

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 PAT SONGER

4 Appellants,

5 v.

6 RAYMOND DELUCCHI and
7 TOMMY HOLLIS,

8 Respondents
9 _____/

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District Court Case No. CV35969
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11 **RESPONDENTS' SUPPLEMENTAL APPENDIX**
12 **Volume I of I**

13 Appeal from the Fifth Judicial District Court
14 Case No.: CV35969

15
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ALPHABETICAL INDEX FOR RESPONDENTS'
SUPPLEMENTAL APPENDIX

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>BATE STAMP NOS.</u>
Amended Notice of Appeal	1	RSA101-109
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Special Motion to Dismiss Under Nevada's Anti-SLAPP Statutes (NRS 41.635, Et. Seq.)	I	RSA001-100

Case No. CV35969

Dept. No. 1

FILED
FIFTH JUDICIAL DISTRICT COURT

JUL 30 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

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.

SPECIAL MOTION TO DISMISS UNDER NEVADA'S ANTI-SLAPP STATUTES
(NRS 41.635, ET SEQ.)

Defendant ERICKSON, THORPE & SWAINSTON, LTD. (also referred to herein as "ETS"), by and through its attorneys, Lemons, Grundy & Eisenberg, hereby moves this Court for an order dismissing the Plaintiffs' claims based on the immunity provided to ETS by Nevada common law and Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute. As will be set forth below, the plaintiffs' claims against ETS must be dismissed as the conduct which forms the basis of the plaintiffs' complaint is absolutely privileged and protected by Nevada's anti-SLAPP statute. Therefore, the claims must fail as a matter of law.

This motion is based on the following memorandum of points and authorities and any further information this Court deems appropriate to consider.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Mr. Delucchi and Mr. Hollis bring this lawsuit after they were terminated, and eventually reinstated to their EMT positions with the Town of Pahrump ("the Town"). The complaint asserts two claims both of which stem entirely from an investigation and subsequent report which was prepared by the defendant Pat Songer at the direction of ETS. The first claim for relief alleges defamation. The second claim alleges intentional infliction of emotional distress ("IIED").

In June of 2012, the Town received a report that Messrs. Delucchi and Hollis failed to render aid to Brittanie Choyce, who was delivering a stillborn baby on the side of the road close to the county line between Nye County and Clark County. Following this incident, Mr. Delucchi and Mr. Hollis were placed on leave pending an investigation. Thereafter, the Town retained ETS to coordinate and oversee an investigation into these allegations. Rebecca Bruch was the attorney primarily responsible for ETS's engagement with the Town.

After Messrs. Delucchi and Hollis were placed on leave, plaintiff Delucchi filed an internal complaint wherein he alleged that he was placed on leave in retaliation for his activities as the union president. Because of this new claim, Ms. Bruch engaged two independent investigators, Cindy Davis and Pat Songer. Ms. Davis was retained to investigate the retaliation allegations, and Mr. Songer was retained to investigate the underlying allegations against Mr. Hollis and Mr. Delucchi. Specifically, the complaint against the plaintiffs was that while on duty in a Pahrump Valley Fire and Rescue Service ("PVFRS") ambulance, they failed to render aid to a patient who had delivered a stillborn baby on her way to a Las Vegas hospital. Notably, there was no factual dispute as to whether they failed to render aid. The only dispute was why they

1 did not render aid.

2 Following the completion of his investigation, Mr. Songer prepared a written report.
3 Before submitting that report to the Town, Rebecca Bruch edited the report, but only for various
4 typographical and spelling errors. She made no substantive changes to his report. As a result of
5 the investigation, Mr. Delucchi and Mr. Hollis were terminated. As noted above, they were
6 eventually returned to work after a grievance and arbitration proceeding.
7

8 As will be detailed below, this lawsuit is precisely the type of retaliatory litigation that
9 prompted the Nevada legislature to adopt anti-SLAPP (Strategic Lawsuits Against Public
10 Participation) legislation similar to at least 35 other states. In creating this Act, Nevada's
11 legislature recognized that the proliferation of litigation against those who were willing to come
12 forward and speak out about perceived misconduct of public employees was having a profound
13 chilling effect upon the public's participation in government activities. To regain the public's
14 confidence, the legislature knew that it would have to enact legislation that would grant
15 comprehensive protection to those who, in good faith, proffered information germane to any
16 governmental proceedings. Because the legislature deemed these protections so vital, it created a
17 mechanism unlike anything which had ever existed in Nevada to protect citizens and remove any
18 disincentive which might otherwise dissuade a person to participate in the public process. Thus,
19 the protective mechanism had to be not only all-encompassing, but also exceedingly swift in
20 application. This, of course, is why the legislature mandated that the District Court actually
21 render a decision in just seven days after the anti-SLAPP motion is filed.
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23 The purpose of a special motion to dismiss under NRS 41.660, is to protect the entity and
24 its representatives from the punishment, retribution, reprisal and/or revenge from individuals like
25 Mr. Delucchi and Mr. Hollis, when the sued defendant had engaged in good-faith
26 communications pertaining to an issue of concern to the Town. No matter the outcome of the
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2 investigation; no matter the opinions that were reached; no matter what legal advice Attorney
3 Bruch may have given, the Town through its representatives, Attorney Bruch and Mr. Songer,
4 must be at liberty to engage in that process, and reach their conclusions, without fear of having to
5 answer to a lawsuit.
6

7 As will be detailed below, to bring a Special Motion to Dismiss under the anti-SLAPP
8 statute, the moving party need only establish, by a preponderance of the evidence that the
9 plaintiff's claims are premised upon on a good-faith communication made by the defendant to a
10 governmental entity. NRS 41.660(3)(a). In sharp contrast, once that initial burden is met, the
11 plaintiff then must overcome a very high evidentiary burden in order proceed forward with the
12 case. In this regard, the plaintiff must establish, by clear and convincing evidence, a probability
13 of prevailing on the claim. NRS 41.660(3)(b). Mr. Delucchi and Mr. Hollis cannot meet their
14 burden in this case because the alleged conduct of ETS was absolutely privileged, and because
15 the plaintiff will never be able to prove, by clear and convincing evidence, that they will be able
16 to prevail on their asserted claims. Therefore, the claims asserted against ETS should be
17 dismissed.
18

19 **II. STATEMENT OF RELEVANT FACTS**
20

21 **A. The Highway 160 incident involving James and Brittnie Choyce**

22 On May 30, 2012, a woman named Vicki, who eventually was identified as Brittnie
23 Choyce's mother, called Town officials to report that in the early morning hours of May 25,
24 2012, Ms. Choyce's life was endangered when PVFRS personnel failed to render the necessary
25 aid to her. *Complaint*, p. 2, ¶ 9; *see also Record of Phone Conversation, dated May 31, 2012*,
26 attached hereto as **Exhibit 1**.

27 The details of the events on the side of the road on May 25, 2012, were chillingly
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provided by Ms. Choyce at the grievance arbitration hearing on August 13, 2013. *Testimony of Brittne Choyce*, attached hereto as **Exhibit 2**. Ms. Choyce testified that after her initial contact with Town representatives, she ignored subsequent attempts by the Town to contact her because she was not emotionally able to meet with anyone until the grievance almost 18 months later. **Exhibit 2**, pp. 23-24. She testified that because of the trauma of the events, as well as the fact that her husband James committed suicide a few weeks after the May 25, 2012 events, she simply was unable to respond to the request for information. **Exhibit 2**, p. 24.

Ms. Choyce testified that she was pregnant, but she had previously been informed that her baby was not alive and would be stillborn. **Exhibit 2**, pp. 5-6. Her doctor had instructed her to go to a Las Vegas hospital when she went into labor because the delivery of a stillborn baby was a high-risk situation, and there were no OB/GYNs at the hospital in Pahrump. **Exhibit 2**, p. 7. In the late evening hours of May 24, 2012, she went into labor and she and her husband began their drive to Las Vegas along Highway 160. **Exhibit 2**, p. 7. Tragically, she delivered her stillborn baby in the car at approximately 12:15 a.m. **Exhibit 2**, p. 7. A few minutes later, at or near the county line between Nye and Clark Counties, Ms. Choyce and her husband passed an ambulance driving in the opposite direction. **Exhibit 2**, p. 8. Mr. Choyce then turned his vehicle around and tried to get the ambulance to stop, hoping that the ambulance would transport his wife to a Las Vegas hospital. **Exhibit 2**, p. 8. After a couple miles, the ambulance finally pulled over. **Exhibit 2**, p. 8. Mr. Choyce and the ambulance attendants, Mr. Delucchi and Mr. Hollis, got out of their respective vehicles. **Exhibit 2**, pp. 8-9. Mr. Choyce frantically explained that his wife was in the car, that she had just delivered a stillborn baby, and that she was hemorrhaging. **Exhibit 2**, p. 8.

Mr. Delucchi and Mr. Hollis stood between the back of the ambulance and the hood of the Choyces' car, talking with Mr. Choyce. **Exhibit 2**, p. 8. Ms. Choyce yelled and cried, "my

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2 baby's on my lap. Just please come – just come look at me. Come help me, help me, help me.”
3 **Exhibit 2**, p. 9. Instead, Mr. Delucchi and Mr. Hollis stood several feet away and looked into
4 the Choyces' car, but they refused to approach and assess Ms. Choyce's medical situation.
5 **Exhibit 2**, pp. 9-10. With her legs up on the dashboard, Ms. Choyce tried to show Mr. Delucchi
6 and Mr. Hollis the stillborn baby she had just delivered. **Exhibit 2**, p. 10.

8 Mr. Delucchi and Mr. Hollis refused to render any care whatsoever to Ms. Choyce, and
9 they refused to transport her to the Las Vegas hospital. **Exhibit 2**, pp. 8-11. Instead, they told
10 the Choyces there was nothing they could do because they were on the Clark County line and, to
11 be of any service, they would need to be dispatched. **Exhibit 2**, pp. 11-12. Mr. Delucchi and
12 Mr. Hollis informed Mr. Choyce that he could call it in and have emergency services dispatched,
13 but that the Choyces could already be at the hospital by the time emergency services units could
14 respond. **Exhibit 2**, pp. 11-12. Mr. Delucchi and Mr. Hollis then informed Mr. Choyce of the
15 nearest hospital in Las Vegas. **Exhibit 2**, p. 11.

17 Frustrated and angry, Mr. Choyce returned to his vehicle and continued to drive Ms.
18 Choyce to Las Vegas. **Exhibit 2**, p. 11. Ms. Choyce continued to hemorrhage and lose a large
19 amount of blood, and she ultimately lost consciousness before arriving at the hospital in Las
20 Vegas. **Exhibit 2**, pp. 12-13.

22 Curiously, Mr. Delucchi and Mr. Hollis made absolutely no report of their encounter with
23 James and Brittnie, until after the Town of Pahrump had received the May 30, 2012 complaint
24 from Brittnie's mother. *Declaration of Pat Songer*, attached hereto as **Exhibit 3**. They did not
25 prepare an incident report. **Exhibit 3**. They did not prepare a patient care report. **Exhibit 3**.
26 They did not make any calls or radio transmissions to their dispatcher. **Exhibit 3**. They did not
27 notify any law enforcement agencies. **Exhibit 3**. They did not report the incident to their
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1 lieutenant or to the Fire Chief when they got back to their fire station. **Exhibit 3.** They did not
2 even report the incident to their superiors the following morning. **Exhibit 3.**

3 **B. The labor dispute between Mr. Delucchi and Fire Chief Scott Lewis**

4 At the time of the Highway 160 incident, Mr. Delucchi was president of the IAFF Local
5 4068 Union. **Exhibit 3**; see also *Declaration of Rebecca Bruch*, attached hereto as **Exhibit 4.**
6 Shortly after the incident, Mr. Delucchi filed an internal complaint against Fire Chief Scott
7 Lewis, claiming that Chief Lewis was retaliating against him because of his union activities,
8 taking absolutely no responsibility for the events at the side of the road. **Exhibits 3 and 4.** In
9 response, Chief Lewis filed a cross-complaint against Delucchi for harassment. **Exhibits 3 and**
10 **4.**

11 **C. Investigation of the Highway 160 incident by Chief Lewis and Lt. Moody**

12 Immediately after receiving the complaint by Ms. Choyce's mother, Lt. Moody and Chief
13 Lewis began an internal investigation of the incident. *Report of External Complaint*, attached
14 hereto as **Exhibit 5.** Lt. Moody and Chief Lewis began their investigation by returning Ms.
15 Choyce's mother's phone call. **Exhibit 5.** During that call, Lt. Moody and Chief Lewis spoke
16 directly with the Choyces, who each recounted the events of incident. **Exhibit 5.**

17 Ms. Choyce provided details of her labor with a stillborn baby, the drive to Las Vegas,
18 and the fact that her husband flagged down the ambulance in an effort to get medical assistance
19 for her. **Exhibit 5.** She informed Chief Lewis and Lt. Moody that one of the medics approached
20 her side of the car and, through the open window, asked, "What's going on?" She described her
21 communication with the medic who approached the car, stating that "[s]he was crying while she
22 informed him that she was having a miscarriage and was bleeding. **Exhibit 5.** She stated by this
23 time the stillborn was delivered and was 'in her pants.'" **Exhibit 5.**

24 Ms. Choyce informed Chief Lewis and Lt. Moody that the medic who approached her car

1
2 refused to help her or look at the amount of blood she was losing. **Exhibit 5.** "She stated her
3 need for help to the same medic, but again he did not help." **Exhibit 5.** Ms. Choyce stated that
4 eventually the medic offered to drive her back to the Pahrump hospital, but he only offered the
5 name and directions to the closest Las Vegas hospital. **Exhibit 5.** She informed Chief Lewis
6 and Lt. Moody that her husband became more agitated and finally got back in the car and drove
7 to Las Vegas. **Exhibit 5.** She stated that when she arrived at the Las Vegas hospital, she
8 required five blood transfusions and passed five large blood clots. **Exhibit 5.**

9
10 Mr. Choyce then got on the phone with Chief Lewis and Lt. Moody and relayed the same
11 story with some additional details. **Exhibit 5.** He stated that both medics approached Ms.
12 Choyce's window and asked her, "what's going on?" **Exhibit 5.** He described his wife's cries
13 for help and her statement that she was having a miscarriage and bleeding. **Exhibit 5.** He stated
14 that one of the medics responded to Ms. Choyce that she wasn't losing that much blood and that
15 they offered to take her back to Pahrump "as that was the direction they were heading."
16 **Exhibit 5.** He explained to Mr. Delucchi and Mr. Hollis that Ms. Choyce had been instructed by
17 her doctor to go to Las Vegas, rather than to the hospital in Pahrump. **Exhibit 5.** Mr. Choyce
18 then recounted his growing anger and his final decision to drive away after Mr. Delucchi and Mr.
19 Hollis provided directions to the closest hospital in Las Vegas. **Exhibit 5.**

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21
22 Chief Lewis and Lt. Moody then scheduled a face-to-face visit with the Choyces, to
23 inspect the Choyces' vehicle and gather additional information. **Exhibit 5.** At the scheduled
24 appointment at the Choyces' home, Chief Lewis and Lt. Moody looked at their minivan, where
25 they observed large blood stains on and under the passenger seat. **Exhibit 5.** They
26 demonstrated the position of the medics in relation to the passenger side of the minivan when the
27 medics had approached and talked with Ms. Choyce. **Exhibit 5.** Chief Lewis and Lt. Moody
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1 measured the distance at which the medics had stood from the minivan at approximately three
2 feet nine inches. **Exhibit 5.**

3 Mr. Choyce then stated that the entire encounter with the medics lasted approximately
4 five minutes. **Exhibit 5.** Mr. Choyce then recounted that Ms. Choyce had described feeling as
5 though sand was being “poured over her head [as though she was losing too much blood and
6 beginning to lose consciousness],” but that the medics still refused to help her. **Exhibit 5.** The
7 Choyces then stated that neither of the medics appeared to be scared or in fear, but more that
8 “they wanted to get home.” **Exhibit 5.**

9
10 **D. The Town of Pahrump’s engagement of ETS, and ETS’s engagement of Songer**

11 In June of 2012, ETS was retained by the Town to coordinate and oversee investigations
12 into the Highway 160 incident and the internal cross-complaints filed by Mr. Delucchi and Chief
13 Lewis. **Exhibit 4.** Chief Lewis and Lt. Moody had been leading the investigation into the
14 encounter with the Choyces. **Exhibit 4.** Because of the allegations by Mr. Delucchi against
15 Chief Lewis, Attorney Bruch determined that Chief Lewis and Lt. Moody should not continue to
16 conduct the investigation, so as to insure a completely unbiased and neutral process. **Exhibit 4.**
17 Attorney Bruch oversaw the investigation and retained an outside, independent investigator,
18 Cindy Davis at Strategic HR Partners. **Exhibit 4.**

19
20 Ms. Davis recognized that despite her past employment with REMSA in northern
21 Nevada, she did not have an extensive background in emergency medical services and was not
22 qualified to investigate the propriety of Mr. Delucchi’s and Mr. Hollis’ conduct on the night of
23 the incident involving Ms. Choyce. **Exhibit 4.** Accordingly, Attorney Bruch also retained
24 defendant Pat Songer, the Director of Emergency Medical Services for Humboldt General
25 Hospital in Winnemucca, Nevada, to conduct the investigation into the propriety of the conduct.
26 **Exhibit 4.** Mr. Songer’s role was to determine whether the events on the side of the road
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2 violated Town policy, protocol or law.

