

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON
THORPE & SWAINSTON, LTD.

Respondents

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District Court: TC 35969 Lindeman
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JOINT APPENDIX

VOLUME VII OF VII

Appeal from the Fifth Judicial District Court
Case. No. CV35969

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1 IN THE FIFTH JUDICIAL DISTRICT COURT STATE OF NEVADA
2 FIFTH JUDICIAL DISTRICT COURT
3 IN AND FOR THE COUNTY OF NYE MAY 17 2016
4 RAYMOND DELUCCHI and)
5 TOMMY HOLLIS,)
6 Plaintiffs,) Case No. CV35969
7 Vs.) Dept. No. I
8 PAT SONGER and ERICKSON,)
9 THORPE & SWAINSTON, LTD.,)
10 Defendants.)
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COURT HEARING

Held on August 27, 2014

At 1:35 P.M.

Transcribed by: Lisa A. Young

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THOMAS BEKO, ESQ.
REBECCA BRUCH, ESQ.

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1 STATE OF NEVADA; AUGUST 27, 2014; 1:35 P.M.

2 -o0o-

3 THE COURT: Good afternoon. Thank you. Please
4 be seated.

5 Well, for just beginning a case, we sure have a
6 lot of pleadings. Five volumes so far.

7 We are here on case number CV35 -- I have to
8 look at the file. The Court's stuff is set up --
9 CV35969; Raymond Delucchi and Tommy Hollis versus Pat
10 Songer and Erickson, Thorpe & Swainston.

11 Counsel, I have read -- I haven't read every
12 exhibit. I will be quite honest with you. There are
13 quite a few of them. But I have read all of the
14 pleadings, and I have also taken a look at Nevada's case
15 law on the anti-SLAPP statutes. At least, what is
16 available via Westlaw. I have had the opportunity to do
17 that.

18 I will give you all of the time that each of the
19 parties needs today to argue in front of the Court.

20 We have two motions to dismiss which are
21 essentially motions for summary judgment.

22 We have a motion filed on behalf of Mr. Songer,
23 and we have a motion filed on behalf of the law firm
24 Erickson, et al. That's the easy way to say that.

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1 And we also have oppositions filed on behalf of
2 the two Plaintiffs in this case.

3 So, Counsel, before we begin, I'm going to have
4 everyone state their appearances so we are certain we
5 have it for the record, and then we will proceed.

6 MR. LEVINE: I'll start. Adam Levine, bar
7 number 4673 for Plaintiffs, Raymond Delucchi and Tommy
8 Hollis.

9 THE COURT: Okay.

10 MS. GUTIERREZ: Siria Gutierrez on behalf of
11 Pat Songer.

12 MR. ALEXANDER: Todd Alexander on behalf of
13 Erickson, Thorpe & Swainston. And with me are Tom Beko
14 and Rebecca Bruch.

15 THE COURT: Okay. All right. I think the first
16 motion was filed on behalf of Mr. Songer, if I recall
17 correctly. So I put all -- it's much easier -- this is a
18 very difficult way to work with things. That's why I so
19 appreciate when you sent over a courtesy copy --

20 (Fire alarm went off.)

21 THE COURT: Thank you. Please be seated. That
22 was fun. So we'll try to get started again here.

23 I think we were just getting ready for argument
24 from Pat Songer's attorney. So proceed.

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1 MS. GUTIERREZ: That is correct, Your Honor. We
2 usually don't have such an eventful opening.

3 First I do want to thank Your Honor for blocking
4 off a substantial amount of time for these issues to be
5 heard. As you saw from the five volumes, there's a lot
6 of interesting issues in this matter and a lot of
7 contention.

8 I'm going to start off by addressing Your
9 Honor's request on -- of August 4th that we address
10 whether or not the 2013 statutes or 2012 statutes apply.
11 I'm not sure if Your Honor has had a chance to read
12 through the exhaustive Legislative history.

13 THE COURT: I have. I have read through it. I
14 will be anxious to hear what you think. I think I know
15 what I think after looking at it but.

16 MS. GUTIERREZ: We addressed it in our motion.

17 THE COURT: Yes.

18 MS. GUTIERREZ: I won't repeat everything at
19 nauseam.

20 THE COURT: Okay.

21 MS. GUTIERREZ: I'm sure you will hear lots of
22 arguments over the day today.

23 Essentially our review of the Legislative
24 history it indicates that since the Legislature enacted
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1 the anti-SLAPP laws in Nevada, they've always intended it
2 to have a broad application. So whether it was the '97
3 version of the statute that Plaintiffs are arguing for or
4 the 2013, our intent has always been to protect all
5 Nevadans from -- excuse me, with their participation in
6 public affairs.

7 And so -- and to ensure that people weren't being
8 brought into lawsuits because they were exercising their
9 free speech.

10 So it is Mr. Songer's position that the 2013
11 statute applies in this matter for multiple reasons.
12 One, the 2013 amendments were clarifying in nature and
13 that was --

14 THE COURT: Thank you. I appreciate that.

15 MS. GUTIERREZ: They were clarifying in nature
16 in metabolic in 2012 the Ninth Circuit had decided that
17 the Nevada laws, anti-SLAPP laws, were very limiting.
18 That they didn't have the right to appeal. That there
19 was no right to appeal. Two other points that I'm
20 forgetting at the moment. I apologize.

21 That they were not brought in the sense that --
22 they weren't the way that Nevada or that California was
23 structured. And even though California has a broader
24 statute in the eyes of the Ninth Circuit, they felt that
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1 Nevada's statute was much more limiting in terms of what
2 could be protected by the civil immunity under 41.637.

3 And with those clarifications in mind, the
4 Legislature undertook the amendments in 2013 to
5 specifically add in the language of right to free speech
6 and to add a fourth definition to the good faith
7 communication and privilege of the right to free speech
8 on the matter of public concern.

9 And so it is our position that the 2013
10 amendments were not new. It's not a matter of it being
11 retroactive. It's a matter of these being in clarifying
12 nature of the previous statute, which was intended to
13 have a broader application than what the Ninth Circuit
14 had read into the statute.

15 So if -- for purposes of this hearing, I'll be
16 arguing primarily that the 2013 statute is the one that
17 applies. And under that statute, the procedural
18 mechanisms show that Pat Songer would have to present by
19 a preponderance of the evidence that the report was a
20 good faith communication in furtherance of the right to
21 free speech or right to petition as defined in 41.635.

22 And we contend that it does because of
23 Subsection 2 and 3. And in Subsection 2, it's a
24 communication -- excuse me, 41.637. A communication of

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1 information to an officer, employee of this state or
2 political subdivision regarding a matter reasonably of
3 concern to the respective governmental entity.

4 The report was a communication to the town of
5 Pahrump through their counsel of Erickson, Thorpe, ETS,
6 and it was regarding this issue of public concern which
7 was what happened in May of 2012 on Highway 160.

8 Having the allegation that your firefighters may
9 have essentially abandoned a woman in critical state is
10 certainly a matter that was of concern to Pahrump and
11 certainly something that they felt was important enough
12 to undergo a third-party investigation and hire a third
13 party to conduct that work. So we contend that it falls
14 under Subsection 2 as the communication.

15 In addition to Subsection 2, there is Subsection
16 3, which is a written statement made in direct connection
17 with an issue under consideration by any other official
18 proceeding authorized by law.

19 At some point this report was used in the
20 disciplinary actions against Plaintiffs. With that it
21 was an authorized proceeding that Pahrump underwent and
22 it was in direct connection with that issue of what
23 happened on Highway 160.

24 And so that's yet another basis as to why the
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1 report itself is a good faith communication in
2 furtherance of the right to free speech. And having met
3 not only one but two of the definitions under 41.637, the
4 burden has been shifted to Plaintiffs to show by clear
5 and convincing evidence that they would be able to
6 prevail on their defamation and intentional infliction of
7 emotional distress claim.

8 However, Plaintiffs have never argued how they
9 are going to prevail on their defamation or intentional
10 infliction of emotional distress claim. Instead, they
11 focussed on the lack of clarity and the contents of the
12 report itself, which in the analysis of applying the
13 statute is -- frankly, it's not relevant. It's whether
14 the report itself, good, bad or indifferent, fits into
15 one of those two definitions, four definitions. We
16 contend it fits into two of them.

17 So at this point with the burden being shifted
18 to Plaintiffs, they have to show how they are going to
19 prevail on these claims.

20 And under Pegasus versus Reno, the elements of
21 -- were clearly laid out, and I don't see where
22 Plaintiffs have made any effort to show that they would
23 be able to prevail on a defamation claim.

24 The only argument that they've have put forth
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1 is, assuming that we take this argument as face value, is
2 Subsection 1, which is a false and defamatory statement
3 made by Defendant concerning the Plaintiffs. They
4 haven't presented clear and convincing evidence of this.
5 They presented hearsay evidence through the Arbitrator's
6 award who has no binding authority on this Court and came
7 up with those opinions.

8 And there is no way that that arbitration award
9 is going to be admissible evidence for this Court to
10 consider whether or not there was clear and convincing
11 evidence that they can prevail on this claim.

12 More to the point, there's four elements of
13 failure to present any evidence -- any clear and
14 convincing evidence on any one of these elements for the
15 defamation claims, would be grounds for summary judgment.

16 And Plaintiffs often throughout their pleadings
17 have referred to this as a 12B6 type motion. A 12 motion
18 under which all the facts need to be taken as true. It's
19 not. And in John, the Nevada Supreme Court stated this
20 was a summary judgment standard, but with the amendment
21 of the Legislature in 2013, instead of showing a genuine
22 issue material fact, they have to show clear and
23 convincing evidence. And with them having not presented
24 any clear and convincing evidence that they can prevail

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1 on these claims, they haven't met their burden and the
2 motion must be granted under the statute.

3 And I would also point out to Your Honor that
4 one of the elements, more troublesome element, that they
5 failed to even address was whether it was an unprivileged
6 publication to a third person.

7 The Nevada Supreme Court has recently held in
8 two recent opinions that they've further discussed the
9 application of an absolute privilege which is the
10 litigation privilege.

11 The investigation that was undertaken in this
12 matter was in full anticipation that the Choyces would,
13 perhaps, at some point, bring litigation against the town
14 of Pahrump for these actions.

15 So those privileges, the litigation privilege,
16 which apply to all communications made in a proceeding
17 would be applicable in this matter. And the two
18 decisions are Jacobs vs. Adelson and most recently is
19 Greenberg Traurig versus Frias Holding Company. It's 130
20 Nevada Advanced Opinion 67.

21 And the Nevada Supreme Court essentially
22 reiterates the importance of the public policy behind the
23 litigation privilege in that attorneys are supposed to be
24 able to advocate for their clients freely. That's why
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1 this litigation privilege is established.

2 And the report is an extension of what the
3 attorneys thought would be the best position for the town
4 of Pahrump. Obviously, my firm doesn't represent ETS in
5 this matter, but they retained Mr. Songer. And
6 Mr. Songer's communications through them would have that
7 protection as well as the absolute privilege.

8 I know there's lots of pleadings and lots of
9 parties here. So I just -- unless Your Honor has any
10 specific questions at this moment or would like me to
11 address something orally that hasn't been addressed in
12 the pleadings, I will be happy to do so.

13 THE COURT: I think I understand your argument.
14 Thank you.

15 What's the preference? You want to hear all the
16 motions at once and argue the opposition to those motions
17 since the arguments are similar?

18 MR. LEVINE: I believe -- I think that is best
19 unless you -- she's already given her substantive
20 argument. I didn't know if you briefly wanted to argue
21 just the retroactivity issue or not. Given the fact she
22 argued both, I think we should hear from the other
23 defendant and then I will set forth my opposition.

24 THE COURT: Very good.

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1 MR. ALEXANDER: Thank you, Your Honor. My name
2 is Todd Alexander, once again. With me are Mr. Beko and
3 Ms. Bruch. Ms. Bruch was the attorney at Erickson,
4 Thorpe who had retained Pat Songer to coordinate the
5 investigation or to conduct the investigation.

6 I know the reason I point that out is because
7 the spelling of her name tends to be a little misleading.
8 It is pronounced Brew, although it's spelled B-r-u-c-h.

9 What I wanted to point out, as you observed at
10 the outset of this, the pleadings are already extensive.
11 I don't have a whole lot to add to them orally. But what
12 I did want to say is when I sit back and just, you know,
13 think about this case conceptually, it's easy for one's
14 mind to slip out of sort of legal analysis mode and begin
15 to surmise and to make assumptions because we don't like
16 unanswered questions.

17 But I think what's important in this case is to
18 resist that impulse because the pertinent question is
19 whether the Plaintiffs have presented the evidence
20 necessary to answer those questions. And they are
21 required to do so by clear and convincing evidence, which
22 the case law tells us is evidence that commands the
23 unhesitating ascent of every reasonable mind.

24 Here they have not done so. In fact, we believe
25

1 they have fallen drastically short of that standard.
2 Instead of offering admissible evidence to the Court that
3 they can prevail on their claims, the Plaintiffs present
4 this Court with, primarily, the Arbitrator's opinion,
5 which, as we pointed out in our briefing, is not
6 admissible evidence. It's neither relevant. The
7 Arbitrator had absolutely no personal knowledge of the
8 underlying facts.

9 And over and above that, even if it had some
10 probative value, its prejudicial affect would
11 substantially outweigh that probative value. However,
12 that's assuming it had any probative value to begin with,
13 which it did not.

14 Instead of admitting admissible evidence, the
15 Plaintiffs argue that the 2013 amendments don't apply so
16 they don't have to produce clear and convincing evidence.
17 However, as we have seen, that position is contrary to
18 California case law, which Nevada Supreme Court has
19 specifically recognized as persuasive.

20 It's contrary to Nevada Federal Court case law,
21 which has been so kind as to cite unpublished Nevada
22 Supreme Court decisions for us in which they have
23 specifically held those amendments were simply
24 clarifying.

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1 If we apply them in cases such as these where
2 the underlying events took place before the amendment,
3 that's not considered retroactive application, Your
4 Honor.

5 And, again, instead of offering this --
6 presenting this Court with admissible evidence, the
7 Plaintiffs argue citing Massachusetts case law for the
8 proposition that the anti-SLAPP protections don't apply
9 to what they refer to as contracts for hire. However, as
10 we pointed out in our briefing, virtually every
11 jurisdiction recognizes Massachusetts as in its own
12 separate world with regard to anti-SLAPP law.

13 States with the anti-SLAPP statutes that are
14 similar to Nevada's do not, actually, make such
15 distinction.

16 The Plaintiffs misapply the statute. We pointed
17 this out in our very recent reply brief. They selected
18 and focussed their or they focussed strictly on
19 Subsection 4 of NRS 41.637 and set that up as a strong
20 arm, essentially, Your Honor, because it's so easily --
21 it's so easy to point out that Mr. Songer's report does
22 not necessarily fall into that specific provision.

23 However, by doing so, it appears that they went
24 out of their way to avoid what Ms. Gutierrez just pointed
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1 out to you as Subsections 2 and 3 into which the report
2 squarely and unquestionably falls.

3 So if we look at the case in sort of an
4 overview, the Plaintiffs are trying to show that
5 Ms. Bruch and Mr. Songer submitted this report with
6 actual knowledge and maliciously knowing that it
7 contained false information.

8 The evidence that they presented the Court,
9 however, is the report itself which contains reference to
10 it being an attorney-client privileged communication.
11 They repeatedly point out to the Court that Ms. Bruch had
12 communications with Mr. Songer during the course of his
13 investigation in which she requested that he communicate
14 with her before we produce this report.

15 Our response to that is of course she did.
16 Every attorney that hires an investigator does just that.
17 They want to know what's going to be, you know, what's
18 forthcoming.

19 It does not -- it does not even raise an
20 inference that -- I think the inference that the
21 Plaintiffs are trying to draw from that is that, you
22 know, Ms. Bruch was behind the scenes sort of
23 mischievously guiding the investigation and telling
24 Songer, you know, what she wanted the report to say even
25

1 though the facts of this investigation didn't state that.

2 However, those communications do not raise such
3 an inference. They do not -- not even by the
4 preponderance of the evidence standard let alone the
5 clear and convincing evidence standard.

6 With all of that said, Your Honor, we believe
7 this is the precise scenario that the anti-SLAPP
8 protections were meant to apply to.

9 If this case were to survive, what rational
10 public entity would investigate such and police itself
11 knowing that if somebody disagrees with what's shown in
12 the investigation, they can get sued for defamation.

