IN THE SUPREME COURT OF THE STATE OF NEVADA

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VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE W. SANSON, Appellant, vs. MARSHAL S. WILLICK AND WILLICK LAW GROUP, Respondent.	S.C. NO. 72778 D.C. NO: A-17-750171-C

RESPONDENT'S ANSWERING BRIEF

JENNIFER V. ABRAMS, ESQ.
Attorney for Respondent
Nevada Bar No. 7575
THE ABRAMS AND MAYO LAW FIRM
6252 South Rainbow Blvd., Ste. 100
Las Vegas, Nevada 89118
(702) 222-4021
email: JVAGroup@theabramslawfirm.com

ANAT LEVY, ESQ.
Attorney for Appellant
Nevada Bar No. 12250
5841 E. Charleston Blvd., #230-421
Las Vegas, Nevada 89142
(310) 621-1199
Email: alevy96@aol.com

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. In the course of these proceedings leading up to this appeal, Respondent has been represented by the following attorneys:

a. Marshal S. Willick, Esq., of the law firm WILLICK LAW GROUP.

b. Jennifer V. Abrams, Esq., of the law firm THE ABRAMS AND MAYO LAW FIRM.

c. Dennis L. Kennedy, Esq., and Joshua Gilmore, Esq., of the law firm BAILEY KENNEDY, LLP.

There are no corporations, entities, or publicly-held companies that own 10% or more of Willick Law Group's stock, or business interests.

DATED this 7th day of February, 2018.

Respectfully Submitted By:
THE ABRAMS AND MAYO LAW FIRM

/s/ Jennifer V. Abrams, Esq.

JENNIFER V. ABRAMS, ESQ.
Attorney for Respondent
Nevada Bar No. 7575
6252 South Rainbow Blvd., Ste. 100
Las Vegas, Nevada 89118
(702) 222-4021
email: JVAGroup@theabramslawfirm.com

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ROUTING STATEMENT

Although part of Appellant's[1] routing statement is no longer accurate (this Court addressed the impact of hyperlinks in analyzing the scope of the fair report privilege in *Adelson*[2]), Respondent[3] concurs that this appeal should presumptively be retained in the Nevada Supreme Court under NRAP 17(a)(14) and because this Court's existing jurisprudence in the areas of defamation and anti-SLAPP law have been inconsistently applied in the district courts.

STATEMENT OF ISSUE

Whether the district court abused its discretion in denying Sanson's "Anti-SLAPP" motion on the bases that he failed to establish that each claim is based on a communication "made in direct connection with an issue of public interest" and failed to show that each communication was true or made without knowledge of falsehood.

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[1] Appellants Veterans In Politics International, Inc. ("VIPI") and Steve W. Sanson ("Sanson") are collectively referenced as "Sanson."

[2] *Adelson v. Harris*, 133 Nev. ___, 402 P.3d 665 (Adv. Opn. No. 67, Sep. 27, 2017).

[3] Marshal S. Willick ("Attorney Willick") and Willick Law Group are collectively referenced as "Willick."

While arguably beyond the first prong of the anti-SLAPP statute that is on appeal, whether the district court abused its discretion in finding that Willick is not a "public figure" for purposes of defamation law.

STATEMENT OF CASE[4]

This is an appeal from an order denying Sanson's "anti-SLAPP" motion.[5] The *Order* was filed March 30, 2017, Hon. Charles J. Thompson, Senior District Court Judge, presiding (temporarily) in Dept. XVIII.[6]

[4] The Statement of the Case filed by Sanson includes both argument and disputed assertions of fact; neither is proper. We request this Court refer to this Statement in its place.

[5] VIII Appellants' Appendix ("AA") 1707-08.

[6] VIII AA 1682-91.

STATEMENT OF FACTS[7]

As discussed at some length in prior motions filed in this Court, three intertwined and interrelated appeals are now pending. Both this appeal and *Abrams v. Schneider and Sanson*, No. 73838 ("*Abrams*"), arise out of facts occurring in *Saiter v. Saiter*, No. 72819 ("*Saiter*"). Sanson's *Opening Brief* makes scattered references to those (and other) cases with no cogent explanation of their relationship or how they inform the decisions to be made in this appeal.

In the interest of completeness, and assuming that this Court takes judicial notice of the events occurring in *Saiter* and *Abrams*, this Statement of Facts recites the material facts leading up to this appeal.

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[7] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. The "Statement of Facts" in Sanson's *Opening Brief* ("AOB") does not provide all relevant facts and is incomplete as to the issues presented, so we request that the Court refer to this Statement of Facts instead.

A. *Saiter/Abrams*

In *Saiter*, attorney Jennifer Abrams ("Abrams") represented the husband, and attorney Louis Schneider ("Schneider") represented the wife.[8] The Abrams firm documented assorted improprieties by Schneider in a *Motion for Sanctions and Attorney's Fees* ("Sanctions Motion") alleging that he was responsible for delaying the resolution of the case and fueling unnecessary litigation for personal and improper motives through billing and discovery improprieties, claiming to continue representing his client after being fired, obstructing resolution of the case against his client's wishes, and other inappropriate behavior including "sexually suggestive conduct" toward his client.[9]

Schneider responded with a written threat that "If your firm does not withdraw that motion, I will oppose it and take additional action beyond the opposition."[10]

When the Abrams firm did not withdraw the Sanctions Motion, Schneider followed through on his threat. He requested a copy of the video of a *closed* hearing in the divorce case (he was the only person to request the September 29, 2016, hearing

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[8] I AA 116, at ¶ 21. Abrams verified the Amended Complaint filed in Abrams. I AA 151.

[9] I AA 116, at ¶ 23; *see also* I RA 1-20.

[10] I AA 116 at ¶ 24.

video),[11] and provided it to Sanson to post on various internet channels along with commentary attacking the integrity of Abrams and her law firm.[12]

Sanson claims to run an "advocacy" group but actually runs an internet-based extortion and defamation service intended to alter political races and judicial proceedings – essentially a modern day "protection racket."[13] Sanson advertises it as such, posting that he and his organization are available: "When people needed somone [*sic*] to get dirty so they can stay nameless, we do it without hesitation."[14]

Sanson has sworn that his organization is a "non-profit"[15] from which he "takes no salary," but investigative reporters claim that it has not been any such thing for six years and is actually "a for-profit organization" that is "Sanson's business" of which

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[11] I AA 117 at ¶¶ 27-30; I RA 131-132.

[12] I AA 118-119, 154-158; II RA 3313-318. The Sanson commentary invited viewers to watch that portion of the video where Judge Elliott made preliminary remarks concerning Abrams' ethics, without mentioning the judge's retraction of those remarks after learning all the facts. I AA 118-20, at ¶¶ 33-37.

[13] VII AA 1423; II RA 335-372, 375-378, 380-405.

[14] VII AA 1424, 1461.

[15] VII AA 1500; VIII AA 1714.

he is "president and owner," and in which judicial endorsements are part of his "business plan."[16]

Schneider's client, Tina Saiter, did not want videos from her divorce posted on the internet; when she questioned Schneider about it, he sent her an email pretending that he did not know how it got posted, which she then copied to her husband, Brandon Saiter (Abrams' client).[17] Schneider then sent an email to Abrams saying he was unsure why he was being copied with correspondence because "I don't want anything to do with this."[18]

By October 3, Sanson had posted the video of the closed *Saiter* hearing on Youtube and emailed a link to the video to thousands of third parties not involved in the case.[19] An advertisement for Schneider's law office then appeared as an advertisement on Sanson's personal Facebook page.[20]

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[16] Jane Ann Morrison, *Judges' ties with Sanson have courts in tight spot*, Las Vegas Review-Journal, January 21, 2018, at IV part III RA 956 – RA 963.

[17] III part 1 RA 617-618.

[18] I AA 89.

[19] *See*, *e.g.*, I AA 178.

[20] I RA 37.

Sanson immediately initiated a series of "smear campaigns" against Abrams via email blast, Youtube, numerous Facebook pages, Twitter accounts, Google+ accounts, and on various blogs and Facebook "groups," etc., re-posting the embedded *Saiter* hearing video again and again thereafter.[21] While Sanson denied being paid for the specific purpose of launching a smear campaign against Abrams[22] Sanson did post an advertisement for Schneider just when the campaign began.

Throughout, the privacy of Brandon and Tina Saiter was invaded, their personal information widely was disseminated, and the emotional well-being of everyone in the family (including the children) was compromised.[23]

Judge Elliott attempted to persuade Sanson to stop posting the closed hearing video by writing to him directly and informing him that the information he posted about Abrams was incorrect.[24]

Instead of admitting fault, Sanson complained that Judge Elliott sealed the case "in error" because she was "shielding the attorney and not the litigants," and then

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[21] *See*, *e.g.*, AA 94-107, 118-130, 154, 160, 166, 178, 181, 186, 189.

[22] *See*, *e.g.*, VII AA 1502.

[23] II RA 429; IV App.

[24] II RA 310-311.

threatened the judge directly, stating that he was going to "ask for an opinion from the Nevada Judicial Discipline Commission and Nevada State Bar in regards [*sic*] to the sealing of the case."[25] Sanson further proclaimed that court rules "don't apply" to him[26] and that he can do as he pleases because of the "Freedom of Information Act."[27]

Schneider, without acknowledging that he had put these events into motion, stipulated with Abrams to seal the *Saiter* divorce and agreed that all internet postings of the video should be removed.[28] Judge Elliott issued a separate order "Prohibiting Dissemination of Case Material."[29]

The order was personally served on Sanson,[30] but he ignored it[31] and continued to disseminate the closed Saiter hearing video through "boosted paid placements" on

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[25] II RA 310-311.

[26] I AA 91, 92-93, 120, 123; VII AA 1420, 1550. Whether district court judges have the authority to prohibit dissemination of closed hearing videos in sealed family court cases is the central issue pending before this Court in *Saiter*.

[27] *See*, *e.g.*, I AA 131.

[28] VI AA 1328-1329.

[29] VI AA 1328-1329.

[30] I AA 160.

[31] I AA 131.

social media,[32] including Facebook, where the Saiter children had accounts and could view the video.[33] Sanson wrote and posted *additional* articles about the closed Saiter hearing and the sealed Saiter divorce file,[34] and solicited and posted other videos from cases in which judges had specifically ordered that the videos remain private.[35]

The defamation campaign against Abrams went on for months; on January 9, 2017, Abrams filed suit against Sanson and Schneider.[36]

During the months that Sanson's smear campaign against Abrams went on, Brandon Saiter attempted to protect his family's privacy without litigation.[37] After Sanson posted the hearing videos on YouTube, he submitted two privacy complaints.[38] As a result, YouTube removed the videos.[39] Facebook and Constant Contact also

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[32] II RA 225.

[33] II RA 222 – RA 243, at p. 4, Saiter kids had Facebook accounts.

[34] *See, e.g.,* VI App. 1093.

[35] I AA 130.

[36] I AA 112. As noted above, *Abrams* is one of the three inter-related appeals now before this Court.

[37] IV App. 888.

[38] IV App. 888-889.

[39] IV App. 889.

removed the videos,[40] and Constant Contact shut down Sanson's account for "violation of terms of service."[41]

When Sanson learned that the videos were removed, he announced that he would continue to post whatever he wanted and he re-posted two Saiter videos on an alternate internet service called "Vimeo."[42]

When Brandon Saiter learned that Sanson had re-posted his private divorce hearings on the internet, he submitted privacy complaints to Vimeo, which removed the videos.[43] Unfazed, Sanson found yet another forum through which to violate the Saiters' family privacy by posting them on a Russian website; he publicly stated "I'll be damned if anyone can get that one down!"[44] The link to the Russian-hosted video continues to be repeatedly shared on social media.[45]

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[40] VI App. 1075-1077.

[41] VI App. 1069.

[42] IV App. 889.

[43] *See* II AA 345, 349; II RA 227.

[44] IV App. 889.

[45] IV App. 889.

B. *Willick*

The extremely limited pre-litigation interactions between Willick and Sanson are recounted in the *Affidavit* filed below,[46] the most extensive of which was a 2015 "interview" that immediately devolved into "profanity-laced shouting" by Sanson.[47]

By January, 2017, When Sanson discovered the personal relationship between Abrams and Willick, he expanded the smear campaigns to include Willick, falsely accusing him of multiple crimes and other wrongs,[48] including the false claim that "Attorney Marshall [*sic*] Willick and his pal convicted of sexually coercion of a minor."[49] The defamatory postings were repeatedly posted to dozens of sites hundreds of times and boosted to tens of thousands of recipients.[50]

This case was eventually assigned to Department 18, which was temporarily vacant due to the retirement of Judge David Barker. When Sanson filed his "Special

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[46] VII AA 1504.

[47] VII AA 1505-1506, 1520-1529.

[48] *See*, *e.g.*, I AA 204; II AA 269-275, 292, 297, 312, 326; VII AA 1508-1509 (noting at least 45 known separate postings over 9 days).

[49] *See*, *e.g.*, VII AA 1465, 1508.

[50] I AA 1.

Motion to Dismiss Pursuant to NRS 41.650" on February 17, 2017, the Hon. Charles J. Thompson, Senior Judge, was presiding.

By that time, presumably on advice of counsel, Sanson posted a purported "clarification" to one of the defamatory postings.[51] It did not reference or retract the earlier posting, was not "boosted" to reach the same tens of thousands of recipients, and itself made the false claim that Willick "settled before trial on issue privilege."[52] The original defamatory postings were then repeated.[53]

Sanson began repeatedly posting and widely disseminating a promised bounty of $10,000 for "verifiable" defamatory material to be used against Willick.[54]

C. The Hearings Leading to These Appeals

On February 13, in *Saiter*, Brandon filed a *Motion for an Order to Show Cause* against Schneider and Sanson, alleging they violated the *Order Prohibiting Dissemination of Case Material* by posting the closed hearing video after the *Order*

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[51] VII AA 1502.

[52] II AA 292.

[53] VII AA 1509-1512.

[54] *See*, *e.g.*, VII AA 1531.

was issued,[55] and that both Brandon and Tina were mortified to learn that videos of their private divorce case were being repeatedly posted on the internet.[56]

Brandon represented that he was especially concerned about his four children, three of whom have Facebook accounts, and the possibility that they or their friends would see their parents' private case materials, including the false (and later retracted) allegation that their father lied about his finances.[57]

Brandon asked the Court to compel Schneider and Sanson to remove the private case information from the internet.[58] He asserted that Schneider had obtained the video of the closed hearing and provided it to Sanson, apparently with payment, for the purpose of out-of-court extortion against his counsel (Abrams) to alter the outcome of the litigation and to attempt to intimidate the district court.[59] Brandon did not believe Tina was involved in the dissemination of the case materials and that she also wanted

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[55] IV App. 884-905.

[56] IV App. 888.

[57] IV App. 888.

[58] IV App. 890.

[59] IV App. 892-894.

them removed from the internet.[60] The exhibits supporting the *Motion* were detailed and voluminous.[61]

On March 6, Sanson made a "special appearance" in *Saiter*[62] to contest the jurisdiction of the Court.[63] The *Opposition* raised a host of objections to both the *Motion* and the underlying *Sealing Order*, mostly based on the purported inability of the Family Court to assert any jurisdiction over Sanson or in any way constrain him from posting on the internet anything he wanted from the case, regardless of whether it was closed, sealed, or otherwise.

Meanwhile, on March 8, 2017, Willick opposed Sanson's special motion in this case,[64] recounting much of the history detailed above, as well as the statutory and case law behind anti-SLAPP and defamation claims, and focusing on this Court's recent opinion in *Shapiro v. Welt*.[65]

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[60] IV App. 894, 902.

[61] V App. 906-942.

[62] VI AA 1289; II RA 281-297.

[63] VI App. 1066.

[64] VII AA 1422.

[65] *Shapiro v. Welt*, 133 Nev. ___, 389 P.3d 262 (Adv. Opn. No. 6, Feb. 2, 2017); see VII AA 1431.

On March 14, Sanson's special motion was heard by Judge Thompson.[66] Judge Thompson noted at the outset that for anti-SLAPP statute purposes, whether an attorney lost on an issue when arguing an appeal is not an "issue of public concern."[67] He also indicated that claiming a lawyer had been convicted of sexually coercing a minor would be a statement of fact, not opinion.[68]

Willick's counsel described the two-step analysis in an anti-SLAPP motion, and argued that the district court did not need to reach the second part of the analysis, including whether Willick is a public figure or limited purpose public figure and whether hyperlinking documents to defamatory posts immunizes the defendant from liability, because Sanson failed to satisfy the *Shapiro* factors or prove that their statements were true or made without knowledge of their falsity.[69]

Sanson's counsel argued that the assertion of fact of the alleged criminal conviction was just a "mistake of punctuation." She insisted that each word must be examined individually, and if a word could conceivably have a dual meaning, or

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[66] VIII AA 1604.

[67] VIII AA 1621-1622.

[68] VIII AA 1624.

[69] VIII AA 1628-1642.

constitute an opinion, then it could not be actionable and the anti-SLAPP statute shielded the communication.[70]

Willick's counsel (Mr. Gilmore) noted that Sanson's offering up of a bounty for anyone that could "dig up dirt" on Willick established the intention behind the postings,[71] that there was no "issue of public interest" in the settled resolution of a private civil case six years earlier, the arguments made in private civil cases, or years-old legislative hearings and that Sanson was trying to turn his private disputes ***into*** an issue of public concern by posting it on the internet.[72]

Mr. Gilmore asserted that defamatory words used are not to be taken in isolation, but collectively in context, with the question being what a reasonable person would perceive from the entire communication.[73] He noted that under the statute, Sanson had the burden of proving truth, and could not do so on these facts.[74]

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[70] VIII AA 1605-1627.

[71] VIII AA 1646.

[72] VIII AA 1628-1636.

[73] VIII AA 1635.

[74] VIII AA 1636, 1637-1641.

Judge Thompson considered the suggestion by Sanson's counsel that the false accusation of conviction for sexual coercion was the mistaken omission of commas,[75] but as Ms. Abrams pointed out, the "correction" actually made the accusation worse, and the original defamatory comment was then re-posted again and again.[76]

Sanson's counsel argued that the false accusation of sexual coercion of a minor was protected because if it had been true, it would have resulted in a court case, and courts are public.[77] She asserted that linking the false accusation to information that a reader could review to verify that it was false made it protected.[78] She argued at length that saying that someone who won a case actually lost it is protected as "true" if there was some issue on which the winning party did not prevail.[79]

Judge Thompson observed that communications between a lawyer and his client relating to what arguments to make and billings in a specific case are not issues of

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[75] VIII AA 1637-1638.

[76] VIII AA 1648-1649. On appeal, Sanson alleges that the "clarification" was also "mistaken" in "inserting the commas in the wrong place." AOB at 41.

[77] VIII AA 1658.

[78] VIII AA 1659.

[79] VIII AA 1663-1665.

public concern.[80] He also agreed that for anti-SLAPP purposes, the communication has to be something of concern to a substantial number of people, and there must be a close relation between the statement and the public interest.[81]

Ultimately, Judge Thompson concluded that Willick was not a "public figure,"[82] that the subjects of the defamatory posts were not "matters of public interest,"[83] and denied Sanson's anti-SLAPP motion to dismiss.[84]

On March 21, 2017, in *Saiter*, Judge Elliott issued an *Order Without Hearing Pursuant to EDCR 2.23*, vacating all pending hearings in the case, and setting aside the Order Prohibiting Dissemination.[85] That order found that the video "would clearly be disturbing emotionally and mentally to most any child who witnessed it,"[86] and that the best interests of the children trumped Sanson's "free speech rights."[87] But it went on

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[80] VIII AA 1662.

[81] VIII AA 1640.

[82] VIII AA 1665-1666.

[83] VIII AA 1667.

[84] VIII AA 1667.

[85] VI App. 1192.

[86] VI App. 1207.

[87] VI App. 1207.

to find that because the Order Prohibiting Dissemination failed to give advance notice to "all persons or entities," including Sanson,[88] it must be "struck and vacated" as "unconstitutionally overbroad."[89] Stating that her decision was a bad one for children, the district court found that "there is nothing this Court can do."[90] That finding (that a family court judge is "powerless" to prohibit the internet posting of closed hearing videos in sealed cases) is the focus of the pending *Saiter* appeal.

Judge Thompson's order denying Sanson's anti-SLAPP motion was filed on March 30, 2018.[91] After reciting this Court's "guiding principles" for determining whether an issue is of "public interest" as stated in *Shapiro*, Judge Thompson found that for purposes of assessing whether any of statements at issue falls within the communications codified at NRS 41.637(4), the district court must determine: (i) whether the statement was made in direct connection with an issue of public interest; (ii) whether the statement was made in a public forum; and (iii) whether the statement

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[88] This finding was incorrect; Sanson was personally served with the order, and acknowledged being served. IV App. 887; V App. 912-913.

[89] VI App. 1209.

[90] VI App. 1209-1210.

[91] VIII AA 1686.

was truthful or made without knowledge of falsity.[92] Judge Thompson noted that if Sanson did not establish all three of those elements, Willick was not required to establish a probability of prevailing on his claims.

Judge Thompson found that Sanson failed to meet his initial burden of proof because: each claim did not arise from a communication made in direct connection with "an issue of public interest"; Willick is not a public figure (or "limited purpose public figure"); and Sanson failed to show that his statements were truthful or made without knowledge of their falsehood.[93]

Because Sanson had failed to meet his initial burden, Judge Thompson did not have to address whether Willick had shown at least "minimal merit" for the claims in the *Complaint*.[94]

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[92] VIII AA 1688-1689.

[93] VIII AA 1689-1690.

[94] VIII AA 1689-1691.

D. *Ansell*

By the spring of 2017, Sanson had formed a relationship with Douglas Ansell, a divorce court litigant in a case still pending in the family court.[95] Sanson discusses the Ansell divorce case in his opening brief[96] and his appendix contains various documents from that action.[97]

As detailed in the *Ansell* record, Sanson met with Douglas Ansell on some number of occasions and exchanged documents and information with him; Ansell became an eager participant in Sanson's self-declared "War on Family Court" and sat outside family court during Sanson's "protests" holding a sign with a picture of Willick attacking his character and integrity.[98]

On May 11, Sanson sent text messages to the private cell phone of the Hon. Bryce Duckworth requesting a phone conversation. When the call was made, Sanson

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[95] No. D-15-521960-D, filed in October, 2015.

[96] AOB at 13-14.

[97] *See*, *e.g.*, VIII AA 1804.

[98] IV, part III RA 964, DiCiero, Mark (2018, January 26). Nevada Court Watchers [Facebook group]. Retrieved from https://www.facebook.com/groups/433293260115971/permalink/1322318161213472/.

immediately attacked Willick's actions in *Ansell*.[99] As detailed in the *Order of Recusal*, Judge Duckworth terminated the call and convened a hearing with both counsel to the divorce case to make a record of Sanson's improper *ex parte* conversation.

On August 30, Judge Duckworth held a formal hearing at which he announced that Sanson's actions required him to recuse from the case. Sanson was present at the hearing; he was unable to contain his malice and hostility toward Willick, leaving Judge Duckworth to make a record:

> Hey, stop it! OK, let the record reflect that the witness [Sanson] is scowling at counsel, directing his venom and anger at counsel, which is completely inappropriate. That behavior is not tolerated in the courtroom.[100]

Much of the August 30 hearing made it into Judge Duckworth's written *Order of Recusal* filed September 5, 2017, which included detailed findings about Sanson's *ex parte* communications with him, including the veiled threat against Judge Duckworth made during their exchange (emphasis in the original):

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[99] IV, part I RA 724-RA 734 *Order of Recusal* filed September 5, 2017, in *Ansell v. Ansell*.

[100] V RA 967-RA 1009, p. 22.

[N]otwithstanding his self-proclaimed faux cover of seeking to "expose injustice and corruption," Mr. Sanson's sole motivation for communicating with this Court was to intimidate and harass the Court. Mr. Sanson proudly proclaims that he has "declared war" on the Family Court. There is no doubt that the courts are under attack and that the entire judiciary of this great State of Nevada is on notice that, behind that false banner of "justice and corruption" is an individual and group who seek to manipulate, intimidate and control. The arsenal of weapons that Mr. Sanson utilizes include attempts to manipulate, intimidate and control the judicial process through off-the-record communications. This case has exposed the reality of his tactics.

. . . .

What should be frightening to this Court (and members of the Nevada judiciary in general) is that Mr. Sanson refused to acknowledge at the August 30, 2017 hearing that his communication with the Court about a pending case was inappropriate. Specifically, Mr. Sanson, through his counsel, suggested it was the Court's fault based on the earlier conversation cited above. This Court reiterates that it is inappropriate to communicate with a judicial officer off the record about a pending case - ***at <u>any</u> time and under <u>any</u> circumstances***. Mr. Sanson's attempts to deflect blame to the Court are appalling.

. . . .

Is there anything more corrupt than the influence Mr. Sanson sought to exert over the Court? And he proclaims that he seeks to expose corruption? Because this Court called him out on the inappropriateness of his communication and refused to kowtow and cower to his manipulation and control, Mr. Sanson predictably let the Court know that his wrath was coming out against the Court. This type of threat to any judicial officer strikes at the very core of the integrity of the judicial process. Moreover, such threatening behavior is an attempt to manipulate and control judicial officers if they do not succumb to Mr. Sanson's desired result.

As documented in motion proceedings below in this case, Sanson immediately retaliated against Judge Duckworth, launching a smear campaign against the judge.[101]

In August, while this appeal was pending, the Hon. Mark B. Bailus was appointed to the vacant Department 18 seat by Governor Sandoval. Sanson promptly sought contact with him. He succeeded, and on November 18, 2017, Sanson sent out a mass marketing email representing that Judge Bailus was scheduled to appear on the his web radio show on November 25.

When Judge Bailus appeared on Sanson's radio show, the judge noted that the only reason he was invited was because of his appointment, and Sanson made veiled references to the judge's ability to finance future campaigns.[102] Based on those contacts, we moved to disqualify, which Sanson vigorously opposed; Judge Bailus acknowledged the "appearance of impropriety" and was removed from the case by Chief Judge Gonzalez.[103] There are a minimum of five additional district court cases where Sanson has forced recusal of judges in pending cases.[104]

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[101] III, part II RA 619-723.

[102] III, part II RA 619-723, at p.14-16.

[103] III, part II RA 619-723, at p. 16.

[104] III, part II RA 619-723 at p. 17.

Sanson then turned to this Court, and made direct contact with at least one Justice despite having three appeals now pending, announcing that Justice Cherry would be appearing on his internet radio show.[105] On January 10, Abrams sent a letter to Justice Cherry detailing Sanson's efforts to contact judges who are presiding over cases to which he is a party.[106] The same day, Justice Cherry sent an email to both parties stating in its entirety: "Please be advised that I will not appear on the Veterans in Politics show on Saturday but will seek some advice from the Commission on Judicial Discipline on the issues raised by Ms. Abrams. Justice Michael Cherry."

This *Answering Brief* follows.

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[105] IV part III RA922-923.

[106] IV part III RA924- RA955.

ARGUMENT

I. STANDARD OF REVIEW

Based on outdated authority, Sanson incorrectly asserts (at 16 & 22) that the standard of review in this appeal is *de novo*. As this Court expressly held in *Shapiro*[107] less than a year ago:

> Prior to 2013, this court treated special motions to dismiss as motions for summary judgment and therefore reviewed the resulting orders de novo. See John v. Douglas Cty. Sch. Dist., 125 Nev. 746, 753 219 P.3d 1276, 1281 (2009). After 2013, however, with the plaintiffs burden increased to clear and convincing evidence, this court will provide greater deference to the lower court's findings of fact and therefore will review for an ***abuse of discretion.***[108]

Because the standard of review is abuse of discretion, this Court will only reverse a decision "founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law,"[109] or if it "lacks support in the

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[107] *Shapiro v. Welt*, 133 Nev. ___, 389 P.3d 262 (Adv. Opn. No. 6, Feb. 2, 2017).

[108] *Shapiro*, 133 Nev. at __, 389 P.3d at 266 (emphasis added) (internal citations and footnotes omitted); *see also SPG Artist Media, LLC v. Primesties, Inc.*, No. 69078, 2017 WL 897756, at *1 (Feb. 28, 2017) (unpublished disp.) ("**This court reviews a district court's order denying a special motion to dismiss for an abuse of discretion.**") (emphasis added).

[109] *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011).

form of substantial evidence,"[110] which is "evidence that a reasonable person may accept as adequate to sustain a judgment."[111] A district court errs in the exercise of personal judgment to a level meriting appellate intervention only when ***no*** reasonable judge could reach the conclusion reached under the same circumstances.[112] A court does ***not*** abuse its discretion, however, when it reaches a result which could be found by a reasonable judge.[113]

Improperly in this section of his brief, Sanson repeats (at 17-18) his unsupported argument from below that individual words must be reviewed in isolation.[114] This Court's resolution of this appeal should clarify that defamatory comments must be reviewed in context,[115] and hold that in reviewing an anti-SLAPP motion, a trial court

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[110] *Stratosphere Gaming Corp. v. Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

[111] *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007).

[112] *Leavitt v. Siems*, 130 Nev. __, __, 330 P.3d 1, 5 (2014); *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P. 2d 1147 (1979); *Delno v. Market Street Railway*, 124 F.2d 965, 967 (9th Cir. 1942).

[113] *Goodman v. Goodman*, 68 Nev. 484, 236 P.2d 305 (1951).

[114] Sanson repeats the argument, again without any citation to relevant authority, at pages 26-28.

[115] *See* Robert D. Sack, 1 Sack on Defamation: Libel, Slander and Related Problems § 2.4.2, at 2-20 (5th ed. 2017) ("Particular words must be read in the context of the communication as a whole, 'taking into account [the communication's] wording,

should review a series of related comments–such as an internet defamation campaign–in context, with the question being the perception of those comments expected from a reasonable reader.[116]

II. SUMMARY OF ARGUMENT

In order to successfully invoke Nevada's anti-SLAPP statute, Sanson had to show by a preponderance of the evidence that each of Willick's causes of actions were based on a communication by Sanson that was: "made in direct connection with an issue of public interest"; and "truthful or [] made without knowledge of its falsehood."[117]

The district court correctly found that Sanson's smear campaign against Willick through multiple social media posts and email blasts failed to constitute "activity

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the nature and use of headlines, and any other methods employed to give special emphasis.'" (Internal citations omitted.)

[116] *Id*. at 2-21 ("A court will not isolate particular phrases and determine whether, considered alone, they are defamatory. . . . If two or more broadcasts, articles, or other communications would likely be received and perused by their audience together, the meaning of each communication may be understood in light of the other communication or communications.") (Internal citations omitted.)

[117] NRS 41.637(4); NRS 41.660(3)(a). Each communication also had to have been made "in a place open to the public or in a public forum." NRS 41.637(4).

protected by the anti-SLAPP statute."[118] The court correctly found that Sanson failed to show that ***any*** of his communications involved an "issue of public interest" based on the guiding principles set out in *Shapiro*.

First, the public is *not* interested in a private citizen's unrelenting disdain for an attorney.[119] Nor in a decade-old, out-of-state dispute between an attorney and a litigant,[120] the private affairs of an employee of a law firm,[121] or a lawyer's strategic decisions concerning the presentation of arguments for a private client in a divorce case, that lawyer's private billing dispute with the client, or this Court's reluctance to address an issue not expressly raised in a cross-appeal.[122]

Because none of the Sanson communications at issue in the Complaint was made "in direct connection with an issue of public interest," the district court correctly found that Sanson "failed to meet [his] initial burden of proof."[123]

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[118] *Century 21 Chamberlain & Assocs. v. Haberman*, 92 Cal. Rptr. 3d 249, 256 (Cal. Ct. App. 2009) (stating that the defendant bears the initial burden of establishing that each claim arises from "activity protected by the anti-SLAPP statute").

[119] 1 AA 5, at ¶ 22; I AA 204.

[120] I AA 7, at ¶ 28; II AA 269.

[121] I AA 8, at ¶ 31; II AA 302.

[122] I AA 9-10, at ¶¶ 33, 35; II AA 312, 326.

[123] VIII AA 1690.

Moreover, the district court correctly found that the Sanson failed to show that all communications were truthful or were made without knowledge of their falsehood.[124] Sanson's communications were patently false and intended to create the appearance of wrongdoing where none existed. Sanson knew of their falsity, and published them anyway with the specific intent to harm Willick. Sanson's "malice," in both the legal and common meanings of the word, is readily established on the face of the record.

Finally, the district court correctly found that the Sanson failed to show that Willick is either a public figure or a limited purpose public figure for purposes of defamation law.[125] Sanson's arguments concerning Willick's expertise in family law

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[124] NRS 41.637(4); NRS 41.660(3)(a).

[125] Whether Willick is either a public figure or a limited purpose public figure impacts his burden of proof. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) ("Once the plaintiff is deemed a limited-purpose public figure, the plaintiff bears the burden of proving that the defamatory statement was made with actual malice, rather than mere negligence.") (footnote omitted). This finding arguably is more important for the second prong of the anti-SLAPP analysis, but Judge Thompson addressed it during the first part of the analysis, and Sanson raised it as an issue on appeal.

fell flat because this Court's holdings indicate that Willick's "professional achievements are insufficient to render him a limited-purpose public figure."[126]

Smear campaigns conducted through months-long social media posts and email blasts to tens of thousands of people merit more rigorous scrutiny than a single off-the-cuff defamatory remark made to a small audience. In the context of both defamation law and the anti-SLAPP statute, the egregiousness and persistence of the defendant's conduct should inform the analysis of whether the defendant may seek the benefits of the "anti-SLAPP" statute (*e.g.*, the potential right to recover attorneys' fees and damages).

Here, Sanson was not intending in good faith to raise public awareness of matters concerning Willick's work and courtroom practices, but rather to damage him by all means possible in furtherance of a personal vendetta. Because Sanson made knowingly false statements of fact concerning Willick that were not in direct connection

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[126] *Bongiovi*, 122 Nev. at 573, 138 P.3d at 446. Willick has not achieved "such pervasive fame or notoriety" as to become a public figure "for all purposes and in all contexts." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 91 (2002) (quotation marks and citation omitted).

with an issue of public interest, this Court should affirm the District Court's March 30, 2017 Order.[127]

III. ARGUMENT

A. Sanson Failed to Show That He Was Sued for Making Statements in Direct Connection with an Issue of Public Interest

1. Sanson Failed to Satisfy the *Shapiro* Factors

Without citation to relevant authority, Sanson attempts to divert this Court's analysis (at 26-28) by claiming that his "good faith" is an "issue." The argument is misleading.

[127] If for any reason this Court does not directly affirm, it should remand this matter with instructions for the district court to address the second prong of the anti-SLAPP analysis; this Court should decline to make findings, in the first instance, concerning the merits of the Willick's claims based on the evidence presented. *See Pope v. Fellhauer*, No. 68673, 2017 WL 1438534, at *1 (Nev. Apr. 20, 2017 (unpublished disp.) (reversing and remanding so that the district court could address certain elements of an anti-SLAPP motion "in the first instance"). Alternatively, this Court should find that Willick satisfied his burden pursuant to NRS 41.660(3)(b).

In *Shapiro*, this Court held that "The term 'good faith' does not operate independently within the anti-SLAPP statute." Instead, the term "good faith" operates as part of the broader phrase defined by NRS 41.637.[128]

Sanson needed to show that he was sued for making statements "in direct connection with an issue of public interest in a place open to the public or in a public forum," which were "truthful or [were] made without knowledge of [their] falsehood"[129]–***not*** that he was sued for making what he labels "good faith communications" about Willick.

Sanson attempts (at 29 & 45-46) to alter this Court's analysis of an anti-SLAPP motion by arguing that the district court should have considered "the federal definition of 'public concern' when deciding whether the statements fit within the definition prescribed by NRS 41.637(4)." But this Court has ***rejected*** the notion that a district court should consider First Amendment law when determining whether certain speech "falls within one of the four categories enumerated in NRS 41.637."[130]

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[128] *SPG Artist Media v. Primesites*, No. 69078, Order of Affirmance (Unpublished Disposition, Feb. 28, 2017), quoting *Shapiro v. Welt*, 133 Nev. at __, 389 P.3d at 267.

[129] NRS 41.637(4).

[130] *Delucchi v. Songer*, 133 Nev. __, __, 396 P.3d 826, 832-33 (2017).

The district court properly followed this Court's direction in *Shapiro* to apply the "guiding principles" adopted from California when determining whether the statements at issue involved "an issue of public interest" under NRS 41.637(4)[131]:

> (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.[132]

Beginning with the first statement, Sanson chastised Willick for long ago opposing proposed legislation, claiming that Willick did so in order to "screw" veterans "for profit and power."[133] By targeting Willick and not addressing the legislation (which, as an aside, was modified and adopted years earlier), the district court correctly

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[131] VIII AA 1688-1690.

[132] VIII AA 1688-90 (quoting *Shapiro*, 133 Nev. at __, 389 P.3d at 268 (citation omitted)).

[133] I AA 204.

found that Sanson failed to make a statement "in direct connection with an issue of public interest." [134]

Moving on to the next two statements, rather than discussing attorney misconduct and how it allegedly impacts the legal community, Sanson made crude statements about employees of Willick Law Group involving events that were both *outdated* and *unrelated* to the practice of law.[135] Sanson was not republishing newsworthy matters of prior interest to a large audience–he was trying to ***create*** public "interest" where none existed. Because his posts were "unconnected to any discussion, debate, or controversy," the district court correctly found that the statements were not made "in direct connection with an issue of public interest."[136]

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[134] *Shapiro*, 133 Nev. at __, 389 P.3d at 268 ("[T]he 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."). Even if the legislation itself had at some point been a matter of public interest, Sanson's statement did not explain why the legislation, as modified, was bad for veterans. *Wilbanks v. Wolk*, 17 Cal. Rptr. 3d 497, 506 (Cal. Ct. App. 2004) ("***[I]t is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate.***") (emphasis added).

[135] II AA 269, 302.

[136] *Du Charme v. International Brotherhood of Electrical Workers*, 1 Cal. Rptr. 3d 501, 510 (Cal. Ct. App. 2003) ("***To grant protection to mere informational statements, in this context, would in no way further the statute's purpose of encouraging participation in matters of public significance***.") (emphasis added).

With regard to the last two statements, rather than providing an objective synopsis of this Court's unpublished decision in *Holyoak v. Holyoak*, No. 67490, Sanson denigrated Willick's actions in handling the case, falsely claiming that he lost a case that he won.[137] Because the public is not interested in the outcome of a private divorce,[138] the district court correctly found that the statements were not made "in direct connection with an issue of public interest."[139]

In sum, the district court found that Sanson did not show that he published statements "in direct connection with an issue of public interest." Because that finding is supported by substantial evidence and is in accord with existing law, this Court should affirm the March 30, 2017, Order.

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[137] II AA 312, 326.

[138] *Shapiro*, 133 Nev. at __, 389 P.3d at 268 ("[A] matter of public interest should be something of concern to a substantial number of people . . . [and] a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.").

[139] *Rivero v. Am. Fed'n of State, Cty., & Mun. Employees*, AFL-CIO, 130 Cal. Rptr. 2d 81, 89-81 (Cal. Ct. App. 2003) (finding that statements concerning the alleged wrongs of a single individual were too insignificant to involve an issue of public interest).

2. Sanson's Statements Were Not Intended as "Warnings to Consumers" About the Willick Parties' "Courtroom Practices"

Notwithstanding his failure to satisfy the *Shapiro* factors, Sanson asserts (at 18-19 & 44-49) that because the State Bar regulates attorneys, and because courtrooms are publicly funded, anything and everything he says about any Nevada lawyer is *ipso facto* a matter of "public interest" for purposes of NRS 41.637(4), because "attorney conduct" can be "a matter of great public concern."

Sanson's argument is long on the law and short on how the law applies to fit his statements within the purview of NRS 41.637(4).[140] As explained above, his statements have nothing to do with any matters of public interest.[141]

The cases cited by Sanson (at 44-45) are distinguishable because they involve direct warnings to consumers. In *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, the district court indicated that the statements in question were intended to serve as a "warning to consumers not to do business with plaintiffs because of their allegedly

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[140] The *Opening Brief* is some 61 pages in length; the argument concerning how the statements at issue in the Complaint purportedly involve matters of public interest begins on page 48, line 19, and ends on page 49, line 21.

[141] Contrary to Sanson's argument, each of his statements did not pertain to Willick's professional conduct. See AOB at 2 & 19.

faulty business practices."[142] Similarly, in *Wilbanks v. Wolk*, the appellate court found that the statements in question were "not simply a report of one broker's business practices, of interest only to that broker and to those who had been affected by those practices," but rather, statements that served as "a warning not to use plaintiffs' services."[143]

Finally, in *Chaker v. Mateo*,[144] the appellate court found that statements about the plaintiff's "character and business practices . . . were intended to serve as a warning to consumers about his trustworthiness."

Here, Sanson did not seek to warn members of the public of any alleged risks associated with retaining Willick to represent them in divorce cases. In fact, that is not what Sanson even claims VIPI does; according to Sanson, VIPI is a political organization that "exposes public corruption and wrongdoing."[145] Nothing about Sanson's statements concerning Willick could have been in furtherance of those

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[142] 946 F. Supp. 2d 957, 969 (N.D. Cal. 2013), aff'd, 609 F. App'x 497 (9th Cir. 2015).

[143] 17 Cal. Rptr. 3d at 506.

[144] 147 Cal. Rptr. 3d 496, 502 (Cal. Ct. App. 2012).

[145] I AA 83. In reality, as noted above, VIPI is an internet-based extortion and defamation service intended to alter political races and influence judicial proceedings for specific litigants.

objectives.[146] Even if it could be so stretched, as this Court held in *Bongiovi*, "There is no public issue when the speech is solely in the individual interest of the speaker and [the speaker's] specific . . . audience."[147]

Because Sanson failed to show how the statements were intended to warn consumers about the "business practices" of Willick, this Court should affirm the March 30, 2017, Order.

B. Sanson Failed to Prove Truth by a Preponderance of the Evidence

1. Sanson's Defamatory Statements Were Knowingly False

As this Court reiterated in Shapiro: "[N]o communication falls within the purview of NRS 41.660 unless it is truthful or is made without knowledge of its

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[146] *Trindade v. Reach Media Grp., LLC*, No. 12-CV-4759-PSG, 2013 WL 3977034, at *11-*13 (N.D. Cal. July 31, 2013) (denying an anti-SLAPP motion where the statements in question were published to a "specific group" and served more as a "cautionary tale" than as an attempt to address an existing public controversy or dispute).

[147] *Bongiovi*, 122 Nev. at 572, 138 P.3d at 446 (quotation marks and citation omitted).

falsehood."[148] ***The failure to prove truth, by a preponderance of the evidence, is fatal to an anti-SLAPP motion***.[149]

Nevada is unlike California in that regard; the element of truth is ***not*** contained in California's anti-SLAPP statute.[150] Unlike in Nevada, a California court does not address the truth or falsity of a statement during the first prong of the anti-SLAPP analysis, but reserves that issue to the second prong of the anti-SLAPP analysis.[151]

Here, the district court correctly found that Sanson did not (and could not) prove that his statements were truthful or were made without knowledge of their falsehood.[152]

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[148] 133 Nev. at __, 389 P.3d at 268 (quotation marks and citation omitted).

[149] *See*, *e.g.*, *Balestra-Leigh v. Balestra*, No. 3:09-CV-551-ECR-RAM, 2010 WL 4280424, at *4 (D. Nev. Oct. 19, 2010) (denying an anti-SLAPP motion where the moving party did not set forth any evidence showing that the statements in question were "truthful or [were] made without knowledge of [their] falsehood").

[150] *Compare* NRS 41.637 (requiring a communication to be "truthful or . . . made without knowledge of its falsehood"), with Cal. Code Civ. Proc. § 425.16(e)(3) (defining an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" without reference to the statement's truth or the person's lack of knowledge as to the falsity of the statement).

[151] *See*, *e.g.*, *DuPont Merck Pharm. Co. v. Sup. Ct.*, 92 Cal. Rptr. 2d 755, 758-59 (Cal. Ct. App. 2000).

[152] Although Sanson submitted a declaration saying that he believed his statements "to be true," *see* I AA 82, at 15, the district court was well within its discretion to discredit Sanson's testimony in light of substantial evidence to the contrary.

In fact, as explained below, most of Sanson's statements ***were made up out of whole cloth***; the remainder were deliberately misleading in order to imply the existence of non-existent facts.

As to the statement about Willick seeking to "screw" veterans for "power and profit," Sanson did not present any evidence indicating that Willick had ***ever*** harmed a veteran in the course of his law practice. To the contrary, the evidence established that Willick has, for decades, been representing members of the military community and general public, often *pro bono*.[153]

Sanson did not present any evidence supporting the false statement that Willick was "convicted" of sexual coercion and defamation,[154] or that Willick had ever been convicted of ***either*** crime. Their own materials proved that Willick had only been involved in a civil–as opposed to a criminal–settlement years ago.[155]

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[153] II AA 222; III AA 468-78.

[154] Conviction implies that Willick committed a criminal act of defamation. *See Midwest ATM Servs., LLC v. Implementation Sols. Servs., Inc.*, No. 3:09-CV-00021, 2010 WL 11538472, at *3 (S.D. Ohio June 8, 2010) (finding that the word criminal "implies an assertion of objective fact-that [plaintiff] has been convicted [of] a criminal offense or that [plaintiff's] business practices in some way violate criminal law"). It is well settled that "[a] false statement involving the imputation of a crime has historically been designated as defamatory per se." *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005).

[155] II AA 276-90.

With regard to the statement about Richard Crane, Sanson did not present any evidence supporting the implication underlying his post (*e.g.*, that Mr. Crane was continuing to practice law despite his suspension), but wanted the public to (erroneously) believe that Willick was allowing Mr. Crane to practice law without a license.

With regard to the statements that Willick "scammed the court" and made misrepresentations to this Court during the *Holyoak* appeal, Sanson did not present any evidence indicating that Willick did or said ***anything*** wrong when prosecuting the matter; this Court made no such finding. In context, the use of the phrase "scammed the Court" is an actionable false assertion of wrongdoing.[156]

Sanson's statement that Willick lost the *Holyoak* appeal was just false. The evidence established that Willick's client ***prevailed*** on appeal.[157]

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[156] *See*, *e.g.*, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S. Ct. 2695 (1990); *Shadle v. NEXTSTAR Broad. Grp., Inc.*, 2016 U.S. Dist. LEXIS 118379 (D.C. PA, Aug. 31, 2016); *Gavrilovic v. World Wide Language Res., Inc.*, 2005 U.S. Dist. LEXIS 32134 (D.C. Maine, Dec. 8, 2005).

[157] II AA 327-35.

Because the district court's finding that Sanson did not show that his statements were truthful or were made without knowledge of their falsehood was supported by substantial evidence, this Court should affirm the March 30, 2017, Order.

2. Sanson's Defenses Are Irrelevant for Purposes of NRS 41.637(4)

Sanson contends (at 33-37) that he met his initial burden to prove that all of the statements at issue were truthful or were made without knowledge of their falsehood, pursuant to NRS 41.637(4), because: (i) several statements allegedly involve non-actionable opinion;[158] (ii) he used hyperlinks "to disclose underlying source documents"; (iii) some statements were "substantially true"; and (iv) one statement was ambiguous and subsequently clarified. Each argument fails.[159]

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[158] Sanson should not be heard to argue on appeal that his statements were matters of opinion and not fact. When challenged by a member of VIPI, Sanson insisted that his statements were "true." VII AA 1427.

[159] Sanson further argues (at 27) that the district court "lumped together all of [Sanson's] five separate statements." Not true. The district court's Order held: "[U]pon review of the defamatory statements at issue in the Complaint, the Court finds that the VIPI [Parties] have not established, by a preponderance of the evidence, that each was truthful or was made without knowledge of its falsehood." VIII AA 1690 (emphasis added).

Assessing whether a statement falls within NRS 41.637(4) does not require determining whether the statement is an assertion of fact or opinion.[160] Sanson conflates the first and second prongs of the anti-SLAPP analysis by failing to address the truth component of his statements and instead arguing why Willick's defamation and related claims allegedly lack merit.

This Court has ***not*** exempted a defendant from meeting its initial burden under NRS 41.660(3)(a) by instead attacking a plaintiff's claim on the merits. A defendant who prefers to attack a claim on the merits is able to do so pursuant to NRCP 12(b)(5); however, if the defendant wishes to invoke the anti-SLAPP statute, the defendant has to initially prove that the statement in question was truthful or was made without knowledge of its falsehood. Any other result would improperly blur the distinction between a motion to dismiss and a special motion to dismiss.[161]

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[160] This Court should thus reject Sanson's notion (at 27-28) that the district court had some obligation to categorize each of the statements in question when deciding Sanson's anti-SLAPP motion.

[161] *Lefebvre v. Lefebvre*, 131 Cal. Rptr. 3d 171, 175 (Cal. Ct. App. 2011) ("The determination whether a privilege established by statute immunizes [the defendant] from civil liability . . . is a wholly separate issue from the determination whether her conduct in the first instance was an act in furtherance of her constitutional rights.") (emphasis removed from original); *see also id.* at 177 ("[***Defendant] may have a valid privileged-based defense which she may present in another procedural context, but such a defense may not be presented by way of an anti-SLAPP motion.***") (emphasis

Sanson's argument (at 37-39) that his false statements fall within NRS 41.637(4) because his posts contained "hyperlinks" to source materials is specious given that his statements are facially inconsistent with the source materials (thus proving knowledge of falsity).[162]

Regardless, whether Sanson has a defense to the defamation claims is irrelevant for purposes of determining whether Sanson was sued for making truthful statements that fall within the purview of NRS 41.637(4) because ***the statute does not, on its face, protect false statements that are accompanied by hyperlinks purportedly allowing the reader to discover the truth***.[163] Sanson did not provide any legal support justifying his request for this Court to create a judicial exception to the truth component underlying NRS 41.637.[164]

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added).

[162] *See* VIII AA 1610-12.

[163] *Cf. Lefebvre*, 131 Cal. Rptr. 3d at 175, 177.

[164] With one exception, none of the cases cited by Sanson in this portion of his Opening Brief (32-33) involves an anti-SLAPP motion. With regard to *Adelson v. Harris*, 973 F. Supp. 2d 467 (S.D.N.Y. 2013), the portion of the decision addressing truth is inapplicable because the plaintiffs had neither alleged nor attempted to prove "knowledge of falsity." *See id*. at 502-03.

Sanson's argument (at 39-41) that his statements were "substantially true" is contrary to the evidence. Pursuant to NRS 41.660(3)(a), Sanson had to prove, by a preponderance of the evidence, *inter alia*, that: Mr. Crane was continuing to practice law without a license; that Willick misled this Court in the *Holyoak* appeal; and that Willick did not prevail in the *Holyoak* appeal. He failed to do so, as correctly determined by the district court; at a minimum, it can hardly be said that the district court abused its discretion by finding that none of the statements in question was true or substantially true.

Finally, Sanson's argument that his false assertion concerning Willick's alleged conviction falls within NRS 41.637(4) is self-defeating because he admits (at 41-42) that the statement was factually incorrect. There is no exception under NRS 41.637(4) for statements that are false, but then "clarified."[165]

Because Sanson failed to satisfy his initial burden, this Court should affirm the March 30, 2017, Order.

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[165] During the March 14, 2017 hearing, Judge Thompson noted that the "clarification" did not obviate the fact that the initial defamatory post would remain on the internet to Willick's detriment. VIII AA 1638.

C. Willick is Neither a "Public Figure" nor a "Limited Purpose Public Figure"

Sanson's anti-SLAPP motion was premised, in part, on the wondrous notion (at 48) that anything and ***everything*** Willick does is a matter of "public interest" because he is an attorney.[166] But being an attorney does not–without more–make someone a public figure or a limited purpose public figure.

This Court has previously held that professional achievements such as having an "accomplished career" or a "national reputation" for skill and caring; going to a great school; having a prestigious fellowship; publishing numerous articles and abstracts; contributing to chapters in books and textbooks; belonging to specialized professional groups; and being "the subject of newspaper articles" does not make someone a "limited-purpose public figure" for purposes of defamation law.[167]

Notwithstanding, Sanson argues (at 19 & 56) that Willick's having testified at past legislative sessions, authored family law articles, marketing, public appearances,

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[166] "What [lawyers] do is a matter of public interest . . . ."

[167] *Bongiovi*, 122 Nev. at 442-46, 138 P.3d at 568-74; *see also Doe v. Brown*, No. 62752, 2015 WL 3489404, at *2-*3 (Nev. May 29, 2015) (unpublished disp.). Although NRAP 36(c)(3) provides that a party may only cite, on appeal, unpublished dispositions issued by this Court on or after January 1, 2016, the district court relied in part on *Doe* in denying Sanson's anti-SLAPP motion. VIII AA 1690.

and work as an expert witness qualify him as a "limited purpose public figure." Sanson fails to acknowledge, let alone attempt to distinguish, this Court's holding in *Bongiovi*, and he confuses legal expertise with fame and notoriety; being a private practicing attorney representing clients in divorce cases does not make an attorney any kind of "public figure" as the district court correctly found.[168]

Absent having achieved widespread fame and notoriety, an attorney must "voluntarily inject[] himself or [be] thrust into a particular public controversy or public concern" in order to become "a public figure for a limited range of issues."[169] None of the communications underlying the claims against Sanson arose from an existing public controversy in which Willick had "injected himself."[170] As such, Willick does not

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[168] VIII AA 1690.

[169] *Pegasus*, 118 Nev. at 720, 57 P.3d at 91. A few states have held that professionals whose services are of "vital importance" to the public are limited purpose public figures even if they have not inserted themselves into a public debate, but this Court has rejected that proposition. *See Bongiovi*, 122 Nev. at 573, 138 P.3d at 446.

[170] The cases cited by Sanson at pages 55-66 of his Opening Brief are factually distinguishable because they involve attorneys who voluntarily injected themselves into existing public controversies. *See Young v. The Morning Journal*, 717 N.E.2d 356, 359 (Ohio Ct. App. 1998) (a government attorney who had run a high-profile narcotics investigative unit for 15 years was a public figure for defamation purposes for matters related to a pending criminal case); *Schwartz v. Worrall Publications, Inc.*, 610 A.2d 425, 427 (N.J. App. Div. 1992) (an attorney who has long been involved with this State's education system was a public figure for defamation purposes for current matters related to the school board).

constitute a limited purpose public figure for purposes of his defamation and related claims.

Even if Willick ***could*** be considered a limited purpose public figure, the end result is the same. "Malice" is a term with two meanings, and the record readily establishes both of them.

In common parlance, "malice" means "active ill will," "desire to harm, or "evil intent."[171] In defamation law, "malice" is sometimes referenced as acting with knowledge of the falsity of a statement or with reckless disregard for its truth.[172] This Court has noted that "express malice" is "conduct which is intended to injure a person" while "implied malice" is "despicable conduct which is engaged in with a conscious disregard of the rights . . . of others."[173]

Although beyond the scope of this appeal (from an order finding that Sanson failed to satisfy the first prong of the anti-SLAPP analysis), Sanson's publication of a bounty for any "dirt" that could be found on Willick, his months of relentless insults

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[171] Webster's New World Dictionary (1984 ed.) at 365.

[172] *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983).

[173] *Bongiovi*, 122 Nev. at 582, 138 P.3d at 451.

smeared across the internet, and his open hostility and hatred toward Willick noted in open court by judicial officers proves that Sanson acted with actual malice.

Because the district court's finding that Sanson failed to show that Willick is either a public figure or a limited purpose public figure is supported by substantial evidence, this Court should affirm the March 30, 2017, Order.

D. If this Court Nevertheless Reverses the Finding that Sanson Failed to Meet His Initial Burden, it Should Remand for a Hearing on Whether Willick Met His Burden

A party making a special motion to dismiss under Nevada's anti-SLAPP statute bears the initial burden of production and persuasion.[174] The defendant must establish, "by a preponderance of the evidence, that [each] 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."[175]

If, but ***only*** if, the defendant meets its initial burden, the burden shifts to the plaintiff to put forth "prima facie evidence" of a probability of prevailing on each

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[174] *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 754, 219 P.3d 1276, 1282 (2009), *superseded by statute on other grounds*.

[175] NRS 41.660(3)(a).

claim.[176] ***If the defendant fails to meet its initial burden, the burden never shifts to the plaintiff; the anti-SLAPP motion is denied without further review.***[177] That was the ruling here.

Sanson acknowledges (at 5) that the district court "did not reach the issue of whether [Willick] could make a prima facie [showing] of prevailing on [his] claims."[178] Notwithstanding, Sanson improperly asks this Court (at 51-60), without citation to authority, to decide in the first instance, whether Willick made a prima facie showing of prevailing on his claims.

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[176] NRS 41.660(3)(b).

[177] *See*, *e.g.*, *Stenehjem v. Sareen*, 173 Cal. Rptr. 3d 173, 191 n.19 (Cal. Ct. App. 2014); *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.*, 1 Cal. Rptr. 3d 390, 393 (Cal. Ct. App. 2003) ("***if the moving defendant cannot meet the threshold showing, then the fact that he or she might be able to otherwise prevail on the merits under the 'probability' step is irrelevant.***") (emphasis added); *see also Collins v. Laborers Int'l Union of N. Am. Local No. 872*, No. 2:11-cv-00524-LDG-LRL, 2011 WL 12710632, at *1-*2 (D. Nev. July 21, 2011) (denying a special motion to dismiss where the moving party failed to make "a threshold showing that Nevada's anti-SLAPP statute applies").

[178] *See also* VIII AA 1690.

This Court is not a fact-finding tribunal[179] and should not try to determine, in the first instance, whether Willick's claims have "minimal merit."[180] As aptly stated by the California Court of Appeal:

> ***the more prudent course is to remand the matter to the trial court to determine in the first instance whether Hunter demonstrated a reasonable probability of prevailing on the merits of his causes of action.***[181]

The same reasoning would apply here; assuming arguendo that Sanson met his initial burden (he did not), the ***district*** court would then be called upon to decide, in the first instance, whether Willick met his burden.[182] It would be impractical for this Court

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[179] *See*, *e.g.*, *Ryan's Express v. Amador Stage Lines*, 128 Nev. __, __, 279 P.3d 166, 172-73 (2012); *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) ("This court is not a fact-finding tribunal; that function is best performed by the district court.").

[180] *See*, *e.g.*, *Park v. Bd. of Trustees of Cal. State Univ.*, 393 P.3d 905, 907 (Cal. 2017). This Court consults California case law for guidance in determining whether a plaintiff "demonstrated with prima facie evidence a probability of prevailing on the claim." NRS 41.665(2).

[181] *Hunter v. CBS Broad., Inc.*, 165 Cal. Rptr. 3d 123, 136 (Cal. Ct. App. 2013) (emphasis added); *see also Navellier v. Sletten*, 52 P.3d 703, 713 (Cal. 2002).

[182] A claim is not subject to dismissal merely because it is based on a communication that falls within the purview of the anti-SLAPP statute. *See*, *e.g.*, *Navellier*, 52 P.3d at 711-12 ("[T]he statute poses no obstacle to suits that possess minimal merit").

to undertake the second prong of the anti-SLAPP analysis where the district court has not yet done so.[183]

If this Court did attempt that task, it would have to address an issue raised for the first time on appeal by Sanson–whether allegations in Willick's First Amended Complaint contradict allegations in their initial Complaint.[184] This Court would have to assess the allegations in Willick's First Amended Complaint, which were not reviewed by the district court when it denied Sanson's anti-SLAPP motion.

Sanson claims (at 51) that the evidence is allegedly insufficient to support the claims at issue in the First Amended Complaint, but Willick did not file his First Amended Complaint until ***after*** the district court entered its March 30, 2017, Order. It is for the district court, not this Court, to address them in the first instance.

E. Willick Met His Burden Pursuant to NRS 41.660(3)(b)

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[183] VII AA 1504-90. The district court did not consider the Supplemental Affidavit filed by Willick or the evidentiary objections brought by Sanson as noted in his Opening Brief (at 25). VIII AA 1688.

[184] *See*, *e.g.*, *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

If this Court chose to review the allegations itself instead of remanding to the district court, it should find that Willick demonstrated a probability of prevailing on his claims for defamation, false light invasion of privacy, business disparagement, and civil conspiracy.[185]

1. Standard of Decision

If a defendant meets its initial burden of proof pursuant to NRS 41.660(3)(a), the burden shifts to the plaintiff to put forth "prima facie evidence" of a probability of prevailing on its claims.[186] This means that the plaintiff must show that each claim has "minimal merit."[187]

"Since an Anti-SLAPP motion is brought at an early stage of proceedings, the plaintiff's burden of establishing a probability of success is not high."[188] Determining

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[185] Although Willick also added a cause of action for deceptive trade practices in their First Amended Complaint, Sanson did not address it in his Opening Brief. See AOB, at 51 n.145.

[186] NRS 41.660(3)(b).

[187] *See*, *e.g.*, *Park*, 393 P.3d at 907 ("If the defendant carries its burden, the plaintiff must then demonstrate its claims have at least 'minimal merit.'") (citation omitted).

[188] *Browne v. McCain*, 611 F. Supp. 2d 1062, 1068 (C.D. Cal. 2009).

whether the plaintiff met its burden requires review of the evidence presented, and the court accepts as true "all evidence favorable to the plaintiff and assesses the defendant's evidence only to determine if it bars plaintiff's submission as a matter of law."[189]

A defendant who advances an affirmative defense bears the burden of proof on the defense and must establish "a probability of prevailing" on that defense during the second prong of the analysis.[190]

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[189] *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 61 Cal. Rptr. 3d 29, 38 (Cal. Ct. App. 2007).

[190] *Davis v. Elec. Arts Inc.*, 775 F.3d 1172, 1177 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1448 (2016).

2. Willick's Claims Have At Least "Minimal Merit"

a. Defamation

"Defamation is a publication of a false statement of fact."[191] The elements of a defamation claim are:

(1) a false and defamatory statement;

(2) an unprivileged publication to a third person;

(3) fault, amounting to at least negligence; and

(4) actual or presumed damages.[192]

"However, if the defamatory communication imputes a person's lack of fitness for trade, business, or profession, or tends to injure the plaintiff in his or her business, it is deemed defamation *per se* and damages are presumed."[193] That is what Sanson communicated.

"In determining whether a statement is actionable for purposes of a defamation suit, the court must ask whether a reasonable person would be likely to understand the

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[191] *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

[192] *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009).

[193] *Id.* (quotation marks and citation omitted).

remark as an expression of the source's opinion or as a statement of existing fact."[194] The court also, as a general matter, considers the statement in its entirety and in context in order to determine whether it is susceptible to a defamatory meaning.[195]

Here, Willick presented prima facie evidence supporting his defamation claim, as detailed above. Sanson intentionally and repeatedly published false and defamatory statements, and was actively seeking "dirt" on Willick (and seeking to inflict harm on him, personally and professionally.[196] Sanson (purportedly) had source documents at his disposal, but knowingly disregarded their contents when publishing the false statements in furtherance of his smear campaign.

Sanson nevertheless argues (at 51-57) that the defamation claim is subject to dismissal because (i) the statements in question were matters of opinion; (ii) his posts

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[194] *Pegasus*, 118 Nev. at 715, 57 P.3d at 88 (quotation marks and citation omitted).

[195] *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001); *see also Posadas v. City of Reno*, 109 Nev. 448, 443-44, 851 P.2d 438, 443 (1993) (liability from defamatory press release together with ill will). Because "***words do not exist in isolation***," *Branda v. Sanford*, 97 Nev. 643, 647, 637 P.2d 1223, 1226 (1981), this Court should disregard Sanson's attempt (at 32-37) to have this Court address various words in their defamatory posts and email blasts in isolation.

[196] VII AA 1463 (saying that Sanson will "get dirty . . . without hesitation"); VII AA 1531 (offering "up to $10,000 for verifiable information on . . . Attorney Marshal Willick").

contained hyperlinks to source documents; and (iii) the fair report privilege immunizes him from liability. Each argument fails, particularly at this stage of the proceedings.

As Judge Thompson noted, the statements about Willick being convicted of crimes, making misrepresentations to this Court, and losing the *Holyoak* appeal are purely factual.[197] The remaining statements read in context are "mixed type" statements–opinions that infer the existence of undisclosed, defamatory facts.[198] It is for the jury to decide whether they are capable of defamatory import.[199]

That Sanson may have hyperlinked certain materials to his posts/email blasts does not immunize him. In *Las Vegas Sun, Inc. v. Franklin*, this Court held that the headline and tag-line of an article may be defamatory irrespective of the contents of the article "since the public frequently reads only the headline [or tag-line]."[200] The same

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[197] "Accusations of . . . unethical activity . . . are expressions of fact, as are allegations relating to one's professional integrity that are susceptible of proof." *Held v. Pokorny*, 583 F. Supp. 1038, 1040 (S.D.N.Y. 1984); *see also Yoder v. Workman*, 224 F. Supp. 2d 1077, 1081 (S.D.W. Va. 2002) (denying a motion to dismiss a defamation claim because allegations against an attorney could "be reasonably interpreted as stating actual facts).

[198] *Lubin*, 117 Nev. at 113, 17 P.3d at 426.

[199] *Id*.

[200] 74 Nev. 282, 287, 329 P.2d 867, 870 (1958); *see also Sprouse v. Clay Commc'n, Inc.*, 211 S.E.2d 674, 680-81 (W. Va. 1975) ("[O]nce an overall plan or scheme to injure has been established, an unreasonable deviation between headlines

rationale logically applies to hyperlinks–*e.g.*, most readers will not follow the links, but rather, read the headline or tag-line of the article.[201]

Finally, the fair report privilege does *not* apply because none of the statements in question included a "fair, accurate, and impartial" account of what occurred in the underlying matters. Sanson did not fairly and accurately report on the decision entered in *Vaile v. Willick*, Civil Action No. 6:07-cv-00011, nor did he fairly and accurately opine on the briefing and outcome in *Holyoak*.[202] "[A] party may not don itself with the judge's mantle, crack the gavel, and publish a verdict through its 'fair report.'"[203]

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and the remainder of the presentation is in and of itself evidence of actual malice, which, along with other evidence, supports a jury verdict for libel.").

[201] RESTATEMENT (SECOND) OF TORTS § 563 (1977) ("the public frequently reads only the headlines of a newspaper or reads the article itself so hastily or imperfectly as not to realize its full significance").

[202] *Lubin*, 117 Nev. at 114, 17 P.3d at 427.

[203] *Id*.

b. False Light

Liability for a claim of false light arises when a person publicizes a matter concerning the plaintiff that places the plaintiff before the public in a false light. The elements of a false light claim are:

> (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.[204]

"[W]hile a false light claim may be defamatory, it need not be."[205] "The false light privacy 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."[206]

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[204] RESTATEMENT (SECOND) TORTS § 652E (1977), *cited with approval in Franchise Tax Bd. of State of California v. Hyatt*, 133 Nev. __, __, 407 P.3d 717, 735 (2017).

[205] *Machleder v. Diaz*, 801 F.2d 46, 55 (2d Cir. 1986).

[206] *Rinsley v. Brandt*, 700 F.2d 1304, 1307 (10th Cir. 1983).

c. Business Disparagement

A claim for business disparagement is similar to a claim for defamation. The elements of a business disparagement claim are:

(1) a false and disparaging statement,

(2) the unprivileged publication by the defendant,

(3) malice, and

(4) special damages.[207]

Sanson's statements (discussed above) disparaged the Willick Law Group by impugning the services provided by the firm to its clients.[208] Moreover, as summarized above, the Willick Parties presented prima facie evidence establishing that Sanson acted with actual malice. Finally, Willick indicated that the statements affected his firm's ability to conduct business.[209]

d. Civil Conspiracy

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[207] *Clark Cnty. Sch. Dist.*, 125 Nev. at 386, 213 P.3d at 504.

[208] *See id.* (a statement directed toward the quality of a company's goods or services support a claim for business disparagement).

[209] I AA 14.

Sanson first argues (at 60) that the civil conspiracy claim "makes no sense" because Schneider was not joined as a defendant in the First Amended Complaint. The argument reflects a misunderstanding of tort law; "***[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit.***"[210] Because "[c]onspirators are liable on a joint and several basis,"[211] Willick was not required to name Schneider as a defendant in order to state a viable civil conspiracy claim.[212]

"Actionable civil conspiracy arises where two or more persons undertake some concerted action with the intent to accomplish an unlawful objective for the purpose of harming another, and damage results."[213]

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[210] *Temple v. Synthes Corp.*, 498 U.S. 5, 7 (1990) (emphasis added).

[211] *Kuhn Constr. Co. v. Ocean & Coastal Consultants, Inc.*, 723 F. Supp. 2d 676, 689 (D. Del. 2010).

[212] *See*, *e.g.*, *Walker Distributing Co. v. Lucky Lager Brewing Co.*, 323 F.2d 1, 8 (9th Cir. 1963); *Patterson v. Alaska Dept. of Agriculture*, 880 P.2d 1038, 1044 n.12 (Alaska 1994). This Court has recognized that ***"the plaintiff has the right to decide for himself whom he shall sue.***" *Reid v. Royal Ins. Co.*, 80 Nev. 137, 141, 390 P.2d 45, 47 (1964) (emphasis added).

[213] *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. __, __, 335 P.3d 190, 198 (2014) (quotation marks and citation omitted).

Willick presented prima facie evidence supporting the civil conspiracy claim; Sanson's arrangement with Schneider is detailed above.[214]

Notwithstanding, Sanson argues (at 69) that civil conspiracy is not a stand-alone "cause of action" in Nevada. His reliance on *Applied Equipment Corp. v. Litton Saudi Arabia, Ltd.*,[215] is misplaced because this Court previously held that "an act lawful when done, may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the individual against whom the concerted action is taken."[216]

Finally, Sanson argues that the civil conspiracy claim fails because the other claims fail. Because those claims have at least "minimal merit," this Court should find that Willick met his burden, pursuant to NRS 41.660(3)(b), to substantiate the civil conspiracy claim.

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[214] I AA 116, at ¶ 24.

[215] 869 P.2d 454 (Cal. 1994).

[216] *Eikelberger v. Tolotti*, 96 Nev. 525, 527-28, 611 P.2d 1086, 1088 (1980) ("when an act done by an individual is not actionable because justified by his rights, such act becomes actionable when done in pursuance of a combination of persons actuated by malicious motives, and not having the same justification as the individual.") *Id.*

For these reasons, if it chooses to reach the weighing, this Court should find that Willick met his burden, pursuant to NRS 41.660(3)(b), to substantiate the defamation, false light, and business disparagement claims.

F. Judicial Notice and the Appendices

As noted above, Sanson included with his Opening Brief matters outside the record, including: (i) an Order entered in *Abrams* on Sanson's anti-SLAPP motion in that case[217]; (ii) briefing from *Saiter*[218]; and (iii) discovery-related matters from *Ansell*.[219]

Sanson did so (i) without conferring with the Willick's counsel[220]; without seeking leave of Court; and (iii) without asking this Court to take judicial notice of

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[217] IX AA 1970-93.

[218] VI AA 1289-373; 421; VII AA 1374-421.

[219] IV AA 1958-69, 1994-2023.

[220] See NRAP 30(a) ("Counsel have a duty to confer and attempt to reach an agreement concerning a possible joint appendix."). Initially, Sanson's counsel indicated that Appellants' Appendix would be comprised solely of matters contained in the record. IV part III RA000965 – RA000966. Willick's counsel suggested a few additional matters that were also contained in the record. *See id.* No request was made to add matters outside the record.

those matters. By doing so, Sanson opened the door to additional materials outside the record.

Sanson is directly involved in all three appeals as the agitator attempting to influence ongoing litigation by running online defamation campaigns against lawyers and threatening sitting judges. Sanson's Opening Brief makes substantial (if inaccurate) reference to *Saiter* below and on appeal, and similar inaccurate representations to *Abrams*. As discussed in the Motions to Suspend Briefing, to Consolidate, and Response to Order to Show Cause in *Saiter*, these references create a dilemma because they cannot go without response.

As noted in the prior Motions, the interrelated cases provide context and explanation from which an optimal and thorough review of this appeal can be made. The records in these three cases largely overlap, and as Sanson's Opening Brief shows, it is difficult to present any of these three cases without extensive references to the others.

Sanson's position throughout this litigation has been that courts can and should take judicial notice of all "public records," including filings in other cases.[221] His

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[221] *See*, *e.g.*, V AA 995-96 (citing, *inter alia*, *Niles v. Nat'l Default Servicing Corp.*, 126 Nev. 742, 367 P.3d 804 (2010)).

position is overstated, because this Court has been more circumspect in the materials of which it will take judicial notice,[222] but the relevant point here is that Sanson cannot take an opposing position on appeal as a matter of judicial estoppel.[223]

This Court can choose to take judicial notice of facts generally known or capable of verification from a reliable source under NRS 47.150(1). The records from *Saiter*, *Abrams*, and *Ansell* are such reliable sources.

Accordingly, as set out in the earlier motions, in order for this Court to obtain a complete picture of all material facts, and assuming (arguendo) that this Court considers the Opening Brief despite its inclusion of matters outside the record, this Court should take judicial notice of other documents from the related cases included with this *Answering Brief*. (The entire Saiter record, now on file with this Court, can be filed in this case as well, if preferred.)

IV. CONCLUSION

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[222] *See Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009).

[223] *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 273, 44 P.3d 506, 514 (2002); *see also Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 8, __, 390 P.3d 646, 651-52 (2017) (identifying the elements for judicial estoppel).

There is a difference between a defamation case involving some allegedly false comment and the kind of relentless, months-long campaigns of defamation waged by Sanson here against Abrams and Willick. Where, as here, the defamatory statements are made constantly and repeatedly, hundreds of thousands of times,[224] actual malice can and should be presumed, and attempted recourse to the "anti-SLAPP" statute as a shield to continue malevolent damage to the target should be viewed with skepticism.

The "big lie" gambit is hardly new.[225] But it was not until the age of social media that someone like Sanson could take the time to build a mailing list of tens of thousands of names and weaponize it to inflict harm on targets, for hire or for spite.

Sanson did not and cannot show that his smear campaigns were "made in direct connection with an issue of public interest"; and "truthful or made without knowledge

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[224] *See*, *e.g.*, VII AA 1507-1512.

[225] Usually attributed to Joseph Goebbels, from an article dated January 12, 1941, titled "Aus Churchills Lügenfabrik" (translated: "From Churchill's Lie Factory"), published in *Die Zeit ohne Beispiel*, some 16 years after Hitler's first use of the phrase. Used widely by George Orwell in Nineteen Eighty-Four, it is perhaps most succinctly defined by Richard Belzer in UFOs, JFK, AND ELVIS: CONSPIRACIES YOU DON'T HAVE TO BE CRAZY TO BELIEVE (Ballantine Books, 2000) as "If you tell a lie that's big enough, and you tell it often enough, people will believe you are telling the truth, even when what you are saying is total crap."

of its falsehood." The order denying Sanson's special motion should be affirmed, and this case remanded for trial on the merits of the defamation case.

Respectfully submitted,

/s/ Jennifer V. Abrams, Esq.

JENNIFER V. ABRAMS, ESQ.
Attorney for Respondent
Nevada Bar No. 7575
6252 South Rainbow Blvd., Ste. 100
Las Vegas, Nevada 89118
(702) 222-4021
email: JVAGroup@theabramslawfirm.com

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[**X**] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X13, Standard Edition in font size 14, and the type style of Times New Roman; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 13,812 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed _____ pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7th day of February, 2018.

/s/ Jennifer V. Abrams, Esq.

JENNIFER V. ABRAMS, ESQ.
Attorney for Respondent
Nevada Bar No. 7575
6252 South Rainbow Blvd., Ste. 100
Las Vegas, Nevada 89118
(702) 222-4021
email: JVAGroup@theabramslawfirm.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 7th day of February, 2018, documents entitled *RESPONDENT'S ANSWERING BRIEF* were e-mailed, and were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list, to the attorney listed below at the address, email address, and/or facsimile number indicated below:

Anat Levy, Esq.
Anat Levy and Associates, P.C.
5841E. Charleston Blvd., #230-421
Las Vegas, Nevada 89142
alevy96@aol.com
Attorney for Appellants

That there is regular communication between this office and the place so addressed.

/s/ David J. Schoen, IV, ACP

An Employee of the ABRAMS LAW FIRM

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