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9
10 **IN THE SUPREME COURT OF NEVADA**

11) SUP. CT. CASE #: 72778
12)
13 VETERANS IN POLITICS)
14 INTERNATIONAL, INC.; AND STEVE)
15 W. SANSON) DIST. CT. CASE #:
16) A-17-750171-C

17 Appellants,

18 vs.

19 MARSHAL S. WILLICK; AND
20 WILLICK LAW GROUP,

21 Respondents.

22 **APPELLANTS' RESPONSE TO RESPONDENTS'**

23 **SUPPLEMENTAL BRIEF**

24 [Filed concurrently with Declaration of Anat Levy]

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APPELLANTS' RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3
4 The Supplemental Brief filed by Respondents Marshal Willick and his law
5 firm The Willick Group (collectively, “Respondents”) pertains solely to one of the
6 five statements at issue in this case¹ – the January 12, 2017 statement that
7 Appellant Veterans in Politics International, through its president Steve Sanson
8 (collectively “Appellants”), inadvertently published online without commas,
9 rendering the statement ambiguous (the “Ambiguous Statement”). The
10 Ambiguous Statement, which was in any event full of grammatical errors, was
11 supposed to read in relevant part as follows with the underlined commas inserted:
12
13
14

15 Attorney Marshall [sic] Willick₂ and his pal convicted of
16 sexually coercion of a minor Richard Crane₂ was [sic]
17 found guilty of defaming a law student in United States
18 District Court of Virginia signed by US District Judge
19 Norman K. Moon.”²

19 The Ambiguous Statement is TRUE. If the commas were inserted, the
20 statement would also not be ambiguous. Within two days of publication, without
21
22

23 ¹ Respondents’ illogically claim that there are more than five statements at issue
24 because each statement was distributed to the public on various Facebook pages
25 and VIPI’s website. This argument is akin to arguing that a newspaper that makes
26 a single statement has actually made thousands of statements simply because the
27 newspaper is distributed to thousands of tore outlets and consumers. The fact is
28 that this Court is only analyzing whether *five statements*, which statements were
distributed to the public through various venues, are entitled to protection under
Nevada’s anti-SLAPP statutes.

² AA I:269 for statement without the commas; AA I: 85, Sanson Decl., at 14b

1 any demand or suit by Respondents, VIPI tried to clarify the statement in good
2 faith, but inserted a comma in the wrong place. Within four days thereafter, on
3
4 January 18, 2017, VIPI again clarified the post, again without any demand or suit
5 from Respondents (the “Clarification”). The Clarification completely changed the
6 structure of the statement so that there could be no reader confusion.³ The
7
8 Clarification read:

9
10 **CLARIFICATION:**

11 Attorney Marshal Willick’s letters against opposing party
12 found defamatory per se in 2008; Willick settled before
13 trial on the issue of privilege. Click onto link below:
14 (hyperlink to Virginia court’s order). Richard Crane,
15 formerly with Willick’s firm, guilty of sexual misconduct
16 involving a minor and suspended from the practice of
17 law. Click onto link below: (hyperlink to Supreme
18 Court’s order of suspension).

19 The Ambiguous Statement was promptly taken down and the Clarification was
20 posted to all the same Facebook pages and internet sites to which the original
21 statement was posted. As stated in Sanson’s Declaration:⁴

22 I took down the January 12, 2017 post with inadvertently
23 omitted the intended commas as soon as I realized, just a
24 few days later, the ambiguity caused by the error. I then
25 promptly issued a clarification on behalf of VIPI and
26 circulated the clarified statement to all the same entities
27 who received the original statement. To my knowledge,
28 there are no more copies of the original ambiguous
statement available for public view through any venues

³ Clarification at AA II: 270-271

⁴ AA VII: 1502:9-12

1 that VIPI or I control or administer. If there are, then
2 VIPI would be willing to take them down.⁵

3 The Clarification and the Ambiguous Statement were both hyperlinked to a
4 Review Journal article about Richard Crane's conviction and suspension,⁶ the State
5 Bar's Order of Suspension of Crane,⁷ and Judge Moon's Order finding that Willick
6 committed defamation per se.⁸ Thus, even absent Appellants' voluntary
7 clarification, any ambiguity caused by the missing commas should have been
8 easily resolved by clicking on the disclosed source materials. *See, Jankovic v.*
9 *Inter'l Crisis Grp.*, 429 F.Supp.2d 165, 177 n.8 (D.D.C. 2006) ("[W]hat little
10 confusion the sentence could possibly cause is easily dispelled by any reader
11 willing to perform minimal research")
12

13 Notwithstanding the truth of the Ambiguous Statement, it should be noted
14 that statements do not have to even be true to receive anti-SLAPP protection.
15
16 *Piping Rock Partners, Inc. v. David Lerner Associates*, 946 F. Supp.2d 957, 969,
17 2013 U.S. Dist. Lexis 70660 (N.D. Cal. 2013). All that is required is that the
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22 ⁵ See also, AA I:87 -- Sanson Decl., ¶15: "I made each of the above postings on
23 behalf of VIPI in good faith, believing them to be true or believing them to
24 constitute my valid good faith opinion on the subject. I at all times hyperlinked my
25 statements to the documents I believed were relevant so that readers would be able
26 to judge for themselves. The postings also gave readers the case numbers in case
27 they wanted to look further into the cases to make up their own minds about VIPI's
28 postings."