3 **E. Mr. Songer's investigation and report**

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5 Mr. Songer is now the administrative director for Humboldt General Hospital in
6 Winnemucca, Nevada. **Exhibit 3.** At the time of his investigation of the Highway 160 incident,
7 he was the Director of Emergency Medical Services at Humboldt General. **Exhibit 3.** Mr.
8 Songer had over 20 years of experience as an emergency medical technician. **Exhibit 3.** As
9 such, he was eminently qualified to conduct an investigation into the allegations which had been
10 made against the plaintiffs.

11
12 On or about June 27, 2012, Attorney Bruch contacted Mr. Songer to investigate the
13 Highway 160 incident on behalf of the Town. **Exhibits 3 and 4.** Songer was asked to review
14 the facts that had already been gathered by Chief Lewis and Lt. Moody, and to conduct
15 additional interviews as he determined were necessary. **Exhibit 3.** Mr. Songer began his
16 investigation by reviewing policies and procedures of the Town and the PVFRS, as well as the
17 personnel files of Mr. Delucchi and Mr. Hollis. **Exhibit 3.** He reviewed statements from the
18 Choyces, which were taken by Chief Lewis and Lt. Moody. **Exhibits 3 and 5.** He then
19 conducted interviews of Mr. Delucchi and Mr. Hollis. **Exhibit 3.**

20
21 After collecting all available information, Mr. Songer prepared a written report
22 containing the facts he had gathered in his investigation and the opinions he reached by virtue of
23 his investigation. **Exhibit 3; see also Songer Investigative Report of Facts and Conclusions,**
24 **attached hereto as Exhibit 6.** In reaching his findings, conclusions and opinions, Mr. Songer
25 relied in part on the reports of the incident prepared by Chief Lewis and Lt. Moody, after their
26 interviews with the Choyces. **Exhibit 3.** He also relied on his own interviews with Mr. Delucchi
27 and Mr. Hollis. **Exhibit 3.**

1 Mr. Songer concluded, among other things, that the story proffered by Mr. Delucchi and
2 Mr. Hollis was not plausible and that Mr. Delucchi and Mr. Hollis were not credible witnesses.
3 **Exhibits 3 and 6.** Mr. Songer further concluded that Mr. Delucchi and Mr. Hollis had breached
4 the standard of care applicable to emergency medical services personnel, that their failure to
5 prepare a Patient Care Report or Incident Report could be viewed as an attempt to cover up their
6 wrongdoing, and that their conduct potentially exposed the Town to civil liability. **Exhibit 6.**

8 **F. Attorney Bruch's review and edit of the Songer report**

9 Attorney Bruch reviewed the Songer report and suggested various grammatical and
10 stylistic revisions to the report. *Songer Report with Bruch Edits*, attached hereto as **Exhibit 7.**
11 As is apparent from a review of Attorney Bruch's edits, she made purely grammatical and
12 typographical corrections to the report. **Exhibit 7.** In an effort to make Mr. Songer's
13 conclusions a bit more clear and concise, she also made a few stylistic changes to his report.
14 **Exhibit 7.** In this regard, at the bottom of page 4 of the "conclusions" section of the report,
15 Attorney Bruch rewrote the first sentence of paragraph 8 of the report because Mr. Songer's
16 original sentence was grammatically incorrect. **Exhibit 7.** As is easily recognized from a
17 comparison of the original sentence drafted by Mr. Songer and the revision drafted by Attorney
18 Bruch, she did nothing more than make clear the conclusions reached by Mr. Songer.
19 Importantly, none of Attorney Bruch's edits made any substantive change to the findings or
20 conclusions. **Exhibit 7.**

21 The "conclusions" portion of Mr. Songer's report was marked as "confidential attorney
22 work product." **Exhibit 6.** Such a demarcation is standard in an investigative process.
23 **Exhibit 4.** The notation was placed on the report because Mr. Songer's investigation was
24 conducted in anticipation of litigation and was performed at the request of an attorney.
25 **Exhibit 4.** More importantly, the Town fully anticipated that the Choyces would later file a

lawsuit against the Town based upon the actions of the plaintiffs. The hope was to prevent disclosure of the report, not only to protect the Town, but also to protect Mr. Delucchi and Mr. Hollis in the likely event of litigation. *Ballard v. Eighth Judicial Dist. Court*, 106 Nev. 83, 84-85, 787 P.2d 406, 407 (1990). **Exhibit 4.**

After Mr. Songer completed his report, the Town subsequently requested that Mr. Songer also prepare recommendations as to how the Town should respond to his conclusions. **Exhibits 3 and 4**; see also *Songer Recommendations Report*, attached hereto as **Exhibit 8**. Mr. Songer's ultimate recommendations consisted of the actions he would have taken if Mr. Delucchi and Mr. Hollis were under Mr. Songer's command. **Exhibit 3**. Mr. Songer's recommendations included a recommendation that the Town should comply with state law by fully briefing and informing PVFRS's EMS medical director, as well as the State of Nevada EMS program manager, on the incident and the investigation. **Exhibit 8**. Mr. Songer also ultimately recommended that Mr. Delucchi and Mr. Hollis be terminated from their positions with PVFRS. **Exhibit 8**. Mr. Songer's final recommendations were based on what Mr. Songer interpreted as various violations of the Town's personnel policies, PVFRS's rules and regulations, and PVFRS's EMS protocols. In this regard, he concluded that their roles in the incident, their lack of judgment in the handling of the incident, as well as their response to the allegations merited the discipline he recommended. **Exhibit 8**.

G. This SLAPP lawsuit filed by Mr. Delucchi and Mr. Hollis

Mr. Delucchi and Mr. Hollis now assert claims against ETS and Songer for defamation and IIED. They allege that Mr. Songer's report contained false and defamatory statements and that the preparation of the report constitutes extreme and outrageous conduct intended to cause Mr. Delucchi and Mr. Hollis emotional distress. Mr. Delucchi and Mr. Hollis further seek an

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2 award of punitive damages from both defendants. As is the hallmark of a SLAPP lawsuit, Mr.
3 Delucchi and Mr. Hollis now hope to punish ETS and Mr. Songer for participating in good faith
4 in public affairs, and for conducting an investigation which, at least in part, was conducted to
5 protect them as well as the Town from anticipated litigation by the Choyces.
6

7 To link ETS to the findings and recommendations made by Mr. Songer, the plaintiffs
8 allege that Mr. Songer and Attorney Bruch "co-authored" Mr. Songer's investigative report.
9 Complaint, p. 3, ¶ 13. They allege that Attorney Bruch edited the portions written by Mr.
10 Songer, and that other paragraphs "were written directly by Attorney Bruch and directed to be
11 incorporated into the report." Complaint, p. 3, ¶ 13. Attempting to show that Attorney Bruch
12 "co-authored" the report, Mr. Delucchi and Mr. Hollis further allege that "[s]everal pages of the
13 'Conclusions' portion of the report stated that it was 'confidential attorney work product'."
14 Complaint, p. 3, ¶ 13.
15

16 The irrefutable evidence reveals that Attorney Bruch did not "co-author" Mr. Songer's
17 report. She merely edited the report for typographical and grammatical errors, in an effort to
18 make them more clear and concise. Portions of the report were marked as "confidential attorney
19 work product" in order to provide protection to both the Town and the plaintiffs in the event of
20 litigation by third parties. *Ballard*, 106 Nev. at 84-85, 787 P.2d at 407. Thus, even if this Court
21 could somehow find that the report contained false information, the information was not
22 provided by ETS.
23

24 Perhaps most importantly, the findings and conclusions contained in Songer's report were
25 either entirely true, or they were merely recitations of the opinions of the investigator based upon
26 the results of his investigation. There is no evidence, let alone clear and convincing evidence,
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2 that the report is anything other than a good-faith communication to the Town regarding a matter
3 reasonably of concern to the Town. As such, ETS is immune from Mr. Delucchi's and Mr.
4 Hollis' claims asserted in this action. Because of this fact, the complaint must be dismissed.
5

6 **III. STANDARD FOR GRANTING THIS SPECIAL MOTION TO DISMISS**

7 If an action is brought against a person based upon a good- faith communication to a
8 governmental entity (regarding a matter reasonably of concern to the governmental entity), "[t]he
9 person against whom the action is brought may file a special motion to dismiss."
10 NRS 41.660(1)(a). A special motion to dismiss must be filed within 60 days after service of the
11 complaint. NRS 41.660(2). Discovery is stayed pending a ruling on the motion and pending the
12 disposition of any appeal from the ruling on the motion. NRS 41.660(3)(e). The anti-SLAPP
13 statute is intended to allow a citizen "to obtain prompt review of potential SLAPP lawsuits and
14 have them dismissed before she is forced to endure the burdens and expense of the normal
15 litigation process." *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 802 (9th Cir. 2012).
16

17 A special motion to dismiss "functions as a motion for summary judgment and allows the
18 district court to evaluate the merits of the alleged SLAPP claim." *Stubbs v. Strickland*, 129 Nev.
19 ___, ___, 297 P.3d 326, 329 (2013); *see also John v. Douglas County Sch. Dist.*, 125 Nev.
20 746, 753, 219 P.3d 1276, 1281 (2009). Like a motion for summary judgment, the moving party
21 bears the initial burden of production and persuasion. *John*, 125 Nev. at 754, 219 P.3d at 1282.
22 However, the moving party need only make a threshold showing, "by a preponderance of the
23 evidence, that the lawsuit is based upon a good faith communication in furtherance of the right to
24 petition or the right to free speech in direct connection with an issue of public concern." NRS
25 41.660(3)(a). Once the moving party satisfies this threshold showing, the burden then shifts to
26 the nonmoving party.
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2 As a result of the 2013 amendments to Nevada's anti-SLAPP statute, the burden upon a
3 plaintiff has been significantly increased. In the context of a special motion to dismiss, the
4 nonmoving party now bears a heightened substantive evidentiary burden. To survive a special
5 motion to dismiss, the plaintiff must establish "by clear and convincing evidence a probability of
6 prevailing on the claim." NRS 41.660(3)(b) (emphasis added). This is critical because, just as in
7 ruling on a motion for summary judgment, "the judge must view the evidence presented through
8 the prism of the substantive evidentiary burden." *Bonnell v. Lawrence*, 128 Nev. ___, ___,
9 282 P.3d 712, 718, (2012).

10
11 The nonmoving party cannot overcome the special motion to dismiss on the gossamer
12 threads of whimsy, speculation and conjecture. *John*, 125 Nev. at 754, 219 P.3d at 1281.
13 Instead, the nonmoving party must provide more than general allegations and conclusions; it
14 must submit specific factual evidence demonstrating the existence of a genuine factual issue. *Id.*
15 Clear and convincing evidence is evidence "sufficiently strong to command the unhesitating
16 assent of every reasonable mind." *In re Valerie W.*, 162 Cal.App.4th 1, 13, 75 Cal.Rptr.3d 86,
17 95 (2008). If the plaintiff cannot meet this heavy evidentiary burden, "the district court must
18 dismiss the action, and that dismissal operates as an adjudication on the merits." *John*, 125 Nev.
19 at 754, 219 P.3d at 1282.

20 21 22 **IV. LEGAL ARGUMENT**

23 **A. The report authored by Mr. Songer and edited by Attorney Bruch was a "good**
24 **faith communication in furtherance of the right to petition or the right to free**
25 **speech in direct connection with an issue of public concern."**

26 Anti-SLAPP statutes were created to allow public entities and their representatives to
27 speak and act freely in the course of their duties. SLAPP lawsuits are pointedly and deliberately
28 filed to prevent that very conduct which is critical to the safe operations of those entities. As

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2 articulated by New York Supreme Court Judge J. Nicholas Colabella, in reference to SLAPP
3 lawsuits such as the one brought by Mr. Delucchi and Mr. Hollis, "Short of a gun to the head, a
4 greater threat to First Amendment expression can scarcely be imagined." *Gordon v. Morrone*,
5 590 N.Y. S.2d 649, 656 (N.Y. Sup.Ct. 1992).
6

7 As noted above, ETS must make a threshold showing, by a preponderance of the
8 evidence, that this lawsuit is based upon "a good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public concern."
10 NRS 41.660(3)(a). The term "good faith communication in furtherance of the right to petition or
11 the right to free speech in direct connection with an issue of public concern" is defined in
12 NRS 41.637. That definition includes a "[c]ommunication of information or a complaint to a
13 Legislator, officer or employee of ... a political subdivision of this state, regarding a matter
14 reasonably of concern to the respective governmental entity." NRS 41.637(2). The
15 communication of information must be truthful or made without knowledge of its falsehood.
16 NRS 41.637 (Emphasis added). It is incomprehensible that Mr. Delucchi and Mr. Hollis will
17 argue that the disturbing events on the side of the road on May 25, 2012, are not matters
18 reasonably of concern to the Town.
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21 The concept of protected communications to a governmental entity was explained and
22 applied in *John, supra*. In that case, Mr. John, a security officer at Douglas County School
23 District ("DCSD"), was disciplined after an investigation revealed that he had engaged in, among
24 other things, the improper videotaping of special education students. 125 Nev. at 750, 219 P.3d
25 at 1279. As part of the investigation, other acts of sexual harassment and misconduct were
26 uncovered. *Id.* After the investigation, John received a letter of discipline and other disciplinary
27 measures from DCSD. *Id.* He then filed a union grievance related to his discipline and a claim
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2 with the EEOC, but the imposition of discipline was upheld by the union and the EEOC. *Id.*
3 John subsequently engaged in further misconduct when he obtained confidential student
4 disciplinary records and failed to cooperate with the school district's investigation into the
5 matter. *Id.* Because of this, along with his previous misconduct, John was fired, but like Mr.
6 Delucchi and Mr. Hollis, was eventually reinstated. *Id.* After his termination, John filed a
7 wrongful termination and defamation lawsuit against DCSD and others. *Id.* at 751, 219 P.3d at
8 1279-80.
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10 DCSD filed a special motion to dismiss pursuant to NRS 41.660. *Id.* at 751, 219 P.3d at
11 1280. Just like ETS in this case, DCSD argued that "the school officials' actions related to the
12 investigations of John constituted protected conduct under the statute, and the communications
13 between school officials and the DCSD in furtherance of these investigations were privileged
14 and truthful." *Id.* The district court granted DCSD's special motion to dismiss, finding that the
15 communications by DCSD and its officials related to its investigations were protected under the
16 anti-SLAPP statute. *Id.*
17