13 That's the very purpose of the anti-SLAPP
14 statute was enacted to prevent, Your Honor.

15 And with that, unless you have any specific
16 questions from me, I will take a seat.

17 THE COURT: Okay. I don't. Thank you.

18 MR. ALEXANDER: Thank you.

19 MR. LEVINE: Thank you, Your Honor. Adam Levine
20 for the Plaintiffs. Let me start with the issue of the
21 statutory amendments.

22 It was hindsight a little humerus. You, of
23 course, asked us to look at the Legislative history.
24 What I had overlooked when you asked us to do so, was
25

1 that in my original opposition before you asked us to
2 look at the Legislative history Exhibit 9 from Songer was
3 the statutory changes from the Legislative Counsel
4 Bureau. And that actually has the Legislative Counsel
5 Digest.

6 The defense is partially correct when they say
7 the amendment was clarifying. Part of the amendment was
8 clarifying and part was not. I agree.

9 The amendment to clarify that Ninth Circuit's
10 ruling for metabolic research regarding the
11 appealability, that was absolutely clarified. But that's
12 not what I'm objecting to. That's not the issue as to
13 retroactivity.

14 If you take a look at Exhibit 9, Legislative
15 Counsel's Digest, first, second, third paragraph,
16 "Existing law provides that a person who engages in good
17 faith communication in furtherance of the right to
18 petition is immune of civil liability for claims based on
19 that communication."

20 Section two of this bill expands the scope of
21 that immunity by providing that a person who exercises
22 the right to free speech in direct connection with an
23 issue of public concern is also immune. In other words,
24 they expanded the immunity. That is a substantive

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1 change, not a clarifying change.

2 Under the state of the law when the
3 communication was made in this case, the immunity only
4 applied to the right to petition. The 2013 amendments
5 seeks to expand that.

6 It is our position that the 2013 amendment
7 cannot be applied retroactively beyond and is limited to
8 the issue of the right to petition. So that being said,
9 it should not apply retroactively, that portion. In
10 2012, only, the right to petition, is covered.

11 Now let's go to the substance. Under
12 anti-SLAPP, the Defendants have to meet a certain
13 threshold before we are obligated to come forward with
14 evidence. Okay.

15 Quite frankly, we have conformed with the
16 evidence, and I'm prepared to argue it, but they never
17 actually met the threshold. Because to meet the
18 threshold, you must engage in a good faith communication
19 in furtherance of the right to petition. And under the
20 law, it has to be -- to meet that standard, that
21 threshold, it has to be truthful or made without
22 knowledge of its falsehood.

23 They haven't met that threshold. They want you
24 to believe that the contents or they ignore the argument
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1 of the issue that the contents of the report are not
2 truthful. They are false. There are multiple false
3 statements in there.

4 I have highlighted some of them in the briefing.
5 There are the false statements that leads the reader to
6 believe that, in fact, the Choyces had been interviewed
7 and given a statement and when they did not do so and
8 that was withheld.

9 Let's take a good example. It accuses them of
10 violating the town policy against intimidation. That
11 they intimidated him. Well, Pat Songer admitted under
12 cross-examination he had no basis for that even though he
13 had no explanation of how it got in there. That's a
14 false statement.

15 Let's see. Another false statement would be
16 that Delucchi and Hollis deliberately chose not to take
17 them to Las Vegas but only offered to take them to Desert
18 View Hospital for their own convenience. Well, that was
19 false. Not only did Delucchi and Hollis testify that,
20 Hey, we can take you to Desert View Hospital at which
21 point James Choyce said, "Fuck Desert View" dropped the
22 car into gear and sped off. That was the state of the
23 facts. That was the only evidence Pat Songer had when he
24 submitted his report because he spoke to no other person.
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1 It was uncontested evidence.

2 The fact is even later, after the fact, when
3 they called Brittanie Choyce, she conceded that is what
4 happened. That basically he yelled, "Fuck Desert View",
5 dropped the car in to gear and ran off. So the statement
6 that he willfully chose not to take him to Las Vegas,
7 that's a false statement.

8 False statement. That they engaged in a cover
9 up because they didn't fill out a patient care report or
10 a special circumstance report. Well, that's a false
11 statement because, one, they did do a special
12 circumstance report. Second, there was no patient under
13 the law, something that Songer would know, probably.

14 So, you know, in other words in order to put a
15 burden on us, they have to demonstrate that the
16 statements are true or made without knowledge of their
17 falsity. They haven't met that initial threshold.

18 When you have two people -- let me give you a
19 perfect example. What we have is is the light red or the
20 light green. You're trying to figure it out. You
21 interview two people in one car. Was the light green?
22 Yes. Was the light green? Yes.

23 You want to go to the other side. Tell me, was
24 the light red or green? The other side won't talk to

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1 you, refuses to cooperate. The only evidence you have is
2 the statement that the light is green.

3 I think that's what we are looking at here.
4 They only interviewed two people, Mr. Songer. And then
5 he came up with fact findings that were dimetrically
6 opposite to what he was told by the only people he
7 interviewed.

8 Simply put, the Nevada Supreme Court in the only
9 published anti-SLAPP decision, which was Ms. Bruch's case
10 actually, ironically, John versus Douglas County. They
11 made it very clear that the anti-SLAPP statutes don't
12 protect false speech.

13 The anti-SLAPP is designed, as the Court lays
14 out, to protect people from being targeted in a strategic
15 lawsuit to prevent their involvement in public affairs.

16 Well-meaning citizens -- I'm quoting,
17 "Well-meaning citizens who petition the Government and
18 then find themselves held with retaliatory suits known as
19 SLAPP."

20 I would say more importantly, anti-SLAPP
21 statutes only protect citizens who petition the
22 Government from civil liability arising from good faith
23 communications.

24 If bars claims from persons who seek to abuse
25

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1 other citizens rights to petition their Government and
2 the laws of meritorious claims who do not petition the
3 Government -- against those who don't petition the
4 Government in good faith. There was no petitioning here.
5 They'd like to -- they want to claim that Massachusetts
6 is on another planet. It's not.

7 In the Massachusetts case, Massachusetts'
8 Supreme Court said, Wait a second. Anti-SLAPP is
9 designed, just like ours. There's is just like ours, to
10 protect people in the right to petition the Government.
11 That doesn't apply when the Government hires you and pays
12 you to do an investigation for them.

13 Rebecca Bruch and Pat Songer were not
14 petitioning the Government. They weren't speaking out as
15 citizens on a First Amendment issue. They were hired to
16 do a fact-finding investigation, and they prepared a
17 report that made false statements which were defamatory.

18 Now, even if you take -- they go past the
19 threshold to the merits, contrary to the argument, we
20 have presented admissible evidence. I didn't just attach
21 the Arbitrator's decision. I attached the testimony of
22 Songer under oath, the testimony of Delucchi under oath,
23 and the testimony of Hollis. And later on I think I put
24 in Cobarkers (phonetic). So the testimony, the
25

1 underlying testimony, is there. That is admissible
2 evidence. That is sufficient to defeat a motion for
3 summary judgment.

4 Now the issue of the admissibility of the
5 Arbitrator's decision, it's interesting. They cite the
6 United States versus Johnson. I was actually involved in
7 that case as it related to the arbitration. Generally,
8 it was Stew Johnson.

9 What that holds is that the Arbitrator's
10 decision is not admissible in a Federal criminal case.
11 Stew Johnson was charged with oppression under collar of
12 law after he won his arbitration was reinstated to city
13 of north Las Vegas.

14 This was a ruling on a motion in limine brought
15 by the prosecution. It was granted by Judge Mahan saying
16 an Arbitrator's decision is not relevant in a criminal
17 case. United States Government is not a party to the
18 underlying proceedings.

19 But where it is admissible and relevant in this
20 case is with regard to the issue of issue preclusion.
21 Issue preclusion is unique for civil liability. It
22 doesn't apply in a criminal case.

23 But issue preclusion requires that the parties
24 or their privies be involved, that the issue was actually

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1 litigated, and there was a final decision on the merits.
2 And all of those requirements are met.

3 Let's talk about privity. The privity the State
4 says you have the town of Pahrump. Well, Ms. Bruch, as
5 the attorney for the town, was certainly in privity. In
6 fact, if you go back and you take a look at Exhibit 1,
7 which is the very first transcript, you will see in the
8 appearances on the Page 2 of the transcript, Exhibit 1,
9 Ms. Bruch is making an appearance as the attorney of
10 record for the town. Okay.

11 Mr. Songer, as their investigator upon whom they
12 are putting on the stand to have him testify as to his
13 facts. He certainly is in privity with the town of
14 Pahrump. Their entire case is based upon Mr. Songer's
15 investigation. So you have the same party where they're
16 privies.

17 The issue of the investigation being litigated,
18 that was an issue necessarily litigated. I know Your
19 Honor did employment law a long, long time ago. That's
20 where I first encountered you. I think you know that
21 under the test of just cause in labor relations one of
22 the seven part test, the famous test developed by Master
23 Arbitrator Carol Dougherty is was there an appropriate
24 investigation conducted into the allegations of

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1 misconduct.

2 Any time you have an arbitration under a just
3 cause standard, the appropriateness of the investigation
4 is going to be properly litigated in the underlying
5 proceedings.

6 And there was a final decision on the merits by
7 the arbitrators. So the Arbitrator's opinion is
8 admissible for the purposes of issue preclusion. You
9 can't establish issue preclusion unless you show the
10 evidence of the prior adjudication. In this particular
11 case, it's the Arbitrator's decision.

12 There is no issue of privilege in this case.
13 This was not done in connection with a litigation
14 privilege. The Adelson case (phonetic), they actually
15 ruled against the application of the privilege. They
16 said, the privilege applies to what you say in court, not
17 in a press conference outside of court.

18 But there was no litigation going on here. This
19 was a confidential, not a public investigation. Not a
20 public concern. This was a confidential internal
21 investigation. It was an internal investigation which
22 landed with the Defendants when the fire chief was
23 disqualified because of other disputes with Delucchi.

24 I've cited the case law. Both Nevada public
25

1 records law excludes such internal investigations.
2 They're not public records. They are confidential. I
3 have cited you the case law from the Ninth Circuit that
4 this is a private concern in an internal investigation.
5 It's sort of interesting, because they are not matters of
6 public concern, I was noting in the lead story in the
7 Pahrump Valley Times today about the internal
8 investigation into Percovich (phonetic) and how nobody
9 can seem to get it.

10 The reason nobody can get it is because
11 sheriff's department doesn't have to turn it over. It's
12 an internal investigation. Internal. That means it's a
13 confidential investigation.

14 This wasn't a matter of public concern. But, of
15 course, public concern isn't the issue in 2012 where it's
16 only the right to petition. But there is no litigation
17 privilege for an internal investigation.

18 THE COURT: Do you think there's a work product
19 privilege for the attorney?

20 MR. LEVINE: What was that?

21 THE COURT: Because don't you think that after
22 the fire chief had spoken to Mrs. Choyce -- I guess it's
23 the Brittnie Choyce's mother. And then she got on the
24 phone, it was my understanding, and then maybe he got on

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1 the phone. Some of the allegations raised by them then
2 would have prompted a concern to be in touch with the
3 attorney, that there could be liability involved here?

4 MR. LEVINE: Okay. The work product doctrine,
5 of course, is not an immunity.

6 THE COURT: Right. I understand that.

7 MR. LEVINE: It basically allows matters which
8 are prepared in anticipation of litigation which contain,
9 you know, opinions -- we all know what the work product
10 doctrine is.

11 THE COURT: Right.

12 MR. LEVINE: The problem is work product
13 doctrine was waived when they turned the report over to
14 us. When they gave Delucchi and Hollis at the
15 pre-determination hearing Songer's report, the work
16 product doctrine is waiving that.

17 THE COURT: Wouldn't they have had to have given
18 that report due to the collective bargaining agreement?
19 Wouldn't that have been a requirement?

20 MR. LEVINE: The collective bargaining agreement
21 itself doesn't require them to give it. I will tell you
22 that as a practical matter, Cleveland Board of Education
23 versus Loudermill says that at a pre-determine hearing
24 you must give them the charges against them, the evidence

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1 which it is based and an opportunity to tell your side of
2 the story, you know, very informal hearing. Lots of
3 times employers in order to comply with Loudermill
4 instead of giving an explanation of the evidence, they
5 just give the report. Whether they had to -- they didn't
6 have to under the collective bargaining agreement. The
7 fact is they did.

8 In other words, the work product doctrine is not
9 a basis or a defense or a basis for an anti-SLAPP motion.

10 Whether it is properly characterized as a work
11 product or not, when they published it and gave it out,
12 regardless of whether they were able to, the privilege is
13 lost.

14 But getting back to what they were citing, the
15 case of absolute privilege? Absolute privilege applies
16 to judicial proceedings.

17 I could stand here and say Mr. Songer is a child
18 molester. I might get sanctioned by you for doing it,
19 but I cannot be sued by Mr. Songer because I am stating
20 it in a court proceeding. That is the absolute
21 privilege.

22 But we are not dealing with an absolute
23 privilege here. The privileges that would otherwise
24 apply are covered by the Morris versus Simpson case,
25

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1 Nevada Supreme Court case. If you recall that's the
2 issue of publication to a non-privileged third party.

3 And what they said was, Hey, the issue is to
4 whether or not the person you are giving it to is an
5 unprivileged third party. That is an affirmative defense
6 which must be raised in the answer and, of course, the
7 Defendants have the burden of proof.

8 And under the common law good faith privilege,
9 it's a good faith privilege, it's a conditional
10 privilege. The privilege of comment on a mutual concern,
11 which they haven't raised in their proceedings. They
12 only raised the absolute privilege, which applies to
13 judicial proceedings and doesn't apply to this case.

14 I would note we are going well beyond the
15 pleadings here on privilege. But that good faith
16 privilege is lost if the statement is made -- if,
17 basically, with reckless disregard for its truth or
18 falsity. In other words, what we have shown in the
19 evidence would be sufficient to, we believe, by clear and
20 convincing evidence defeat that privilege -- conditional
21 privilege if it is raised in the answer which I haven't
22 thought of yet in this case.

23 But there is no absolute privilege of the sort
24 that they have mentioned.

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1 Counsel for Mr. Songer spoke briefly of the
2 report of intentional infliction of emotional distress.
3 The original opposition I filed cited two cases that
4 stands for the proposition that submitting a knowingly
5 false report will support an IED claim.

6 So I have also pointed out -- I cited one of the
7 cases in my original opposition that a -- I think it was
8 California held that anti-SLAPP does not apply to the
9 withholding of information, which is, of course, what
10 Songer did in his report.

11 So unless the Court has any questions of me, I
12 believe we have attached admissible evidence in the form
13 of the testimony.

14 I don't think they made out the initial
15 threshold which would shift the burden to us under either
16 2012 or 2013. It's not a good faith communication
17 because, one, they were doing so as a vendor not as a
18 citizen petitioning the Government, which even our
19 Supreme Court in the John case says you have to be acting
20 as a citizen petitioning the Government. And, two, it
21 can't be a good faith communication if it is false, and
22 we have demonstrated the falsity.

23 I have heard -- they have no evidence to show
24 the basis for the statement that my clients were guilty

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1 of violating the town policy against intimidation by
2 intimidating the Choyces.

3 In other words, they decide, Oh, I believe it to
4 be true. Well, that's not good enough. Saying I believe
5 it to be true -- I like to refer to that as that's the
6 George Costanza approach. There was the old Seinfeld
7 episode talking about the polygraph, Jerry, it's not a
8 lie if you believe it.

9 Well, he had knowledge of the falsity. He
10 talked to the only two witnesses that were willing to
11 talk. Both told him the identical, correct version of
12 the events. He had no evidence of the contrary, but
13 submitted a report with false statements and is outside
14 the protections of anti-SLAPP.

15 THE COURT: Thank you.

16 Reply?

17 MS. GUTIERREZ: Thank you, Your Honor. Just a
18 few brief points. I'm going to briefly touch on the 2012
19 or 1997 version of the statute since that's what
20 Plaintiffs had decided -- argue incorrectly to argue.

21 The right to petition as the Legislature
22 understood it when they enacted the statutes in 1993 and
23 then amended them in 1997 included all communications to
24 the Government. That's laid out in our pleadings. This
25

1 is not a petition, hey, we want to make sure we are not
2 bringing Facey (phonetic) to Nevada. Please signed this
3 petition. Doesn't mean that this report is outside the
4 per view of the protection of the statute.

