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IN THE SUPREME COURT OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC.; AND STEVE W. SANSON Appellants, vs. MARSHAL S. WILLICK; AND WILLICK LAW GROUP, Respondents.	SUP. CT. CASE #: 72778 DIST. CT. CASE #: A-17-750171-C (Dept. 18)

APPELLANTS' APPENDIX

VOLUME IX OF IX

Appeal from Eight Judicial District Court, Clark County

Senior Judge, Hon. Charles Thompson, Dept. 18

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cause of action, supported by mere conclusory statements" will not suffice. *Iqbal* 556 U.S. at 678. (internal citations and quotations omitted).

In short, Plaintiffs have failed to "set forth sufficient ***facts*** to demonstrate the necessary elements of a claim for relief," *Western States Const. v. Michoff*, 108 Nev. at 936, 840 P. 2d at 1223 (emphasis added). Even construed liberally, *Vacation Village*, 874 P.2d at 746, each and every claim fails. Further as set forth below (*see* § VI ("Plaintiffs Should Not Be Granted Leave to Amend")), the problems with the FAC are also fatal.

B. Plaintiffs' Defamation Claim (First Cause of Action) Fails, and Is Improper.

In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus v. Reno Newspapers, Inc*. 118 Nev. 706, 718, 57 P.3d 82, 90 (2003). Plaintiffs have not pled facts sufficient to meet all elements of this claim, and thus it must be dismissed. Defendants' alleged speech consists of opinions, rhetorical hyperbole, or true facts, none of which are actionable as defamation.

Statements of opinion cannot be defamatory because there is no such thing as a false idea. *Pegasus*, 57 P.3d at 87. To constitute any sort of actionable statement the material publicized must actually be facts, as distinguished from opinions or conclusions. *See Miller v. Jones*, 114 Nev. 1291, 1296, 970 P.2d 571, 575 (1998) (recognizing the distinction between fact and opinion in defamation claims); *Wellman v. Fox*, 108 Nev. 83, 86, 825 P.2d 208, 210 (1992) (recognizing the distinction between fact and opinion in libel claims); *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995) (distinguishing between statements of facts and personal conclusions or interpretations of those facts). Similarly, only publication of private **facts**, as distinguished from opinions, personal conclusions, and interpretations of those facts, are legally actionable under the invasion of privacy torts. *See Partington*, 56 F.3d at 1156. "Whether the objectionable statements constitute fact or opinion is a matter of law." *Wellman*, 108 Nev. at 87, 825 P.2d at 210. "[W]hen an author outlines

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the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment." *Partington*, 56 F.3d at 1156-57 "A question can conceivably be defamatory, though it must reasonably be read as an *assertion* of a false fact; inquiry itself, however embarrassing or unpleasant to its subject, is not an accusation." *Id.* at 1157.

Nor can exaggerations or generalizations that could be interpreted by a reasonable person as "mere rhetorical hyperbole" be defamatory statements. *Pegasus* at 88. However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id*. The court must therefore ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id*. The Federal District Court of Nevada has looked to three relevant factors to determine whether, under Nevada law, alleged defamatory statements include a factual assertion: "(1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that negates that impression; and (3) whether the statement in question is susceptible of being proved true or false." *Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000) (citing *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995)).

Substantial truth is sufficient to defeat an action for defamation. *Fendler v. Phoenix Newspapers, Inc.*, 130 Ariz. 475, 479, 636 P.2d 1257, 1261 (Az. App.1981). "It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified, and if the gist of the charge be established by the evidence, the defendant has made his case." *Id.* at 479, 636 P.2d at 1261 (further citation omitted).

Although Plaintiffs do their best to mischaracterize Defendants' words in their FAC, the complained-of statements are overwhelmingly statements of opinion which are incapable of being proven true or false, or rhetorical hyperbole that negates the impression

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that they are statements of fact, neither of which is actionable as defamatory. In the exceedingly rare instances that a complained-of statement is a statement of fact, the underlying fact is true, and thus not actionable as defamatory.

In addition, several of Defendants' allegedly defamatory statement are protected by the fair report privilege. As the Nevada Supreme Court explained in *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, "[t]he law has long recognized a special privilege of absolute immunity from defamation given to the news media and the general public to report newsworthy events in judicial proceedings." *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 215, 984 P.2d 164, 166 (1999). Although the fair report privilege "is usually directed toward the news media and others engaged in reporting news to the public," it also extends to "any person who makes a republication of a judicial proceeding from material that is available to the general public." *Id.* (citation omitted). In order for the fair report privilege to apply, "[i]t is not necessary that [a report] be exact in every immaterial detail or that it conform to that precision demanded in technical or scientific reporting. It is enough that it conveys to the persons who read it a substantially correct account of the proceedings." *Adelson v. Harris*, 973 F. Supp. 2d 467, 486 (S.D.N.Y. 2013) (quoting Restatement (Second) of Torts § 611 cmt. f). In this case, as discussed in greater detail below, several of the statements Plaintiffs complain of are subject to the fair report privilege, and this are not actionable.

Moreover, because Plaintiffs are public figures, they bear the additional burden of demonstrating actual malice by Defendants Sanson and VIPI. The United States Supreme Court defines "public figures" as "[t]hose who, by reason of the notoriety of their achievements…seek the public's attention," and therefore, "have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *see also Wynn v. Smith*, 117 Nev. 6, 16 P.3d 424 (2001) (Wynn held to be a public figure.)) The *Gertz* Court created two categories of public figures: general public figures and limited public figures. General public figures are those individuals who "achieve such pervasive fame or notoriety that [they] become[ ] a

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public figure for all purposes and in all contexts." *Id.* at 351. Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue. *Id.* at 351-52. One may become a limited public figure if one "voluntarily injects himself or is drawn into a particular public controversy," thereby becoming a public figure for a limited range of issues. *Id.* at 351.

In this case, Plaintiff Abrams is, at a minimum, a limited public figure because she holds herself out as a highly-qualified attorney specializing in family law—an area of public concern. As Ms. Abrams states in the biography on her firm's website:

> Attorney Jennifer V. Abrams is Certified by the State Bar of Nevada as a Family Law Specialist and has been admitted to the American Academy of Matrimonial Lawyers (AAML). She is one of only seventeen attorneys in the State of Nevada that has been accepted into this prestigious organization. Previously the Nevada Family Court Judges and Family Law Attorneys have elected attorney Abrams to the Executive Council of the State Bar of Nevada, Family Law Section.

See http://www.theabramslawfirm.com/divorce_lawyers_las_vegas.html (last accessed February 16, 2017). The Abrams & Mayo Law Firm markets itself as a firm that has advanced specialization in family law matters, and advertises throughout the Las Vegas area. Thus, the Plaintiffs are public figures. Because the Plaintiffs hold themselves out as expert practitioners in an area of the law that is of public interest, they are public figures. *See, e.g.*, *Young v. The Morning Journal*, 129 Ohio App. 3d 99, 717 N.E.2d 356 (1998) (Local attorney's well-publicized involvement in running a narcotics investigative unit for 15 years made him a "public figure" for purposes of his defamation suit concerning a newspaper article confusing him with a nonlocal attorney with a similar name who was facing a contempt citation); *Schwartz v. Worrall Publications, Inc.*, 258 N.J. Super. 493, 610 A.2d 425 (App. Div. 1992) (Attorney for school boards association was a "public figure").

Because they are public figures, Plaintiffs must allege and prove actual malice with clear and convincing evidence. *Pegasus*, 118 Nev. at 719 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) Actual malice is "knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *Sullivan*, 376 U.S. at 280. Reckless

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disregard means that the publisher of the statement acted with a "high degree of awareness of the probable falsity of the statement or had serious doubts as to the publication's truth." *Pegasus*, 118 Nev. at 719 (quotation and internal punctuation omitted). In this case, Plaintiffs have not alleged—and cannot prove—actual malice. (*See generally* FAC, ¶¶ 83-91.) Instead the Plaintiffs have merely alleged that the complained-of statements were "false or misleading" without any demonstration how the statements are false or misleading.

1. The Attack Article and courtroom video are not actionable.

Plaintiffs contend that Defendants made five different "false and defamatory" statements in his October 5 "Attack Article" and contemporaneous YouTube video. (*See* FAC, ¶ 36.) The video cannot possibly be considered defamatory because it is a real video of an actual proceeding. *Kegel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009) ("the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim"). Further, the five statements Plaintiffs complain of either do not appear in the article or are non-actionable statements of opinions (even as characterized by Plaintiffs).

a) Plaintiff, Jennifer Abrams "attacked" a Clark County Family Court Judge in Open Court" (FAC, ¶ 36(a)).

The article's headline reads "Nevada Attorney attacks a Clark County Family Court Judge in Open Court." Whether Abrams' heated exchanges with Judge Elliot in the September 29, 2016 hearing constituted an attack is a matter of opinion and thus non-actionable. Some observers, such as Defendants, may interpret Abrams' interrupting Judge Elliot ("excuse me I was in the middle of a sentence") and questioning Judge Elliot's impartiality ("is there any relationship between you and [opposing counsel] Louis Schneider?") as an "attack". Even if Abrams' interprets her actions as zealous advocacy and approves of her own behavior, this is an instance where Plaintiffs have merely alleged that Defendants have voiced an opinion, and thus it cannot be defamatory.

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b) Abrams has "no boundaries in our courtrooms" (FAC, ¶ 36(b)).

The article contains the underlined phrase "No boundaries in our courtrooms!" It does not say specifically that Abrams or her firm have no boundaries; rather it is rhetorical hyperbole that Sanson uses to call attention to misbehavior in the courtroom generally. Indeed, the article's opening paragraph mentions a "Justice of the Peace handcuffing Public Defenders unjustly." (FAC, Exh. 1.) Even if the article did state that Abrams has "no boundaries in our courtrooms," such a statement would be an opinion incapable of being proven true or false, and thus not actionable for defamation.

c) Abrams is unethical (FAC, ¶ 36(c)).

Nowhere in the "Attack" article does Sanson call Abrams "unethical." (*See* FAC, Exh. 1.) In fact, the word "unethical" does not even appear in the article. The word "ethical" appears three times: twice in written excerpts of Judge Elliot's statements in the September 29 hearing, and once in reference to a judicial duty to report attorney ethical problems. Reprinting Judge Elliot's verbatim statements cannot be defamatory, nor can a statement that judges must report on lawyers who act unethically in their courtrooms.

d) There is a "problem" requiring Abrams to be reported to the Nevada State Bar (FAC, ¶ 36(c)).

Nowhere in the "Attack" article does Sanson purport that there is a problem requiring Abrams to be reported to the Nevada State Bar. The article merely says "[i]f there is an ethical problem or the law has been broken by an attorney the Judge is mandated by law to report it to the Nevada State Bar or a governing agency that could deal with the problem appropriately." (FAC, Exh. 1.) This is not a statement of fact about Abrams, and thus not actionable as defamatory. Even it were, a person is entitled to his or her own interpretation of the ethical rules and while an attorney may simply view herself as zealous, others observing her behavior can reasonably find it both rude to the judge and unethical.

e) Abrams "crossed the line with a Clark County District Court Judge" (FAC, ¶ 36(c)).

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In the "Attack" article, Sanson asks "what happens when a Divorce Attorney crosses the line with a Clark County District Court Judge Family Division?" (FAC, Exh. 1.) Again, whether Abrams "crossed the line" in her interactions with Judge Elliot in the September 29 hearing is a matter of opinion. Whereas some may view Abrams' interactions with Judge Elliot as perfectly acceptable advocacy, others, such as Sanson, view them as crossing an imagined line of decorum. Nobody can say, as a matter of objective fact, where this "line" is, much less whether someone has crossed it. Thus, stating that Abrams "crossed a line" is merely an opinion, and thus not actionable as defamatory.

2. The Bully Article Is Not Actionable.

Plaintiffs contend that Sanson made five different "false and defamatory" statements in the Bully Article. However, the listed statements are non-actionable statements of opinions.

a) Abrams bullied Judge Elliot into issuing the Order Prohibiting Dissemination of Case Material (FAC, ¶ 49(a)).

The subtitle to the Bully Article states "District Court Judge Bullied by Family Attorney Jennifer Abrams." (FAC, Exh. 2.) Under the law set forth above, this statement does not qualify as defamation. Although the "bullied" characterization is an opinion, it is a truthful statement of fact that Abrams convinced Judge Elliot to issue the order that is discussed in the Bully Article.

b) Abrams' behavior is "disrespectful and obstructionist" (FAC, ¶ 49(b)).

Whether Abrams' behavior in the September 29, 2016 hearing was "disrespectful" or "obstructionist" (or both) is a matter of opinion. There are no objective standards for what constitutes "disrespectful" or "obstructionist" behavior in the courtroom. Because this statement is opinion and not a statement of fact, it cannot be defamatory.

c) Abrams "misbehaved" in court (FAC, ¶ 49(c)).

Whether Abrams "misbehaved" during the September 29, 2016 hearing is a matter of opinion. There are no objective standards for what constitutes "misbehavior" in the

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courtroom. Because this statement is opinion and not a statement of fact, it cannot be defamatory.

d) Abrams' behavior before the judge is "embarrassing" (FAC, ¶ 49(d)).

Whether Abrams behavior during the September 29, 2016 hearing was "embarrassing" is a matter of opinion. There are no objective standards for what constitutes "embarrassing" behavior in the courtroom. Because this statement is clearly Sanson's opinion and not a statement of fact, it cannot be defamatory.

e) Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC, ¶ 49(e)).

Whether the order discussed in the Bully Article is part of an attempt by Abrams to "hide her behavior" from the legal community and the public is not a statement of fact. Rather, it is an expression of Defendants' opinion regarding Abrams' legal tactics. Thus, it is not defamation. *See, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995) ("[T]he book's general tenor makes clear that Bugliosi's observations about Partington's trial strategies, and the implications that Partington contends arise from them, represent statements of personal viewpoint, not assertions of an objective fact").

3. The Seal Happy Article Is Not Defamatory.

a) Abrams "appears to be 'seal happy' when it comes to trying to seal her cases" (FAC ¶ 56(a)).

Whether Abrams is "seal-happy" is a matter of opinion. There are no objective standards for what constitutes being "seal-happy," nor should this Court entertain a line-drawing problem of determining how many times a lawyer must request her cases be sealed before she becomes "seal-happy." Rather, because "seal-happiness" is purely a matter of opinion, this statement is not a statement of fact, and thus cannot be defamatory.

b) Abrams seals cases in contravention of "openness and transparency" (FAC, ¶ 56(b)).

Whether sealing cases is an affront to "openness and transparency" is a matter of

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opinion. Some advocates for transparency and public access to the courts may view sealing cases as contravening the court's "openness and transparency," others may view sealing cases as zealous advocacy that values a client's privacy interests. Thus, this statement is not a statement of fact and cannot be defamatory.

c) Abrams' sealing of cases is intended "to protect her own reputation, rather than to serve a compelling client privacy or safety interest" (FAC, ¶ 56(c))

As with the statement in the Bully Article regarding Abrams allegedly attempting "to hide her behavior from the rest of the legal community and the public," this is a statement of opinion, not fact, and therefore does not qualify as defamation. *See Partington*, 56 F.3d at 1153; a*ccord Gardner v. Martino*, 563 F.3d 981, 987 (9th Cir. 2009).

d) Abrams engaged in "judicial browbeating" (FAC, ¶ 56(d))

Whether Abrams engaged in "judicial brow beating" is also not defamatory. This statement, interpreted in context, is one that a reasonable person would interpret as "mere rhetorical hyperbole," and therefore it is not actionable in defamation. *Pegasus*, 57 P.3d at 88.

e) Abrams obtained an order that "is specifically disallowed by law" (FAC ¶ 56(e))

As the Court is aware, disagreement about what the law does or does not allow is the bread and butter of the legal profession. If attorneys and members of the public were not permitted to disagree about the interpretation of law, then the entire practice of law would be obviated. Thus, this statement simply cannot be defamatory.

f) Abrams obtained the order against the "general public" with "no opportunity to be heard" (FAC ¶ 56(f)).

As noted above, a statement of fact that is "absolutely true, or substantially true" is not defamatory. *Pegasus*, 118 Nev. at 715. In this instance, it is true that Abrams obtained the order described in the Seal Happy Article. And it is also true that Abrams obtained the order without allowing for any member of the public to weigh in on the order. Thus, this is not defamation.

g) After issuing his initial story, Sanson and VIPI were

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"contacted by judges, attorneys and litigants eager to share similar battle-worn experiences with Jennifer Abrams" (FAC, ¶ 56(g)).

This statement is a true statement of fact, and thus not actionable. Moreover, it is unclear how Abrams would be able to know whether this is a false statement, as she was not a party to any of the conversations that took place between defendants and certain members of the legal community.

h) Abrams obtained an "overbroad, unsubstantiated order to seal and hide the lawyer's actions" (FAC, ¶ 56(h)).

As discussed *supra* in § V(B)(2) this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

i) Abrams is an "over-zealous, disrespectful lawyer[] who obstruct[s] the judicial process and seek[s] to stop the public from having access to otherwise public documents (FAC, ¶ 56(i)).

Whether Abrams is "overzealous" or "disrespectful" are matters of opinion.[16] There are no objective standards for what constitutes being "overzealous" or "disrespectful." Furthermore, whether sealing multiple cases—a tactic which does, in fact, stop the public from having access to otherwise public records of legal proceedings—obstructs the judicial process is a matter of opinion that cannot be proven true or false. Thus, this statement cannot be defamatory. *See, e.g.*, *Lieberman v. Fieger*, 338 F.3d 1076 (9th Cir. 2003) (comments made by attorney during televised interview about psychiatrist who had served as expert witness in highly publicized murder trial that the psychiatrist was "Looney Tunes," "crazy," "nuts," and "mentally imbalanced," were protected under First Amendment as statements of opinion).

/ / /

[16] Otherwise, this litigation itself would be evidence of the truth of her over-zealousness and lack of respect for the judicial process or legal resources—and, of course, truth is an absolute defense to a claim for defamation. *See Thomas v. Pearl*, 998 F.2d 447, 452 (7th Cir.1993) ("[A] party's accurate quoting of another's statement cannot defame the speaker's reputation since the speaker is himself responsible for whatever harm the words might cause.... The fact that a statement is true, or in this case accurately quoted, is an absolute defense to a defamation action.")

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4. The Acting Badly Article Is Not Defamatory.

a) Plaintiffs were "acting badly" in Clark County Family Court (FAC, ¶ 60(a)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

b) Abrams' behavior is "disrespectful and obstructionist" (FAC, ¶ 60(b)).

As explained in § V(B)(2), whether an attorney is "disrespectful" or "obstructionist" is purely a matter of opinion, and therefore stating it cannot be defamatory.

c) Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC, ¶ 60(c)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

d) Abrams engaged in conduct for which she should be held "accountable" (FAC, ¶ 60(d)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

5. The Deceives Article Is Not Defamatory.

Plaintiffs contend that Sanson made two different "false and defamatory" statements in his November 16 "Deceives" article. (*See* FAC, ¶ 64.) However, all five of the listed statements either do not appear in the article or are non-actionable statements of opinions.

a) Abrams "appears to be 'seal happy' when it comes to trying to seal her cases (FAC, ¶ 64(a)).

As explained in § V(B)(2), *supra*, whether an attorney is "seal-happy" is purely a matter of opinion, and therefore stating it cannot be defamatory.

b) Abrams "bad behaviors" were "exposed" (FAC, ¶ 64(b)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

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6. December 21 "Inspection Videos".

As discussed above in § V(B)(1), a video cannot possibly be considered defamatory because it is a real video of an actual proceeding.

7. The Schoen Conversation Is Not Defamatory.

Plaintiffs contend that Sanson made several "defamatory statements" during a December 22, 2016 conversation with David J. Schoen, IV, an employee of The Abrams & Mayo Law Firm who is not a plaintiff in this case. (FAC, ¶¶ 70-81.) The statements Plaintiffs complain of include:

- An allegation that Plaintiffs "bullied" and "forced" Yulia in "unlawfully" entering her home, or words to that effect (FAC, ¶ 71);
- An allegation that Jennifer Abrams is "unethical and a criminal," or words to that effect (FAC, ¶ 72);
- An allegation that Jennifer Abrams "doesn't follow the law," or words to that effect (FAC, ¶ 73);
- An allegation that Jennifer Abrams was "breaking the law by sealing her cases" or words to that effect (FAC, ¶ 75);
- An allegation that Sanson is in possession of "dozens of hours" of hearing videos from multiple cases where Jennifer Abrams is counsel of record, or words to that effect (FAC, ¶ 79); and
- An allegation that Jennifer Abrams is "in bed with Marshal Willick, that explains a lot about the kind of person she is" (FAC, ¶ 80).

These statements are primarily non-defamatory, non-actionable statements of opinion regarding Abrams' legal tactics. The alleged statement about Abrams being in bed with Marshal Willick is a mixed statement of fact and opinion. While false statements of fact are actionable as defamation, true statements are not. *See Pegasus*, 57 P.3d at 88 ("[n]or is a statement defamatory if it is absolutely true, or substantially true"). Here, Sanson made the factual assertion that Abrams is, or was, in a sexual relationship with Marshal Willick. However, this cannot be defamatory, as Plaintiffs admit the existence of such a relationship

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in their complaint. (FAC, ¶ 80 n. 7) ("The relationship between Jennifer V. Abrams and Marshal S. Willick is not being denied"). Sanson's assertion that Abrams' relationship with Willick "explains a lot about the kind of person she is" is not a statement of fact, but rather a disapproving opinion of Abrams' and Willick's relationship. Because it consists of a truthful statement of fact coupled with a non-actionable opinion, this statement as a whole cannot be defamatory.

8. The "Negative Comments" Are Not Actionable.

Finally, Plaintiffs allege that "[t]he defamatory statements by Defendants have caused numerous negative comments to be directed against Plaintiffs" (FAC ¶ 82), and that one commenter on an article stated that the person hoped Ms. Abrams' law partner would have a heart attack. (*Id.* at ¶ 82, fn. 8.) While unclear, it appears that Plaintiffs are attempting to articulate some sort of secondary liability for the comments of persons unrelated to the defendants. However, Defendants are not liable for the statements of other individuals. Moreover, as noted above, the statement cited by Plaintiffs was directed at Ms. Abrams' law partner, who is not a party to this matter.

C. Plaintiffs' Intentional Infliction of Emotional Distress Claim (Second Claim) Must Be Dismissed.

As a preliminary matter, while corporations may also be "people" these days, of course only a human being can pursue a claim for emotional distress. This should be obvious: the Abrams & Mayo Law Firm does not have emotions and thus cannot experience emotional distress. While the undersigned was unable to locate any Nevada law on the topic (perhaps exactly because it is so ludicrous to pursue such a claim on behalf of a business entity), at least one court has spelled out the inanity of such a claim:

> While it is true that all corporations possess a 'corporate personhood' in which a corporation can sue and be sued, enjoy due process rights under the Fifth and Fourteenth Amendments of the United States Constitution as well as Fourth Amendment rights against search and seizure, and can own property, be a citizen of a state, and even sue for defamation, **it affronts common sense to believe a corporation can suffer emotional distress.**

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Patel v. AT&T, No. 94-B-49, 1997 WL 39907, at *2 (Ohio Ct. App. Jan. 30, 1997) (emphasis added).

Ms. Abrams' personal claim also fails. The elements of a cause of action for intentional infliction of emotional distress ("IIED") are: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress to plaintiff, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 886 (1999). In the instant case, Abrams fails to set forth facts sufficient to meet either of the first two elements, and thus her claim for IIED must be dismissed.

1. Abrams Fails to Set Forth Facts Demonstrating Defendants' Behavior Is "Extreme or Outrageous."

Extreme and outrageous behavior must be more than just "occasional acts that are definitely inconsiderate and unkind," but rather conduct which is "outside all possible bounds of decency" and is regarded as "utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal citations omitted). Indeed, liability for IIED "will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Candelore v. Clark Cty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992).

Nevada courts have established that this is a difficult bar to clear. Recently, a court held that, in the context of the workplace, "regularly belittling Plaintiff, calling her a 'piece of shit,' moving her desk to keep an eye on her, falsely telling her other supervisors disapproved of her work, and berating her for taking approved and legally-protected medical leave" did not constitute "extreme or outrageous" enough conduct to survive a motion to dismiss. See *Tuggle v. Las Vegas Sands Corp.*, No. 215CV01827GMNNJK, 2016 WL 3456912, at *2 (D. Nev. June 16, 2016).

In the instant case, none of the behavior Abrams allege Defendants engaged in is "extreme" or "outrageous." Authoring and publishing five Internet articles criticizing Abrams' courtroom behavior and litigation tactics (*see* FAC, ¶¶33-37, ¶¶46-49, ¶¶54-64) is

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not "extreme;" indeed, it is the very type of criticism that is protected by the First Amendment. None of the other behaviors[17] Defendants' allegedly engaged in could be characterized as extreme or outrageous. Rather, these are the types of mere insults and trivialities that are tame compared to the repeated abuse the federal court found not "outrageous or extreme" in *Tuggle*, *supra*. Defendants' alleged behavior was neither extreme nor outrageous enough for Plaintiffs' IIED claim to proceed.

2. Abrams Fails to Set Forth Facts Demonstrating Severe or Extreme Emotional Distress.

To recover on a claim for IIED, a plaintiff must also set forth "objectively verifiable indicia" to establish that the plaintiff "actually suffered extreme or severe emotional distress." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 147 (2014), vacated and remanded on other grounds sub nom. *Franchise Tax Bd. of California v. Hyatt*, 136 S. Ct. 1277, 194 L. Ed. 2d 431 (2016) (quoting *Miller v. Jones*, 114 Nev. 1291, 1300, 970 P.2d 571, 577 (1998)). Additionally, the Nevada courts apply a "sliding-scale" approach to how much evidence of physical injury or illness from emotional distress is required to prevail on an IIED claim: the less outrageous the defendant's alleged behavior is, the more objective evidence of a plaintiff's extreme emotional distress is necessary. *Hyatt*, 335 P.3d at 148 (quoting *Nelson v. City of Las Vegas*, 99 Nev. 548, 665 P.2d 1141 (1983)).

In *Miller v. Jones*, the Nevada Supreme Court held that the plaintiff's deposition testimony that he was "depressed for some time" but "did not seek any medical or psychiatric assistance" was "insufficient to raise a genuine issue of material fact as to whether [Plaintiff] suffered severe emotional distress." *Miller*, 970 P.2d at 577. In the instant case, Plaintiff does not set forth any facts demonstrating that she suffered *any* emotional distress from Sanson's alleged conduct, let alone the severe or extreme emotional distress required to prevail on a

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[17] *See* FAC, ¶ 72 (calling Abrams "unethical and a criminal"), ¶ 73 (saying Abrams "doesn't follow the law"), ¶¶ 75-76 (misstating law regarding sealing cases and the Freedom of Information Act); ¶ 78 (blaming Abrams for "starting this war"); ¶ 79 (alleging possession of "dozens of hours" of videos of Abrams' courtroom hearings); ¶ 80 (truthfully accusing Abrams of "being in bed" with Marshal Willick).

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claim of IIED. Plaintiff merely offers a barely-modified recitation of the damages element of an IIED claim[18], precisely the type of "unadorned, the-defendant-unlawfully-harmed-me accusation" the United States Supreme Court railed against in *Iqbal*. *See Iqbal*, 556 U.S. at 678. Plaintiff's complaint never mentions any specific symptoms of anxiety, depression, or physical ailments resulting from Sanson's alleged behavior. Nor does Plaintiff allege that she sought or received medical or psychiatric assistance for her alleged "mental pain and anguish" or "unjustifiable emotional trauma." Given that Sanson's alleged behavior is not even extreme enough to meet the first element of IIED, Plaintiff must allege many objective indicia of emotional distress to prevail under Nevada's "sliding-scale" approach. Because she has made zero such allegations in her Amended Complaint, Plaintiff's cause of action for IIED must be dismissed.

D. Plaintiffs' Negligent Infliction of Emotional Distress Claim (Third Claim) Must Be Dismissed.

As noted above, The Abrams & Mayo Law Firm cannot pursue any emotional distress claim as a matter of law and, thus, should not have pursued a negligent infliction emotional distress ("NIED") claim. Ms. Abrams also fails to allege a valid claim. Nevada courts recognize that "the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff." *Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). Thus, a cause of action for NIED has essentially the same elements as a cause of action for negligence: (1) duty owed by defendant to plaintiff, (2) breach of said duty by Defendant, (3) that said breach is the direct and proximate cause of Plaintiff's emotional distress, and (4) damages (i.e. emotional distress).[19]

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[18] *See* FAC ¶ 94 ("Plaintiff was, is, and with a high degree of likelihood, will continue to be emotionally distressed due to the defamation"); FAC ¶95 ("Plaintiffs have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional trauma").

[19] Some argue that more recent decisions of the Nevada Supreme Court require more stringent elements be met; namely that "[t]o recover, the witness-plaintiff must prove that he or she (1) was located near the scene; (2) was emotionally injured by the

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Plaintiff Abrams' claim is insufficient in numerous ways. Aside from incorporating the rest of the complaint by reference and asking the court for damages in excess of $15,000.00, the only other paragraph in this claim is "To whatever extent the infliction of emotional distress asserted in the preceding cause of action was not deliberate, it was a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others." (FAC, ¶97.) On its face, this claim cannot proceed: it fails to even set forth the elements of NIED or even mention the word "negligence." Even if Plaintiff Abrams had bothered to name the elements of NIED, this claim could not move forward. *Michoff*, 108 Nev. at 936. She has not pled (and cannot plead) any particularized facts which demonstrate that Defendants owed her a duty of care or breached said duty. Moreover, just like the IIED claim, the NIED fails to plead any *facts* which tend to demonstrate Plaintiffs suffered any emotional distress whatsoever. Thus, the Court should dismiss this spurious claim.

E. Plaintiffs' False Light Claim (Fourth Claim) Must Be Dismissed.

1. The Abrams & Mayo Law Firm Is Not A Human Being and Cannot Pursue a False Light Claim.

As was the case with the emotional distress claims, a business entity cannot pursue a claim for false light because it is not an actual human being. Because it is not a human being, it has no right to privacy. *See United States v. Morton,* 338 U.S. 632 (1950); Restatement of the Law 2d, Torts, Section 6521, Comment c (1977*); Franklin Prescriptions Inc. v. N.Y. Times Co.*, No. CIV. A. 01-145, 2001 WL 936690, at *2 (E.D. Pa. Aug. 16, 2001) (federal court exercising supplemental jurisdiction over state law false light claim by company dismissed it because "[h]aving adopted the tentative restatement, the Pennsylvania Supreme Court likely would adopt the Restatement and would approve of the notion that false light invasion of privacy is limited to individuals."). Moreover, because it is not a human being, a law firm cannot suffer "mental anguish." *People for the Ethical*

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contemporaneous sensory observance of the accident; and (3) was closely related to the victim. *Grotts v. Zahner*, 115 Nev. 339, 340, 989 P.2d 415, 416 (1999) (citation omitted). In any case, even under the more permissive and generalized *Shoen* standard, Plaintiff Abrams' claim fails as set forth above.

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Treatment of Animals v. Bobby Berosini, Ltd., 111 Nev. 615, 622 n.4 (1995) ("The false light action differs from a defamation action in that the injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is damage to reputation.")

2. Claims for False Light Are Disfavored.

With regard to the substance of the archaic false light tort, it must be noted that the archaic false light tort is largely duplicative of the tort of defamation, but omits imperative built-in First Amendment protections and safeguards contemplated by the more stringent standard required for defamation claims. *See Denver Pub. Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). Unlike defamation, the amorphous nature of false light carries serious risks of chilling fundamental First Amendment speech rights. *See id.* Furthermore, the subjective standards in false light give no clarity in specifying what conduct should be considered wrongful, which makes the false light tort a poor deterrent of wrongful conduct. *See id.* at 903 (recognizing that "[b]ecause tort law is intended to both recompense wrongful conduct and to prevent it, it is important to be clear in its identification of that wrongful conduct. The tort of false light fails that test.").

Because of this overlap with defamation, risks of chilling First Amendment freedoms, and vague subjective parameters, courts disagree about whether false light should even be recognized as a separate privacy tort from defamation. *See id.* at 897-98. Some states either have not expressly adopted the tort or have expressly rejected it. *See, e.g., id.* at 897, 904 (holding that "false light is too amorphous a tort for Colorado, and it risks inflicting an unacceptable chill on those in the media seeking to avoid liability.")

In any case, The VIPI Defendants recognize that the Nevada Supreme Court has "impliedly recognized the false light invasion of privacy tort." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 140 (2014) (citing *Berosini, Ltd.*, 895 P.2d 1269, 111 Nev. 615, n. 4). However, the authority from Colorado serves to remind the Court that the tort should be evaluated carefully and not be allowed to stifle speech.

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3. Plaintiff Abrams' Claim For False Light Fails.

According to the Nevada Supreme Court, the false light tort requires that "(a) the **false light** in which the other was placed **would be highly offensive to a reasonable person, and** (b) the actor had **knowledge of** or acted in reckless disregard as to the **falsity of the publicized matter** and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 141 (2014) (emphasis added). Nevada courts require that Plaintiffs suffer mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson v. Sprint Nextel Corp.*, 2014 WL 553314 at *5 (D. Nev. Feb. 10, 2017). Plaintiffs do not make allegations that satisfy these elements; they simply make threadbare accusations and rote recitations of legal conclusions. (*See* FAC, ¶¶ 99-100. Plaintiffs fail to enumerate the elements of false light, and also fail to allege that they suffered emotional distress as a result of being portrayed in a false light. Thus, their claim for false light should be dismissed.

a) Plaintiffs Fail to Claim that Sanson's Alleged "False Portrayal" of Plaintiffs Is Highly Offensive to a Reasonable Person.

While Plaintiffs' FAC is full of vitriol and emotion, it nowhere alleges that there is any "false light," let alone that the "false light" that Ms. Abrams was placed in was highly offensive to a reasonable person. All Plaintiffs do is, in conclusory fashion, allege that Defendants recklessly or knowingly made/published "false and misleading facts" (FAC, ¶ 100) that "are highly offensive and inflammatory" (FAC, ¶ 101.) Not only does she not get the elements quite right, this kind of conclusory pleading is not sufficient.

When analyzing whether a complaint should be dismissed, this Court must accept factual allegations in the complaint as true, but it need not accept legal conclusions as true. *Vacation Village*, 110 Nev. at 484, 874 P.2d at 746 (citation omitted); *In re Amerco Derivative Litigation*, 252 P.3d at 706. Here, the FAC contains insufficient facts to establish a claim for false light because falsity is a threshold requirement. As stated above (§ V(B)

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("Plaintiff's Defamation Claim Fails")), the type of statements at issue in this case cannot be true or false. **Only facts** may be **false**, and "as long as the author presents the factual basis for his statement, it can only be read as his personal conclusion about the information presented, *not as a statement of fact*." *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995) (emphasis in original, internal quotations omitted).This Court may not infer from Plaintiff Abrams' conclusory characterization of the material as "false and misleading" (FAC, ¶ 10)) or "highly offensive and inflammatory" (FAC, ¶ 101) that the material was in fact false.

b) Plaintiff Abrams Fails to Allege Any Emotional Distress Resulting from Defendants' Alleged "False Portrayal" of Plaintiffs.

Nevada courts require that the Plaintiff prove mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson*, 2014 WL 553314, at *5. A plaintiff (such as the Plaintiffs here) who merely alleges that they "have endured stress, anxiety, disparagement of character, fear, emotional distress, and pain and suffering" do not meet this threshold. *See id*. at *6. In the instant case, Plaintiffs have failed to allege that they suffered *any* emotional distress as a result of this "false light." Plaintiffs have not even alleged facts which tend to demonstrate they suffered any emotional distress whatsoever. (*See* § V(C)(2) ("Abrams Fails to Set Forth Facts Demonstrating Severe or Extreme Emotional Distress.)). Therefore, Plaintiffs' claim for false light must be dismissed.

F. Plaintiffs' Business Disparagement Claim (Fifth Claim) Must Be Dismissed.

The elements of a business disparagement cause of action are: "(1) a false and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386, 213 P.3d 496, 504 (Nev. 2009) (citing *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987)). Plaintiffs cannot prevail on the first three elements of business

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disparagement for the same reason their defamation claim fails. Plaintiffs also fail to allege special damages, and thus the Court should dismiss this cause of action.

The Nevada Rules of Civil Procedure require that "[w]hen items of special damage are claimed, they shall be specifically stated." NRCP 9(g). "[P]roof of special damages is an essential element of business disparagement … in a business disparagement claim, the plaintiff must prove that the defendant's disparaging comments are the proximate cause of the economic loss." *CCSD v. Virtual Ed. Software*, 125 Nev. 374, 387, 213 P.3d 496, 505 (2009). Therefore, "a cause of action for business disparagement requires that the plaintiff set forth evidence proving economic loss that is attributable to the defendant's disparaging remarks" or, failing that, "show evidence of a general decline of business." *Id.*

Plaintiffs' Amended Complaint does not specifically state any special damages with regard to its business disparagement claim. It instead issues a blanket demand for damages in excess of $15,000.00. (*See* FAC, ¶ 105.) Plaintiffs never once allege that Sanson's comments have caused them economic loss, nor do Plaintiffs even proffer any evidence of a general decline of business since October 2016.[20] Because Plaintiffs fail to allege special damages in flagrant disregard for NRCP 9(g), their claim of business disparagement should be dismissed.

G. Plaintiffs' Harassment Claim (Sixth Claim) Must Be Dismissed.

Harassment is a criminal act defined by Nev. Rev. Stat. § 200.571. There is no civil cause of action for harassment, unless the perpetrator was motivated by certain characteristics of the victim. *See* Nev. Rev. Stat. § 41.690. Nowhere do Plaintiffs allege that Defendants violated Nev. Rev. Stat. § 200.571, nor do Plaintiffs allege that any alleged violation of criminal statute was motivated by Plaintiffs' characteristics. Instead, Plaintiffs attempt to

[20] As part of their RICO claim, Plaintiffs make naked allegations that Defendants stole "good will" which has "diminished the value of the business." (FAC, ¶ 137.) However, this is not a specific pleading that provides facts tending to prove economic loss, nor is it related to Plaintiffs' Business Disparagement claim, and thus cannot help Plaintiffs prevail on their claim of Business Disparagement.

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create a new cause of action from bits and pieces of existing causes of action. This novel claim of "harassment" apparently consists of one part defamation[21], one part business disparagement[22], and a smidge of IIED.[23] Because Harassment simply does not exist as a civil cause of action in Nevada statute or case law, this Court should not allow Plaintiffs to proceed with a superfluous claim that is little more than an imaginative amalgamation of other claims. This claim must be dismissed with prejudice.

H. Plaintiffs' "Concert of Action" Claim (Seventh Claim) Must Be Dismissed

The elements of a cause of action for Concert of Action are that Defendant acted with another, or Defendants acted together, to commit a tort while acting in concert or pursuant to a common design. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). The plaintiff must also show the defendants "agreed to engage in conduct that is inherently dangerous or poses a substantial risk of harm to others." *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1092 (D. Nev. 2012) (quoting *GES, Inc. v. Corbitt,* 117 Nev. 265, 21 P.3d 11 (2001)). The conduct alleged is not inherently dangerous. Further, because the other tort claims fail, so does this one.

I. Plaintiffs' Civil Conspiracy Claim (Eighth Claim) Must Be Dismissed.

The elements of a cause of action for civil conspiracy are: (1) Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming plaintiff; and (2) Plaintiff sustained damage resulting from defendants' act or acts. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, P.2d 1251 (Nev. 1999).

Plaintiffs' FAC is hard to make sense of, but it appears that their conspiracy claim is predicated on disparaging Plaintiffs, placing them in a false light, inflicting emotional distress upon them, and "harassing them."[24] As set forth above, each of those causes of action

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[21] *See* Amended Complaint ¶ 107.

[22] *See* Amended Complaint ¶ 108.

[23] *See* Amended Complaint ¶ 109.

[24] Plaintiffs' Schneider Opposition at p. 5:21-6:17.

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fails. There was nothing illegal about Mr. Sanson or VIPI posting videos or engaging in free speech critical of the Ms. Abrams and her law firm. This claim thus also necessarily also fails. Plaintiffs cannot rely on the conclusory claim that "this behavior is unlawful" to satisfy their pleading burden.

J. Plaintiffs' RICO Claim (Ninth Claim) Must Be Dismissed.

The elements of a civil RICO claim are: (1) defendant violated a predicate racketeering act; (2) plaintiff suffered injury in her business or property by reason of defendant's violation of the predicate racketeering act; (3) defendant's violation proximately caused plaintiff's injury; (4) plaintiff did not participate in the racketeering violation. Nev. Rev. Stat. § 207.470, Nev. Rev. Stat. § 207.400; *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 849 P.2d 297 (Nev. 1993). The Nevada Supreme Court has held that civil racketeering claims must be pled not merely with specificity, but with the specificity required of a criminal indictment or information. *Hale v. Burkhardt*, 104 Nev. 632, 637-38, 764 P.2d 866, 869-70 (Nev. 1988). The complaint must provide adequate information as to "when, where [and] how" the alleged criminal acts occurred. *Id*. at 637.

In the instant case, Plaintiffs allege that Defendants "either committed, conspired to commit, or have attempted to commit" twelve separate offenses. *See* FAC ¶ 118. However, several of these alleged offenses are not predicate racketeering acts under Nevada law, and thus cannot form the basis of a civil RICO claim. For the alleged offenses that are predicate racketeering acts, Plaintiffs have not pled facts sufficient to demonstrate that Defendants violated, conspired to violate, or attempted to violate any of the predicate racketeering acts. Furthermore, Plaintiffs have not pled facts sufficient to demonstrate that they suffered any injury in their business or property by reason of these alleged violations, nor have they sufficiently demonstrated that Defendants' alleged conduct is the proximate cause of Plaintiffs' alleged injury. Thus, this claim should be dismissed.

1. Several Alleged Violations are not Violations of Predicate Racketeering Acts, and Cannot Form the Basis of a RICO Violation

"Crimes related to racketeering" are enumerated in Nev. Rev. Stat. § 207.360. *Hale*, 104 Nev. at 634. Thus, crimes that are not enumerated in Nev. Rev. Stat. § 207.360

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cannot be predicate racketeering acts. Plaintiffs waste this Court's time by alleging that Defendants committed seven crimes that are nowhere to be found in Nev. Rev. Stat. § 207.360:

(1) Intimidating public officer in violation of Nev. Rev. Stat. § 199.300(d). FAC ¶ 118(c);

(2) Criminal Contempt (Willful Disobedience of Court) in violation of Nev. Rev. Stat. § 199.340(4). FAC ¶ 118(d);

(3) Criminal Contempt (Publication of Grossly Inaccurate Report of Court Proceedings) in violation of Nev. Rev. Stat. § 199.340(7). FAC ¶ 118(e);

(4) Challenges to fight in violation of Nev. Rev. Stat. § 200.450. FAC ¶ 118(f);

(5) Furnishing libelous information in violation of Nev. Rev. Stat. § 200.550. FAC ¶ 118(g);

(6) Threatening to publish libel in violation of Nev. Rev. Stat. § 200.560. FAC ¶ 118(h);

(7) Harassment in violation of Nev. Rev. Stat. § 200.571. FAC ¶ 118(i).

Because none of these alleged crimes are predicate offenses listed in Nev. Rev. Stat. § 207.360, they cannot form the basis of a RICO claim and need not be discussed further.

2. Plaintiffs Have not Sufficiently Demonstrated that Defendants Bribed or Attempted to Bribe or Intimidate Witnesses to Influence Testimony in Violation of Nev. Rev. Stat. § 199.240(2)(b).

Nev. Rev. Stat. § 199.240(2)(b)[25] prohibits the use of force, threat, intimidation or deception with the intent to cause or induce him or her to give false testimony or to withhold true testimony. Plaintiffs allege that Defendant Schneider made "threats." However, Plaintiffs fail to allege in their FAC that Sanson made any threats whatsoever. Furthermore, Plaintiffs have not demonstrated any Defendants' intent to cause or induce

[25] Plaintiffs cite to Nev. Rev. Stat. § 199.240(b), which does not exist. Assuming, *arguendo*, that Plaintiffs also meant to accuse Defendants of bribery under Nev. Rev. Stat. § 199.240(1), such a claim cannot underlie a RICO violation because Plaintiffs have not pled with specificity any monetary transaction between Defendants and potential witnesses. A naked allegation, upon "information and belief," that Defendant Schneider paid money to the other Defendants (*see* FAC ¶ 44), none of whom are potential witnesses in an official proceeding, does not lay out the "when, where or how" in a matter sufficient to make a prima facie claim of bribery under Nev. Rev. Stat. § 199.240(1).

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Plaintiffs to give false testimony or to withhold true testimony. Indeed, Plaintiffs have not alleged that they are potential witnesses in any relevant litigation. Thus, Plaintiffs cannot make a prima facie claim of a violation of Nev. Rev. Stat. § 199.240(2)(b) with regard to Sanson.

3. Plaintiffs Have not Sufficiently Demonstrated that Defendants Bribed or Attempted to Bribe or Intimidate Witnesses to Influence Testimony in Violation of Nev. Rev. Stat. § 199.240(2)(c).

Nev. Rev. Stat. § 199.240(2)(c) prohibits the use of force, threat, intimidation or deception with the intent to cause or induce someone to withhold a record, document or other object from a proceeding. As mentioned above, Plaintiffs fail to allege in their FAC that Sanson made any threats whatsoever. Thus, Plaintiffs cannot make a prima facie claim of a violation of Nev. Rev. Stat. § 199.240(2)(c) with regard to Sanson.

4. Plaintiffs Have not Sufficiently Demonstrated that Defendants Engaged or Attempted to Engage in Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise in Violation of Nev. Rev. Stat. § 205.377.

To be guilty of multiple transactions involving fraud or deceit in the course of enterprise or occupation, a person must:

> "knowingly and with the intent to defraud, engage in an act, practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that:
>
> (a) The person knows to be false or omitted;
>
> (b) The person intends another to rely on; and
>
> (c) Results in a loss to any person who relied on the false representation or omission,
>
> in at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650." Nev. Rev. Stat. § 205.377.

Nowhere in the FAC do Plaintiffs allege that Defendants made any sort of false representation or omission of a material fact to Plaintiffs. Plaintiffs cannot possibly demonstrate that Defendants had knowledge of a nonexistent representation's falsity, nor

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that Defendants intended that Plaintiffs relied on a nonexistent representation. Plaintiffs do not allege that they engaged in even one transaction, let alone two or more, with Defendants. Finally, Plaintiffs also fail to plead that they have lost anything of value or suffered any pecuniary damages from Defendants' conduct. Because Plaintiffs have failed to adequately allege any element of the crime defined in Nev. Rev. Stat. § 205.377, this naked accusation cannot form the basis of a RICO claim.

5. Plaintiffs Have not Sufficiently Demonstrated that Defendants Took or Attempted to Take Property form Another Under Circumstances not Amount to Robbery.

To be guilty of taking property from another under circumstances not amounting to robbery, one "must knowingly and designedly by any false pretense obtain any chose in action, money, goods, wares, chattels, effects or any other valuable thing, including rent or the labor of another person not his or her employee, with the intent to cheat or defraud the other person." Nev. Rev. Stat. § 205.380(1). Thus, to prevail on a claim for false pretenses, a party must establish four elements: (1) intent to defraud; (2) a false representation; (3) reliance on that representation, and (4) that the victim be defrauded. defrauded. *G.K. Las Vegas Ltd. Partnership v. Simon Prop. Grp., Inc.*, 460 F. Supp. 2d 1246, 1257 (D. Nev. 2006) (citing *Bright v. Sheriff, Washoe County,* 90 Nev. 168, 169, 521 P.2d 371, 372 (1974)).

Nowhere in the FAC do Plaintiffs allege any of the aforementioned four elements of false pretenses. They do not allege any intent to defraud. They do not allege that Defendants made any false representations, so of course they cannot possibly allege that they relied on any false representations. Most importantly, Plaintiffs do not specify any money, goods, wares, chattels, effects, rent, labor, or any other thing of value that they lost to Defendant via fraud. Because Plaintiffs have not even attempted to make a prima facie showing of a violation of Nev. Rev. Stat. § 205.380(1), this alleged crime cannot form the basis of a RICO claim.

6. Plaintiffs Have not Sufficiently Demonstrated that Defendants Committed or Attempted to Commit Extortion.

Nevada's extortion statute states, in relevant part, that, one is guilty of extortion if he or she, with the intent to "affect any cause of action or defense … or to influence the

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action of any public officer, or to procure any illegal or wrongful act … threatens directly or indirectly: (1) To accuse any person of a crime; (2) To injure a person or property; (3) To publish or connive at publishing any libel; (4) To expose or impute to any person any deformity or disgrace; or (5) To expose any secret." Nev. Rev. Stat. § 205.320. In the instant case, Plaintiffs fail to sufficiently allege that VIPI Defendants have made any threats whatsoever.

For all these reasons, the RICO claim must be dismissed.

K. Plaintiffs' Copyright Infringement Claim (Tenth Claim) Must Be Dismissed.

1. This Court Does Not Have Subject Matter Jurisdiction Over Plaintiffs' Alleged Claims of Copyright Infringement

Claims for copyright violations are subject to the exclusive original jurisdiction of the federal courts:

> The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

28 U.S.C. 1338(a). Consequently, this Court cannot hear matters pertaining to this purported claim, and it must be dismissed.

2. Plaintiffs' Claims Could not Proceed Even if this Court did Have Jurisdiction.

Plaintiffs have not sufficiently pleaded that they actually own the copyrights in professional pictures taken of them. Plaintiffs cannot file a copyright infringement claim before registering their copyrights with the U.S. Copyright Office. *See* 17 U.S.C. § 411(a) ("no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title.") Plaintiffs admit that they have not yet obtained copyright registrations for their works: "Defendants have infringed upon Plaintiffs' photographic works owned by Plaintiff, for which copyright registration is being sought…". (FAC, ¶ 90.)

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In addition, Defendants' use of publicly available pictures of Plaintiffs in connection with its statements and articles falls under the "fair use" exception to the Copyright Act. Accordingly, Plaintiffs have failed to sufficiently allege a claim for copyright infringement and, even if this Court had jurisdiction over the claim, it would have to be dismissed.

L. Injunctive Relief Is Not a Cause of Action, and Plaintiffs Are Not Entitled to Injunctive Relief.

Injunctions are an equitable form of relief that a court may grant to prevent future harms to Plaintiffs. It is not a separate cause of action and, even if it were, it is an improper remedy. Courts rarely grant injunctive relief in defamation or business interference cases. While the Nevada Supreme Court has granted a preliminary injunction concerning allegedly defamatory conduct; that case did not explicitly address the First Amendment issues present in this case. *See Guion v. Terra Marketing of Nevada, Inc.,* 90 Nev. 237, 523 P.2d 847 (1974). The facts of this case—even as alleged by Plaintiffs—do not come close to meeting the standard for injunctive relief barring speech. Moreover, the broad relief requested also includes a demand for forced speech, which is of course also unconstitutional.

1. Injunctive Relief Is Not a Cause of Action.

This claim must be dismissed. Injunctive relief is a type of remedy—not a separate cause of action. *See e.g., Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010) ("An injunction is a remedy, not a separate claim or cause of action. A pleading can . . . request injunctive relief in connection with a substantive claim, but a separately pled claim or cause of action for injunctive relief is inappropriate.").

2. Injunctive Relief Is Not Permissible Relief.

Both the U.S. Constitution and the Nevada Constitution protect the right to speak freely, which includes the right to engage in speech critical of businesses—even law firms—and attorneys. The First Amendment, applied to the states through the Fourteenth Amendment, of course protects "free speech." Similarly, Article 1, section 9 of the Nevada Constitution unequivocally provides that "every citizen may freely speak, write and publish

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his sentiments on all subjects, being responsible for the abuse of that right." The Nevada Supreme Court has observed "the constitutional right to free speech . . . embraces every form and manner of dissemination of ideas held by our people" and that "[f]ree speech . . . must be given the greatest possible scope and have the least possible restrictions imposed upon it, for it is basic to representative democracy." *Culinary Workers Union v. Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990, 993, 994 (1949);[26] *see also People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 625 (Nev. 1995) (reversing injunctive relief in a defamation case and holding that the "the constitutional privilege provided by the Nevada Constitution protects the animal rights activists [speakers] from defamation liability."); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978) ("the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.").

Injunctive relief enjoins speech before it even occurs and, thus, constitutes a prior restraint. *See* Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57 Syracuse L. Rev. 157, 163 (2007); *see also Alexander v. United States*, 509 U.S. 544, 550 (1993); *Balboa Island Village Inn, Inc. v. Lemen*, 57 Cal. Rptr. 3d 320, 355 (Cal. 2007) ("A prohibition targeting speech that has not yet occurred is a prior restraint."); *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697, 706 (1931) (holding that an injunction prohibiting the publication of expressive material was a prior restraint, and reversing a court order that indefinitely enjoined a court order that enjoined any future "malicious, scandalous or defamatory" publication). The Injunction Order is thus presumptively unconstitutional. *See, e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights and are thus

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[26] In *Culinary Workers*, on a writ of prohibition, the Nevada Supreme Court overturned a district court injunction against peaceful picketing that had been based in part on the fact that an "unfair" sign was untruthful. *Id.* at 995. The Supreme Court noted that statements of opinion "are not subject to judicial restraint." *Id.*

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presumptively unconstitutional).[27]

Indeed, any prior restraint, including the Injunction Order, carries a "heavy presumption" against its constitutional validity. *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Due to the inherent First Amendment problems, courts rarely, if ever, grant injunctions enjoining defamatory speech.[28] Under early English and American common law, injunctions were never permissible in defamation cases. *See* Chemerinsky, *supra*, at 167. The United States Supreme Court has never departed from this precedent.[29]

Business interests such as the ones asserted by Plaintiffs in this case cannot serve as the basis for an injunction against free expression. In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) the United States Supreme Court reversed an injunction against distributing pamphlets critical of a realtor's business practices. The Court noted:

> No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or

---

[27] Even where a criminal defendant's Sixth Amendment rights are alleged to be at issue, a court is strictly limited in its ability to limit publication, "one of the most extraordinary remedies known to our jurisprudence." *Hunt v. National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. Cal. 1989) (citation omitted).

[28] "The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative. A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 2803, 49 L. Ed. 2d 683 (1976).

[29] The Supreme Court was poised to consider the question of whether an injunction should ever be available to enjoin false and defamatory speech but decided not to after the plaintiff's death. *Tory v. Cochran*, 544 U.S. 734, 736 (2005) (while the Court did not find it moot, it held that the plaintiff's "death makes it unnecessary, indeed unwarranted, for us to explore … [whether] the First Amendment forbids the issuance of a permanent injunction in a defamation case.

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> leaflets warrants use of the injunctive power of a court. …Among other important distinctions, respondent is not attempting to stop the flow of information into his own household, but to the public.

Id. at 419-420. Just like the plaintiff in *Better Austin*, Plaintiffs are trying to stop the flow of criticism about their business practices to the public. And, just as in *Better Austin*, an injunction in this case could not withstand constitutional scrutiny. For all these reasons, even if there is any defamation at issue in this case or other valid cause of action (which there is not, as detailed above), it should not be enjoined.

3. An Injunction Cannot Issue to Force Speech.

It is well-established that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752 (1977). Although this issue has not yet arisen in Nevada, other courts have been loath to force apologies from civil litigants, as forcing someone to speak violates his or her First Amendment rights. *See Griffith v. Smith,* 30 Va. Cir. 250 (Va. Cir. 1993), *rev'd on other grounds sub nom. Roberts v. Clarke*, 34 Va. Cir. 61 (Va. Cir. 1994) ("First Amendment concerns preclude the Court from ordering the apology originally suggested").[30] This court should not use its injunctive power to force any speech, much less a formal apology, out of a civil litigant.

VI. PLAINTIFFS SHOULD NOT BE GRANTED LEAVE TO AMEND

Typically, NRCP 15(a) provides that leave to amend a complaint should be "freely given when justice so requires. Such leave, however, "should not be granted if the proposed amendment would be futile ... [, and] plead[ing] an impermissible claim" is futile. *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. No. 42, 302 P.3d 1148, 1152 (2013) (citation omitted). A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim—such as one which would not survive a motion to dismiss under NRCP 12(b)(5)—or a "last-second amendment[ ]

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[30] Admittedly, the case law in this area is scant. Perhaps this is because forced speech may be common in places like China, North Korea, Australia, South Africa, and other places that don't have a First Amendment but is not tolerated here.

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alleging meritless claims in an attempt to save a case from summary judgment." *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).

As discussed above, Plaintiffs have failed to state any claims upon which this Court may grant relief. Plaintiffs' defamation claims are not actionable, Defendants' alleged statements are protected speech, and Plaintiffs have failed to allege any facts to support their various tort claims, even seeking emotional distress on behalf of a law firm. Plaintiffs have also failed to allege facts to support their civil conspiracy and racketeering claims. Finally, Plaintiffs' request for injunctive relief is a request for an impermissible prior restraint on Defendants' protected speech, and thus cannot stand. In short, Plaintiffs' claims are both baseless and impermissible, and any attempt to amend the FAC would be futile. Accordingly, this Court should not permit Plaintiffs to amend the FAC.

VII. CONCLUSION

For all these reasons, Plaintiffs' Second Amended Complaint must be dismissed in its entirety, with prejudice. Further, Defendants VIPI and Sanson should be awarded fees and costs for having to defend against this vexatious action.

Respectfully submitted this 16th day of February, 2017.

/s/ Margaret A. McLetchie

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2017, I served a true and correct copy of the foregoing NOTICE OF MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF via electronic service using Wiznet's electronic court filing system and, pursuant to NRCP 5(b)(2)(B), by First Class United States Mail, postage fully prepaid, to the following:

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EXHIBIT 8

COMP
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DISTRICT COURT,
CLARK COUNTY, NEVADA

MARSHAL S. WILLICK AND THE WILLICK LAW GROUP Plaintiffs, vs. JERE BEERY, GENE D. SIMES, MARK BERES, FREDERICK JONES, MICHAEL K. MCKOWN, DON HOLLAND, VETERANS FOR VETERAN CONNECTION, INC., OPERATION FIRING FOR EFFECT, VETERANS TODAY MILITARY & FOREIGN AFFAIRS JOURNAL, JONES & ASSOCIATES, USFSPA LIBERATION SUPPORT GROUP, DOES I THROUGH X,	CASE NO:A12661766-C DEPT NO: XXIII DATE OF HEARING: N/A TIME OF HEARING: N/A ACTION IN TORT ARBITRATION EXEMPTION CLAIMED

SECOND AMENDED COMPLAINT FOR DAMAGES

I

INTRODUCTION

1. As *Ordered* by this Court on May 14, 2013, Plaintiffs Marshal S. Willick and the Willick Law Group (Plaintiffs) bring this Second Amended action for damages based upon, and to redress, Defendant's Intentional Defamation of the character of the Plaintiffs through libelous writings and speech, for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, False Light, Business Disparagement, Harassment, Concert of Action, Civil

Conspiracy and violations of RICO, all of which were perpetrated individually and in concert with others by defendants Mr. Jere Beery (Beery), Mr. Gene D. Simes (Simes), Mr. Mark Beres (Beres), Mr. Frederick Jones, Mr. Michael K. McKown, Mr. Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veteran Connection, Inc. (VFVC), Operation Firing For Effect (OFFE), Veterans Today Military & Foreign Affairs Journal, and Does I through X (collectively "Defendants").

II

VENUE AND JURISDICTION

2. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

3. Jurisdiction is proper in Nevada State court as all alleged claims were transmitted to or performed in Nevada by the Defendants individually or in concert with others.

III

PARTIES

4. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

5. Plaintiff Marshal S. Willick, is a natural person and an attorney licensed to practice law in the State of Nevada. He practices exclusively in the field of Domestic Relations and is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law.[1]

6. The Willick Law Group is a dba of Marshal S. Willick P.C., a duly formed professional corporation in the State of Nevada.

7. Upon information and belief, Mr. Jere Beery is a natural person and freelance writer and self-professed activist for veteran's rights. He also claims to be the National Public Relations Director for Veterans for Veterans Connection Inc., and Operation Firing For Effect.

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[1] Per direct enactment of the Board of Governors of the Nevada State Bar, and independently by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to write the examination that other would-be Nevada Family Law Specialists must pass to attain that status.

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8. Upon information and belief, Mr. Gene Simes is a natural person and the National Chairman of an Organization called Operation Fire for Effect, and the President of Veterans For Veterans Connection, Inc.

9. Upon information and belief, Mark Beres is a natural person and self-professed veteran's rights activist and member of the USFSPA Liberation Support Group, located in the Tucson, Arizona area.

10. Upon information and belief, Frederick Jones is a natural person who purports to be an Attorney at Law with the Law Firm of Jones & Associates, located 105 Jonesboro Street, McDonough, Georgia. Mr. Jones purports to be legal counsel to Veterans for Veterans Connection (VFVC), Inc., Operation Fire for Effect (OFFE), and has provided legal counsel to Gene Simes, the President of VFVC and National Chairman of OFFE, another named defendant.

11. Upon information and belief, Michael K. McKown is a natural person claiming to be the USFSPA Liberation Support Group (ULSG) State Representative for the State of Colorado, located in Broomfield, Colorado.

12. Upon information and belief, Don Holland is a natural person and self-professed veteran's rights activist located at 20313 Nettleton Street, Orlando, Florida 32833.

13. Upon information and belief, the USFSPA Liberation Support Group (ULSG), is a duly formed 501(c)(4) charitable organization whose purpose is the repeal of the federal Uniformed Services Former Spouse Protection Act (USFSPA). ULSG is purportedly located at 20770 U.S. Hwy 281 North, Suite 108, PMB 125, San Antonio, Texas, 78258.

14. Upon information and belief, the Law Firm of Jones & Associates, is a duly formed Professional Corporation located in McDonough, Georgia.

15. Upon information and belief, Veterans For Veterans Connection Inc., (VFVC) is a registered non-profit 501(c)(19) veterans service organization headquartered in Walworth, New York.

16. Upon information and belief, Operation Firing For Effect is associated or affiliated with the VFVC and conducts lobbying efforts in Washington, D.C., and in other jurisdictions as targeted by the VFVC.

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17. Upon information and belief, Veterans Today Military & Foreign Affairs Journal is a web-based magazine that publishes articles and news clips on issues concerning veterans and foreign policy. The web site is accessible through the internet in Nevada.

18. Upon information and belief, additional persons and entities have been working with the above named Defendants either individually or in concert and have been added as Doe Defendants in this action until they are personally identified.

19. Marshal S. Willick and the Willick Law Group are informed and believe, and therefore allege, that each of the Defendants designated herein as Jere Beery, Gene D. Simes, Mark Beres, Frederick Jones, Michael K. McKown, Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veterans Connection, Inc., Operation Firing for Effect, Veterans Today Military & Foreign Affairs Journal, and Does I through X inclusive, are in some way legally responsible and liable for the events referred to herein, and directly or proximately caused the damages alleged herein.

20. At all times material hereto, and in doing the acts and omissions alleged herein, the Defendants, and each of them, including Jere Beery, Gene D. Simes, Mark Beres, Frederick Jones, Michael K. McKown, Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veterans Connection, Inc., Operation Firing for Effect, Veterans Today Military & Foreign Affairs Journal, and Does I through X inclusive, acted individually and/or through their officers, agents, employees and co-conspirators, each of whom was acting within the purpose and scope of that agency, employment, and conspiracy, and these acts and omissions were known to, and authorized and ratified by, each of the other Defendants.

IV

FACTUAL ALLEGATIONS

21. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

22. On or about December 17, 2011, Mr. Jere Beery, claiming to be acting on behalf of Veterans for Veterans Connection, and Operation Firing for Effect, published or caused to be published on a website known as veteranstoday.com, a web site purportedly owned and controlled

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by Veterans Today Military & Foreign Affairs Journal, an article entitled "Veteran Court Conspiracy Exposed."

23. That this same article has been re-published a number of times on different web sites and via email across multiple states, including Beery sending it directly to the Willick Law Group via an email channel intended for use by prospective clients.

24. Within that article, Mr. Beery defames Mr. Willick and his law firm, the Willick Law Group, with a number of false statements.[2]

25. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Plaintiffs, including:

a. That Willick has divulged secrets on how to drain every penny possible from a retired military veteran, including any disability compensation the veteran may be receiving.

b. That Willick has made millions of dollars by distorting the facts surrounding veterans' military retirement pay, disability compensation, and Combat Related Special Compensation (CRSC).

c. That Willick intentionally ignores federal protection of veteran's disability compensation.

d. That Willick has claimed that federal law carries absolutely no relevance in dividing veterans' disability compensation in state divorce law.

e. That Willick has said that disability compensation is not protected in any way.

f. That Willick has obtained large alimony and child support awards and then taken a large percentage of those awards for himself.[3]

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[2] A copy of the published article is attached here.

[3] Current ethical rules in the State of Nevada do not allow contingency agreements in a divorce action. Mr. Willick and his firm have never made a contingency agreement in a divorce action. The allegation addressed here was apparently based upon a deliberately false reading of contracts from the 1980's – close to 30 years ago – for independent actions to partition and recover the spousal share of military retirement benefits silently omitted from decrees of divorce and thus stolen by the military members.

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g. That Willick "routinely has his clients sign a '*contingency agreement*' in which he (Willick) gets 50% of all the moneys he wins."

h. That Willick has used arguments of PTSD to take children away from military members or claiming that a military member has intentionally abandoned his children due to deployments or military service.

i. That Willick has used "underhanded techniques and legal deception designed to illegally strip our veterans of their earned retirement, benefits, and entitlements."

j. Claiming that Willick has argued that veterans are dangerous individuals unfit to care for their children.

k. Claiming that Willick has threatened to expose state and federal politicians and elected judges as "anti-child support" and "anti-alimony" if they do not agree to support his "distorted" interpretation of veterans' benefits.

l. That Willick is directly responsible for the increased number of veterans who are homeless, emotionally distraught, and suicidal.

m. That Willick has violated the Professional Code of Conduct or the "Code of Conduct."[4]

n. That Willick has dismissed federal laws which are protected under the U.S. Constitution.

o. That Willick has forced "(with the threat of jail) disabled veterans to sign a divorce settlement agreement in which their disability compensation is listed as a funding source for alimony and/or child support."

26. That Defendants have published, republished, or attributed to one another, or disseminated to third parties across state lines, additional false and defamatory statements directed against Plaintiffs, including those published by Beery on January 16, 2012, in which he defamed Mr. Willick and the Willick law Group, with a number of false statements, including:

a. Stating that "Veterans Need Skinning."

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[4] This was the term used. We believe the intended reference was to the Rules of Professional Conduct.

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b. That Willick "routinely has his client's sign a '*contingency agreement*' in which he (Willick) gets 50% of all the moneys he wins."

c. That Willick has exploited the hardships of vulnerable military spouses, children and the sacrifices of our returning service members.

d. That Willick has used the 'poor spouse' and 'needy child' tactic to get the highest award possible, and then helped himself to half of the awarded money.

e. That Willick is nothing more than a "common crook" in a shark skin suit hiding his self-enrichment motives behind ex-spouses and the veteran's children to pad his own bank account.

f. That Willick is ripping off combat disabled veterans.

g. That Willick is stealing from the spouse and child of the combat disabled veteran.

27. Beery incited veterans that have never had any dealings with Willick or the Willick Law Group to file spurious complaints with the Nevada State Bar.

a. Beery caused at least one complaint to be filed with the State Bar of Nevada which was investigated at significant cost to the State Bar and to Mr. Willick and the Willick Law Group. That complaint was found to be meritless.[5]

28. Mr. Mark Beres has sent many false and defamatory emails across state lines, including:

a. Calling Willick a "scumbag lowlife".

b. Claiming that Willick has "written the book on how to plunder a disabled veteran in the family court system."

c. Claiming that Willick has compared veteran's advocates to Adolph Hitler.

d. Claiming that Willick is a "miscreant" who has "worked tirelessly to create a legal environment in which wounded veterans are sitting ducks and lambs to the slaughter."

[5] We are not aware of any other complaints filed with the State Bar of Nevada, but presuming they are all based on the same arguments, they are being dismissed by the State Bar as also meritless.

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e. Claiming that Willick is personally responsible for a "holocaust" inflicted on wounded veterans.

29. The false and defamatory statements by Defendants were intended to incite violence and constitute actionable hate speech.

30. The false and defamatory statements by Defendants have resulted in numerous death threats and threats in general to be directed against Mr. Willick, sent by Defendants directly or caused by their false and defamatory statements:

a. Beery himself published and caused to be re-published a direct threat against Willick by saying, "Any attorneys who target our combat disabled veterans and strip them of their earned disability compensation in a divorce settlement should be lined up and shot with a military grade weapon in order to experience firsthand the pain and agony associated with disfiguring and disabling combat related injuries. And you, Mr. Willick should be first in line."

b. Beery also sent an email on December 13, 2011, with the subject line "Merry Christmas MARSHAL WILLICK - From You [*sic*] Worst Nightmare." This email included a bolded Shakespeare quote, "The first thing we do, let's kill all the lawyers."

c. Don Holland supposedly from Orlando, Florida sent an email that stated, "If the courts had not been corrupted by the judicial alchemy concocted by Willick, and if everyone were to receive the justice they deserve then Willick should wake up with a Horse's head in bed with him!!"

d. A "John Rose" sent an email that stated, "When you publish anything it had better have the right facts, when those facts are used in a Court Room, they better be verifiable! I have waste (sic) enough time with you. I promise you will not be forgetting my name. The 'Rose'."

e. An email from a person only identified as "Bill" stated, "Marshal Willick you are really a piece of shit. A well deserved bullet between your eyes would be waste of a perfectly good bullet. Hope you rot in Hell with my ex-wife."

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f. A person identified only as "Al Garcia" sent an email that said, "I just read your piece on USFSPA dated DEC 5, 2011. Great piece of writing for someone who equivalent to the Taliban and Nazis. You are a disgrace to this country and make a living off of stealing from honorable service member. Try to sue me. I'm already bankrupt and have a house in foreclosure because of guys like you."

g. A letter was received from St. Petersburg, Florida, that stated, "I read your recent "legal note" on alimony received by former spouses of military with great interest. It strikes me that the greatest accomplishment of these women's lives was to spread their legs for a man in uniform. Then they divorce these patriots and the US Government awards them a lifetime of welfare payments from his hard and dangerous work. They are whores and you, sir, are their pimp. You should take into consideration the fact that you are picking a fight with hundreds of thousands of men who were trained by their country to kill. You are siding with the lazy ticks that suck the blood from the men who put their lives on the line for your freedom. You are a moron who enables them. Just because something is legal, that doesn't make it right. We are coming for you, soon."

31. Mr. Gene Simes has been quoted in a number of articles – mostly written by Beery – repeating or attributing to Simes the same false and defamatory statements recounted above.

32. Simes has also posted to a Google Groups web page in response to a warning from legal counsel and others that they were possibly defaming Willick, "No! No! No! Michael, we are going to the root of this hold [*sic*] issue, and there's no turning back for no one do we get this clear! A mission is just what a mission is and on this one we will make our stand!!!!! None of you out there have seen nothing YET! Get ready for Operation White House 2012 and Operation D O J 2012 about three months from now. There's no retreat forecast for OFFE! I will fire everything that I have to accomplish this mission, now! let me get my job done, do we all understand, thank [*sic*]."

33. Simes also posted on this same Google Groups web page defamatory statements about Willick, specifically, Nevada Attorney at Law Marshal Willick no Friend Of our Military, Operation Fire for Effect, and Marshal S. Willick Anti-Military Anti-Veteran Anti-American.

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34. Defendants organized, publicized, and participated in a boisterous assembly at Plaintiffs' place of business, with the intent and effect of interfering with Plaintiffs' business and placing Plaintiffs and Plaintiffs' employees in fear of their personal safety.

V

FIRST CLAIM FOR RELIEF

(DEFAMATION)

35. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

36. Defendants, and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, published one or more oral or written false statements which were intended to impugn Mr. Willick's honesty, integrity, virtue and/or personal and professional reputation.

37. Willick and the Willick Law Group are not public figures, as some or all of Defendants have acknowledged in writing, or been notified of in writing.

38. The statements imputed by Defendants to Willick and published by Defendants are slurs on Willick's character including his honesty, integrity, virtue, and/or reputation.

39. The referenced false and defamatory statements would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.

40. The referenced false and defamatory statements were unprivileged.

41. The referenced false and defamatory statements were published to at least one third party.

42. The referenced false and defamatory statements were published or republished deliberately or negligently by one or more of each of the Defendants.

43. Some or all of the referenced false and defamatory statements constitute defamation *per se*, making them actionable irrespective of special harm.

44. Publication of some or all of the referenced false and defamatory statements caused special harm in the form of damages to Willick and the Willick Law Group.

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WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

VI

SECOND CLAIM FOR RELIEF

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

45. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

46. Defendants and/or Defendants' agents, representatives, and/or/ employees, either individually, or in concert with others, intentionally and deliberately inflicted emotional distress on Plaintiffs by defaming them to many people, including but not limited to the following: several of Willick's friends, co-workers, colleagues, clients, and an unknown number of persons that were subjected to the defamatory comments on the internet.

47. As a result of Defendants' extreme and outrageous conduct, Willick and the Willick Law Group was, is, and, with a high degree of likelihood, will continue to be emotionally distressed due to the defamation.

48. As a result of Defendants' extreme and outrageous conduct, Willick and the Willick Law Group have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional trauma.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $10,000.

VII

THIRD CLAIM FOR RELIEF

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

49. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

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50. To whatever extent the infliction of emotional distress asserted in the preceding cause of action was not deliberate, it was a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $10,000.

VIII

FOURTH CLAIM FOR RELIEF

(FALSE LIGHT)

51. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

52. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made and published false statements about Mr. Willick and the Willick Law Group.

53. The statements made by the Defendants against Mr. Willick were made with the specific intent to cause harm to Plaintiffs and their pecuniary interests, or, in the alternative, the Defendants published the false statements knowing its falsity or with reckless disregard for the truth.

54. The statements made the Defendants place Mr. Willick and the Willick Law Group in a false light and are highly offensive and inflammatory, and thus actionable.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

IX

FIFTH CLAIM FOR RELIEF

(BUSINESS DISPARAGEMENT)

55. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

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56. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made false and disparaging statements about Willick and the Willick Law Group and disparaged Mr. Willick's and the Willick law Group's business.

57. The referenced statements and actions were specifically directed towards the quality of Mr. Willick and the Willick Law Group's services, and were so extreme and outrageous as to affect the ability of Willick and the Willick Law Group to conduct business.

58. The Defendants intended, in publishing the false and defamatory statements and participating in the boisterous assembly, to cause harm to Plaintiffs and its pecuniary interests, or, in the alternative, the Defendants published the disparaging statements knowing their falsity or with reckless disregard for the truth.

59. The false and defamatory statements and boisterous assembly by the Defendants resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

X

SIXTH CLAIM FOR RELIEF

(HARASSMENT)

60. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

61. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, have threatened bodily injury to the Plaintiffs or caused such threats to be made.

62. Defendants' making of false and defamatory statements and then inviting the recipients of those statements to a boisterous assembly at Plaintiffs' place of business were specifically intended to interfere with Plaintiffs' business, and to cause the apprehension or actuality of economic or personal harm to Plaintiffs and Plaintiffs' employees.

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63. Defendants' efforts to cause persons with no personal knowledge whatsoever of any violations of the Rules of Professional Conduct to nevertheless file spurious complaints with the Nevada Bar was intended to cause economic and personal harm to Plaintiffs.

64. Defendants' actions were intended to result in substantial harm to the Plaintiffs with respect to their physical or mental health or safety, and to cause physical or economic damage to Plaintiffs.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XI

SEVENTH CLAIM FOR RELIEF

(CONCERT OF ACTION)

65. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

66. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, based upon an explicit or tacit agreement, intentionally committed a tort against Willick.

67. Defendants' concert of action resulted in damages to Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XII

EIGHTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

68. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

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69. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, based upon an explicit or tacit agreement, intended to accomplish an unlawful objective for the specific purposes of harming Mr. Willick and the Willick Law Group's pecuniary interests and Marshal S. Willick's physical well-being.

70. Defendants' civil conspiracy resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XIII

NINTH CLAIM FOR RELIEF

(RICO VIOLATIONS)

71. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

72. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in at least two crimes related to racketeering pursuant to NRS 207.360 that have the same or similar pattern, intents, results, accomplices, victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

73. Here, Defendants[6] have all either committed, conspired to commit, or have attempted to commit the following crime(s):

a. Taking property from another under circumstances not amounting to robbery.

b. Perjury or subornation of perjury.

c. Extortion.

d. Offering False Evidence.

[6] The named Defendants – and others – constitute a criminal syndicate as defined in NRS 207.370.

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e. Multiple transactions involving fraud or deceit in the course of an enterprise. (NRS 205.377)

74. Defendants comprise a criminal syndicate: Any combination of persons, so structured that the organization will continue its operation even if individual members enter or leave the organization, which engages in or has the purpose of engaging in racketeering activity.

Here, OFFE, ULSG, Jones & Associates, and VFVC are organizations that have members – headed by Defendants Gene Simes, Michael McKown, Mark Beres, Frederick Jones, and Jere Beery – that do come and go and the organization continues on, and these organizations and their principals have conspired to engage in and have engaged in racketeering activity.

This group also meets the statutory definition – NRS 207.380 – as an enterprise:

> Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and, Any union, association or other group of persons associated in fact although not a legal entity.

Here VFVC is a registered not for profit business and OFFE is sub unit of VFVC. Both can and should be considered individual legal entities.[7]

Jones & Associates is a for profit law firm in Georgia and is definitionally a separate legal entity.[8]

ULSG is also an organization with members and is a registered LLC.

On information and belief, not all Defendants are members of VFVC , OFFE, Jones & Associates, and ULSG, but meet the "association or other group of persons associated in fact" requirements under the statue as an enterprise. The statute explicitly includes both licit and illicit enterprises.

75. Racketeering is the engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one

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[7] OFFE and VFVC operate numerous web sites where the defamation continues. Some of these web sites include: www.offe.org; www.anamericanpromise.org; www.jerebeery.com; www.vfvc.org.

[8] Mr. Jones admitted at the October 9, 2012, hearing that his law practice is a sole proprietorship.

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of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

a. Taking property from another under circumstances not amounting to robbery. (A minimum of four counts and maximum of 12 counts.)

Here, Jere Beery and Gene Simes and other members of the Defaulted organizations – through these organizations – encouraged members and non-members of VFVC, OFFE, and ULSG to file formal complaints with the State Bar of Nevada, even providing a ghost-written letter for the members use, that falsely allege criminal, ethical, and violations of professional conduct by Marshal S. Willick, Esq. The Exhibits that prove this claim have already been admitted by the Court.

Other exhibits admitted by the Court show at least four of these complaints, but the organization boasts the submission of over a dozen.

None of these people filing complaints have ever had any relationship with Willick or his law practice. Willick does not know any of these persons and to the best of his knowledge has never met any of them. He certainly has never represented any of them. None of these persons has or ever had any first hand knowledge of Willick's practice.

Second, the State Bar of Nevada has determined that none of the allegations have any truth. The Court has admitted exhibits in this case that show the State Bar of Nevada found no wrong doing by Willick.

The State Bar was forced to open an investigation based on these complaints, and Willick was forced to respond to the State Bar as to these allegations. The amount of time dedicated by the State Bar to this matter is unknown, but must have been substantial as the Bar was required to respond to each and every complaint. Willick's time is far more quantifiable. He spent over 5 hours gathering documents and drafting the response to the Bar to prove that the allegations were not only unsupported, but were false. The total value of time expended by Willick was over $3,000 and this does not include the costs of missed opportunities or time that should have been spent working on cases for paying clients.

These actions are a direct violation of NRS 205.377 – Multiple transactions involving fraud or deceit in course of enterprise or occupation. The statute states:

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> A person shall not, in the course of an enterprise (VFVC, OFFE, Jones & Associates and ULSG), knowingly and with the intent to defraud (The State Bar of Nevada and Willick), engage in an act (filing fraudulent Bar Complaints), practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that:
> The person knows to be false or omitted;
> The person intends another to rely on; and
> Results in a loss to any person who relied on the false representation or omission.
> In at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650.

It is clear that it was the intent of the Defendants to cause harm to both the State Bar of Nevada and Willick and the aggregate costs far exceed the $650 threshold. Each act (letter sent to the Bar) which violates subsection one constitutes a separate offense and a person who violates subsection one is guilty of a category B felony.

Additionally, NRS 205.0832 defines the actions which constitute theft as including that which:

> Obtains real, personal or ***intangible property or the services of another person***, by a material misrepresentation with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

Additionally the statute goes on to define the theft as a person or entity that "Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person."

Here, as Abraham Lincoln famously pointed out 150 years ago, time is a lawyer's stock in trade. Defendants – with malice – stole valuable time from Willick. Also, the theft of Willick's and Willick Law Group's "good will" by the making of false and defamatory comments and placing both Willick and Willick Law Group in a false light has diminished the value of the business. These are intangible thefts, but thefts nonetheless.[9]

Defendants have sent emails that specifically agree that attacking Willick and the State Bar is perfectly fine.

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[9] Goodwill – A business's reputation, patronage, and other intangible assets that are considered when appraising the business, especially for purchase. *Black's Law Dictionary* 279 (Bryan A. Garner ed., Pocket ed., West 1996).

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> I see nothing wrong with attacking Marshall Willick and the Nevada Bar. In fact I know of no one better to attack than them... He is as responsible for this debacle as any one individual including Pat Schroeder and Doris Mozley!!

This same Defendant also wrote, "If the courts had not been corrupted by the judicial alchemy concocted by Willick, and everyone were to receive the justice they deserve then Willick should wake up with a Horse's Head in bed with him!!"

These same communications, insofar as they were formal complaints to a Nevada State licensing authority, constitute perjury, and their active solicitation constituted suborning perjury. Additionally, Gene Simes has filed his discovery responses in this action and perjures himself as to his and his organization's relationship with web sites such as An American Promise which lists his phone number as the point of contact for the web site.

b. Extortion

Defendants attempted to extort a particular ruling from the State Bar through a veiled threat. In a letter to the State Bar of Nevada they wrote:

> I strongly suggest you consider your response to my complaint very carefully, as I have seen the canned form letter responses you have sent to other individuals who have submitted complaints against Willick, and I am not impressed.

The letter goes on to make outrageous claims of criminal activity by Willick, violations of constitutional rights, violations of civil rights, violations of federal codes and regulations, and ethical violations, all of which have been proven to be untrue under the law.

A similar letter was sent by another Defendant which makes similar unfounded and false testimony as to Willick's ethical and legal conduct. Again, none of these Defendant's has any first hand knowledge as to Willick's practice and the intent was to do damage to Willick and his business.

Members of this enterprise sent emails admitting that their intent was a "suicide mission." They went on to say that it was their intent to "get under Willick's skin" and that they were "successful". Gene Simes sent an email dated April 6, 2012, where – discussing the planned picket of Willick and his offices – that "a mission is just what a mission is and on this one we will make our stand!!!!!" He goes on to say, "None of you out there have seen nothing YET!

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Lastly, Jere Beery publishes the intent of "Operation Sin City" to all members of the organization/enterprise saying that:

> Our objective is to bring public and media attention to Attorney at Law Marshal Willick and his 25 year long efforts to strip disabled veterans of their disability compensation and retirement pay. Some of us have been working on the 5301 issue for 10 years, and I can tell you with a great deal of certainty that Marshal Willick is directly responsible for the attack on our disability benefits. In fact, 25 years ago Willick wrote the first handbook on how to get the most money out of out (sic) disabled Veterans. Willick was also directly involved with the development and passage of USFSPA. Willick is the Grand Dragon of the attack on disability compensation and retirement pay.[10]

c. Giving False Evidence

The Defendants and others provided false testimony to the State Bar of Nevada and each of the Defendants has repeated the same in fugitive documents filed with this Court as to alleged "violations of constitutional rights", "violations of civil rights", "violations of federal codes and regulations", "criminal activity", and "ethical violations", all of which have been proven to be untrue under the law. Exhibits already admitted in this case document this false testimony.

The Defendants participated in racketeering as defined by Nevada Statute. They ***could*** all be found to be guilty of a category B felony and imprisoned for their actions, but this is a civil action.

These are not the only crimes that Defendants have been involved in. They also meet the elements for violation of criminal libel, criminal harassment, stalking with an aggravating factor of using the internet to further the crime, criminal publishing matter inciting breach of peace or other crime, criminal syndicalism, and threatening or obscene letters or writings.[11] However, these crimes are not specifically enumerated in the statute concerning RICO.

Defendants' illegal conduct resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group, pursuant to NRS 207.470, are entitled to treble damages as a result of Defendants' criminal conduct in the form of actual, special, compensatory, and punitive damages in amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

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[10] The USFSPA was enacted by the 97th Congress in September 1982, with an effective date of 25 June 1981. Mr. Willick graduated from Law School on May 31, 1982. He would have been a busy law student to have been "directly involved in the passage of the USFSPA."

[11] See NRS 207.180.

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XIV

TENTH CLAIM FOR RELIEF
(INJUNCTION)

76. Marshal S. Willick and the Willick Law Group incorporate and re-allege all preceding paragraphs as if fully stated herein.

77. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in acts that were so outrageous that injunctive relief is necessary to effectuate justice. WHEREFORE, Plaintiffs request the following injunctive relief:

a. That all named defendants and members of the listed organizations be enjoined from approaching within 1000 feet, of the person of Marshal S. Willick, his vehicle, his home, The Willick law Group and all of its employees, and their places of residence or vehicles.

b. That all defamatory writings, video, postings, or any other documents or public display of the same, concerning Willick, the Willick Law Group, and the employees of the same, be removed from public view within 10 days of the issuance of the injunction.

c. That all innuendo of illegal, immoral, or unethical conduct that has already been attributed by defendants to Willick, must never be repeated by any named Defendant or any member of any of the named organizations. Generalities toward lawyers in general will constitute an offense of this relief.

d. That Mr. Frederick Jones be reported to the State Bar of Georgia for his complicity in the actions of the defendants.

XV
CONCLUSION

78. Marshal S. Willick and the Willick Law Group incorporate and re-allege all preceding paragraphs as if fully stated herein.

WHEREFORE, Marshal S. Willick and the Willick Law Group respectfully prays that judgment be entered against Defendants, and each of them individually, as follows:

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

a. General damages in an amount in excess of $10,000 for each and every claim for relief.

b. Compensatory damages in an amount in excess of $10,000 for each and every claim for relief.

c. Punitive damages in an amount in excess of $10,000 for each and every claim for relief.

d. Treble damages for Defendants' RICO violations pursuant to NRS 207.470 in the form of general, compensatory, and/or punitive damages in an amount in excess of $10,000.

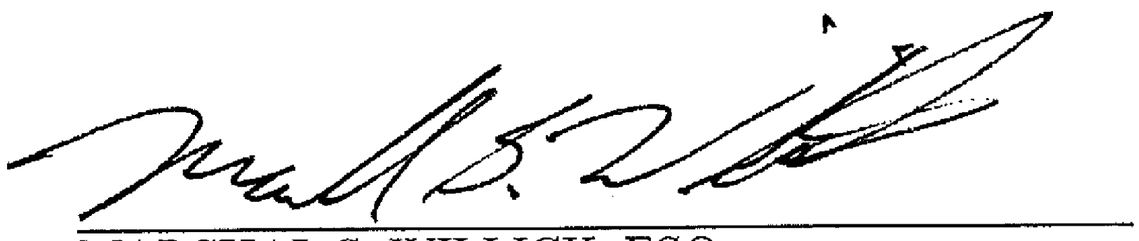
e. All attorney's fees and costs that have and/or may be incurred by Marshal S. Willick and the Willick Law Group in pursuing this action.

f. For such other and further relief this Court may deem just and proper.

DATED this 21st day of May, 2013.

Respectfully submitted:

WILLICK LAW GROUP



MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110
(702) 438-4100
Attorney for Plaintiffs

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARSHAL S. WILLICK, principal of WILLICK LAW GROUP first being duly sworn, deposes and says:

That his business is the Plaintiff in the above-entitled action; that he has read the above and foregoing ***SECOND AMENDED COMPLAINT FOR DAMAGES*** and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

MARSHAL S. WILLICK

SUBSCRIBED and SWORN to before me
this 21 day of MAY, 2013

NOTARY PUBLIC in and for said
County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LEONARD H. FOWLER III
Appt. No. 01-66951-1
My Appt. Expires Jan. 16, 2017

P:\wp13\BEERY\00026478.WPD

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

EXHIBIT 9

Anat Levy

From: Joshua Gilmore <JGilmore@baileykennedy.com>
Sent: Friday, March 24, 2017 4:29 PM
To: Anat Levy
Cc: Susan Russo; 'Alex Ghibaudo, Esq.'
Subject: RE: Willick v. Sanson

Anat,

Though I appreciate your efforts, I will put together a draft of the Order. Despite my best intentions, I was unable to finish doing so last night (my son had a very difficult time sleeping, which kept me from working). I had three different items that had to go out today, and therefore, I will have a draft of the Order ready for your review early next week. I will also take another look at your request for a stay and discuss it with my clients.

Thanks.

Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

www.BaileyKennedy.com

- -

From: Anat Levy [mailto:alevy96@aol.com]
Sent: Thursday, March 23, 2017 2:03 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>
Cc: Susan Russo <SRusso@baileykennedy.com>; 'Alex Ghibaudo, Esq.' <alex@alexglaw.com>
Subject: RE: Willick v. Sanson

Josh, I appreciate your getting back to me.

Since I didn't hear from you this morning, I took the liberty of drafting the Order and am attaching it for your review and comments.

I also reviewed the anti-SLAPP statutes again, and it looks like we have a statutory right to stay discovery pending the appeal. I put that into the Order – given your note below, please reconsider this since our right to a stay is statutory. I think the judge would also issue a broader stay, particularly with regard to responding to an amended complaint. If our appeal is granted, then your clients would have no right to file an amended complaint. The whole purpose of the anti-SLAPP statute and appeal is to minimize cost and time for the defendant

so it doesn't make sense to move forward with a case when the denial of the motion, which adjudicates the case on the merits, is being appealed.

Please take a look at the draft and let me know if you have comments. We'd like to work it out with you if possible and I would like to get it to the judge by tomorrow's deadline.

Thanks much and I hope you feel better –
Anat

From: Joshua Gilmore [mailto:JGilmore@baileykennedy.com]
Sent: Thursday, March 23, 2017 1:42 PM
To: Anat Levy
Cc: Susan Russo; Alex Ghibaudo, Esq.
Subject: RE: Willick v. Sanson

Anat,

Bad allergies slowed me down this week. In addition, I was slammed with several work items. I will endeavor to have a draft of the Order to you for review by tomorrow. Your patience is appreciated.

My clients are not willing to stay the proceeding pending your appeal.

Thanks.

Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

www.BaileyKennedy.com

- -

From: Anat Levy [mailto:alevy96@aol.com]
Sent: Wednesday, March 22, 2017 5:47 PM
To: Joshua Gilmore <JGilmore@baileykennedy.com>
Cc: Susan Russo <SRusso@baileykennedy.com>; Alex Ghibaudo, Esq. <alex@alexglaw.com>
Subject: RE: Willick v. Sanson

Josh,

When we spoke on Monday you indicated that you would get me the draft Order on our anti-SLAPP motion this week. This Friday will mark 10 days since the hearing, and EDCR 7.21 says

that we have to get the proposed order to the court within 10 days of the decision. Additionally, I would like to get it in as soon as possible so that we may begin our appeal process.

If you can't get it to me by tomorrow, let me know and I'll prepare the draft and will send it to you for quick turn-around review.

Also, as I mentioned, it makes sense for the case to be stayed pending our appeal of the anti-SLAPP motion. Please let me know if you are amenable to entering into a stipulation to that effect (which I can draft and send you), otherwise I will need to make the appropriate motion.

Thanks,
Anat

Anat Levy, Esq.
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Levy Cell: 310-621-1199
Efax: 310-734-1538

From: Anat Levy [mailto:alevy96@aol.com]
Sent: Friday, March 17, 2017 8:50 PM
To: Joshua Gilmore
Cc: Susan Russo
Subject: Re: Willick v. Sanson

Josh, I was traveling all day. I will call you on Monday to discuss your email below. I don't believe you can amend at this stage without leave of court, so let's discuss.

Also, when will you get me a draft order on the anti-SLAPP hearing we had?

Thanks,
Anat
310-621-1199

Sent from my iPhone

On Mar 17, 2017, at 3:43 PM, Joshua Gilmore <JGilmore@baileykennedy.com> wrote:

> Ms. Levy,
>
> Good afternoon. I just tried calling you a few minutes ago. I wanted to let you know that we will be filing an Amended Complaint in this matter, which will render moot the pending Motions to Dismiss. Please give me a call to discuss—I'm here for the next hour or so and then all day Monday.
>
> Thanks; have a good weekend.

Josh

Joshua P. Gilmore, Esq. | Bailey Kennedy, LLP
8984 Spanish Ridge Avenue, Las Vegas, Nevada 89148-1302
(702) 562-8820 (main) | (702) 562-8821 (fax) | (702) 789-4547 (direct) | JGilmore@BaileyKennedy.com

www.BaileyKennedy.com

- -

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On this date I asked the court to E-serve a true and correct copy of the document entitled DECLARATION OF ANAT LEVY IN SUPPORT OF DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION on the below listed recipients through its e-serve service on wiznet to the following recipients.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubado, Esq. (Bar #10592)
G Law
703 S. 8th St.
Las Vegas, NV 89101
(702) 924-6553
alex@alexglaw.com

Joshua Gilmore, Esq. (Bar #11576)
Bailey Kennedy
8984 Spanish Ridge Ave.,
Las Vegas, NV 89148-1302
(702) 562-8820
glimore@BaileyKennedy.com

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 7th day of April, 2017, in Las Vegas, NV

//Anat Levy//

MSTY
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	Case No: A-17-750171-C Dept.: XIX (19) [Filed concurrently with 1) Motion to Stay Proceedings Pending Appeal on Order Denying Denfendants' Anti-SLAPP Motion; and 2) Declaration of Anat Levy in Support of Motion to Stay]

DEFENDANTS' EX PARTE MOTION TO SHORTEN TIME ON MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION;

(ATTACHED DECLARATION OF ANAT LEVY IN SUPPORT THEREOF; PROPOSED ORDER ATTACHED THERETO)

Defendant Veterans in Politics International, Inc. ("VIPI") and its President, Defendant Steve W. Sanson ("Sanson"), hereby move Ex Parte for an Order shortening time on Defendants' motion to stay further proceedings in this case pending their appeal

of the Court's March 30, 2017 Order Denying Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650.

This motion is made pursuant to Rule 2.26 of the Eighth Judicial District Court Rules, NRS §§41.660(3)(e)(2), 41.660(6), and is based on the accompanying Memorandum of Points and Authorities, the accompanying Declaration of Anat Levy in supporter thereof, the Proposed Order attached to Levy's Declaration, Defendants' concurrently filed Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion, the concurrently filed Declaration of Anat Levy In Support of Defendants' Motion to Stay Proceedings, the pleadings and court records in this case, and any argument and evidence submitted at the time of hearing.

DATED: April 7, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Veterans in Politics International, Inc. ("VIPI"), and its President, Defendant Steve W. Sanson ("Sanson"), hereby move *ex parte* for an Order shortening time on their Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP motion, filed concurrently herewith.

Eighth Judicial District Rules, Rule 2.26 permits the Court to shorten time on a motion for good cause shown. Rule 2.26 states, in full, as follows:

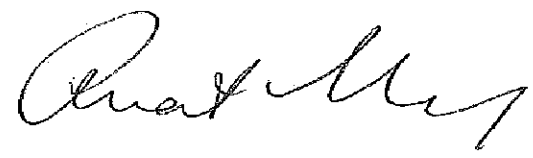
> Ex parte motions to shorten time may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. If a motion to shorten time is granted, it must be served upon all parties promptly. An order which shortens the notice of a hearing to less than 10 days may not be served by mail. In no event may the notice of the hearing of a motion be shortened to less than 1 full judicial day. A courtesy copy shall be delivered by the movant to the appropriate department, if a motion is filed on an order shortening time and noticed on less than 10 days' notice.

Good cause for setting the Motion is set forth in the attached Declaration of counsel, Anat Levy. Accordingly, it is respectfully requested that the hearing on the Motion be set at the Court's earliest date. Defendants request the following briefing and hearing schedule, if available for the Court:

- April 7, 2017 – Defendants' file and electronically serve their motion for stay;
- April 14, 2017 – Last day for Plaintiffs to file and electronically serve an opposition, if any, to Defendants' motion for stay;
- April 18, 2017 – Last day for Defendants to file and serve a reply, if any, to Plaintiffs' opposition;
- April 21, 2017 – hearing on motion for stay;
- May 4, 2017 – No change – per stipulation of the parties, last day for Defendants to respond to First Amended Complaint if stay not granted.

A proposed Order is attached as Exhibit 1 to Levy's attached Declaration.

DATED this 7th day of April, 2017.



By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

DECLARATION OF DEFENDANTS' COUNSEL

I, **ANAT LEVY**, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the courts of the State of Nevada. I represent Defendants Veterans in Politics, International, Inc. and Steve Sanson. I make this declaration in support of Defendants' Ex Parte Motion to Shorten Time on Defendants' Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion, filed concurrently herewith. If called upon as a witness I could and would testify competently as to the matters set forth herein as they are within my personal knowledge, except as to those matters that I expressly declare based on information and belief.

2. Plaintiffs served their First Amended Complaint ("FAC") on Defendants on April 4, 2017. Pursuant to stipulation of counsel, made before the Court on the morning of April 4, 2017, Defendants were given thirty (30) days to respond to the FAC, i.e., until May 4, 2017.

3. The response to the FAC will require Defendants' counsel to conduct additional research and briefing as the FAC contains allegations not previously made in the original complaint, including, a new purported cause of action for Deceptive Trade Practices, a new allegedly defamatory statement made on February 25, 2017 which was not included in the original complaint, a revised conspiracy claim involving a new person instead of the six prior defendants previously sued in the original complaint, and new factual allegations purporting to establish a motive for an alleged "smear campaign," pertaining to all of the claims.

4. Defendants intend to file motions to dismiss and may file another anti-SLAPP motion in response to the FAC. This will unfortunately cause Defendant to incur thousands of additional dollars in fees, in addition to the substantial sums already spent on motions made to the original complaint, including motions that were never heard because Plaintiffs filed their FAC one day before the hearing on those motions.

5. On April 3, 2017, Defendant filed a Notice of Appeal to the Supreme Court appealing the Court's denial of Defendant's anti-SLAPP motion in connection with Plaintiffs' original complaint. The standard of review for the appeal is *de novo*, and if the Supreme Court reverses the Court's March 30, 2017 Order, then Plaintiffs' original, and ergo, the FAC, would be dismissed on the merits and the case would end. This is set forth in more detail in Defendants' Motion to Stay Proceedings filed concurrently herewith.

6. The Clerk's office through the court's e-file system typically sets hearing dates on motions 32 days from the date of filing. This was told to me by the Clerk and comports with my experience in filing motions. Defendants are filing their motion for stay on Friday, April 7, 2017. Thirty-two days therefrom would be May 9, 2017, five days *after* Defendants' May 4, 2017 due date to respond to the FAC.

7. Even if the Clerk's office were to specially set the hearing date for the motion 21 days out, such date would still be April 28, and it would take the Clerk's office at least 3 days from Friday April 7 (over the weekend) until at least Monday April 10, 2017 to specially set it. Plus Defendant would have three extra days from that due to being served via E-serve. This means that the soonest the hearing on Defendants' request for stay could take place under this scenario would be May 1, 2017 (April 10 + 21 days notice time). This means that if Defendants' counsel wanted to file motions to dismiss by the May 4, 2017 deadline, she would need to start researching and preparing such motions well before the hearing on the motion to stay, which of course would force Defendant to incur the expenses of a response to the FAC thereby again undermining the very reason for the requested stay.

8. Attached as Exhibit 1 is a Proposed Order shortening time Defendants' motion to stay the proceedings.

9. I attempted in good faith to come to agreement with Plaintiffs' counsel regarding the issuance of a stay before filing the instant motion, but to no avail. See my separately filed Declaration in support of Defendants' motion for stay.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed this 7th day of April, 2017, in Las Vegas, Nevada.

Anat Levy

EXHIBIT 1

ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	CASE NO. A-17-750171-C DEPT. NO.: 18 ORDER SHORTENING TIME

ORDER

GOOD CAUSE APPEARING THEREFOR, it is hereby ORDERED that Defendants Veterans in Politics International, Inc.'s ("VIPI") and Steve W. Sanson's ("Sanson") (collectively, "Defendants") Ex Parte Motion to Shorten time on Defendants' Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion ("Motion to Stay") is hereby GRANTED.

IT IS SO ORDERED that in the interests of efficiency and to minimize costs in conformity with the purposes of Nevada's anti-SLAPP statutes to provide a fast and inexpensive procedure to resolve claims that fall under NRS §41.637 et. seq., the Court hereby sets the following briefing schedule for Defendants' Motion to Stay.

April 7, 2017 – Defendants file and E-serve their Motion to Stay;

April ___(14), 2017 – Plaintiffs' last day to oppose (file and E-serve) such motion;

April ___(18), 2017 – Defendants' last day to reply (file and E-serve) to Plaintiffs' opposition.

April ___(21), 2017, at ___a.m./p.m. – the hearing on Defendants' Motion to Stay.

The above schedule is designed to permit the Court to rule on Defendants' Motion to Stay before Defendants are be required, if at all, to begin work to respond to Plaintiffs' First Amended Complaint, which response is presently due by May 4, 2017.

DATED: _____, 2017

By: _____
DISTRICT COURT JUDGE

Respectfully submitted,

ANAT LEVY & ASSOCIATES, P.C.

By: _____

Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com
Counsel for Defendants Veterans in Politics International, Inc. and Steve W. Sanson.

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On the date indicated below, I caused to be served a true and correct copy of the document entitled **EX PARTE MOTION TO SHORTEN TIME ON DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document to their respective email addresses as indicated below.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubado, Esq. (Bar #10592)
G Law
703 S. 8th St.
Las Vegas, NV 89101
(702) 924-6553
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

Joshua Gilmore, Esq. (Bar #11576)
Bailey Kennedy
8984 Spanish Ridge Ave.,
Las Vegas, NV 89148-1302
(702) 562-8820
glimore@BaileyKennedy.com

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 7th day of April, 2017, in Las Vegas, NV

_____

NEOJ
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

Electronically Filed
04/11/2017 09:30:27 PM

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	CASE NO. A-17-750171-C DEPT. NO.: XVIII (18)

NOTICE OF ENTRY OF ORDER SHORTENING TIME

PLEASE TAKE NOTICE that on April 11, 2017 the Court entered an Order granting Defendants' Ex Parte motion to shorten time on Defendants' Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion. A file stamped copy of the Order is attached hereto. The hearing date is set for April 20, 2017, and the briefing schedule is set forth in the attached Order.

DATED: April 11, 2017

By: //Anat Levy//
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199; Alevy96@aol.com

ORDR

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	CASE NO. A-17-750171-C DEPT. NO.: 18 ORDER SHORTENING TIME

ORDER

GOOD CAUSE APPEARING THEREFOR, it is hereby ORDERED that Defendants Veterans in Politics International, Inc.'s ("VIPI") and Steve W. Sanson's ("Sanson") (collectively, "Defendants") Ex Parte Motion to Shorten time on Defendants' Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion ("Motion to Stay") is hereby GRANTED.

IT IS SO ORDERED that in the interests of efficiency and to minimize costs in conformity with the purposes of Nevada's anti-SLAPP statutes to provide a fast and inexpensive procedure to resolve claims that fall under NRS §41.637 et. seq., the Court hereby sets the following briefing schedule for Defendants' Motion to Stay.

April 7, 2017 – Defendants file and E-serve their Motion to Stay;

April 14 (14), 2017 – Plaintiffs' last day to oppose (file and E-serve) such motion;

April 18 (18), 2017 – Defendants' last day to reply (file and E-serve) to Plaintiffs' opposition.

April 20 (21), 2017, at 9:00 a.m./~~p.m.~~ – the hearing on Defendants' Motion to Stay.

The above schedule is designed to permit the Court to rule on Defendants' Motion to Stay before Defendants are be required, if at all, to begin work to respond to Plaintiffs' First Amended Complaint, which response is presently due by May 4, 2017.

DATED: April 11, 2017

By: _____
DISTRICT COURT JUDGE

Respectfully submitted,

ANAT LEVY & ASSOCIATES, P.C.

By: _____

Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com
Counsel for Defendants Veterans in Politics International, Inc. and Steve W. Sanson.

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a Copy of this Order was electronically served, emailed or mailed as follows:

Abrams & Mayo Law Firm

Name	Email	Select
Jennifer Abrams	JVAGroup@theabramslawfirm.com	

Anat Levy & Associates, P.C.

Name	Email	Select
Anat Levy, Esq.	alevy96@aol.com	

Bailey Kennedy

Name	Email	Select
Bailey Kennedy	bkfederaldownloads@baileykennedy.com	
Dennis L. Kennedy	dkennedy@baileykennedy.com	
Jennifer Kennedy	jkennedy@baileykennedy.com	
Joshua Gilmore	jgilmore@baileykennedy.com	
Kelly B. Stout	kstout@baileykennedy.com	
Susan Russo	srusso@baileykennedy.com	

G Law

Name	Email	Select
Alex Ghibaudo, Esq.	alex@alexglaw.com	
Danielle Alvarado	danielle@alexglaw.com	
Maryam Sabitian	maryam@alexglaw.com	

McLetchie Shell

Name	Email	Select
Maggie McLetchie, Esq.	maggie@nvlitigation.com	

McLetchie Shell, LLC

Name	Email	Select
Margaret McLetchie	maggie@nvlitigation.com	

McLetchie Shell, LLC

Name	Email	Select
E-File	efile@nvlitigation.com	

Willick Law Group

Name	Email	Select
Carlos A. Morales	carlos@willicklawgroup.com	☑
Justin	Justin@willicklawgroup.com	☑
Marshal S. Willick, Esq.	Marshal@willicklawgroup.com	☑
Reception	Email@willicklawgroup.com	☑

Paula Walsh

Paula Walsh, Relief Judicial Executive Assistant
Department 18

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action. On the date indicated below I caused to be served a true and correct copy of the document entitled **NOTICE OF ENTRY OF ORDER SHORTENING TIME** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document at emails listed below.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubado, Esq. (Bar #10592)
G Law
703 S. 8th St.
Las Vegas, NV 89101
(702) 924-6553
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 11th day of April, 2017, in Las Vegas, NV

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARSHAL S. WILLICK and MARSHAL S. WILLICK LLC d/b/a WILLICK LAW GROUP,

Plaintiffs,

vs.

STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC.; and DOES I through X,

Defendants.

Case No. A-17-750171-C
Dept. No. XVIII

PLAINTIFFS' OPPOSITION TO DEFENDANTS STEVE W. SANSON AND VETERANS IN POLITICS INTERNATIONAL, INC.'S MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION

HEARING DATE: April 20, 2017
HEARING TIME: 9:00 AM

Plaintiffs, Marshal S. Willick ("Mr. Willick") and Marshal S. Willick LLC d/b/a Willick Law Group (together, the "Willick Parties"), by and through their counsel, oppose the Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion filed by Defendants, Steve W. Sanson ("Mr. Sanson") and Veterans in Politics International, Inc. ("VIPI") (together, the "VIPI Defendants").

This Opposition is made and based on the papers and pleadings on file, the following Memorandum of Points and Authorities, and any oral argument heard by the Court.

DATED this 14th day of April, 2017.

BAILEY❖KENNEDY

By: */s/ Joshua P. Gilmore*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Setting aside the white noise, the VIPI Defendants have not established (or even attempted to establish) that they are likely to prevail on appeal—an essential element to obtaining a stay under *Nevada* law.[1] Frustrated with this Court's well-reasoned decision denying their anti-SLAPP Motion, the VIPI Defendants hope that the Nevada Supreme Court will reach a different result. But false hope does not equate with a likelihood of success on the merits, and the VIPI Defendants have not made any effort to meet their burden of proof under *Nevada* law.

[1] As set forth below, the VIPI Defendants' reliance on California law in requesting a stay is misplaced.

Because the Willick Parties should not be delayed in seeking redress for their injuries, this Court should deny the Motion to Stay.

II. RESPONSE TO THE VIPI DEFENDANTS' COMMENTARY ABOUT THE FIRST AMENDED COMPLAINT

The VIPI Defendants assigned nefarious intentions to the Willick Parties' decision to amend their Complaint *as expressly permitted by* NRCP 15(a). (*See* Mot. to Stay, 3:14 – 5:25.) The Court already rejected those gripes at the April 4, 2017 hearing, recognizing that the First Amended Complaint will help streamline this litigation. Moreover, the very basis of the VIPI Defendants' objection—e.g., that the Willick Parties added additional factual allegations and a cause of action for deceptive trade practices to their First Amended Complaint—weighs against granting a stay because it is *not* the subject of the appeal.

The VIPI Defendants also speculated that the Willick Parties delayed preparing the Order denying the anti-SLAPP Motion in order to file their First Amended Complaint. (*See id.* at 8 n.2.) Yet, this argument fails because the Willick Parties submitted their proposed Order on March 28, 2017—*six days before* they filed their First Amended Complaint.

III. ARGUMENT

A. The *Correct* Standard of Decision.

Absent from the Motion to Stay is a recitation of the factors that this Court *must* consider in deciding whether to stay this proceeding pending the appeal.[2] Those factors are:

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[2] Instead, the VIPI Defendants reference NRS 41.660(3)(e)(2), which, on its face, only applies to a stay of discovery pending "[t]he disposition of any appeal"—not a stay of the proceeding. If the Nevada Legislature intended for a defendant to obtain a stay of the proceeding pending its appeal of an Order denying its anti-SLAPP motion, it would have said so. *Randono v. CUNA Mut. Ins. Grp.*, 106 Nev. 371, 374, 793 P.2d 1324, 1326 (1990) (noting that statutory rules of interpretation require a Court to apply a clear and unambiguous statute as written "despite its potential for incommensurate hardship").

The VIPI Defendants also reference NRS 41.660(6); however, that section simply says that this Court "shall modify any deadlines . . . relating to a complaint filed pursuant to this section if such modification would serve the interests of justice." The word "stay" does not appear in this section of the statute. The fact that the word "stay" is used in sub-section (3) means that the Nevada Legislature intentionally and purposefully omitted it from sub-section (6). *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002) ("[If] Congress includes particular language in one section of a statute but omits it in another section of the same [statute], it is generally presumed that Congress act[ed] intentionally and purposely in the disparate inclusion or exclusion.") (quotation marks and citation omitted).

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> (1) whether the object of the appeal will be defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits in the appeal.

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). A strong showing "that the appeal lacks merit" will weigh against a finding that the object of the appeal will be defeated if the request for a stay is denied. *Id.* at 250, 89 P.3d at 37-38.

The VIPI Defendants' reliance on *California* law (as opposed to *Nevada* law) in requesting a stay is misplaced. (*See* Mot. to Stay, 8:17-21, 9:9 – 10:27.) In California, with limited exceptions not applicable here,

> Perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.

Cal. Civ. Proc. Code § 916(a). In *Varian Medical Systems, Inc. v. Delfino*—the principal case cited by the VIPI Defendants in their Motion to Stay—the California Supreme Court specifically relied on Section 916(a) in holding that a trial court must stay the proceedings pending the appeal of an Order denying an anti-SLAPP motion. *Id.*, 106 P.3d 958, 964-69 (Cal. 2005).

Because Nevada law does not have a rule or statute automatically staying a proceeding pending an appeal from an Order denying an anti-SLAPP motion, *Varian Medical Systems* and its progeny are inapplicable.

B. The VIPI Defendants' Appeal is Devoid of Merit, the Object of their Appeal Will Not be Defeated by Denying their Request for a Stay, and the Willick Parties Will Suffer Irreparable Harm if this Proceeding is Stayed.

Under Nevada law, the VIPI Defendants are not entitled to a stay of this proceeding because: (1) the appeal lacks merit; (2) the object of the appeal will not be defeated if the stay is denied; and (3) the Willick Parties—and not the VIPI Defendants—will suffer irreparable harm if the stay is granted.

First, this Court denied the VIPI Defendants' anti-SLAPP Motion because the Willick Parties did not sue the VIPI Defendants for engaging in statutorily protected activity. (Order, filed Mar. 30, 2017, 3:8 – 5:9.) *The VIPI Defendants made no attempt to show otherwise in their Motion to Stay.*

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They will be unsuccessful in attempting to do so on appeal because *none* of the statements underlying the Willick Parties' claims involves a *truthful* communication made by the VIPI Defendants in direct connection with an issue of "public interest." NRS 41.637(4); *Shapiro v. Welt*, 133 Nev. __, __, 389 P.3d 262, 268 (2017). That ends the anti-SLAPP analysis, whether before this Court or the Nevada Supreme Court.

Second, the object of the VIPI Defendants' appeal will *not* be defeated if this Court denies their request for a stay. If the VIPI Defendants are successful on appeal (which they will not be), the Nevada Supreme Court will reverse and remand with instructions for this Court to undertake the second prong of the anti-SLAPP analysis – *i.e.*, determine whether the Willick Parties have a probability of prevailing on their claims. (*Contra* Mot. to Stay, 8:22 – 9:5.) That is because this Court did not address "whether the Willick Parties have presented prima facie evidence supporting their claims" because "the VIPI Defendants . . . failed to meet their initial burden of proof." (Order, filed Mar. 30, 2017, 5:9-16.) Addressing the remaining claims in the First Amended Complaint will aid this Court in assessing the Willick Parties' probability of prevailing on their claims under the guise of NRS 41.660(3)(c), if the need to do so arises following the appeal.

Finally, the fact that the VIPI Defendants may have to incur fees and costs defending against the Willick Parties' claims, (Mot. to Stay, 6:14 – 7:2, 10:27 – 11:5), does *not* establish irreparable harm. *See Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) (stating that litigation expenses, "while potentially substantial, are neither irreparable nor serious"). In contrast, "[t]he right to carry on a lawful business without obstruction is a property right, and acts committed without just cause or excuse which interfere with the carrying on of plaintiff's business or destroy its custom, its credit or its profits, do an irreparable injury." *Guion v. Terra Mktg. of Nevada, Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974). Thus, entering a stay would delay the Willick Parties' ability to obtain relief from the irreparable harm caused by the VIPI Defendants' actions.

Because the VIPI Defendants cannot show that a stay of this proceeding pending their (futile) appeal is warranted under *Nevada* law, this Court should deny their request for a stay.

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III. CONCLUSION

Though perhaps appealing at first glance, a stay of this proceeding is not warranted under Nevada law because the VIPI Defendants were not sued for engaging in statutorily protected activity as defined under NRS 41.637(4) and interpreted by the Nevada Supreme Court in *Shapiro*. The VIPI Defendants have no chance of success on appeal, and therefore, no right to request a stay of this proceeding pending the appeal. A stay will solely work to their advantage by allowing them to delay being held accountable for their wrongdoing to the detriment of the Willick Parties. By contrast, allowing this proceeding to continue will advance the objectives of the litigation.

For these reasons, the Court should deny the Motion to Stay.

DATED this 14th day of April, 2017.

BAILEY❖KENNEDY

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 14th day of April, 2017, service of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS STEVE W. SANSON AND VETERANS IN POLITICS INTERNATIONAL, INC.'S MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; VETERNAS IN POLITICS INTERNATIONAL, INC.; and DOES 1 THROUGH X, Defendants.	Case No: A-17-750171-C Dept.: XVIII (18) Hearing Date: April 20, 2017 Hearing Time: 9:00 a.m.

REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION

Defendants Veterans in Politics International, Inc. ("VIPI") and Steve W. Sanson ("Sanson") hereby Reply to Plaintiffs' opposition to Defendants' motion to stay proceedings pending their appeal on their anti-SLAPP motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs make three principal arguments in opposition to Defendants' motion to stay these proceedings pending the appeal on their anti-SLAPP motion:

First, Plaintiffs argue that there is no authority in Nevada's anti-SLAPP statutes to stay these proceedings because the statutes don't use the exact words "stay proceedings." Yet, NRS 41.660(6) expressly requires the Court to "modify any deadlines pursuant to this section or any other deadlines relating to a complaint," and NRS 41.660(3)(e)(2) expressly obligates the Court to "stay discovery pending . . . the disposition of any appeal from the ruling on the motion." Together, in this case, this means the Court should stay the proceedings – the response to the First Amended Complaint pursuant to NRS 41.660(6), and subsequent discovery pursuant to NRS 41.660(3)(e)(2).

Second, Plaintiffs argue that the Court should not rely on the plethora of California cases that stay cases pending appeals of anti-SLAPP motions because they purportedly require reliance on Cal. Civ. Code §916(a), for which Nevada has no counterpart. This is wrong. The holdings in these cases do not require an adoption of Cal. Civ. Code §916(a). Rather, the cases (the seminal case of which has been cited over 400 times including in different states and federal circuits), hold that proceeding with a case while defendants appeal the denial of an anti-SLAPP motion is "inconsistent" with the purpose of anti-SLAPP statutes. The anti-SLAPP statutes provide defendants with immunity from suit, not just immunity from liability. Proceeding with the case while the appeal is pending is the antithesis of the purpose of the statutes and results in the court exceeding its subject matter jurisdiction. In other words, *the court's rulings on the case pending the appeal may be vacated for lack of* jurisdiction.

Third, Plaintiffs argue that the proper test to be used to determine whether the case should be stayed is the test set forth in NRAP §8(a). Not only does that not apply

since this is not an appellate court, but the test also does not apply in connection with anti-SLAPP motions which have their own rules on stays pending appeals. Even if the test is used, however, as shown below, the results fall squarely in favor of granting a stay.

Continuing with the case pending the appeal on Defendants' anti-SLAPP motion would undermine the very purpose of Nevada's anti-SLAPP statutes, exceed the Court's subject matter jurisdiction (which may require vacating all future rulings pending the outcome of the appeal), and would cause irreparable harm to Defendants whose constitutionally protected free speech rights are at issue.

Further, failing to stay the case when the Supreme Court will issue a de novo review of the entire anti-SLAPP motion, and may either dismiss the entire case or at a minimum, issue a ruling that may affect this court's future orders (for example, the Supreme Court is likely to find that Plaintiffs are public figures, so this court would be required to find that Plaintiffs proved that Defendants acted with malice) would be a colossal waste of judicial and litigant time and resources.

It makes no sense to proceed under these circumstances.

I. NEVADA'S ANTI-SLAPP STATUTES AUTHORIZE THE COURT TO STAY THIS CASE.

Plaintiffs wrongly claim that Nevada's anti-SLAPP statutes do not authorize a stay of proceedings in this case because they do not expressly use the words "stay of proceedings."

NRS 41.660(6) expressly requires the Court to "modify any deadlines pursuant to this section or any other deadlines relating to a complaint" where such modification would best serve the interests of justice.

NRS 41.660(3)(e)(2) expressly obligates the Court to "stay discovery pending . . . the disposition of any appeal from the ruling on the motion."

Plaintiffs fail to explain why the Court cannot "modify" the due date of Defendants' response to the First Amended Complaint ("FAC") to a date set after the

resolution of Defendants' appeal under NRS 41.660(6), and why any discovery thereafter wouldn't be stayed under NRS 41.660(3)(e)(2).

Given that we are at the complaint stage of this case (because Plaintiffs waited months to "voluntarily" and significantly amend their complaint)[1] as a practical matter, these two statutes require a stay of these proceedings until after Defendants' interlocutory appeal.

Failing to stay the proceedings would be inconsistent with Nevada's strong public policy that underlies anti-SLAPP motions -- "to quickly and cheaply dispose of meritless suits against them filed in retaliation for certain forms of speech." Panicaro v. Crowley, (Nev. App., 2017) unpub. op.; emphasis added; see also, Davis v. Parks (Nev., 2014 unpub.) (Nevada's anti-SLAPP statutes "filter unmeritorious claims in an effort to protect citizens from costly retaliatory lawsuits arising from their right to free speech." This also comports with NRS § 41.660(5) which states that dismissal of a complaint pursuant to anti-SLAPP statutes "operates as an adjudication upon the merits") and Doe v. Brown (NV Sup. Ct. May 29, 2015, unpub.) on which this Court relied in issuing its Order on Defendants' anti-SLAPP motion ("[u]nder Nevada's anti-SLAPP statute, district courts treat a special motion to dismiss as a motion for summary judgment and, if granted, as an adjudication on the merits.")

II. THE COURT CAN RELY ON CALIFORNIA CASES ON THIS ISSUE.

A. The Analysis in California's Myriad of Cases on This Issue Does Not Depend on Cal. Code Civ. Proc. §916(a).

Plaintiffs wrongly argue that the Court should not consider California cases that require a stay of proceedings pending the appeal of an anti-SLAPP motion, because such cases purportedly depend on California Code of Civil Procedure 916(a) which is not in effect in Nevada.

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[1] As explained in more detail in Defendants' moving papers (Mtn, at 3:24-5:2), the changes include changing prior allegations, making new allegations that involve third parties not previously mentioned, adding a whole new cause of action, adding another allegedly defamatory statement and dropping numerous claims and defendants.

First, the rationale in the California cases transcend and do not depend on Cal. Code of Civ. Proc. 916(a). Rather, they express the underlying public policy and legislative history of California's anti-SLAPP statutes as being a substantive immunity from suit, not just an immunity from liability. This is why anti-SLAPP motions are subject to immediate interlocutory appeals. In D.C. Comics v. Pac. Pictures Corp. 706 F.3d 1009, 1013, 1015 companies and individuals claiming intellectual property rights to the Superman comic character appealed when the district court denied their anti-SLAPP motion. The Ninth Circuit stated that California's anti-SLAPP statute "functions as immunity from suit, and not merely as a defense against liability." (Emphasis added.) Because "an immunity from suit is 'imbued with a significant public interest' that is not always present with regard to a defense against liability," the Ninth Circuit ruled that "the denial of an immunity from suit—whether created by state or federal law—is an immediately appealable collateral order." Id. (quotation omitted).

The Sixth Circuit court of appeals in Black v. Dixie Consumer Prods. LLC, Case no. 15-5889 (6th Cir., 2016), citing the D.C. Comics case, agreed and further explained that "[o]ther courts of appeals have followed a similar path. See, e.g., Godin v. Schencks, 629 F.3d 79, 84-85 (1st Cir. 2010) (allowing interlocutory appeal for denial of anti-SLAPP motion under Maine law); Liberty Synergistics Inc. v. Microflo Ltd., 718 F.3d 138, 143 (2d Cir. 2013) (same under California's anti-SLAPP statute); NCDR, L.L.C. v. Mause & Bagby, P.L.L.C., 745 F.3d 742, 752 (5th Cir. 2014) (same for Texas's anti-SLAPP statute); see also McMahon v. Presidential Airways, Inc., 502 F.3d 1331, 1339-40 (11th Cir. 2007) (permitting appeal by military contractor due to "substantial claim to a true immunity from suit")."

B. Nevada's Legislature Passed the Anti-SLAPP Statutes as a Substantive Immunity from Suit, and Look to California Law Which Is More Developed on Anti-SLAPP cases.

When amending Nevada's anti-SLAPP statute, the Nevada legislature itself indicated that Nevada's anti-SLAPP statutes create a substantive immunity from suit,

not just immunity from liability which is why litigants have an immediate right to appeal anti-SLAPP orders. See, Senate Committee on Judiciary, hearing on Nev. SB 286 at 3 (Mar. 28, 2013).

Both Nevada's Legislature and its judiciary have historically looked to California for guidance in crafting and applying its Anti-SLAPP statute. The Nevada Supreme Court explicitly stated that "we consider California case law because California's Anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute." See, John v. Douglas Cnty. Sch. Dist., 125 Nev. 746, 756 (2009); see also, Shapiro v. Welt, 133 Nev. Adv. Rep. 6 (Nev. 2017); see also, Nev. Rev. Stat. § 41.465(2) ("the Legislature intends that in determining whether the plaintiff "has demonstrated with prima facie evidence a probability of prevailing on the claim" the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015").

In Varian Med. Sys. v. Delfino, 25 Cal.Rptr.3d 298, 307-308, 35 Cal.4th 180, 106 P.3d 958 (Cal., 2005), the case that Plaintiffs would have this court ignore, the California Supreme Court expressly held that it is "inherently inconsistent" to proceed with a lawsuit while a defendant is appealing the denial of his anti-SLAPP motion. "[S]uch a proceeding is inherently inconsistent with the appeal because the appeal seeks to avoid that very proceeding." Id. This is the results of its analysis. It is not dependent on Cal. Code of Civ. Proc. §916(a).[2]

C. Proceeding with the Substance of the Case Divests the Court of Subject Matter Jurisdiction.

Proceeding with this case when to do so would be inconsistent with the purpose of the anti-SLAPP statute divests the court of subject matter jurisdiction. In Williams v.

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[2] But even if it did (which it doesn't), to say that Nevada cannot rely on it because Nevada has no corollary rule is circular – if Nevada had a corollary rule there would be no need to rely on California law. Nevada looks to the more developed law in California to administer its anti-SLAPP statutes.

Nordstrom, Inc. (Cal.App., 2016), the appellate Court held that the lower court would be exceeding its subject matter jurisdiction to proceed with a case when to do so would be inconsistent with a possible outcome of a pending appeal. "[We] conclude the superior court exceeded its jurisdiction by dismissing the action while appeal of the August 7, 2015 discovery order remained pending."

This Court simply cannot proceed when, as shown above, to do so would undermine and be inconsistent with the pending anti-SLAPP appeal.

III. THIS CASE SHOULD BE STAYED EVEN UNDER THE FACTORS SET FORTH IN PLAINTIFFS' OPPOSITION.

Plaintiffs argue that the court should only consider the four factors (outlined below) that are set forth in Nev. Rules of App. Proc. 8(c) and repeated in the case cited by Plaintiffs, Mikohn Gaming Corp. v. McCrea, 89 P.3d 36, 120 Nev. 248 (Nev., 2004). Yet, even under these four factors, the present case should be stayed.

As a preliminary matter, it should be noted that Plaintiffs' argument that the fourth factor – the probability of success of the appeal –should be given the most weight is wrong. The Mikohn court expressly stated: "We have not indicated that any one factor carries more weight than the others, although Fritz Hansen A/S v. District Court recognizes that if one or two factors are especially strong, they may counterbalance other weak factors." Mikohn, 89 P.3d at 38 (emphasis added). Notably, in State v. Robles-Nieves, 306 P.3d 399, 129 Nev.Adv.Op. 55 (Nev., 2013), the court found that in connection with a criminal hearing involving evidence suppression issues, the four factors used in NRAP 8(a) pertaining to stays in civil cases should apply, and that the first factor -- inconsistency with the object of the appeal -- and third factor (irreparable harm to the respondent when his constitutional right to a speedy trial is at issue) were the most significant. The court stated: "The first factor is the most significant because the appeal will be rendered moot and the State's right to appeal effectively eliminated if the trial proceeds. In that context, the third factor also is significant and may require

consideration of the defendant's speedy-trial rights…" Id., 306 P.3d 402. The court in that case granted a stay in the case to protect the defendants' constitutional rights.

A. Factor #1: Whether The Object Of The Appeal Will Be Defeated If The Stay Is Denied:

In Mikohn, the case cited by Plaintiffs, the court held that the court proceedings had to be stayed because they were "inconsistent" with a party's appeal to enforce the arbitration clause in the parties' contract. The court reasoned that the purpose of the arbitration clause was to refer the controversy to arbitration, which was inconsistent with continuing to litigate the case in Nevada's courts.

The same reasoning would apply here. As discussed above and in Defendants' moving papers, not only have California courts held that proceeding with a case while an anti-SLAPP appeal is pending is inconsistent with the purpose of the anti-SLAPP statutes, but other federal and state courts have similarly held. For example, the Massachusetts Supreme Court held that "[t]he protections afforded by the anti-SLAPP statute against the harassment and burdens of litigation are in large measure lost if the petitioner is forced to litigate a case to its conclusion before obtaining a definitive judgment through the appellate process." Fabre v. Walton (2002) 436 Mass. 517, 781 N.E.2d 780, 784.

Accordingly, this factor bodes in favor of Defendants' motion for a stay.

B. Factor #2: Whether Appellant Will Suffer Irreparable Or Serious Injury If The Stay Is Denied.

Appellant's constitutionally protected first amendment free speech rights are at stake. Plaintiffs have filed this lawsuit, and have engaged in other wrongful and oppressive acts including filing another pending similar case against Defendants, overreaching on alleged causes of actions (now dismissed), naming defendants associated with VIPI or Steve Sanson simply because of such association (these defendants now dismissed), seeking to incarcerate Sanson (which the court denied), getting VIPI's internet email service shut down based on an unconstitutionally obtained

court order (now vacated by the issuing court), posting viciously disparaging statements about Defendants on Plaintiffs' website (which make Defendants' statements about Plaintiffs pale by comparison) and engaging in other bad faith acts (as set forth in more detail in Defendants' anti-SLAPP motion at 6:1-8:11), to stifle Defendants' first amendment free speech rights. Continuing the object of this case, which is to stifle and punish Defendants' protected speech, particularly when Nevada law provides for a fast and efficient procedural tool to minimize any infringement on Defendants' constitutional rights, would cause irreparable harm to Defendants. Just as in the Robles-Nieves case above, when a party's constitutionally protected rights are threatened, that party is suffers irreparable harm.

C. Factor #3: Whether Plaintiff Will Suffer Irreparable Or Serious Injury If The Stay Is Granted.

Citing Guion v. Terra Mktg. of Nevada, Inc., 90 Nev. 237, 240, 523 P.2d 847, 848 (1974), Plaintiffs argue that they will suffer irreparable harm because Defendants are somehow "obstructing" Plaintiffs' "ability to carry on a lawful business," and are "interfering with such business or trying to destroy its custom, its credit or its profits."

Yet, Guion's holding had nothing to do with the type of conduct at issue in this case, and in fact, held the opposite with regard to such conduct. In Guion, the appellant put signs up in front of Respondent's place of business to discourage people from entering and physically threatened to kill the respondent. The Court stated that:

> It is a long-standing rule of equity that publication of unjust and malicious matter will not be restrained simply upon a showing of its falsity. Equity will, however, restrain tortious acts where it is essential to preserve a business or property interest and also restrain the publication of false and defamatory words where it is the means or an incident of such tortious conduct."

Id., 90 Nev. at 239-240 (emphasis added). In other words, there is no irreparable harm to Plaintiffs simply by virtue of the alleged defamatory statements without some other tort that keeps people from doing business with Plaintiffs.

Notably, throughout the myriad of documents filed to date, Plaintiffs' have not

made a single factual allegation or showing of any tangible harm resulting from Defendants' statements.

Moreover, the anti-SLAPP cases make clear that any resulting delays to Plaintiffs resulting from the stay is irrelevant. The California Supreme Court in Varian, 35 Cal. 4th at 192-96 noted that, because the anti-SLAPP statutes protect defendants, its automatic stay provision may subject plaintiffs to delay or to additional litigation costs, but that is not determinative in issuing the stay. Similarly in Makaeff v. Trump University, the California District Court held that the Counter-Plaintiffs' concerns about additional litigation costs "are not relevant in deciding the breadth of the automatic stay pending the cross-Defendant's anti-SLAPP appeal." Makaeff v. Trump Univ. LLC (S.D. Cal., Feb. 2, 2011) p. 4; emphasis added. See also, Flores v. Fike, 2007 WL 963282, at *7 n.6 (E.D. Cal. Mar. 29, 2007) ("The purpose of the Anti-SLAPP statute, to prevent parties from being dragged through the courts because they exercised their constitutional rights, does not protect Plaintiffs, who filed the state law claims that are the subject of the Anti-SLAPP motion.").

Accordingly, this factor likewise cuts in favor of issuing a stay.

D. Factor #4: Whether Appellant Is Likely To Prevail On The Merits In The Appeal.

In denying Defendants' anti-SLAPP motion, the Court found that Defendants did not prove by a preponderance of the evidence that (a) Defendants acted in good faith, (b) the subject matter of the statements were of public concern, and (c) Plaintiff Willick is a "public figure." (See, Order on Defendants' anti-SLAPP motion, at pp. 4:26-5:9.) Defendants believe that each of these findings will be overturned on appeal.[3]

First, contrary to Plaintiffs' arguments, Nevada's anti-SLAPP statutes do not require that the statements at issue be truthful in order to be immune from suit. Courts have expressly rejected that requirement. In Piping Rock Partners, Inc. v. David Lerner Associates, 946 F. Supp.2d 957, 969, 2013 U.S. Dist. Lexis 70660 (N.D. Cal. 2013), the

[3] This reply is not intended to be a full recitation of the facts and law on which Defendants' appeal will be based. All of Defendants' rights to argue additional facts and law on appeal are expressly reserved.

case that the Nevada Supreme Court expressly adopted in Shapiro v. Welt, 2017 Nev. Lexis 1, 133 Nev. Adv. Rep. 6 (Nev. 2017), the California Supreme Court stated:

> By asserting that the statements are not in the public interest because they are false, plaintiffs urge the Court to "read a separate proof-of-validity requirement into the operative sections of the statute," which this Court cannot do…. Moreover, "plaintiffs' argument confuses the threshold question of whether the SLAPP statute potentially applies with the question of whether an opposing plaintiff has established a probability of success on the merits.

(Citations omitted; emphasis added.) The anti-SLAPP statutes require only that the statements be either true or made without knowledge of its falsehood, i.e., made in good faith. NRS 41.637(4). Defendants' testimony and actions in that regard fully support, factually and as a matter of law, a finding of good faith:

> "I made each of the above postings on behalf of VIPI in good faith, believing them to be true or believing them to constitute my valid good faith opinion on the subject. I at all times hyperlinked my statements to the documents I believed were relevant so that readers would be able to judge for themselves. The postings also gave readers the case numbers in case they wanted to look further into the cases to make up their own minds about VIPI's postings."

Sanson Decl., ¶15, filed in support of Defendants' anti-SLAPP motion; see also, the relevant case law cited in Defendants' anti-SLAPP motion pertaining to the legal effect of adding hyperlinks to online statements, what constitutes a non-actionable "opinion" and the effect of issuing a correction (which pertains to one of the five statements at issue). By contrast, Plaintiffs have offered no evidence whatsoever, nor any legal authority, that the statements were not made in good faith.

Second, the Court's finding that the statements at issue are not of "public concern" is also subject to reversal. First, the statements at issue all dealt with Plaintiffs' court and work practices.[4] Plaintiffs are attorney Willick and his law firm. Attorneys

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[4] A December 25, 2016 statement on the VIPI website stating "[t]his is the type of hypocrisy we have in our community. People that claim to be for veterans but yet the screw us for profit and power." (Cmplt.¶¶ 20-25.) A January 12, 2017 post on the VIPI website stating "Attorney Marshall [sic] Willick and his pal convicted of sexually coercion of a minor Richard Crane was

are officers of the court, empowered by elected officials, i.e., the Supreme Court Justices, to assist in the administration of justice, in courtrooms paid for by the general public. Nevada Sup. Ct. Rule 39 states: "Attorneys being court officers and essential aids in the administration of justice, the government of the legal profession is a judicial function." The Supreme Court has the sole authority to admit and to discipline attorneys. Id. Attorneys practice before judicial officers who are elected by the people. Attorneys hold themselves out to the public, work on a for-profit basis, and can be "public figures" under a plethora of cases, even if such attorneys are not elected officials themselves. The performance and behavior of attorneys and judges in open court is not a "mere curiosity." Indeed, the operation of Nevada's courtrooms is a matter of great public concern. See, Lubin v. Kunin, 117 Nev. 107, 114 (Nev. 2001) ("'fair, accurate and impartial' reporting of judicial proceedings is privileged and nonactionable, thus affirming the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings"). Reflecting the importance of the public's right to know about attorney conduct, courts addressing various states' anti-SLAPP statutes have found that criticizing attorneys is protected activity for anti-SLAPP purposes. In Davis v. Avvo, Inc., No. C11-1571RSM, 2012 WL 1067640, at *3 (W.D. Wash. Mar. 28, 2012, the Court stated: "The Court has no difficulty finding that the Avvo.com website is 'an action involving public participation,' in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer"). In Choyce v. SF Bay Area Indep. Media Ctr, , 2013 WL 6234628, at *8 (N.D. Cal. Case No. 13-CV-01842-JST Dec. 2, 2013) the court held: " The Court finds that substantial number of people, especially potential clients, would be concerned, for reasons beyond mere curiosity, with whether an attorney was embezzling from clients, and the statements alleged in the complaint are closely connected to that interest." The Court

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found [sic] guilty of defaming a law student in United States District Court Western District of Virginia signed by US District Judge Norman K. Moon." (Cmplt., ¶¶ 26-29.) A January 14, 2017 post on the VIPI website stating "[w]ould you have a Family Attorney handle your child custody case if you knew a sex offender works in the same office? Welcome to The [sic] Willick Law Group." (Cmplt., ¶¶30-31.) Two January 14, 2017 Facebook postings pertaining to a recent case that Willick handled entitled Holyoak v. Holyoak. (Cmplt., ¶¶ 32-35.)

further stated:

> In fact, the level of public interest in the conduct of an attorney is both actually and appropriately higher than the level of interest in the conduct of viatical settlement brokers or online universities. Cf. Wilbanks, 121 Cal.App.4th at 889; Makaeff, 715 F.3d at 260. **Lawyering is "a profession imbued with the public interest and trust," Standing Comm. on Discipline of U.S. Dist. Court for S. Dist. of California v. Ross, 735 F.2d 1168, 1170 (9th Cir.1984), and California law specifically recognizes the public's heightened interest in acts of moral turpitude committed by members of the California bar. Cal. Bus. & Prof. Code §§ 6001.1, 6106.**

Should there be any doubt about whether what an attorney does in the courtroom or in his practice is a matter of "public concern" one need only look to the Nevada State Bar's Mission statement: "To govern the legal profession, to serve our members, **and to protect the public interest**." See, https://www.nvbar.org/about-us/our-mission/. "Public interest" and "public concern" are synonymous. (See their interchangeability in Nevada's anti-SLAPP statute which uses the term "public concern" and cases thereunder, including the Piping Rock Partners case, which use the term "public interest.")

Further, as discussed more fully in Defendants' anti-SLAPP motion and reply, the statements fall squarely within the ambit of Snyder v. Phelps, 131 S.Ct. 1207, 179 L. Ed. 2d 172 (2011), wherein the United States Supreme Court broadly defined what constitutes a matter of public concern: "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' . . . or when it 'is a subject of legitimate news.'" (Emphasis added; citations omitted.) The Court made clear that "[a] statement's arguably 'inappropriate or controversial character... is irrelevant to the question of whether it deals with a matter of public concern'" (citing, Rankin v. McPherson, 483 U. S. 378, 387. Pp. 5-7.) Statements pertaining to lawyers' court practices, overcharging for services, and

frankly any other matter that the State Bar would have an interest in regulating to protect the public, is by its very definition a matter of public concern and by its very nature a matter of "concern to the community."

Third, the Court's ruling that Plaintiff Marshal Willick is not a public figure because he is not an elected official is also likely to be reversed. Cases have consistently held that attorneys and private citizens can be public figures, regardless of whether they are elected or not, when they purposely publicly interject themselves into public issues. In Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 the court found that anyone who injects himself or is drawn into a particular public controversy, as Willick routinely does (see below). In Wynn v. Smith, 117 Nev. 6, 16 P.3d 424 (2001) the Nevada Supreme Court found that Steve Wynn was a public figure. In Young v. The Morning Journal, 129 OhioApp.3d 99, 717 N.E.2d 356 (1998) the court found that a local attorney's well-publicized involvement in running a narcotics investigative unit for 15 years made him a "public figure" for purposes of a defamation suit. In Schwartz v. Worral Publications, Inc., 258 N.J. Super. 493, 610 A.2d425 (App.Div. 1992) the court found that an attorney for the school boards association was a "public figure."

In this case, Willick's status as a public figure should be clear. Willick touts his firm as "the premiere Family Law firm in Nevada." He thrusts himself into public controversy by testifying before the Nevada legislature on proposed legislation (see, Sanson Decl. filed in support of anti-SLAPP motion ["Sanson Decl."], Exs. 8, 9), has written dozens of articles on family law matters (see Willick's 11 page resume, attached as Ex. 8 to Levy Decl. filed in support of Defendants' anti-SLAPP motion ["Levy Decl."]), has written 3 books on family law matters (Levy Decl., Ex. 9), is extensively quoted in the Las Vegas Review Journal and other publications (Levy Decl., Ex. 10), has received numerous local and national awards for his work (Levy Decl., Ex. 8) and makes public appearances on television, radio and in newspapers to promote his work and firm. His firm also has a large public billboard right across the street from family court (Levy

Decl., Ex. 12) marketing his firm to the public. The Supreme Court has ample legal basis to find that Willick is a public figure for purposes of defamation law.

Fourth, Plaintiffs' argument that the Supreme Court would not be able to dismiss this case outright because it would have to remand the case to this court to determine whether Plaintiffs can demonstrate a prima facie case of succeeding on the merits is wrong. The Supreme Court will review Defendants' anti-SLAPP motion in its entirety, de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) ("[t]he appropriate standard of review for a denial of a special motion to dismiss would be the same as for a grant of summary judgment: de novo."); Doe v. Brown (Nev., 2015, unpub. op.). The Supreme Court will have broad latitude to review the entirety of the motion, the plethora of evidence submitted by Defendants in support of the motion, the utter lack of evidence presented by Plaintiffs in opposition, and grant Defendants' anti-SLAPP motion in its entirety without having to remand it for further findings.

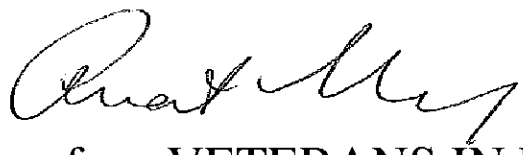
Moreover, even if the Supreme Court were to remand it, the Supreme Court's ruling may have a significant effect on this case's analysis moving forward, for example, if the Supreme Court finds that Plaintiffs are public figures, then Plaintiffs will have to show that Defendants acted with actual malice.

Accordingly, this factor likewise cuts in favor of staying the case.

IV. CONCLUSION

For all of the reasons set forth above and in Defendants' moving papers, Defendants' motion to stay the proceedings pending a resolution of Defendants' appeal on its anti-SLAPP motion should be granted. The balance of equities and the law itself require a stay.

DATED: April 18, 2017

By: 
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
(310) 621-1199; Alevy96@aol.com

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On the date indicated below, I caused to be served a true and correct copy of the document entitled **REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING APPEAL ONORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document to their respective email addresses as indicated below.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubado, Esq. (Bar #10592)
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alex@alexglaw.com

Courtesy Copy:

Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
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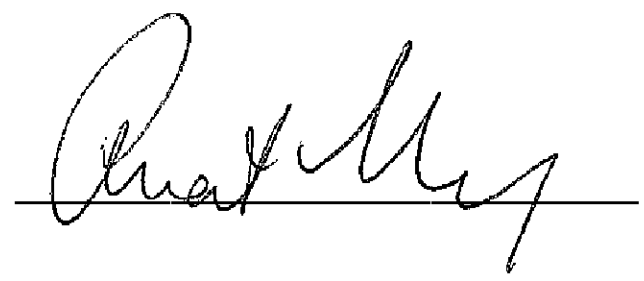
(702) 728-5300
Maggie@nvlitigation.com

Joshua Gilmore, Esq. (Bar #11576)
Bailey Kennedy
8984 Spanish Ridge Ave.,
Las Vegas, NV 89148-1302
(702) 562-8820
glimore@BaileyKennedy.com

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 18th day of April 2017, in Las Vegas, NV



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CLERK OF THE COURT

NEO
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
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Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS Veterans In Politics International, Inc. and Steve Sanson

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	CASE NO. A-17-750171-C DEPT. NO.: XVIII (18)

NOTICE OF ENTRY OF ORDER STAYING PROCEEDINGS

PLEASE TAKE NOTICE that on May 3, 2017 the Court entered an Order granting Defendants Veterans in Politics International, Inc.'s and Steve Sanson's Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion. A copy of the Order is attached hereto.

DATED: May 9, 2017

By: _____
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199; Alevy96@aol.com

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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHAL S. WILLICK and MARSHAL S. WILLICK LLC d/b/a WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC.; and DOES 1 THROUGH X, Defendants.	CASE NO. A-17-750171-C DEPT. NO.: 18 ORDER ON DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING APPEAL ON ORDER DENYING DEFENDANTS' ANTI-SLAPP MOTION

The motion of Defendants Veterans in Politics International, Inc. ("VIPI") and Steve W. Sanson ("Sanson") (collectively, "Defendants") to Stay Proceedings Pending Appeal on Order Denying Defendants' anti-SLAPP motion (the "Motion to Stay"), came on for hearing before the Court on April 20, 2017, at 9:00 a.m. in Department 18, the Honorable Charles Thompson, Senior Judge, presiding. The time for hearing the Motion to Stay was shortened pursuant to the Court's April 11, 2017 Order Shortening Time.

Plaintiffs Marshal S. Willick ("Willick") and Marshal S. Willick LLC d/b/a Willick Law Group ("Willick Law Group") (collectively, "Plaintiffs") appeared through their counsel, Joshua P. Gilmore, Esq. of Bailey Kennedy, LLP and Jennifer V. Abrams, Esq. of The Abrams & Mayo Law Firm. Defendants appeared through their counsel, Anat Levy, Esq. of Anat Levy & Associates, P.C. Sanson also appeared on behalf of Defendants with counsel.

The Court, having considered the Motion to Stay, Plaintiffs' Opposition, Defendants' Reply, and such further argument and documents as the Court deemed relevant, HEREBY FINDS AND ORDERS AS FOLLOWS:

FINDINGS OF FACT:

1. On March 30, 2017, the Court entered an order denying Defendants' anti-SLAPP special motion to dismiss pursuant to NRS 41.650 et seq. and Plaintiffs' countermotion for attorney's fees and costs (the "Anti-SLAPP Order").

2. On April 3, 2017, Defendants filed a Notice of Appeal of the Anti-SLAPP Order pursuant to NRS Section 41.670(4), which states as follows: "If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

3. Also on April 3, 2017, Plaintiffs filed a First Amended Complaint pursuant to N.R.C.P. 15(a). Defendants reserve all rights in connection with responding to the First Amended Complaint.

4. On April 7, 2017, Defendants filed and served their Motion to Stay, along with a supporting Declaration of Anat Levy and exhibits thereto.

5. Also on April 7, 2017, Defendants filed an *ex parte* Motion to Shorten Time and to set a briefing schedule on their Motion to Stay (the "Motion to Shorten Time").

6. On April 11, 2017, the Court entered an Order granting the Motion to Shorten Time.

7. On April 14, 2017, Plaintiffs timely filed and served their Opposition to the Motion to Stay.

7. On April 18, 2017, Defendants timely filed and served their Reply in support of their Motion to Stay.

CONCLUSIONS OF LAW

1. NRS Section 41.660(6) requires the Court to "modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to

this section if such modification would serve the interests of justice."

2. NRS Section 41.660(3)(e)(2) requires the Court to "stay discovery pending . . . [t]he disposition of any appeal from the ruling on the motion."

3. Based on these statutes and relevant case law as briefed by the parties, the Court finds that GOOD CAUSE exists and the interests of justice are best served by GRANTING Defendants' Motion to Stay.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, and good cause appearing,

THE COURT HEREBY ORDERS that this case is hereby STAYED pending resolution of Defendants' appeal of the Court's Anti-SLAPP Order.

DATED: this 3rd day of May, 2017

By: _____
DISTRICT COURT JUDGE
ROBERT E. ESTES
SENIOR DISTRICT COURT JUDGE

Respectfully submitted,
ANAT LEVY & ASSOCIATES, P.C.

By: _____
Anat Levy, Esq. (Bar #12250)
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com
Counsel for Defendants Veterans in Politics International, Inc. and Steve W. Sanson.

Approved as to form and content by:
BAILEY KENNEDY, LLP

By: _____
Joshua P. Gilmore, Esq. (Bar #11576)
Bailey Kennedy, LLP
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Las Vegas, NV 89148
Ph: (702) 562-8820
JGilmore@BaileyKennedy.com
Counsel for Plaintiffs Marshal Willick, Esq. and Willick Law Group.

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action. On the date indicated below I caused to be served a true and correct copy of the document entitled **NOTICE OF ENTRY OF ORDER STAYING PROCEEDINGS** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document at the email addresses stated below.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
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(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubado, Esq. (Bar #10592)
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Joshua Gilmore, Esq. (Bar #11576)
Bailey Kennedy
8984 Spanish Ridge Ave.,
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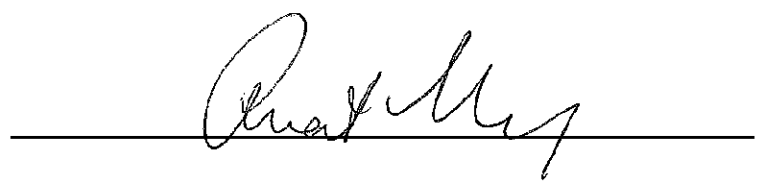
glimore@BaileyKennedy.com

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 9th day of May, 2017, in Las Vegas, NV



DISTRICT COURT
CLARK COUNTY, NEVADA

Intentional Misconduct	COURT MINUTES	June 22, 2017

A-17-749318-C Jennifer Abrams, Plaintiff(s)
vs.
Louis Schneider, Defendant(s)

June 22, 2017 **3:00 AM** **MINUTE ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP)...SCHNEIDER DEFENDANTS SPECIAL MOTION TO DISMISS PLAINTIFFS SLAPP SUIT PURSUANT TO NRS 41.660 AND REQUEST FOR ATTORNEYS FEES, COSTS, AND DAMAGES PURSUANT TO NRS 41.670**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

NO PARTIES PRESENT

JOURNAL ENTRIES

MINUTE ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660 (ANTI-SLAPP)...SCHNEIDER DEFENDANTS SPECIAL MOTION TO DISMISS PLAINTIFFS SLAPP SUIT PURSUANT TO NRS 41.660 AND REQUEST FOR ATTORNEYS FEES, COSTS, AND DAMAGES PURSUANT TO NRS 41.670

The Court having reviewed the pleadings in this matter and after hearing extensive oral argument hereby GRANTS defendants' Special Motion To Dismiss pursuant to NRS 41.660 (Anti-Slapp).

Under Nevada's Anti-Slapp statutes, a defendant may file a special motion to dismiss. The Defendant must show "by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3) (a). If the defendant makes the initial showing, the burden shifts to the Plaintiff to show "with prima facie evidence a probability of prevailing on the claim." NRS 41.660 (3)(b).

NRS 41.637 (4) defines a "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" as follows:

Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

In Shapiro v. Welt, 389 P.3d 262 (2017), the court outlined guiding principles in determining what constitutes "public interest":

1. "public interest" does not equate with mere curiosity;
2. A matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
3. There should be some degree of closeness between the challenged statements and the asserted public interest the assertion of a broad and amorphous public interest is not sufficient;
4. The focus of the speaker s conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
5. A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. Id. at 268.

The Defendants met their burden of showing that the instant matter arises from Defendants' good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern. The majority of the communication took place on the public forum of the internet and the communications were made without knowledge of falsehood, or were opinions incapable of being true or false.

Therefore, the burden shifts to the Plaintiff to show "with prima facie evidence a probability of prevailing on the claim." NRS 41.660 (3) (b). Plaintiffs failed to meet their burden as they cannot show a probability of success on their claims. Accordingly, the Special Motion To Dismiss is GRANTED.

Pursuant to NRS 41.670 (a), the court shall award reasonable costs and attorney s fees to the person against whom the action was brought. Further, the court has discretion to award, in addition to reasonable costs and attorney s fees awarded pursuant to (a), an amount up to $10,000 to the person

against whom the action was brought.

The Defendants in this matter may file any additional motions pursuant to NRS 41.670, on or before July 24, 2017.

Ms. McLetchie, Esq. to prepare the order for the Court as to the Sanson defendants. Mr. Cal J. Potter, Esq. to prepare the order for the Schneider defendants.

CLERK'S NOTE: A copy of the above minute order has been forwarded to: Attorney Joshua Gilmore, Esq., Attorney Marshal Willick, Esq., Attorney Margaret McLetchie, Esq., and Attorney Cal Potter, Esq. /// sj

verizon

Verizon Security Subpoena Compliance
180 Washington Valley Road
Bedminster, NJ 07921
PHONE: 800-451-5242 | FAX: 888-667-0028

July 13, 2017

SANSON STEVE W
PO BOX 28211
LAS VEGAS NV 89126-2211

Verizon Wireless Case #: 170160820
Docket / File #: D-15-521960-D
Target: 702-283-8088

Dear Customer,

This is to notify you that Verizon has received a subpoena requiring the production of certain records associated with the target referenced above.

Verizon has no information as to the purpose of the subpoena or the nature of the action. Any questions you have should be directed to the party who issued the subpoena.

Please be advised that unless Verizon is provided with a motion for a protective order or a motion to quash within 10 days from the date of this letter, Verizon intends to produce the records. Motion papers can be sent to Verizon via fax number 325-949-6916.

Sincerely,

Diane A.
Coordinator-Verizon Security Subpoena Compliance
800-451-5242

SUBP

DISTRICT COURT
CLARK COUNTY, NEVADA

IRINA ANSELL, Plaintiff, vs. DOUGLAS ANSELL, Defendant.	**CASE NO:** D-15-521960-D **DEPT NO:** Q **FAMILY DIVISION** **SUBPOENA**

[ ] REGULAR [X] DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

Verizon Security Assistance Team
180 Washington Valley Road
Bedminster, NJ 07921
ATT: Subpoena compliance

YOU ARE HEREBY COMMANDED, that all singular, business and excuses set aside, you are required to produce any items set forth on the reverse side of this subpoena on or before the 8th **day of August 2017**, by the hour of **5:00 P.M.** to the WILLICK LAW GROUP, located at 3591 E. Bonanza Road, Suite 200, Las Vegas, Nevada 89110-2101. If you fail to provide the requested items, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to provide the requested items and in addition, forfeit One Hundred dollars ($100.00). Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to this Subpoena.

DATED this 6th day of July, 2017.

BY: WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
LORIEN K. COLE, ESQ.
Nevada Bar No. 11912
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorneys for Plaintiff

ITEMS TO BE PRODUCED

Any and all documents, records, notes, tangible or intangible records, relating to **Phone Number (702) 283-8088**, from August 1, 2016, to the present date, including but not limited to: Phone Call Records, both incoming and outgoing, Text Message Records and Transmissions, Picture Message Records and Transmissions, and any Data Transfers to phone number (702) 234-4945.

Items are to be provided to the WILLICK LAW GROUP, 3591 E. Bonanza Road, Suite 200, Las Vegas, Nevada 89110-2101, on or before the ____**th day of August, 2017**, by the hour of 5:00 p.m., along with the enclosed Certificate of Custodian of Records. Please provide digital copies if possible, and an invoice with the records for any copying costs in relation to this subpoena duces tecum. Should you have any questions, please do not hesitate to contact Lorien K, Cole, Esq. at (702) 438-4100 ext. 127, or Paralegal, Tisha Wells at ext. 119.

verizon

Verizon
VSAT Subpoena Compliance
2701 S. Johnson St., Mail Code TXD01613
San Angelo , TX 76904

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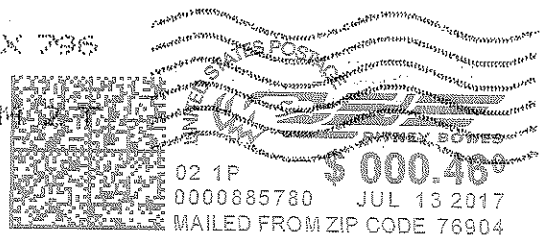

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DISTRICT COURT
CLARK COUNTY, NEVADA

IRINA ANSELL, Plaintiff, vs. DOUGLAS ANSELL, Defendant.	**CASE NO:** D-15-521960-D **DEPT NO:** Q **FAMILY DIVISION** **AMENDED DEPOSITION SUBPOENA**

☐ REGULAR ☒ DUCES TECUM

THE STATE OF NEVADA SENDS GREETINGS TO:

Steve W. Sanson
8908 Big Bear Pines Ave.
Las Vegas, Nevada 89143

YOU ARE HEREBY COMMANDED, that all singular, business and excuses set aside, you appear and attend on the 8th day of August, 2017, at the hour of 9:00 o'clock a.m. the scheduled deposition at the Clark County District Court, Family Division, 601 N. Pecos Road, 3rd Floor Conference Room, Las Vegas, Nevada 89101. You are required to bring with you at the time of your appearance any items set forth on the listed provided in this subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred dollars ($100.00). Please see Exhibit "A" attached hereto for information regarding the rights of the person subject to this Subpoena.

DATED this 6th day of July, 2017.

Issued by: WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
LORIEN K. COLE, ESQ.
Nevada Bar No. 11912
3591 E. Bonanza Road, Suite 200
Las Vegas, Nevada 89110
Attorneys for Plaintiff

ITEMS TO BE PRODUCED

Please bring with you:

1. All "communications" in any form between you – or any of your businesses including but not limited to Sanson Corporation and Veterans in Politics, International – and Douglas Ansell or his companies or agents from January 1, 2015 to the present, whether in the form of notes, letters, emails, text messages, social media postings and exchanges, voice mails, What's App, or any other written or electronically stored media.

2. The financial books for Veterans in Politics showing all receipts of funds, advertising fees and donations and from where they originated from January 1, 2015 to the present. This shall include all financial account statements whether in the name of Steve Sanson, Veterans in Politics, International, any DBA of those persons or entities, whether or not held jointly with any other person or entity along with all ledgers, check registers, and any receipts for cash received from any source.

3. Unredacted proof of all expenditures by Veterans in Politics, International. This shall include but is not limited to cancelled checks, credit card receipts, cash receipts, etc.

4. Unredacted copies of phone records for any phone associated with Steve Sanson, Steve Sanson Corporation, Veterans in Politics, International, or any DBA of those persons or entities.

5. Unredacted proof of source of funds for payment to Attorney McLetchie or any other attorney at law since January 1, 2015.

6. Copies of Sanson Corporation and Veterans in Politics, International 2015 and 2016 unredacted federal income tax forms with all schedules attached.

Should you have any questions, please do not hesitate to contact Lorien K. Cole, Esq. or Paralegal, Tisha Wells at (702) 438-4100.

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 6th day of July, 2017, I caused the above and foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

[ ] by First Class, Certified U.S. Mail.

To the attorney's listed below at the address, email address, and/or facsimile number indicated below:

Mr. Steve W. Sanson
8908 Big Bear Pines Ave.
Las Vegas, Nevada 89143
Deponent

John D. Jones, Esq.
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
jjones@blacklobellolaw.com
Attorney for Defendant

Josha S Valdez

An Employee of the WILLICK LAW GROUP

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WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

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Steven D. Grierson
CLERK OF THE COURT

NOTC
WILLICK LAW GROUP
MARSHAL S. WI002515
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(702) 438-4100; FAX (702) 438-5311
email@willicklawgroup.com
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IRINA ANSELL,

Plaintiff,

vs.

DOUGLAS ANSELL,

Defendant.

CASE NO: D-15-521960-D
DEPT. NO: Q

DATE OF HEARING: n/a
TIME OF HEARING: n/a

SECOND AMENDED NOTICE OF TAKING VIDEO TAPED DEPOSITION

TO: STEVE W. SANSON, Deponent.

PLEASE TAKE NOTICE that on the 8th day of August, 2017, at the hour of 9:00 a.m., at Clark County District Court, Family Division, 601 N. Pecos Road, 3rd Floor Conference Room, Las Vegas, Nevada 89101, Plaintiff's counsel, the Willick Law Group, will take the deposition of Steve W. Sanson, upon oral examination, pursuant to Rule 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by the law to administer oaths.

****

****

The method of recording may be audio and video recording. You are invited to attend and cross-examine.

DATED this 6th day of July, 2017.

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
LORIEN K. COLE, ESQ.
Nevada Bar No. 11912
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 6th day of July, 2017, I caused the above and foregoing document to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

[ ] by First Class, Certified U.S. Mail.

To the attorney's listed below at the address, email address, and/or facsimile number indicated below:

Mr. Steve W. Sanson
8908 Big Bear Pines Ave.
Las Vegas, Nevada 89143
Deponent

John D. Jones, Esq.
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
jjones@blacklobellolaw.com
Attorney for Defendant

An Employee of the WILLICK LAW GROUP

\\wlgserver\company\wp16\ANSELL,JD\DRAFTS-PLEADINGS\00187852.WPD/ms

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NEOJ
Margaret A. McLetchie, Nevada Bar No. 10931
MCLETCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300
Facsimile: (702) 425-8220
Email: maggie@nvlitigation.com
Attorneys for Defendants Steve W. Sanson and Veterans in Politics International, Inc.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS & MAYO LAW FIRM,

Plaintiffs,

vs.

LOUIS C. SCHNEIDER; LAW OFFICE OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANSUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; AND DOES I THROUGH X;

Defendants.

Case No.: A-17-749318-C

Dept. No.: XII

NOTICE OF ENTRY OF ORDER

YOU ARE HEREBY NOTICED that an Order Granting VIPI Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) was entered on July 24, 2017.

/ / /

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A copy of the Order Granting VIPI Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) is attached hereto as Exhibit 1.

DATED this 24th day of July, 2017.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
MCLETCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Facsimile: (702) 425-8220
Email: maggie@nvlitigation.com
Attorneys for Defendants Steve W. Sanson and Veterans in Politics International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2017, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER via electronic service using Odyssey File & Serve's electronic court filing system and, pursuant to NRCP 5(b)(2)(B), by First Class United States Mail, postage fully prepaid, to the following:

Jennifer V. Abrams, Esq.
THE ABRAMS & MAYO LAW FIRM
6252 S. Rainbow Blvd., Suite 100
Las Vegas, NV 89118

Marshal Willick, Esq.
WILLICK LAW GROUP
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110

Dennis L. Kennedy
Joshua P. Gilmore
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
Attorneys for Plaintiffs

Cal Potter, III, Esq.
C.J. Potter IV, Esq.
POTTER LAW OFFICES
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Las Vegas, NV 89102
Attorneys for Schneider Defendants

Alex Ghibaudo, Esq.
G LAW
703 S. Eighth Street
Las Vegas, NV 89101
Attorney for Defendants Ortiz, Hanusa, Spicer, Steelmon, Woolbright, and Sanson Corporation

/s/ Pharan Burchfield
EMPLOYEE of McLetchie Shell LLC

EXHIBIT 1

ORDR

Margaret A. McLetchie, Nevada Bar No. 10931
Alina M. Shell, Nevada Bar No. 11711
MCLETCHIE SHELL LLC
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Las Vegas, NV 89101
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Facsimile: (702) 425-8220
Email: maggie@nvlitigation.com
Attorneys for Defendants Steve W. Sanson and Veterans in Politics International, Inc.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS & MAYO LAW FIRM,

Plaintiffs,

vs.

LOUIS C. SCHNEIDER; LAW OFFICE OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; AND DOES I THROUGH X;

Defendants.

Case No.: A-17-749318-C

Dept. No.: XII

[PROPOSED] ORDER GRANTING VIPI DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP)

Defendants Steve W. Sanson ("Sanson") and Veterans in Politics International's ("VIPI") Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP)[1] (the "Special Motion to Dismiss") having come on for hearing on June 5, 2017, the Honorable Michelle Leavitt presiding, Plaintiffs Jennifer V. Abrams ("Ms. Abrams") and The Abrams & Mayo Law Firm (together, the "Abrams Parties"), appearing by and through

[1] "SLAPP" is an acronym for "strategic lawsuit against public participation."

their attorneys, Joshua P. Gilmore, of Bailey Kennedy and Marshal S. Willick of Willick Law Group, and Defendants Sanson and VIPI (together, the "VIPI Defendants"), appearing by and through their attorneys, Margaret A. McLetchie, and Alina M. Shell, of McLetchie Shell LLC, and the Court, having read and considered all of the papers and pleadings on file, and heard argument of counsel, and being fully advised, and good cause appearing therefor, hereby makes the following Findings of Fact, Conclusions of Law, and Order granting the VIPI Defendants' Special Motion to Dismiss:

I.

PROCEDURAL HISTORY AND FINDINGS OF FACT

A. Background on Sanson and VIPI

1. Defendant Steve W. Sanson is the President of Defendant Veterans in Politics International, Inc. ("VIPI"), a non-profit corporation that advocates on behalf of veterans and works to expose public corruption and wrongdoing.

2. VIPI routinely publishes and distributes articles, and hosts a "weekly online" talk show which features public officials and others who discuss veterans' political, judicial, and other issues of public concerns.

B. Family Court Issues

3. On October 5, 2016, acting in his capacity as President of VIPI, Mr. Sanson posted an article on the publicly-accessible website <veteransinpolitics.org> entitled "Nevada Attorney attacks a Clark County Family Court Judge in Open Court," containing the court video transcript of a September 29, 2016 hearing in the case entitled *Saiter v. Saiter*, Eighth Judicial District Court, Family Division, Clark County, Nevada, Case No. D-15-521372 (the "*Saiter* Hearing").The *Saiter* Hearing involved a heated exchange between Ms. Abrams and Judge Jennifer L. Elliot.

4. The article that accompanied the video posting contained both written excerpts of said exchange and Mr. Sanson's opinions of Plaintiff Abrams' and Judge Elliot's behavior during the *Saiter* Hearing.

///

5. On October 5, 2016, Ms. Abrams sent the Honorable Jennifer L. Elliot Judge Elliot an email about the article in which she complained that the article placed her in a bad light, and requesting that Judge Elliot force VIPI to take the article down.

6. Because Mr. Sanson believed that VIPI was within its rights to publish a video of a court proceeding, Mr. Sanson did not remove either the article or video.

7. On October 8, 2016, Mr. Sanson was personally served with an October 6, 2016 Court Order Prohibiting Dissemination of Case Materials issued by Judge Elliot in the *Saiter* case. This order purported to seal all the documents and proceedings in the *Saiter* case on a retroactive basis.

8. Despite disagreeing with Judge Elliot's order, Mr. Sanson temporarily took the video down. On October 9, 2016, Mr. Sanson reposted the video to, among other websites, <veteransinpolitics.org> together with an article entitled "District Court Judge Bullied by Family Attorney Jennifer Abrams." The article contained a report on what had taken place and criticism of the practice of sealing court documents.

9. On November 6, 2016, Mr. Sanson posted another ~~an~~ article to <veteransinpolitics.org> entitled "Law Frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices." This article was critical of Ms. Abrams' practice of sealing the records in many of her cases.

10. On November 14, 2016, Mr. Sanson posted an article to <veteransinpolitics.org> entitled "Lawyers acting badly in a Clark County Family Court."

11. On November 14, 2016, Mr. Sanson posted a video of the *Saiter* Hearing to the video-hosting website YouTube. In the description of said video, Mr. Sanson stated his opinion that Ms. Abrams' conduct in open court constituted "bullying." In this article, Mr. Sanson states his belief in the importance of public access to court proceedings.

12. On November 16, 2016, Mr. Sanson posted an article to <veteransinpolitics.org> criticizing Judge Rena Hughes for making a misleading statement to an unrepresented child in Family Court. Like the others, this article reflects a core VIPI mission—exposing to the public and criticizing the behavior of officials.

13. On December 21, 2016, the VIPI Defendants posted three videos to YouTube entitled "The Abrams Law Firm 10 05 15," "The Abrams Law Firm Inspection part 1," and "The Abrams Law Firm Practices p 2."

14. In addition to being published on the VIPI website, all of the above-listed articles were also simultaneously sent to VIPI email subscribers.

15. On December 22, 2016, Mr. Sanson allegedly had a conversation with David J. Schoen, and employee of the Abrams & Mayo Law Firm. In this conversation, Mr. Sanson allegedly made several unflattering comments about Plaintiff Abrams.

C. The Abrams Parties' Lawsuit, Attempt to Hold Mr. Sanson In Contempt, and Other Efforts.

16. On January 9, 2017, the Abrams Parties filed a Verified Complaint against the VIPI Defendants, as well as several other Defendants. The Complaint included purported causes of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, business disparagement, harassment, concert of action, civil conspiracy, RICO, and injunctive relief.

17. Besides the VIPI Defendants, the Abrams Parties sued a long list of other defendants.

18. On January 27, 2017, the Abrams Parties filed a First Amended Verified Complaint, adding copyright infringement as a cause of action.

19. On February 13, 2017, Ms. Abrams filed a Motion for an Order to Show Cause in *Saiter v. Saiter*, No. D-15-521372-D, ("OSC Motion") In that Motion, Ms. Abrams suggested that the Family Court hold Mr. Sanson in contempt and incarcerate him for over seven years.

20. The Honorable Judge Elliot denied Ms. Abrams' motion, and vacated the Order Prohibiting Dissemination, holding that it was facially overbroad and not narrowly drawn.

21. On January 30, 2017, the VIPI Defendants filed a Motion to Dismiss Plaintiffs' First Amended Complaint Pursuant to Nev. R. Civ. P. 12(b)(5) (the "12(b)(5)

Motion to Dismiss").

22. On February 17, 2017, the VIPI Defendants filed a Motion to Strike.

23. On March 6, 2017, the Abrams Parties filed an Opposition to the VIPI Defendants' 12(b)(5) Motion to Dismiss and Countermotion for Attorney's Fees and Costs. On March 9, 2017, the Abrams Parties filed an Errata to their Opposition and Countermotion.

24. On March 6, 2017, the Abrams Parties filed an Opposition to the VIPI Defendants' Motion to Strike and Countermotion for Attorney's Fees and Costs.

25. On March 28, 2017, the VIPI Defendants filed the Special Motion to Dismiss.

26. On April 28, 2017, the Abrams Parties filed an Omnibus Opposition to the VIPI Defendants' Special Motion to Dismiss (and to the special Anti-SLAPP motions to dismiss filed by the other Defendants in this case).

27. On May 30, 2017, the VIPI Defendants filed an Omnibus Reply in Support of their 12(b)(5) Motion to Dismiss and Special Motion to Dismiss.

28. On May 30, 2017, the VIPI Defendants filed a Reply in Support of their Motion to Strike and Opposition to the Abrams Parties' Countermotion for Attorney's Fees.

29. On June 5, 2017, the Court heard oral argument on the VIPI Defendants' Special Motion to Dismiss.

30. On June 6, 2017, the Abrams Parties filed a Supplement to their Omnibus Opposition to the VIPI Defendants' Special Motion to Dismiss.

31. On June 9, 2017, the Abrams Parties filed a Supplement to their Omnibus Reply in Support of their 12(b)(5) Motion to Dismiss and Special Motion to Dismiss.

32. On June 22, 2017, the Court entered a minute order granting the VIPI Defendants' Special Motion to Dismiss.

II.

CONCLUSIONS OF LAW

33. Nevada's Anti-SLAPP statute, Nev. Rev. Stat. § 41.635 *et seq.*, provides that if "an action is brought against a person based upon a good faith communication in

furtherance of ... the right to free speech in direct connection with an issue of public concern, [t]he person against whom the action is brought may file a special motion to dismiss." Nev. Rev. Stat. § 41.660(1)(a).

34. Courts must evaluate a special Anti-SLAPP motion to dismiss using a two-step process. First, the moving party must establish by a preponderance of the evidence "that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." Nev. Rev. Stat. § 41.660(3)(a).

35. Second, if the defendant satisfies that threshold showing, a court must then "determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim[s]." Nev. Rev. Stat. § 41.660(3)(b).

36. Nev. Rev. Stat. § 41.637 defines a "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern," as follows:

> Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
>
> Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

Nev. Rev. Stat. § 41.637(3) and (4).

37. In *Shapiro v. Welt*, 133 Nev., Adv. Op. 6, 389 P.3d 262 (2017), the Nevada Supreme Court identified the following guiding principles for determining what constitutes "public interest" for purposes of Nev. Rev. Stat. § 41.637(3) and (4).

> (1) "public interest" does not equate with mere curiosity;
>
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
>
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;

> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Shapiro, 389 P.3d at 268.

The VIPI Defendants Met Their Initial Burden

38. Having reviewed the articles at issue in this case, the Court finds that the VIPI Defendants have met their burden, and that the statements at issue concern mattes of public interest and were made in a public forum.

39. Courts have held that criticism of a professional's on-the-job performance is a matter of public interest. *See, e.g., Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013).

40. Additionally, the United States Supreme Court has provided guidance regarding whether speech involves a matter of public concern. In *Snyder v. Phelps*, 562 U.S. 443 (2011), the Court explained that "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' ... or when it 'is a subject of legitimate news'." *Id.* at 453 (internal citations omitted).

41. The Ninth Circuit Court of Appeals has extended the principles set forth by the Supreme Court in *Snyder*, broadening the category of speech that touches on a matter of public concern. *See Obsidian Finance Group, LLC v. Cox*, 740 F.3d 1284, 1292 (9th Cir. 2014) (blog posts accusing plaintiff of financial crimes in relation to bankruptcy involve a matter of public concern); *see also Gardner v. Martino*, 563 F.3d 981, 989 (9th Cir. 2009) (business owner's refusal to give a refund to a customer who bought an allegedly defective product is a matter of public concern); *Manufactured Home Cmtys., Inc. v. Cnty. Of San Diego*, 544 F.3d 959, 965 (9th Cir. 2008) (claim that mobile home park operator charged excessive rent is a matter of public concern).

42. In addition, the common law has long recognized that the public has a vital and ongoing interest in observing judicial proceedings. The United States Supreme Court has

explained that "[t]he early history of open trials in part reflects the widespread acknowledgment, long before there were behavioral scientists, that public trials had significant community therapeutic value." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570–71, 100 S.Ct. 2814, 2824 (1980). The Nevada Supreme Court has recognized that the operation of Nevada's courtrooms is a matter of great public concern *See Lubin v. Kunin*, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001) ("'fair, accurate and impartial' reporting of judicial proceedings is privileged and nonactionable, thus affirming the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings").

43. "[C]ourts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This right, which includes access to records and documents in judicial proceedings, is anchored in the value of keeping "a watchful eye on the workings of public agencies," and in publishing "information concerning the operation of government." *Id.* at 597-98.

44. The common law right of access is based on the need for courts to "have a measure of accountability and for the public to have confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *see also Stephens Media LLC v. Eighth Judicial District Court*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (2009) ("Public access inherently promotes public scrutiny of the judicial process, which enhances both the fairness of criminal proceedings and the public confidence in the criminal justice system.")

45. The public's interest in observing the administration of justice is also rooted in the First Amendment. *See Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437 (1966) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs."); *accord Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 (1978)).

46. Courts addressing various states' anti-SLAPP statutes have found that criticizing attorneys is protected activity for anti-SLAPP purposes. *See, e.g., Davis v. Avvo, Inc.*, No. C11-1571RSM, 2012 WL 1067640, at *3 (W.D. Wash. Mar. 28, 2012) ("The Court has no difficulty finding that the Avvo.com website is 'an action involving public participation,' in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer"). A California Court, applying the test outlined in *Weinberg v. Feisel*, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392–93 (2003) and recently adopted in Nevada,[2] found "statements that an attorney has embezzled from clients, and is being prosecuted for doing so, relate to an issue of public interest." *Choyce v. SF Bay Area Indep. Media Ctr.*, No. 13-CV-01842-JST, 2013 WL 6234628, at *8 (N.D. Cal. Dec. 2, 2013).

47. The statements by the VIPI Defendants in this case pertained to Plaintiff Abrams' legal practices and courtroom behavior, topics which the above-precedent establish are matters of public interest. Accordingly, the Court finds the VIPI Defendants have met their burden of showing that the instant matter arises from good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern.

48. Nevada's Anti-SLAPP statute requires that the communications giving rise to the suit must be made "in a place open to the public or in a public forum." Nev. Rev. Stat. § 41.637.

49. As discussed above, the articles at issue in this matter were published on VIPI's website and simultaneously sent to VIPI email subscribers.

50. The Abrams Parties argue that Nevada's anti-SLAPP statutes do not protect speech that is republished via "email blasts" to thousands of members of the public.

51. However, the Abrams Parties conflate the test that pertains to evaluating whether a forum is a public forum for the purposes of establishing which level of First Amendment scrutiny applies with the test for application of the anti-SLAPP law, which is

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[2] *See Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

instead concerned with whether a statement is made in public or in private.

52. The fact that a communication is made via email, in addition to being made on a publicly-accessible website, does not make it a private communication or remove it from the public forum. Indeed, as held in *Moreau v. Daily Indep.*, 2013 WL 85362 at *4 (E.D. Cal., 2013), "the plain language of [California's anti-SLAPP statutes applies] to statements made 'in a place open to the public **or** a public forum, indicat[ing] that **a public forum need not be open to the public.**" (emphasis added). Nevada's statute parallels California's. Nev. Rev. Stat. § 41.637(4).

53. In *Am. Broad. Companies, Inc. v. Aereo, Inc.*, 134 S. Ct. 2498, 2503, 2507-2508, 189 L. Ed. 2d 476 (2014), the United States Supreme Court evaluated whether Aereo, a company that transmits television programming via the internet, performs the transmitted works "publicly." The Court rejected the argument that because each individual transmission was to only one subscriber, the transmissions were not "to the public." *Id.* at 2508. Instead, the Supreme Court found, an entity may transmit to the public through a set of actions. *Id.* The Court further found that—much like the subscribers to VIPI's email list—the subscribers to whom Aereo transmits television programs constitute "the public." It noted that "Aereo communicates the same contemporaneously perceptible images and sounds to a large number of people who are unrelated and unknown to each other." *Id.* at 2509–10.

54. Accordingly, communications are still made in the "public forum" even though they are sent via email blasts to members of the public and land in a place not open to the public—the individual email boxes of the recipients. VIPI's email blasts were therefore public communications, and are protected by Nevada's anti-SLAPP statute.

The VIPI Defendants' Statement Are Not False Statements of Fact

55. Nevada's Anti-SLAPP statute requires that a good faith communication is "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637. The Court also finds that the statements at issue are not false statements of fact.

56. Statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as a false idea. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.

706, 714, 57 P.3d 82, 87 (Nev. 2002) (internal quotation omitted). However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id.* The court must therefore ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id.* at 715.

57. All the statements identified by the Abrams Parties in their First Amended Complaint as being false and defamatory were either true statements of fact, or were statements of opinion which were incapable of being false.

58. Additionally, the October 5, 2016 YouTube video of the September 16, 2016 courtroom proceedings in the *Saiter* matter cannot be considered defamatory because it is a real video of an actual proceeding. *Kegel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009) ("the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim").

Closing a Hearing Pursuant to EDCR 5.02 Does Not Involve Any Determination of "Public Interest."

59. Following the June 5, 2017 hearing on this matter, the Abrams Parties filed a supplement to their opposition to Defendants' Special Motion to Dismiss asserting that because Judge Elliot temporarily closed the September 26, 2016 hearing in *Saiter v. Saiter* pursuant to EDCR 5.02, the hearing suddenly and permanently no longer involved "an issue of public interest" under Nev. Rev. Stat. § 41.637(4).

60. Pursuant to EDCR 5.02(a), "the court **must,** upon demand of either party, direct that the trial or hearing(s) on any issue(s) of fact joined therein be private and upon such direction, all persons shall be excluded from the court or chambers wherein the action is heard, except officers of the court, the parties, their witnesses while testifying, and counsel." EDCR 5.02(a) (emphasis added).

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61. That a hearing is "closed" or sealed does not change the fact that it is conducted in a publicly-funded courtroom and presided over by a taxpayer-paid and citizen-elected judge, nor does it alter the fact that members of the public have a vested interest in access to information about court proceedings and access to justice.

62. The Abrams Parties contend that "[i]f Mr. Sanson wanted access to the video from a closed hearing, he had to make a formal request for it so that the parties would have an opportunity to be heard in response to his request." (Supp. Opp., p. 2:10-12.) However, neither sealing a transcript nor closing a hearing transforms court proceedings to wholly private matters outside the protection of the anti-SLAPP statute.

63. In any case, closing a hearing pursuant to EDCR 5.02 does not seal it. This fact is also clear from Ms. Abrams' own actions. Specifically, on October 6, 2016—seven days after the hearing—Abrams prepared a separate order sealing the court records pursuant to Nev. Rev. Stat. § 125.110(2). Further, Judge Elliot's findings in her order vacating the October 6, 2016 sealing order indicate that the video transcript of the hearing was never truly "private." In that order, Judge Elliot found that the order was unconstitutionally overbroad. (October 6, 2016 Order in Saiter Matter ("Order") at p. 18:19-23 (Exh. 2 to First Amended Complaint (article containing screenshot of Order)).) Moreover, Judge Elliot noted that although she would not enforce the sealing of the video even though it was circulated after the date of the sealing order because Nev. Rev. Stat. § 125.110(2) "reads as if it is limited to ***documents only*** and does not give proper notice to anyone as to the prohibitory use of a hearing video as a hearing transcript." (Order at p. 20:15-22.)

64. Finally, Judge Elliot noted that it is "unquestionably vague as to *how the parties were* . . . harmed by the posting of the information online. (*Id.* at pp. 20:23-21:1.) Although Judge Elliot did note that she personally believed it was not "appropriate to . . . post the video on the internet" where the parties' children might have access to it, she acknowledge "there is nothing this Court can do in this case to enforce this viewpoint." (*Id.* at p. 19:3-10.)

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65. In short, Judge Elliot did not make a determination that the hearing was "private" and any findings or decisions it did make have no bearing on whether Mr. Sanson's statements at issue are protected by Nevada's robust anti-SLAPP law.

66. All the statements at issue are squarely within its protections—and this litigation is exactly what anti-SLAPP laws are designed to protect against. *See John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 758, 219 P. 3d 1276, 1284 (2009) ("the statutes create a procedural mechanism to prevent wasteful and abusive litigation…").

67. Ms. Abrams has asserted that the discussion of the *Saiter* matter has caused her extreme emotional distress. Ms. Abrams' embarrassment, however, does not overcome the strong presumption in favor of public access. The Nevada Supreme Court has recognized that court proceedings are presumptively public, and can sealed from public review "only where the public's right to access is outweighed by competing interests." *Howard v. State*, 128 Nev. Adv. Op. 67, 291 P.3d 137, 141 (2012). Moreover, the Nevada Supreme Court has also made clear that "the desire to avoid unnecessary embarrassment …alone is insufficient to warrant sealing court records from public inspection." *Id.* at 144.

68. Matters such as courtroom administration and document sealing are not "private" or matters of "mere curiosity" (*Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017) (citation omitted)) within the meaning of anti-SLAPP statutes. Instead, such matters are "of concern to a substantial number of people." *Id.* The comments made directly pertain to the asserted public interest—courtroom proceedings. There is no "private controversy" (*id.*) between Ms. Abrams and Mr. Sanson—their dispute is entirely related to her conduct in court and his comments on it; they have no personal relationship.

69. That Judge Elliot closed the hearing pursuant to EDCR 5.02(a) does not change this analysis. Closing a hearing under EDCR 5.02(a) does not take the hearing out of the well-established realm of public access to court proceedings. Nor does it reflect that Judge Elliot made any determination that the interest in privacy outweighed the interest in disclosure, let alone that there was no public interest implicated by the hearing. Indeed, Judge Elliot made no determination of any sort whatsoever—consistent with EDCR 5.02(a), she

simply automatically closed the hearing upon Ms. Abrams' request.

The Abrams Parties Failed to Demonstrate a Probability of Success on Their Claims

70. Because the VIPI Defendants met their burden, the burden shifted to the Abrams Parties to demonstrate "with prima facie evidence a probability of prevailing on the claims." Nev. Rev. Stat. § 41.660(3)(b).

71. The Abrams Parties have failed to meet their burden, as they cannot show a probability of success on their claims.

72. Indeed, at the June 5, 2017 hearing on Defendants' Special Motion to Dismiss, the Abrams Parties acknowledged that their causes of action for RICO, copyright infringement, injunctive relief, and harassment should be dismissed. The Abrams Parties' concession that these claims lack merit further demonstrates The Abrams Parties cannot satisfy their burden of demonstrating a probability of prevailing on their claims.

Defamation

73. In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus*, 118 Nev. 706 at 718.

74. The VIPI Defendants' alleged speech consists of opinions or facts, none of which satisfy the first element of a defamation claim. Thus, the Abrams Parties have not established a probability of success on their defamation claim.

Intentional Infliction of Emotional Distress ("IIED")

75. The elements of a cause of action for intentional infliction of emotional distress ("IIED") are: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 886 (1999) (quoting *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 92 (1981)).

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76. Further, while the Abrams Parties brought all their claims on behalf of Ms. Abrams as well as her law firm, only a natural human person can bring a claim such as, intentional infliction of emotional distress for the obvious reason that a law firm cannot suffer mental distress. *See, e.g., Patel v. AT&T*, No. 94-B-49, 1997 WL 39907, at *2 (Ohio Ct. App. Jan. 30, 1997).

77. The Abrams Parties fail to allege facts sufficient to show that the VIPI Defendants' conduct was "extreme and outrageous" or that the Abrams Parties suffered emotional distress, much less the "severe or extreme" emotional distress required to prevail on a claim of IIED. Thus, the Abrams Parties have not established a probability of success on their IIED claim.

Negligent Infliction of Emotional Distress ("NIED")

78. Nevada courts recognize that "the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff." *Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). Thus, a cause of action for NIED has essentially the same elements as a cause of action for negligence: (1) duty owed by defendant to plaintiff, (2) breach of said duty by defendant, (3) said breach is the direct and proximate cause of plaintiff's emotional distress, and (4) damages (i.e., emotional distress).

79. The Abrams Parties fail to allege facts sufficient to show that the VIPI Defendants owed Ms. Abrams or her law firm any duty of care. The Abrams Parties also fail to allege facts sufficient to show that they suffered emotional distress. Thus, the Abrams Parties have not established a probability of success on their NIED claim.

False Light

80. The false light tort requires that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 141 (2014) (quoting Restatement (Second) of Torts § 652E (1977)).

Nevada courts require that plaintiffs suffer mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson v. Sprint Nextel Corp.*, 2014 WL 553314 at *5 (D. Nev. Feb. 10, 2017.)

81. The Abrams Parties fail to allege facts sufficient to show that the VIPI Defendants placed them in a false light that would be "highly offensive to a reasonable person." Furthermore, the Abrams Parties fail to allege facts sufficient to show that they have suffered emotional distress from any of the VIPI Defendants' actions, much less as a result of being placed in a "false light." Thus, the Abrams Parties have not established a probability of success on their false light claim.

Business Disparagement

82. The elements of a business disparagement cause of action are: "(1) a false and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386, 213 P.3d 496, 504 (2009) (citing *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987)).

83. The Abrams Parties cannot prevail on their business disparagement claim for the same reasons that their defamation claim fails. Additionally, the Abrams Parties fail to specifically allege special damages as required by Rule 9(g) of the Nevada Rules of Civil Procedure. This is particularly fatal to the Abrams Parties' business disparagement claim, as "[p]roof of special damages is an essential element of business disparagement." *CCSD v. Virtual Ed. Software*, 125 Nev. at 87. The Abrams Parties have failed to allege any facts which demonstrate that Defendants' communications have caused them any economic harm. Thus, the Abrams Parties have not established a probability of success on their business disparagement claim.

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Harassment

84. "Harassment" is not a cause of action in Nevada. The Abrams Parties cannot prevail on a non-existent cause of action. As discussed *supra* at ¶ 65, the Abrams Parties have acknowledged this claim should be dismissed.

Concert of Action

85. The elements of a cause of action for concert of action are that two defendants commit a tort while acting in concert with one another or pursuant to a common design. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (1998). The plaintiff must also show that the defendants "agreed to engage in conduct that is inherently dangerous or poses a substantial risk of harm to others." *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1092 (D. Nev. 2012) (quoting *GES, Inc. v. Corbitt,* 117 Nev. 265, 270-71, 21 P.3d 11, 14-15 (Nev. 2001)).

86. The conduct alleged in this case is not inherently dangerous. Further, because the other tort claims fail, so does this one. Thus, the Abrams Parties have not established a probability of success on their concert of action claim.

Civil Conspiracy

87. The elements of a cause of action for civil conspiracy are: (1) defendants, "by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another; and (2) damage resulting from the act or acts." *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (Nev. 1999) (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)).

88. The Abrams Parties' conspiracy claim is apparently predicated on their allegations that the VIPI Defendants disparaged them, placed them in a false light, inflicted emotional distress upon them, and harassed them.

89. Because the other tort claims fail, so does this one. Thus, the Abrams Parties have not established a probability of success on their civil conspiracy claim.

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RICO

90. The elements of a civil RICO claim are: (1) defendant violated a predicate racketeering act; (2) plaintiff suffered injury in her business or property by reason of defendant's violation of the predicate racketeering act; (3) defendant's violation proximately caused plaintiff's injury; (4) plaintiff did not participate in the racketeering violation. Nev. Rev. Stat. § 207.470, Nev. Rev. Stat. § 207.400; *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 283, 849 P.2d 297, 299 (1993).

91. The Nevada Supreme Court has held that civil racketeering claims must be pled not merely with specificity, but with the specificity required of a criminal indictment or information. *Hale v. Burkhardt*, 104 Nev. 632, 637-38, 764 P.2d 866, 869-70 (1988). The complaint must provide adequate information as to "when, where [and] how" the alleged criminal acts occurred. *Id.* at 637.

92. The Abrams Parties allege in their First Amended Complaint that Defendants "either committed, conspired to commit, or have attempted to commit" twelve separate offenses. (*See* FAC at ¶ 118.) However, the bulk of the named offenses are not among the predicate racketeering acts enumerated in Nev. Rev. Stat. § 207.360. In addition, of the remaining five named offenses, the Abrams Parties fail to allege with sufficient specificity or provide adequate information as to "when, where and how" these alleged criminal acts occurred. The Abrams Parties therefore fail to allege a prima facie civil RICO claim, a fact which the Abrams Parties acknowledged at the June 5, 2017 hearing. (*See supra*, ¶ 65.)

Copyright Infringement

93. The Abrams Parties make a claim for copyright violation pursuant to 17 USC § 501 et seq. for Defendants' use of photos allegedly belonging to the Abrams Parties. (*See* FAC at ¶¶ 141-147.) However, claims for copyright violations arising under federal law are subject to the exclusive original jurisdiction of the federal courts. *See* 28 U.S.C. § 1338(a).

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94. This Court lacks jurisdiction over federal copyright claims, thus the Abrams Parties cannot raise a federal copyright claim, much less prevail on one. Even assuming this Court did have jurisdiction to hear the Abrams Parties' copyright claims, such claims would fail because the Abrams Parties have not proven (or even alleged) ownership or registration of the copyrights of the pictures appearing on <veteransinpolitics.org>.

95. Additionally, Defendants' use of publicly available pictures of the Abrams Parties falls under the "fair use" exception to the Copyright Act. The Abrams Parties have therefore failed to demonstrate any probability of succeeding on this claim, a fact which the Abrams Parties acknowledged at the June 5, 2017 hearing. (*See supra*, ¶ 72.)

Injunctive Relief

96. The Abrams Parties incorrectly allege that "injunctive relief" is a cause of action. (FAC at ¶¶ 148-49.) However, "an injunction is a remedy, not a separate claim or cause of action ... a separately pled claim or cause of action for injunctive relief is inappropriate." *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010). Because injunctive relief is not a cause of action, the Abrams Parties cannot prevail on such a claim, a fact which the Abrams Parties acknowledged at the June 5, 2017 hearing. (*See supra*, ¶ 72.)

97. Accordingly, for the reasons stated above, the VIPI Defendants' Special Motion to Dismiss is GRANTED.

98. If a Court grants a special Anti-SLAPP motion to dismiss, the defendants are entitled to an award of reasonable costs and attorneys' fees. Nev. Rev. Stat. § 41.670(1)(a). The Court may also award an amount of up to $10,000.00. Nev. Rev. Stat. § 41.670(1)(a)-(b).

99. Additionally, upon the granting of a special Anti-SLAPP motion to dismiss, the defendants may bring a separate action against the Abrams Parties for compensatory damages, punitive damages, and attorney's fees and costs of bringing the separate action. Nev. Rev. Stat. § 41.670(c).

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100. The VIPI Defendants may file any additional motions pursuant to Nev. Rev. Stat. § 41.670 on or before July 24, 2017.

IT IS SO ORDERED this 20 day of July, 2017.

HONORABLE JUDGE MICHELLE LEAVITT

Respectfully submitted by,

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA – FAMILY DIVISION

IRINA ANSELL, Plaintiff, vs. DOUGLAS ANSELL Defendant	Case No.: D-15-521960-D Dep. No.: Q **MOTION TO QUASH SUBPOENA SERVED ON VERIZON WIRELESS** [Filed concurrently with: Motion for Attorney's Fees and Costs; Declaration of Anat Levy, and Declaration of Steve Sanson.]

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOITON MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A EHARING PRIOR TO THE SCHEDULED HEARING DATE.

Non-parties Veterans in Politics International, Inc. ("VIPI") and Steve W. Sanson hereby move for an Order quashing the subpoena issued by Marshal Willick, counsel for plaintiff Irina Ansell herein, on Verizon Wireless. The subpoena was served on the Verizon Security Assistance Team in Bedminster, New Jersey. The subpoena seeks all cell phone, texting and other records of VIPI and Mr. Sanson from August 1, 2016 to present.

This motion is made pursuant to the federal Electronic Communications Privacy Act, NRCP 45(c), EDCR 5.602, the attached Memorandum of Points and Authorities, any declarations and/or exhibits filed herewith, the pleadings and court records in this case, and any argument and evidence submitted at the time of hearing.

DATED: July 25, 2017

By:

Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
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NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Family Court Division, located at 601 N. Pecos Road, Las Vegas, NV on the 24th day of August, 2017 at No Appearance Required .m. or as soon thereafter as counsel may be heard, before the hearing master in Department Q, to bring this MOTION TO QUASH SUBPOENA SERVED ON VERIZON WIRELESS on for hearing.

DATED: July 25, 2017

By: 

Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Non-parties Veterans in Politics International, Inc. ("VIPI"), and its President, Steve Sanson, hereby move for an Order to quash the subpoena that Marshal Willick, counsel for Plaintiff Irina Ansell, recently served on Verizon Wireless (the "Subpoena"). A copy of the Subpoena is attached as Ex. 1 to the Declaration of Mr. Sanson (" Sanson Decl.") filed concurrently herewith.

The Subpoena seeks one category of information – everything – pertaining to Mr. Sanson's cell phone use. It describes the information sought as follows:

> Any and all documents, records, notes, tangible or intangible records, relating to **Phone Number (702) 283-8088**[1], from August 1, 2016, to the present date, including but not limited to: Phone Call Records, both incoming and outgoing, Text Message Records and Transmissions, Picture Message Records and Transmissions, and any Data Transfers to phone number (702) 234-4945.[2] (Emphasis in original.)

The disclosure of this information by Verizon is prohibited under Title II of the federal Electronic Communications Privacy Act ("ECPA"), aka, the Stored Communications Act, 18 USC §§2701 et. seq. (the "SCA"). As discussed in more detail in Section III below, the SCA prohibits cell phone service providers from releasing stored information pertaining to its customers in civil cases, including pursuant to civil subpoenas.

This unlawful subpoena can only be understood as the latest harassment tool brandished by Mr. Willick against Mr. Sanson and VIPI. VIPI is a media and veterans' non-profit organization that operates as a government and judicial "watchdog." Sanson Decl.,¶ 2. VIPI exposes public corruption and injustices

[1] This is Mr. Sanson's phone number.

through, among other things, internet blogs, social media outlets, and its weekly internet show. *Id*. Mr. Sanson is VIPI's President and a 100% combat-related disabled veteran. *Id.* The following is the background of Mr. Willick's present harassment of Mr. Sanson and VIPI:

In or about October 2016, VIPI published a court video online showing Mr. Willick's fiancé, attorney Jennifer Abrams, appearing to bully Judge Elliott during a hearing in the *Saiter v. Saiter* divorce case, Eighth Judicial District Court case no. D-15-521372-D. Sanson Decl., ¶ 5. VIPI followed it up with several blogs criticizing Ms. Abrams and later, criticizing Mr. Willick and his firm's work-related tactics. Sanson Decl., ¶ 7. What ensued has been the following "torrential downpour" of retaliatory court proceedings and other actions by Mr. Willick and Ms. Abrams against VIPI and Mr. Sanson, now culminating in this Subpoena.[3]

1. Attempt to Incarcerate Mr. Sanson: Apparently embarrassed by the Saiter court video, Ms. Abrams obtained a broad Stipulated Order in the *Saiter* case purporting to prohibit the dissemination of all documents and information pertaining to the case by *anyone*. Sanson Decl., ¶ 7. When VIPI refused to abide by the order on constitutional grounds and based on applicable provisions of the NRS, Ms. Abrams unsuccessfully moved to have Mr. Sanson (and her opposing counsel in the *Saiter* case) *incarcerated* for 54 days for contempt. *See*, Abrams' February 13, 2017 Motion for an Order to Show Cause, attached as Ex. 1 to the Declaration of Anat Levy, filed concurrently herewith. Pursuant to Mr. Sanson's objections (see Opposition, attached as Ex. 2 to Levy Decl.), Judge Elliott refused to issue an order of contempt and vacated her prior order as unconstitutional. (*See*,

[2] This is Mr. Ansell's phone number.

[3] Even while preparing this Motion, Mr. Willick served yet two more objectionable subpoenas on Mr. Sanson in this case. Those will be handled separately from this motion.

Order dated March 21, 2017, attached as Ex. 3 to Levy Decl.) Ms. Abrams is now appealing that ruling.

2. The Abrams Complaint: On January 9, 2017, Ms. Abrams, represented by Mr. Willick, sued her opposing counsel in the *Saiter* case, VIPI, Mr. Sanson and each of VIPI's officers and directors (including one who lives in Missouri). *See*, *Abrams v. Schneider et. al*., case no. A-17-749318-C First Amended Complaint attached as Ex. 4 to Levy Decl.) (the "Abrams Complaint"). To maximize its punitive impact, Ms. Abrams also sued Mr. Sanson's wife and his wife's corporation, neither of which have anything to do with VIPI or the claims alleged in the Abrams Complaint. Sanson Decl., ¶ 8. The complaint purported to make claims for defamation, business disparagement, false light, emotional distress, RICO violations, copyright violations, concert of action and conspiracy. The Court in that case recently summarily dismissed the action against VIPI and Mr. Sanson pursuant to Nevada's anti-SLAPP laws, NRS 41.650 et. seq. *See*, Court Order attached as Ex. 5 to Levy Decl. Ms. Abrams indicated that she intends to appeal.

3. Intimidation Tactics. Mr. Willick posted the Abrams Complaint on numerous websites, and published a purported letter to Mr. Sanson in which he falsely and maliciously accused VIPI of manipulating its candidate interview process, Sanson of using VIPI's income for his personal expenses, failing to file tax returns, and using VIPI as an "unethical scheme to extort concessions." Sanson Decl., ¶¶ 9-10, Ex. 3, p.3. He further accused Sanson of being a "hypocrite…but even worse," "a sleazy extra out of 'Harper Valley PTA,'" states that Sanson is the very definition of "hypocrite – not to mention slimy beyond words." *Id*., Ex. 3, p. 5. Willick also called Sanson a "two-bit unemployed hustler," and accused him of "shaking down candidates for cash and conspiring with like-minded cronies." *Id*. He called Sanson "repugnant," and falsely stated that VIPI's radio show is a

"fraud" and that VIPI is a "sham organization." *Id*. Willick also falsely claimed that Mr. Sanson was "forced to flee California." *Id*., pp. 5-6.

Also, in or about February 2017, Mr. Sanson received texts from a phone number that appears to belong to someone with the *same name* as Ms. Abrams' minor daughter. Sanson Decl., ¶14, Ex. 5. The texts urged Mr. Sanson to take down a court video showing Judge Rena Hughes bullying a 12 year old unrepresented child in court. Sanson Decl., ¶ 14. It is believed that Ms. Abrams has a personal friendship with Judge Hughes.

Shortly thereafter, Mr. Sanson for the first time had the SIM card from his Samsung cell phone stolen. Sanson Decl., ¶ 15. The manufacturer of his cell phone, Samsung, however, reportedly does not store personal information on SIM cards so it is believed that the perpetrator did not obtain confidential information from Mr. Sanson's stolen SIM card. Mr. Sanson completed a police report on the incident. Sanson Decl., ¶ 15. It is unknown at this time whether these events are related to Mr. Willick and Ms. Abrams, however, the timing and the quest to obtain Mr. Sanson's telephone information suggest that they may be.

4. The Willick Lawsuit: On January 27, 2017, Mr. Willick brushed off the complaint he used in the Abrams Case (and which he used in a prior 2012 case to sue a different veterans group that had been critical of him), to sue Mr. Sanson and VIPI in his own name. *See*, *Marshal Willick et. al. v. Steve W. Sanson et. al*., Eighth Judicial District Court, case no. A-17-750171-C; the Complaint in that case is attached as Ex. 6 to Levy's Decl. Ms. Abrams filed the case as Mr. Willick's attorney. The claims are identical to those made in the Abrams case and the prior 2012 case against the other veterans group, but this time relate to statements made by VIPI about Mr. Willick and his firm. VIPI and Mr. Sanson recently moved to dismiss the case pursuant to Nevada's anti-SLAPP statutes, but the court found that VIPI and Mr. Sanson had not carried their initial burden of proof under the anti-

SLAPP statutes to have the case summarily dismissed at the outset. VIPI and Mr. Sanson are appealing.

5. Take Down Notices: Ms. Abrams and Mr. Willick also sent "take down" notices to VIPI's online vendors, including to YouTube, Facebook, Vimeo and Constant Contact. Mr. Willick and Ms. Abrams claimed that VIPI was somehow engaging in copyright violations under the Digital Millennium Copyright Act ("DMCA") and/or were somehow violating their privacy rights by posting articles about their court proceedings and work practices (collectively, "Take Down" notices). Sanson Decl., ¶ 16, Ex. 6. The Take Down notices caused those vendors to automatically suspend VIPI's access to those services pending their investigations and pursuant to their pre-set "terms of use" policies. (*Id.*, ¶ 16.) VIPI has spent (and continues to spend) considerable resources dealing with these shut downs which affected not just its postings about Willick and Abrams, but also its other business activities such as announcing guests on its weekly show, announcing its endorsement interviews, circulating news about legislation and politics and its general operations. *Id.*, ¶ 16.

6. The Present Subpoena: Apparently still unsatisfied, and now fishing for information on VIPI and Mr. Sanson to boost his pending District Court case, and his fiancé's afore-mentioned pending Supreme Court appeals, Mr. Willick subpoenaed all of Mr. Sanson's and VIPI's confidential and private cell phone records from Verizon Wireless. Mr. Willick is unable to subpoena these records in his or Ms. Abrams' cases against Mr. Sanson and VIPI because Ms. Abrams' case has been dismissed (*see*, Minute Order, attached as Ex. 5 to Levy Decl.), and discovery is stayed in Mr. Willick's case against VIPI and Mr. Sanson. *See*, Order Staying Proceedings, attached as Ex. 7 to Levy Decl.

7. Two More Subpoenas Just Served on Mr. Sanson: As though the above were not enough, Mr. Willick on July 22, 2017 served Mr. Sanson with two

more Subpoenas, one for his deposition and one for documents. These will be addressed separately.

This Court should sanction Mr. Willick for his bad faith use of the Courts to harass Mr. Sanson and VIPI. To that end, Mr. Sanson and VIPI have concurrently filed a separate motion for attorney's fees and costs.

II. NRCP RULE 45(C) PERMITS THE COURT TO QUASH THE SUBPOENA

NRCP Rule 45(c) permits the court to quash the subpoena in its totality when the subpoena requires disclosure of a "protected matter" or "requires disclosure of other confidential commercial information." The subpoena may also be quashed where it "subjects a person to undue burden." NRCP 45(c)(3)(A).

Further, as explained in *Dart Indus. Co. v. Westwood Chem. Co*., 649 F.2d 646, 649 (9th Cir. 1980), "while discovery is a valuable right and should not be unnecessarily restricted . . ., the necessary restriction may be broader when a nonparty is the target of discovery." (Emphasis added.) In other words, the Court should be especially protective of the confidentiality and other rights of non-parties such as VIPI and Mr. Sanson.

III. THE SUBPOENA SHOULD BE QUASHED AS A MATTER OF LAW UNDER THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

The subpoena is a legal "non-starter." Title II of the Electronic Communications Privacy Act, aka, the SCA (Stored Communications Act), protects the confidentiality and privacy of the contents of files stored by service providers such as Verizon Wireless. 18 USC §§2701-12. Congress passed the SCA to prohibit a provider of an electronic communication service "from knowingly divulging the contents of any communication while in electronic storage by that service to any person other than the addressee or intended

recipient." S.Rep.No. 99-541, 97th Cong. 2nd Sess. 37, reprinted in 1986 U.S.C.C.A.N. 3555, 3591. As courts have held, the SCA "protects users whose electronic communications are in electronic storage with an ISP or other electronic communications facility." *Theofel v. Farey-Jones*, 341 F.3d 978, 982 (9th Cir., 2003). It "reflects Congress's judgment that users have a legitimate interest in the confidentiality of communications in electronic storage at a communications facility." *Id*., at 982.

Contents of communications may not be disclosed to civil litigants even when presented with a civil subpoena. *O'Grady v. Superior Court*, 139 Cal.App.4th 1423, 1448 (Cal.App. 2006); *accord*, The U.S. Internet Service Provider Association, *Electronic Evidence Compliance—A Guide for Internet Service Providers*, 18 BERKELEY TECH. L. J. 945, 965 (2003) ([No Stored Communications Act provision] "permits disclosure pursuant to a civil discovery order unless the order is obtained by a government entity. ... [T]he federal prohibition against divulging email contents remains stark, and there is no obvious exception for a civil discovery order on behalf of a private party."); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D.Va. 2008) ("Agreeing with the reasoning in *O'Grady*, this Court holds that State Farm's subpoena may not be enforced consistent with the plain language of the Privacy Act because the exceptions enumerated in § 2702(b) do not include civil discovery subpoenas."); *J.T. Shannon Lumber Co., Inc. v. Gilco Lumber Inc.*, 2008 WL 4755370 (N.D.Miss. 2008) (holding there is no "exception to the [SCA] for civil discovery or allow for coercion of defendants to allow such disclosure."); *Viacom Intern. Inc. v. Youtube Inc.*, 253 F.R.D. 256 (S.D.N.Y. 2008) ("ECPA § 2702 contains no exception for disclosure of [the content of] communications pursuant to civil discovery requests."); *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal. 2010); *Mintz v. Mark Bartelstein & Associates, Inc.*, 885 F. Supp. 2d

987, 991 (C.D. Cal. 2012) ("The SCA does not contain an exception for civil discovery subpoenas.").

Even government entities (which Mr. Willick and his client obviously are not) cannot obtain these records in civil cases. *See*, e.g., *Federal Trade Comm'n v. Netscape Communications Corp.*, 196 F.R.D. 559, 561 (N.D. Cal. 2000) (Section 2703's allowance for "trial subpoenas" did not authorize the FTC's use of a civil discovery subpoena to obtain non-content subscriber information from Netscape); *Flagg v. City of Detroit*, 252 F.R.D. 346, 350 (E.D. Mich. 2008) ("[A]s noted by the courts and commentators alike, § 2702 lacks any language that explicitly authorizes a service provider to divulge the contents of a communication pursuant to a subpoena or court order.").

The SCA defines an "electronic communication" as "any transfer of signs, signals, writing, images, sound, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photooptical system that affects interstate or foreign commerce...." 18 U.S.C. § 2510(12). This would include each of the items sought in Mr. Willick's subpoena.

The SCA also broadly defines an "Electronic Communications Service" as "any service which provides to users thereof the ability to send or receive wire or electronic communications." 18 U.S.C. § 2510(15). This would include Verizon Wireless, the target of Mr. Willick's subpoena. *See*, *Freedman v. America Online, Inc.*, 325 F. Supp. 2d 638, 643 & n.4 (E.D. Va. 2004); "Courts have interpreted the statute to apply primarily to telephone companies, internet or e-mail service providers, and bulletin board services." *Becker v. Toca*, Civil Action No. 07-7202, 2008 WL 4443050, *4 (E.D.La. Sept. 26, 2008); *see also*, *United States v. Steiger*, 318 F.3d 1039, 1049 (11th Cir. 2003) ("Thus, the SCA clearly applies, for example, to information stored with a phone company, Internet Service Provider (ISP), or electronic bulletin board system (BBS)").

The subpoena should therefore be quashed as a matter of law.

IV. THE REQUESTED INFORMATION VIOLATES MR. SANSON'S, VIPI'S AND THIRD PARTIES' RIGHTS AND INCLUDES INFORMATION THAT IS IRRELEVANT TO THIS CASE.

Cell phones are used for computing, telephoning, internet, networking and digital photography. They generate phone records, emails, faxes, contain personal or business schedules, contain contact lists, calendars, memo pads, photographs and may even have GPS enabled features to determine the location of its user. This broad range of activities and information necessarily implicates the privacy rights of third parties with whom the user interacts, as well as raising serious relevance issues[4] and privilege issues. For example, Mr. Sanson's phone records would undoubtedly show communications with his wife, his four children, his lawyers (including on the various Willick generated court cases), friends, colleagues, VIPI members, and others with whom Mr. Sanson and VIPI interact. Sanson Decl., ¶ 4. Those third parties have a right of privacy in their communications with Mr. Sanson. *See e.g.*, the Telephone Records and Privacy Protection Act of 2006, 18 USC 1039, which defines telephone records held by telephone carriers as ***confidential***[5]: None of their confidential information and

[4] Discovery will be denied when the information sought is simply too remote to any matter involved in the case. NRCP 26(b)(1); *Food Lion, Inc. v. United Food & Comm'l Workers Int'l Union, AFL-CIO-CLC*, 103 F.3d 1007, 1012-13 (D.C. Cir. 1997); *Washoe Cnty Bd. of Sch. Trs. v. Pirhala*, 84 Nev. 1, 5, 435 P.2d 756, 758 (1968) ("Where it is sought to discover information which can have no possible bearing on the determination of the action on its merits, it can hardly be within the rule."

[5] The Act defines "confidential phone records information: as any information that ''(A) relates to the quantity, technical configuration, type, destination, location, or amount of use of a service offered by a covered entity, subscribed to by any customer of that covered entity, and kept by or on behalf of that covered entity

communications could be released absent their consent, which of course would be an enormous burden to obtain.

Getting access to this information, particularly in a divorce case in which neither Mr. Sanson nor VIPI are parties, and have anything to do with this case, would be an unjustifiable invasion of the constitutional rights of VIPI, Mr. Sanson and of other third parties with whom Mr. Sanson communicates.

IV. MR. SANSON WAS NEVER SERVED WITH THE SUBPOENA

Neither Mr. Sanson nor VIPI were ever served with a copy of the subpoena which seeks their their confidential cell phone records. Sanson Decl., ¶ 3. Mr. Sanson for the first time received a copy of the subpoena from Verizon Wireless on July 14, 2017. Sanson Decl., ¶ 3, Ex. 1. Given that the subpoena seeks a tremendous amount of private, confidential and privileged information, including relating to other third parties, Mr. Willick's failure to serve Mr. Sanson and VIPI alone should be reason to quash the subpoena. Mr. Willick was well able to serve Mr. Sanson and VIPI in other proceedings that he and Ms. Abrams instituted against Mr. Sanson and VIPI. Moreover, Mr. Willick and Ms. Abrams both have contact information for Mr. Sanson's and VIPI's attorneys. There is simply no reason they could not have been served.

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solely by virtue of the relationship between that covered entity and the customer; (B) is made available to a covered entity by a customer solely by virtue of the relationship between that covered entity and the customer; or (c) is contained in any bill, itemization, or account statement provided to a customer by or on behalf of a covered entity solely by virtue of the relationship between that covered entity and the customer." The Act defines a "covered entity" as having "…the same meaning given the term 'telecommunications carrier' in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and (B) includes any provider of IP-enabled voice service." That would include Verizon Wireless.

V. CONCLUSION

For the reasons stated above, non-parties VIPI and Mr. Sanson respectfully request that the Court:

a) Grant their motion and fully quash the subpoena that Mr. Willick issued and served on Verizon Wireless for Mr. Sanson's and VIPI's cell phone records and data;

b) Order the payment of reasonable attorney's fees and costs pursuant to Mr. Sanson's and VIPI's separately filed motion; and

c) Order such further relief as the Court may deem just and proper.

Dated this 25th day of July, 2017

By: _____
Attorney for: Non-parties, VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON

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CERTIFICATE OF SERVICE

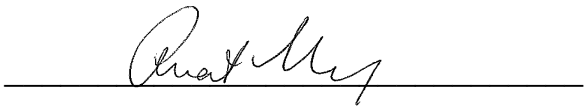
I am over the age of 18 and am not a party to the within action. On the date indicated below I caused to be served a true and correct electronic copy of the document entitled MOTION TO QUASH SUBPOENA SERVED ON VERIZON WIRELESS on the below listed recipients via the District Court's Odyssey file and serve online computer program:

Attorneys for Irina Ansell:
Marshal Willick, Esq.
Willick Law Group
3591 E. Bonanza Rd., Ste. 200
Las Vegas, NV 89110
Email@WillickLawGroup.com

Attorneys for Doug Ansell:
John D. Jones, Esq.
Black & LoBello
10777 W. Twain Avenue, Ste. 300
Las Vegas, NV 89135
jjones@blacklobello.law

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 25th day of July, 2017, in Las Vegas, NV



MQUA/MOT
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Attorney for: Non-Parties Steve Sanson, Veterans In Politics International, Inc., and Sanson Corporation

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA – FAMILY DIVISION

IRINA ANSELL, Plaintiff, vs. DOUGLAS ANSELL Defendant	Case No.: D-15-521960-D Dep. No.: Q **MOTION TO QUASH SUBPEONA DUCES TECUM AND DEPOSITION SUBPOENA SERVED ON STEVE SANSON ON JULY 22, 2017.** ORAL ARGUMENT REQUESTED [Filed concurrently with Motion for Attorneys' Fees and Costs Declaration of Steve Sanson Declaration of Anat Levy]

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 10 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 10

DAYS OF YOUR RECEIPT OF THIS MOITON MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A EHARING PRIOR TO THE SCHEDULED HEARING DATE.

Non-parties Steve Sanson, Veterans in Politics International, Inc. ("VIPI") and Sanson Corporation ("Sanson Corp."). hereby move for an Order quashing the deposition subpoena and subpoena duces tecum served on Mr. Sanson on July 22, 2017 by Marshal Willick, counsel for plaintiff Irina Ansell herein.

This motion is made pursuant to NRCP Rules 45(c) and 26, NRS 48, EDCR 5.602, the attached Memorandum of Points and Authorities, the Motion for Attorneys fees filed concurrently herewith, the supporting Declarations of Steve Sanson and Anat Levy and exhibits filed concurrently herewith, the pleadings and court records in this case, and any argument and evidence submitted at the hearing on this motion.

DATED: August 4, 2017

By:
Attorney for: Steve Sanson, Veterans in Politics International, Inc., and Sanson Corporation
Anat Levy, Esq. (Bar #12250)
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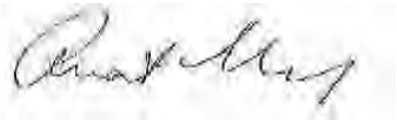
NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Family Court Division, located at 601 N. Pecos Road, Las Vegas, NV on the 5th day of September, 2017 at 10:00 a.m. or as soon thereafter as counsel may be heard, before the hearing master in Department Q, to bring this MOTION TO QUASH DEPOSITION SUBPOENA AND SUPEONA DUCES TECUM SERVED ON STEVE SANSON ON JULY 22, 2017 on for hearing.

DATED: August 4, 2017



By:
Attorney for Nonparties: Steve Sanson, Veterans In Politics International, Inc. and Sanson Corporation
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Non-parties Steve Sanson, Veterans in Politics International, Inc. ("VIPI") and Sanson Corporation ("Sanson Corp.") hereby move for an Order quashing the subpoena duces tecum and the deposition subpoena served on Mr. Sanson on July 22, 2017 by Marshal Willick, counsel for plaintiff Irina Ansell herein. Copies of the subpoenas are attached as Exhibits 1 and 2 respectively to Mr. Sanson's Declaration filed concurrently herewith ("Sanson Decl.").

This is the second motion to quash subpoenas issued by Mr. Willick, that VIPI and Mr. Sanson have had to file in this case.

VIPI is a non-profit 501(c)(4) Nevada corporation that advocates on behalf of veterans, serves as a government watchdog for public wrongdoing, and operates as a media outlet for political, judicial and other issues. Sanson Decl., ¶ 2. VIPI publishes a weekly radio show, internet blogs, and email blasts to its followers. *Id*. Its motto is: "We continue to fight for the freedom of our country, to uphold our vow to protect and defend our Country and our United States Constitution, beyond our military service."

Mr. Sanson is the President of VIPI and has served in that capacity on a volunteer basis for over 10 years. Sanson Decl., ¶ 4. Mr. Sanson is a 6 year veteran of the Marine Corp. having served in Desert Storm and Desert Shield, and a 6 year veteran of the Army, having served as a reservist and Army Chaplain. Mr. Sanson is 100% combat-related disabled. *Id*.

Sanson Corp. is a separate Nevada corporation through which Mr. Sanson's wife, a Nevada licensed family and marriage therapist, operates her therapy business. It operates completely independently from VIPI. *Id*., at ¶ 3. Mr. Sanson is an officer in his wife's corporation. *Id*.

Mr. Willick, counsel for Plaintiff Irina Ansell, is *determined* to get discovery from VIPI, Mr. Sanson, and Sanson Corp. even though *none have anything to do with*

this case. Neither Mr. Sanson, VIPI nor Sanson Corp. have any knowledge that is relevant to these parties' divorce, nor do they have financial dealings with either of the parties, nor to their knowledge, any entity affiliated with either party, nor is either party a shareholder or officer of either VIPI or Sanson Corp. Sanson Decl., ¶ 8. Rather, Mr. Willick and his fiancé, fellow family law lawyer Jennifer Abrams, each have *personal litigation pending* against VIPI and Mr. Sanson and are using this case to "*end run*" court orders staying discovery in their personal cases.

Moreover, the highly confidential and private financial documents and information sought are protected from discovery under federal and state privacy laws.

Counsel for these non-parties has attempted to resolve this discovery dispute with Mr. Willick without the need for court intervention, but to no avail. Levy Decl., ¶ 1-2.

A. <u>Ms. Abrams' Personal Lawsuit Against VIPI and Mr. Sanson and Her Failed Attempt to Have Mr. Sanson Incarcerated</u>

On January 9, 2017, Ms. Abrams, represented by Mr. Willick, sued VIPI, Mr. Sanson, Sanson Corp., and others for defamation, emotional distress, business disparagement, RICO violations, false light invasion of privacy, harassment, conspiracy, concert of action, and copyright violations. *See, Abrams v. Schneider et. al*., case no. A-17-749318-C First Amended Complaint ("FAC") attached as Ex. 3 to Sanson Decl.) (the "Abrams Lawsuit"). The lawsuit related to articles that VIPI published online showing Ms. Abrams' acting like a bully towards Judge Abrams in a family court hearing in a case entitled *Saiter v. Saiter*, Eighth Judicial District Court, case no. D-15-521372-D. One of the false allegations that Ms. Abrams made in the Abrams Lawsuit was that VIPI was paid by her opposing counsel in the *Saiter* case, Louis Schneider, to publish negative comments about her and the judge in an attempt to influence the judge to rule in favor of Mr. Schneider in the *Saiter* case. *See*, Ex. 3 to Sanson Decl. at ¶¶ 30-32, 44. Yet, neither VIPI nor Mr. Sanson have ever been paid, either directly or indirectly, to publish any articles, make any statements or take any particular position on any given issue. Sanson Decl., ¶ 8.

While the Abrams Lawsuit was pending, Ms. Abrams on February 13, 2017 also

filed a motion in the *Saiter* case seeking to have Mr. Sanson *incarcerated* for 54 days for purportedly violating an order that prohibited the dissemination of documents in that case. *See*, Motion attached as Ex. 5 to Sanson Decl. Ms. Abrams alleged that VIPI's online dissemination of the video transcript showing her being rude to Judge Elliott during the court hearing violated the court's non-dissemination order that Ms. Abrams obtained *after* VIPI's online distribution of the video. Pursuant to Mr. Sanson's objections (attached as Ex. 6 to Sanson Decl.), Judge Elliott in the *Saiter* case entirely *denied* Ms. Abrams' motion for contempt, vacated her prior non-dissemination order as *unconstitutional*, and correctly noted:

> The Court further FINDS that ***Plaintiff's Motions appear to be more about bolstering Abrams' civil action against Schneider and Sanson****, especially since neither party has alleged specific harm.*

See, March 21, 2017 Order attached as Ex. 7 to Sanson Decl. and at 21:4-10 quoted above; Emphasis added.) The *Saiter* case is now closed.

On July 24, 2017, the District Court, the Hon. Judge Michelle Leavitt presiding, dismissed the Abrams Lawsuit in its entirety on anti-SLAPP grounds. *See*, Findings of Fact and Conclusions of Law, attached as Ex. 8 to Sanson Decl.

B. Mr. Willick's Personal Lawsuit Against VIPI and Mr. Sanson

On January 27, 2017, Ms. Abrams filed a complaint on Mr. Willick's behalf against VIPI, Mr. Sanson, Sanson Corp. and the same other defendants as Ms. Abrams sued in her case. This time the claims related to online statements that VIPI made about Mr. Willick and his firm. *See*, FAC in *Marshal Willick et. al. v. Steve W. Sanson et. al*., Eighth Judicial District Court, case no. A-17-750171-C (the "Willick Lawsuit"), attached as Ex. 4 to Sanson's Decl. The Willick Lawsuit made the same false accusations about VIPI and Mr. Schneider that Ms. Abrams alleged in her suit:

> Mr. Schneider retaliated against Ms. Abrams by paying Mr. Sanson to commence an internet smear campaign designed to discredit Ms. Abrams… Defendants and Mr. Schneider extended the Smear Campaign to include discrediting and harming Plaintiffs due to Mr. Willick's relationship with Ms. Abrams.

Sanson Decl. Ex. 4: FAC at ¶¶ 19 and 21.

The district court in the Willick Litigation recently *stayed* all proceedings, including discovery, to permit VIPI and Mr. Sanson to appeal the denial of their anti-SLAPP motion to the Supreme Court. See Order Staying Proceedings attached as Ex. 9 to Sanson Decl.

C. Additional Efforts to Harass Mr. Sanson and VIPI

In addition to these legal proceedings, Mr. Willick and Ms. Abrams have engaged in a host of other maneuvers meant to harass VIPI and Mr. Sanson, now culminating in a series of unwarranted subpoenas in this case.

Mr. Willick posted online a menacing open letter to Sanson in which he falsely accused VIPI of engaging in a "pay-for-play" candidate endorsement process, failing to file income taxes, using VIPI as an "unethical scheme to extort concessions," calling VIPI and its weekly online video show a "fraud," claiming that Sanson was "forced to flee California," etc. *See*, copy of letter attached as Ex. 10 to Sanson Decl.

Ms. Abrams and Mr. Willick sent "take down" notices to VIPI's online vendors, YouTube, Facebook, Vimeo and Constant Contact claiming that VIPI was somehow violating their copyrights and privacy rights. These vendors suspended service to VIPI which hampered VIPI's ability to communicate with its members and followers. See Notices attached as Ex. 11 to Sanson Decl.

On January 22, 2017, Mr. Sanson received texts from an unknown phone number that turned out to belong to someone with the same name as Ms. Abrams' minor daughter. Sanson Decl., ¶ 19. These texts were sent to Mr. Sanson despite the fact that Ms. Abrams knew Mr. Sanson and VIPI were represented by counsel and should not have therefore contacted them directly.

A week later, on January 29, 2017, Mr. Sanson for the first time had the SIM card stolen from his cell phone. Sanson Decl., ¶ 20. He filed a police report on the incident (*Id*.), and while unconfirmed, given the timing and how adamant Mr. Willick appears to be to get Mr. Sanson's cell phone records, the incident may well be connected to Mr. Willick or to someone acting at his direction.

D. Improper Use of This Case to End Run Discovery in Their Personal Cases.

Unable to get discovery in his and his fiancé's cases, Mr. Willick is now using *this case* to try to get Mr. Sanson's and VIPI's cell records and financial information.

On July 26, 2017, VIPI and Mr. Sanson filed a motion to quash a subpoena that Mr. Willick served on Verizon Wireless in this case seeking everything pertaining to Mr. Sanson's cell phone use, specifically:

> Any and all documents, records, notes, tangible or intangible records, relating to **Phone Number (702) 283-8088**[1], from August 1, 2016, to the present date, including but not limited to: Phone Call Records, both incoming and outgoing, Text Message Records and Transmissions, Picture Message Records and Transmissions, and any Data Transfers to phone number (702) 234-4945.[2] (Bolding in original; underlining added.)

As set forth in that motion, the disclosure of this information is prohibited under the federal Electronic Communications Privacy Act ("ECPA"), aka, the Stored Communications Act, 18 USC §§2701 et. seq. (the "SCA") and the subpoena seeks confidential, private, privileged information as well as information that infringes upon third party privacy rights. And of course, the information is completely irrelevant to this case.

On July 22, 2017, Mr. Willick served Mr. Sanson with *two more* subpoenas in this case – one seeking to take Mr. Sanson's deposition on August 8, 2017 (Sanson Decl., Ex. 2), and the other seeking the production of the following categories of documents:

> 1. All "communications" in any form between you – or any of your businesses including but not limited to Sanson Corporation and Veterans in Politics International – and Douglas Ansell or his companies or agents from January 1, 2015 to present, whether in the form of notes, letters, emails, text messages, social media postings and exchanges, voice mails, What's App or any other written or electronically stored media.

[1] This is Mr. Sanson's phone number.
[2] This is Mr. Ansell's phone number.

2. The financial books for Veterans in Politics showing all receipts of funds, advertising fees and donations and from where they originated from January 1, 2015 to the present. This shall include all financial account statements whether in the name of Steve Sanson, Veterans in Politics, International, any DBA of those persons or entities, whether or not held jointly with any other person or entity along with all ledgers, check registers, and any receipts for cash received from any source.

3. Unredacted proof of all expenditures by Veterans in Politics, International. This shall include but is not limited to cancelled checks, credit card receipts, cash receipts, etc.

4. Unredacted copies of phone records for any phone associated with Steve Sanson, Steve Sanson Corporation, Veterans In Politics, International, or any DBA of those persons or entities.

5. Unredacted proof of source of funds for payment to Attorney McLetchie or any other attorney at law since January 1, 2015.

6. Copies of Sanson Corp and Veterans in Politics, International 2015 and 2016 unredacted federal income tax forms with all schedules attached.

Ex. 1 to Sanson Decl.

There is no basis for deposing Mr. Sanson, or for seeking any of the documents pertaining to Mr. Sanson, VIPI, Sanson Corp., Sanson's lawyers, etc. in this case. Moreover, the financial information and documents sought are highly confidential and are protected from discovery under state and federal laws.

This Court should quash the subpoenas and sanction Mr. Willick for his continued bad faith use of the Courts to circumvent court orders in his personal case against these non-parties and to harass them. Mr. Sanson, VIPI and Sanson Corp. have concurrently filed a separate motion for attorney's fees and costs relating to this motion to quash.

II. NRCP RULES 45(C) AND 26(C) PERMIT THE COURT TO QUASH THE SUBPOENAS IN THEIR TOTALITY, PARTICULARLY WHERE AS HERE, THE INFORMATION SOUGHT IS IRRELEVANT TO THE

CASE AND IS PRIVATE SUCH THAT ITS DISCLOSURE WOULD RESULT IN IRREPARABLE HARM TO THESE NON-PARTIES.

NRCP Rule 45(c)(3) permits the court to quash subpoenas in their totality when they seek to submit a person to "undue hardship" and when they seek the disclosure of a "protected matter" or "requires disclosure of other confidential commercial information."

NRCP Rule 26(c) likewise provides that the Court, on motion by a person from whom discovery is sought, may "make any order which justice requires to protect…[the] person from annoyance, embarrassment, oppression, or undue burden or expense." This includes an order "that the discovery not be had." (NRCP 26(c)(1); emphasis added.)

None of the discovery sought in this case is relevant to any of the issues in the parties' divorce. NRS 48.025(2) expressly makes irrelevant evidence inadmissible at trial. As the Nevada Court of Appeals recently stated in *Schwartz v. Eighth Judicial Dist. Court of State* (Nev. App., 2017):

> This court generally will not review discovery orders through writ petitions unless the order is likely to. cause irreparable harm, such as if it is "a blanket discovery order, issued without regard to the relevance of the information sought," or if it "requires disclosure of privileged information." Okada v. Eighth Judicial Dist. Court, 131 Nev. ___, ___, 359 P.3d 1106, 1110 (2015) (internal quotation marks omitted)."

Emphasis added. In this case, both conditions are involved – the information sought is irrelevant to the subject matter of the litigation and is privileged so that its disclosure will result in irreparable harm to Mr. Sanson, VIPI and Sanson Corp.

III. DISCOVERY FROM NON-PARTIES IS ENTITLED TO EVEN MORE PROTECTION THAN FROM PARTIES.

As explained in *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980), "while discovery is a valuable right and should not be unnecessarily restricted . . ., the necessary restriction may be broader when a nonparty is the target of discovery." (Emphasis added.)

In other words, the Court should be especially vigilant to protect the privacy, confidentiality and other rights of non-parties such as VIPI, Mr. Sanson and Sanson Corp. from any unnecessary and abusive discovery tactics.

IV. THE DEMAND FOR FINANCIAL DOCUMENTS VIOLATE MR. SANSON'S, VIPI'S AND SANSON CORP.'S FEDERAL AND STATE PRIVACY RIGHTS AND WILL RESULT IN IRREPARABLE HARM.

It is well established that financial documents and information, including tax returns, are private and are entitled to the *highest discovery protections* under *both federal and state law*. 26 USC §6103 provides that tax "returns and return information shall be confidential" except under limited circumstances none of which apply here, (e.g., tax litigation, criminal proceedings, sharing returns with a spouse, shareholder rights to review a corporation's tax return, etc.).

In *Hetter v. District Court*, 874 P.2d 762, 110 Nev. 513 (Nev., 1994), the Nevada Supreme Court issued an extraordinary writ of mandamus to *stop* the district court's ordered discovery of defendant's federal tax returns. The Supreme Court indicated that it was issuing the writ to prevent "improper discovery" that would result in "*irreparable injury*."

In *Hetter,* plaintiff sued her plastic surgeon for defamation and false light when he put her "before" and "after" pictures on the cover of his brochure and disseminated it to his clientele purportedly without her approval. The plaintiff argued that she was entitled to the doctor's financial documents because she was seeking punitive damages for which the doctor's net worth was directly relevant.

The Nevada Supreme Court disagreed, stating:

> …public policy suggest that tax returns or financial status not be had for the mere asking. Claims for punitive damages can be asserted with ease and can result in abuse and harassment if their assertion alone entitles plaintiff to financial discovery. See *Moran v. International Playtex, Inc.*, 103 A.D.2d 375, 480 N.Y.S.2d 6,8 (1984). We hold that before tax returns or financial records are discoverable on the issue of punitive damages, the plaintiff must

> demonstrate some factual basis for its punitive damage claim. Disclosure of Hetter's tax returns at this point is unwarranted.

(Emphasis added.) In other words, the plaintiff in the *Hetter* case had to demonstrate some basis for which punitive damages would even be warranted before being able to delve into the defendant's financial records.

Again, this is even more the case when non-parties are involved. As stated in *Westco, Inc. v. Scoll Lewis' Gardening & Trimming, Inc*., 26 So.3d 620, 622 Fla 4th DCA 2009) "third-party financial records…are of the utmost sensitivity and are not discoverable unless the party seeking discovery establishes a need for the discovery sufficient to overcome the privacy rights of the third party." Similarly, in *Rousso v. Hannon*, 146 S. 3d 66, 69-70 (Fla. Dist. Ct. App. 2014), *reh'g den.* (Sept 1, 2014), *rev. den.*, No. SC14-2038l, 2014 WL 6977670 (Fla. Dec. 9, 2014), the court held that a "heightened standard is necessary because the disclosure of personal financial information may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant."

Here, the nexis between the case and the information sought is even more remote than in the *Hetter* case, and as in the *Westco* and *Rousso* cases, involve non-parties to the case. Mr. Willick is seeking highly confidential information in the form of: all of the financial books and records of VIPI (request #2 of the subpoena), proof of all of VIPI's expenditures (request #3 of the subpoena), proof of funds of payments to all lawyers (request #4 of the subpoena), and copies of VIPI's and Sanson Corp.'s tax returns (request #6 of the subpoena). This is a wildly intrusive, overbroad request that is a massive invasion of these non-parties' privacy rights. In addition, VIPI's donor and member lists are private and are protected from discovery as trade secrets.

There can be no doubt that these subpoenas are being sought -- just as Judge Elliott found with regard to Ms. Abrams' motion for contempt against Mr. Sanson in the *Saiter* case -- for the improper purpose of trying to boost Mr. Willick and Ms. Abrams' *personal* litigation against these non-parties, and at a minimum, to harass them.

V. THE REQUEST FOR PHONE RECORDS, CORRESPONDENCE AND PROOF OF VIPI'S PAYMENT TO ITS ATTORNEYS VIOLATE MR. SANSON'S, VIPI'S AND SANSON CORP.'S PRIVACY RIGHTS AND PRIVILEGE AND ARE IRRELEVANT.

Mr. Willick's demand for "[a]ll 'communications' in any form between you – or any of your businesses including but not limited to Sanson Corporation and Veterans in Politics International – and Douglas Ansell or his companies or agents from January 1, 2015 to present, whether in the form of notes, letters, emails, text messages, social media postings and exchanges, voice mails, What's App or any other written or electronically stored media" likewise misses the mark. There is no showing of how any communication between a Mr. Ansell and these third parties has any bearing on this case.

The same is true for documents demanded that show the source of Mr. Sanson, VIPI's and Sanson Corp's payment of fees to attorneys who are representing them in litigation that Mr. Willick and his fiancé personally filed against them! Nothing about that has any bearing on the instant case and is an intrusion on the privacy and privilege of those entities.

VI. IT WOULD BE UNDULY BURDENSOME AND OPPRESSIVE FOR MR. SANSON TO BE DEPOSED BY MR. WILLICK WHO IS SIMPLY ON A FISHING EXPEDITION TO BOLSTER HIS PERSONAL CASE IN CONTRAVENTION OF COURT ORDERS STAYING DISCOVERY.

Mr. Willick's subpoena to take Mr. Sanson's deposition on August 8, 2017 is nothing more than an attempt by Mr. Willick to go on a "fishing expedition" to garner whatever evidence he can against Mr. Sanson and VIPI to try to bolster his and his fiancé's personal litigation. It is also a violation of the Court's Order staying discovery in the Willick Litigation and against the Rules of Civil Procedure in the Abrams Litigation which was recently dismissed.

Mr. Sanson, VIPI and Sanson Corp. have no financial dealings or other relevant involvement with either party or to its knowledge, any entity that may be associated with either party. Any information that Mr. Sanson could possibly provide would be excluded

from trial under NRS 48.035 for being either irrelevant, or so remote and inconsequential that its probative value would be outweighed by its waste of time, prejudice, danger of confusion of the issues, or misleading of the fact finder.

VII. CONCLUSION

For the reasons stated above, non-parties VIPI and Mr. Sanson respectfully request that the Court:

a) Grant their motion and quash the subpoena duces tecum and deposition subpoena that Mr. Willick served on Mr. Sanson on July 22, 2017 in their entirety;

b) Order the payment of reasonable attorney's fees and costs pursuant to Mr. Sanson's and VIPI's separately filed motion; and

c) Order such further relief as the Court may deem just and proper.

Dated: August 4, 2017

By: _____

Attorney for Non-parties: Steve Sanson, Veterans in Politics International, Inc. and Sanson Corporation
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CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action. On the date indicated below I caused to be served a true and correct electronic copy of the document entitled MOTION TO QUASH SUBPOENA DUCES TECUM AND DEPOSITION SUBPEONA SERVED ON STEVE SANSON ON JULY 22, 2017 on the below listed recipients via the District Court's Odyssey file and serve online computer program:

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 4th day of August, 2017, in Las Vegas, NV