18 The district court's order was upheld *en banc* by the Nevada Supreme Court. *Id.* at 763,
19 219 P.3d at 1287. The Supreme Court first delved into the background and purpose of Nevada's
20 anti-SLAPP legislation. It recognized the Nevada State Legislature's explanation that a SLAPP
21 lawsuit is one that "abuse[s] the judicial process by chilling, intimidating, and punishing
22 individuals for their involvement in public affairs." *John*, 125 Nev. at 752, 219 P.3d at 1281.
23 One of the bases for the prevention of SLAPP suits, the *John* Court held, is that "representative
24 democracy demands that citizens and public officials have the ability to openly engage in
25 discussions of public concern." *Id.* at 753, 219 P.3d at 1281. The Nevada Supreme Court clearly
26 recognized that the protections provided by Nevada's anti-SLAPP legislation remove what might
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2 otherwise be a powerful disincentive against participation, a disincentive that would operate to
3 deny the entity of the benefit of critical information, views and expertise.
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5 The Supreme Court then held that the communications by DCSD and its officials,
6 regarding the investigations into John's misconduct, fell within the protections of the anti-
7 SLAPP statute. *Id.* at 760-62, 219 P.3d at 1286-87. The Court reasoned that (1) the
8 communications were truthful or made without knowledge of falsehood, and (2) the
9 communications were of reasonable concern to the school district. *Id.* at 761-62, 219 P.3d at
10 1286-87. For those reasons, the Supreme Court held, the district court had properly granted
11 DCSD's special motion to dismiss. *Id.*
12

13 Just as in *John*, ETS's communications to the Town regarding the investigation into Mr.
14 Delucchi's and Mr. Hollis' conduct, including Mr. Songer's report, were truthful or made
15 without knowledge of falsehood. All evidence demonstrates that the information in Mr.
16 Songer's report was true or, at the very least, that Attorney Bruch and Mr. Songer had no
17 knowledge of its falsehood. In fact, the majority of the information came directly from Mr.
18 Delucchi and Mr. Hollis. As stated above, by the time Mr. Songer and Attorney Bruch got
19 involved, Ms. Choyce would no longer speak with any Town representatives. It was not until the
20 arbitration that she, at the eleventh hour, agreed to come testify.
21

22 Attached as exhibits to this motion are declarations from Attorney Bruch and Mr.
23 Songer. **Exhibits 3 and 4.** Both Attorney Bruch and Mr. Songer declare that their
24 communications were truthful to the best of their knowledge, and that they made no statements
25 they knew to be false. **Exhibits 3 and 4.** There is no evidence, let alone clear and convincing
26 evidence, that any of the information contained in Mr. Songer's report was false. Moreover,
27 there is certainly no evidence that either Attorney Bruch or Mr. Songer knew such information to
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2 be false.

3 Even if the plaintiffs could prove that Mr. Songer's opinions and conclusions were false,
4 they must still prove that (1) Attorney Bruch made an unprivileged communication of Mr.
5 Songer's statements to a third person, and (2) she made such a communication with actual
6 knowledge of the falsity of the information. *Clark County Sch. Dist. v. Virtual Educ. Software,*
7 *Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009); *Adelson v. Harris*, 973 F.Supp.2d 467, 501-
8 03 (S.D.N.Y. 2013).
9

10 Such a showing cannot be made in this case. In an effort to link Ms. Bruch to Mr.
11 Songer's opinions and conclusions, Mr. Delucchi and Mr. Hollis allege that Attorney Bruch "co-
12 authored" Mr. Songer's report. This allegation is clearly intended to prove that Attorney Bruch
13 directed Mr. Songer to make substantive changes to his report. This allegation is completely
14 belied by the evidence. As shown in **Exhibit 7**, Attorney Bruch made purely grammatical and
15 typographical changes to the report. None of Attorney Bruch's edits made any substantive
16 change to Mr. Songer's factual recitation. The reference to "confidential attorney work product"
17 does not show that Attorney Bruch had in any way "co-authored" the report. Rather, the
18 reference to "confidential attorney work product" was made in an effort to potentially shield Mr.
19 Songer's report from mandatory disclosure in the event of a lawsuit asserted by the Choyces.
20 Stated differently, the designation was an attempt to protect the Town as well as Mr. Delucchi
21 and Mr. Hollis in the event of an adverse finding in the investigation.
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23

24 Before rendering his opinions, Mr. Songer collected all information that was then
25 reasonably available to him. **Exhibit 3**. He relied on the statements of the Choyces, as
26 recounted by Chief Lewis and Lt. Moody. He also relied on his own interviews of Mr. Delucchi
27 and Mr. Hollis. As an investigator, Mr. Songer's role required him to use his best judgment to
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2 determine the credibility of witnesses based not only on the witnesses' characteristics, but also
3 on the plausibility of their respective accounts of the events in question. **Exhibit 3.** Mr. Songer
4 concluded that the stories proffered by Mr. Delucchi and Mr. Hollis were neither credible nor
5 plausible. **Exhibits 3 and 6.** Mr. Songer further opined that Mr. Delucchi and Mr. Hollis were
6 not credible witnesses. **Exhibits 3 and 6.** Mr. Songer and Attorney Bruch believed that the
7 evidence revealed in Mr. Songer's investigation supported the findings and conclusions set forth
8 in his report. **Exhibits 3, 4 and 6.** There is no evidence to the contrary.

9
10 Mr. Songer was justified in relying on the statements of the Choyces, as those statements
11 were recounted by Chief Lewis and Lt. Moody, and as they were verified in emotionally charged
12 testimony by Ms. Choyce at the arbitration. Even without that testimony, Mr. Songer's opinions
13 were that Mr. Delucchi and Mr. Hollis' stories were simply implausible, and that their conduct
14 violated PVFRS protocol, policies and procedures.

15
16 Plaintiffs may argue that Mr. Songer had failed to conduct a complete investigation as to
17 the truth of the statements recounted by Chief Lewis and Lt. Moody, or that Mr. Songer relied on
18 unreliable sources when he relied on the statements recounted by Chief Lewis and Lt. Moody.
19 Such arguments would be unavailing. To demonstrate that communications to a governmental
20 entity were not in made good faith, a plaintiff is required to present facts showing that the
21 informant had actual knowledge that the communicated information was false. *Adelson v.*
22 *Harris*, 973 F.Supp.2d 467, 501-03 (S.D.N.Y. 2013)(emphasis added).

23
24 *Adelson* was a defamation action in which the United States District Court for the
25 Southern District of New York applied Nevada's anti-SLAPP statute and relied extensively on
26 *John*. *Id.* at 496-500. The *Adelson* Court considered whether the allegedly defamatory
27 statements were made in good faith and whether there was any evidence to the contrary. *Id.* at
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2 501-03. It concluded that an alleged failure to investigate the truth of the communications and
3 reliance upon unreliable sources in making the communications are insufficient to show that
4 such communications were not made in good faith. *Id.* at 502. Rather, under Nevada's anti-
5 SLAPP statute, a plaintiff is required to allege and prove the communicator's actual knowledge
6 of the falsity of the communicated information. *Id.* at 502-03. Furthermore, as noted above,
7 such a showing must now be made by clear and convincing evidence. NRS 41.660(3)(b).
8

9 Mr. Delucchi and Mr. Hollis cannot make the required showing that either Attorney
10 Bruch or Mr. Songer had actual knowledge that the information contained in Mr. Songer's report
11 was false. Mr. Songer had derived the information contained in his report from his review of the
12 statements of the Choyces, as recounted by Chief Lewis and Lt. Moody, as well as his interviews
13 with Mr. Delucchi and Mr. Hollis. Mr. Songer and Attorney Bruch believed Mr. Songer's report
14 to be accurate. **Exhibits 3 and 4.** They still believe it to be accurate. **Exhibits 3 and 4.**
15

16 Further attesting to the validity of Mr. Songer's opinions, they were later corroborated by
17 the under-oath testimony of Ms. Choyce. **Exhibit 2.** She testified that Mr. Delucchi and Mr.
18 Hollis refused to render any medical assistance despite her cries and pleas for help. **Exhibit 2,**
19 pp. 8-9. Although she tried to show Mr. Delucchi and Mr. Hollis the baby she had just delivered,
20 as well as all the blood she was losing, Mr. Delucchi and Mr. Hollis refused to approach her and
21 render the necessary aid. **Exhibit 2,** pp. 10-11. As Mr. Songer concluded, this conduct fell
22 below the standard of care applicable to EMS personnel, and it subjected the Town to potential
23 civil liability. **Exhibit 6.** As recognized by the Nevada Supreme Court in *John*, subsequent
24 support for the veracity of communications can and should be considered when determining
25 whether those communications were previously made in good faith. *John*, 125 Nev. at 762, 219
26 P.3d at 1287 (stating that "[m]oreover, the DCSD's subsequent investigations supported the
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2 veracity of the communications.”).

3 Mr. Songer was also requested to make recommendations to the Town as to how to deal
4 with Mr. Delucchi and Mr. Hollis. **Exhibit 8.** To perform this task, Mr. Songer was called upon
5 to interpret policies, regulations, rules and protocols, and, to the best of his ability, apply those
6 principles to the conduct exhibited by Mr. Delucchi and Mr. Hollis. **Exhibit 3.** Mr. Songer
7 performed these difficult tasks to the best of his ability, and he did not dissipate any information
8 he knew to be false. **Exhibit 3.** To the contrary, Mr. Songer and Attorney Bruch wholeheartedly
9 believed Mr. Songer ultimately reached appropriate conclusions that were supported by the
10 evidence. **Exhibits 3 and 4.** They still wholeheartedly believe this. **Exhibits 3 and 4.**
11 According to Mr. Delucchi’s and Mr. Hollis’ SLAPP lawsuit, Mr. Songer and ETS should be
12 punished simply because Mr. Songer’s investigation revealed conclusions that were not
13 favorable to Mr. Delucchi and Mr. Hollis.
14

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16 In reaching his opinions, Mr. Songer also relied heavily on the fact that Mr. Delucchi and
17 Mr. Hollis had not reported the incident to anyone. **Exhibits 3, 6 and 8.** They did not make any
18 cell phone calls or radio transmissions to their dispatcher or to any law enforcement agency.
19 They did not prepare an incident report or a patient care report. They did not report the incident
20 to the on-duty Lieutenant or Fire Chief after returning to Pahrump, and they did not even make
21 any such reports the following morning. It was only after their conduct was discovered, when
22 Ms. Choyce’s mother made her complaint, that Mr. Delucchi and Mr. Hollis came finally
23 forward with their stories of the incident. Mr. Songer concluded that such a failure to report
24 tended to indicate that Mr. Delucchi and Mr. Hollis had been attempting to cover up their
25 wrongdoing, and that such cover-up attempts made them even less credible. **Exhibit 3.**
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27 Attorney Bruch’s knowledge is set forth in her declaration. As stated in that declaration,
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2 all information provided by Attorney Bruch and Mr. Songer to the Town of Pahrump was
3 truthful to the best of her knowledge, and she made no statements she knew to be false.

4 **Exhibit 4.** This Court should therefore conclude that the communications from ETS and Songer
5 to the Town of Pahrump were made in good faith, as such communications were true or made
6 without knowledge of falsehood.
7

8 **B. Mr. Songer's report was undeniably of concern to the Town.**

9 It cannot be plausibly denied that the legal advice and investigation coordinated by ETS,
10 including Mr. Songer's report, were of reasonable concern to the Town. Indeed, the Town
11 sought out Attorney Bruch's legal advice and requested that she coordinate an investigation into
12 the incident. Mr. Delucchi's and Mr. Hollis' conduct was of concern to the Town for three
13 primary reasons: (1) the Town reasonably anticipated that a lawsuit would arise out of the
14 incident; and (2) the Town was concerned as to whether any disciplinary measures were
15 necessary, and (3) the Town had a legitimate interest in using the incident as a tool to ensure that
16 such an incident did not occur in the future.
17

18 Because ETS's legal advice to the Town of Pahrump, including Mr. Songer's
19 investigative report, were good-faith communications to a political subdivision of this State,
20 regarding a matter of reasonable concern to the Town, ETS's and Mr. Songer's communications
21 to the Town meet NRS 41.637's definition of protected communications. As such, ETS is
22 immune from Mr. Delucchi's and Mr. Hollis' claims based on the communications.
23

24 **C. Mr. Delucchi and Mr. Hollis cannot establish by clear and convincing evidence
25 a probability of prevailing on their claims.**

26 NRS. 41.660 lays out the high burden which Mr. Delucchi and Mr. Hollis must satisfy
27 once the Court determines that ETS has established by a preponderance of the evidence that the
28 claim is based upon a good faith communication in furtherance of the right to petition or the right

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2 to free speech in direct connection with an issue of public concern. They must prove by clear
3 and convincing evidence a probability of prevailing on the claim. They have asserted two
4 claims: (1) defamation, and (2) IIED.
5

6 **1. The defamation claim:**

7 **a. ETS did not, by clear and convincing evidence, or otherwise,**
8 **engage in defamatory conduct.**

9 The general elements of a defamation claim require a plaintiff to prove: (1) a false and
10 defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication to
11 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
12 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002).

13 With the adoption of the First Amendment's free speech provisions to the United States
14 Constitution, the United States Supreme Court was forced to determine how the First
15 Amendment interacted with the common law of defamation. Initially, the High Court suggested
16 that the First Amendment did not protect against false statements and was not implicated in a
17 defamation action. However, in the landmark case of *New York Times Company v. Sullivan*,³⁷⁶
18 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Supreme Court concluded that the negligence
19 standard was too broad when applied to defendants who were commenting about the actions of a
20 public official.
21

22 To promote free criticism of public officials, and avoid any chilling effect from the threat
23 of a defamation action, the High Court concluded that a defendant could not be held liable for
24 damages in a defamation action involving a public official plaintiff unless "actual malice" is
25 alleged and proven by clear and convincing evidence. Actual malice has been defined as
26 "knowledge that it [the statement] was false or with reckless disregard of whether it was false or
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3 not." Reckless disregard means that the publisher of the statement acted with a "high degree of
4 awareness of... [the] probable falsity" of the statement or had serious doubts as to the
5 publication's truth. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 90
6 (2002).

7 In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342-43, 94 S.Ct. 2997, 41 L.Ed.2d 789
8 (1974), the United States Supreme Court refined its definition of a limited-purpose public figure,
9 by noting that it is preferable to reduce the public-figure question to a more meaningful context
10 by looking to the nature and extent of an individual's participation in the particular controversy
11 giving rise to the defamation. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82,
12 90 (2002).

13
14 In *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (Nev. 1993), a police
15 officer brought an action against the City of Reno and others to recover for defamation and
16 intentional infliction of emotional distress in connection with the police chief's press release
17 accusing the officer of having lied under oath. In that decision, the Court held that as a police
18 officer, Posadas was a public official. The Court stated, "Because of the importance to the
19 public of being informed as to the conduct and integrity of its public servants, Posadas' right to
20 protection against untrue attacks must be balanced against the First Amendment interest in
21 holding local government actors accountable. The propriety of the district court's summary
22 adjudication of Posadas' claim therefore rests on Posadas' ability to show that the allegedly
23 defamatory statement was made with actual malice."
24

25 Mr. Delucchi and Mr. Hollis have voluntarily placed themselves in the public eye by
26 virtue of their positions as EMTS. They know they are subject to close scrutiny of their work,
27 because of the critical nature of their job duties, and the need for transparency in the way in
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2 which they conduct their work. In fact, it was one of Mr. Songer's major concerns that Mr.
3 Delucchi and Mr. Hollis did not report to their supervisors the encounter with the Choyces.
4

5 To prevail on their defamation claim, they must prove actual malice by clear and
6 convincing evidence. That is, they must prove that the Songer report, as edited by Attorney
7 Bruch, was communicated with knowledge that it was false or with reckless disregard of whether
8 it was false or not. Reckless disregard means that Mr. Songer and/or Attorney Bruch acted with
9 a high degree of awareness of the probable falsity of the statement or had serious doubts as to the
10 publications' truth. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90
11 (2002).
12

13 Mr. Delucchi and Mr. Hollis base their allegation that the report is defamatory on the fact
14 that it was "co-authored" by Attorney Bruch. As discussed above, that is simply not true, which
15 by itself is sufficient to defeat a defamation claim. Grammatical edits to the report do not
16 constitute "co-authoring." But whatever label Mr. Delucchi and Mr. Hollis care to put on the
17 edited report, there is nothing in the report that is false or stated with reckless disregard of
18 whether it was false or not. The report is a memorialization of Mr. Songer's fact-finding task
19 wherein he rendered opinions as to Mr. Delucchi's and Mr. Hollis's veracity, and subsequently
20 made a recommendation as to how he would handle the situation if he were the final decision-
21 maker. There is certainly nothing in the report which Mr. Delucchi and Mr. Hollis can prove
22 was false, or made with a reckless disregard for the truth.
23

24 **b. Even if Mr. Delucchi and Mr. Hollis are not limited public figures,**
25 **they cannot prove their defamation claim by clear and convincing**
26 **evidence, because the Songer report as edited by Attorney Bruch was**
pure opinion.

27 In *People for the Ethical Treatment of Animals v. Bobby Berosini*, 111 Nev. 615, 895
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2 P.2d 1269 (Nev. 1995), there is an exhaustive discussion of libel, defined as written defamation.
3
4 In that case, an entertainer at a Las Vegas casino sued two nonprofit animal protection groups
5 and several individuals for, among other things, comments made by individuals that "Berosini
6 regularly abuses his orangutans." As the Court points out, whether the violence portrayed in the
7 videotape is seen as abuse or proper discipline is a matter of wide-ranging difference of opinion
8 among the witnesses in the case and within the public in general. *Id.* at 622. The Court went on
9 to render its ruling that the statements made were opinion, not libel, and offered the following
10 discussion:

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12 "The opinion expressed by any defendants or by any of defendants' witnesses in
13 this case that Berosini's activities, as represented in the videotape, constituted
14 abuse or cruelty falls squarely into a class of opinion described by Prosser and
15 Keeton as "evaluative opinions." PROSSER AND KEETON ON TORTS 814 (W. Page
16 Keeton, ed.; 5th ed. 1984). An evaluative opinion involves a value judgment
17 based on true information disclosed to or known by the public. Evaluative
18 opinions convey the publisher's judgment as to the quality of another's behavior
19 and, as such, it is not a statement of fact. "Under the Restatement (Second)
20 virtually all 'evaluative only' opinions would be nonactionable, since they are by
21 definition based on disclosed facts.... The statement that 'Jane Doe did not
22 deserve the Oscar for her movie role because it was a shallow, two-bit, hack
23 performance' is not actionable even in the face of ironclad proof that every other
24 living being who has ever seen the movie loved the performance." RODNEY A.
25 SMOLLA, LAW OF DEFAMATION § 6.05 [2], page 6-20 (1988) (citations omitted).
26 The divergent evaluative opinions expressed in the case now before us are subject
27 to debate. Neither is "right" or "wrong."

28 In the present case, everyone involved has seen the "movie"; and all the facts
upon which opinions were based were "disclosed" in the videotape itself. Those
who were of the opinion that Berosini was being abusive to the animals were
making an evaluative judgment based on the facts portrayed in the video. All
viewers of that video are free to express their opinion on the question of whether
they think Berosini was being cruel to those animals, and no one can be
successfully sued for expressing such an evaluative opinion—even if it is
"wrong." There is no such thing as a false idea or a wrong opinion. *See Nevada*
Ind. Broadcasting Corp. v. Allen, 99 Nev. 404, 410, 664 P.2d 337, 341-42 (1983).

...

Finally, the constitutional privilege provided by the Nevada Constitution protects

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3 the animal rights activists from defamation liability in this case. Article 1, section
4 9, of the Nevada Constitution provides that "[e]very citizen may freely speak,
5 write and publish his sentiments on all subjects, being responsible for the abuse of
6 that right." Citing to the Nevada Constitution, in *Culinary Workers Union v.*
7 *Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990 (1949), this court
8 observed that the "constitutional right to free speech ... embraces every form and
9 manner of dissemination of ideas held by our people." *Id.* at 173, 207 P.2d at 993.
10 "Free speech ... must be given the greatest possible scope and have the least
11 possible restrictions imposed upon it, for it is basic to representative democracy."
12 *Id.* at 173, 207 P.2d at 994 (citations omitted). In *Culinary Workers*, the district
13 court issued a restraining order against peaceful picketing. The Culinary Workers
14 Union sought a writ of prohibition countermanding the restraining order. One of
15 the grounds asserted by the parties opposed to the Culinary Workers Union's
16 application for the prohibition writ was that the "unfair" sign used on the picket
17 line was untruthful. *Id.* at 176, 207 P.2d at 995 (citations omitted). With regard
18 to the Culinary Workers Union's use of the word "unfair" on picket signs, this court
19 ruled in *Culinary Workers*, that "[s]uch normal statements or claims which in
20 general convey the idea that a business is 'unfair' to organized labor' are no
21 more than statements of opinion and are not subject to judicial restraint." *Id.* at
22 177, 207 P.2d at 995."

23
24 *Id.* at 624.

25
26 The statements made in the Songer report are his opinion based on the facts as he
27 believed them to be true. They cannot be defamatory statements, any more than the statements
28 and opinions rendered by the Arbitrator in this case, wherein she took great exception to the
decision to terminate Mr. Delucchi and Mr. Hollis. Obviously, the Town strongly disagrees with
her opinion. That does not make the Arbitrator's opinion defamatory. Mr. Songer's opinion as
outlined in the report, and edited by Attorney Bruch, is his opinion about whether various
PVFRS policies, and procedures, as well as relevant state laws and codes, were violated.

As in *Berosini*, the report is an evaluative opinion, and therefore not libelous. The
Berosini Court elaborated that the manner in which Berosini is seen to be treating his animals in
the videotape provides the framework in which the expressed, evaluative opinions of abuse must
be seen, that is to say, as expressions of pure opinion and not statements of fact. So long as the

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3 factual basis for the opinion is readily available, the persons receiving the opinion are in a
4 position to judge for themselves the validity of the opinion. *Id.* at 628. And that is exactly what
5 the Arbitrator did in this case - she disregarded the opinions rendered in the Songer report, and
6 she formulated her own opinions. Neither her opinion nor Mr. Songer's opinions are right or
7 wrong. They are merely vastly contrasting opinions. Neither are defamatory.

8
9 **2. The intentional infliction of emotional distress ("IIED") claim.**

10 **a. The Songer report, as edited by Attorney Bruch, does not
11 constitute conduct which satisfies the elements of the IIED claim.**

12 In order to prevail on their IIED claim, Mr. Delucchi and Mr. Hollis must prove (1) the
13 Songer report constitutes conduct which was extreme or outrageous with either the intention of,
14 or reckless disregard for, causing emotional distress to the plaintiffs; and (2) that they suffered
15 severe or extreme emotional distress as the actual or proximate result of defendant's conduct.
16 *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 989 P.2d 882 (1999).

17 Mr. Delucchi and Mr. Hollis must prove that Mr. Songer and Ms. Bruch created a report
18 with the intention of causing emotional distress. This is the very report that was generated in
19 large part for the purpose of protecting the Town and Mr. Delucchi and Mr. Hollis in the event
20 the Choyces sued them.

21 Extreme and outrageous conduct is that which is outside all possible bounds of decency
22 and is regarded as utterly intolerable in a civilized community. *Maduike v. Agency Rent-A-Car*,
23 114 Nev. 1, 953 P.2d 24 (1998). The emotional distress cannot merely be embarrassment or
24 humiliation. *Dicomes v. State*, 113 Wash.2d 612, 630, 782 P.2d 1002 (Wash. 1989).
25 Notwithstanding the impetus for the report, the fact that a report was generated which ultimately
26 made adverse findings against Mr. Delucchi and Mr. Hollis, does not constitute extreme and
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2 outrageous conduct.

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4 In *Janaszak v. State*, 173 Wash.App. 703, 297P.3d 723 (Wash.App. Div. 1 2013), Dr.
5 Eric Janaszak had been accused of inappropriate sexual relationships with patients, sexual
6 encounters during scheduled appointments, billing for dental services not actually performed,
7 among other things. The Washington Dental Quality Assurance Commission authorized an
8 investigation, which took place over the course of eight months. The Washington Department of
9 Health sought an order prohibiting Janaszak from treating adult female patients pending further
10 disciplinary proceedings. Instead, the Commission prohibited Janaszak from treating female
11 patients aged 12 and older. A third complainant came forward, but at deposition the original two
12 complainants stopped cooperating with the disciplinary proceedings. The Commission therefore
13 withdrew the restrictions and charges against Janaszak.
14

15 Janaszak sued on a variety of grounds, including a claim of IIED. He argued that the
16 Commission acted outrageously by conducting a biased investigation, selectively gathering
17 evidence to build a case against him, and branding him a pedophile by limiting his practice to
18 exclude all females over 12 years old. The Court ruled that while Janaszak may have been
19 distressed by the Commission's actions, he presented no evidence that the Commission or the
20 investigator acted intentionally or recklessly to injure him. As a matter of law, Janaszak failed to
21 present a prima facie case of outrage. *Id.* at 736.
22

23 In *Chowdhry v. NLVH*, 109 Nev. 478, 483, 851 P.2d 459, 462 (Nev. 1993), the Court
24 examined comments about patient abandonment. The plaintiff testified that as a result of the
25 comments, "he was very upset" and could not sleep. Mr. Delucchi and Mr. Hollis do not even
26 present any basic representations about what severe or extreme emotional distress they have
27 suffered. They cannot by clear and convincing evidence establish a probability of prevailing on
28

1
2 this claim.

3
4 **D. Attorney Bruch and Mr. Songer are protected by very strong immunities which
5 compel early dismissal of the lawsuit.**

6 Nevada's anti-SLAPP statute provides full and complete immunity against the lawsuit
7 which has been filed. In addition, however, there also exist a number of common law
8 immunities which render this action meritless, with no likelihood of success. The Nevada
9 Supreme Court has long frowned on the viability of defamation claims against communications
10 afforded absolute privilege on the basis that "the public interest in having people speak freely
11 outweighs the risk that individuals will occasionally abuse the privilege by making false and
12 malicious statements." *Jacobs v. Adelson*, 130 Nev. ___, ___, 325 P.3d 1282, 1285(2014).
13 The alleged defamatory statements under scrutiny here are exactly such privileged
14 communications.

15 Nevada has extended this absolute immunity referenced above to not only quasi-judicial
16 hearings, but administrative ones as well. *Sahara Gaming Corp., v. Culin. Workers Union Local*
17 226, 115 Nev. 212, 217-219, 984 P.2d 164, 167, 168 (1999). In such proceedings, defamatory
18 statements connected with, relevant to or material to the subject matter in controversy are
19 absolutely privileged, and this standard is applied liberally to affect the public policies
20 underlying the privilege. *Id.*, at 219, at 168. Since the quality of emergency medical care can
21 literally be a matter of life and death, public policy demands that communications amongst those
22 responsible for maintaining the quality of emergency medical services be privileged. *Imperial v.*
23 *Drapeau*, 716 A. 2d 244, 250-51 (Ct. App. Maryland 1998).
24
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3 **V. CONCLUSION**

4 Anti-SLAPP legislation is the epitome of a policy decision by Nevada's lawmakers that
5 harm to a plaintiff in leaving a claim unaddressed is outweighed by harm to the public in having
6 officials' decision-making impaired by fear of liability for their decisions. Nevada's anti-SLAPP
7 statute assists the judiciary in managing cases by providing a vehicle to dismiss meritless claims.
8 These statutes aid the judiciary by conserving judicial resources, saving the parties from
9 incurring unnecessary expenses, and preventing the parties from prolonging meritless cases. The
10 statute is intended to filter unmeritorious claims in an effort to protect citizens from costly
11 retaliatory lawsuits arising from their right to free speech.
12

13 Public entities by and through their counsel, cannot be afraid to conduct investigations
14 into matters of public concern, especially matters with the gravity of this one. Likewise, their
15 counsel cannot be afraid to oversee and conduct independent investigations. They must not be
16 intimidated by the fear of being sued, even at the risk of reaching conclusions that are
17 detrimental to the entity or its employees, even at the risk of reaching conclusions that may
18 ultimately be wrong, and even at the risk of an ultimate decision being overturned by an
19 arbitrator.
20

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2
3 ETS's communications to the Town are protected by Nevada's anti-SLAPP statute.
4 Based upon the facts and the applicable law, ETS respectfully requests that this Court grant its
5 special motion to dismiss pursuant to NRS 41.660.

6 *The undersigned does hereby affirm that the preceding document does not contain the*
7 *social security number of any person.*
8


9 Dated: July 29, 2014.

10
11 By: Tesodor
12 Todd R. Alexander, Esq.
13 Attorneys for Defendants
14 Erickson, Thorpe & Swainston
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on July 29, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **SPECIAL MOTION TO DISMISS UNDER NEVADA'S ANTI-SLAPP STATUTES (NRS 41.635, ET SEQ.)**, addressed to the following:

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


Susan G. Davis

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
SUITE 300
RENO, NV 89519
(772) 86-6868

RSA034

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Toni Glines description	1 page
2	Deposition transcript of Brittanie Marie Choyce	26 pages
3	Declaration of Pat Songer	4 pages
4	Declaration of Becky Bruch	3 pages
5	External Complaint	5 pages
6	Pat Songer – Points of Interview with Complainants	4 pages
7	Pat Songer – Points of Interview with Complainants with atty notes	9 pages
8	Pat Songer – Recommendations	5 pages

EXHIBIT 1

EXHIBIT 1

5-31-12

On Wednesday, May 30, 2012, I received a message on my phone from a Vicki. She stated she wanted to issue a complaint against our medics. She stated in the message that it was Medic 3 which was involved. She left her number for me to call.

I returned her call and the following is a detail of our conversation.

She stated that her son-in-law was taking her daughter into Las Vegas, she was pregnant and bleeding. At the top of the hill he saw one of our units coming back into Pahrump so he turned around and attempted to flag them down. After about 6 miles they finally stopped and he told them his wife was pregnant and bleeding. He was told by one of our medics to "calm down" and she wasn't bleeding that much. The medic also told him that all they could do was take her to Desert View. He then got angry got back in his car and headed to Las Vegas.

Vicki then stated that by the time they arrived at the hospital, her daughter had passed out.

I asked her if she could describe the medics and she asked her son-in-law to describe them. I heard him state that the one was bald and he didn't remember what the other looked like.

At this time I told Vicki that I would give this information to the Fire Chief would return her call. 29. 5-31-12



Toni Glines

EXHIBIT 2

EXHIBIT 2

CERTIFIED COPYEXCERPT FROM TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

TESTIMONY OF BRITTNIE MARIE CHOYCE

August 13, 2013

270 Highway 160

Pahrump, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

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26 The Arbitrator:

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31 disputeresolutions@att.net

32 Also Present:

33 Raymond Delucchi
34 Tommy Hollis
35 Dean Fletcher
36 William J. Snow

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I N D E X

Witness

Page

BRITTNIE MARIE CHOYCE

Direct Examination by Mr. Campbell

4

Cross-Examination by Mr. Levine

20

* * * * *

THE ARBITRATOR: Let's go back on the record.

And the Town is calling?

MR. CAMPBELL: Ms. Brittnie Choyce.

THE ARBITRATOR: Would you raise your right hand, please.

BRITTNIE MARIE CHOYCE,
having been called as a witness and having been first duly sworn, was examined and testified as follows:

THE ARBITRATOR: And would you state your full name for the record, please.

THE WITNESS: Brittnie Marie Choyce.

THE ARBITRATOR: Thank you.

You may proceed, Mr. Campbell.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Mrs. Choyce, I think I've introduced myself before. I'm the attorney for the Town of Pahrump. We're here in an arbitration proceeding regarding two firefighters that -- on an incident that occurred -- I think it was May 25 of 2012, just

1 about a year and a few months ago. Okay? We're in
2 an informal proceeding. Like I told you, if you
3 have need to stop for a minute, get emotional, just
4 let me know. We can stop and take a little bit of a
5 break. Okay?

6 A. Okay. Thank you.

7 Q. Are you a resident of Pahrump?

8 A. No longer.

9 Q. Okay. Did you live here back in the May
10 of 2012 time frame?

11 A. We were back in -- we had an apartment.
12 Yeah, we had an apartment in Vegas, but we also had
13 our house in Pahrump.

14 We were having kind of a hard time with
15 my in-laws, my husband's family, so we moved to
16 Vegas for a little while and -- but we still had our
17 house. And my mother lived in it with my
18 grandmother and my grandfather, and we would stay
19 out here with them too, you know.

20 Q. Okay.

21 A. Yeah.

22 Q. I'll just call this incident --

23 A. But that night I -- I was in Pahrump.

24 Q. Okay. So let's just say that night.

25 Prior to that night, you had seen your

1 OB/GYN doctor. You were pregnant; correct?

2 A. Yes, sir.

3 Q. And your OB/GYN doctor had -- you had
4 discussed with him about what happened with the
5 complications from the pregnancy?

6 A. Uh-huh, yeah, and what was going to
7 happen.

8 Q. And what did he tell you?

9 A. Well, they did the ultrasound, and there
10 was no fetal heartbeat or movement. But I was
11 between 17 and 20 weeks, and so they couldn't just
12 do a normal D&C. So what they were going to do was
13 called a D&E, which was going to be on May 26 at
14 10:15 A.M.

15 He inserted seaweed inside of me to help
16 dilate and so that when I did go in to have the
17 procedure, that it wasn't so much trauma to my
18 cervix and everything. Well, that seaweed
19 completely put me into labor.

20 By the time I realized I was contracting
21 so much and everything and, you know, said we got to
22 go to the hospital, we were headed to the hospital
23 where the doctor was supposed to do the surgery.
24 And to this day, I don't remember now which hospital
25 it was.

1 Q. Okay. Let me --
2 A. I think it was Centennial Hills
3 Hospital.
4 Q. Let me stop you for a minute.
5 Was your doctor over in Las Vegas?
6 A. Yes, sir.
7 Q. And he told you he wanted to do this
8 procedure in a Las Vegas hospital?
9 A. Yes, sir.
10 Q. Did you ever talk about possibly doing
11 the procedure in the Pahrump hospital?
12 A. No, 'cause it was a high risk doctor and
13 they -- they didn't have -- they don't have OB/GYNs
14 out here.
15 Q. Okay. Your doctor specifically told you
16 that he was going to have to do this procedure --
17 A. In Vegas.
18 Q. Okay. And so I'll go back to your
19 story. So you started going into -- having
20 contractions and going into labor. And that would
21 have been about what time on the night of the 24th?
22 A. Around 10:30, 11:00.
23 Q. Okay.
24 A. And then we headed out, and at 12:18 or
25 12:15 is when I delivered the baby. And around

1 12:18 to 12:20 is right when we ran into the EMTs.
2 We were coming up that -- right at the volunteer
3 fire station, and they were passing.

4 Q. You were headed to Las Vegas?

5 A. Headed to Las Vegas. They were coming
6 from Las Vegas, heading to Pahrump, and it was right
7 dead at the fire station. So my husband turned
8 around and was flashing his lights and everything.
9 We got side by side by them, and we were waving them
10 down to, you know, pull over.

11 They kept driving a couple miles. They
12 kept looking out the window, like, you know, what
13 the heck is going on? They did turn on their
14 lights, and they did finally pull over.

15 Q. Did they pull over what would have been
16 a couple miles down the road from the summit?

17 A. Yes, yeah. It took a while for them to
18 pull over. My husband then got out of the vehicle,
19 and they stepped out of the vehicle. And he said my
20 wife just delivered the baby, and she's
21 hemorrhaging, and the doctor said if she delivered
22 the baby on her own, she was going to hemorrhage.

23 And he -- they were just saying calm
24 down, calm down. And there's nothing we can do;
25 that, you know, we're on Clark County line and we're

1 Nye County. By the time we call somebody to get
2 here, it -- you could drive yourself to the
3 hospital.

4 Q. Now, you have some pretty good recall of
5 the conversation. Was your passenger window open?

6 A. Both of the windows were down, yes, the
7 driver's side and the passenger side.

8 Q. And then when the -- when the EMTs got
9 out of the ambulance, where did they walk to when
10 they got out of the ambulance?

11 A. They stood at the end of -- in between
12 the back of the ambulance and my hood.

13 Q. Okay.

14 A. And they were talking. I was yelling
15 out the window, like crying, my baby's on my lap.
16 Just please come -- just come look at me. Come help
17 me, help me, help me. You know?

18 Q. So you were talking through the window
19 and making communications with the two firefighters.

20 A. Yes, sir.

21 Q. And were they responding to you?

22 A. They kept telling me to calm down, and
23 that's all they kept telling me to do is calm down.
24 They didn't even literally, like, come up to the
25 window and look at me. They just -- they were

1 several feet away, and they just looked.

2 And I tried to show them the baby. And
3 you know, you're sitting in the seat, and it's
4 leaned back, and I'm bleeding. It's going back, you
5 know. It's coming from the bottom so it's going
6 back. But I also had my legs sitting up on the
7 dashboard like this, and it was puddling up on top
8 and dripping down the sides of me.

9 Q. So if they would have gotten a little
10 closer to the --

11 A. They would have seen how it was puddles
12 of blood just pouring down.

13 Q. Was your husband pretty upset at the
14 time?

15 A. He -- he -- he was a medic in the
16 military, so he knew the signs of, you know, loss of
17 blood and everything. And he -- the whole -- whole
18 ride, he was questioning me and -- excuse me. I'm
19 sorry -- questioning me and, you know, talking to me
20 to keep me aware and keep me awake and asking me
21 questions.

22 Well, I -- while we were pulled over, I
23 started to let them know that I feel like somebody
24 is pulling sand on the back of my neck and I
25 couldn't -- I couldn't hold my neck up. It was

1 just --

2 Q. You said you made that evident to
3 somebody. Were you telling the paramedics on the
4 scene?

5 A. I was yelling out the window 'cause
6 they -- they went back over to talk to my husband.
7 My husband wasn't irate. He was just -- he was
8 worried about me and he was, like, I don't
9 understand. Why can't you guys help her? You know,
10 why can't you put her in the bed and get some fluid
11 in her? You know, she needs fluids in her while
12 she's bleeding this much.

13 And they just kept saying there's
14 nothing we can do. We're on Clark County line.
15 You're going to have to call it in and dispatch it.
16 By the time somebody gets here, you could already be
17 at the hospital. The closest hospital is on
18 Fort Apache. It's called Southern Hills.

19 So my husband ran back to the van, and
20 he said -- excuse my language -- "fuck you," and he
21 spun tires and took off. Well, then we had to drive
22 a ways down for the next turnaround to turn back to
23 Vegas. So, you know, that took even more time to
24 turn around and head back to Vegas to get to
25 Fort Apache to get to Southern Hills.

1 Q. Before we get there, let's go back to
2 the conversation.

3 Do you remember the paramedics ever
4 offering to drive you all to the Pahrump hospital?

5 A. No, no.

6 Q. Did they make any offer to drive you to
7 Las Vegas?

8 A. No. They said that they couldn't
9 because they were on Clark County and they were Nye
10 County and that they needed to be dispatched. It
11 needed to be called in. And by the time Flight For
12 Life got there or another ambulance, we could
13 already be there in our own vehicle.

14 Q. So they specifically said no, we're not
15 driving you to a Las Vegas hospital because we're
16 not in the right county?

17 A. Yeah.

18 Q. You said you felt like sand was pouring
19 on your head. Were you -- were you still fairly
20 alert and cognizant when this incident happened?

21 A. I was -- I was -- I'm going to be
22 honest. I was losing consciousness. It -- it did
23 start to where my ears were getting muffled and like
24 the whooo, whooo, whooo sound was going on and,
25 like, my vision with like the tunnel. It was

1 getting black, you know, started. And by the time
2 we got to the last gas station, I was out.

3 Q. The last -- you're talking about when
4 you come down the little -- Blue Diamond there?

5 A. Yeah.

6 Q. Right by Blue Diamond?

7 A. Yeah.

8 Q. Okay.

9 A. Before you turn on Fort Apache.

10 Q. And when you got to the hospital, what
11 happened?

12 A. My husband had called the hospital to
13 let them know what was going on, that I was
14 hemorrhaging and to have somebody waiting, that we
15 were almost there.

16 I guess when we pulled up, they were
17 already outside waiting. I kind of remember
18 being -- I don't remember -- I couldn't see it, but
19 I could hear a little bit, but it was muffled. They
20 pulled me out of the van, and when I -- when they
21 got me up out of the van, I mean, it just poured out
22 of me. And still to this day at Southern Hills on
23 the sidewalk is still -- you could see, you know,
24 like, a stain of my blood.

25 Q. Did they tell you how much blood you

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1 ultimately lost?

2 A. I had to have six blood transfusions.
3 They wanted do another one before I went home, and I
4 just said that I would take all my vitamins and, you
5 know, eat all the meats and vegetables and
6 everything. I wanted to get home to my kids. I
7 just lost my baby. I just wanted to be home with my
8 other babies, you know.

9 And so yeah, I had six blood
10 transfusions. So honestly, I don't know how much
11 blood I lost, but six blood transfusions -- they
12 said that they've never done more than three blood
13 transfusions so --

14 Q. So that's pretty much your best
15 recollection as we sit here today as to what
16 happened up on the hill that night?

17 A. Yeah. I mean, I felt like they were
18 just not caring. It was, like, they just kept
19 telling me, calm down. You're -- you're fine. They
20 didn't check my vitals. They didn't check, you
21 know, anything. They peeked in, you know.

22 And like I said, if they would have just
23 come a little closer, let me turn on the light to
24 show the puddle of blood -- and also, you got to
25 realize that it's going behind me, you know. And

1 the baby -- obviously they couldn't do nothing for
2 the baby. That -- that's not the issue. The issue
3 was I felt like they offered no help, and it was,
4 well, here's your options. If we do dispatch it,
5 you could be at the hospital before anybody arrives.

6 Q. Were you able to see your husband
7 actually talk to them when he first got out of the
8 car and when they came out?

9 A. Yes. They got out of the driver -- the
10 driver got out, and then my husband got out, and
11 they both met right at the end of the ambulance and
12 the hood of our van.

13 And he explained the situation, you
14 know, of what happened and let him know that the
15 doctor said if I delivered the baby, I would
16 hemorrhage and told him that. And he -- he just
17 walked around. I don't -- actually, I don't know if
18 it was the driver that walked around or if it was --
19 'cause they went and talked -- the two
20 firefighters -- or EMTs went and talked to each
21 other for a second, and one just walked around and
22 looked inside and said you're not -- you're not
23 hemorrhaging. You're not bleeding that bad. This
24 is normal for a delivery of a baby.

25 Q. Do you remember if the scene was fairly

1 well lighted?

2 A. No. There was no light. I mean, they
3 had their -- they had their lights going and our
4 headlights were on, but it -- you know, there's no
5 streetlights or anything. And we weren't -- and it
6 was down the mountain. It wasn't at the top of the
7 mountain where it's more kind of, you know, lit up
8 with the streetlights or whatever, no. It was --
9 and like I said, it was 12:18, 12:20 A.M. It was in
10 the middle of the night. It was midnight.

11 Q. But they had their -- their ambulance
12 lights were on, and your headlights were on.

13 A. Yes, sir.

14 Q. Did you ever see your husband threaten
15 either one of the EMTs?

16 A. No. The only -- the only thing he
17 said -- the worse thing he said was "fuck you."

18 Q. Did he act aggressive toward them? Push
19 them?

20 A. Absolutely not. He did not put his hand
21 on them at all.

22 Q. Okay.

23 A. At all. At all. He -- he was concerned
24 about my health. And when they said that there was
25 nothing he -- they could do, he hopped back in the

1 van and was, like, fuck you. And then he said I'll
2 just get you there. And he drove 120 miles an hour
3 down that curve and everything to get me to the
4 hospital, you know.

5 Q. He was concerned about your safety.

6 A. Yes.

7 Q. Did you talk to him when you -- when you
8 first saw the ambulance going the other way?

9 A. That was -- the thing is -- is right
10 after I had -- my water broke, and then the next
11 contraction, the baby came out. And I was, like,
12 well, maybe we can stop at the -- the fire station.

13 And he was, like, honey, it's a
14 volunteer fire station. Nobody's probably going to
15 be there.

16 And it was just coincidental that that
17 ambulance was right there. And it honestly felt
18 like God was giving us, you know, help. And then
19 they didn't -- they didn't help at all.

20 My main concern is if you're going to
21 choose to be in that profession, you need to really
22 care about people's well-beings, you know. And I
23 almost lost my life, you know.

24 And even the doctors, I -- I can get
25 statements and everything. The doctor said if they

1 would have just put fluid in me, I would have never
2 ever lost consciousness, because now I have
3 short-term memory loss. I have a lot of things
4 going on now because of the situation. Not all of
5 it is their fault for not taking me. A lot of it,
6 you know, is from just having the miscarriage,
7 period, and hemorrhaging. But if I would have had
8 fluids in me and they could have elevated the bed a
9 little bit, I -- it wouldn't have been as severe as
10 it was.

11 And I don't know. And my husband even
12 told the doctors and nurses when we got to the
13 hospital the situation, and they -- they were
14 baffled, you know. So I don't know. After that, it
15 was a long -- a long process at the hospital, you
16 know. I had to deliver the afterbirth. I couldn't.
17 I just kept delivery blood clots. As you guys see
18 in the pictures, it was the baby and multiple blood
19 clots. And then they had to take me back into
20 surgery.

21 But you guys seen how much blood was in
22 the vehicle. And I had a towel underneath me and
23 everything, and I still bled that much, you know.
24 And I just -- I don't -- I don't understand. I
25 mean, how can you sit there and say I wasn't

1 bleeding that bad? And I had to have six blood
2 transfusions. And we were, you know, what, 15,
3 20 minutes from the hospital, and I had just
4 delivered the baby, so look how much blood I lost in
5 that van just in that amount of time. You know what
6 I mean?

7 Q. When you say 15 or 20 minutes, you're
8 talking about from Southern Hills?

9 A. Yeah, from the hospital, Southern Hills
10 on Fort Apache, to where we were, 15, 20 minutes,
11 you know, around about to get there.

12 Q. At over a hundred miles an hour?

13 A. Right, at over 120 miles an hour. So
14 when they seen me, there was obviously already a lot
15 of blood.

16 Q. Okay.

17 A. You know.

18 Q. And you're positive that the window was
19 open and they could hear what you were saying?

20 A. I'm positive, because they kept telling
21 me to calm down.

22 Q. Not just your husband but they told you
23 to calm down?

24 A. They were telling me to calm down.

25 MR. CAMPBELL: Okay. Thank you. You've

1 been very brave. I know this is tough for you. The
2 attorney for the union will ask you a couple
3 questions, but thank you very much.

4

5

CROSS-EXAMINATION

6

BY MR. LEVINE:

7

8 Q. Miss Choyce, my name is Adam Levine, and
9 I'm very sorry for your loss and what you've had to
10 go through. I know it can't be easy. And I
11 apologize in advance, but I have to ask you some
12 questions about this. It's never easy for any of us
13 to have to do.

14

15 If I understand you correctly, you went
16 into labor at -- when you began to believe you were
17 going into labor here in Pahrump; is that correct?

18

19 A. Uh-huh, yes, sir.

20

21 Q. Would I be correct that your husband did
22 not call 911 or call for an ambulance to transport
23 you when you went into labor at the residence you
24 were staying at?

25

26 A. No.

27

28 Q. Why not?

29

30 A. Because we were going to the hospital
31 to -- I don't know. We just -- I didn't think I was
32 going to have the baby, and I thought I was just

1 cramping and we were going to the hospital where my
2 doctor was.

3 Q. The goal -- I guess you and your husband
4 perceived, am I correct, that you needed to go to a
5 hospital when you were at the residence here in
6 Pahrump; correct?

7 A. Right.

8 Q. And you knew that's a good hour, hour
9 and 15 minutes away?

10 A. Correct.

11 Q. Can you explain to me, then, why you or
12 your husband wouldn't call for EMT assistance to
13 come to you where you were and take you to where you
14 needed to go.

15 MR. CAMPBELL: I think that's asked and
16 answered. She said that she wasn't delivering at
17 the time so --

18 THE ARBITRATOR: Well, if she can add
19 anything.

20 BY MR. LEVINE:

21 Q. If you can --

22 A. I can't really say why or why not.

23 Q. Okay.

24 A. It was just what we chose to do. We
25 were going to my doctor, which he told us to go and

1 go to this hospital. And I didn't realize I was
2 going to deliver the baby, you know.

3 If I would have known I was in full
4 labor and the baby's about to come out, then -- then
5 obviously I would have -- you know, but I thought it
6 was just -- I was cramping due to the -- you know,
7 the seaweed and everything. And I didn't know I was
8 going to go into full term labor and actually
9 deliver the baby and then hemorrhage, or of course I
10 would have called 911 to transport me, you know.

11 But then I would have been transported
12 to Desert View and then all the way to Vegas, which
13 would have taken more time. And I would have
14 been -- you know -- you know what I mean? Like,
15 Desert View -- Desert View transports more people
16 than anything, and they don't -- they don't handle
17 OB/GYN.

18 Q. When -- at some point prior to
19 encountering what I'm going to refer to as
20 Medic 3 -- that's the ambulance that it's referenced
21 by -- prior to that, I guess your water broke and
22 you realized you were delivering; is that correct?

23 A. Uh-huh.

24 Q. If I understood your testimony
25 correctly, your husband subsequently called the

1 hospital to let them know you were arriving; right?

2 A. After -- after the ambulance had left
3 and we got cell phone coverage --

4 Q. Okay.

5 A. -- again.

6 Q. Is there a reason you didn't -- when the
7 water broke, is there a reason your husband didn't
8 call 911 at that point?

9 A. No service.

10 Q. Okay. So there's no cell service in
11 that area?

12 A. No. No, sir.

13 Q. All right. That's been an issue of
14 discussion.

15 So your experience is there's no cell
16 service out there?

17 A. No service from at least -- I want to
18 say a little before Tecopa turnoff to almost till
19 you get to the last -- to the gas station. You get
20 service right before you get to the gas station. So
21 almost that whole way, you don't have -- I don't
22 have service.

23 Q. Do you recall the fire chief coming out
24 to your residence on two occasions, one in May and
25 one in June 2012, to meet with you and your husband?

Rocket Reporting

702.8Rocket (702.876.2538)

RSA061

1 A. Yes, sir.

2 Q. Is there a reason that you would not
3 give a recorded statement on either of those
4 occasions to the fire chief?

5 A. I wasn't ready to talk about everything.
6 I mean, look how emotional I was just looking at the
7 pictures. That was my daughter, you know, and --
8 and also -- not only that, I almost lost my life.

9 It took -- it took a good five months
10 for me to actually get back to feeling normal again
11 and okay. I didn't have any energy. I didn't
12 have -- literally, I -- I was just so like this,
13 blah, you know, and I wasn't ready to talk about it.
14 I didn't know that it was going to go this far. It
15 wasn't that I just put it off.

16 And like I -- as you guys know, Nevaeh
17 passed away -- that was her name -- May 25. I lost
18 my husband October 4. There was multiple times that
19 I started to write the letter, and God as my witness
20 and my mom, I started, and I just couldn't continue
21 and relive that -- that whole night again. And
22 then -- I don't know. And then ever since my
23 husband passed away, I've had to deal with that.

24 MR. LEVINE: Arbitrator's indulgence.

25 THE ARBITRATOR: Let's go off the record

1 for a moment.

2 (A discussion was held off the
3 record.)

4 THE ARBITRATOR: Back on the record.

5 MR. LEVINE: I have no further
6 questions.

7 THE ARBITRATOR: And will there be any
8 redirect?

9 MR. CAMPBELL: No redirect.

10 THE ARBITRATOR: Thank you very much,
11 Miss Choyce.

12 THE WITNESS: Thank you. I just want
13 you guys to know that I told you guys what I can
14 recall as my memory, and I -- I wish my husband was
15 here to speak for himself.

16 * * * * *

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CERTIFICATE OF REPORTER

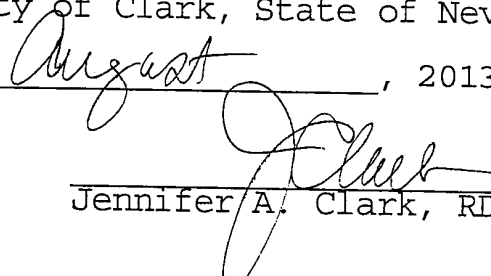
STATE OF NEVADA)
 SS:
COUNTY OF CLARK)

I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on August 13, 2013.

That prior to testifying, the witness was duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a partial, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 15th day of August, 2013.



Jennifer A. Clark, RDR, CRR, CCR 422

EXHIBIT 3

EXHIBIT 3

DECLARATION OF PAT SONGER

STATE OF NEVADA)
COUNTY OF HUMBOLDT) ss.

I, PAT SONGER, declare under penalty of perjury as follows:

1. I am the administrative director for Humboldt General Hospital in Winnemucca, Nevada.

2. I have been named as a defendant in the lawsuit asserted by Plaintiffs Raymond Delucchi and Tommy Hollis, filed as Case No. CV35969 in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

3. At the time of the events in question in the aforementioned lawsuit, I was the Director of Emergency Medical Services at Humboldt General Hospital.

4. On or about June 27, 2012, attorney Rebecca Bruch contacted me to investigate an encounter between Delucchi and Hollis and James and Brittne Choyce, which occurred on Highway 160, when James and Brittne were on their way to a Las Vegas hospital.

5. I was asked to review the facts that had already been gathered by Fire Chief Scott Lewis and Lt. Steve Moody, and to conduct additional interviews as necessary to complete an investigation of the incident on June 27, 2012.

6. During the course of my investigation, I discovered evidence that led me to conclude that: a) Delucchi and Hollis had not reported the incident to anyone; b) They did not make any cell phone calls or radio transmissions about the incident to their dispatcher or to any law enforcement agency; c) They did not prepare an incident report or a patient care report; d) They did not report the incident to the on-duty Lieutenant or Fire Chief after returning to Pahrump; and e) they did not even make any such reports the following morning. It was only after their conduct was discovered through a complaint to the department and they were confronted by the department that Delucchi and Hollis finally came forward with their stories of the incident.

///

1 7. In my investigation, I believe I collected all relevant information that was
2 then reasonably available to me.

3 8. After collecting all available information, I prepared a written report
4 containing the facts I had gathered in my investigation and the conclusions I reached by
5 virtue of my investigation. I am unaware of any other evidence that was withheld, and I
6 have not been advised of the existence of any information that would have caused me
7 to modify my written report. A true and correct copy of my report is attached as Exhibit
8 6 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and Exhibit A to
9 Defendant Pat Songer's Special Motion to Dismiss.

10 9. In reaching my findings and conclusions, I relied on my investigation which
11 included review of the reports of the incident prepared by Lewis and Moody, after their
12 interviews with James and Brittanie Choyce.

13 10. I also relied on my own interviews with Delucchi and Hollis. I also drew
14 my conclusions in part based on the fact that Delucchi and Hollis had not reported the
15 incident to anyone on the night in question or the following morning.

16 11. As an investigator, I acted in good faith and believe that my role required
17 me to, among other things, use my best judgment to determine the credibility of
18 witnesses based not only on the witnesses' characteristics, but also on the plausibility of
19 their respective accounts of the events in question. I performed this task to the best of
20 my ability and at all times acted in good faith.

21 12. I concluded, among other things, that the story proffered by Delucchi and
22 Hollis was not plausible and that Delucchi and Hollis were not credible witnesses.

23 13. I understood that Delucchi and Hollis were obligated to report the incident
24 promptly after it transpired and I concluded that Delucchi's and Hollis' failure to report
25 suggested to me that they had been attempting to conceal their wrongdoing, and that
26 concealment made them even less credible.

27 ///

28 ///

1 14. I further concluded that Delucchi and Hollis had breached the standard of
2 care¹ applicable to emergency medical services personnel, that their failure to prepare a
3 Patient Care Report or Incident Report could be viewed as an attempt to cover up their
4 wrongdoing, and that their conduct potentially exposed the Town of Pahrump to civil
5 liability.

6 15. After my report of findings and conclusions were finalized, I was asked by
7 Becky Burch to prepare a report of recommendations as to how the Town of Pahrump
8 should deal with Delucchi and Hollis. I subsequently provided a report of my
9 recommendations. A true and correct copy of my report of recommendations is
10 attached as Exhibit 8 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and
11 Exhibit B to Defendant Pat Songer's Special Motion to Dismiss.

12 16. In making my report of recommendations, I was called upon to interpret
13 policies, regulations, rules and protocols, and, to the best of my ability, apply those
14 principles to the conduct exhibited by Delucchi and Hollis. I performed these tasks to
15 the best of my ability, in good faith, and I did not disseminate any information I knew to
16 be false.

17 17. My recommendations consisted of the actions I would have taken if
18 Delucchi and Hollis were under my command. My recommendations included fully
19 briefing and informing PVFRS's EMS medical director, as well as the State of Nevada
20 EMS program manager, on the incident and the investigation. I also recommended that
21 Delucchi and Hollis be terminated from their positions with PVFRS. My
22 recommendations for termination were based on what I interpreted as various violations
23 of the Town of Pahrump's personnel policies, PVFRS's rules and regulations, and
24 PVFRS's EMS protocols.

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27
28 ¹ I understand that standard of care in this context required: all emergency medical services personnel to
file a report regarding any patient contact.

1 18. The information contained in my reports was truthful to the best of my
2 knowledge, and I made no statements I knew to be false. I am unaware of any facts in
3 the report being incorrect.

4 19. I still believe the information contained in my reports to be accurate,
5 truthful, and supported by the evidence revealed in my investigation.

6 20. I had no knowledge or belief that any information provided to the Town of
7 Pahrump was false.

8 21. If I was deposed or otherwise offered the opportunity to testify, I would
9 testify that I believed my report and recommendations were truthful, accurate and
10 supported by the evidence.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on July 18, 2014.

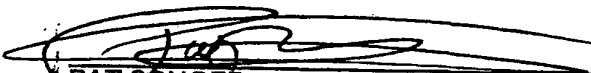
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EXHIBIT 4

EXHIBIT 4

DECLARATION OF REBECCA BRUCH

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, REBECCA BRUCH, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the States of Nevada and California and I am admitted to practice before all courts in the State of Nevada.

2. I am a shareholder with the law firm Erickson, Thorpe & Swainston, Ltd. ("ETS"), which has been named as a defendant in lawsuit asserted by Plaintiffs Raymond Delucchi and Tommy Hollis, filed as Case No. CV35969 in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

3. This Declaration is submitted in support of a Special Motion to Dismiss, filed on behalf of ETS, seeking the dismissal of the aforementioned lawsuit.

4. In June of 2012, ETS and I were appointed by ASC Risk Management to oversee and coordinate investigations into two incidents of concern to the Town of Pahrump. ASC is the third-party administrator for the Nevada Public Agency Insurance Pool, of which the Town of Pahrump is a member for insurance purposes.

5. One incident involved an encounter between Raymond Delucchi and Tommy Hollis and James and Brittnie Choyce, which occurred on Highway 160 when James and Brittnie were on their way to a Las Vegas hospital.

6. The other incident involved internal cross-complaints concerning a union labor dispute between Mr. Delucchi, who was at that time the president of the IAFF Local 4068 Union, and Fire Chief Scott Lewis. I was informed that Mr. Delucchi had filed an internal complaint against Chief Lewis, alleging retaliation, and that Chief Lewis had filed a cross-complaint against Mr. Delucchi for harassment.

7. I came to learn that Chief Lewis and Lt. Steve Moody were, at that time, leading the investigation into the encounter with James and Brittnie Choyce.

8. I determined that Chief Lewis and Lt. Moody should not continue to conduct the investigation. Rather, to avoid even the appearance of bias or impropriety, I determined

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& EISENBERG
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THIRD FLOOR
RENO, NV 89519
(786-6868

1 that an outside, independent investigator should conduct the investigations.

2 9. I initially retained Cindy Davis at Strategic HR Partners, LLC to conduct the
3 independent investigations.

4 10. Ms. Davis informed me that the findings and conclusions of her investigation
5 into the dispute between Mr. Delucchi and Fire Chief Lewis would depend, in part, on the
6 outcome of the investigation of the Highway 160 incident.

7 11. Ms. Davis further informed me that she did not have a background in
8 emergency medical services and did not feel she was qualified to investigate the propriety of
9 Mr. Delucchi's and Mr. Hollis' conduct on the night of the incident involving Brittnie Choyce.

10 12. Accordingly, I also retained Pat Songer, who was then the Director of
11 Emergency Medical Services for Humboldt General Hospital in Winnemucca, Nevada, to
12 conduct the investigation into the propriety of Mr. Delucchi's and Mr. Hollis' conduct.

13 13. Mr. Songer conducted his investigation and provided me a draft report of his
14 findings and conclusions.

15 14. I reviewed Mr. Songer's draft report of findings and conclusions, and I made
16 various typographical and grammatical edits to the draft report. I did not make any
17 substantive changes to the content of the findings and conclusions. A true and correct copy of
18 the draft report, showing the extent of my edits, is attached as Exhibit 7 to the Special Motion
19 to Dismiss.

20 15. Mr. Songer's report was then finalized and provided to the Town Manager of
21 the Town of Pahrump. A true and correct copy of Mr. Songer's finalized report of findings and
22 conclusions is attached as Exhibit 6 to the Special Motion to Dismiss.

23 16. Mr. Songer's report was marked as "confidential attorney work product" in
24 anticipation of litigation by the Choyces. The report was authored by Mr. Songer, and
25 reviewed by me. After Mr. Songer's report of findings and conclusions was finalized and
26 provided to the Town of Pahrump, the Town Manager requested that Mr. Songer prepare a
27 report of recommendations as to how the Town of Pahrump should deal with Mr. Delucchi
28 and Mr. Hollis. Mr. Songer subsequently provided a report of his final recommendations. A

1 true and correct copy of Mr. Songer's final report of recommendations is attached as Exhibit 8
2 to the Special Motion to Dismiss.

3 17. At the time that I provided Mr. Songer's reports to the Town of Pahrump, I
4 believed the information contained in the reports to be accurate, truthful, and supported by
5 the evidence revealed in Mr. Songer's investigation. I had no reason to believe the
6 information was false.

7 18. I still believe the information contained in Mr. Songer's reports to be accurate,
8 truthful, and supported by the evidence revealed in his investigation.

9 19. I had no knowledge or belief that any information or legal advice provided to
10 the Town of Pahrump was false.

11 20. If I was deposed or was otherwise offered the opportunity to testify, I would
12 testify that I believed Mr. Songer's report and recommendations were truthful, accurate and
13 supported by the evidence.

14 21. I declare under penalty of perjury that the foregoing is true and correct.

15 Dated: July 29, 2014.

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17 REBECCA BRUCH
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EXHIBIT 5

EXHIBIT 5

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

On May 30, 2012 at approximately 15:30, Administrative Director Tony Glines entered my office at 300 N. Hwy 160 and informed me of a complaint that was received to her telephone. She placed a written note before me, which listed the complainant name, their telephone number, the patient's name, the location of an incident, and the Medic Number.