5 The Legislature understood that all good faith
6 communications, the right to petition on an issue of
7 public concern, would be covered and that includes
8 written communications to the Government which is laid
9 out in the Legislative history.

10 And turning to the fact that Counsel thinks that
11 the threshold has not been met, I was quite surprised to
12 hear about that during oral argument when it hasn't been
13 raised in any of the pleadings.

14 I contend it has been met under the 2013 or the
15 prior statute. That the communication itself, the
16 report, good, bad, or indifferent as California courts
17 have indicated, the first step of an analysis in whether
18 or not the anti-SLAPP motion burden has been met is does
19 the report fall into the definitions?

20 The three definitions that are presented in the
21 prior statute are very similar to the ones presented in
22 the current statute and show that it was a written
23 statement on an issue of public concern. It was a
24 written statement regarding the Highway 160 incident and
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1 that it was communicated with regards to this proceeding.

2 These were good faith communications. This
3 report was made available to the Plaintiffs in September
4 of 2012. At that time the Plaintiffs had every single
5 opportunity to come to court and dispute those
6 allegations. They chose to go through a grievance
7 process and go through that. And even then, have waited
8 an additional five months before they even brought this
9 lawsuit to the court.

10 So there is an argument for waiver that -- the
11 fact that they chose to proceed when they knew that these
12 changes were going to be in affect in the 2013
13 Legislature and chose not to proceed that they had
14 conceded to proceeding under the 2012 statute, but I
15 digress.

16 The report itself, Counsel brought up three
17 specific issues that he thinks were false. Mr. Choyce
18 or, excuse me, Mr. Songer did not have the opportunity to
19 interview the Choyces for multiple reasons. One they
20 didn't want to be interviewed. And Mr. Choyce eventually
21 committed suicide. So these are things that were outside
22 of Mr. Songer's control.

23 Admittedly this is Mr. Songer's first
24 investigation. He has -- did the best that he could

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1 under the circumstances which was interview the
2 Plaintiffs, compile a report, and have some brief edits
3 from Ms. Bruch on grammatical issues. Even the final
4 report, I have issues with some of the grammar in there.

5 I mean, there's -- the report itself was made in
6 good faith. The quality of the investigation or the
7 other things that they take issue with, that doesn't go
8 into the analysis of whether or not he's afforded the
9 protection of immunity, which he is.

10 The communication falls into the definitions and
11 because they fall into the definitions Plaintiffs had the
12 obligation to meet by clear and convincing evidence that
13 they would prevail on all of their claims. And they
14 simply haven't presented that evidence to the Court. And
15 with that I would submit it to Your Honor.

16 THE COURT: Thank you.

17 MR. ALEXANDER: Just a couple things for me as
18 well, Your Honor.

19 First, Counsel argues that Defendants have not
20 met the threshold that would shift the burden to the
21 Plaintiffs. The burden there is to show their
22 communications were good faith communications in
23 furtherance of the right to free speech to petition the
24 Government on the matter of concern to that public

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1 entity.

2 Both Ms. Bruch and Mr. Songer have each
3 submitted declarations in support of each of their
4 oppositions stating that they believed, and to this day
5 continue to believe, the contents of that report.

6 Plaintiff or Defense Counsel next argued the
7 Arbitrator's decision is admissible for issue preclusion
8 purposes. Those four factors under which issue
9 preclusion may apply, two of them are absent here.

10 First of all, the issues in the first litigation
11 or arbitration in this case had to have been identical to
12 the issue presented in this lawsuit. In this case the
13 issues are totally distinct.

14 The Arbitrator was called upon to decide whether
15 the disciplinary provisions of the collective bargaining
16 agreement under the facts as she perceived them entitled
17 the town to terminate Mr. Delucchi's and Mr. Hollis's
18 employment.

19 In contrast in this case, the issue is whether
20 Mr. Songer's report is defamatory and/or whether it
21 caused them -- intentionally caused them emotional
22 distress. Those two issues are not identical.

23 Another of those factors, the five star case,
24 five star factors for whether issue preclusion applies,

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1 is that the parties were in privity with each other.

2 And the Plaintiffs argue that there was privity
3 -- a privity of contract -- actually their words are,
4 "There was a privity of contract whereby the town hired
5 the defendants to conduct its investigation and prepare
6 its findings."

7 What they failed to explain, however, is that
8 privity for purposes of issue preclusion, is not near
9 contractual privity. What's required is that the person
10 is or that the two people who are potentially in privity
11 are so identified in interest with a party to form a
12 litigation that he represents precisely the same right in
13 respect to the subject matter evolved.

14 Here neither Erikson, Thorpe or Mr. Songer are
15 so identified in interest with the town of Pahrump that
16 they -- the language is that they represent precisely the
17 same right in respect to the subject matter involved.

18 Erickson, Thorpe was the town's legal counsel.
19 Mr. Songer was its independent investigator in which the
20 town was -- demanded to reinstate Mr. Delucchi's and
21 Mr. Hollis's employment.

22 The town was not being sued for defamation or
23 intentional infliction of emotional distress as are
24 Erickson, Thorpe and Mr. Songer in this case. So it
25

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1 cannot be said that they are in privity for purposes of
2 issue of preclusion.

3 Next Mr. Levine argued that the only evidence
4 upon which Mr. Songer had to rely on in preparing his
5 report were the testimony of Mr. Delucchi and Mr. Hollis.
6 Not the testimony, his interviews with Mr. Delucchi and
7 Mr. Hollis.

8 We'd like to point out that's not correct.
9 First of all, it's not correct. And, second of all, even
10 if it was correct, there is nothing that required
11 Mr. Songer to believe them. He didn't have to say, Well,
12 the only people I've heard from are Mr. Delucchi and
13 Mr. Hollis. So that has to be the result of my
14 investigation.

15 He is an investigator. He is entitled to say,
16 You know, what. I heard what they had to say. But what
17 they said just didn't sound plausible in my
18 investigator's mind. It didn't sound credible. I didn't
19 find these two guys to be credible witnesses.

20 And then based on the Choyce's statements, which
21 he did have, by virtue of what the report that fire Chief
22 Lewis and Lieutenant Moody --

23 THE COURT: Their written notes.

24 MR. ALEXANDER: Correct.

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1 THE COURT: Their written notes of the
2 interview.

3 MR. ALEXANDER: Yes. Right. So he did know
4 what they or what he believed that they would -- the
5 information they had given.

6 There's simply nothing that required Mr. Songer
7 to say, You know, Okay. I've heard from Mr. Delucchi and
8 Mr. Hollis, but I haven't personally heard from James or
9 Brittanie Choyce; therefore, I have to write up a report
10 that's favorable to Mr. Delucchi and Mr. Hollis. It's
11 just not the law.

12 And finally, one of Mr. Levine's final comments
13 was that it cannot be a good faith communication if it is
14 false. That's completely untrue. That's incorrect.

15 What's required is to make it something other
16 than a good faith communication, it would have had to
17 have been, not only false, but knowingly false. That is
18 what has not been shown here.

19 That is why the anti-SLAPP protection applies.
20 With that, Your Honor, nothing further.

21 THE COURT: Okay. Thank you.

22 MR. LEVINE: Do I get another -- do I get more
23 comment? I don't know. It's within the Judge's
24 discretion.

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1 THE COURT: I think I kind of know where I'm at
2 on this.

3 MR. LEVINE: Okay.

4 THE COURT: And so, first of all, let's talk
5 about the statute that applies. I think the 2013
6 statutes apply in this case. And the reason I believe
7 that is because I do believe -- and, Mr. Levine, I hear
8 your argument. But I do think it's instructive. And
9 while I realize that no Court including the District
10 Court can rely on unpublished opinion, I do find the
11 Nevada Supreme Court slip opinion issued in -- on January
12 24th, 2014 to be instructive of what the Court is
13 thinking.

14 They haven't come out and said this yet,
15 obviously in a published decision, but they -- the -- in
16 reading that decision, it does appear that they are
17 saying that that the 2013 amendments came about because
18 the Nevada -- the metabolic research case really was too
19 narrow of a holding. That wasn't what was intended. It
20 was intended to be a broad statute. And so that was the
21 purpose.

22 And the Court sites in their unpublished
23 decision a number of cases discussing about where a
24 former statute is amended or a doubtful interpretation of
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1 a former statute rendered certain by subsequent
2 Legislation, it has been held that such amendment is
3 persuasive evidence of what the Legislature intended by
4 the first statute. Then it quotes the Nevada Supreme
5 Court decisions and cites one stating that, "When a
6 statute's doubtful determination is made clear through
7 subsequent legislation, we may consider the subsequent
8 legislation persuasive evidence of what the Legislature
9 originally intended."

10 So I guess whether we look at the old version or
11 the new version, I think that the Legislature intended a
12 very broad application of the anti-SLAPP statute.

13 Now being an employment lawyer is very difficult
14 for me to step out of the employment hat and step into
15 the judge hat.

16 I'm going to tell you, Mr. Levine, had we been
17 on opposite sides, which we had been many times, as a
18 private lawyer, I would have made my clients get the
19 checkbook out. To me, the method that this investigation
20 was done is totally inadequate.

21 First of all, the first rule of an
22 investigation, as you know, is that you always interview
23 the alleged victims. They weren't interviewed here, by
24 the very person who was doing the investigation.

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1 In fact, there is no evidence here that the
2 people who interviewed those folks, Chief Lewis and
3 Lieutenant Moody were ever interviewed by Mr. Songergraph
4 -- Songer.

5 MR. LEVINE: Mr. Songer. In fact, his testimony
6 was that he did not speak with them.

7 THE COURT: Right. So what he did was he looked
8 at their notes and tried to interpret those notes and
9 incorporated that into his report. I find that, as an
10 employment lawyer, absolutely appalling.

11 And I think the facts here in this case are
12 highly, highly disputed. I mean, I don't think there is
13 any question the incident occurred very quickly up in
14 Mountain Springs.

15 What was said depends on what side you are going
16 to believe. But, obviously, what we do know is we didn't
17 transport to Las Vegas, and at some point the husband
18 says, Fuck Desert View, and speeds off in his car. So we
19 do know those two things.

20 What also went on I have had a hard time -- I
21 read all of the transcripts and the testimony. And, you
22 know, it's hard after the fact when you wait a year and a
23 half and then all of a sudden they are willing to appear
24 at an arbitration hearing. But I will say I think the
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1 Arbitrator arrived at the right decision. I think the
2 investigation was very poor in this case. Very poor in
3 this case.

4 And, quite frankly, I -- had I been the
5 employment lawyer, I would have never recommended the
6 termination of either one of these gentlemen. It just,
7 to me, didn't seem that there was sufficient evidence
8 that would warrant their termination in this case.

9 I mean, they had plausible reasons why didn't
10 you report it at the end of your shift. We tried to.
11 Lieutenant Moody had already -- he worked a double shift.
12 He already had gone home that day. We were off the next
13 four days. I think there are -- I think your clients
14 have some legitimate facts.

15 That being said, I have to step back from my
16 role as an employment lawyer, especially as a defense
17 lawyer, because I'm always looking at where is the
18 liability. But I did private employment law. And I have
19 to put my judge hat on, and I have to look at what the
20 law is.

21 And I don't necessarily -- the hardest part of
22 being a judge is even if I don't agree with the law, I
23 have to apply it correctly. That's just the long and the
24 short of being a judge. You don't -- you may not like
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1 it. You may absolutely disagree with it at times, but
2 you have to apply it.

3 In this case I think that the Defendants who've
4 brought the motion have provided through their briefing
5 pretty convincing evidence that it doesn't matter that
6 the investigation is shotty, which I find is just
7 appalling, personally find it appalling.

8 But I think what we have to look at is are the
9 requirements of the SLAPP statute met. And when I look
10 at Subsection 2 and Subsection 3 of NRS 41.637, I do
11 think that they fall within both of those. And what was
12 really telling to me --

13 I don't necessarily agree with this, Mr. Levine,
14 I want you to know that. But I find it telling that
15 there is also the Nevada Supreme Court decision about the
16 -- is it the Jones versus Douglas -- John versus Douglas
17 County School District. And that's a situation where, I
18 believe, if this is the right case, where we had the
19 sexual harassment. The sexual harassment allegations,
20 and the teacher was ultimately fired because of that.
21 And there was an issue with regard to the investigation,
22 et cetera.

23 And, again, while I didn't agree with how the
24 Court ruled in that case, nonetheless, they ruled that
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1 the anti-SLAPP provisions applied. And I think that's
2 pretty telling in this case that -- and I looked at all
3 of the cases where the Nevada Supreme Court has applied
4 the anti-SLAPP statutes, and I think that NRS 41.637,
5 Subsection 2 and Subsection 3 would encompass this
6 situation.

7 I understand your arguments. I don't
8 necessarily personally disagree with them, but in taking
9 a look at what the Court has done and what the Court is
10 thinking, I think that the Defendants in this case are
11 correct, that this is how the Nevada Supreme Court would
12 rule in this case.

13 So then the question becomes if the anti-SLAPP
14 statutes are applicable, and I think that they are, then
15 there's going to be a shift in the burden. And the
16 burden now is for you to prove by clear and convincing
17 evidence that there is no general issue of material fact
18 really.

19 And in this case, I don't see the material issue
20 of fact. I will be honest with you. Do you have some
21 great arguments? I think you had tremendous arguments,
22 Mr. Levine.

23 Like I said, when I saw as an employment
24 attorney how this whole thing was handled, I was

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1 appalled. Nonetheless, the issue isn't what I personally
2 think as an employment lawyer and would I -- if I would
3 have been the attorney advising the town of Pahrump would
4 I have given this advice and would I have done it this
5 way. I mean, to me it's appalling that you hire someone
6 to investigate who has never conducted a single
7 investigation and a person who has not conducted a single
8 investigation who conducts, in my opinion, what is a
9 haphazard investigation and recommends termination on top
10 of it, including the fact, as you mention, that he places
11 in his report that these two intimidated the folks at the
12 -- is it Coins? How do you pronounce it correctly?

13 MS. GUTIERREZ: Choyce.

14 MR. ALEXANDER: Choyces.

15 THE COURT: Choyces. I just don't see that. I
16 didn't see that anywhere in anything that I read that
17 would suggest that there was anything along those lines.

18 But I think the arbitration and the SLAPP
19 statutes are two different things that we're looking at.

20 And in this case I'm looking at the anti-SLAPP
21 lawsuit, the motion that's filed, and I think that the
22 protections under Chapter 41 applied to both the law firm
23 and to the investigator that was hired.

24 And I believe that based upon my review of not
25

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1 only the published and unpublished opinions of the Nevada
2 Supreme Court in looking at the legislative history plus
3 the arguments that have been raised by counsel, by
4 defense counsel, in this case.

5 Now I realize that regardless of how I rule in
6 this case, somebody is going to want to take this up. I
7 understand that. And I encourage that. The Court may be
8 wrong. And if the Court's wrong, the Court's wrong. The
9 Supreme Court will set us back on kilter. I have no
10 problem with that. Because this in many ways raises a
11 number of issues that have never been addressed by the
12 Nevada Supreme Court and that we require answers to.

13 MR. LEVINE: I understand the Court's ruling.
14 Since you have obviously -- you're correct that somebody
15 is going to take it up for purposes of clarification.

16 THE COURT: Mm-hm.

17 MR. LEVINE: When you say you don't see a
18 genuine issue of material fact, when you say there is
19 nothing in the materials that I have read that would
20 support a finding that they violated the regulation
21 against town rule -- against intimidation when there's no
22 evidence to support it and Songer admits there is no
23 evidence to support it, how can it then be true? In
24 other words --

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1 THE COURT: Well, it's did he act in good faith?
2 That's the argument. Did he act in good faith?

3 MR. LEVINE: The answer --

4 THE COURT: Your argument is no.

5 MR. LEVINE: The answer is if it's by the
6 definition by the statute -- I understand what the Court
7 is saying, but by the definition of the statute, to be a
8 good faith communication it must be truthful or made
9 without knowledge of it is falsehood.

10 THE COURT: But you are singling out one little
11 part of this investigation. I'm looking at the overall
12 picture of this investigation, and I think he acted in
13 good faith. I really do. I think he believed that --
14 that these -- you know, there's a question about whether
15 or not they even had a duty to render care, whether or
16 not this woman was a patient.

17 Obviously, your argument was that these
18 gentlemen were never required to even render aid or
19 render care because she was never a patient within the
20 meaning of the Nevada Administrative Code.

21 Nonetheless, when I look at the recommendations
22 made by somebody who was in the industry, I do believe he
23 acted in good faith. I don't think he did anything that
24 was malicious toward either one of the gentlemen here,

25

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1 the Plaintiffs in this case.

2 I do -- like I said, while I may criticize and
3 second guess the method of the investigation that was
4 done, I still think they acted in good faith both the law
5 firm I don't think they maliciously went after your
6 clients. And so I just don't see bad faith. What I
7 would consider bad faith in this case. I just don't see
8 it.

9 So, unfortunately, like I said, I am -- I am
10 inclined to grant the -- grant both of the motions filed
11 in this case.

12 Now, the next issue becomes then the attorneys'
13 fees under 41.670. Nothing has been submitted to this
14 court with regard to what are reasonable attorney's fees.

15 MR. ALEXANDER: We were going to do that in
16 separate briefings, Your Honor.

17 THE COURT: I assumed that you would.

18 MR. ALEXANDER: Thank you.

19 THE COURT: I will tell you this, in light of
20 the fact I was almost certain when I came in here and
21 read everybody's briefing that you're going to take it
22 up. I will probably award them, and then I may stay them
23 if I know that an appeal is forthcoming to allow the
24 Supreme Court to rule.

25

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1 MR. LEVINE: I understand. I disagree with your
2 ruling, but I understand.

3 THE COURT: Well, like I said, I understand your
4 arguments and when I where my employment law hat, I'm
5 just appalled. But when I wear my judge hat and have to
6 look at the proper application of the statute, I think
7 that the Defendants are correct and I think their
8 interpretation of the statute is correct. 2013 statute
9 applies. But even if it doesn't, I think we have to look
10 at what was the intent of the Legislature.

11 And I think when we go back to the Legislative
12 history, it was to encompass these communications.

13 Then the second part of that is whether you have
14 overcome by clear and convincing evidence that you would
15 prevail, and I don't think that you have in this case. I
16 think they have raised arguments that are convincing to
17 me in this case.

18 So this is what I would like counsel to do. I
19 would like counsel to -- each counsel for the defense to
20 prepare an order for my signature granting your motions.

21 I would like them run by Mr. Levine. And what I
22 will do is I would like to set a deadline, (sneezing)
23 bless you, for filing a request for the attorneys' fees
24 and give Mr. Levine an opportunity to respond. Okay.

25

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1 And then we can set that for hearing. So 30
2 days? Would that be sufficient time for the parties to
3 have that to the Court?

4 And then, Mr. Levine, would you like 30 days to
5 respond?

6 MR. LEVINE: Yes.

7 THE COURT: Okay. And then 10 days to reply,
8 30, 30, 10?

9 MR. LEVINE: Sure.

10 THE COURT: So can you set that out in about 90
11 days for me?

12 THE CLERK: November 18th.

13 THE COURT: November 18th? Is that a law and
14 motion day?

15 THE CLERK: Yes, Your Honor.

16 THE COURT: Please set it in the afternoon and
17 be sure there are no other things set.

18 MR. LEVINE: I'm sorry. What date?

19 THE COURT: November 18th. It would be a
20 Tuesday at 1:30. If that doesn't work --

21 MR. LEVINE: No, that should be okay. Yeah. If
22 a problem comes up --

23 THE COURT: Just let us know, and we'll
24 coordinate with the parties and reschedule.

25

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1 MR. LEVINE: I think I am going to be asked to
2 sub into an EMRB case that is going to be going at or
3 about that time, and that's what is giving me pause. I
4 will get the Court know, though, if that is the case.

5 THE COURT: Realize that my civil calendar is
6 always subject to bumping by criminal. So we set it
7 tentatively, but if we have a trial, and I don't have
8 that in front of me, but if we have a criminal trial that
9 is going, it may bump the civil matters.

10 THE CLERK: Your Honor, there is a 1:30.

11 THE COURT: There is a 1:30? How about on
12 Wednesday or Thursday? You know what, can you instant
13 message Jeri?

14 THE CLERK: I did not see her online.

15 THE COURT: Okay. It's just the trials and the
16 tribulations of a big jurisdiction, and my secretary who
17 schedules all the hearings is out in Tonopah. And if she
18 is not online with us, we are in bit of a trouble.
19 Because if I choose a date, it will probably be wrong.

20 THE CLERK: November 19th at 1:30 seems to be
21 open but --

22 THE COURT: Okay. How about November 19th at
23 1:30? That's a Wednesday.

24 MR. LEVINE: That's fine, Your Honor. Is that
25

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1 going to go into the order that they are going to prepare
2 or do I have to commit that to memory and write it down?
3 That's what I'm --

4 THE COURT: I'll have them put it in the order.
5 How's that?

6 MR. LEVINE: That way it will be sure to be
7 calendared by my staff.

8 THE COURT: You know, the anti-SLAPP statutes
9 are very interesting. And they are very interesting
10 interpretations by the Courts. But, like I said, I do
11 think in this case that they do apply. And I think
12 counsel is correct about that.

13 So is there anything else we need to address?
14 Then I apologize for the fire alarm earlier. And thank
15 you for coming. Thank you for your patience, and I will
16 see you back here on November 19th at 1:30.

17 THE CLERK: All rise.

18 (Whereupon the proceedings were concluded.)

19 -oOo-

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Court Hearing August 27, 2014
Audio Transcription

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1 STATE OF NEVADA,)
2)
3 COUNTY OF WASHOE.)

4 I, LISA A. YOUNG, do hereby affirm that I
5 transcribed the audio proceedings in the within entitled
6 because, recorded on August 27, 2014, 1:35 p.m. of said
7 day, in the case of RAYMOND DELUCCHI and TOMMY HOLLIS,
8 Plaintiffs, vs. PAT SONGER and ERICKSON, THORPE &
9 SWAINSTON, LTD., Defendants, Case No. CV35969, do hereby
10 affirm:

11 That the foregoing transcription, consisting
12 of pages number 1 to 53, both inclusive, is a full, true
13 and correct transcription of said recording to the best
14 of my ability to hear and understand the recording.

15 DATED: At Fernley, Nevada, this 12th day of
16 May 2016.

17

18

19

IN WITNESS WHEREOF,

20

State of Nevada
21 County of Clark

22

This instrument was signed and acknowledged
23 before me on May 12, 2016.

24

25

NOTARY PUBLIC
State of Nevada
County of Clark



SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

1 Case No. CV35969

2 Dept. No. 1

3
4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF NYE

6 RAYMOND DELUCCI and TOMMY
7 HOLLIS,

8 Plaintiff,

9 v.

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

12 Defendants.

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

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

25 FINDINGS OF FACT

26 1. Plaintiffs Delucchi and Hollis, in their capacity as employees of the Pahrump Valley
27 Fire and Rescue Service ("PVFRS"), were involved in an incident on Highway 160 (the
28

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ORDER

24 NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Erickson,
25 Thorpe & Swainston's Special Motion to Dismiss is GRANTED.
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IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file an opposition to said motion. ETS shall then have 10 days in which to file a reply in support of its motion.

Dated: September 17th, 2014.

By: KIMBERLY A. WANKER
DISTRICT COURT JUDGE

1 Todd R. Alexander, Esq., NSB #10846
2 Lemons, Grundy & Eisenberg
3 6005 Plumas Street, Suite 300
4 Reno, Nevada 89519
5 (775) 786-6868

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

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

8 **IN AND FOR THE COUNTY OF NYE**

9 **RAYMOND DELUCCHI and TOMMY HOLLIS,**

10 **Plaintiffs,**

Case No. CV35969

11 **v.**

Dept. No. 1

12 **PAT SONGER and ERICKSON, THORPE &**
13 **SWAINSTON, LTD.,**

14 **Defendants.**

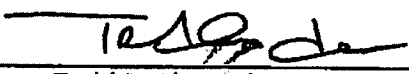
15 **NOTICE OF ENTRY OF ORDER**

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

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

20 **Dated: October 3, 2014.**

21 **By:**

22 
23 **Todd R. Alexander, Esq.**
24 **Attorney for Defendant,**
25 **Erickson, Thorpe & Swainston, Ltd.**

26 **MONS, GRUNDY**
27 **& EISENBERG**
28 **05 PLUMAS ST.**
SUITE 300
NO, NV 89519
75) 786-6868

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg
3 and that on October 3, 2014, I deposited in the United States Mail, with postage fully
4 prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the
5 following:
6

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

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

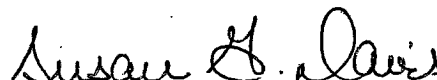
13 
14 Susan G. Davis

EXHIBIT 1

EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

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

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

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

Defendants.

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

1 Pahrump, setting forth his findings, conclusion and recommendations.

2 10. In his report, Mr. Songer concluded that Mr. Delucchi and Mr. Hollis were not
3 credible witnesses. Mr. Songer concluded that Mr. Delucchi's and Mr. Hollis' descriptions of
4 the incident were not plausible. He concluded that Mr. Delucchi's and Mr. Hollis' failure to
5 report the incident cast suspicion onto their stories. Ultimately, Mr. Songer concluded that
6 Mr. Delucchi and Mr. Hollis had breached the standard of care applicable to emergency
7 medical services personnel, that their failure to prepare a Patient Care Report or Incident
8 Report could be viewed as an attempt to cover up their wrongdoing, and that their conduct
9 potentially exposed the Town of Pahrump to civil liability.
10

11 11. Attorney Rebecca Bruch reviewed and edited Mr. Songer's report for grammatical,
12 typographical and stylistic changes.
13

14 12. After Ms. Bruch's edits, Mr. Songer's report was submitted to the Town of Pahrump's
15 Town Manager.

16 13. In this lawsuit, Plaintiffs have alleged that Mr. Songer's report was defamatory and
17 that it intentionally caused them severe emotional distress.

18 CONCLUSIONS OF LAW

19 1. Nevada's anti-SLAPP statute (NRS 41.635, *et seq.*), as amended by the Nevada
20 Legislature in 2013, is applicable in this action. Although Mr. Songer's report was submitted
21 to the Town of Pahrump before the 2013 statutory amendments took effect, this Court
22 concludes that the amendments were intended to be clarifying in nature, such that application
23 of the amended statute in this action does not constitute retroactive application.
24

25 2. In accordance with NRS 41.660(3)(a), ETS has established, by a preponderance of the
26 evidence, that Plaintiffs' claims are based on a "good faith communication in furtherance of
27 the right to petition or the right to free speech in direct connection with an issue of public
28

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

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

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

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

23 **ORDER**

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

27 ///

28 ///

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

Dated: September 17th, 2014.

By: KIMBERLY A. WANKER
DISTRICT COURT JUDGE

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13 *Attorneys for Defendant,*
14 PAT SONGER

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 RAYMOND DELUCCHI and TOMMY
18 HOLLIS,

19 Plaintiffs,

20 v.

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

23 Defendants.

CASE NO: CV35969
DEPT NO: 1

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

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

CONCLUSIONS OF LAW

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

FILED
FIFTH JUDICIAL DISTRICT COURT

NOV 19 2014

NYE COUNTY DEPUTY CLERK
DEPUTY *Anna Davis*

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

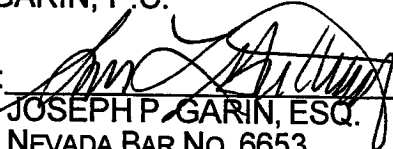
DATED this 18th day of November, 2014.


DISTRICT COURT JUDGE

Submitted by:

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

By:


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Attorneys for Defendant,
PAT SONGER

Court Hearing December 2, 2014

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Page 1

1 IN THE FIFTH JUDICIAL DISTRICT COURT STATE OF NEVADA
2 IN AND FOR THE COUNTY OF NYE
3 MAY 17 2016

NYE COUNTY DEPUTY CLERK
DEPUTY Patricia Couture

4 RAYMOND DELUCCHI and)
5 TOMMY HOLLIS,)

6 Plaintiffs,)

7 Vs.)

8 PAT SONGER and ERICKSON,)
9 THORPE & SWAINSTON, LTD.,)

10 Defendants.)

Case No. CV35969
Dept. No. I

**CERTIFIED
COPY**

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14 **AUDIO TRANSCRIPTION**

15 COURT HEARING

16 Held on Demember 2, 2014

17 At 1:35 P.M.

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23
24
25 Transcribe by: Lisa A. Young

Court Hearing December 2, 2014

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APPEARANCES:

For the Plaintiffs:

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TODD ALEXANDER, ESQ.
Lemons, Grundy & Eisenberg
6005 Plumas Street
Suite 300
Reno, Nevada 89519

*** * *Audio Transcription* * ***

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1 LAS VEGAS, NEVADA; Demember 2, 2014 ; 1:35 P.M.

2 -o0o-

3 THE COURT: Afternoon. Be seated. Ready for
4 the afternoon, Tanner?

5 UNIDENTIFIED SPEAKER: I am.

THE COURT: We are here on case number CV35969.
These are for Pat Songer's motion for attorneys' fees and costs and Erikson, Thorpe & Swainston's motion for attorneys' fees and costs.

10 Then we have a motion to re-tax the costs.
11 I think that's pretty much it.

12 So just so we have it for the record, we have
13 Mr. Levine on behalf of Raymond Delucchi and
14 Tommy Hollis.

15 And who do we have on behalf of Pat Songer?

16 MR. ALEXANDER: Todd -- I'm sorry.

17 MS. GUTIERREZ: For Songer Siria Gutierrez, from
18 Lipson, Neilson.

19 THE COURT: Okay. And on behalf of Erickson,
20 Thorpe & Swainston?

21 MR. ALEXANDER: Todd Alexander, Your Honor.

22 THE COURT: Okay. Counsel, I have looked at all
23 of the documents. But you guys have come all this way,
24 and I'm going to have some questions. So if -- do you

25

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1 want to give me an argument? Do you want to submit them,
2 and I'll just ask questions? What would you prefer to do
3 this afternoon?

4 MR. LEVINE: Interestingly, Your Honor,
5 Mr. Alexander and I just got done having a discussion off
6 the record about the -- how nice it is when you
7 adequately brief things, why you really don't need to
8 reargue them. I don't know if you still feel that way.

9 MR. ALEXANDER: I do still feel that way, Your
10 Honor. However, there is one correction --

11 THE COURT: Okay.

12 MR. ALEXANDER: -- I would like to make.

13 THE COURT: Okay.

14 MR. ALEXANDER: And this was an inadvertent
15 error that I recognized after making it.

16 THE COURT: Okay.

17 MR. ALEXANDER: Separately setting out my
18 client's insurance deductible.

19 THE COURT: Okay.

20 MR. ALEXANDER: In our memorandum of costs.

21 THE COURT: Mm-hm.

22 MR. ALEXANDER: Was a mistake because if you
23 think about it conceptually, that deductible is subsumed
24 within our fees.

25

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1 THE COURT: Okay.

2 MR. ALEXANDER: So rather than the 18,000 number
3 shown in our costs memorandum --

4 THE COURT: Okay.

5 MR. ALEXANDER: It should be \$3,288.17.

6 THE COURT: Okay. All right.

7 Okay. So, Counsel, do you want me to just tell
8 you what my thoughts are?

9 MR. LEVINE: That would be my preference, and
10 I'm here to answer any questions that you have.

11 THE COURT: Okay. My understanding is that on
12 behalf of Pat Songer we had actual billed attorneys' fees
13 of \$10,386.50, which comprised time for three different
14 individuals, \$235.00 an hour, \$90.00 an hour, and \$180.00
15 an hour and we had \$408.00 in costs.

16 And on -- and there was not -- they did not seek
17 any travel expenses to and from the hearings.

18 On behalf of ETS, we have costs of -- the costs
19 are set forth in the amended memorandum of costs, \$198.00
20 for an answer, \$5.00 for a CD, \$240.20 for photocopying,
21 travel for the August 4th and August 27th -- 7th hearings
22 1,094.93, delivery services and messengers 266.18.

23 And then we have costs associated with ETS,
24 photocopies of \$100.20, postage of \$1.82 and travel of
25

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1 \$1,381.84.

2 Now in terms of attorneys' fees, we have two
3 different attorneys' fees. For counsel that actually
4 represented Erickson, Thorpe & Swainston, the attorneys
5 -- the actual attorney fees billed are \$22,907.50.

6 ETS has submitted attorneys' fees for
7 \$38,225.00.

8 So, first, I'm going to talk about the costs. I
9 didn't see any opposition to the costs of -- obviously,
10 let me back up and say this.

11 NRS 41.670 provides that if the Court grants the
12 special motion to dismiss, which I did, I don't think the
13 Court has any discretion under Subsection A.

14 The Court shall award reasonable costs and
15 attorneys' fees to the person against whom the action was
16 brought, and under Subsection B the Court may award in
17 addition to reasonable costs and attorneys' fees an
18 amount up to \$10,000 to the person against whom the
19 action was brought.

20 I want to talk about the attorneys' fees and
21 costs first. For Pat Songer's attorneys' fees \$408.00, I
22 didn't see any opposition to that.

23 MR. LEVINE: I don't -- \$408? No. It would
24 cost my client more to file an opposition than to oppose

25

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1 \$408.00.

2 THE COURT: Okay.

3 MS. GUTIERREZ: Your Honor, I just want to point
4 out that the invoicing we provided also had the billing
5 that hadn't been billed to the client yet. And so the
6 \$10,000.00 figure and the \$400.00 figure that Your Honor
7 just pointed out was what was actually billed. But since
8 we did quarterly billing, it still wasn't actually
9 accrued. So I will be arguing for the higher numbers of
10 what was going to be billed, the 21,000 and the 700.

11 THE COURT: Okay. But that's -- when you say --
12 tell me where the 700 is coming from.

13 MS. GUTIERREZ: That was what was projected as
14 of our --

15 THE COURT: Okay. I'm not going to award a
16 projected cost. I'm going to award actual costs. I
17 think that's what the statute requires.

18 MS. GUTIERREZ: Well, the costs were actually
19 accrued. Just because we do our quarterly billing
20 doesn't mean that the client isn't going to be on the
21 hook for those.

22 THE COURT: So you only bill four times a year?

23 MS. GUTIERREZ: Every client is different. Some
24 clients we do quarterly. Some clients we do monthly. It
25

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1 really depends on the time we submitted these --

2 THE COURT: Wow.

3 MS. GUTIERREZ: That's why I submitted the paid
4 or the billed invoice or the projection of the invoices.
5 But either way, Mr. Songer is still requesting the
6 reasonable attorneys' fees which I'm sure Your Honor will
7 cover as well.

8 THE COURT: Okay. Now ETS costs, I have -- I
9 have an issue, I'm just going to tell you, with the
10 following costs on the amended memorandum of costs.

11 I did some independent legal research on travel.
12 And there is not -- I ran an all-states query. I also
13 ran a Nevada query. The only cases I could find deny
14 travel costs as part of a memorandum of costs.

15 There is nothing, obviously, in Nevada that
16 addresses that issue. But everything I saw -- this isn't
17 a deposition cost. But traveling to hearings, what I
18 reviewed indicated that that would not be allowable.

19 I know that the argument was that that would
20 fall under 18.005, Subsection 17. Any other reasonable
21 and necessary expense incurred in connection with the
22 action including reasonable and necessary expenses for
23 computerized services for legal research.

24 But I was curious how other jurisdictions had
25

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1 dealt with this. I can't find any jurisdiction that
2 awarded it, but I will give you the opportunity to
3 address that.

4 The expenses -- then we have four -- well, three
5 -- because we took the insurance deductible off. But
6 ETS's photocopies, postage, and travel I don't think
7 those are permissible under 41.670, Subsection 1, because
8 I think it falls under 41.670, Subsection 1C, which says,
9 "The person against whom the action is brought may bring
10 a separate action to recover compensatory damages,
11 punitive damages, and attorneys' fees and costs of
12 bringing the separate action."

13 So I'm not sure that the photocopies, postage,
14 and travel, if they intended to pursue those, wouldn't
15 come as a separate action. It looks to me like that's
16 addressed pretty clearly in the statute. So that's --
17 the only one that I saw that was really related to this
18 hearing or to the attorneys' fee other than their
19 internal attorneys' fees were this \$1094.93 for the
20 travel. And, like I said, my research indicated I
21 couldn't find anyone who had awarded it.

22 I mean, it didn't make any difference to me. I
23 just wanted to know what the law was. And I couldn't
24 find any unpublished Nevada decisions or anything from

25

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1 the U.S. District Court for the District of Nevada. The
2 only problem is the federal rule is so much more
3 restrictive than the state statute. So it's really hard
4 to rely on that.

5 I couldn't find in running an all-state query
6 that would indicate that travel would be covered.

7 So with that being said, it would seem like
8 there is no opposition to the answer fee of \$198.00 for
9 Erickson, Thorpe & Swainston. The \$5.00 CD fee, the
10 \$240.20 photocopying charges, the delivery services and
11 messenger services of \$266.18, that would seem to be the
12 amount of the costs that would be awardable to Erickson,
13 Thorpe & Swainston.

14 MR. LEVINE: I'm not going to argue with Your
15 Honor on that point.

16 THE COURT: Okay. That seemed reasonable to me.

17 MR. LEVINE: I would make a note with regard to
18 the issue of travel expenses. There is a Latin phrase in
19 the law, which I'm not going to attempt to pronounce, but
20 translated is the inclusion of one is to the exclusion of
21 the other.

22 When the Legislature and the cost statute says
23 you can have travel costs for discovery in deposition,
24 that excludes travel costs for anything else otherwise
25

1 the statutory language is rendered meaningless. If the
2 Legislature intended travel costs for hearings to be
3 included, the statute would have so included so.

4 THE COURT: Well, actually, the case law I saw,
5 although there weren't many, I think there were three
6 cases, all denied it as travel costs to and from a
7 hearing were disallowed from other states. That's how I
8 arrived at -- just so you know, I just didn't make it
9 up. I came up with some basis of arriving at it. I took
10 it as an open mind. I was just curious how other states
11 viewed that.

12 So I don't think we have any opposition to the
13 400 -- well, I need to know what the actual costs are.

14 The projected costs are hard for me. If I have
15 actual costs, I don't have a problem with that. But
16 projected costs -- maybe I just missed that, you know, on
17 the billing.

18 But whatever the actual costs are, that are
19 reasonable, I don't think there is going to be an
20 opposition to that.

21 MS. GUTIERREZ: Your Honor, we did attach to our
22 motion the September 17th, 2014 summary which went up to
23 the \$21,767.50. That included the costs through the
24 entire month of --

25

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1 THE COURT: That \$702 worth of -- okay. This
2 was kind of confusing to me because when I looked at your
3 billing, I assumed that your total attorney's fees, and
4 maybe I'm wrong here, were -- let me see what I wrote
5 down here. Your total attorneys' fees were 10,000 --
6 what you're telling me is maybe I'm wrong. I thought Pat
7 Songer's total attorneys' fees were \$10,386.50. Is that
8 wrong?

9 MS. GUTIERREZ: Yes, that is wrong, Your Honor.

10 THE COURT: Okay.

11 MS. GUTIERREZ: The total attorneys' fees that
12 were accrued as of September 17th were \$21,767.50.

13 THE COURT: Okay. \$21,767.50. And then the
14 attorneys' fees on behalf of Erickson would have been
15 22,907.50. Those are the actual billed expenses. The
16 issue is whether or not I should adjust those. I think
17 there are two issues here. One, whether or not you are
18 entitled to something beyond that or whether the Court is
19 going to award something beyond that.

20 And then the other issue is, of course, you both
21 have asked for the additional \$10,000.00 to be imposed.

22 You know, my position is this, and I -- and I
23 looked at the argument and read your briefs, but what
24 struck me -- and I realize I have a lot of discretion in
25

1 this area, but these are -- I mean, your attorneys' fees
2 in each of these cases for basically a type of insurance
3 defense are identical. So that must be -- what my
4 thought was, that's pretty much the going rate.

5 I mean, it's different as a retained private
6 attorney. I don't have any disagreement with that that
7 what's negotiated. But these were negotiated contract
8 amounts, that you agreed to do this work for in exchange
9 for this hourly rate. Am I right?

10 And it seemed to be pretty consistent when I
11 looked at what Pat Songer's attorneys' fees were per rate
12 and what Erickson, Thorpe & Swainston attorneys' fees
13 were. \$175.00 an hour versus, basically, the majority of
14 the work was done at \$180.00 an hour. So that seemed to
15 me to be a pretty negotiated rate.

16 Now if you want to argue for the additional
17 attorney's fees, like I said, I've read the pleadings.
18 But it seems to me like you have to look at --

19 My thinking was the type of work that's
20 performed. And it's true that if you take the factors of
21 the skill of the attorney and the prevailing rate, this
22 that and the other, that it's a higher rate. But I think
23 if we look at the type of work performed, that we are
24 pretty much on line. And so I think what my personal
25

1 opinion is that what would be appropriate is the amount
2 actually billed, the actual billed amount at the rates
3 that were set for the defense of this case.

4 MR. LEVINE: Okay. Your Honor, I have not
5 raised an issue vis-a-vis the rates being charged other
6 than they shouldn't be using the Laffey factors.

7 THE COURT: Right.

8 MR. LEVINE: I don't have a problem with the
9 180. The issue is fees must be reasonable under the
10 statute.

11 THE COURT: Right.

12 MR. LEVINE: The statute doesn't provide -- it's
13 the fees in connection with the special motion to
14 dismiss, not everything they did in the case.

15 And as I pointed out in the billing or in my
16 opposition --

17 By the way, I presume I have permission to
18 remain seated during argument?

19 THE COURT: Sure. That's fine.

20 MR. LEVINE: Okay. Not everything billed
21 related to the special motion to dismiss, number one,
22 and, number two, the fees that they are talking about
23 simply are not reasonable for what was a relatively --
24 while they may have been novel issues of first
25

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1 impression, don't require that much work. It's a special
2 motion to dismiss. They already know what the statute
3 is. They lay out the statute.

4 I file my opposition. I raise two issues. One,
5 it doesn't apply to vendors, and I cite cases from other
6 jurisdictions saying it doesn't apply to vendors because
7 a vendor is not somebody who is exercising the First
8 Amendment right to petition the Government for address a
9 grievance or speak out on a matter of importance to the
10 Government.

11 The second issue I raise is sort of a procedural
12 issue which is, Hey, when the speech occurred, it took
13 place in 2012. The statute was limited only to
14 petitioning the Government for addressing grievance at
15 that point.

16 In other wards, it didn't require \$60,000.00 in
17 attorneys' fees between two firms to brief these issues.
18 It goes back to the statute. The statute doesn't say,
19 The Court shall award the attorneys' fees incurred. It
20 says reasonable attorneys' fees incurred.

21 THE COURT: But it doesn't limit the statute.
22 I'm just looking at the statute. You raise an
23 interesting argument. I don't see where the statute says
24 I can only grant attorneys' fees for the work on the
25

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1 motion.

2 It says, "The Court shall award reasonable costs
3 and attorneys' fees to the person against whom the action
4 was brought."

5 But it doesn't say only in connection with
6 filing of the motion.

7 MR. LEVINE: True, but there was nothing else
8 done in the case other than the filing of the motion.

9 THE COURT: Well, there was a lot of research.
10 This is a complicated -- I think it's -- you think it's
11 very easy. I spent a lot of time. And I have to tell
12 you, for just a motion to dismiss, this is the Court's
13 official file.

14 MR. LEVINE: Right.

15 THE COURT: So we are not talking, you know,
16 just -- I mean, the reason I set it in an afternoon was
17 to give you guys more time, but it also took me a lot of
18 time to go through it. It isn't something that I can put
19 on my 10 minute law and motion calendar and take it home
20 and say, Oh, half an hour later I buzzed through the file
21 and this is very simple.

22 I don't think it was simple. I know I spent a
23 lot of time and actually had you guys do additional
24 briefing on it because I had some issues with it.

25

1 I saw your argument. I'm not sure I agree with
2 it, as far as that goes. I probably am not going to make
3 anybody happy here by the time everybody walks out the
4 door.

5 But it just seemed to me like -- and I saw that
6 you -- but I also took a look at the billing and, you
7 know, I practiced law for 25 years before I took the
8 bench. And, I mean, there's a lot of preparation that
9 goes into filing these motions and researching them, if
10 you do them right. I mean -- and this isn't, in my
11 opinion, a very simple issue at all. I think it's a
12 complicated statute.

13 And I know that when I was working on it and I
14 even looked at the unpublished decisions to kind of get a
15 feel for what the Nevada Supreme Court was thinking in
16 this area.

17 So I -- I got to tell you guys, you have tons of
18 exhibits and parsing through that and sorting this out so
19 I'm not sure that the attorney's fees that were billed --
20 what I found was interesting is they were basically the
21 same. I mean, very close to the same without consulting
22 one another about the attorney's fees.

23 So it seemed like, I mean, if we had one set of
24 attorneys' fee that were, you know, three times than

25

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1 other attorneys' fees, maybe I would say, Oh, yes. We
2 have something excessive here. But, quite frankly, this
3 is a pretty complicated issue. And I just -- I think
4 that sometimes that -- I didn't see anything that I
5 thought was outrageous here.

6 MR. LEVINE: Well, I do have an issue, Your
7 Honor --

8 THE COURT: Okay.

9 MR. LEVINE: -- for them billing for things that
10 are redacted. I think I did point that out.

11 THE COURT: You did point that out.

12 MR. LEVINE: How can I know whether it's
13 reasonable if I don't know what it is?

14 THE COURT: Well, I think the argument that they
15 made is some of that, and I have done that myself where
16 it would describe something that you were doing for the
17 attorney-client privilege.

18 But I didn't see anything just reading through,
19 and I looked at the bills with a pretty fine tooth comb
20 because we see a lot of billing here at the courts for
21 specially appointed attorneys. I didn't see anything
22 that jumped out that said, Oh, no. This is totally
23 inappropriate.

24 On the costs I did. I will be honest with you.

25

1 Those kind of things jumped right out at me. But I
2 really didn't see it on the attorneys' fee, to be honest
3 with you.

4 MS. GUTIERREZ: Your Honor, if I can address the
5 Court regarding the attorneys' fees that Pat Songer is
6 requesting.

7 THE COURT: Uh-huh.

8 MS. GUTIERREZ: Pat Songer used the Laffey
9 matrix as an example to show what it would project what
10 the reasonable attorneys' fees would have been for this
11 matter. And that projection was higher than what Mr.
12 Songer was requesting. That was \$34,468.80. And that
13 was just based on that example.

14 In terms of the insured billing rates versus the
15 billing rates that we would charge on a private-pay case,
16 my cases are pretty much about evenhanded, half
17 insurance, half private pay matters. And the rates that
18 we requested here the, \$115.00 for paralegal, \$275.00 for
19 an associate such as myself, and \$475.00 for Mr. Garin,
20 those are the reasonable rates that we are charging for
21 our other private pay cases that may or may not be
22 tangentially related to insurance.

23 Either way, they are still getting the same
24 amount of attention and same amount of time dedicated to
25

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1 those matters that also may have complicated issues such
2 as this one. But as the Court noted, the statute says
3 reasonable attorneys' fees to the person against whom the
4 the action was brought.

5 It wasn't just the attorneys' fees in
6 researching that we incurred. There was also talking to
7 our client, investigating the matter, all of these things
8 that go into any case that you would get from the
9 beginning of the matter to try to really understand what
10 it was that you were dealing with.

11 So I would argue that we are still entitled to
12 reasonable attorneys' fees not based on the
13 pre-negotiated benefit that we've given to our insurance
14 clients in order to be able to have that type of
15 business, but I don't think it's any secret that in order
16 to have insurance-defense-type clients, they're expecting
17 a discount to be able to give you that type of work.

18 The fact that Mr. Alexander also does
19 professional liability just shows that we are being
20 reasonable in terms of our billing to those particular
21 clients. But it doesn't diminish the type of work or the
22 experience or the quality of the attorneys. And so we
23 would still request the rates that we bill for our
24 non-insurance cases.

25

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1 THE COURT: Okay. All right.

2 Well, anyone have anything else they want to
3 say? Because I think that under the circumstances and
4 anti-SLAPP statute and how this is brought, I think the
5 reasonable attorneys' fees are those fees that you
6 actually charged. And so I'm not going to adjust the
7 rates up. I think that's -- is that reasonable? I think
8 so.

9 And I, quite frankly, don't see plaintiff's
10 counsel really having an argument that they aren't
11 reasonable because I haven't accelerated those fees. I
12 think a reasonable fee is what was charged.

13 And you're right. That's how you get the work.
14 Is you agree that that's what you're willing to charge
15 for these types of cases. It doesn't diminish you as an
16 attorney. It's just that you realize that's the
17 agreement you have made.

18 And so I think that what was actually billed
19 would be the appropriate amount of attorney's fees in
20 each case.

21 Now I want to address something with Erickson,
22 they -- one thing that amazed me is they had attorneys'
23 fees of \$38,225.00. That -- if they want to bring those
24 as a separate action, great, but I'm not going to award
25

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1 them as part of this action. I don't think that's
2 appropriate. I think that falls under Subsection C of
3 41.670, 1(c). If they want to pursue those, and try to
4 pursue that they can. But I don't think that's the
5 purpose or the intent of the attorneys' provisions under
6 the statute.

7 So the actual -- I think the reasonable
8 attorneys' fees are the actual fees incurred in the
9 representation up to the time that I granted the motion.
10 And I think that would be reasonable in this case and the
11 costs that I have gone through.

12 MR. LEVINE: Are you going to provide us with
13 those numbers on the record?

14 THE COURT: Well, I don't have them. The
15 problem is I don't have the actual costs. I do from --
16 well, I have the attorneys' fee from LGE of \$22,907.50 --

17 MR. LEVINE: \$22,907 --

18 MR. ALEXANDER: And fifty cents. I'm sorry.

19 MR. LEVINE: Okay.

20 THE COURT: But I just heard from counsel that
21 the other one for Pat Songer \$21,757.50, is that right?

22 MS. GUTIERREZ: Yes, Your Honor.

23 THE COURT: And then the costs for Pat Songer
24 are like 709 or 707?

25

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1 MS. GUTIERREZ: 702.

2 THE COURT: 702. I was close. And then I show
3 other costs. I itemized them. I don't have the actual
4 figure.

5 MR. ALEXANDER: For mine, Your Honor, for
6 Erickson, Thorpe, I don't have them totalled up, but I
7 have the 198, the \$5.00, the \$240.20 and then the 266.18.

8 MR. LEVINE: Can somebody with a calculator do
9 that really quickly for us?

10 THE COURT: I don't have a calculator in here.

11 MR. LEVINE: May I pull out the cell phone, Your
12 Honor?

13 THE COURT: You may. I usually leave one on the
14 bench, but I had civil this morning so.

15 MR. LEVINE: I'm going to do it and somebody
16 tell me if they think my calculator has tried to cheat
17 them. So 198, plus 5, plus \$240.20, plus \$266.18 equals
18 \$709.38, which is awfully close to Songer's costs.
19 Within seven dollars.

20 THE COURT: Okay. \$709.38.

21 Now let's talk about this additional \$10,000.00
22 that I can award, up to \$10,000.00.

23 Both sides have asked for \$10,000.00. You know,
24 I think this is a -- I think the facts of this case and
25

1 the application of the anti-SLAPP statute I'm inclined
2 not to award that to either party, but just to award what
3 I find to be reasonable attorneys' fees and costs.

4 Now I want to talk about one other thing. We
5 have an appeal. I just signed the order in one of the
6 cases. I had a question, and I think that the -- there's
7 an appeal from the one order that was filed like
8 September 16th, if I remember correctly. An appeal --

9 MR. LEVINE: Correct, Your Honor. That creates
10 a -- I don't think you have jurisdiction to sign any
11 other orders.

12 THE COURT: Well, I -- yes, I think I do.

13 MR. LEVINE: Well, hold on. Let me back up.

14 THE COURT: I have the authority to sign -- as
15 long as it's tangential and I think the attorneys' fees
16 and costs is a tangential issue.

17 MR. LEVINE: I agree on that.

18 THE COURT: I also think I have the authority
19 because I had each counsel prepare the order from the
20 hearing on the motion -- the special motion to dismiss.
21 So I think those two orders I can sign. I did sign both
22 of those.

23 MR. LEVINE: Okay.

24 THE COURT: I'm not saying I'm signing anything
25

1 else. That's it.

2 MR. LEVINE: My concern -- I totally agree with
3 you. Attorneys' fees and costs are collateral orders.
4 I'm well familiar with the law on that. Clearly.

5 The concern I have is this, the granting of the
6 special motion to dismiss is a final judgment on the
7 merits.

8 THE COURT: Uh-huh.

9 MR. LEVINE: Once you signed the first one,
10 that's the final judgment on the merits of the case.

11 THE COURT: As to that particular defendant.
12 Realize that that's the difference. I signed a special
13 motion to dismiss as to each particular defendant.

14 MR. LEVINE: It should have been consolidated
15 into one because it creates jurisdictional nightmares
16 issues for purposes of appeal if you don't do it that
17 way, which is, you enter a final judgment on the merits
18 on one case that, you know, that makes factual findings,
19 I have to file a notice of appeal within 30 days.

20 THE COURT: Right. Which you did.

21 MR. LEVINE: Right. Now, once that notice of
22 appeal is filed, the District Court does not have
23 jurisdiction to enter any orders which might be at
24 variance or affect the findings from that first judgment.

25

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1 THE COURT: Well, I don't think my second order
2 does.

3 MR. LEVINE: Okay.

4 THE COURT: I think I had them each applied
5 differently. I already signed the order.

6 MR. LEVINE: Okay. I haven't seen it, and I
7 haven't done a notice of entry. And I will just do an
8 amended notice of appeal.

9 MS. GUTIERREZ: We haven't received it either.

10 THE COURT: Here is the one I signed on
11 September 17th. I have been gone just a lot this month.
12 It's filed in the Court on November 19th. If you guys
13 don't have a copy, I will be happy to give you one.

14 MS. GUTIERREZ: It's the unsigned one.

15 MR. LEVINE: No. Just give me notice of the
16 entry of the new one so I can make sure I protect myself
17 with timely notice.

18 THE COURT: Have you received this one?

19 MS. GUTIERREZ: I have not received that.

20 THE COURT: Get Ms. Romando (phonetic) to make
21 copies of this for the parties. I don't know. It's
22 probably lost somewhere in translation.

23 And I -- oh, James went that way. You came this
24 way. Before you leave I want to make sure everybody has

25

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1 a copy of that. And that's the -- well, the problem is I
2 had some issues with that so until we got those
3 resolved -- and I was gone at Judicial College for the
4 last week of October, back two weeks and gone again for a
5 week. So I was gone up until last Monday.

6 I handle the drug court. And so every two years
7 -- first they went to the Judicial College because for
8 like the first time in, like, eight years they had
9 training for drug court judges. So I was gone to that.

10 And then every two years the Nevada
11 Administrative Offices of the Court has training for the
12 specialty courts. So they happen to fall all within the
13 same period of time. I hate that, but sometimes it works
14 that way. So that's why there was some delay in this
15 because I was gone.

16 So now we have one other thing I think we need
17 to address. And that was Mr. Levine had filed a motion
18 to stay the attorneys' fees and costs.

19 MR. LEVINE: Yes, and I did so based upon a
20 comment that you made at the time that you granted the
21 special motion to dismiss that you would be inclined to
22 grant such a motion because of the novel issues of first
23 impression being raised in this particular case.

24 THE COURT: Now, I had an opposition to the
25

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1 extent that they asked that a supersedeas bond be posted.

2 MR. LEVINE: That's correct, Your Honor.

3 THE COURT: And much of that was dependant upon
4 what I did today in terms of the award of attorneys' fees
5 and costs. There is -- actually, and it was to
6 Mr. Levine's firm in the past where there have been
7 substantial assets I have not required a posting of a
8 bond because I felt like if I was overturned by the
9 Supreme Court that they would be able to pay.

10 In this case I have some concerns about whether
11 if the -- if the decision is affirmed, will your clients
12 be able to pay that?

13 MR. LEVINE: As I pointed out, they remain
14 employed as a result of the Arbitrator's finding, not
15 withstanding Mr. Songer's best efforts. They remain
16 employed by the -- by Pahrump Valley Fire and Rescue.
17 And what you could do, Your Honor, and, of course, if the
18 judgment is affirmed, note, one, as public employee, they
19 can just readily ascertainable -- they can simply file
20 writs of garnishments on their paychecks and the town of
21 Pahrump will pay them.

22 What I will request is that there be no
23 supersedeas bond required so long as they remain employed
24 with Pahrump Valley Fire and Rescue.

25

1 Obviously, should they lose their jobs with
2 Pahrump Valley Fire and Rescue, retire, or otherwise put
3 them in a position where they are not continuing to
4 receive a paycheck, well, that's an different issue. As
5 long as they are employed, it's easy for them to come
6 after them and find a paycheck.

7 THE COURT: Let me ask counsel what your
8 position is with regard to that? How do you feel about
9 that?

10 MR. ALEXANDER: It's the first that I have
11 actually considered it.

12 THE COURT: Okay.

13 MR. ALEXANDER: Obviously, we would be much more
14 comfortable with a supersedeas bond.

15 THE COURT: Okay. And the bond amount of --

16 MR. ALEXANDER: Well, the bond amount would
17 be --

18 THE COURT: Well, less than 50,000. Probably --
19 probably right at 45,000 or 50,000.

20 MR. ALEXANDER: It's going to be somewhere
21 around there, yes.

22 THE COURT: All right. If I were to have them
23 post a supersedeas bond, it would probably be, what,
24 about -- I'm thinking about the cost for them to post
25

1 that bond.

2 MR. LEVINE: A lot of companies charge 10 to 15
3 percent. So you are looking at between five to seven
4 thousand dollars just to get a bond.

5 THE COURT: And the problem with that is that
6 it's gone.

7 MR. LEVINE: Correct.

8 THE COURT: What's your position?

9 MS. GUTIERREZ: Well, I agree with Mr. Alexander
10 that the parties would feel much more comfortable with
11 having the bond going into this appeal that's likely
12 going to take up a substantial amount of time and
13 additional resources. And I think in order for any type
14 of resolution to happen, I think that it would be prudent
15 to have the bond.

16 MR. ALEXANDER: There are two plaintiffs amongst
17 whom the cost of a bond can be split because they are
18 jointly and severally liable.

19 THE COURT: How would you feel -- I mean, if
20 they post a bond, they're looking at basically \$2500 to
21 \$3000 a piece for a \$50,000 bond.

22 MR. LEVINE: I'm guesstimating having never had
23 to put up a bond for myself before. That's my
24 understanding. Usually what I find with the casinos is
25

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1 they say do we have to put up a bond or can we just give
2 you an irrevocable letter by the bank. Casinos play by
3 different rules.

4 THE COURT: Right. And that's what -- I'm
5 trying to think in the back of my mind when we have
6 posted bonds before as well. I hate to let -- the issue
7 that I have -- I mean, I think I'm right, but I may be
8 wrong. And, you know, I have to tell you, as a Judge it
9 doesn't bother me. If I'm wrong, I'm wrong. Whether the
10 Court told me I'm wrong. You know, I'm not going to
11 pretend I have all the answers because I don't think I
12 do.

13 MR. LEVINE: I will flip that. I think you are
14 wrong, but you might be right.

15 THE COURT: Well, I am wondering if it would
16 make more sense if we are were going to require the
17 posting of a bond to have some cash put up because, at
18 least, if I'm upheld, then there is readily available
19 money quickly. I mean, just a thought here.

20 So, in other words, you can either post a
21 \$25,000 supersedeas bond or \$2500 cash as a bond. Cash
22 or -- I'm just trying to think outside the box here.
23 Probably -- that's what always gets me in trouble when I
24 try something like that. I mean, I understand what the
25

1 concern is.

2 The other thing that's been offered I think is
3 relatively -- I have to tell you, we don't know what's
4 going to happen out here. As you may know, the town of
5 Pahrump is going to cease ex-- well, it's going to
6 continue to exist. The form of government is going to
7 change as of January 5th, 2015.

8 The voters voted the town board into an advisory
9 board effective January 5th, 2015. The Nevada Supreme
10 Court upheld that. And so, quite frankly, I don't see
11 any change.

12 I have also had those issues come in front of me
13 because Pahrump cannot operate on an entirely volunteer
14 fire department. We are a town of 36,000 people.

15 MR. LEVINE: I'm not just the attorney for
16 Raymond Delucchi and Tommy Hollis. I also happen to be
17 the attorney for Local 4066, which is the Pahrump's
18 Valley Fire Rescue union. We have already looked into
19 it. And we have already had conversations with
20 Mr. Coonsey (phonetic) and everything else. Nothing is
21 going to change. In other words, they are still a local
22 government employer.

23 THE COURT: Right.

24 MR. LEVINE: The Nye County and the Nye County
25

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1 Department of Emergency Services has no desire to take on
2 Pahrump Valley Fire and Rescue. They are not just going
3 to take them over, disband them or subsume them. They
4 are not going anywhere.

5 THE COURT: That's my feeling as well. I mean,
6 that's just -- the only thing that's going to happen is
7 January 5th, 2015 instead of answering to the town board,
8 they will answer to the board of County Commissioners.

9 MR. LEVINE: That is absolutely correct.
10 Pahrump is still going to be a town. It doesn't lose its
11 legal status as a town.

12 THE COURT: Right.

13 MR. LEVINE: The only change is the government.

14 THE COURT: Yes.

15 MR. LEVINE: Its contracts remain in place.

16 THE COURT: Yes.

17 MR. LEVINE: Its property remains in place. Its
18 ability to tax and carry out its sovereign functions
19 delegated by the Legislature remains in place.

20 THE COURT: This is what I'm going to do. I'm
21 going to allow them while they are still employed, I
22 won't require the posting of a supersedeas bond.
23 However, should they lose their employment, should they
24 leave, I will require each, not together, but each to
25

1 post a \$50,000.00 bond.

2 MR. ALEXANDER: All right.

3 THE COURT: And that would be true even if they
4 change employment.

5 MR. LEVINE: Okay.

6 THE COURT: Okay.

7 MR. LEVINE: Preparation of the order. So as to
8 avoid one order for Songer and one order for ETS, I would
9 request a joint order. I would even be willing to draft
10 it and send it to opposing counsel for approval as to
11 form and content.

12 THE COURT: I think that would be wonderful.
13 That way they won't incur any additional attorneys' fees.
14 How's that?

15 MR. LEVINE: Sounds good.

16 MR. ALEXANDER: I'm good with that, Your Honor.

17 THE COURT: All right. Is there anything else
18 we need to address?

19 MR. ALEXANDER: I don't believe so.

20 THE COURT: Okay. Well, this is a very
21 interesting case.

22 Like I said, I think -- you know, I have to say,
23 I think I'm right. Not what you want to hear,
24 Mr. Levine.

25

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1 MR. LEVINE: That's okay.

2 THE COURT: That's why I ruled the way I did. I
3 have some sympathy for your client, being a former
4 employer attorney. And I wasn't -- and I still remain --
5 I think the investigation, my personal opinion, was done
6 very poorly. But, nonetheless, I think that this is a
7 proper application of the law.

8 MR. LEVINE: I understand your ruling. My
9 position is that it doesn't apply to vendors, but that's
10 what the Supreme Court is going to decide as an issue of
11 first impression.

12 THE COURT: I think it's going to be
13 interesting. Who knows? Maybe it will go to the newly
14 created Court of Appeals which is supposedly going to
15 start hearing cases, it's my understanding, like the
16 first week of January.

17 MR. LEVINE: Have the appointments been made
18 yet?

19 THE COURT: The interviews are this week with
20 the Commission of Judicial Selection. And next week --
21 what happens is as soon as the Commission on Judicial
22 Selection interviews, they vote that same day. And then
23 the -- for the -- they've got the three departments. So
24 they will advance the three up.

25

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1 I know that -- I don't know if they had
2 interviews starting yesterday, today, and tomorrow. But
3 I do know that they've kind of split it into Department
4 1, 2 and 3 and Department 3 interviews, I believe, are
5 tomorrow.

6 So they planned -- the Governor plans to
7 interview them next week. So I would -- and they plan to
8 start hearing cases the first week of January.

9 MR. LEVINE: I have been so busy I haven't
10 followed the process as closely as I should. So the
11 committee or the commission advances three names for each
12 department, and then Governor appoints from those three?

13 THE COURT: The Governor interviews.

14 MR. LEVINE: Sort of like the -- is it like the
15 Missouri plan, the Arizona plan, like they do for
16 judicial appointments?

17 THE COURT: Well, what they do was -- I was
18 appointed originally.

19 MR. LEVINE: Right.

20 THE COURT: What happens is, of course, there is
21 a pretty extensive application. Part of it is seen by
22 the public. Part of it is not. Then they run a
23 background and credit check.

24 MR. LEVINE: That's why I'm never going to be a
25

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1 judge, that part right there.