⁶ AA II: 271-272

⁷ AA II: 273-275

⁸ AA II: 276-290

1 statement be made in “good faith,” that it be of “public interest” and that it be
2 made in a public forum. NRS § 41.637. The burden then shifts to the Plaintiffs,
3 Respondents herein, to establish by a preponderance of the *evidence* a prima facie
4 case that they would prevail on their claims. NRS § 41.660(3)(b).
5

6 Here, the evidence shows that each of the five statements at issue, including
7 the Ambiguous Statement, meet the requirements of Nevada’s anti-SLAPP
8 statutes.
9

10 **II. SUMMARY OF ARGUMENT**

11 In their supplemental brief, Respondents: (a) challenge Appellants’ “good
12 faith”⁹ in making the single Ambiguous Statement, (b) claim that Appellants
13 accused Willick of committing a “crime” simply because Appellants used the word
14 “guilty” in describing Willick’s culpability for defamation, and (c) seek to bar
15 Appellants reference to Nevada’s retraction statutes (NRS §§ 41.336 and 41.337)
16 because they did not publish the Ambiguous Statement in a traditional
17 “newspaper” as the statute purportedly requires.
18

19 Respondents’ supplemental brief fails for the following reasons:
20

21 1. As a procedural matter, all or part of Respondents’ supplemental brief
22 should be stricken. The brief exceeds the scope of the Court’s January 30, 2019
23 Order which limits Respondents’ supplemental brief solely to the issue of whether
24
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28 ⁹ “Good faith” is statutorily defined as a statement “which is truthful or is made

1 Appellants’ accused Willick of a crime and any corrections or retractions thereof.
2 Instead, Appellants brief continues to ascribe ill motive to Appellants by attaching
3 irrelevant documents that are outside the record of this case, and contrary to the
4 Court’s January 30, 2019 Order (the “Supplemental Briefing Order”), still draws
5 analogy with *Coker v. Sassone*, 135 Nev. Adv. Op. 2 (Jan. 3, 2019). Respondent’s
6 supplemental brief also intentionally violates Rule 5(a)(5) of this Court’s Policy for
7 Handling Filed, Lodged, and Presumptively Confidential Documents by attaching
8 Exhibit A thereto (Judge Duckworth’s recusal order in *Ansell v. Ansell*, Dist. Court
9 case no. D-15-521960-D, divorce case). Respondents know that this exhibit
10 should have been filed under seal. This exhibit should be stricken or in the
11 alternative, the Court should now seal it.

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16 2. Anti-SLAPP motions are treated as summary judgment motions with
17 each side having to step forward with admissible *evidence*. Here, there is no
18 admissible evidence substantiating Willick’s claim that Appellants republished the
19 Ambiguous Statement after issuing the Clarification. First, no new evidence can
20 be submitted on appeal. Second, the only evidence actually in the record confirms
21 Appellants’ good faith and attempts to clarify any ambiguity in this single
22 statement. Third, Respondents’ rely on an untimely, unsupported and evidentiarily
23 objectionable declaration that Willick filed the day before the anti-SLAPP hearing
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28 without knowledge of its falsehood.” NRS §41.637.

1 in the district court – this is not “evidence.” Fourth, the computer print-outs
2 attached to Willick’s untimely declaration are not authenticated and do not in any
3 event support his claim of republication. Fifth, each instance of the Ambiguous
4 Statement in the print-outs (all dated prior to the Clarification) have the
5 Clarification right next to it, and there is no evidence of reader confusion nor can
6 there be with both statements next to each other. Sixth, the Ambiguous Statement
7 does not actually come up on any Google or Facebook search, and even if it did,
8 this would be of no legal import – Respondents cite to no authority obligating
9 journalists and others to retrieve every single physical or digital copy of a
10 newspaper or article as part of a condition of showing good faith or issuing a
11 clarification or retraction. If that were the case, anti-SLAPP protection could never
12 be given to any article, let alone in the digital age. Seventh, contrary to
13 Respondents’ request, this Court cannot take judicial notice of facts that are subject
14 to reasonable dispute, such as whether, when, where and by whom the Ambiguous
15 Statement was purportedly republished, let alone any impact that may have on the
16 issue of good faith. Eighth, Respondents unsupported argument that the
17 Clarification should have been called a “retraction” or a “correction” instead of a
18 “Clarification” is wrong -- the Ambiguous Statement was *ambiguous*, it was *not*
19 *wrong*. As such, a “clarification,” not a retraction, was appropriate.
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1 3. Using the word “guilty” in a statement does not solely denote a
2 criminal conviction. Legal dictionaries and caselaw define “guilty” simply as
3 being “culpable.” The term applies to *torts* as well as to crimes. The word cannot,
4 therefore, automatically be considered an accusation of a crime, and was
5 *appropriately* used to describe Willick’s liability for defamation per se against his
6 opponent in Virginia.
7

8
9 4. Respondents erroneously conflate Appellants’ reference to Nevada’s
10 retraction statutes (NRS §§ 41.336 and 41.337) to show “good faith” (which even
11 California permits), with the role of the statutes in limiting liability. Evidence and
12 timing of corrections, clarifications, retractions, can always be used as
13 circumstantial evidence of common law good faith and for mitigation of damages.
14

15
16 Moreover, Nevada’s retraction statutes should apply to limit liability for
17 Appellants since they regularly issue articles and run radio and television shows ,
18 albeit on the internet. Nothing in the statute limits its protections only to
19 traditional newspapers, nor should it. Traditional printed articles, newspapers,
20 television and radio shows are increasingly being distributed online. As a matter
21 of constitutional equal protection and public policy these statute should apply to
22 online distribution of news and other speech. The focus of the inquiry should be
23 the type of article/statement involved, and not the medium through which it is
24 distributed to the public since that constantly evolves due to new technologies.
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1 All told, this Court should reject the arguments in Respondents'
2 supplemental brief as unmeritorious and should find that all five of the statements
3 at issue are entitled to Nevada's anti-SLAPP protections in furtherance of
4 constitutionally protected free speech.
5

6 **III. THE COURT SHOULD STRIKE ALL OR PART OF**
7 **RESPONDENTS' SUPPLEMENTAL BRIEF.**
8

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10 A. All or Portions of Respondents' Supplemental Brief Should Be
11 Striken For Exceeding The Permitted Scope of The Supplemental Briefing Order
12 And For Lack of Relevance.
13

14 Respondents' January 14, 2019 motion for supplemental briefing sought to
15 brief three issues – (a) the corrections that Appellants made to the Ambiguous
16 Statement, (b) the impact of the holding in *Coker v. Sassone*, 135 Nev. Adv. Op. 2
17 (Jan. 3, 2019) on this case, and (c) to provide more conjecture as to “why”
18 Appellants exercised their free speech rights criticizing Willick's work practices.¹⁰
19 Appellants objected to this motion.¹¹
20
21

22
23 On January 30, 2019, the Court granted Respondents' motion in part,
24 permitting Respondents to file a supplemental brief “*solely addressing the*
25 *purported retraction or correction of an allegation that respondent had been*
26
27

28 ¹⁰ Docket no. 19-02087

¹¹ Docket no. 19-03165

1 convicted of a criminal offense.”¹² Disregarding the Court’s express order,

2 Respondents nonetheless shoehorned all three issues into their supplemental brief –
3
4 continuing their obvious “smear campaign” against Appellants.

5 Appellants therefore request that the Court strike from the record the following
6
7 portions of Respondents’ supplemental brief that exceed the permitted scope of the
8 Supplemental Briefing Order, and to boot, exceed the scope of the underlying
9
10 record, and are irrelevant:

11 a) Page 8, last line of main text starting with “Sanson’s use of
12 defamatory smear campaign....” through the quote from Judge Duckworth’s
13 September 5, 2017 recusal order in the *Ansell* divorce case, on page 9. Matters
14
15 pertaining to the *Ansell* case is outside the record on this case and beyond the scope
16
17 of the Supplemental Briefing Order.¹³

18 Further, as set forth in more detail at pages 4-5 of Appellants’ opposition to
19
20 Respondents’ motion to file a supplemental brief, any attempts to assign “motive”
21
22 to VIPI/Sanson for exercising their free speech rights are wholly irrelevant in this

23 ¹² Docket no. 19-04583; emphasis added.

24 ¹³ No weight should be given to any of Judge Duckworth’s characterizations about
25
26 VIPI and Sanson in his recusal order. Judge Duckworth was biased and
27
28 disqualified at the time he issued his order. Judge Duckworth is one of the family
court judges against whom VIPI has filed judicial disciplinary complaints in
connection with its efforts to expose (and lobby to correct) malfeasance and
incompetence in Clark County’s family court system. *See*, Appellants’ November
9, 2018 Motion for Writ in *Sanson et. al v. Eighth Judicial District Court, etc., et. al.*, Supreme Court case no. 77363 (doc no. 18-903578).

1 case (not to mention, pure conjecture). California courts have long held that
2 consideration of motive undercuts and has no place in anti-SLAPP analysis. *See*
3 *e.g., Tuszynska v. Cunningham*, 199 Cal.App.4th 257, at 269, 131 Cal.Rptr.3d 63
4 (Cal. App. 2011) (analysis of motive is “untenable and is at odds with the language
5 and purpose of anti-SLAPP statutes”); *People ex rel. Fire Ins. Exch. v. Anapol*, 211
6 Cal.App.4th 809, 150 Cal.Rptr.3d 224 (Cal. App., 2013) (in applying anti-SLAPP
7 statutes, “courts must be careful to distinguish allegations of conduct on which
8 liability is to be based from allegations of motives for such conduct. . . Causes of
9 action do not arise from motives; they arise from acts”); *emphasis added*.

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14 b) Page 9, footnote 14 in its entirety. This footnote discusses and
15 attaches Judge Duckworth’s Recusal Order in the *Ansell* case and also purports to
16 analogize the *Coker* case to this case, again exceeding the scope of this Court’s
17 Supplemental Briefing Order.

18
19 Accordingly, these portions of Respondents’ supplemental brief should be
20 stricken from the record.

21
22 B. If Not Stricken From The Record, Exhibit A To Respondents’
23 Supplemental Brief Should Be Placed Under Seal.

24
25 Exhibit A to Respondent’s Supplemental brief is a copy of Judge Duckworth’s
26 Recusal Order in the *Ansell* case. In the event that this attachment is not stricken,
27 the Court should now place it under seal.
28

1 Rule 5(a)(5) of this Court’s Policy For Handling Filed, Lodged, And
2 Presumptively Confidential Documents, states that any document that has been
3
4 ordered sealed by a judge pursuant to the Nevada Rules for Sealing and Redacting
5 Court Records (“SRCR”) is “to be considered presumptively confidential and
6 nonpublic.”
7

8 On May 30, 2018, Sr. Judge Saitta entered an Order in the *Ansell* case stating:

9
10 Other than the Complaint and the Answer and the
11 Counterclaim, the entire case, including all docket
12 entries, orders, pleadings, exhibits, videos and/or
13 transcripts, is SEALED and will remain so until ordered
14 otherwise by this court.

15 *See*, Declaration of Anat Levy filed concurrently herewith (“Levy Decl.”), Exhibit

16 1. This Court has already ordered the sealing of this Judge Duckworth’s recusal
17 order in Appellants’ November 9, 2018 Motion for Writ in *Sanson et. al v. Eighth*
18 *Judicial District Court, etc., et. al.*, Supreme Court case no. 77363) (“VIPI/Ansell
19 Writ Petition), document no. 18-906215, and should do so again given that nothing
20 has changed.
21

22 Respondents’ failure to seal this exhibit was calculated, intentional,
23 constituted a violation of the Court’s SRCR rules, and should not be tolerated.
24 Respondents are well aware of Judge Saitta’s Sealing Order as they were counsel
25 of record for Irina Ansell at the time it was issued in the *Ansell* case. Respondents
26 were also served with a copy of VIPI’s/Sanson’s motion to seal this document and
27
28

1 this Court’s order sealing it in the VIPI/Ansell Writ Petition. Moreover,
2 VIPI/Sanson also expressly stated at page 2, footnote 4 of their Opposition to
3 Respondents’ motion for supplemental briefing in the present case: “this exhibit
4 must be filed under seal pursuant to Rule 5(a)(5) of this Court’s Policy For
5 Handling Filed, Lodged, And Presumptively Confidential Documents.” This Court
6 should not tolerate this type of intentional misconduct.
7

8
9 **II. THERE IS NO ADMISSIBLE EVIDENCE THAT APPELLANTS**
10 **REPUBLISHED THE AMBIGUOUS STATEMENT AFTER ISSUING THE**
11 **CLARIFICATION.**
12

13
14 An anti-SLAPP motion “functions as a motion for summary judgment and
15 allows the district court to evaluate the merits of the alleged SLAPP claim.” *Stubbs*
16 *v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (Nev. 2013). *See also*,
17 NRS § 41.660(5) (“dismissal operates as an adjudication upon the merits.”).

18
19 Appellants have presented thousands of pages of admissible evidence
20 showing by a preponderance of the evidence that the statements at issue were true,
21 opinions, privileged or at a minimum were made without knowledge of their
22 falsity, as required by the first prong of the anti-SLAPP statutes. NRS § 41.660.
23 Respondents have no admissible evidence to the contrary.
24

25
26 A. No New Evidence Is Permitted On Appeal.
27
28

1 It is axiomatic that on appeal, a court can only consider those matters that
2 are contained in the record made by the court below and the necessary inferences
3 that can be drawn therefrom. *See, Carson Ready Mix v. First Nat'l Bank of Nev.*,
4 97 Nev. 474, 476-77, 635 P.2d 276, 277-78 (1981) (“We cannot consider matters
5 not properly appearing in the record on appeal.”); *Alderson v. Gilmore*, 13 Nev. 84,
6 85 (1878) (“We have no power to look outside of the record of a case. We have
7 consistently recognized this limitation.”).

8 The only evidence in the record on the issue of this January 12, 2017
9 ambiguous post and its clarification is as follows:

- 10 ○ The Ambiguous Statement itself dated January 12, 2017;¹⁴
- 11 ○ The Clarification of January 18, 2017;¹⁵
- 12 ○ Sanson’s Declaration that he issued all of the statements in good faith
13 because he believed the statements to be true and they were either true
14 or constituted his opinions.¹⁶
- 15 ○ Sanson’s Declaration confirming that VIPI took down the Ambiguous
16 Statement from all facebook pages and websites that it
17 controls/administers.¹⁷
- 18 ○ Sanson’s Declaration that he distributed the Clarification in all the
19 same channels as the original Ambiguous Statement.¹⁸
- 20 ○ Sanson’s exchange with a third party stating that he believes what he
21 wrote is true and to read the hyperlinked documents.¹⁹ And in fact,
22 this exchange shows that the hyperlink was actually *effective*, just as it
23 was supposed to be, to allow readers to review the underlying
24 materials and make up their own mind.

25 ¹⁴ AA VII: 1465

26 ¹⁵ AA I: 271

27 ¹⁶ AA I: 87 (para. 15 of declaration)

28 ¹⁷ AA I: 85:25 through 86:8

¹⁸ *Id.*

¹⁹ AAVII: 1466-1467

1
2 B. The “Evidence” On Which Respondents Rely is an Untimely and
3 Disregarded Declaration from Willick in the District Court.

4 Respondents cite to AA VII 1509, an untimely and disregarded declaration
5 from Willick (“Willick’s Untimely Declaration”), as evidence that Appellants
6 reposted the original Ambiguous Statement after issuing their clarification on
7 January 18, 2017. As explained in Appellant’s Opening Brief at pp. 4:18-5:12,
8 Willick’s opposition to Appellants’ anti-SLAPP motion was due on March 8, 2017.
9 Willick filed his Untimely Declaration on March 13, 2017,²⁰ one day before the
10 district court anti-SLAPP hearing. VIPI/Sanson on the same day filed a motion to
11 strike this declaration as untimely and for inadmissibility based on evidentiary
12 objections including profound lack of foundation for its key assertions.²¹ The anti-
13 SLAPP hearing was held on March 14, 2017 at which time the district court
14 advised that it was not considering the declaration, and therefore, the motion to
15 strike.²² Willick’s Untimely Declaration should likewise not be considered by this
16 Court. Considering it now, when Appellants have no opportunity to present
17 evidence to the contrary would be a violation of Appellants due process rights and
18 would encourage Respondents to continue to ignore their legal deadlines.
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27 ²⁰ AA VII: 1504

28 ²¹ AA VII: 1591-1598

²² See, Transcript of Proceedings at AA VIII: 1605 line 20-1606 line 15.

1 C. Even if This Court Were to Consider Willick’s Untimely Declaration,
2 Nothing Therein Supports Respondents’ Allegations of Republication.
3

4 First, as detailed in Appellants’ March 13, 2017 Motion to Strike,²³
5 Willick’s Untimely Declaration is replete with speculation, lacks foundation, and
6 contains a host of other evidentiary violations that make it *wholly unreliable* by
7 any legal measure. For example, Willick opines, but states as fact of which he has
8 personal knowledge, that Sanson was somehow too “embarrassed” to initially air
9 Willick’s appearance on the VIPI radio show because Sanson swore at Willick
10 during the show.²⁴ He attests without foundation that VIPI/Sanson are being paid
11 for running a smear campaign against Willick,²⁵ and that VIPI is a “criminal
12 syndicate engaged in extortion against my fiancé, and defamation against me”²⁶
13 etc. Not only are these statements false, but they are made with a complete lack of
14 foundation or personal knowledge and are simply inadmissible.
15
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18

19 Second, Willick’s Untimely Declaration attaches print-outs of alleged
20 “reposting” of the Ambiguous Statement, after the January 18, 2017 Clarification
21 was issued. Yet, the print-outs are not authenticated, the declaration fails to
22 explain who, when, or how any search for the posting was made, and more
23 significantly, none of the pages attached actually support the contention that the
24
25
26

27 ²³ AA VII: 1594-1595

28 ²⁴ Willick’s Untimely Declaration at AA VII: 1506, lines 16-18

²⁵ Willick’s Untimely Declaration at AA VII: 1506, lines 19-21

1 Ambiguous Statement was reposted after the January 18, 2017 Clarification.²⁷

2 Where the print-outs even show the Ambiguous Statement, such statement has a
3
4 post date of January 12, or 13 or some time prior to the issuance of the
5 Clarification. Moreover, the Clarification appears immediately next to the
6 Ambiguous Statement. Any claimed bad faith is unsupportable under these
7
8 circumstances.

9 Further, it is not in the record, and it is unsubstantiated and disputed, that the
10 Ambiguous Statement still appears online, but even if it does, there is no authority
11 for Respondents' claim that this somehow shows that the statement was made in
12 bad faith at the time it was made. Moreover, Respondents cite to no authority for
13 the proposition that a journalist has to retrieve every copy of an article that may
14 appear anywhere in the world before being eligible for anti-SLAPP protection. For
15 example, Newspaper operators are not required to retrieve every copy they've sold
16 of a newspaper in order to be protected by Nevada's anti-SLAPP statutes.
17
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21 D. Judicial Notice is Not Appropriate to Determine Whether a Statement
22 Was Republished Online.

23 Cognizant that they have no evidence, timely or otherwise, on which to base
24 their claims, Respondents ask this Court to take "judicial notice" that Appellants
25 republished the Ambiguous Statement after issuing the Clarification.
26
27
28

²⁶ Willick's Untimely Declaration at AA VII: 1516, lines 1-6

1 Yet, NRS § 47.130(2) only permits the Court to take judicial notice of facts
2 that are:

- 3
4 (a) Generally known within the territorial jurisdiction of
5 the trial court; or
6 (b) Capable of accurate and ready determination by resort
7 to sources whose accuracy cannot reasonably be
8 questioned;
9 *so that the fact is not subject to reasonable dispute.*

10 Certainly, it is not generally known in the community whether VIPI reposted the
11 original ambiguous statement after January 18, 2017, nor is that something that can
12 be readily determined through accurate sources. The Court cannot take judicial
13 notice of facts that are subject to reasonable dispute. *Clark Cnty. Dep't of Family*
14 *Servs. v. Anne O.* (In re R.Y.), page 8 (*unpub. Nev.*, 2014), *citing*, NRS 47.130.

15
16 Further, in *KJH & RDA Investor Grp., LLC v. Eighth Judicial Dist. Court of*
17 *State*, 281 P.3d 1192 (Nev., 2009) this Court refused to take judicial notice of facts
18 set forth in declarations that were not part of the lower court record. The Court
19 stated: “However, because these declarations were not presented to the district
20 court in this matter, we declined to take judicial notice of any facts, legal
21 principles, or arguments espoused in the declarations, as they were not part of the
22 district court record.” The same is true here. Respondents are asking the Court to
23 take judicial notice of purported “facts” in a declaration that was untimely and
24 should not be considered by this Court. This Court should refuse to do so.
25
26
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²⁷ AA VII: 1534-1567

1 Respondents' reliance on *Mack v. Estate of Mack*, 206 P.3d 98, 125 Nev. 80
2 (Nev., 2009) in support of judicial notice is misplaced. The issue in *Mack* was
3 whether a family court could take judicial notice of court records showing the
4 outcome of a spouse's separate criminal proceeding for killing his wife.
5 Specifically, whether "*records in another and different case, even though the cases*
6 *are connected.*" *Mack, supra*, 206 P.3d at 106; emphasis added.²⁸ It had nothing to
7 do with contested facts that outside of court adjudicated proceedings.
8
9
10

11 E. Respondents' Arguments Actually Bolster Appellants' Contentions
12 that They Acted in "Good Faith."
13

14 Respondents cite to the following evidence in support of their position, but
15 this evidence actually bolsters Appellants' showing of good faith:
16

17 1. Sanson's online communication with a third party named Lee
18 Pudemonuchin Gilford in which Mr. Gilford indicates that he read the hyperlinked
19 court opinion and that he disagrees with Mr. Sanson's statement, shows that the
20 hyperlinked court order worked to *eliminate* confusion, just as it was designed to
21 do.
22
23

24 ²⁸ The court stated: "[w]e hold that judicial notice may be taken of the outcome of
25 a murder trial in which the deceased stood to gain financially from the killer
26 because of the close relationship between the murder trial and the benefits to which
27 the deceased's estate is entitled. This relationship is close and serious enough that
28 the legislature of almost every state has addressed it in state slayer statutes, which
prohibit a person's financial gain from their own wrongdoing in taking the life of
another." *Id.*

1 2. Sanson’s explanation to Gilford that he believes the Ambiguous
2 Statement is true, confirms Sanson’s declaration that he acted in good faith at the
3
4 time he made it. And in fact, the statement is true.

5 3. VIPI’s two attempts to clarify the statement – once by adding a
6 comma albeit in the wrong place and then by completely rewriting the statement to
7
8 avoid all confusion also shows good faith. Sanson is not a college graduate, the
9 statement had other grammatical errors as well, so it makes no sense to assume that
10 the lack of commas was intentional. Perfect punctuation is not a requirement for
11 anti-SLAPP protection.
12

13 4. Appellants’ distribution of the Clarification in all the same channels as
14 the original statement, and the fact that the Clarification was made before any
15 demand for retraction or the filing of a lawsuit is also evidence of good faith.²⁹
16
17

18 5. The fact that both the Ambiguous Statement and the Clarification
19 were both included prominent hyperlinks to the relevant court order also bolsters
20 Appellants’ good faith.
21
22
23

24
25 ²⁹ Respondents’ claim (at p. 9 of Resp. Supp. Brief) that they would have never
26 filed this lawsuit if Appellants had simply retracted their statements ring hollow.
27 Respondents never requested a retraction before suing. The statement also
28 confirms that that the primary purpose of this suit is to stifle Appellants’ protected
speech.

1 **III. USING THE WORD “GUILTY” TO DESCRIBE WILICK’S**
2 **CULPABILITY FOR DEFAMATION AGAINST AN OPPONENT IS NOT**
3
4 **AN ACCUSATION OF A CRIME.**

5 Respondents argue that the Ambiguous Statement accused Mr. Willick of
6 having committed a crime because it stated that a Virginia court found Willick
7 “guilty” of defamation per se against an opponent. Yet, the word “guilty” does not
8 solely mean a criminal conviction – it means being *culpable or responsible for a*
9 *specified wrongdoing*.

12 Black’s Law Dictionary defines “guilty” as: “Having committed a crime or
13 tort.”³⁰

15 Dictionary.com defines “guilty” as: “having committed an offense, crime,
16 violation, or wrong, especially against moral or penal law; justly subject to a
17 certain accusation or penalty; culpable.”³¹ Indeed, one can be guilty of civil
18 conspiracy, civil contempt, or even be “guilty” of simply having bad judgment.

21 Merriam-Webster dictionary defines “guilty” as “justly chargeable with or
22 responsible for a usually *grave breach of conduct* or a crime.”³²

26 ³⁰ *Black’s Law Dictionary* (5th Ed., 1979), emphasis added; *see also*,
27 <https://thelawdictionary.org/guilty> repub. Black’s definition as of 2/12/2019.

28 ³¹ <https://www.dictionary.com/browse/guilty>, as of 2/12/2019; emphasis added.

29 ³² <https://www.merriam-webster.com/dictionary/guilty>, as of 2/12/2019.

1 In this case, Willick was indeed found *guilty* of having committed the tort of
2 defamation per se. That is a true statement. See Virginia court order at AA II:
3
4 276.

5 In *Hilkert v. Canning*, 58 Ariz. 290, 119 P.2d 233 (Ariz. Sup. 1941), the
6 court had before it a statute authorizing the revocation of an accountant's license if
7 he should be found to be “guilty” of any act or default discreditable to the
8 profession. The court construed this to mean the commission of acts of
9 profession. The court construed this to mean the commission of acts of
10 unprofessional conduct, not a criminal offense, and it held that the statute was
11 sufficiently definite to support a revocation of a license. The court relied upon that
12 portion of the dictionary definition of 'guilty' which gave its meaning as
13 'responsible for a delinquency, crime, or sin.' See also, *In re Goldberg*, 53 F.2d
14 454, 80 A.L.R. 399 (6th Cir. 1931), (“guilty” as used in Bankruptcy act denotes
15 intentional wrongdoing; held to apply to fraudulent misconduct, *not criminal in*
16 *nature* -- taking or attempting to take a second discharge in bankruptcy within a
17 six-year period); *Great Am. Ins. Co. v. Langdeau*, 379 S.W.2d 62, 71 (Tex., 1964)
18 (jury instructions using the word “guilty” in a civil case did not connote criminal
19 activity or suggest that the plaintiff had to prove his case beyond a reasonable
20 doubt as required for a criminal conviction. “In this context, we cannot say that the
21 use of the word was erroneous.”)
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23
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Notwithstanding that criminal defamation cases are *extremely* rare and that a reader is much more likely to assume civil liability for defamation than criminal, any confusion on this issue is easily clarified by clicking on the prominent hyperlink that contained the relevant court order. The reader that Willick highlights,³³ Lee Pudemonhuchin Gilford, did that and exclaimed “Nothing you shared indicates that Willick did anything but employ a nasty bastard.” Clearly, he wasn’t confused. As explained in *Sack on Defamation* (3rd Ed.) § 4.3.2, “When an author outlines the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment.”

Accordingly, the use of the word “guilty” in Appellants’ statement was appropriate and was not an accusation of a crime.

IV. RESPONDENTS CONFLATES THE USE OF NRS 41.336 AND NRS 41.337 IN THIS CASE

Respondents argue that Nevada’s retraction statutes, NRS § 41.336 and NRS § 41.337 are not applicable to this case because they pertain only to statements made in traditional newspapers, radio or television broadcast.

³³ Res. Supp. Brief at p. 4

1 First, Respondents are conflating two separate issues – the use and timing of
2 clarifications and retractions to show good faith under anti-SLAPP statutes, and the
3 use and timing of such retractions to statutorily limit a plaintiff’s damages to
4 “special damages.”

5
6 Regardless of the medium in which the statement was made (whether on the
7 internet or in traditional newspapers, and regardless of whether an article is “hot
8 news” or not, the fact and timing of clarifications and retractions, including as
9 judged against the legislative intent that retractions be made within 20 days of
10 demand, can always be used to show good faith and the absence of malice. The
11 California appellate court in *Twin Coast Newspapers, Inc. v. Superior Court*, 256
12 Cal. Rptr. 310, 208 Cal.App.3d 656, *review den.*, explained:

13
14 With the enactment of section 48a [California’s retraction
15 statute] in 1931, retractions assumed an additional
16 significance: publication of a retraction meeting the
17 statutory standard eliminates liability for specified types
18 of damages. (A retraction can also be used by both
19 parties as circumstantial evidence on issues of malice.
20 See *Burnett v. National Enquirer, Inc.* (1983) 144
21 Cal.App.3d 991, 1012, 193 Cal.Rptr. 206)

22
23 256 Cal. Rptr. at 312; emphasis added. Indeed, retraction statutes augment (by
24 limiting liability) the common law significance of retractions – namely, to show
25 good faith and to mitigate damages.
26
27
28

1 Second, nothing in Nevada’s retraction statutes (NRS 41.336 and 41.337)
2 prohibit its statutory application to Appellants to limit any purported damages by
3 Respondents. NRS 41.336 states:
4

5 In any action for damages for the *publication* of a libel in
6 a newspaper, or of a slander by radio or television
7 broadcast, the plaintiff may recover no more than special
8 damages unless a correction is demanded by the plaintiff
and not published or broadcast.

9 A newspaper is defined as “a publication issued at regular and usually close
10 intervals, especially daily or weekly, and commonly containing news, comment,
11 features, and advertising.” www.dictionary.com, as of February 14, 2019. It also
12 includes “a single issue or copy of such a publication.” Appellants regularly issue
13 articles online as evidenced by the articles published about Willick and others
14 involved in the court and government systems. Moreover, nothing in the statute
15 states that the publication/distribution of the newspaper or the radio or television
16 program must be in traditional form and cannot be in digital format, including on
17 the internet. Indeed, newspapers, books, radio and television shows are
18 increasingly distributed online. To limit the statute only to traditional physical
19 distribution may also run afoul of the state’s and federal equal protection clause by
20 limiting damages for those who can afford to engage in expensive traditional
21 physical distribution of speech and those whose only means of distribution is via
22 digital formats such as the internet. *See, e.g., White v. Manchester Enter., Inc.*, 910
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1 F.Supp. 311 (E.D. KY 1996), *citing*, Ky. Const. Sec. 59 (granting retraction
2 protection to some media over others is “arbitrary and irrational”).
3

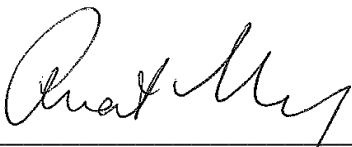
4 **V. CONCLUSION**

5 For all of the reasons stated above, Appellants respectfully request that this
6 Court grant Appellants’ anti-SLAPP appeal in its entirety.
7

8 Respectfully submitted,

9 Dated: February 14, 2019

ANAT LEVY & ASSOCIATES, P.C.

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1 **ATTORNEY’S CERTIFICATE OF COMPLIANCE**

2 1. I certify that this brief complies with the formatting requirements of
3
4 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
5 requirements of NRAP 32(a)(6) because it has been prepared in a proportionally
6 spaced typeface using Microsoft Word 2010, 14 characters per inch font, in the
7
8 Times New Roman typestyle.

9 2. I further certify that this brief complies with the page- or-type-volume
10
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
12 NRAP 32(a)(7)(C), it does not exceed 30 pages.

13 3. Finally, I certify that I have read this brief, and to the best of my
14
15 knowledge, information, and belief, it is not frivolous or interposed for any
16 improper purpose. I further certify that this petition complies with all applicable
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires
18 every assertion in the petition regarding matters in the record to be supported by a
19 reference to the page and volume number, if any, of the transcript or appendix
20 where the matter relied on is to be found. I understand that I may be subject to

21 ///

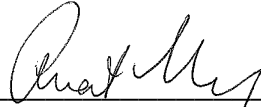
22 ///

23 ///

24 ///

1 sanctions in the event that the accompanying petition is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.
3

4 Dated this 14th day of February, 2019.
5

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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I am over the age of 18 and am not a party to the within action. On the date
3
4 indicated below I caused to be served a true and correct electronic copy of the
5 document entitled **APPELLANT’S RESPONSE TO RESPONDENT’S**
6 **SUPPLEMENTAL BRIEF** on the below listed recipients via the master
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8 transmission list with the Nevada Supreme Court:

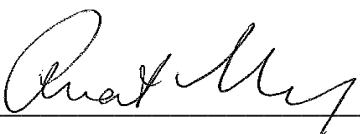
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21 I declare under penalty of perjury under the laws of the State of Nevada that
22 the foregoing is true and correct.

23 Executed this 14th day of February, 2019, in Las Vegas, Nevada.

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27
28