In the presence of Lt. Steve Moody (conference call) I telephoned 1-702-417-8008 and spoke with Vicki. I identified myself and explained that I was returning her telephone call. Vicki informed me of a serious complaint against the crew of Medic 3. The incident occurred on May 25, 2012 at approximately midnight on Hwy 160, (approximately 1 mile) North of the Spring Mountain pass. As she explained the situation, I asked if her information was first hand. She explained that the situation involved her daughter Brittney and her son-in-law, James Choyce. She informed me that both were present and she placed Brittney on to the phone.

Brittney explained that she had been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child. She informed me of a scheduled appointment the next day for the evacuation of the stillborn. In the meantime, her Doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerlin Hospital in Las Vegas. Later she began to have problems including bleeding and her husband began to drive her to Summerlin as the local Pahrump Hospital (Desert View) was unable to provide the level of care.

As they drove to on Highway 160 her condition deteriorated and her water broke approximately 5-10 miles before the top of Spring Mountain and at some point she began delivery of the still born child with profuse bleeding. At the top of the Spring Mountain on Highway 160, they passed PVFRS Medic 3 travelling in the opposite direction (toward Pahrump). Her husband pulled a U-turn and attempted to catch up to Medic 3 while flashing his lights. Approximately 2 miles from Fire Station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out to tell the crew that she was having a miscarriage and needed help.

She stated that a "bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital.

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Defucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

Brittney stated that her husband was becoming more agitated and finally began to drive her to Las Vegas after making another u-turn on Highway 160. Shortly after, she passed out.

At the Las Vegas hospital, she received 5 blood transfusions and passed 5 large blood clots.

James Choyce then came on to the phone and relayed the same story with some additional points. He stated that he is veteran and feels that the medics did not take his wife's situation seriously. He stated that her seat was covered in her blood and she was on the verge of passing out from the miscarriage. He was previously informed by their Dr. that if this condition presented, that it was a true life emergency. He stated that he was talking with the Dr. and trying to reach the hospital on the way. He stated that when he observed Medic 3 he began flashing his lights, made a u-turn, attempted to catch up with them. He pulled aside the ambulance and they eventually pulled over. He approached the driver's window and spoke with the "bald" driver. He informed the driver that his wife was having a miscarriage. The "bald" medic and his passenger seated partner got out of the vehicle and approached his wife's side window and asked her "what's going on"? She was crying and informing him that she was having a miscarriage and was bleeding. The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading. James explained that they were instructed to get to Las Vegas not Desert View. James stated that he became angrier and finally just drove away after the crew informed them of the closest LV hospital off of Fort Apache.

Both James and Brittney expressed their desire to further their complaint and they would follow-up in writing.

Lt. Moody and I concluded the telephone conversation.

On 05/31/2012, at approximately 8:30 am I met with Town Manager Bill Kohbarger and HR Terry Bostwick at the Town Office. I relayed the content of the complaint and preliminary information confirming that Medic 3 was returning from an Inter-Facility transfer and had been travelling on Hwy 160 around that time. Further, the crew names were confirmed including the physical description of the driver.

The Town Manager instructed me to assign Lt. Moody to the investigation with my direct assistance to help through the process. Specific parameters were directed to me including the recording of both interviews. While in the TM's office, I telephoned Lt. Moody (209-5882) at 9:01 and informed him to have the crew come to Station 1 for interviews and that I would be over in a short while. When I arrived back at Station 1 (approx. 9:47) I observed the Lts. door closed. I opened the door without knowing who

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

was inside. I then observed Lt. Moody conducting an interview of Ray Delucchi with Union Rep. Nate Alexander. I stated "stop" to cease the interview as Lt. Moody began the interview and was conducting it outside of the scope directed to me by TM Kohbarger. I pulled Lt. Moody aside, informed him of the dictated parameters and asked each to the training to allow Lt. Moody to begin the recorded interview.

After the introduction, Ray Delucchi, made a statement regarding the interruption and stated that he felt he was being retaliated against and feared for his job. He requested HR to attend and later amended the request to include the TM to the interview process. This request was completed without incident. The interview was conducted with both the Town and the Union recording the interview.

The same process was completed with the second crew member, Tommy Hollis. I had to excuse myself several minutes into the interview due to a previous 11:00 commitment. I returned toward the end of the interview process.

I telephoned and spoke with Britney and James Choyce. I scheduled a 13:00 appointment for us to inspect the subject van and to gather additional information.

On the way to our appointment, Lt. Moody informed me that Ray Delucchi was on his way to HR to file a harassment charge against me.

Lt. Moody and I travelled to 951 E Laguna Court. We observed a silver color Dodge Caravan (Van) with Nevada Reg. 501-XLC parked in the driveway in front of the single-family dwelling. At the front door we met with Brittney Choyce and her husband, James, soon joined us from a nearby bedroom. The Choyce's provided access to the inside of the van where we observed an apparent "large" blood stain on the passenger side bucket style seat cushion, the lower seat back, and under the seat. The Choyces informed us that they were able to get some of the blood stain out, but not all.

They then demonstrated the position of the PVFRS medics in relation to their van's passenger side window as they conversed with Mrs. Choyce. Measured, it was approximately 3' 09".

James restated that the entire conversation with the PVFRS medic lasted approximately 5 minutes in which Brittney stated that she was bleeding and "felt like there was sand be poured over her head" still the medic would not help her. They further stated that neither medic presented as being scared or in fear, but more that "they wanted to get home".

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

Britney and James were asked to provide a recorded interview, but preferred to provide their information in written form. Brittney freely offered to show a photo of the stillborn and the material contained in her pants. Brittney took the photo using her cell phone upon arrival at the hospital. She allowed a photo of the image displayed on her phone.

James did inform us that he is with the U.S. Army Reserve (Chemical) and served two tours in Afghanistan. He is set to enter the Special Forces in July or August of 2012.

At approximately 13:30, Lt. Moody and I travelled to the area described by the PVFRS Medic 3 crew and Brittney and James Choyce. The area is thought to be around mm 23 and is approximately 2 miles North of the CCFD Station 79 in the North bound lanes. There is a designated turn-around less than a mile and the Lovell Canyon turn-off is located at mm 24.1 There is a semi-graded shoulder and no illumination. Photos secured.

Upon return to town, I met with HR Bostwick and filed harassment charges against Ray Delucchi as it became apparent that he was attempting to use his position as Union President and a recent arbitration hearing to thwart my authority and responsibility to conduct an investigation resulting from an external complaint. This is especially true as I received a directive from the Town Manager as to how the investigation was to be conducted with Lt. Moody and the fact that the incident occurred prior to the Arb. hearing. Additionally, the crew never called 911, never called the on-duty Lt., never reported the matter to dispatch, never mentioned the incident to the on-duty Lt. of the Fire Chief, never completed paperwork including a Special Circumstances Form", never provided patient care, and never requested other emergency medical care for the patient.

At 15:00, I received a text message from Lt. Moody. He informed me that Ray Delucchi was going home sick. I notified the TM and HR.

On 06/04/2012 at approx. 13:40 hours, I telephoned and spoke with State of Nevada EMS representative Buck Fenlason (John Lambert was out of the office). We discussed and reviewed the requirements of our EMS providers as outlined in the Nevada Administrative Code (NAC) for patient, documentation, etc.

On 6/6/2012 at approximately 15:30 hours, Lt. Moody and I travelled back to the complainant's E. Laguna residence. We spoke with both James and Brittney who informed us that they are pursuing the complaint, but have been in the process of moving into the Laguna address and were unable to

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

complete their written statements. They anticipated that the complaints would be completed within the next day or so.

On June 9, 2012, I was informed by the on-duty Lt. that FF/P Delucchi called out sick.

On June 11, 2012 at approximately 8:30 am, I met with Cindy Davis (Strategic HR Partners) at the Town Annex. The purpose of our meeting was to discuss a complaint filed against me by Ray Delucchi. I provided information, documentation, and oral feedback throughout the investigative process. At approximately 11:30 I met again with Cindy Davis to further review the matter and concluded the additional discussion at approximately 12:15.

At approximately, 11:00, Lt. Moody informed me of a grievance filed by the Union against me for unspecified reasons over several dates. I walked to the Town Office and discussed the information with the Town Manager.

*6/20/12
Per
B. Kohbars turned
over to outside firm.*

EXHIBIT 6

EXHIBIT 6

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Points of Interview with Complainants

A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Review of Documents

A. External Complaints

B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

E. International Association of Fire Fighters Local 4068 & Town of Pahrump, Collective Bargaining Agreement

F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

G. Pahrump Valley Fire-Rescue Services Rules and Regulations

H. Pahrump Valley Fire-Rescue Services EMS Protocols

I. Pahrump Valley Fire-Rescue Services Rules and Regulations

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".
"The scene wasn't safe enough to make contact with the passenger".

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid"
12. Asked, have you filled out a PCR since that date? Answer by EMT-Intermediate Hollis "no".

EXHIBIT 7

EXHIBIT 7

Pat Songer

T. Schubert -
atty notes

Facts From
Pahrump Valley Fire-Rescue Services Investigation

Points of Interview with Complainants

A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Review of Documents

- A. External Complaints
- B. Resumes
 - 1. Raymond Delucchi, EMT-Advanced (Paramedic)
 - 2. Tommy Hollis, EMT-Intermediate
 - 3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate
- C. Pahrump Valley Fire-Rescue Services
 - 1. Job Description for Firefighter/Paramedic
 - 2. Job Description for Firefighter/EMT-I Transport
- D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)
- E. International Association of Fire Fighters Local 4068 & Town of Pahrump *Collective Bargaining Agreement*
- F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources
- G. Pahrump Valley Fire-Rescue Services Rules and Regulations
- H. Pahrump Valley Fire-Rescue Services EMS Protocols
- I. Pahrump Valley Fire-Rescue Services Rules and Regulations

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".
"The scene wasn't safe enough to make contact with the passenger".

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
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9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid"
12. Asked, have you filled out a PCR ^{since} sense that date? Answer by EMT-Intermediate Hollis "no".

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Conclusions From
Pahrump Valley Fire-Rescue Services Investigation

1. The Complainants could have ~~be~~^{been} more believable for the following reasons 2-13.

2. There was "Patient Contact". Contrary to what the two (2) Firefighter/EMS personnel want us to believe, because they both went to Brittney's front passenger door where she was seated. The PVFRS employee's statement "What's going on" at the right side of the vehicle in close proximity to the front passenger door, combined with both Brittney's statement (see #3. below), and James Joyce's statement (see # 4 below) constitutes Patient Contact.

Choyce's

3. In the Allegations by Complainant Brittney

"What's going on", stated by the Paramedic while at the passenger/patient's front passenger window denotes "patient contact".

Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis, have a more believable and plausible pattern to it. Brittney explains in detail what the "bald" person (Paramedic Delucchi) stated ("What's going on") to her and her response to that (See Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis). An EMS expert will tell you that the words that were stated by Brittney would be a typical response to Paramedic Delucchi's question. Paramedic Delucchi's statement that all the passenger did was cry is not believable nor what a bleeding miscarriage lady would be saying or doing. She would be verbalizing everything (and possibly more) as in the statement by Brittney. Additionally, for the two Firefighter/EMS employees to have credibility and be considered believable, then STAR CARE (As in the PVFRS Rules and Regulations) would have to been demonstrated by the "A" and the "R" (in STAR), and the "C", "A", "R", and "E" (in CARE). And in this case six (6) out of the eight (8) STAR CARE topics were disregarded.

Moreover, failure by both Fire/EMS personnel together or individually to document the details of this encounter in a PVFRS's Patient Care Report, or PVFRS's Special Circumstance Report (Incident Report) form will be viewed as a cover up by the two (2) Firefighter/EMS personnel.

4. The allegation by complainant James Choyce

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Conclusions From
Pahrump Valley Fire-Rescue Services Investigation

"The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

This demonstrates that Paramedic Delucchi was in fact close enough to the patient to make a ~~call~~ statement "it wasn't that much blood". Moreover, Paramedic Delucchi ~~did~~ make "Patient Contact".

calls

5. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".

Therefore, Paramedic Delucchi, by the National Standards of Care from the Department of Transportation (DOT) for EMT-Basic, and or EMT-Paramedic didactic, clinical, and or field education should have responded appropriately. Additionally, STAR CARE (see #3) which is a part of PVFRS Rules and Regulations were continuously disregarded by both EMS providers. Moreover, a "Miscarriage" is a serious situation which can/may lead to a life threatening situation called Hemorrhagic Shock (loss of blood/bleeding), resulting in possible death.

6. Paramedic Delucchi stated, "The whole incident took 60 seconds". EMT-Intermediate Hollis stated "2 minutes". Paramedic Delucchi stated, I was speaking to the driver not the patient". "The scene wasn't safe enough to make contact with the passenger".

If you look at all the conversations detailed by all four people on scene that night, then compile them into a conversational screen play format the true on scene time probably exceeded 5 minutes.

7. All the questioning regarding the Patient Care Report, the Special Circumstance Report, and or any other reports or documentation for Dispatch, Medical, and or Operations that was not nor has been filled out as of the date of our interviews is severely damaging. ~~In the United States of America, "if you didn't document it, it didn't happen".~~ This is the foundation of all the legal chapters in every EMT-Basic, EMT-Intermediate, and all EMT-Paramedic book and courses. *emphasize the need to document*. Not documenting all aspects in a lengthy narrative within the Patient Care Report, exposes the town, service, and EMT's to litigation, ~~that finds for the~~

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Conclusions From
Pahrump Valley Fire-Rescue Services Investigation

~~plaintiff~~ ^{may}. What they did, by doing nothing will be perceived by any reasonable person as an attempt to cover up that whole situation. What they should have done was ~~expose~~ ^{disclose and report} the entire situation; then they ~~are~~ ^{are} believable.

*
see next page
8. As far as EMT-Intermediate Tommy Hollis, ~~yes, he is the subordinate to a Paramedic regarding patient care in as far as he is to follow a Paramedic's requests, unless, the Paramedic's requests or actions does not follow the National Standards of Care as outlined in all EMS educational material.~~ ^{while} These standards can be found in all published DOT approved EMS course textbooks. Therefore, all Volunteer and Professional EMS personnel (PVFRS is a Professional EMS Service) have a Responsibility and "Duty to Act" which EMT-Intermediate Tommy Hollis and Paramedic Delucchi failed to perform as a professional EMS provider and team. Additionally, EMT-Intermediate Tommy Hollis was the Senior PVFRS employee on that ambulance. Therefore, EMT-Intermediate Tommy Hollis did not ^{properly} supervise that ambulance's activity/operation and reporting as the senior PVFRS employee in accordance with PVFRS Rules and Regulations, and the National Standards of Care.

9. In EMT-Intermediate Tommy Hollis's "second interview", "by Bill Kohbarger", on page (no page numbers are documented) 8 at the bottom, ^{he} When asked by "BK (Chuck(e)) You have no problem writing Incident Reports at any time." Answer: "They are a key thing in court." This demonstrates the knowledge ^{of the} Supervising ambulance team leader regarding what is proper and the right thing to do for this event, IE: file an Incident Report, which was not filed that day.

10. The more damaging fact discovered in our investigation was ^{the fact that} Summerlin Hospital in Las Vegas Nevada (Where Brittney's Physician wanted her to go, and an "appropriate hospital") was only approximately 33 miles away from their location. In comparison, Desert View Regional Medical Center in Pahrump Nevada was approximately 31 miles away in the opposite (North) direction, and not an "Appropriate Hospital" to transport to.

11. "Appropriate Hospital Destination" as denoted in the National DOT Standards of Care, is a hospital that can appropriately care for a/your patient's medical needs. Desert View Regional Medical Center, in Pahrump Nevada is not an

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Conclusions From
Pahrump Valley Fire-Rescue Services Investigation

"Appropriate Hospital" for an Obstetrical emergency of this nature. Desert View Regional Medical Center, in Pahrump, Nevada does not have an Obstetrician specially trained and board-certified on call 24/7; nor does most small hospitals across America. Summerlin Hospital in Las Vegas, Nevada is a major receiving hospital with many specialty board-certified Physicians, including Obstetricians. Additionally, ~~all~~ EMS personnel in America are fully educated as to what constitutes an "Appropriate Hospital Destination".

Both EMT-Intermediate Tommy Hollis, the PVFRS Ambulance ^{properly trained} leader/supervisor; PVFRS Paramedic Delucchi, and all other EMS personnel in ~~America~~ have been educated regarding "Appropriate Hospital Destination" during their EMS Certification/Education.

~~to me~~ ^{I concluded} ~~Based on my interviews and review of documents, it appeared~~ Now, twelve people could conclude that the EMS crew (Paramedic and EMT-I) did not want to take the patient to Summerland Hospital in Las Vegas, Nevada, but instead to Desert View Regional Medical Center, in Pahrump Nevada, the closest hospital to the EMS crew's fire station ^{for} the EMS crew's personal convenience.

12. No effort on either provider's part was made to contact law enforcement, another ambulance service, Medical Control, and or PVFRS's supervisory personnel. Moreover, both individual's failure and flagrant disregard to report by filing proper documentation to PVFRS as part as their Rules and Regulations, PVFRS EMS Protocols, State of Nevada Reporting criteria for Patient Contact, and Radio Failure with Medical Control.

8. As far as EMT-Intermediate Tommy Hollis, while he is subordinate to a Paramedic regarding patient care, and is to follow a Paramedic's direction, ~~he~~ he is not to follow those directions if they do not follow the National Standards of Care as outlined in all EMS educational material. . . . [add the rest of the paragraph]

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Conclusions From
Pahrump Valley Fire-Rescue Services Investigation

13. This mind set of both Paramedic Delucchi and EMT-Intermediate Tommy Hollis, is that they used good sound judgment, which we cannot find/identify in either ~~of~~ the documentation provided by PVFRS and/or in our Interviews or investigation. Additionally, their ~~mindset they didn't do anything wrong;~~ demonstrates a pattern of behavior and professional conduct that may be repeated in the future. Moreover, they showed no remorse for anything that transpired. This was their demeanor, and mindset at the interviews. Therefore, their attitude leads me to believe that there may be repeated poor judgment in the future resulting in ramifications for the Town of Pahrump. Probability in Actuarial Analysis tells us that it's not if, but when the next event/incident will happen.

*refusal to acknowledge
any wrongdoing*

EXHIBIT 8

EXHIBIT 8

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Recommendations From
Pahrump Valley Fire-Rescue Services Investigation

We would be more than happy to assist, coordinate, and or lead the Town of Pahrump, the PVFRS's Medical Director, and or anyone else you desire during this process on your behalf.

Our Immediate Recommendations for the Town of Pahrump is to:

1. Medical Director: Have the Fire Chief (or his Agent) fully inform and brief PVFRS's EMS Medical Director regarding:
 - a. The incident
 - b. The severity
 - c. Current investigations
 - d. Investigations findings
 - e. Possible litigation
 - f. Actions taken (see g., 1))
 - g. Actions he/she as Medical Director may/should take immediately:
 - 1) As Medical Director PVFRS I have temporary revoked Paramedic Raymond Delucchi's, and EMT-Intermediate Tommy Hollis's authorization to practice under my license, pending their investigation(s) outcome.
 - 2) Medical Director notifies the State of Nevada EMS Program Manager Patrick Irwin of his action (See 1) above).
 - 3) Medical Director desires to actively cooperate with the State of Nevada's investigation.
2. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump: Have their Agent fully inform and brief the State of Nevada EMS Program Manager Patrick Irwin regarding:
 - a. The incident
 - b. The severity
 - c. Current investigations
 - d. Investigations findings
 - e. Possible litigation
 - f. Actions taken
 - g. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump's desires to actively cooperate with State of Nevada EMS Program Manager Patrick Irwin, and the State of Nevada's investigation.

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Recommendations From
Pahrump Valley Fire-Rescue Services Investigation

3. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
 - a. For PVFRS Firefighter/Paramedic Raymond Delucchi's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
 - 1) Termination for the listed reasons, the Town of Pahrump's Personnel Policies:
 - a) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
 - b) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.4, "administrative leave, without pay"
 - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
 - a) 02.03.01, Line:
 - 1] D., H., K.
 - b) 02.03.02
 - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
 - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
 - e) 02.03.05
 - f) 02.03.11
 - g) 02.03.14
 - h) 02.05.15
 - i) 02.05.24

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Recommendations From
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
 - a) Documentation (Page 14)
 - 1] 1., 2., 3., 4.
 - b) Refusal of Care (Page 18)
Star 11
 - c) Standard of Care (Page 20)
 - 1] Paragraph 1, and 2, Notes: Star 10, 11
 - d) Childbirth. Failure to evaluate or perform
 - e) Pre-Term Labor. Failure to evaluate or perform
 - f) Shock – Hypovolemia. Failure to evaluate or perform

Pat Songer
CONFIDENTIAL ATTORNEY WORK PRODUCT
Recommendations From
Pahrump Valley Fire-Rescue Services Investigation

4. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
 - a. For PVFRS Firefighter/EMT-Intermediate Tommy Hollis's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
 - 1) Termination for the listed reasons, the Town of Pahrump's Personnel Policies:
 - a) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
 - b) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.4, "administrative leave, without pay"
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 - 1] D., H., K.
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 - e) 02.03.05
 - f) 02.03.11
 - g) 02.03.14
 - h) 02.05.15
 - i) 02.05.24

Pat Songer
CONFIDENTIAL ATTORNEY WORK PRODUCT
Recommendations From
Pahrump Valley Fire-Rescue Services Investigation

- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
 - a) Documentation (Page 14)
 - 1] 1., 2., 3., 4.
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 - Star 11
 - c) Standard of Care (Page 20)
 - 1] Paragraph 1, and 2, Notes: Star 10, 11
 - d) Childbirth. Failure to evaluate or perform
 - e) Pre-Term Labor. Failure to evaluate or perform
 - f) Shock – Hypovolemia. Failure to evaluate or perform

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ADAM LEVINE, ESQ.
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5 *Attorneys for Plaintiffs*

FILED
2014 DEC 17 P 1:35
[Signature]
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
9

10 RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

11 Plaintiffs,
12

13 v.

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

15 AMENDED NOTICE OF APPEAL

16 Defendants.
17 _____ /

18 Plaintiffs Raymond Delucchi and Tommy Hollis hereby amend their Notice of Appeal of the
19 Findings of Fact, Conclusions of Law and Order Granting Erickson, Thorpe and Swainston's Special
20 Motion to Dismiss entered in this action on September 17, 2014 to include Order Granting Defendant

21 ///

22 ///

23 ///

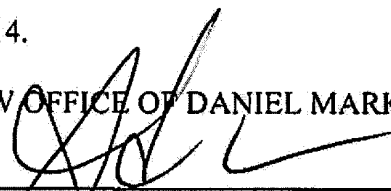
24 ///

25 ///

1 Pat Songer's Special Motion to Dismiss Pursuant to NRS§ 41.650 entered in this action on November
2 19, 2014. (Exhibit "2" attached hereto).

3 DATED this 17th day of December, 2014.

4 LAW OFFICE OF DANIEL MARKS

5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 002003
8 ADAM LEVINE, ESQ.
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10 610 South Ninth Street
11 Las Vegas, Nevada 89101
12 (702) 386-0536: FAX (702) 386-6812
13 *Attorneys for Plaintiffs*

14 **CERTIFICATE OF MAILING**

15 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on
16 the 16th day of December, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada,
17 in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the
18 foregoing AMENDED NOTICE OF APPEAL, to the addresses as follows:

19 Todd Alexander, Esq.
20 LEMONS, GRUNDY & EISENBERG
21 6005 Plumas Street, Suite 300
22 Reno, Nevada 89519
23 *Attorneys for Defendant ETS*

24 Joseph P. Garin, Esq.
25 Siria L. Gutierrez, Esq.
LIPSON, NEILSON, COLE, SELTZER GARIN
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Pat Songer



An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT “2”

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Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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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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11 jgarin@lipsonneilson.com
12 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 3rd 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 3rd 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, 3rd Flr.
Reno, NV 89519

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


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

1 **ORDR**
2 **JOSEPH P. GARIN, ESQ.**
3 **NEVADA BAR NO. 6653**
4 **SIRIA L. GUTIERREZ, ESQ.**
5 **NEVADA BAR NO. 11981**
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12 **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.**

FILED
FIFTH JUDICIAL DISTRICT COURT

NOV 19 2014

NYE COUNTY DEPUTY CLERK
DEPUTY *James Davis*

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. Gutierrez,
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 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 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 18th day of November, 2014.

15
16 
DISTRICT COURT JUDGE

17 Submitted by:

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

20 By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

21 SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

22 9900 Covington Cross Drive, Suite 120

23 Las Vegas, Nevada 89144

(702) 382-1500

24 Attorneys for Defendant,
25 PAT SONGER
26
27
28

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

FILED
2015 SEP 24 P 1:10
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
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

11 Plaintiffs,

12 v.

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

15 Defendants.

16
17 **NOTICE OF ENTRY OF ORDER OF DISMISSAL**

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 of Dismissal was
2 filed on September 15, 2015, a copy of which is attached hereto.

3 DATED this 29 day of September, 2015.

4 LAW OFFICE OF DANIEL MARKS



5 DANIEL MARKS, ESQ.

6 Nevada State Bar No. 002003

7 ADAM LEVINE, ESQ.

8 Nevada State Bar No. 004673

9 610 South Ninth Street

10 Las Vegas, Nevada 89101

11 (702) 386-0536: FAX (702) 386-6812

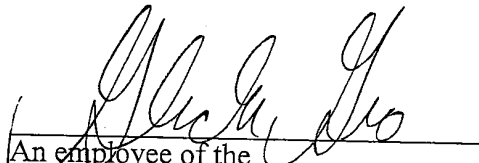
12 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 21st day of September, 2015, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER OF DISMISSAL, to the addresses as follows:

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

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


An employee of the
LAW OFFICE OF DANIEL MARKS



Case No. CV35969
Dept. 1

FILED

2015 SEP 15 PM 2:25
Sarah Westfall

NYE COUNTY CLERK
BY DEPOSIT

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

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

vs.

ORDER OF DISMISSAL

PAT SONGER and EROCKSON, THORPE
& SWAINSTON, LTD,

Defendants.

On September 17, 2014, the Court entered Findings of Fact, Conclusions of Law and an Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss. The Court did not award attorneys' fees and costs as part of said Order, instead ordering said parties to file a motion, opposition and reply concerning said attorneys' fees and costs. A Notice of Entry of Order was filed on October 7, 2014. Plaintiffs filed a Notice of Appeal on October 28, 2014.

On November 19, 2014, the Court entered a written Order on Pat Songer's Special Motion to Dismiss Pursuant to NRS 41.660. The Court advised the parties the case would be dismissed with prejudice once the Court awarded attorneys' fees and costs. The Court set a hearing on Songer's Motion for Attorneys Fees and Costs for December 2, 2014. A Notice of Entry of Order was entered on the Songer Order on December 4, 2014.



The Plaintiffs filed an Amended Notice of Appeal on December 17, 2014, to encompass both the District Court's September 17, 2014 Order, and its November 19, 2014 Order. The Court on December 29, 2014 issued an Order Awarding Attorneys' Fees and Costs. The December 29, 2014 Order failed to specifically state that the District Court was dismissing the case with prejudice.

On June 1, 2015, the Nevada Supreme Court issued an Order Dismissing Appeal, finding that the District Court had not issued a final order of dismissal in this case.

It was the intention of the District Court, in entering its September 17, 2014 Order, its November 19, 2014 Order, and its December 29, 2014 Order, read together, to dismiss this case in its entirety. In light of the Nevada Supreme Court's June 1, 2015 Order, and based upon the District Court's previous three orders, this case is now dismissed in its entirety, with prejudice.

Dated this 15th day of September, 2015.


KIMBERLY A. WANKER,
DISTRICT COURT JUDGE

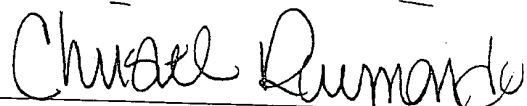


CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 15th day of September 2015, she mailed via U.S. mail a copy of the foregoing ORDER to the following:

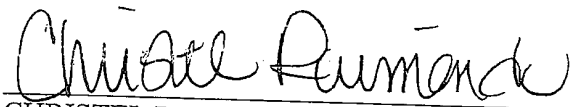
Siria L. Gutierrez, Esq.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101


CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.


CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE

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

FILED
FIFTH JUDICIAL DISTRICT COURT

OCT 09 2015

NYE COUNTY DEPUTY CLERK
DEPUTY

Sarah Westfall

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

7 IN AND FOR THE COUNTY OF NYE

8
9 RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

10 Plaintiffs,

11 v.

12 PAT SONGER,

13 Defendant.
14 _____/

15 NOTICE OF APPEAL

16 Plaintiffs Raymond Delucchi and Tommy Hollis hereby appeal the Order of Dismissal entered
17 in this action on September 24, 2015. (Exhibits "1" attached hereto).

18 DATED this 6th day of October, 2015.

19
20 LAW OFFICE OF DANIEL MARKS


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

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 7th day of October, 2015, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing NOTICE OF APPEAL, to the addresses as follows:

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



An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT “1”

1 NEOJ
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*

2015 SEP 24 P 1:10
Stephanie May
NYE COUNTY CLERK
BY 017017

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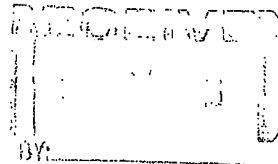
IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and
TOMMY HOLLIS,
Plaintiffs,

Case No. CV35969
Dept. No. I

v.

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



NOTICE OF ENTRY OF ORDER OF DISMISSAL

TO: PAT SONGER, Defendant;
TO: SIRIA L. GUTIERREZ, ESQ., Attorney for Defendant Pat Songer;
TO: ERICKSON THORPE & SWAINSTON, LTD., Defendant, and
TO: TODD ALEXANDER, ESQ. Attorney for Defendant Erickson Thorpe & Swainston, Ltd.:

///

///

///

///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order of Dismissal was
2 filed on September 15, 2015, a copy of which is attached hereto.

3 DATED this 29 day of September, 2015.

4 LAW OFFICE OF DANIEL MARKS



5 DANIEL MARKS, ESQ.

6 Nevada State Bar No. 002003

7 ADAM LEVINE, ESQ.

8 Nevada State Bar No. 004673

9 610 South Ninth Street

10 Las Vegas, Nevada 89101

11 (702) 386-0536; FAX (702) 386-6812

12 *Attorneys for Plaintiffs*

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An employee of the
LAW OFFICE OF DANIEL MARKS



Case No. CV35969
Dept. 1

FILED

2015 SEP 15 P M 25
Sarah Westfall

NYE COUNTY CLERK
2015 SEP 17

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

vs.

ORDER OF DISMISSAL

PAT SONGER and EROCKSON, THORPE
& SWAINSTON, LTD,

Defendants.

On September 17, 2014, the Court entered Findings of Fact, Conclusions of Law and an Order Granting Defendant Erickson, Thorpe & Swainston's Special Motion to Dismiss. The Court did not award attorneys' fees and costs as part of said Order, instead ordering said parties to file a motion, opposition and reply concerning said attorneys' fees and costs. A Notice of Entry of Order was filed on October 7, 2014. Plaintiffs filed a Notice of Appeal on October 28, 2014.

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KIMBERLY A. WANKER,
DISTRICT COURT JUDGE



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 15th day of September 2015, she mailed via U.S. mail a copy of the foregoing ORDER to the following:

Siria L. Gutierrez, Esq.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101

Christel Raimondo
CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.

Christel Raimondo
CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE