the current appeal considering the  
15 uncertainty on whether Respondents' will be allowed to go forward with a subsequent appeal  
16 on the district court's granting of Appellant Songer's motion to dismiss the anti-SLAPP. The  
17 current appeal on attorney's fees is directly related and intertwined with the dismissed  
18 appeal. In fact, Appellant Songer's decision to even proceed with the current appeal was, in  
19 part, dependent on the fact that there was an ongoing appeal on the anti-SLAPP dismissal.  
20 With the anti-SLAPP dismissal appeal now in a state of uncertainty, which Respondents'  
21 created, Appellant Songer requires additional time to file his Opening Brief.  
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**Conclusion**

Appellant Songer has presented both good cause and unusual and extraordinary circumstances to support his 90-day requested extension to file his Opening Brief. Therefore, Appellant Songer asks for an extension until October 19, 2015, to file his Opening Brief.

Dated this 17th day of July, 2015

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

By: /s/ Siria L. Gutiérrez  
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 Appellant,*  
PAT SONGER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July, 2015, service of the foregoing  
**APPELLANT PAT SONGER'S MOTION FOR EXTENSION OF TIME FOR FILING  
OPENING BRIEF PURSUANT TO NRAP 26(b)(1)(B )** was made by the Supreme Court's  
electronic filing system to the email address registered to:

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

*Attorneys for Respondents*

/s/ Talin Ebrahimian  
An Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

**EXHIBIT “A”**

**EXHIBIT “A”**

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

9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144

Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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JOSEPH P. GARIN, ESQ.  
NEVADA BAR No. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR No. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[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

**PAT SONGER'S OPPOSITION TO  
MOTION FOR ORDER OF FINAL  
DISMISSAL**

**I. Introduction**

Pat Songer opposes to Plaintiffs' request for a final judgment as this Court has already entered a final judgment. The present Motion is inappropriate and moot for three main reasons: 1) Plaintiffs provide no legal authority for their untimely request, 2) Plaintiffs ignored the opportunity to have input in Songer's Order granting the anti-SLAPP motion to dismiss, and 3) based on the Nevada Supreme Court's decision, the final judgment was the Order for Fees and Costs, which was noticed long ago and Plaintiffs did not file an appeal on that order. In other words, this case is over<sup>1</sup> and the Court should dismiss the pending motion.

//

<sup>1</sup> Songer has a pending appeal on the award of fees. Songer will further evaluate the necessity of the appeal based on the current motion practice.

FILED  
FIFTH JUDICIAL DISTRICT COURT  
JUL 15 2015  
NYE COUNTY DEPUTY CLERK  
DEPUTY \_\_\_\_\_  
Veronica Aguilar

1           II.       **There is legal mechanism for Plaintiffs' request to this Court**

2           Plaintiffs are attempting to create their own rules so that they can proceed with the  
3 dismissed appeal. NRCP 52 provides any party with 10 days after written notice of entry to  
4 file a motion with the court to amend the order. Nev. R. Civ. P. 52. While NRCP 60 only  
5 allows for relief from an order based on one of the following: "1) mistake, inadvertence,  
6 surprise, or excusable neglect; 2) newly discovered evidence which by due diligence could  
7 not have been discovered in time to move for a new trial under Rule 59(b); 3) fraud  
8 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other  
9 misconduct of an adverse party; 4) the judgment is void; or, 5) the judgment has been  
10 satisfied, released, or discharged, or a prior judgment upon which it is based has been  
11 reversed or otherwise vacated, or it is no longer equitable that an injunction should have  
12 prospective application." Nev. R. Civ. P. 60(b). Notably, basis one, two, and three have an  
13 express six-month deadline from when the notice of entry of the order was served. *Id.*

14           Not once in their motion do Plaintiffs cite legal authority<sup>2</sup> for their request to the  
15 Court. Nor do they attempt to argue for relief under Rule 52 or Rule 60. In fact, the time for  
16 Plaintiffs to use Rule 60(b)(1), (2) or (3) has lapsed as their motion needed to be filed on or  
17 before June 3, 2015.

18           Instead of providing a legal basis, Plaintiffs vaguely ask this Court to repeat itself  
19 and re-issue the final judgment based on no legal authority. Yet, there is no authority for  
20 what Plaintiffs are asking, as a result, their motion should be denied.

21           III.       **Background of Songer's Order on Motion to Dismiss**

22           Plaintiffs filed their appeal based on Erickson, Thorpe and Swainston's order  
23 granting the motion to dismiss dated October 3, 2014. Plaintiffs mistakenly believed ETS'  
24 order encompassed both ETS' and Songer's Motions to Dismiss; however, this was  
25 incorrect and Plaintiffs chose to ignore Songer's draft Order.

26 \_\_\_\_\_  
27 <sup>2</sup> Under the Nevada District Court Rules "a party filing a motion shall also serve and file with it a memorandum  
28 of points and authorities in support of each ground thereof. The absence of such memorandum may be  
construed as an admission that the motion is not meritorious and cause for its denial or as a waiver of all  
grounds not so supported." DCR 13.



1 Songer provided Plaintiffs with a draft order as early as September 18, 2014,<sup>3</sup> and  
2 received no response or comments on the contents of the order. Then, when Songer  
3 followed up and sent the proposed order to this Court, Plaintiffs argued that this Court could  
4 not sign any additional order regarding the Motion to Dismiss because the ETS order had  
5 been signed and appealed.

6 This Court granted ETS' and Songer's respective Motions to Dismiss under NRS §  
7 41.660, and ordered *each* party to prepare their own order for their motion, which is exactly  
8 what the parties did. Although ETS and Songer argued for the application of Nevada's anti-  
9 SLAPP statute, the findings were indeed different, as there were additional factual findings in  
10 Songer's Order.

11  
12 IV. **The Order on the award of attorney's fees and costs has already been entered**

13 Due to Plaintiffs ignoring Songer's proposed order on the attorney's fees and costs,  
14 Plaintiffs insisted on preparing the order on the award of attorney's fees and costs, and the  
15 granting of the stay on the execution of the award ("Fees and Costs Order"). Plaintiffs  
16 drafted the Fees and Costs Order, with ETS and Songer providing additional comments,  
17 submitted it to this Court, and Plaintiffs noticed it on December 30, 2014. Therefore, any  
18 appeal from the Fees and Costs Order was due on or before January 29, 2015.<sup>4</sup> The Fees  
19 and Costs Order, which Plaintiffs did not file with the Nevada Supreme Court<sup>5</sup>, had already  
20 contemplated that the Orders on the anti-SLAPP were the final judgments, stating "the  
21 court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue  
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26 <sup>3</sup> Attached as Exhibit A is a true and correct copy of the email and proposed draft order sent to  
27 Glenda Guo. Attached as Exhibit B is a true and correct copy of the letter and proposed order sent  
28 to Judge Wanker, with a CC to Appellant's counsel.

<sup>4</sup> Songer was the only party to file an appeal based on this order. Songer's Notice of Appeal  
was filed on January 29, 2015.

1 will provide adequate security for the attorney's fees and costs award in the event the  
2 judgment is affirmed on appeal." See, Notice of Entry of Order dated December 30, 2014,  
3 attached as Exhibit C. Thus, the Fees and Costs Order shows the Court's intent that the  
4 anti-SLAPP orders were indeed the final judgments against each respective defendant.

5 Based on the Nevada Supreme Court's Order Dismissing Appeal, the order on  
6 attorney's fees and costs was the order that brought this case to its conclusion. As a result,  
7 the Fees and Costs Order is the final judgment for purposes of this matter. Plaintiffs  
8 ignored their opportunity to have input in Songer's Order, and failed to file an appeal based  
9 on the Fees and Costs Order noticed on December 30, 2014. With their being no basis for  
10 this motion, no appeal from Plaintiffs on the award of fees and costs, and a complete lack  
11 of authority, this Court should dismiss this motion.  
12

13  
14 V. Conclusion

15 This Court granted Songer's anti-SLAPP motion to dismiss nearly 11 months ago.  
16 Since that time, Songer has incurred substantial fees and costs for defending the appeal,  
17 which the Nevada Supreme Court has now dismissed, and even more fees and costs for  
18 the current motion practice. Plaintiffs had their opportunity to see this case through;  
19 however, due to their refusal to acknowledge Songer's overtures to get their input on the  
20 anti-SLAPP motion order, this case is now over. Plaintiffs also failed to file an appeal after  
21 Songer served notice of the Order for Fees and Costs. There is no basis Plaintiffs' request

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27 <sup>5</sup> The Supreme Court even noted "[Plaintiffs] have not provided a copy of the order awarding fees and costs."

28 Supreme Court Order, filed June 1, 2015, fn 1.

1 and this Court should deny the motion in its entirety.

2 DATED this 15<sup>th</sup> day of July, 2015.

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

4  
5 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

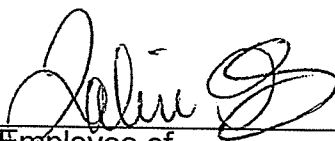
I hereby certify that on the 15<sup>th</sup> day of July 2015, service of the foregoing **NOTICE OF APPEAL** was made by depositing a true and correct copy of the same in the United States mail, with postage fully prepaid, addressed to:

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.

**EXHIBIT “A”**

**EXHIBIT “A”**

## Talin Ebrahimian

**From:** Elsa Pena  
**Sent:** Thursday, September 18, 2014 11:27 AM  
**To:** gguo@danielmarks.net  
**Cc:** Todd R. Alexander; Siria Gutierrez  
**Subject:** Songer, et al. adv. Delucchi, et al.  
**Attachments:** (Proposed) Order Granting Songer's Special MTD - 09-18-14.pdf

Dear Ms. Guo,

On behalf of Siria Gutiérrez, please have Mr. Levine review the attached (Proposed) Order and provide his changes or approval by 5 p.m. on Friday, September 19, 2014. Should Mr. Levine have any questions, please have him contact Ms. Gutiérrez directly.

*Sincerely,*

**Lipson|Neilson**  
COLE, SELTZER, GARIN, P.C.  
*Attorneys and Counselors at Law*

*Elsa C. Peña, Legal Assistant to  
Joseph P. Garin, Esq.  
Siria L. Gutiérrez, Esq.  
Las Vegas Office  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144-7052  
(702) 382-1500 ext. 119  
(702) 382-1512 (fax)  
Email: [epena@lipsonneilson.com](mailto:epena@lipsonneilson.com)  
Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)*

### OFFICES IN NEVADA & MICHIGAN

\*\*\*\*\*

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**ORDR**

JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[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 Daniel Marks, 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

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 Brittnie 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 briefing shall be as follows: Defendant  
13 Songer has until September 26, 2014, to file a Motion For Fees and Costs; Plaintiffs have  
14 until October 26, 2014 to file an opposition, and Defendant Pat Songer has until  
15 November 5, 2014, to file a reply. The Court will hold a hearing on Defendant Pat  
16 Songer's Motion for Fees and Costs on November 19, 2014, at 1:30 p.m.

17 DATED this \_\_\_\_\_ day of September, 2014.

18  
19 \_\_\_\_\_  
DISTRICT COURT JUDGE

20 Submitted by:  
21 LIPSON, NEILSON, COLE, SELTZER  
& GARIN, P.C.

Approved as to Form and Content:  
LAW OFFICE OF DANIEL MARKS

22  
23 By: \_\_\_\_\_  
JOSEPH P. GARIN, ESQ.  
NEVADA BAR NO. 6653  
24 SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR NO. 11981  
25 9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
26 (702) 382-1500  
27 *Attorneys for Defendant,*  
PAT SONGER

By: \_\_\_\_\_  
DANIEL MARKS, ESQ.  
NEVADA BAR NO. 2003  
ADAM LEVIN, ESQ.  
NEVADA BAR NO. 4673  
610 S. Ninth Street  
Las Vegas, NV 89101  
(702) 386-0536  
*Attorneys for Plaintiffs, RAYMOND*  
DELUCCI and TOMMY HOLLIS

**Talin Ebrahimian**

---

**From:** Siria Gutierrez  
**Sent:** Monday, November 10, 2014 2:22 PM  
**To:** 'Glenda Guo'; Joe Garin; Talin Ebrahimian  
**Subject:** RE: Delucchi / Hollis v Songer / ETS

Dear Ms. Guo,

The Court only signed the order granting ETS' Motion. It had not signed the order regarding Mr. Songer's Motion due to your office's delay in approving our proposed order. We had no choice but to proceed with submitting our order.

There were separate motions filed, which require separate orders. I'll leave it up to the Court to decide if she will sign this separate order at this time considering your client's pending appeal.

Very Truly Yours,

Siria

**Lipson|Neilson**  
COLE, SELTZER, GARIN, P.C.  
*Attorneys and Counsellors at Law*

Siria L. Gutiérrez, Esq.  
Nevada Bar No. 11981  
California Bar No. 288362  
Lipson, Neilson, Cole, Seltzer & Garin, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500 Ext. 114  
Fax: (702) 382-1512  
Email: [sgutierrez@lipsonneilson.com](mailto:sgutierrez@lipsonneilson.com)  
Website: [www.lipsonneilson.com](http://www.lipsonneilson.com)

Offices in Nevada and Michigan

\*\*\*\*\*

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**From:** Glenda Guo [mailto:gguo@danielmarks.net]  
**Sent:** Monday, November 10, 2014 2:18 PM  
**To:** Joe Garin; Siria Gutierrez; Talin Ebrahimian  
**Subject:** Delucchi / Hollis v Songer / ETS  
**Importance:** High

Good Afternoon:

I am in receipt of your e-mail of today's date regarding the submission of a second Order to the Court. Please be advised that the judge has already signed an Order Granting Summary Judgment and that Order is already the subject of an appeal. Therefore there should be no further Order signed or filed in this matter.

GLENDA GUO  
Paralegal  
LAW OFFICE OF DANIEL MARKS  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; FAX (702) 386-6812  
Email: [gguo@danielmarks.net](mailto:gguo@danielmarks.net)

**EXHIBIT “B”**

**EXHIBIT “B”**

JEFFREY T. NEILSON<sup>1,2,5</sup>  
JOSEPH P. GARIN<sup>1,2,3,5</sup>  
PHILLIP E. SELTZER<sup>1,2</sup>  
SHANNON D. NORDSTROM<sup>1,6</sup>  
J. WILLIAM EBERT<sup>1</sup>  
KALEB D. ANDERSON<sup>1</sup>  
STEPHEN G. KEIM<sup>1,8</sup>  
ANGELA T. NAKAMURA OCHOA<sup>1</sup>  
CRYSTAL J. HERRERA<sup>1</sup>  
JESSICA A. GREEN<sup>1</sup>  
H. SUNNY JEONG<sup>1</sup>  
SIRIA L. GUTIERREZ<sup>1,6</sup>  
CHRISTIANA O. OTUWA<sup>4</sup>

1 ADMITTED IN NEVADA  
2 ADMITTED IN MICHIGAN  
3 ADMITTED IN ILLINOIS  
4 ADMITTED IN NEW YORK  
5 ADMITTED IN COLORADO  
6 ADMITTED IN CALIFORNIA  
7 ADMITTED IN FLORIDA  
8 ADMITTED IN PENNSYLVANIA  
9 ADMITTED IN MASSACHUSETTS  
10 ADMITTED IN MARYLAND

LAW OFFICES

**Lipson|Neilson**  
COLE, SELTZER, GARIN, P.C.  
*Attorneys and Counselors at Law*

9900 COVINGTON CROSS DRIVE, SUITE 120  
LAS VEGAS, NEVADA 89144

TELEPHONE (702) 382-1500  
TELEFAX (702) 382-1512  
www.lipsonneilson.com

E-MAIL: sgutierrez@lipsonneilson.com

November 10, 2014

BARRY J. LIPSON  
(1955-2003)

STEVEN R. COLE<sup>2</sup>  
THOMAS G. COSTELLO<sup>2</sup>  
DAVID B. DEUTSCH<sup>2</sup>  
STEVEN H. MALACH<sup>2</sup>  
KAREN A. SMYTH<sup>2,4</sup>  
C. THOMAS LUDDEN<sup>2</sup>  
STUART D. LOGAN<sup>2</sup>  
SANDRA D. GLAZIER<sup>2</sup> STARR  
HEWITT KINCAID<sup>2</sup>  
SHAWN Y. GRINNEN<sup>2</sup>  
DOUGLAS E. KELIN<sup>2,3,7</sup>  
SAMANTHA K. HERAUD<sup>9</sup>  
EMILY J. SCHOLLER<sup>2</sup>  
CARLY R. KOLO<sup>2,10</sup>

Judge Kimberly A. Wanker  
Fifth Judicial District Court  
1520 E. Basin Ave., Dept. 1  
Pahrump, Nevada 89060

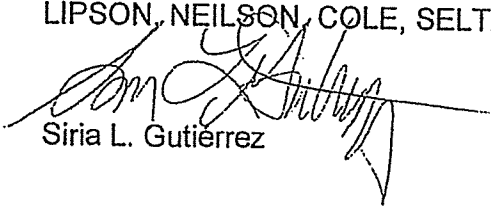
Re: Songer, et al. adv. DeLucchi, et al.  
Case No.: CV35969

Dear Honorable Judge Wanker:

Please find enclosed for your review and signature a revised Order Granting Defendant Pat Songer's Special Motion to Dismiss Pursuant to NRS § 41.660 with the corrected name and we believe the remainder of the proposed order is accurate. We re-reviewed the audio from the hearing and believe the proposed order reflects the Court's ruling. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

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

  
Siria L. Gutierrez

SLG/te/HI5703-007

Enclosures (As Stated)

cc: Joseph P. Garin (via email only)  
Adam Levine (via email only)  
Todd Alexander (via email only)

1 **ORDR**  
2 JOSEPH P. GARIN, ESQ.  
3 NEVADA BAR NO. 6653  
4 SIRIA L. GUTIERREZ, ESQ.  
5 NEVADA BAR NO. 11981  
6 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
7 9900 Covington Cross Drive, Suite 120  
8 Las Vegas, Nevada 89144  
9 Phone: (702) 382-1500  
10 Fax: (702) 382-1512  
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

**ORDER GRANTING  
DEFENDANT PAT SONGER'S  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NRS § 41.660**

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660  
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,  
26 Esq., appearing on behalf of Defendant Pat Songer, and Adam Levine, Esq., appearing on  
27 behalf of Plaintiffs Raymond Delucchi and Tommy Hollis, who were also present, and  
28 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

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 \_\_\_\_\_ 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

**EXHIBIT “C”**

**EXHIBIT “C”**

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.:

22 ///

23 ///

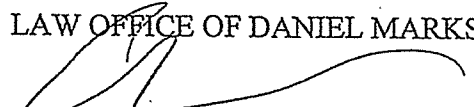
24 ///

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

11 610 South Ninth Street

12 Las Vegas, Nevada 89101

13 (702) 386-0536; FAX (702) 386-6812

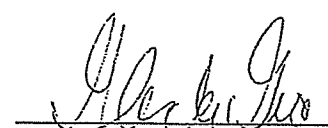
14 Attorneys for Plaintiffs

15 CERTIFICATE OF MAILING

16 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on  
17 the 30<sup>th</sup> day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,  
18 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the  
19 foregoing NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS, to the addresses as  
20 follows:  
21

22 Todd Alexander, Esq.  
23 LEMONS, GRUNDY & EISENBERG  
24 6005 Plumas Street, Suite 300  
25 Reno, Nevada 89519  
*Attorney for Defendant ETS*

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

26   
27 An employee of the  
28 LAW OFFICE OF DANIEL MARKS

FILED  
FIFTH JUDICIAL DISTRICT COURT

DEC 29 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

Veronica Aguilar

LAW OFFICE OF DANIEL MARKS  
DANIEL MARKS, ESQ.  
Nevada State Bar No. 002003  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
(702) 386-0536; FAX (702) 386-6812  
*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;

Delucchi and Hollis v. Songer and Erickson, Thorpe & Swainston, Ltd.  
Case No. CV35969

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  
ADAM LEVINE, ESQ.  
Nevada State Bar No. 004673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

  
SIRIA L. GUTIERREZ, ESQ.  
Nevada State Bar No. 011981  
9900 Covington Cross Drive, Suite 120  
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*



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

Respectfully submitted by:

THE LAW OFFICE OF DANIEL MARKS

**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 Plaintiffs*

SIRIA L. GUTIERREZ, ESQ.  
Nevada State Bar No. 011981  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Defendant Pat Songer*

LEMONS, GRUNDY & EISENBERG

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

**EXHIBIT “B”**

**EXHIBIT “B”**

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

FILED  
2015 JUN 26 A 11:38  
Stephanie May  
NYE COUNTY CLERK  
BY \_\_\_\_\_

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.,

Hearing Date: 9/1/2015  
Hearing Time: 9:00 am

Defendants.

RE-NOTICE OF MOTION FOR ORDER OF FINAL DISMISSAL

TO: PAT SONGER, Defendant;

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

TO: ERICKSON, THORPE & SWAINSTON, Defendant;

TO: TODD ALEXANDER, ESQ., Attorney for Defendant Ericson, Thorpe & Swainston:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel  
will bring the PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL on for hearing before


///

///

1 this Court on the 1<sup>st</sup> day of September 2015, at the hour of 9.00 o'clock  
2 A.M.

3 DATED this 23<sup>rd</sup> day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5   
6 DANIEL MARKS, ESQ.  
7 Nevada State Bar No. 2003  
8 ADAM LEVINE, ESQ.  
9 Nevada State Bar No. 4673  
10 610 South Ninth Street  
11 Las Vegas, Nevada 89101  
12 *Attorneys for Plaintiffs*

1 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*

FILED

2015 JUN 15 P 1:36  
Stephanie May  
NYE COUNTY CLERK  
BY DEPUTY

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

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.

17 PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL ✓

18 COMES NOW Plaintiffs, Raymond Delucchi and Tommy Hollis, by and through their  
19 undersigned counsel, Adam Levine, Esq. of the Law Office of Daniel Marks and hereby moves the  
20 Court for an Order of Final Dismissal. .

21 ///

22 ///

23 ///

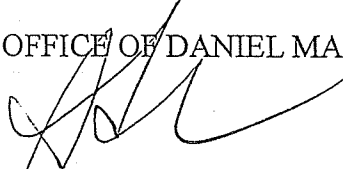
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25 ///

1 The grounds for Plaintiffs' Motion are set forth in the following Memorandum of Points and  
2 Authorities

3 DATED this 7/15 day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5   
6 DANIEL MARKS, ESQ.  
7 Nevada State Bar No. 2003  
8 ADAM LEVINE, ESQ.  
9 Nevada State Bar No. 4673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

10 NOTICE OF MOTION

11 TO: PAT SONGER, Defendant;

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


13 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

14 TO: TODD ALEXANDER, ESQ., Attorney for Defendant Ericson, Thorpe & Swainston:

15 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel  
16 will bring the above and foregoing PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL  
17 on for hearing before this Court on the 21<sup>st</sup> day of July 15 2015, at the hour of  
18 9:00 o'clock a.M.

19 DATED this 7/15 day of June, 2015.

20 LAW OFFICE OF DANIEL MARKS

21   
22 DANIEL MARKS, ESQ.  
23 Nevada State Bar No. 2003  
24 ADAM LEVINE, ESQ.  
25 Nevada State Bar No. 4673  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

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Based on the Notice of Entry of the Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss Plaintiffs filed their Notice of Appeal and Case Appeal Statement on October 27, 2015. The Appeal was filed and issued Case No. 66858.

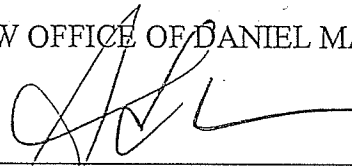
On April 14, 2015 the Supreme Court filed an Order to Show Cause why the appeal should not be dismissed on jurisdictional grounds due to the fact that the November 19, 2015 Order was not a final judgment for purposes of appellate jurisdiction as it contemplated dismissal at a future date. (Attached hereto as Exhibit "3"). After briefing by the parties, the Supreme Court issued its Order Dismissing Appeal in Docket No. 66858 noting "Appellant may file a notice of appeal from any final judgment entered in this matter." (Attached hereto as Exhibit "4").

///

1 Plaintiffs desire to appeal the Court's ruling on the merits. Because the prior orders entered by  
2 this Court have been deemed insufficient by the Supreme Court to constitute a final judgment for  
3 purposes of appellate jurisdiction, Plaintiffs therefore request that an Order of Final Dismissal in the  
4 above entitled case be issued for purposes of rendering the matter right for appellate review.

5 DATED this 11<sup>th</sup> day of June, 2015.-

6 LAW OFFICE OF DANIEL MARKS

7 

8 DANIEL MARKS, ESQ.  
9 Nevada State Bar No. 2003  
10 ADAM LEVINE, ESQ.  
11 Nevada State Bar No. 4673  
12 610 South Ninth Street  
13 Las Vegas, Nevada 89101  
14 *Attorneys for Plaintiffs*



# EXHIBIT "1"

Todd R. Alexander, Esq., NSB #10846  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
Reno, Nevada 89519  
(775) 786-6868

Attorney for Defendant, Erickson, Thorpe & Swainston, Ltd.

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

RAYMOND DELUCCHI and TOMMY HOLLIS,

Plaintiffs,

Case No. CV35969

v.

Dept. No. 1

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

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss was entered on September 17, 2014. A copy of said Findings is attached hereto as Exhibit 1.

I affirm this document does not contain the social security number of any person.

Dated: October 3, 2014.

By: 

Todd R. Alexander, Esq.  
Attorney for Defendant,  
Erickson, Thorpe & Swainston, Ltd.

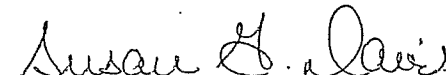
LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
SUITE 300  
RENO, NV 89519  
775 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on October 3, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within NOTICE OF ENTRY OF ORDER, addressed to the following:

Daniel Marks, Esq.  
Adam Levine, Esq.  
Law Office of Daniel Marks  
610 South Ninth Street  
Las Vegas, Nevada 89101  
*Attorney for Plaintiffs*

Siria L. Gutierrez, Esq.  
Lipson | Neilson  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144-7052  
*Attorneys for Pat Songer*

  
\_\_\_\_\_  
Susan G. Davis

LEMONS, GRUNDY  
& EISENBERG  
6005 PLUMAS ST.  
SUITE 300  
RENO, NV 89519  
(775) 796-6868

# EXHIBIT 1

# EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY  
Patricia Couture

Case No. CV35969

Dept. No. 1

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

RAYMOND DELUCCI and TOMMY  
HOLLIS,

Plaintiff,

v.

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

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER  
GRANTING DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL  
MOTION TO DISMISS

Defendant ERICKSON, THORPE & SWAINSTON, LTD. ("ETS"), has filed a Special Motion to Dismiss pursuant to Nevada's anti-SLAPP statute. Plaintiffs have opposed the motion, and ETS has replied in support thereof. Additionally, this Court ordered supplemental briefing on two issues: (1) which version of the statute applies (pre or post 2013 amendments); and (2) whether a deficient investigation can still result in a good faith communication entitled to protection under Nevada's anti-SLAPP statute. Both parties have provided supplemental briefing as ordered. Furthermore, this Court heard oral argument from all involved parties on August 27, 2014. Having carefully considered all parties' briefing and oral argument, this Court finds and concludes as follows:

FINDINGS OF FACT

1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the

1 "Highway 160 incident"), in which the ambulance they were operating was flagged down by  
2 passing motorists, James and Brittne Choyce.

3 2. At the time of the Highway 160 incident, Brittne Choyce had given birth to a stillborn  
4 fetus, and she and her husband sought to have Brittne taken by Plaintiffs' PVFRS ambulance  
5 to a hospital in Las Vegas, Nevada.  
6

7 3. For reasons that remain in dispute between the parties, but are not pertinent to this  
8 decision, Plaintiffs did not ultimately transport Brittne Choyce in the PVFRS ambulance.

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone  
10 complaint from Brittne Choyce's mother regarding Plaintiffs' conduct during the Highway  
11 160 incident.

12 5. The Town of Pahrump retained Rebecca Bruch, attorney and partner at ETS, to  
13 coordinate an investigation into the Highway 160 incident. In turn, Ms. Bruch retained  
14 Defendant Pat Songer as an independent investigator to conduct the investigation into the  
15 Highway 160 incident.  
16

17 6. During his investigation, Mr. Songer reviewed a synopsis of the complaint the Town  
18 of Pahrump had received via telephone from Brittne Choyce's mother. The synopsis was  
19 drafted by the Town employee who had taken the telephone call.  
20

21 7. Mr. Songer also reviewed notes of an interview with James and Brittne Choyce by  
22 Fire Chief Scott Lewis and Lt. Moody. Mr. Songer was not able to personally interview Mr.  
23 and Mrs. Choyce because Brittne had refused to speak with anyone about the Highway 160  
24 incident, and James had committed suicide.

25 8. During the course of his investigation, Mr. Songer also interviewed Plaintiffs Delucchi  
26 and Hollis.  
27

28 9. After completing his investigation, Mr. Songer prepared a report to the Town of

1 concern," as that phrase is defined in NRS 41.637(2) and (3). Specifically, Mr. Songer's  
2 investigative report was a communication of information to the Town of Pahrump regarding a  
3 matter reasonably of concern to the Town. NRS 41.637(2). Additionally or alternatively, Mr.  
4 Songer's report was a written statement made in direct connection with an issue under  
5 consideration by the Town of Pahrump. NRS 41.637(3).  
6

7 3. ETS has further shown that Mr. Songer's report was made without knowledge of its  
8 falsehood. Although Plaintiffs have called into question the sufficiency of Mr. Songer's  
9 investigation and the accuracy of the information contained in Mr. Songer's report, this Court  
10 concludes that Plaintiffs have not presented evidence showing that said information was  
11 knowingly false. Stated differently, this Court concludes that, even if it is established that Mr.  
12 Songer's investigation was inadequate and the contents of his report were inaccurate, Mr.  
13 Songer's report is still entitled to the protections of Nevada's anti-SLAPP statute, as long as  
14 the report was not knowingly false. Thus, this Court concludes that Mr. Songer acted in good  
15 faith in submitting his investigative report to the Town of Pahrump.  
16

17 4. This preliminary showing having been made, the burden shifted to Plaintiffs to show,  
18 by clear and convincing evidence, a probability of prevailing on their claims. NRS  
19 41.660(3)(b).  
20

21 5. Plaintiffs have not met their burden of showing, by clear and convincing evidence, a  
22 probability of prevailing on their claims.

23 ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Erickson,  
25 Thorpe & Swainston's Special Motion to Dismiss is GRANTED.  
26

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IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17<sup>th</sup>, 2014.

By: KIMBERLY A. WANKER  
DISTRICT COURT JUDGE



# EXHIBIT "2"

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

RECEIVED  
BY: [Signature]  
12/19/14

NEOJ  
JOSEPH P. GARIN, ESQ.  
NEVADA BAR No. 6653  
SIRIA L. GUTIERREZ, ESQ.  
NEVADA BAR No. 11981  
LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Phone: (702) 382-1500  
Fax: (702) 382-1512  
[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

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

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

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

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

By: [Signature]

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

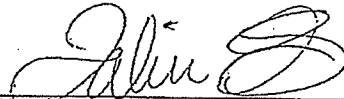
I hereby certify that on the 3<sup>rd</sup> day of December, 2014, service of the foregoing  
NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL  
MOTION TO DISMISS PURSUANT TO NRS § 41.660 was made by depositing a true and  
correct copy of the same in the United States mail, with postage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

LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

1 **ORDR**  
2 **JOSEPH P. GARIN, ESQ.**  
3 **NEVADA BAR NO. 6653**  
4 **SIRIA L. GUTIERREZ, ESQ.**  
5 **NEVADA BAR NO. 11981**  
6 **LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.**  
7 **9900 Covington Cross Drive, Suite 120**  
8 **Las Vegas, Nevada 89144**  
9 **Phone: (702) 382-1500**  
10 **Fax: (702) 382-1512**  
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.**

24 **CASE NO: CV35969**  
25 **DEPT NO: 1**

26 **ORDER GRANTING**  
27 **DEFENDANT PAT SONGER'S**  
28 **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. Gutierrez, 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

### 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 Brittnie 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

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

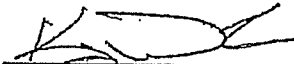
19. Mr. Songer's overall investigation was in good faith and there is no evidence of bad faith.

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

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

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


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

  
DISTRICT COURT JUDGE

Submitted by:

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

EXHIBIT "3"

---

---

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY  
HOLLIS,

Appellants,

vs.

PAT SONGER; AND ERICKSON,  
THORPE & SWAINSTON, LTD.,  
Respondents.

No. 66858

**FILED**

APR 14 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Our initial review of the documents before this court reveals a potential jurisdictional defect. Specifically, it is not clear whether the district court's November 19, 2014, order granting Pat Songer's special motion to dismiss is a final judgment because it contemplates the dismissal of the case at a later date. See NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (a final judgment is one that resolves all of the parties' claims and rights in the action, leaving nothing for the court's future consideration except post-judgment issues).

Accordingly, appellants shall have 30 days from the date of this order to show cause why this appeal should not be dismissed for lack of jurisdiction. In responding to this order, appellants should submit documentation that established this court's jurisdiction including, but not limited to, a copy of any written district court order dismissing the case against Pat Songer. We caution appellants that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The requesting of transcripts and the briefing schedule in this appeal shall be suspended pending further order of this court.



Respondents may file any reply within 10 days from the date that appellants' response is served.

It is so ORDERED.

Jardeth, C.J.

cc: Law Office of Daniel Marks  
Lipson Neilson Cole Seltzer & Garin, P.C.  
Lemons, Grundy & Eisenberg

EXHIBIT "4"

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY  
HOLLIS,

Appellants,

vs.

PAT SONGER,

Respondents.

No. 66858

**FILED**

JUN 01 2015

*ORDER DISMISSING APPEAL*

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

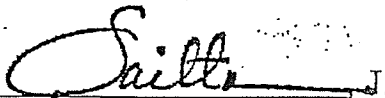
This is an appeal from district court orders granting special motions to dismiss pursuant to NRS 41.660. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

When our initial review of the docketing statement and other documents before this court revealed a potential jurisdictional defect, we ordered appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having considered appellants' response and respondent's reply, we are not convinced that the district court has entered a final appealable judgment in this matter.


Although the district court's November 19, 2014, order grants a special motion to dismiss, it also states that "the case will be dismissed with prejudice once the Court has awarded fees and costs." The order thus contemplates dismissal of the action at a later date and does not constitute a final judgment. See NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426; 996 P.2d 416, 417 (2000). We disagree with appellants' contention that a dismissal took effect upon the subsequent entry of an order awarding fees and costs where appellants represent that that the order

"does not state that the action is dismissed as of the filing of that Order."<sup>1</sup>  
Further, we decline to remand this matter to the district court for entry of an order of dismissal. Appellants may file a notice of appeal from any final judgment entered in this matter. Accordingly, we

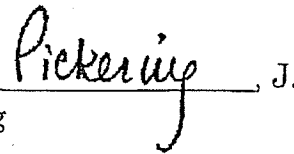
ORDER this appeal DISMISSED.

 J.

Saitta

 J.

Gibbons

 J.

Pickering

cc: Hon. Kimberly A. Wanker, District Judge  
Carolyn Worrell, Settlement Judge  
Law Office of Daniel Marks  
Lipson Neilson Cole Seltzer & Garin, P.C.  
Nye County Clerk

<sup>1</sup>Appellants have not provided a copy of the order awarding fees and costs.