2 THE COURT: Then from that point then that's all
3 part of the information that's provided. You have to get
4 certain letters of reference. And they gave the
5 parties time -- they only gave the parties a week to
6 apply.

7 MR. LEVINE: Wow.

8 THE COURT: From the day as of November 5th to
9 November 12th that's how short the window was for the
10 Court of Appeals.

11 MR. LEVINE: Now are all cases from the Supreme
12 Court -- that would be impractical for the Supreme Court
13 dump their entire case load on them.

14 THE COURT: No. What they're going to do is a
15 push-down court, which means when the cases go to the
16 Court of Appeals, they won't be appealable up to the
17 Supreme Court.

18 My guess is a case like this, a case of first
19 impression, will be heard by the Nevada Supreme Court.

20 If you saw -- virtually, every criminal that we
21 sentence or that we have a trial and gets convicted takes
22 their case to the Nevada Supreme Court. I mean, it's
23 just inevitable. Even when they plead guilty, they sit
24 in jail for a while and they go, You know what, that was
25

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1 a really dumb idea -- I bet I can think of a way --

2 I just recently had a decision come down that
3 was a trial from Judge Davis in 1997. The gentleman had
4 14 different counsel. And the Supreme Court sent it to
5 me to write an opinion, and they gave me 30 days and it
6 was like this big. I mean, it was ridiculous. And so
7 they have tons of those cases. I think their back load
8 per judge -- I mean, if they each took one of those files
9 and wrote an opinion every single -- I think they would
10 have to write three opinions a day for a year they would
11 catch up their backlog. So I think they're going to push
12 a bunch of that stuff down.

13 MR. LEVINE: So they are going to push stuff
14 down and decide what to keep initially for the existing
15 case load?

16 THE COURT: Yes. They are actually formulating
17 rules now on what they are pushing down and what they are
18 keeping.

19 MR. LEVINE: And then once presumably all
20 appeals -- all new appeals will go to the Court of
21 Appeals.

22 THE COURT: No. All new appeals go to the
23 Supreme Court, and they push them down.

24 MR. LEVINE: Oh, okay. It's not the system like
25

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1 in other states where you appeal to the Court of Appeals
2 and then you have the right to petition the Supreme Court
3 for cert.

4 THE COURT: No. Because like I'm licensed in
5 Colorado and Arizona.

6 MR. LEVINE: Arizona. I am also in Arizona.

7 THE COURT: You know --

8 MR. LEVINE: Right. We have division one and
9 division two and if one of them gets wrong or the two
10 divisions have different opinions, you can request the
11 Supreme Court grant cert.

12 THE COURT: Absolutely. Well, I have to tell
13 you, it's been a pleasure working with all of you. You
14 guys did a great job of briefing things. I like -- I
15 have always liked the practice of law. I like the
16 research end of it. And so I appreciate all of your hard
17 work and the effort that you expended and the documents
18 you prepared because I think you all did a great job.

19 MR. LEVINE: Thank you.

20 THE COURT: So we'll just see where it goes from
21 here. Thank you very much.

22 (Whereupon the proceedings were concluded.)

23

24

25

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* * * Audio Transcription * * *

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1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.)

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11

I, LISA A. YOUNG, do hereby affirm that I transcribed the audio proceedings in the within entitled case recorded on December 2, 2014 ; 1:35 P.M. of said day, and transcribed the audio proceedings the court hearing of the case of RAYMOND DELUCCHI and TOMMY HOLLIS, Plaintiffs, vs. PAT SONGER and ERICKSON, THORPE & SWAINSTON, LTD., Defendants, Case No. CV35969, do hereby affirm:

12

13

14

That the foregoing transcript, consisting of pages number 1 to 40, both inclusive, is a full, true and correct transcription of the said audio proceedings.

15

16

DATED: At Fernley, Nevada, this 11th day of May 2016.

17

18

19

IN WITNESS WHEREOF,

20

21

State of Nevada
County of Clark

22

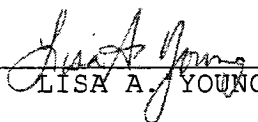
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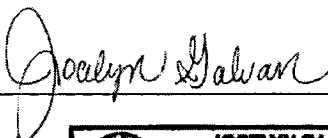
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This instrument was signed and acknowledged before me on May 12, 2016.

NOTARY PUBLIC
State of Nevada
County of Clark


LISA A. YOUNG





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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.
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PAT SONGER

FILED

2014 DEC -4 A 10:19

NYE COUNTY CLERK
BY DEPUTY Sarah Westfall

CERTIFICATE OF SERVICE

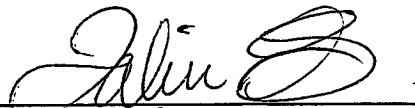
I hereby certify that on the 3rd day of December, 2014, service of the foregoing
**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT PAT SONGER'S SPECIAL
MOTION TO DISMISS PURSUANT TO NRS § 41.660** was made by depositing a true and
correct copy of the same in the United States mail, with postage fully prepaid,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

Daniel Marks, Esq.
Adam Levine, Esq.
Law Offices of Daniel Marks
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14 **PAT SONGER**

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 **RAYMOND DELUCCHI and TOMMY**
18 **HOLLIS,**

19 **Plaintiffs,**

20 **v.**

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

23 **Defendants.**

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

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

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

CONCLUSIONS OF LAW

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

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FIFTH JUDICIAL DISTRICT COURT

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NYE COUNTY DEPUTY CLERK
DEPUTY *Anna Davis*

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

- 4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and 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

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

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


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

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

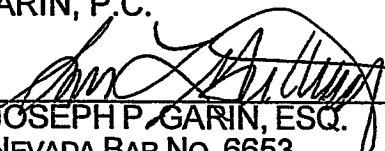
21. Plaintiffs failed to establish by clear and convincing evidence that there was a genuine issue of material fact.

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

DATED this 18th day of November, 2014.


DISTRICT COURT JUDGE

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

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

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

FILED

2015 MAY 28 P 2:13
TANNER DAVIS
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 v.

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

15 Defendants.
16 _____ /

17 **STIPULATION AND ORDER TO VACATE AWARD OF FEES AND COSTS AS TO**
18 **DEFENDANT ERICKSON, THORPE & SWAINSTON, LTD. WITH PREJUDICE**

19 IT IS STIPULATED and AGREED between Plaintiffs Raymond Delucchi and Tommy Hollis
20 and Defendant Erickson, Thorpe & Swainston, Ltd. that based on the General Mutual Release
21 Agreement executed by the parties above named parties the award of attorney's fees and costs entered
22 in the above entitled action on December 30, 2014 in favor of Defendant Erickson, Thorpe &

23 ///

24 ///

25 ///

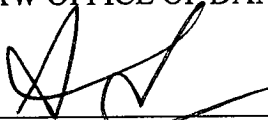
Swainston, Ltd. and against the Plaintiffs Raymond Delucchi and Tommy Hollis be vacated with prejudice.

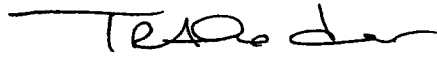
DATED this ____ day of ____, 2014.

DATED this 27th day of April, 2014.

LAW OFFICE OF DANIEL MARKS

LEMONS, GRUNDY & EISENBERG


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 04673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
*Attorneys for Defendant Erickson
Thorpe & Swainston, Ltd.*

ORDER VACATING AWARD OF ATTORNEY'S FEES AND COSTS WITH PREJUDICE

Based on the above and foregoing Stipulation, it is

ORDERED, ADJUDGED AND DECREED that the award of attorney's fees and costs on behalf of the Defendant Erickson, Thorpe & Swainston is hereby VACATED with prejudice.


DATED this 28 day of May, 2015.

KIMBERLY A. WANKER

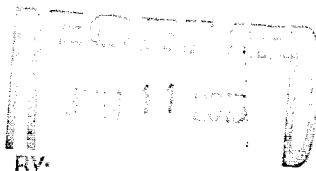
DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICE OF DANIEL MARKS


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

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*



FILED

2015 JUN -8 P 3:00
TANNER DAVIS
NYE COUNTY CLERK
BY DEPT.

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

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

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

16 Defendants.

17 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO VACATE**
18 **AWARD OF FEES AND COSTS AS TO DEFENDANT ERICKSON,**
19 **THORPE & SWAINSTON, LTD. WITH PREJUDICE**

20 TO: PAT SONGER, Defendant;

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

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

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

24 ///

25 ///

///

1 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that a Stipulation and Order to
2 Vacate Award of Fees and Costs as to Defendant Erickson, Thorpe & Swainston, Ltd. with Prejudice
3 was entered in the above entitled matter on the 28th day of May, 2105, a copy of which is attached
4 hereto.

5 DATED this 3rd day of June, 2015.

6 LAW OFFICE OF DANIEL MARKS

7 
8 DANIEL MARKS, ESQ.

9 Nevada State Bar No. 002003

ADAM LEVINE, ESQ.

Nevada State Bar No. 004673

610 South Ninth Street

Las Vegas, Nevada 89101

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

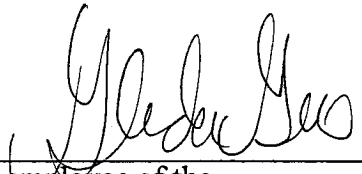
Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 3rd day of June, 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 STIPULATION AND ORDER TO VACATE AWARD OF FEES AND COSTS AS TO DEFENDANT ERICKSON, THORPE & SWAINSTON, LTD. WITH PREJUDICE, to the addresses as follows:

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

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


An employee of the
LAW OFFICE OF DANIEL MARKS

FILED

2015 MAY 28 P 2:13
TANNER DAVIS
NYE COUNTY CLERK
BY DEPUTY

1 SAO
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*

11
12
13 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF NYE

16
17 RAYMOND DELUCCHI and
18 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

19 Plaintiffs,

20 v.

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

23 Defendants.
24
25

STIPULATION AND ORDER TO VACATE AWARD OF FEES AND COSTS AS TO
DEFENDANT ERICKSON, THORPE & SWAINSTON, LTD. WITH PREJUDICE

26 IT IS STIPULATED and AGREED between Plaintiffs Raymond Delucchi and Tommy Hollis
27 and Defendant Erickson, Thorpe & Swainston, Ltd. that based on the General Mutual Release
28 Agreement executed by the parties above named parties the award of attorney's fees and costs entered
29 in the above entitled action on December 30, 2014 in favor of Defendant Erickson, Thorpe &

30 ///

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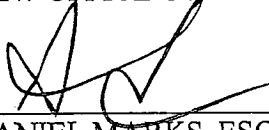
Swainston, Ltd. and against the Plaintiffs Raymond Delucchi and Tommy Hollis be vacated with prejudice.

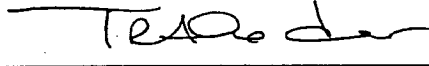
DATED this ____ day of ____, 2014.

DATED this 27th day of April, 2014.

LAW OFFICE OF DANIEL MARKS

LEMONS, GRUNDY & EISENBERG


DANIEL MARKS, ESQ.
Nevada State Bar No. 002003
ADAM LEVINE, ESQ.
Nevada State Bar No. 04673
610 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs


TODD ALEXANDER, ESQ.
Nevada State Bar No. 010846
6005 Plumas Street, Suite 300
Reno, Nevada 89519
*Attorneys for Defendant Erickson
Thorpe & Swainston, Ltd.*

ORDER VACATING AWARD OF ATTORNEY'S FEES AND COSTS WITH PREJUDICE

Based on the above and foregoing Stipulation, it is

ORDERED, ADJUDGED AND DECREED that the award of attorney's fees and costs on behalf of the Defendant Erickson, Thorpe & Swainston is hereby VACATED with prejudice.

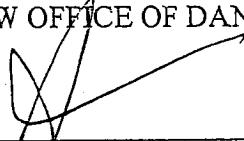
DATED this 28 day of May, 2015.

KIMBERLY A. WANKER

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICE OF DANIEL MARKS


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

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

FILED

2015 JUN 15 P 1:35
Stephanie May
NYE COUNTY CLERK
BY DEPUTY

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

8 IN AND FOR THE COUNTY OF NYE

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 Plaintiffs,

13 v.

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

15 Defendants.

16
17 PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL ✓

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

21 ///

22 ///

23 ///

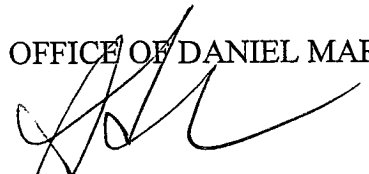
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25 ///

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

3 DATED this 11th day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

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

10 **NOTICE OF MOTION**

11 TO: PAT SONGER, Defendant;

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

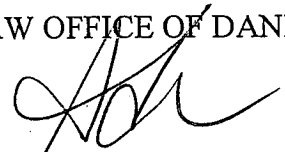
13 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

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

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

19 DATED this 11th day of June, 2015.

20 LAW OFFICE OF DANIEL MARKS

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

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

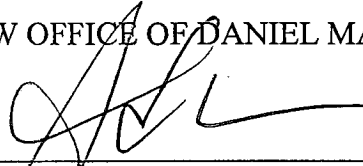
On April 14, 2015 the Supreme Court filed an Order to Show Cause why the appeal should not be dismissed on jurisdictional grounds due to the fact that the November 19, 2015 Order was not a final judgment for purposes of appellate jurisdiction as it contemplated dismissal at a future date. (Attached hereto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

///

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

5 DATED this 11th day of June, 2015.-

6 LAW OFFICE OF DANIEL MARKS

7 

8 DANIEL MARKS, ESQ.
9 Nevada State Bar No. 2003
10 ADAM LEVINE, ESQ.
11 Nevada State Bar No. 4673
12 610 South Ninth Street
13 Las Vegas, Nevada 89101
14 *Attorneys for Plaintiffs*
15
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25

EXHIBIT “1”

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

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

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCHI and TOMMY HOLLIS,

Plaintiffs,

Case No. CV35969

v.

Dept. No. 1

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

Defendants.

NOTICE OF ENTRY OF ORDER

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

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

Dated: October 3, 2014.

By: Todd R. Alexander

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

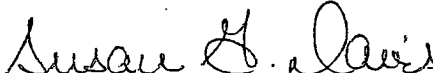
LEMONS, GRUNDY
& EISENBERG
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SUITE 300
RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

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

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

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



Susan G. Davis

EXHIBIT 1

EXHIBIT 1

SEP 17 2014

NYE COUNTY DEPUTY CLERK
DEPUTY
Patricia Couture

Case No. CV35969

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

RAYMOND DELUCCI and TOMMY
HOLLIS,

Plaintiff,

v.

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

Defendants.

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

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

FINDINGS OF FACT

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

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

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

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

9 4. Shortly after the Highway 160 incident, the Town of Pahrump received a telephone
10 complaint from Brittne Choyce's mother regarding Plaintiffs' conduct during the Highway
11 160 incident.
12

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

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

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

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

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

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

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

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

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

23 ORDER

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

27 ///

28 ///

1 IT IS FURTHER ORDERED that ETS shall have 30 days from the date of this
2 Order to file a motion for costs, attorney's fees and other monetary relief, pursuant to NRS
3 41.670. Plaintiffs shall then have 30 days, from the date such motion is filed, in which to file
4 an opposition to said motion. ETS shall then have 10 days in which to file a reply in support
5 of its motion.
6

7 Dated: September 17th, 2014.

8 By: KIMBERLY A. WANKER
9 DISTRICT COURT JUDGE
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28

EXHIBIT “2”

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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.
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(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.

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1 **ORDR**
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13 *Attorneys for Defendant,*
14 **PAT SONGER**

15 **IN THE FIFTH JUDICIAL DISTRICT COURT**
16 **NYE COUNTY, NEVADA**

17 **RAYMOND DELUCCHI and TOMMY**
18 **HOLLIS,**

19 **Plaintiffs,**

20 **v.**

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

23 **Defendants.**

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

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

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

CONCLUSIONS OF LAW

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

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: 

21 JOSEPH P. GARIN, ESQ.
22 NEVADA BAR NO. 6653
23 SIRIA L. GUTIERREZ, ESQ.
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27 (702) 382-1500

28 Attorneys for Defendant,
PAT SONGER

EXHIBIT “3”

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

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

Respondents.

No. 66858

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

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

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

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

It is so ORDERED.

Jardosty, C.J.

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

EXHIBIT “4”

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI; AND TOMMY
HOLLIS,

Appellants,

vs.

PAT SONGER,

Respondents.

No. 66858

FILED

JUN 01 2015

ORDER DISMISSING APPEAL

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

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

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

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

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

ORDER this appeal DISMISSED.

Saitta J.
Saitta

Gibbons J.
Gibbons

Pickering J.
Pickering

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

¹Appellants have not provided a copy of the order awarding fees and costs.

1 RNOT
LAW OFFICE OF DANIEL MARKS
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Attorneys for Plaintiffs

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

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,
11
12 Plaintiffs,

Case No. CV35969
Dept. No. I

13 v.

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

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

15 Defendants.
16 _____ /

17 RE-NOTICE OF MOTION FOR ORDER OF FINAL DISMISSAL

18 TO: PAT SONGER, Defendant;

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

20 TO: ERICKSON, THORPE & SWAINSTON, Defendant;

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

22 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned counsel
23 will bring the PLAINTIFFS' MOTION FOR ORDER OF FINAL DISMISSAL on for hearing before
24 ///
25 ///

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

3 DATED this 23rd day of June, 2015.

4 LAW OFFICE OF DANIEL MARKS

5 

6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 2003
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12 *Attorneys for Plaintiffs*

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Attorneys for Defendant,
PAT SONGER

IN THE FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

v.

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

Defendants.

CASE NO: CV35969
DEPT NO: 1

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

I. Introduction

Pat Songer opposes to Plaintiffs' request for a final judgment as this Court has already entered a final judgment. The present Motion is inappropriate and moot for three main reasons: 1) Plaintiffs provide no legal authority for their untimely request, 2) Plaintiffs ignored the opportunity to have input in Songer's Order granting the anti-SLAPP motion to dismiss, and 3) based on the Nevada Supreme Court's decision, the final judgment was the Order for Fees and Costs, which was noticed long ago and Plaintiffs did not file an appeal on that order. In other words, this case is over¹ and the Court should dismiss the pending motion.

//

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

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

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

14 Not once in their motion do Plaintiffs cite legal authority² for their request to the
15 Court. Nor do they attempt to argue for relief under Rule 52 or Rule 60. In fact, the time for
16 Plaintiffs to use Rule 60(b)(1), (2) or (3) has lapsed as their motion needed to be filed on or
17 before June 3, 2015.

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

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

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

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

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

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

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

14 Due to Plaintiffs ignoring Songer's proposed order on the attorney's fees and costs,
15 Plaintiffs insisted on preparing the order on the award of attorney's fees and costs, and the
16 granting of the stay on the execution of the award ("Fees and Costs Order"). Plaintiffs
17 drafted the Fees and Costs Order, with ETS and Songer providing additional comments,
18 submitted it to this Court, and Plaintiffs noticed it on December 30, 2014. Therefore, any
19 appeal from the Fees and Costs Order was due on or before January 29, 2015.⁴ The Fees
20 and Costs Order, which Plaintiffs did not file with the Nevada Supreme Court⁵, had already
21 contemplated that the Orders on the anti-SLAPP were the final judgments, stating "the
22 court finds that the Plaintiffs' continued employment with Pahrump Valley Fire and Rescue
23
24
25

26 ³ Attached as Exhibit A is a true and correct copy of the email and proposed draft order sent to
27 Glenda Guo. Attached as Exhibit B is a true and correct copy of the letter and proposed order sent
28 to Judge Wanker, with a CC to Appellant's counsel.

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

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

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

13
14 **V. Conclusion**

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

22 ///

23 ///

24 ///

25 ///

26
27 ⁵ The Supreme Court even noted "[Plaintiffs] have not provided a copy of the order awarding fees and costs."
28 Supreme Court Order, filed June 1, 2015, fn 1.

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

2 DATED this 15th day of July, 2015.

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

4
5 By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500

Attorneys for Defendant,
PAT SONGER

CERTIFICATE OF SERVICE

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

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

Attorneys for Plaintiffs

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

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

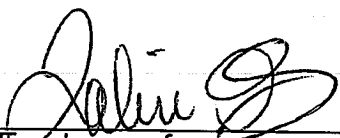

An Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

EXHIBIT “A”

EXHIBIT “A”

Talin Ebrahimian

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

Dear Ms. Guo,

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

Sincerely,

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

Elsa C. Peña, Legal Assistant to
Joseph P. Garin, Esq.
Siria L. Gutiérrez, Esq.
Las Vegas Office

9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144-7052
(702) 382-1500 ext. 119
(702) 382-1512 (fax)

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OFFICES IN NEVADA & MICHIGAN

CONFIDENTIALITY NOTICE

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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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9 Phone: (702) 382-1500
10 Fax: (702) 382-1512
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

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

24 Defendant PAT SONGER's Special Motion to Dismiss Pursuant to NRS §41.660
25 having come before the Court on August 27, 2014, at 1:30 p.m., with Siria L. Gutiérrez,
26 Esq., appearing on behalf of Defendant Pat Songer, and Daniel Marks, 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

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Las Vegas, Nevada 89144
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1 under consideration by the Town authorized by law in the disciplinary actions
2 against Messrs. Delucchi and Hollis.

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

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

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

10 IT IS HEREBY ORDERED that Defendant Pat Songer's Special Motion to Dismiss
11 Pursuant to NRS §41.660 is GRANTED and the case will be dismissed with prejudice
12 once the Court has awarded fees and costs. The briefing shall be as follows: Defendant
13 Songer has until September 26, 2014, to file a Motion For Fees and Costs; Plaintiffs have
14 until October 26, 2014 to file an opposition, and Defendant Pat Songer has until
15 November 5, 2014, to file a reply. The Court will hold a hearing on Defendant Pat
16 Songer's Motion for Fees and Costs on November 19, 2014, at 1:30 p.m.

17 DATED this _____ day of September, 2014.

18
19 _____
DISTRICT COURT JUDGE

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

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

23 By: _____
24 JOSEPH P. GARIN, ESQ.
25 NEVADA BAR NO. 6653
26 SIRIA L. GUTIERREZ, ESQ.
27 NEVADA BAR NO. 11981
28 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500
Attorneys for Defendant,
PAT SONGER

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

Talin Ebrahimian

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

Dear Ms. Guo,

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

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

Very Truly Yours,

Siria

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

Siria L. Gutiérrez, Esq.
Nevada Bar No. 11981
California Bar No. 288362
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
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Las Vegas, Nevada 89144
Phone: (702) 382-1500 Ext. 114
Fax: (702) 382-1512
Email: sgutierrez@lipsonneilson.com
Website: www.lipsonneilson.com

Offices in Nevada and Michigan

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

Good Afternoon:

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

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

EXHIBIT “B”

EXHIBIT “B”

JEFFREY T. NEILSON^{1,2,5}
JOSEPH P. GARIN^{1,2,3,5}
PHILLIP E. SELTZER^{1,2}
SHANNON D. NORDSTROM^{1,6}
J. WILLIAM EBERT¹
KALEB D. ANDERSON¹
STEPHEN G. KEIM^{1,8}
ANGELA T. NAKAMURA OCHOA¹
CRYSTAL J. HERRERA¹
JESSICA A. GREEN¹
H. SUNNY JEONG¹
SIRIA L. GUTIERREZ^{1,6}
CHRISTIANA O. OTUWA⁴

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

LAW OFFICES

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E-MAIL: sgutierrez@lipsonneilson.com

November 10, 2014

BARRY J. LIPSON
(1955-2003)

STEVEN R. COLE²
THOMAS G. COSTELLO²
DAVID B. DEUTSCH²
STEVEN H. MALACH²
KAREN A. SMYTH^{2,4}
C. THOMAS LUDDEN²
STUART D. LOGAN²
SANDRA D. GLAZIER² STARR
HEWITT KINCAID²
SHAWN Y. GRINNEN²
DOUGLAS E. KELIN^{2,3,7}
SAMANTHA K. HERAUD⁹
EMILY J. SCHOLLER²
CARLY R. KOLO^{2,10}

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

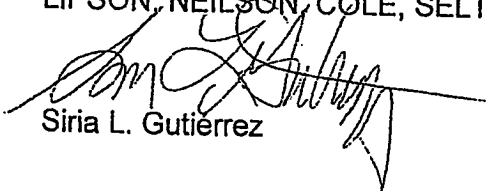
Re: Songer, et al. adv. DeLucchi, et al.
Case No.: CV35969

Dear Honorable Judge Wanker:

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

Very truly yours,

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


Siria L. Gutierrez

SLG/te/HI5703-007

Enclosures (As Stated)

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

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

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

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

CONCLUSIONS OF LAW

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

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

- 4 2. When a statute's doubtful interpretation is made clear through subsequent
5 legislation, we may consider the subsequent legislation persuasive evidence of
6 what the Legislature originally intended. *Pub. Emps. Benefits Program v. Las*
7 *Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008).
- 8 3. The 2013 Amendments to NRS § 41.635 – 41.670 clarified the former statute
9 in order to give meaning to the legislative intent.
- 10 4. The legislature intended a broad application of Nevada's anti-SLAPP laws.
- 11 5. Thus, the 2013 statute applies to this case and under NRS § 41.660 the
12 moving party must establish by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to
14 petition or the right to free speech in direct connection with an issue of public
15 concern.
- 16 6. Once the court determines that the moving party has met the burden, the
17 plaintiff must established by clear and convincing evidence a probability of
18 prevailing on the claim.
- 19 7. If plaintiff is unable to meet that burden, the case must be dismissed and the
20 moving party is entitled to fees and costs.
- 21 8. A good faith communication in furtherance of the right to petition or the right
22 to free speech in direct connection with an issue of public concern means
23 any: (2) communication of information or a complaint to a Legislator, officer
24 or employee of the Federal Government, this state or a political subdivision
25 of this state, regarding a matter reasonably of concern to the respective
26 governmental entity; (3) Written or oral statement made in direct connection
27 with an issue under consideration by a legislative, executive or judicial body,
28 or any other official proceeding authorized by law. NRS § 41.637(2) and (3).

FINDINGS OF FACT

9. Raymond Delucchi and Tommy Hollis were paramedics employed with the Town of Pahrump.
10. On May 25, 2012, Messrs. Delucchi and Hollis were involved on in an incident on Highway 160 with James and 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

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

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

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

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

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

14 DATED this _____ day of November, 2014.

15
16 _____
DISTRICT COURT JUDGE

17 Submitted by:

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

20 By: 

JOSEPH P. GARIN, ESQ.

NEVADA BAR NO. 6653

21 SIRIA L. GUTIERREZ, ESQ.

NEVADA BAR NO. 11981

22 9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

23 (702) 382-1500

24 *Attorneys for Defendant,*
PAT SONGER

EXHIBIT “C”

EXHIBIT “C”

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*

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

10 RAYMOND DELUCCHI and
11 TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

12 *Plaintiffs,*

13 v.

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

16 *Defendants.*

17 NOTICE OF ENTRY OF ORDER AWARDING FEES AND COSTS

18 TO: PAT SONGER, Defendant;

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

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

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

22 ///

23 ///

24 ///

25 ///

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

4 DATED this 30 day of December, 2014.

5 LAW OFFICE OF DANIEL MARKS

6 
7 DANIEL MARKS, ESQ.

8 Nevada State Bar No. 002003

9 ADAM LEVINE, ESQ.

10 Nevada State Bar No. 004673

11 610 South Ninth Street

12 Las Vegas, Nevada 89101

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

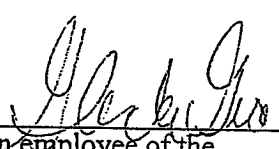
14 Attorneys for Plaintiffs

15 CERTIFICATE OF MAILING

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

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

26 Siria L. Gutierrez, Esq.
27 LIPSON, NEILSON, COLE, SELTZER GARIN
28 9900 Covington Cross Drive, Suite 120
29 Las Vegas, Nevada 89144
30 Attorney for Defendant Pat Songer

31 
32 An employee of the
33 LAW OFFICE OF DANIEL MARKS

FILED
FIFTH JUDICIAL DISTRICT COURT

DEC 29 2014

NYE COUNTY DEPUTY CLERK

DEPUTY

Veronica Aguilar

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

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

11 IN AND FOR THE COUNTY OF NYE

12 RAYMOND DELUCCHI and
13 TOMMY HOLLIS,

Case No. CV35969

Dept. No. I

14 Plaintiffs,

15 v.

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

18 Defendants.
19 _____ /

20 ORDER AWARDING FEES AND COSTS

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

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

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

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

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

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

DATED this 29th day of December, 2014.

KIMBERLY A. WANKER
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS

LIPSON, NEILSON, COLE, SELTZER, GARIN

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


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

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG

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

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

DATED this ____ day of December, 2014.

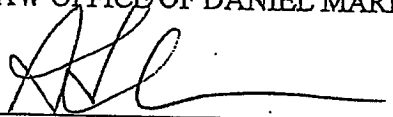
DISTRICT COURT JUDGE


Respectfully submitted by:

Approved as to Form and Content:

THE LAW OFFICE OF DANIEL MARKS


LIPSON, NEILSON, COLE, SELTZER, GARIN


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


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

Approved as to Form and Content:

LEMONS, GRUNDY & EISENBERG


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



Case No. CV35969
Dept. 1

FILED

2015 SEP 15 PM 11:25
Sarah Westfall

NYE COUNTY CLERK
OFFICE

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

RAYMOND DELUCCHI and TOMMY
HOLLIS,

Plaintiffs,

ORDER OF DISMISSAL

vs.

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.



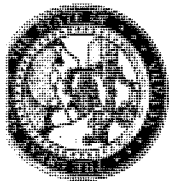
1 The Plaintiffs filed an Amended Notice of Appeal on December 17, 2014, to
2 encompass both the District Court's September 17, 2014 Order, and its November 19, 2014
3 Order. The Court on December 29, 2014 issued an Order Awarding Attorneys' Fees and
4 Costs. The December 29, 2014 Order failed to specifically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

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

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

13 Dated this 15th day of September, 2015.

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16 _____
17 KIMBERLY A. WANKER,
18 DISTRICT COURT JUDGE
19
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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 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*

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
9 IN AND FOR THE COUNTY OF NYE

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

Case No. CV35969
Dept. No. I

14 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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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 

6 DANIEL MARKS, ESQ.

7 Nevada State Bar No. 002003

8 ADAM LEVINE, ESQ.

9 Nevada State Bar No. 004673

10 610 South Ninth Street

11 Las Vegas, Nevada 89101

12 (702) 386-0536: FAX (702) 386-6812

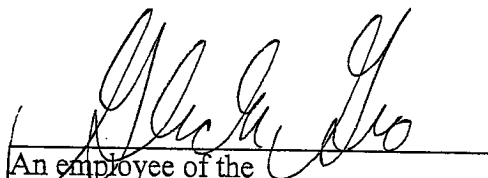
13 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 25th 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 25

Sarah Westfall

NYE COUNTY CLERK
BY CIPRIAN

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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3 Order. The Court on December 29, 2014 issued an Order Awarding Attorneys' Fees and
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10 this case in its entirety. In light of the Nevada Supreme Court's June 1, 2015 Order, and
11 based upon the District Court's previous three orders, this case is now dismissed in its
12 entirety, with prejudice.

13 Dated this 15th day of September, 2015.

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16 _____
17 KIMBERLY A. WANKER,
18 DISTRICT COURT JUDGE
19
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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

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 LAW OFFICE OF DANIEL MARKS
20 

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

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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

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EXHIBIT “1”

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

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

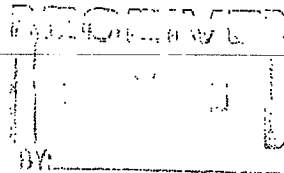
7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF NYE

10 RAYMOND DELUCCHI and
TOMMY HOLLIS,
11
12 Plaintiffs,

Case No. CV35969
Dept. No. I

13 v.

14 PAT SONGER and ERICKSON,
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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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

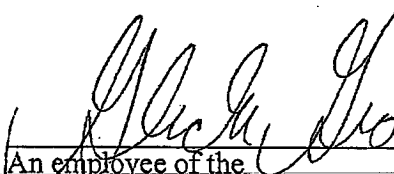
5 
6 DANIEL MARKS, ESQ.
7 Nevada State Bar No. 002003
8 ADAM LEVINE, ESQ.
9 Nevada State Bar No. 004673
10 610 South Ninth Street
11 Las Vegas, Nevada 89101
12 (702) 386-0536; FAX (702) 386-6812
13 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

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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 CLERK

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
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18 DISTRICT COURT JUDGE
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Las Vegas, NV 89144

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

Christel Raimondo
CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE

AFFIRMATION

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Christel Raimondo
CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE