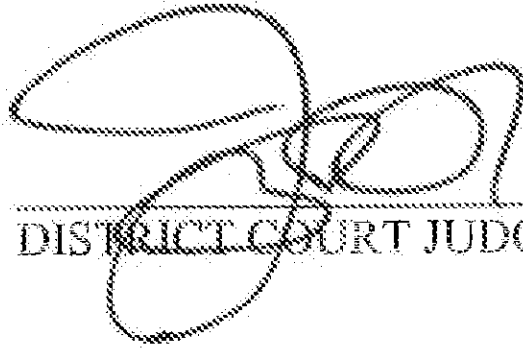


1 **ORDERED**, that said application is hereby GRANTED, and GRAHAM M. WILSON,
2 ESQ., is hereby admitted to practice in the above-entitled Court for the purposes of the above-
3 entitled matter only.

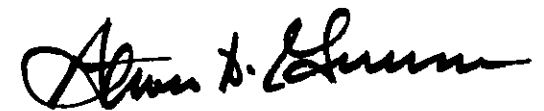
4 DATED this 28th day of February, 2017.


DISTRICT COURT JUDGE *Lee*

8 Submitted by:

9 **WOLF, RIFKIN, SHAPIRO,**
10 **SCHULMAN & RABKIN, LLP**
11 BRADLEY S. SCHRAGER, ESQ.
12 Nevada State Bar No. 10217
13 DANIEL BRAVO, ESQ.
14 Nevada Bar No. 13078
15 3556 E. Russell Road, Second Floor
16 Las Vegas, Nevada 89120
17 *Attorneys for Defendants*


16 Bradley S. Schrager, Esq.



CLERK OF THE COURT

ORAP
BRADLEY S. SCHRAGER, ESQ.
Nevada State Bar No. 10217
DANIEL BRAVO, ESQ.
Nevada Bar No. 13078
WOLF, RIFKIN, SHAPIRO,
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MARC E. ELIAS, ESQ. (pro hac vice motion to be filed)
GRAHAM WILSON, ESQ. (pro hac vice motion to be filed)
ELISABETH C. FROST, ESQ. (pro hac vice motion to be filed)
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700 13th Street, N.W., Suite 600
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gwilson@perkinscoie.com
efrost@perkinscoie.com

Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXI

**ORDER GRANTING EX PARTE
MOTION TO ASSOCIATE COUNSEL**

ELISABETH C. FROST, ESQ., having filed her Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing for the District of Columbia and the state of New York, and the State Bar of Nevada Statement; said application having been noticed, no objection having been made and the Court being fully apprised in the premises, and good cause appearing, it is hereby:

1 ORDERED, that said application is hereby GRANTED, and ELISABETH C. FROST,
2 ESQ., is hereby admitted to practice in the above-entitled Court for the purposes of the above-
3 entitled matter only.

4 DATED this ~~12~~ day of February, 2017.

5 *12 of May 2017*

6
7 
8 DISTRICT COURT JUDGE *LN*

9 Submitted by:

10 WOLF, RIFKIN, SHAPIRO,

11 SCHULMAN & RABKIN, LLP

12 BRADLEY S. SCHRAGER, ESQ.

13 Nevada State Bar No. 10217

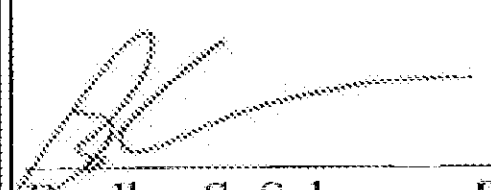
14 DANIEL BRAVO, ESQ.

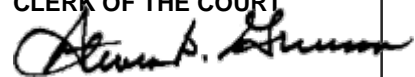
15 Nevada Bar No. 13078

16 3556 E. Russell Road, Second Floor

17 Las Vegas, Nevada 89120

18 *Attorneys for Defendants*

19
20
21
22
23
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28
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30 Bradley S. Schrager, Esq.



ORAP

BRADLEY S. SCHRAGER, ESQ.

Nevada State Bar No. 10217

DANIEL BRAVO, ESQ.

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GRAHAM WILSON, ESQ. (*Admitted Pro Hac Vice*)

ELISABETH C. FROST, ESQ. (*Admitted Pro Hac Vice*)

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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXX

**ORDER GRANTING EX PARTE
MOTION TO ASSOCIATE COUNSEL**

AMANDA R. CALLAIS, ESQ., having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the District of Columbia and the State of Virginia, and the State Bar of Nevada Statement; said application having been noticed, no objection having been made and the Court being fully apprised in the premises, and good cause appearing, it is hereby:

AA000458

1 **ORDERED**, that said application is hereby GRANTED, and AMANDA R. CALLAIS,
2 ESQ., is hereby admitted to practice in the above-entitled Court for the purposes of the above-
3 entitled matter only.

4 DATED this 21st day of April, 2017.

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DISTRICT COURT JUDGE

Submitted by:

9 **WOLF, RIFKIN, SHAPIRO,**
10 **SCHULMAN & RABKIN, LLP**
11 **BRADLEY S. SCHRAGER, ESQ.**

Nevada State Bar No. 10217

DANIEL BRAVO, ESQ.

Nevada Bar No. 13078

3556 E. Russell Road, Second Floor

Las Vegas, Nevada 89120

Attorneys for Defendants



Daniel Bravo, Esq.

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-16-746797-C

Danny Tarkanian, Plaintiff(s)
vs.
Jacky Rosen, Defendant(s)

§
§
§
§
§

Location: **Department 30**
Judicial Officer: **Wiese, Jerry A.**
Filed on: **11/17/2016**
Case Number History:
Cross-Reference Case Number: **A746797**

CASE INFORMATION

Case Type: **Other Tort**
Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-16-746797-C
Court Department 30
Date Assigned 02/28/2017
Judicial Officer Wiese, Jerry A.






PARTY INFORMATION

Plaintiff	Tarkanian, Danny	<i>Lead Attorneys</i> Knight, Samira C, ESQ <i>Retained</i> 702-508-4998(W)
Defendant	Rosen for Nevada	Schrager, Bradley S. <i>Retained</i> 702-341-5200(W)
	Rosen, Jacky	Schrager, Bradley S. <i>Retained</i> 702-341-5200(W)

DATE

EVENTS & ORDERS OF THE COURT















INDEX

11/17/2016	 Complaint Filed By: Plaintiff Tarkanian, Danny <i>Complaint</i>	
11/22/2016	 Summons Filed by: Plaintiff Tarkanian, Danny <i>Summons-Civil - Jacky Rosen</i>	
12/13/2016	 Affidavit of Service Filed By: Plaintiff Tarkanian, Danny <i>Affidavit of Service</i>	
01/25/2017	 Declaration Filed By: Defendant Rosen, Jacky <i>Declaration of Bradley Schrager in Support of Defendants Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660</i>	
01/25/2017	 Motion to Dismiss Filed By: Defendant Rosen, Jacky <i>Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660</i>	





DEPARTMENT 30
CASE SUMMARY
CASE NO. A-16-746797-C

01/25/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Rosen, Jacky <i>Initial Appearance Fee Disclosure</i>
01/25/2017	 Disclosure Statement Party: Defendant Rosen, Jacky <i>Defendants' Notice of NRCP 7.1 Disclosure</i>
01/26/2017	 Exhibits <i>Exhibits K and L to Defendants' Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660</i>
01/27/2017	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
01/27/2017	 Minute Order (10:57 AM) (Judicial Officer: Earley, Kerry) <i>Minute Order Re: Recusal</i>
02/09/2017	 Motion to Associate Counsel Filed By: Defendant Rosen, Jacky <i>Ex Parte Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42 [Elisabeth C. Frost, Esq.]</i>
02/09/2017	 Motion to Associate Counsel Filed By: Defendant Rosen, Jacky <i>Ex Parte Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42 [Marc Erik Elias, Esq.]</i>
02/09/2017	 Motion to Associate Counsel Filed By: Defendant Rosen, Jacky <i>Ex Parte Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42 [Graham Wilson, Esq.]</i>
02/22/2017	 Motion Filed By: Plaintiff Tarkanian, Danny <i>Motion to Continue hearing on Defendants' Anti-Slapp Special Motion to Dismiss Under NRS 41.660</i>
02/24/2017	 Affidavit of Service Filed By: Plaintiff Tarkanian, Danny <i>Affidavit of Service</i>
02/24/2017	 Opposition Filed By: Defendant Rosen, Jacky <i>Defendants' Opposition to Plaintiff's Motion to Continue Hearing on Defendants' Anti-Slapp Special Motion to Dismiss Under NRS 41660</i>
02/27/2017	 Motion to Continue (3:00 AM) (Judicial Officer: Wiese, Jerry A.) 02/27/2017, 03/07/2017 <i>Plaintiff's Motion to Continue hearing on Defendants' Anti-Slapp Special Motion to Dismiss Under NRS 41.660</i>
02/28/2017	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-16-746797-C

02/28/2017	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
03/01/2017	 Order Admitting to Practice Filed By: Defendant Rosen, Jacky <i>Order Granting Ex Parte Motion to Associate Counsel</i>
03/01/2017	 Order Admitting to Practice Filed By: Plaintiff Tarkanian, Danny <i>Order Granting Ex Parte Motion to Associate Counsel - Elisabeth C. Frost, Esq.</i>
03/01/2017	 Order Admitting to Practice Filed By: Defendant Rosen, Jacky <i>Order Granting Ex Parte Motion to Associate Counsel - Graham M. Wilson, Esq.</i>
03/02/2017	 Notice of Entry of Order Filed By: Defendant Rosen, Jacky <i>Notice of Entry of Order</i>
03/02/2017	 Notice of Entry of Order Filed By: Defendant Rosen, Jacky <i>Notice of Entry of Order</i>
03/02/2017	 Notice of Entry of Order Filed By: Plaintiff Tarkanian, Danny <i>Notice of Entry of Order</i>
04/10/2017	 Certificate of Service Filed by: Plaintiff Tarkanian, Danny <i>Certificate of Service</i>
04/10/2017	 Opposition to Motion to Dismiss Filed By: Plaintiff Tarkanian, Danny <i>Opposition To Defendants' Anti-Slapp Special Motion To Dismiss Under N.R.S. 41.660</i>
04/20/2017	 Reply in Support Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Reply in Support of Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660</i>
04/20/2017	 Motion to Associate Counsel Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Ex Parte Motion to Associate Counsel Pursuant to Nevada Supreme Court Rule 42</i>
04/21/2017	 Order Granting Motion Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Order Granting Ex Parte Motion to Associate Counsel</i>
04/21/2017	 Notice of Entry of Order Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Notice of Entry of Order</i>
04/25/2017	 Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-16-746797-C

	<i>Defendants' Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660</i>	
06/12/2017	 Order Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Order for Defendants' Motion to Dismiss Under N.R.S. 41.660</i>	
06/12/2017	 Notice of Entry of Order Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Notice of Entry of Order</i>	
06/13/2017	 Notice of Appeal Filed By: Defendant Rosen, Jacky; Defendant Rosen for Nevada <i>Notice of Appeal</i>	
06/13/2017	 Case Appeal Statement Filed By: Defendant Rosen, Jacky <i>Case Appeal Statement</i>	

DATE	FINANCIAL INFORMATION	
	Defendant Rosen for Nevada	
	Total Charges	30.00
	Total Payments and Credits	30.00
	Balance Due as of 6/15/2017	0.00
	Defendant Rosen, Jacky	
	Total Charges	247.00
	Total Payments and Credits	247.00
	Balance Due as of 6/15/2017	0.00
	Plaintiff Tarkanian, Danny	
	Total Charges	270.00
	Total Payments and Credits	270.00
	Balance Due as of 6/15/2017	0.00
	Defendant Rosen, Jacky	
	Appeal Bond Balance as of 6/15/2017	500.00

DISTRICT COURT CIVIL COVER SHEET A- 16- 746797- C

County, Nevada

I V

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Danny Tarkanian	Jacky Rosen, an individual; Rosen for Nevada, a 527 Organization and Does I-X and Does Entities VI-X
7220 S. Cimarron Rd. #110	1000 N. Green Valley Parkway #440-177
Las Vegas, NV 89113	Henderson, NV 89074
702-508-4998	702-998-5327
Attorney (name/address/phone):	Attorney (name/address/phone):
Samira C. Knight, Esq.	
7220 S. Cimarron Rd. #110	
Las Vegas, NV 89113	
702-508-4998	

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

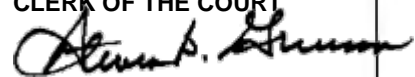
Business Court filings should be filed using the Business Court civil coversheet.

11/16/16

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **ORDR**

2 BRADLEY S. SCHRAGER, ESQ.
3 Nevada State Bar No. 10217
4 DANIEL BRAVO, ESQ.
5 Nevada Bar No. 13078
6 **WOLF, RIFKIN, SHAPIRO,**
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11 bschrager@wrslawyers.com
12 dbravo@wrslawyers.com

13 MARC E. ELIAS, ESQ. (*Admitted Pro Hac Vice*)
14 GRAHAM WILSON, ESQ. (*Admitted Pro Hac Vice*)
15 ELISABETH C. FROST, ESQ. (*Admitted Pro Hac Vice*)
16 AMANDA R. CALLAIS, ESQ. (*Admitted Pro Hac Vice*)

17 **PERKINS COIE LLP**

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21 melias@perkinscoie.com
22 gwilson@perkinscoie.com
23 efrost@perkinscoie.com
24 acallais@perkinscoie.com

25 *Attorneys for Defendants*

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

28 DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXX

**ORDER FOR DEFENDANTS' MOTION
TO DISMISS UNDER N.R.S. 41.660**

This matter having come before this Court on April 25, 2017, at 9:00 a.m., for Defendants' Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660, and Plaintiff's Opposition to Defendants' Anti SLAPP Special Motion to Dismiss Under N.R.S. 41.660 and Plaintiff's request for Attorney's Fees and Costs. Plaintiff, Danny Tarkanian ("Danny"), being present with counsel

AA000465

1 Samira C. Knight, Esq., and Jenny L. Foley, Esq. of Tarkanian & Knight Law Group, and
2 Defendants, Jacky Rosen and Rosen for Nevada (collectively "Defendants"), not present with
3 counsel Amanda Callais, Esq. of Perkins Coie appearing Pro Hac Vice, and Bradley Schragar of
4 Wolf Rifkin Shapiro Schulman & Rabkin, LLP, appearing as local counsel. This Court having
5 reviewed the papers and pleadings on file herein and having heard the arguments of counsel, the
6 Court does hereby enter the following:

7 **THE COURT FINDS¹** that when a party brings a Special Motion to Dismiss under NRS
8 41.660 (the "Anti-SLAPP Statute), the moving party has the initial burden to show, by a
9 preponderance of evidence, that the plaintiff's claims are "based upon a good faith communication
10 in furtherance of the right to petition or the right to free speech in direct connection with an issue of
11 public concern." NRS 41.660(1), (3)(a). A statement is made in "good faith" under the statute if it
12 "is truthful or is made without knowledge of its falsehood." NRS 41.637. If the defendant meets
13 this burden, the plaintiff then has the burden of showing, by *prima facie* evidence, that it has a
14 probability of prevailing on its claims. NRS 41.660(3)(b).

15 **THE COURT FURTHER FINDS** that Defendants' Anti-SLAPP Motion was filed, and
16 Defendants argued, among other things, that Plaintiff's Complaint was an improper restraint on
17 political speech. At issue in the Complaint are several statements made by Defendants during Jacky
18 Rosen's campaign for Nevada's Third Congressional District in 2016, including statements made in
19 a video published on the website Youtube.

20 Relevant to this Motion, the Complaint alleges *inter alia*, that the statements are defamatory.
21 Further, the Complaint alleges that Defendants knew or should have known that the statements were
22 defamatory because in 2009, Plaintiff Danny Tarkanian obtained a jury verdict in Clark County
23 against Mike Schneider for statements that the Complaint alleges are the same or substantially
24 similar to those at issue here. *See Danny Tarkanian v. Mike Schneider*, Case No. A500379 (the
25 "Schneider Case").

26
27 ¹ Herein, any findings of the Court that are, in truth, conclusions of law, or any conclusions of law that are, in
28 truth, findings, shall be treated as such.

1 **THE COURT FURTHER FINDS** that Plaintiff was a public figure for purposes of the
2 claims made in the Complaint

3 **THE COURT FURTHER FINDS** that the statements in question were made in a political
4 advertisement (the “Advertisement”) that aired during the 2016 general election and are political
5 speech, and thus constitute “communication[s] in furtherance of the right to petition or the right to
6 free speech in direct connection with an issue of public concern” under the Anti-SLAPP Statute.
7 NRS 41.637; *see Shapiro v. Welt*, 389 P.3d 262, 268 (Nev. 2017) (adopting five-factor test
8 articulated in *Piping Rock Partners*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013) in determining
9 whether statements are in direct connection with matters of public concern under Nevada’s Anti-
10 SLAPP Statute).

11 **THE COURT FURTHER FINDS** that the issues for this Court in the case generally will be
12 whether the statements in the Advertisement are truthful or not, and whether there was actual malice
13 on the part of the Defendants’ and their agents in making the statements; however, for purposes of
14 this Anti-SLAPP motion the Court need not resolve these issues now. Rather, the Court need only
15 address the respective burdens of the parties discussed above.

16 **THE COURT FURTHER FINDS** that Plaintiffs allege that Defendants made three
17 statements that are at issue in this case.

18 **THE COURT FURTHER FINDS** that some of the statements made by Michael Schneider
19 in 2004 State Senate race regarding Plaintiff that was adjudicated as defamatory in 2009 by a Clark
20 County jury, are similar to the statements made in Defendants’ Advertisement.

21 **THE COURT FURTHER FINDS** that the Defendants relied upon statements Ross Miller
22 and Steven Horsford made in their advertisements regarding Plaintiff in campaigns subsequent to the
23 statements in (the “Schneider Case”), that were never addressed in a court proceeding.

24 **THE COURT FURTHER FINDS** that Defendants have not met their burden under the first
25 prong of the Anti-SLAPP Statute, as they have not shown by a preponderance of evidence that the
26 three statements at issue were truthful or made without knowledge of its falsehood. The Court
27 cannot find, at this preliminary stage, that the statements at issue are true.

28 ///

THE COURT FURTHER FINDS that Plaintiff has shown prima facie evidence of a probability of success on his defamation claim, and the Court will let the case go forward, in the likelihood that a jury will have to determine—as the finder of fact—whether the challenged statements are truthful, and whether the challenged statements were made with actual malice. At the very least, the Court cannot find, as a matter of law, that Plaintiff cannot make out a case for defamation regarding the statements made by Defendants.

IT IS HEREBY ORDERED that Defendants' Anti-Slapp Motion to Dismiss is hereby **DENIED**.

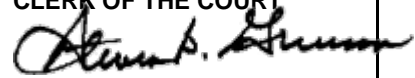
DATED this 2 day of June, 2017.

DISTRICT COURT JUDGE

Respectfully Submit by:

**WOLF RIFKIN SHAPIRO
SCHULMAN & RABKIN, LLP**

BRADLEY S. SCHRAGER, ESQ.
Nevada State Bar No. 10217
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Attorney for Defendants



1 **NEOJ**
BRADLEY S. SCHRAGER, ESQ.
2 Nevada State Bar No. 10217
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MARC E. ELIAS, ESQ. (*Admitted Pro Hac Vice*)
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13 acallais@perkinscoie.com

14 *Attorneys for Defendants*

15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

17
18 DANNY TARKANIAN,
19 Plaintiff,
20 vs.

Case No: A-16-746797-C
Dept. No.: XXX

NOTICE OF ENTRY OF ORDER

21 JACKY ROSEN, an individual; ROSEN FOR
22 NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X
23 Defendant.

24
25 ///

26 ///

27 ///

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AA000469

1 NOTICE IS HEREBY GIVEN that an ORDER FOR DEFENDANTS' MOTION TO
2 DISMISS UNDER N.R.S. 41.660 was entered in the above-captioned matter on the 12th day of
3 June, 2017. A copy of the ORDER is attached hereto.

4 DATED this 12th day of June, 2017.

5 **WOLF, RIFKIN, SHAPIRO,**
6 **SCHULMAN & RABKIN, LLP**

7 By: /s/ Bradely S. Schrager

8 BRADLEY S. SCHRAGER, ESQ.

9 Nevada State Bar No. 10217

10 DANIEL BRAVO, ESQ.

11 Nevada Bar No. 13078

12 3556 E. Russell Road, Second Floor

13 Las Vegas, Nevada 89120

14 *Attorneys for Defendants*

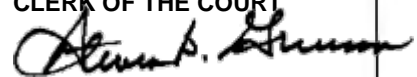
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12th day of June, 2017, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court
4 using the Odyssey eFileNV system and serving all parties with an email-address on record,
5 pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. and by depositing a
6 true copy of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas,
7 Nevada, said envelope addressed to:

8 Samira C. Knight, Esq.
9 TARKANIAN & KNIGHT
10 LAW GROUP, PLLC
11 7220 S. Cimarron Rd., Suite 110
12 Las Vegas, NV 89113

13 By: /s/ Dannielle R. Fresquez

14 Dannielle R. Fresquez, an Employee of WOLF,
15 RIFKIN, SHAPIRO, SCHULMAN &
16 RABKIN, LLP
17
18
19
20
21
22
23
24
25
26
27
28



1 **ORDR**

2 BRADLEY S. SCHRAGER, ESQ.
3 Nevada State Bar No. 10217
4 DANIEL BRAVO, ESQ.
5 Nevada Bar No. 13078
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25 *Attorneys for Defendants*

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

28 DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXX

**ORDER FOR DEFENDANTS' MOTION
TO DISMISS UNDER N.R.S. 41.660**

This matter having come before this Court on April 25, 2017, at 9:00 a.m., for Defendants' Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660, and Plaintiff's Opposition to Defendants' Anti SLAPP Special Motion to Dismiss Under N.R.S. 41.660 and Plaintiff's request for Attorney's Fees and Costs. Plaintiff, Danny Tarkanian ("Danny"), being present with counsel

AA000472

1 Samira C. Knight, Esq., and Jenny L. Foley, Esq. of Tarkanian & Knight Law Group, and
2 Defendants, Jacky Rosen and Rosen for Nevada (collectively "Defendants"), not present with
3 counsel Amanda Callais, Esq. of Perkins Coie appearing Pro Hac Vice, and Bradley Schragar of
4 Wolf Rifkin Shapiro Schulman & Rabkin, LLP, appearing as local counsel. This Court having
5 reviewed the papers and pleadings on file herein and having heard the arguments of counsel, the
6 Court does hereby enter the following:

7 **THE COURT FINDS¹** that when a party brings a Special Motion to Dismiss under NRS
8 41.660 (the "Anti-SLAPP Statute), the moving party has the initial burden to show, by a
9 preponderance of evidence, that the plaintiff's claims are "based upon a good faith communication
10 in furtherance of the right to petition or the right to free speech in direct connection with an issue of
11 public concern." NRS 41.660(1), (3)(a). A statement is made in "good faith" under the statute if it
12 "is truthful or is made without knowledge of its falsehood." NRS 41.637. If the defendant meets
13 this burden, the plaintiff then has the burden of showing, by *prima facie* evidence, that it has a
14 probability of prevailing on its claims. NRS 41.660(3)(b).

15 **THE COURT FURTHER FINDS** that Defendants' Anti-SLAPP Motion was filed, and
16 Defendants argued, among other things, that Plaintiff's Complaint was an improper restraint on
17 political speech. At issue in the Complaint are several statements made by Defendants during Jacky
18 Rosen's campaign for Nevada's Third Congressional District in 2016, including statements made in
19 a video published on the website Youtube.

20 Relevant to this Motion, the Complaint alleges *inter alia*, that the statements are defamatory.
21 Further, the Complaint alleges that Defendants knew or should have known that the statements were
22 defamatory because in 2009, Plaintiff Danny Tarkanian obtained a jury verdict in Clark County
23 against Mike Schneider for statements that the Complaint alleges are the same or substantially
24 similar to those at issue here. *See Danny Tarkanian v. Mike Schneider*, Case No. A500379 (the
25 "Schneider Case").

26
27 ¹ Herein, any findings of the Court that are, in truth, conclusions of law, or any conclusions of law that are, in
28 truth, findings, shall be treated as such.

1 **THE COURT FURTHER FINDS** that Plaintiff was a public figure for purposes of the
2 claims made in the Complaint

3 **THE COURT FURTHER FINDS** that the statements in question were made in a political
4 advertisement (the “Advertisement”) that aired during the 2016 general election and are political
5 speech, and thus constitute “communication[s] in furtherance of the right to petition or the right to
6 free speech in direct connection with an issue of public concern” under the Anti-SLAPP Statute.
7 NRS 41.637; *see Shapiro v. Welt*, 389 P.3d 262, 268 (Nev. 2017) (adopting five-factor test
8 articulated in *Piping Rock Partners*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013) in determining
9 whether statements are in direct connection with matters of public concern under Nevada’s Anti-
10 SLAPP Statute).

11 **THE COURT FURTHER FINDS** that the issues for this Court in the case generally will be
12 whether the statements in the Advertisement are truthful or not, and whether there was actual malice
13 on the part of the Defendants’ and their agents in making the statements; however, for purposes of
14 this Anti-SLAPP motion the Court need not resolve these issues now. Rather, the Court need only
15 address the respective burdens of the parties discussed above.

16 **THE COURT FURTHER FINDS** that Plaintiffs allege that Defendants made three
17 statements that are at issue in this case.

18 **THE COURT FURTHER FINDS** that some of the statements made by Michael Schneider
19 in 2004 State Senate race regarding Plaintiff that was adjudicated as defamatory in 2009 by a Clark
20 County jury, are similar to the statements made in Defendants’ Advertisement.

21 **THE COURT FURTHER FINDS** that the Defendants relied upon statements Ross Miller
22 and Steven Horsford made in their advertisements regarding Plaintiff in campaigns subsequent to the
23 statements in (the “Schneider Case”), that were never addressed in a court proceeding.

24 **THE COURT FURTHER FINDS** that Defendants have not met their burden under the first
25 prong of the Anti-SLAPP Statute, as they have not shown by a preponderance of evidence that the
26 three statements at issue were truthful or made without knowledge of its falsehood. The Court
27 cannot find, at this preliminary stage, that the statements at issue are true.

28 ///

THE COURT FURTHER FINDS that Plaintiff has shown prima facie evidence of a probability of success on his defamation claim, and the Court will let the case go forward, in the likelihood that a jury will have to determine—as the finder of fact—whether the challenged statements are truthful, and whether the challenged statements were made with actual malice. At the very least, the Court cannot find, as a matter of law, that Plaintiff cannot make out a case for defamation regarding the statements made by Defendants.

IT IS HEREBY ORDERED that Defendants' Anti-Slapp Motion to Dismiss is hereby **DENIED.**

DATED this 2 day of June, 2017.

DISTRICT COURT JUDGE

Respectfully Submit by:

**WOLF RIFKIN SHAPIRO
SCHULMAN & RABKIN, LLP**

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Attorney for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

January 27, 2017

A-16-746797-C Danny Tarkanian, Plaintiff(s)
vs.
Jacky Rosen, Defendant(s)

January 27, 2017

10:57 AM

Minute Order

**Minute Order Re:
Recusal**

HEARD BY: Earley, Kerry

COURTROOM: Chambers

COURT CLERK: April Watkins

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- As this Court is familiar with one of the parties, in accordance with Rule 2.11(a), and to avoid the appearance of impropriety and implied bias, this Court hereby disqualifies itself and ORDERS this case be REASSIGNED at random.

CLERK'S NOTE: The above minute order has been distributed to: Samira C. Knight, Esq., (Samira@TKLawGroupNV.com) and Bradley S. Schrager, Esq., (bschrager@wrslawyers.com). aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

February 27, 2017

A-16-746797-C Danny Tarkanian, Plaintiff(s)
vs.
Jacky Rosen, Defendant(s)

February 27, 2017 3:00 AM Motion to Continue

HEARD BY: Adair, Valerie **COURTROOM:** Chambers

COURT CLERK: Jill Chambers

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court's spouse has past and forthcoming matters before an immediate family member of the Pltff. wherein the Court has direct financial interest Therefore, in accordance with rule 2.11 (A) and (B) and to avoid the appearance of impropriety and implied bias, Court hereby DISQUALIFIES itself and ORDERS the case to be reassigned at random.

CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the listed Service Recipients in the Wiznet E-Service system. jmc

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

March 07, 2017

A-16-746797-C Danny Tarkanian, Plaintiff(s)
vs.
Jacky Rosen, Defendant(s)

March 07, 2017 9:00 AM Motion to Continue

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Foley, Jennifer L. Attorney
 Schrager, Bradley S. Attorney

JOURNAL ENTRIES

- Plaintiff's Motion to Continue hearing on Defendants' Anti-Slapp Special Motion to Dismiss Under NRS 41.660

Following conference at the bench. COURT ORDERED, motion GRANTED. The March 14, 2017, Motion to Dismiss RESCHEDULED to 4/25/17 to obtain the transcript. Court noted that the deposition of Ms. Rosen is not necessary at this time.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

April 25, 2017

A-16-746797-C Danny Tarkanian, Plaintiff(s)
vs.
Jacky Rosen, Defendant(s)

April 25, 2017 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Foley, Jennifer L. Attorney
 Knight, Samira C, ESQ Attorney
 Schrager, Bradley S. Attorney
 Tarkanian, Danny Plaintiff

JOURNAL ENTRIES

- Defendants' Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660

Court advised counsel that it had reviewed the Ad in dispute. Ms. Callias argued for dismissal as Plaintiff had not met there burden to prove claims. Opposition by Ms. Knight. Argument regarding good faith standard, truthfulness, and defamation of character. Court finds genuine issues of fact remaining. COURT ORDERED, motion DENIED. Ms. Knight to prepare the order.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING DEFENDANT'S MOTION TO
DISMISS UNDER N.R.S. 41.660; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

DANNY TARKANIAN,

Plaintiff(s),

vs.

JACKY ROSEN; ROSEN FOR NEVADA,

Defendant(s),

Case No: A-16-746797-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 15 day of June 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

AA000480

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

OPERATING ACCOUNT
3556 E. RUSSELL ROAD, 2ND FLOOR
LAS VEGAS, NV 89120
PHONE (702) 341-5200

Las Vegas Petty Cash Account
2320 E. Tropicana Avenue
Las Vegas, NV 89119
16-1606/1220

5064

DATE: 06-13-2017

CHECK AMOUNT

\$250.00

TWO HUNDRED FIFTY AND 00/100 DOLLARS

CLERK OF THE SUPREME COURT

PAY
TO THE
ORDER OF

201 S. CARSON STREET, NO. 201
LAS VEGAS, NV 89701



GENERAL ACCOUNT

A handwritten signature in black ink, appearing to read "Deborah D. [unclear]".

A-16-746797-C

⑈⑈ 5064 ⑈ ⑈ 122016066⑈ 362200563⑈

AA000481

1 my question.

2 THE COURT: You need to listen to the question. And
3 he is asking a number of leading questions for you as you are a
4 party opponent. And so he's framing them so that they can be
5 answered yes or no. And if you can so answer, then you should.
6 And if you cannot, then you should so indicate.

7 THE WITNESS: All right.

8 BY MR. FLANGAS:

9 Q So is it true that you wanted the -- the -- your
10 statement about Mr. Tarkanian forming 19 -- 19 fraudulent
11 corporations, you wanted that to be stated to your viewing
12 audience as a fact; is that correct?

13 A Correct.

14 Q Now, one of the things -- scratch that. Now, you
15 believe you had basis to make those statements; is that correct?

16 A Correct.

17 Q And the basis that you made on -- the basis for that
18 -- those statements, according to you, is that Mr. Grover told
19 you about it; is that correct?

20 A In conversations, yes.

21 Q And that's Mr. Groover. Excuse me. And he told you
22 about those during your meetings and possibly a telephone
23 conversation; is that correct?

24 A Correct.

25 Q Now, you would agree with me that making an allegation

1 that you turned state's evidence or an allegation that you
2 purposely and knowingly put corporations together to fraud
3 people, those would be serious allegations; is that correct?

4 A Yes.

5 Q And because of the severity of those allegations, a
6 prudent person would probably want those fully investigated; is
7 that correct?

8 A Right.

9 Q And did you get anything in writing from Mr. Groover
10 that said that Mr. Tarkanian had turned state's evidence to
11 essentially save his own skin?

12 A Never received anything in writing from Mr. Groover.

13 Q Is it also true that you didn't receive anything in
14 writing from Mr. Groover that Mr. Tarkanian knowingly entered or
15 put these 19 fraudulent corporations together?

16 A I never received anything in writing from Mr. Groover
17 at any time.

18 Q Now, you -- I think when you met with Mr. Groover you
19 got to look at some legal papers pertaining to some of the
20 clients that Mr. Tarkanian had represented in those
21 corporations; is that correct?

22 A Correct.

23 Q And I think it was Mr. Cloninger; is that correct?

24 A Cloninger, yeah.

25 Q Cloninger.

1 A Yes.

2 Q And is it also true that Mr. Tarkanian's name wasn't
3 mentioned in those legal documents as having any kind of
4 culpability in that?

5 A I can't remember what was in there.

6 Q Is it also true that you knew at the time that Mr.
7 Tarkanian was putting those corporations together that Mr.
8 Tarkanian was an attorney?

9 A Yes.

10 Q And you also knew that Mr. Tarkanian was just the
11 resident agent; is that correct?

12 A I didn't know that. I had belief that he was involved
13 more.

14 Q Okay. And you got your belief based on what Mr.
15 Grover -- Groover told you; is that correct?

16 A Mr. Groover and Charlie Waterman, also.

17 MR. FLANGAS: Court's indulgence.

18 (Pause in the proceedings)

19 MR. FLANGAS: May I approach, Your Honor?

20 THE COURT: Yes.

21 MR. FLANGAS: Counsel, I'll be looking at page 92,
22 begin at line 12.

23 BY MR. FLANGAS:

24 Q It says, question, so as we sit here today, your
25 statement that Mr. Tarkanian turned state's evidence as being a

1 true statement is still based on your previous meetings with Mr.
2 Groover, is that true?

3 Answer, true.

4 Question, did you base it on anything else other than
5 your meetings with Mr. Groover?

6 Answer, no.

7 Did you base it on anything that Mr. Cooper said?

8 Answer, no.

9 Is that what that says?

10 A That's what that says.

11 Q Now, in your attorney's opening statement he mentioned
12 something about Arkansas; is that correct?

13 A Correct.

14 Q And your attorney mentioned something that there was
15 someone on a corporation that Mr. Tarkanian had found -- or had
16 been informed that they had gotten in trouble in Arkansas;
17 correct?

18 A Correct.

19 Q And is it also true that Mr. Tarkanian had no
20 involvement whatsoever in that other than to form the
21 corporation and act as the registered agent of that corporation;
22 is that correct?

23 MR. COHEN: Objection.

24 THE WITNESS: I don't know --

25 MR. COHEN: Calls for speculation.

1 MR. FLANGAS: It's Exhibit No. 1, Your Honor.

2 THE COURT: We're a little bit confused because what
3 I'm seeing in the exhibit book appears to be photocopies.

4 MR. COHEN: And Senator Schneider has the originals
5 with him.

6 THE COURT: Okay. Would you approach -- would you
7 approach your client --

8 MR. COHEN: Sure.

9 THE COURT: -- and retrieve those, then? You're going
10 to substitute those for the photocopy pages inside the evidence
11 binder?

12 MR. COHEN: I think it's better to have the original.

13 THE COURT: Okay. Exhibit 1 consists of two items, so
14 one of them will be marked as 1-A, and the other one is 1-B, and
15 the originals are being substituted in place of photocopies. So
16 those copies can be taken out of the binder.

17 MR. COHEN: And we'll stipulate to that, Your Honor.

18 THE COURT: And then the parties stipulate to the
19 admission of 1-A and 1-B. Very well. Is that correct?

20 MR. FLANGAS: That's correct, Your Honor. Thank you.

21 (Exhibits 1-A and 1-B admitted)

22 MR. FLANGAS: And, Your Honor, I'd like to publish a
23 portion of Exhibit 1 to the jury.

24 THE COURT: 1-A or 1-B?

25 MR. FLANGAS: That would be 1-A, Your Honor.

1 THE COURT: You may.

2 BY MR. FLANGAS:

3 Q Now, sir, direct your attention -- or you can see it
4 on your screen. What I'm showing you right now is Exhibit 1-A,
5 and on there you can see where I'm going around with my finger.
6 It says Danny Tarkanian can't be trusted, he's associated with
7 convicted criminals, crooked telemarketers, illegal bookies, and
8 stiffed too many people. When Danny Tarkanian says I work for
9 people who did bad things, it sounds like he was self-employed.
10 Now, that was a statement that was just on the show that we saw;
11 is that correct?

12 A Correct.

13 Q Now, the quote here says when Danny Tarkanian says I
14 worked for people who did bad things, and it ends right there;
15 is that correct?

16 A Correct.

17 Q And the source of that statement, I believe, was --
18 was the Las Vegas Sun article; is that correct?

19 A I assume so, yes.

20 Q Okay.

21 MR. FLANGAS: And would you guys stipulate to the
22 admittance of No. -- Exhibit No. 7?

23 MR. COHEN: Yes.

24 BY MR. FLANGAS:

25 Q Now, I'm going to --

1 THE COURT: You may not publish.

2 MR. FLANGAS: Beg your pardon?

3 THE COURT: You may not publish your own personal
4 copy.

5 MR. FLANGAS: I was just trying to keep from tearing
6 apart you all's exhibit book, Your Honor.

7 THE COURT: Are you stipulating for the admission of
8 7?

9 MR. FLANGAS: We already stipulated, Your Honor.

10 THE COURT: No, you asked him if he wanted to
11 stipulate and he said he would.

12 MR. FLANGAS: Okay. I'm assuming -- I'm stipulating,
13 as well, Your Honor.

14 THE COURT: Very well. 7 is stipulated and admitted
15 and the original will be --

16 MR. FLANGAS: Sorry about that.

17 THE COURT: -- in the exhibit book may be published to
18 the jury.

19 (Exhibit 7 admitted)

20 BY MR. FLANGAS:

21 Q Okay. Now, the quote we just saw on Exhibit 1-A, sir,
22 it just ended at where Danny Tarkanian said he was merely a
23 corporate lawyer for businessmen who did some bad things; is
24 that correct?

25 A Yes.

1 Q Okay. Now, right here is the -- right here is the
2 quote; is that correct, sir?

3 A Yes.

4 Q And that's the full quote. It says Tarkanian said he
5 was merely a corporate lawyer for businessmen who did some bad
6 things. He said he was never questioned, officially
7 investigated, or charged in connection to his clients; is that
8 correct?

9 A That's what it says.

10 Q Okay. And your previous thing didn't have -- the
11 flyer didn't have the quote in full; is that correct?

12 A You know, what's that -- I guess that's correct.
13 Yeah.

14 Q Now, let's kind of talk about what you had to say
15 about, you know, using quotes in the context of a campaign.

16 MR. FLANGAS: And if I may approach the witness, Your
17 Honor.

18 THE COURT: You may.

19 BY MR. FLANGAS:

20 Q Now, in your deposition I questioned you a little bit
21 about that quote we just saw. And the question was, okay, now
22 the next sentence says when Danny Tarkanian --

23 THE COURT: I need a page and a line, please.

24 MR. FLANGAS: Oh, I apologize, Your Honor. I'm on
25 page 172, counsel, and I'm beginning at line 21.

1 Q You also said that Mr. Groover told you that Mr.
2 Tarkanian was finding office space for these various
3 corporations; is that correct?

4 A Correct.

5 Q You also said that Mr. Groover also told you that Mr.
6 Tarkanian was finding people to sit as officers and directors on
7 some of these corporations; is that correct?

8 A Correct.

9 Q You also said that Mr. Groover told you that Mr.
10 Tarkanian had actually put a man with the last name of Flowers
11 who used to be a UNLV basketball player on one of these
12 corporations; is that correct?

13 A Correct.

14 Q And -- and according to you, this is one of the
15 reasons why you felt that you could say that Mr. Tarkanian was
16 forming fraudulent corporations out in your -- in your
17 literature and on the Ralston Show; is that correct?

18 A Not totally, no.

19 Q But that's one of the -- most of the main reasons; is
20 that correct?

21 A Not most of the main reasons, no.

22 Q You also said on the Ralston Show that you had
23 newspaper articles; is that correct?

24 A Correct.

25 Q That said that Mr. Tarkanian had turned state's

1 evidence; is that correct?

2 A No, I -- I can't remember.

3 Q We just saw it, sir.

4 A I just saw it, so I -- I said it, but I can't remember
5 the newspaper articles, that's what I'm saying.

6 Q You also said there was newspaper articles that Mr.
7 Tarkanian was under grand jury investigation, as well; correct?

8 A Correct.

9 Q You also said that there were newspaper articles that
10 said Mr. Tarkanian had formed 19 fraudulent corporations; is
11 that correct?

12 A Correct.

13 Q Now, sir, do you have any reason to believe that Mr.
14 Groover would ever lie?

15 A No.

16 MR. FLANGAS: May I approach your clerk, Your Honor?

17 THE COURT: You may.

18 MR. FLANGAS: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 MR. FLANGAS: I'm going to be looking at Exhibit 53,
21 Your Honor.

22 BY MR. FLANGAS:

23 Q Sir, I'm showing you what is marked as Proposed
24 Exhibit No. 53. And it's entitled Defendant Mike Schneider's
25 first supplement answers to plaintiff's first set of

1 page 8, does it indicate Communications Plus?

2 A Yes.

3 Q Okay. And does it indicate the status, the business
4 entity status as permanently revoked?

5 A Yes.

6 Q And does it indicate that the resident agent is
7 Daniel J. Tarkanian?

8 A Yes.

9 MR. FLANGAS: Your Honor, I'm going to object that
10 this is beyond the scope of my redirect.

11 THE COURT: Sustained.

12 BY MR. COHEN:

13 Q Did you ever see any articles about the telemarketing
14 companies that Mr. Tarkanian formed that were involved in
15 illegal activities?

16 A Yes.

17 Q I'd like you to take a look at Exhibit -- Proposed
18 Exhibit 20. And Proposed Exhibit 20, page 1, indicates
19 Associated Press; is that correct?

20 A Correct.

21 Q And the date line is Littlerock; is that correct?

22 A Correct.

23 Q And does it reference -- let's see, it references
24 Arkansas customers telephone bills; is that correct?

25 A Correct.

1 Q And the placing of unauthorized web posting charges;
2 is that correct?

3 A Correct.

4 Q It is one of the companies mentioned, Communications
5 Plus, Inc.?

6 A It's one of the companies on the list.

7 Q Okay.

8 A One of the 19 companies.

9 Q And do you recall seeing Communications Plus, Inc. as
10 one of the corporations that Mr. Tarkanian formed?

11 A Yes.

12 Q Do you believe it would be unreasonable for somebody
13 reading this article from the Associated Press that they would
14 think that this company was involved in fraudulent activity?

15 A Yes.

16 MR. FLANGAS: Objection. No foundation. Requires
17 speculation. Irrelevant.

18 THE COURT: Sustained.

19 BY MR. COHEN:

20 Q Did you have any reason to believe that Mr. Tarkanian
21 didn't have knowledge of these telemarketing corporations and/or
22 unlawful activities?

23 A No.

24 Q Did you believe those statements to be true that Mr.
25 Tarkanian formed these telemarketing corporations at the time

1 that you made them?

2 A Yes.

3 MR. COHEN: No further questions, Your Honor.

4 THE COURT: Redirect.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. FLANGAS:

7 Q Sir, you have your exhibit book in front of you;
8 correct?

9 A Correct.

10 Q All right. Let's have you move to Exhibit 13 that
11 your counsel just had you look at.

12 THE COURT: Proposed Exhibit 13.

13 MR. FLANGAS: You're right, Your Honor. Proposed
14 exhibit. I would go ahead and stipulate to its admittance if
15 counsel is willing.

16 MR. COHEN: Yes, we'll stipulate.

17 THE COURT: Very well. Exhibit 13 --

18 BY MR. FLANGAS:

19 Q Sir, I want you to look at Exhibit --

20 THE COURT: -- is stipulated admitted.

21 (Exhibit 13 admitted)

22 MR. FLANGAS: Okay. Thank you, Your Honor.

23 BY MR. FLANGAS:

24 Q Sir, I want you to look at Exhibit 13, which is --
25 purports to be the Las Vegas Telefunder charged in deceptive

1 recovery room scheme to solicit charitable donations agrees to
2 settle FTC charges. That's what the title of that is; correct?

3 A Correct.

4 Q Show me where it says anything about Mr. Tarkanian,
5 please, in the page and a half.

6 A In this short article it doesn't mention his name.

7 Q All right. Let's look at the other very short
8 article, which is Exhibit 21 that counsel just -- or, excuse me.

9 MR. FLANGAS: What was the other article you were
10 showing him?

11 MR. COHEN: You're joking; right?

12 MR. FLANGAS: No, I'm not joking. You showed him the
13 other article.

14 THE COURT: 12, 13, 19, and 21 were covered in
15 recross.

16 MR. FLANGAS: Okay. I guess it was Item No. 20.

17 BY MR. FLANGAS:

18 Q If you'll look at 20, please.

19 THE COURT: 20? Proposed Exhibit 20?

20 MR. FLANGAS: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. FLANGAS: And I'd be willing to stipulate that one
23 into evidence if counsel will agree to it.

24 MR. COHEN: Yes.

25 THE COURT: 20 is stipulated admitted.

1 (Exhibit 20 admitted)

2 BY MR. FLANGAS:

3 Q Now, I'm having you look at what's marked as
4 Plaintiff's -- or, excuse me, as Exhibit 21 in this case -- or,
5 excuse me, Exhibit 20 in this case. And it's the Associated
6 Press article that you were just questioned on a moment ago
7 dealing with what was happening in Arkansas; is that correct?

8 THE COURT: No, that was 21.

9 MR. FLANGAS: No, 21, Your Honor, I think, is the
10 subpoena duces tecum.

11 THE COURT: I had written down 21.

12 MR. FLANGAS: May I approach the witness, Your Honor?
13 Let's get that clarified.

14 THE COURT: Yes.

15 MR. FLANGAS: It appears to be 20 in his book, Your
16 Honor, and the 21 was the subpoena duces tecum.

17 THE COURT: Okay. So perhaps it was misstated by Mr.
18 Cohen. He intended 20.

19 MR. COHEN: Very likely, Your Honor.

20 THE COURT: Thank you.

21 MR. FLANGAS: That's probably why I was looking at 21
22 and not finding it myself. But the -- in any event, just to
23 verify for the record, Your Honor, Exhibit 20 is admitted; is
24 that correct?

25 THE COURT: Yes.


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, JULY 29, 2009

APPEARANCES:

FOR THE PLAINTIFF:	GUS W. FLANGAS, ESQ.
	KIM D. PRICE, ESQ.

FOR THE DEFENDANT:	NELSON L. COHEN, ESQ.
	LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000357

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<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESSES:

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HELEN FOLEY	30	43	51	55
JOHN CUMMINGS	82	93	100	101
DANNY TARKANIAN	103	134		

DEFENDANT'S WITNESS:

LEIF REID	65	80		
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EXHIBITS

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1 discussed that with him.

2 Q Did you ever tell Mr. Schneider that Mr. Tarkanian had
3 turned state's evidence?

4 A I don't recall telling him that, no.

5 Q Is it true that a lot of the corporations that you put
6 on that list of 19 or 20 did not involve telemarketing?

7 A You know, I would honestly have to look at the list
8 again.

9 Q That's fine. Are you -- did you look at the
10 corporation called People Against Drugs and Disease?

11 A I can't tell you without seeing the complete list.

12 Q Okay. That's fair enough. You're here under subpoena
13 today; is that correct?

14 A Yes, sir.

15 MR. FLANGAS: I have no further questions, Your Honor.

16 THE COURT: Cross.

17 MR. COHEN: Thank you, Your Honor. Your Honor, may I
18 bring the exhibit books to the witness?

19 THE COURT: Yes.

20 MR. COHEN: Thank you.

21 CROSS-EXAMINATION

22 BY MR. COHEN:

23 Q Mr. Groover, I may be referring to exhibits. If I do,
24 they are listed in here under number. I think this book is 1
25 through 39.

1 Q And this is --

2 A Well, let me check. Hold on.

3 Q Okay.

4 A Yes, sir.

5 Q And this is the research that you provided to Ms.
6 Foley; is that correct?

7 A Correct.

8 Q And so when you do research, you printed this out for
9 the purpose of providing it to the candidate in terms of
10 background information; right?

11 A Correct.

12 Q In terms of what your research turned up?

13 A Correct.

14 Q Do you know if plaintiff was ever called to testify in
15 front of the grand jury?

16 A Do I know if he was ever called?

17 Q Right.

18 A No, sir, I don't.

19 Q Did you ever read any newspaper articles regarding
20 grand jury investigation and the plaintiff?

21 A I don't believe that I located any or referenced any
22 in this. If you can give me just one moment.

23 Q Sure.

24 THE WITNESS: Sorry, Your Honor. I'll take just one
25 moment.

1 REDIRECT EXAMINATION

2 BY MR. FLANGAS:

3 Q Okay. Let's look at Exhibit 57 again, sir, that
4 counsel was just talking about, which is your report.

5 A Yes, sir.

6 Q Now, you stated that it contains mostly factual
7 information; is that correct?

8 A Yes, sir. Most of this is information that is pulled
9 through public record databases or sources, such as the
10 assessor's office, the recorder's office, voter registration,
11 business license or various licensing entities in this county,
12 Secretary of State of Nevada. It includes information from
13 federal databases, as well, that pretty much if you know where
14 to go you can find the same information.

15 Q Is there any information contained in your report that
16 says Mr. Tarkanian turned state's evidence to save his skin?

17 A No, sir.

18 Q Is there anything in your report that says attached to
19 page -- as Exhibit 57, Proposed 57, is there anything in there
20 that says that Mr. Tarkanian formed 19 fraudulent corporations?

21 A I don't believe I referred to all 19 of the
22 corporations as fraudulent. Are you talking about corporations
23 that committed fraud or that they were fraudulently formed?

24 Q That Mr. Tarkanian knowingly formed fraudulent
25 corporations. Is there anything in your report that says that?

1 A No, sir.

2 Q Is there anything in your report that indicates that
3 Mr. Tarkanian was called before a grand jury?

4 A No, sir.

5 Q Is there anything in your report that said Mr.
6 Tarkanian testified in front of a grand jury?

7 A No, sir.

8 Q Now, it would be a true statement, then, that if none
9 of these things were in your report, it didn't come up in your
10 data, you certainly wouldn't have told Mr. Schneider those
11 things; is that correct?

12 A Correct.

13 Q Now, you were asked a little while ago about Mr.
14 Cooper's report. Did you even know Mr. Cooper was even
15 associated with the campaign back in --

16 A Not at that --

17 Q -- 2004?

18 A -- time. No, sir, I did not.

19 Q The first time you learned was when you saw his report
20 in 2007?

21 A Correct.

22 Q Now, is it true --

23 A Mr. Flangas, if I might, the references that you're
24 stating are from Mr. Cooper's report and not from my report.

25 Q Okay. And you can't say that Mr. Tarkanian had the

1 A Our campaign didn't do polls. We didn't have the
2 money to do those. We would hear about polls occasionally.

3 Q And were the polls showing that Mr. Tarkanian and Mr.
4 Schneider were running almost in a dead heat?

5 A Little snippets that I would see from -- on Jon
6 Ralston, and I don't even know the validity of them or where
7 they came from, showed that the race was close.

8 Q Did -- and speaking of Jon Ralston, were you present
9 when Mr. Tarkanian and Mr. Schneider were on the Jon Ralston
10 Show Face to Face?

11 A I was.

12 Q Were you involved in the preparation of Mr. Schneider
13 for his appearance on Face to Face?

14 A Yes.

15 Q And Mr. Cummings, he was also involved, as well?

16 A Yes.

17 Q Was it ever discussed in your debate prep that Mr.
18 Tarkanian turned state's evidence?

19 A No.

20 Q Was it ever presented in your debate prep that Mr.
21 Tarkanian had set up fraudulent corporations?

22 A It -- it was discussed that people who were involved
23 in those corporations were convicted and that he had set all of
24 those corporations up.

25 Q Okay. But it was never -- it was never discussed in

1 that debate prep that Mr. Tarkanian knowingly set up those
2 corporations with the intent to defraud people?

3 A That's not how it was phrased.

4 Q Was it part of the debate prep that Mr. Tarkanian had
5 testified before a grand jury?

6 A I don't believe so. I -- I cannot remember. I know
7 that we had discussed Mr. Tarkanian and grand juries before, but
8 I'm not sure if it was discussed before the Ralston Show.

9 Q Did you discuss with Mr. Schneider his appearance on
10 the Ralston Show after it was over?

11 A We did.

12 Q And that was just you and he having the discussion; is
13 that correct?

14 A I believe so. I don't recall if Mr. Cummings was
15 there.

16 Q And did you discuss with him where he got the
17 information about Mr. Tarkanian turning state's evidence?

18 A Can you repeat that?

19 Q After the debate was over you had an opportunity to
20 talk to Mr. Schneider; correct?

21 A Yes.

22 Q Okay. Did you tell me -- or, excuse me, did you ask
23 Mr. Schneider or did you discuss with him where he got that
24 information about Mr. Tarkanian turning state's evidence?

25 A I don't know if I asked him that. I know that we

1 BY MR. FLANGAS:

2 Q Now, Ms. Foley, I know it's been a long time since
3 this all happened, and I know you've had a deposition taken in
4 my office. It's been almost two years and your memory was
5 probably better back then. But I'm going to show you some
6 portions on your deposition transcript here if you could follow
7 along with me. And it says -- and it's a question by myself --

8 MR. GRECO: What pages, Your Honor?

9 MR. FLANGAS: Oh, I apologize, counsel. I'm on page
10 48, and I will be starting on line 22. Ready?

11 BY MR. FLANGAS:

12 Q Question, it says after the Ralston Show, Mr.
13 Schneider's appearance on the Ralston Show, did you or your
14 group or Mr. Cummings or any of you all discuss with him why he
15 said Mr. Tarkanian had turned state's evidence against his
16 fellow telemarketers to save his skin or where he came up with
17 that or why he said it?

18 Mr. Hand registers renew my objection to the form of
19 the question.

20 And your counsel who was present says join with him.

21 And then you answered, yes, I did discuss that with
22 him.

23 Is that what that says so far?

24 A It says that, yes.

25 Q Okay. And what did you say to him and what was

1 BY MR. FLANGAS:

2 Q Were you also surprised that Mr. Schneider was
3 discussing Mr. Tarkanian being investigated by the grand jury or
4 grand jury testimony because it wasn't part of the debate prep?

5 A No, I was never surprised about Mr. Schneider talking
6 about things that we had not discussed. He was free to talk
7 about other things if he wanted to. We just simply prepped him
8 on some of the things that we wanted him to discuss. But he had
9 been a senator for many years and has a brain and can discuss
10 what he wants to discuss.

11 Q So you weren't surprised about him discussing that?

12 A No, I wasn't.

13 Q Even to your knowledge, though, pertaining to these
14 fraudulent corporations, it was the gentlemen who were convicted
15 were the ones who continued to set up other corporations; is
16 that correct?

17 A From what I understand Mr. Tarkanian set up those
18 corporations for them.

19 Q Would it be a true statement that you would not
20 dispute that a message went out from Mr. Schneider's campaign
21 that Mr. Tarkanian was involved in fraudulent corporations?

22 A Can you repeat that, please?

23 Q Would it be a true statement that you would not
24 dispute that a message went out from Mr. Schneider's campaign
25 that Mr. Tarkanian was involved in fraudulent corporations?

1 Q Okay. And did the campaign also look at newspaper
2 articles?

3 A Yes.

4 Q Did the campaign put out positive pieces about Mr.
5 Schneider?

6 A Oh, yes.

7 Q Okay. So there weren't only negative pieces. There
8 were also positive pieces that went out?

9 A There were far more positive pieces than negative
10 pieces.

11 Q Thank you. Did you ever see any newspaper articles
12 that stated Mr. Tarkanian was involved in a grand jury
13 investigation?

14 A I believe that I did, yes.

15 Q Thank you.

16 A Absolutely.

17 Q Do you know who many?

18 A How many articles I read --

19 Q Correct.

20 A -- or how many --

21 Q How many articles --

22 A -- investigations?

23 Q First, how many articles referenced investigations by
24 a grand jury?

25 A There were -- there were several different articles

1 or is the deposition still in front?

2 THE COURT: She still has the deposition.

3 MR. FLANGAS: Counsel, I'll be looking page 28, line
4 16.

5 REDIRECT EXAMINATION

6 BY MR. FLANGAS:

7 Q Now, ma'am, I'm showing you what's your deposition
8 again; is that correct?

9 A Yes.

10 Q Okay. And I'm going to start on page 28, line 16. If
11 you'll read along with me. It says, question, okay --

12 MR. GRECO: Objection, Your Honor. This is beyond the
13 scope of my cross.

14 THE COURT: Okay. Would you approach with the
15 deposition. Would counsel please approach the bench.

16 (Off-record bench conference)

17 THE COURT: The objection is overruled. Mr. Flangas
18 may proceed.

19 BY MR. FLANGAS:

20 Q And, again, ma'am, I'm starting on page 28, line 16.
21 It says, question, okay, but during the phone conversations that
22 was had while you were present with David Groover, Mike
23 Schneider, and yourself on those conference calls, you said we,
24 that you guy were talking about the past business practices of
25 Mr. Tarkanian, his dealings with his colleagues and

1 telemarketing. So what was specifically discussed in that vein?

2 Answer, on those calls I'm not sure. I'm not sure.

3 Question, was it ever discussed that Mr. Tarkanian had
4 turned state's evidence against his fellow telemarketers to save
5 his skin?

6 Mr. Hand registers an objection.

7 You answered, I never heard that from -- on those
8 calls, no.

9 Then the question goes, did you ever hear anything
10 about Mr. Tarkanian setting up fraudulent corporations in those
11 calls?

12 Answer, I heard that those individuals committed
13 fraud. I didn't hear specifically that Danny Tarkanian set up
14 fraudulent corporations.

15 I'll go ahead and continue reading. Some of this is a
16 little superfluous and I apologize.

17 Question, did you hear anything else during the course
18 of those conversations as it pertained to Mr. Tarkanian?

19 Answer, of course, I heard many things.

20 Question, I'm talking about during those -- these
21 conversations, so let's just limit it to that right now.

22 Answer, we talked about many things dealing with the
23 campaign's strengths and weaknesses of both candidates.

24 Question, you and Mr. Groover?

25 Answer, and Senator Schneider.

1 Question, did you ever discuss with Mr. Groover and
2 Mr. Schneider whether or not Mr. Tarkanian had testified before
3 the grand jury?

4 Answer, someone may have brought it up, but I don't
5 know the details of it.

6 Question, who brought it up?

7 Answer, one of the other two people on the call.

8 Question, meaning Mr. Schneider or Mr. Groover?

9 Answer, right, but I don't know who.

10 Question, was there anything discussed that Mr.
11 Tarkanian was investigated by any type of grand jury?

12 Answer, not that I know.

13 MR. FLANGAS: Thank you, Your Honor.

14 BY MR. FLANGAS:

15 Q Oh, excuse me. And that's what it said? I read that
16 correctly?

17 A You read it correctly.

18 Q Thank you. Now, you stated earlier that it's -- it's
19 almost completely necessary to have opposition research in any
20 campaign; is that correct?

21 A Yes.

22 Q And --

23 A If you have an opponent.

24 Q If you have an opponent. And you stated that the
25 opposition research has to be accurate; is that correct?

1 Mr. Tarkanian being the subject of grand jury investigations
2 from sources other than Mr. Groover?

3 A Yes.

4 Q Do you recall what those sources were?

5 MR. FLANGAS: I'm going to object on grounds of double
6 hearsay, hearsay, and foundation.

7 THE COURT: If she knows, she may answer. Overruled.

8 THE WITNESS: We heard from people that -- that --
9 well, from grand jury sources. I mean --

10 MR. FLANGAS: Objection.

11 THE WITNESS: -- but in the newspaper --

12 MR. FLANGAS: Hearsay and --

13 THE WITNESS: -- I read in the newspaper that he had
14 been subject or participated in grand jury investigations. It
15 was in several -- several articles about his grand jury
16 participation. Yes.

17 BY MR. GRECO:

18 Q Okay. Through --

19 A It wasn't that I needed to hear that from -- from
20 someone else. As far as the telemarketers were concerned, with
21 -- with that issue --

22 Q Right.

23 A Okay. All right.

24 Q I believe you answered the question. Thank you.

25 A Okay.

1 a pretty good law school, had a pretty good clerkship, and
2 interviewed for the job.

3 Q Did he make calls for you or send letters to the U.S.
4 Attorney's Office as far as you know to say, hey, I'm a U.S.
5 senator, let my son in?

6 A I don't know. I don't know. That may have happened.
7 I have no idea.

8 Q Did you ever ask him to do that for you?

9 A No.

10 Q Okay. And your jobs with Lewis & Roca and Lionel,
11 Sawyer & Collins, did you ever ask him to make any telephone
12 calls or send any letters to get you the jobs there?

13 A No. With all due respect, I don't need him to make
14 calls to be employed. Thanks.

15 Q There's exhibit binders in front of you. I would like
16 you to take a look at what has been proposed as Exhibit 34.

17 A Okay. I have that in front of me.

18 Q You have that in front of you?

19 A Yes.

20 Q And it's a letter to Danny Tarkanian, do you see that?

21 A Yes.

22 Q And it's a two-page letter; is that correct?

23 A It is.

24 Q Okay. So it goes 34, and then you see the Bates
25 numbers on the bottom, 34-001 and then 34-002 on the bottom?

1 A Yes.

2 Q Okay. And if you turn to page 2, it looks like
3 there's a signature block and it reads E. Leif Reid; is that
4 correct?

5 A Yeah, that's my name and my signature.

6 Q And this is a letter that you wrote; is that correct?

7 A It is.

8 Q And that is a letter that you wrote to Danny
9 Tarkanian; is that correct?

10 A Correct.

11 Q And does this appear to be a true and correct copy of
12 the letter that --

13 MR. FLANGAS: Objection. Leading.

14 THE COURT: That's foundational. I'll allow a little
15 leeway.

16 BY MR. COHEN:

17 Q Does this appear to be a true and correct copy of the
18 letter that you wrote to Danny Tarkanian?

19 A It does, to the best of my recollection.

20 MR. COHEN: Okay. Your Honor, at this time the
21 defense would request that Exhibit No. 34 be moved into
22 evidence.

23 MR. FLANGAS: I object on the grounds of hearsay.
24 Object on the -- I object on the ground of relevance.

25 THE COURT: The rulings of the Court that were placed

1 on the record earlier today stand. The objection is overruled.
2 34 is admitted.

3 (Exhibit 34 admitted)

4 MR. COHEN: Your Honor, at this time I would request
5 that the letter be published.

6 THE COURT: Motion granted.

7 MR. COHEN: Peter, would you please put up Exhibit No.
8 34 on the screen.

9 BY MR. COHEN:

10 Q And, Mr. Reid, just to let you know, the letter,
11 besides being in front of you, is going to be on the screen and
12 it's going -- the screen in front of you and the screen behind
13 you, okay?

14 A Okay.

15 MR. COHEN: Peter, would you please highlight the
16 first paragraph and bring that up?

17 BY MR. COHEN:

18 Q I'm going to read for you the first paragraph. Dear
19 Danny, yesterday I learned from members of my church
20 congregation that you were running a campaign advertisement
21 featuring my name and stating that I personally cleared
22 Tarkanian, you, of any involvement in illegal telemarketing
23 fraud. Having now seen this ad, I demand that you immediately
24 cease and desist from further airing it as the advertisement is
25 patently false, defamatory, and holds me in a false light. Did

1 A Yes, sir.

2 Q And what were those polls showing at that time?

3 A All the way up until election day, the polls showed
4 that I was either tied or one or two points ahead. There may
5 have been one where I was one point behind, but it was in that
6 range.

7 Q Now, during the course of this election, Mr. Schneider
8 made several allegations, false statements about you. One of
9 them being that you turned state's evidence with the intent
10 being that you were trying to save your own skin. Is that one
11 of the allegations he made?

12 A Yes, he did.

13 Q Is that a true allegation?

14 A No, it's an absolute falsehood.

15 Q Another false statement he made was that you were --
16 that you formed 19 fraudulent corporations and that you
17 knowingly did that with the intent of defrauding other people,
18 including elderly. Are those true statements?

19 A No, they're not true, and not only that, I never
20 formed one fraudulent corporation. Forget the number. And I
21 never knowingly created a fraudulent corporation.

22 Q And another false statement that was made by Mr.
23 Schneider that --

24 MR. COHEN: Objection. Leading, Your Honor.

25 THE COURT: Sustained.

1 BY MR. FLANGAS:

2 Q Was one of the other false statements that Mr.
3 Schneider made --

4 MR. COHEN: Objection. Leading, Your Honor.

5 THE COURT: Sustained.

6 MR. FLANGAS: I'm asking the question with an open-end
7 answer.

8 BY MR. FLANGAS:

9 Q All right. I'll do it this way. Was there any other
10 false statements that Mr. -- that Mr. Schneider made?

11 A Yes.

12 Q What was it?

13 A Well, he said that I was a subject of an investigation
14 here in Las Vegas.

15 Q A grand jury investigation?

16 A A grand jury investigation. And I -- to the best of
17 my knowledge I've never been the subject of investigation here
18 in Las Vegas, or anywhere else. He said that -- oh, he said
19 that I -- he sent out a flyer that said that I was an officer of
20 a company that failed to pay its IRS taxes. And that was a lie,
21 but this is where, you know, you sort of expect this one because
22 there's a semblance of truth. I was an officer --

23 MR. COHEN: Your Honor, I'm going to object based on
24 the Court's prior ruling.

25 THE COURT: Sustained.

1 BY MR. FLANGAS:

2 Q Now, were you ever questioned by a grand jury?

3 A No, I was not questioned ever.

4 Q Were you ever questioned by any type of law
5 enforcement in conjunction with telemarketing?

6 A No, absolutely not.

7 Q Were you ever subpoenaed to testify in front of a
8 grand jury?

9 A No, I was not.

10 Q Were you ever given any notice that you were the
11 subject of an investigation or that you were a target of an
12 investigation by a grand jury here?

13 A No, I was not.

14 Q And for the jury's edification, what exactly is a
15 target letter?

16 A A target letter is a letter that the government must
17 provide to the person if they are the subject of an
18 investigation. If I could expand upon -- on that.

19 Q Please do.

20 A I was -- I was -- and let's work backwards on this. I
21 was never charged or indicted with any illegal activities for
22 anything, but we're talking about the telemarketing stuff. Not
23 only that, I was never provided a subpoena to personally come in
24 and testify anywhere. So we can take the next step back, I was
25 never asked to come in and even be questioned by them. And, in

1 fact, I was told that they were asking questions about the
2 number of corporations that I was the attorney for the resident
3 agent.

4 And as a result of that, I had a family friend, his
5 name was Stan Hunterton who is a local attorney here in town who
6 was a former federal prosecutor. So I contacted Mr. Hunterton
7 and I asked him to contact the U.S. Attorney's Office and see if
8 they wanted to speak with me or ask me any questions or get any
9 of my records. Mr. Hunterton contacted them and -- and they
10 never wanted to -- they never wanted to meet with me. The
11 matter was completely dropped.

12 And all this stuff happened -- I mean, the last I
13 practiced law was in April of 1995. I never heard another thing
14 until my election in 2004. So nine years later, nothing has
15 ever been brought up about this after our request for our --
16 after our offer to speak with the U.S. Attorney's Office if they
17 had any questions they wanted to ask us. It wasn't until this
18 campaign started.

19 Q And I probably asked you already, did you ever turn
20 state's evidence?

21 A No, I have never turned state's evidence, and as I
22 testified just a second ago, I was never questioned. Never
23 questioned, never asked anything.

24 Q And, again, I've asked this, I believe, but did you
25 ever form 19 fraudulent corporations?

1 campaign mailers; is that correct?

2 A That is correct, yes.

3 Q You didn't do the research yourself; is that correct?

4 A Yes, that is correct.

5 Q Under questioning from your attorney, you stated under
6 oath that you were never questioned by a grand jury; is that
7 true?

8 A We were talking about the Las Vegas grand jury.

9 Q No, I'm asking you --

10 MR. FLANGAS: Objection, Your Honor.

11 THE COURT: I'm going to ask counsel to approach.

12 (Off-record bench conference)

13 BY MR. COHEN:

14 Q Under questioning from your attorney, you said that
15 there was polls showing that you were either ahead or neck and
16 neck with Senator Schneider; is that correct?

17 A That's correct.

18 Q Where are those polls?

19 A Where are the polls? You mean the written papers of
20 those polls or --

21 Q Yeah, you have an opportunity, you understand as an
22 attorney, to produce documents during discovery of litigation;
23 is that correct?

24 A Yes.

25 Q Where are those polls showing that you were ahead at


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, JULY 30, 2009

APPEARANCES:

FOR THE PLAINTIFF:	GUS W. FLANGAS, ESQ.
	KIM D. PRICE, ESQ.

FOR THE DEFENDANT:	NELSON L. COHEN, ESQ.
	LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000380

INDEX

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S WITNESS:

DANNY TARKANIAN		48	93	
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DEFENDANT'S WITNESS:

JOHN RICHARD COOPER	10	31	41	46
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* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
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1 THE COURT: Redirect.

2 MR. COHEN: Very briefly, Your Honor.

3 MR. FLANGAS: Your Honor, may I -- I apologize. Just
4 one or two more questions before I got. I --

5 THE COURT: You wish to reopen your cross?

6 MR. FLANGAS: Reopen. Yes, Your Honor.

7 THE COURT: You may.

8 BY MR. FLANGAS:

9 Q During the course of your research, it's also true
10 that you never found any indication whatsoever that Mr.
11 Tarkanian ever turned state's evidence; is that a correct
12 statement?

13 MR. COHEN: Objection. Vague and ambiguous, calls for
14 speculation as to whether or not this witness even knows what
15 turning state's evidence means.

16 MR. FLANGAS: It was directed specifically towards his
17 research, Your Honor.

18 THE COURT: Objection is overruled.

19 THE WITNESS: In terms of whether he -- do I have --
20 do I have direct knowledge whether he turned state's evidence,
21 was that your question?

22 BY MR. FLANGAS:

23 Q Do you have any knowledge that he ever turned state's
24 evidence, Your Honor -- or, excuse me, sir? It's getting late
25 in the afternoon already.

1 A No, I don't know. I don't have any direct personal
2 knowledge.

3 Q And when you did your report you had no -- in 2004 you
4 had no knowledge of whether or not Mr. Tarkanian had turned
5 state's evidence; is that a correct statement?

6 A There was -- as I recall there was nothing in the
7 public record to that effect.

8 MR. FLANGAS: May I approach the witness, Your Honor?

9 THE COURT: For what purpose?

10 MR. FLANGAS: To read his deposition with him.

11 THE COURT: Okay.

12 MR. FLANGAS: Counsel, I'll be starting at page 51,
13 line 8.

14 BY MR. FLANGAS:

15 Q Question, is there anything in your papers that show
16 that he turned state's evidence against other telemarketers?

17 Answer, I have no knowledge of that, no.

18 Is that what that says?

19 A Yes.

20 MR. FLANGAS: No further questions, Your Honor.

21 THE COURT: Now you may initiate your redirect.

22 REDIRECT EXAMINATION

23 BY MR. COHEN:

24 Q What does it mean to you to turn state's evidence?

25 MR. FLANGAS: Objection, Your Honor. Irrelevant.

1 THE COURT: Overruled.

2 THE WITNESS: I think that if you turn state's -- and
3 my -- and my interpretation of that would be if you turned
4 state's evidence you would be agreeing to testify to -- for the
5 prosecution against someone else generally to protect yourself
6 from prosecution.

7 BY MR. COHEN:

8 Q And agreeing to testify for the government in a civil
9 or criminal prosecution, do you see that as a bad thing?

10 MR. FLANGAS: Objection, Your Honor. This is
11 irrelevant. He has no foundation. It's beyond the scope of
12 cross-examination because I asked his personal knowledge of
13 whether he had any knowledge of whether Mr. Tarkanian turned
14 state's evidence.

15 THE COURT: Overruled.

16 MR. COHEN: Thank you.

17 THE COURT: You may answer the question.

18 THE WITNESS: Okay. Can you repeat the question,
19 please.

20 BY MR. COHEN:

21 Q Yeah. In your opinion do you think helping the
22 government in a civil or criminal prosecution in regards to
23 turning state's evidence is a bad thing?

24 A Well, I think it can imply that you've done something
25 that the public should know about and may want to question in

1 THE COURT: I'm going to sustain that objection. That
2 question calls for speculation and as to what Mr. Reid's mind
3 frame is. He is the best witness and this witness could only
4 speculate on interpreting what Mr. Reid wrote.

5 MR. FLANGAS: And move to strike his answer, Your
6 Honor.

7 THE COURT: Motion granted. So stricken. The jury
8 will disregard it.

9 MR. COHEN: No further questions, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. FLANGAS:

12 Q As counsel asked you turning state's evidence is not a
13 bad thing; is that correct?

14 A Turning state's evidence is not a bad thing?

15 Q Well, you tried to imply that it might be a good thing
16 to turn state's evidence, you know, to help out the government.
17 Is that how you perceived --

18 A That's not really what I -- I'm just looking at it
19 from a political perspective and if someone turned state's
20 evidence I would wonder why and what -- how that would reflect
21 on them.

22 Q And if the message is communicated that the person
23 turned state's evidence to save their own skin, that would
24 clearing imply that that person had done something wrong and had
25 engaged in some kind of criminal activity and was only

1 Question, do you know if he was convicted?

2 Answer, yes.

3 Question, do you know the name of the company that he
4 was involved in?

5 Answer, I believe it was American First Foundation.
6 But, again, that was just through this lawsuit and it's not from
7 a specific recollection of his work.

8 And do you see America First Foundation as the top
9 name in Exhibit 56?

10 A Yes.

11 Q Okay. Did Mr. Cloninger ever tell you that federal
12 prosecutors of the FBI were asking questions about you and
13 telemarketing activities?

14 A Yes.

15 Q As a result, did you hire an attorney?

16 A Yes.

17 Q Do you think the voters have a right to know this
18 information?

19 A I don't know if -- well, if they have a right to know,
20 they can. I wouldn't have objected to that.

21 Q Do the voters have a right to know about your legal
22 background and who you do business with?

23 A Sure.

24 Q Do you recall doing legal work for an individual named
25 Alex Norman?


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, JULY 31, 2009

APPEARANCES:

FOR THE PLAINTIFF:	GUS W. FLANGAS, ESQ.
	KIM D. PRICE, ESQ.

FOR THE DEFENDANT:	NELSON L. COHEN, ESQ.
	LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000387

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DEFENDANT'S WITNESS:

GARY GRAY	4	22	26	28
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* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
(No exhibits admitted)	

1 Q And, obviously, I'm going to restate you, what you
2 just stated, is it's not because they want to share a victory
3 with you; is that a true statement?

4 A I think, counsel, I was being flippant at the time.
5 It was a long ways into a long deposition.

6 Q Now, sir, you've referenced the Cooper report a couple
7 of times now, and you got to see it up there on the screen and
8 you relied solely on it as you've testified; is that correct?

9 A Yes, I did, although --

10 Q Now --

11 A -- that totally means I also verified with Cooper.

12 Q Okay. Now, in the Cooper report, is it true there's
13 nowhere in that Cooper report that states that Mr. Tarkanian
14 turned state's evidence against his fellow telemarketers in
15 essence to save his own skin?

16 A Frankly, I don't remember that portion. I know that I
17 did not use that statement in direct mail.

18 Q And you never saw it in the Cooper report, either, did
19 you?

20 A The Cooper report, when you look at all the references
21 in there it's fairly extensive. I don't recall it being there.

22 Q Now, this is what you would define as a relatively
23 small campaign because it's a senate seat in a defined district.
24 It's not going across the county, it's not going across the
25 state, would you agree with me?

1 A In terms of size, yes.

2 Q And because of the size there and your mailers, the
3 size of the district and the limited time, you had about, I
4 think, almost a dozen mailers that went out; is that correct?

5 A I didn't verify that number, but that's very close to
6 correct.

7 Q Now, with just roughly that amount of numbers, is it
8 probably that a candidate would not know what the mailers were
9 saying before they went out?

10 A The -- the candidate being the -- the client, not the
11 opponent.

12 Q Okay. The -- the candidate being defined as your
13 client.

14 A Yes. That happens sometimes. I'm really not sure how
15 those were vetted once they got to the Schneider campaign.

16 Q But it's not probable, though, is it?

17 MR. COHEN: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 BY MR. FLANGAS:

20 Q Did -- in your Cooper report, is it true that you
21 never saw that Mr. Tarkanian was under grand jury
22 investigation --

23 MR. COHEN: Your Honor, I objection.

24 BY MR. FLANGAS:

25 Q -- for telemarketing?

1 MR. COHEN: Can we approach based on the Court's
2 earlier ruling? I mean, this is --

3 THE COURT: Counsel may approach.

4 (Off-record bench conference)

5 THE COURT: The objection is premature and, therefore,
6 overruled.

7 BY MR. FLANGAS:

8 Q Now, is it true in the Cooper report that you never
9 saw any reference to Mr. Tarkanian being under grand jury
10 investigation for anything related to telemarketing?

11 A Well, hold on because I thought I saw that in here. I
12 believe there was a reference to grand jury, but I don't know
13 exactly what it was, and I may not be able to find it quickly
14 now. But I don't --

15 MR. FLANGAS: I'll move on --

16 THE WITNESS: -- know the --

17 MR. FLANGAS: -- Your Honor.

18 THE WITNESS: -- context of that.

19 BY MR. FLANGAS:

20 Q Now, in your -- in your flyers that you've sent out,
21 is it true that you believe that one of the effects of a person
22 or people reading your flyer would be that they would get the
23 impression that Mr. Tarkanian was actively involved in trying to
24 defraud seniors?

25 MR. COHEN: Objection. Calls for speculation as to

Exhibit B



Exhibit C

1 ROBIN B. JOHANSEN, State Bar No. 79084
2 MARGARET R. PRINZING, State Bar No. 209482
3 ANDREW HARRIS WERBROCK, State Bar No. 304509
4 KRISTEN M. ROGERS, State Bar No. 274672
5 REMCHO, JOHANSEN & PURCELL, LLP
6 1901 Harrison Street, Suite 1550
7 Oakland, CA 94612
8 Phone: (510) 346-6200
9 Fax: (510) 346-6201
10 Email: aw@rjp.com

11 Attorneys for Defendants
12 Douglas L. Applegate, Robert Dempsey, and
13 Doug Applegate for Congress

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN DIEGO

16 DARRELL E. ISSA, an individual,
17
18 Plaintiff,

19 vs.

20 DOUG APPELEGATE, individually; ROBERT
21 DEMPSEY, individually; DOUG APPELEGATE
22 FOR CONGRESS, INC.; a California corporation;
23 and DOES 1-10, inclusive,
24
25 Defendants.

No.: 37-2016-00039144-CU-MC-CTL

**[PROPOSED] JUDGMENT GRANTING
SPECIAL MOTION TO STRIKE
COMPLAINT**

[Code Civ. Proc., § 425.16]

Judge: The Honorable Richard E.L. Strauss
Dept.: C-75

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/20/2017 at 01:15:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

1 In accordance with the Court's Tentative Ruling, which the Court has adopted as its
2 final ruling and which is attached as Exhibit A and incorporated herein by reference, IT IS HEREBY
3 ADJUDGED AND DECREED that:

- 4 1. Defendants' Special Motion to Strike Complaint is GRANTED.
5 2. Plaintiff's complaint is stricken in its entirety.
6 3. The Court will address any request for attorneys' fees through a separate
7 motion.

8 Dated: 03/20/2017



The Honorable Richard E.L. Strauss
Judge of the Superior Court

13 Approved as to Form:



15 Charles H. Bell, Jr.
16 Bell, McAndrews & Hiltachk, LLP
Attorney for Plaintiff Darrell E. Issa

EXHIBIT A

AA000397

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - March 09, 2017

EVENT DATE: 03/10/2017

EVENT TIME: 09:00:00 AM

DEPT.: C-75

JUDICIAL OFFICER: Richard E. L. Strauss

CASE NO.: 37-2016-00039144-CU-MC-CTL

CASE TITLE: ISSA VS APPELEGATE [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: SLAPP / SLAPPback Motion Hearing

CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 12/16/2016

Defendants Douglas L. Applegate, Robert Dempsey and Doug Applegate for Congress's Special Motion to Strike is granted.

Pursuant to CCP §425.16, the court must first determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity, i.e., the act underlying petitioner's cause of action fits one of the categories delineated in CCP §425.16(e). (CCP §425.16 (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) Statements fall within the first prong of CCP §425.16 if the statements, oral or written, were made in a public forum or public place "in connection with an issue of public interest." (CCP §425.16(e).) The moving defendant bears the initial burden of establishing a prima facie showing that the plaintiff's cause of action arises from the defendant's free speech or petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) If the court finds that such a showing has been made, it must then determine whether the opposing party has demonstrated a probability of prevailing on the claim. (*Ibid.*) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.)

First Prong

There is no dispute among the parties that the challenged cause of action arises from protected activities. The allegedly defamatory conduct arises from two campaign advertisements. Thus, the first prong of CCP §425.16 has been met.

Second Prong

Plaintiff alleges one cause of action for libel arising from two different campaign advertisements. The first advertisement was released on September 20, 2016 ("9/20 Advertisement"). (Complaint ¶8.) The second advertisement was released on October 4, 2016 ("10/4 Advertisement"). (Complaint ¶28.) Plaintiff asserts that both advertisements contain numerous false statements rendering Defendants liable for defamation.

The elements of defamation are an "intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645, as modified (June 23, 1999); Civil Code §§ 45, 46.) In the case where the plaintiff is a public figure, the plaintiff must show the falsity of the statements in order to

prevail on a defamation claim. (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 202.) A plaintiff cannot carry the burden of establishing falsity if the statement is substantially true. (*Vogel v. Felice* (2005) 127 Cal. App 1006, 1021.) "Minor inaccuracies do not amount of falsity..." (*Masson v. New Yorker Magazine, Inc.* (1991) 501 U.S. 496, 516.) "Put another way, the statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" (*Id.* at 517.)

9/20 Advertisement

Plaintiff alleges the 9/20 Advertisement is defamatory and false, focusing on two statements. The first statement in the ad alleged to be false is the claim that "Rep. Issa Gamed the system to line his own pockets." (Complaint ¶10.) The second statement contested is that "Rep. Issa has secured millions of dollars in Congress earmarks for roadwork to the many properties he owns." (*Id.*)

With regard to the first statement, Plaintiff appears to take issue with the fact the 9/20 Advertisement creates a "quote" from *The New York Times* article which does not exist. A review of the subject advertisement supports Defendants' assertions that quotations are specifically used to distinguish between specifically attributed statements and those which are not. And while Plaintiff generally challenges the accuracy of the implication of the statement, the evidence shows that Plaintiff's net worth has increased since he became a member of Congress. (Dempsey Dec., Exs. E, F.) Thus, Plaintiff has not established the falsity of the first statement.

As to the second statement, Plaintiff challenges the truth of the statement regarding earmarks. Plaintiff limits the challenge to a medical building located at 2067 West Vista Way, San Marcos. ("West Vista Way Project") However, this focus is too narrow. The 9/20 Advertisement and *The New York Times* use the West Vista Way project as an exemplar of funds Plaintiff has personally earmarked near properties he owns. (Complaint, Ex. A ["His medical complex, *for instance*, sits directly along West Vista Way, a busy corridor scheduled for widening with \$815,000 in funds Mr. Issa earmarked." (emphasis added)].) The article references two dozen properties owned by Plaintiff which are within five miles of earmarked projects for road work, sanitation and other improvements. The evidence submitted is restricted to the Vista Way Project and thus, Plaintiff has failed to meet his burden establishing the falsity of the statement. (See, Issa Dec., ¶16.)

Plaintiff focuses much attention on the reliability of the underlying *The New York Times* article which was published on August 15, 2011. (Complaint, Ex. A.) *The New York Times* printed three corrections to the article on the following dates: (1) August 16, 2011; (2) August 26, 2011; and (3) September 7, 2011. Overall, these corrections involve relatively small details within the context of the article. In addition, although Plaintiff has disputed the accuracy of the article, there is no evidence that Plaintiff ever sued *The New York Times* for defamation or that the paper ever fully retracted the article. Thus, there is no substantial evidence demonstrating that this article is not reliable.

10/4 Advertisement

The complaint alleges the 10/4 Advertisement makes misleading statements about Plaintiff's voting record. The two quotes at issue are as follows: (1) "The Tea Party Republicans actually voted to deny healthcare to 9-11 first responders"; and (2) "Issa said he'd done enough for something that was simply a plane crash."

With regard to the first statement, it is undisputed that Plaintiff voted against HR 847, also known as the Zadroga Act, which provided healthcare and monitoring to first responders of the September 11 terrorist attacks, and is the bill referenced in the 10/4 Advertisement. In the complaint, Plaintiff alleges that a bipartisan group of 160 members of Congress opposed the bill, not just Tea Party Republicans. (Complaint ¶31.) However, the 10/4 Advertisement does not state that *only* Tea Party Republicans voted against the bill. Thus, Plaintiff has failed to establish the falsity of this statement.

Plaintiff asserts the second statement is a doctored quote made in an effort to smear Plaintiff's reputation. First, the 10/4 Advertisement clearly references the quote as attributed to the Daily News.

Second, the reference in the 10/4 Advertisement is substantially true. As taken from the Congressional Record, Plaintiff stated, in full:

Mr. Issa: Okay. Because, well, my question from the dais is purely a Federal one. We voted in the wake of 9/11 huge amounts of money to the city and the state of New York. We have spent, arguably, between \$1-\$2 trillion related to the post-9/11, if you include going to Afghanistan and so on. I have to ask why damages from a fire that had no dirty bomb in it--it had no chemical munitions in it, it simply was an aircraft, residue of two aircraft, and residue of the materials used to build this building--why the firefighters who went there and everyone in the City of New York needs to come to the Federal Government for the dollars versus, quite frankly, this being primarily a State consideration. You know, it is very simple: I can't vote for additional money for New York if I can't see why it would be appropriate to do this every single time a similar situation happens, which quite frankly includes any urban terrorist. It doesn't have to be somebody from Al Qaida. It can be somebody who decides that they don't like animal testing at one of our pharmaceutical facilities.
(Dempsey Dec., Ex. O, emphasis added.)

Plaintiff's statement refers to the 9/11 attack as "it simply was an aircraft." This is substantially similar to the quote used in the 10/4 Advertisement that referred to the attack as "simply a plane crash." (See, e.g. *Vogel, supra* 127 Cal. App at 1021.) While the gist of Plaintiff's statement questioned whether funds for 9/11 victims and first responders should come from federal funds or state funds, and thus, the quote was not provided with full context in the commercial, the phrase used in the 10/4 Advertisement is not inaccurate or false.

Malice

Even if Plaintiff had met his burden of establishing the falsity of the allegedly defamatory statements, Plaintiff has failed to meet his burden regarding malice. For a public figure to recover for defamation, the public figure must show, by clear and convincing evidence, the statements were made with "actual malice." (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 279-280.) In other words, a plaintiff must show the statements were made with the knowledge the statements were false or with reckless disregard of whether or not the statements were false. (*Id.* at 280.) The actual malice test is subjective. (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 274-275.)

In the opposition, Plaintiff places significant emphasis on the fact that Defendants have not offered evidence to rebut the claim they acted with reckless disregard in publishing the allegedly defamatory statements. (Opposition 13:14-14:25.) As discussed above, in the context of an anti-SLAPP motion, the burden is on the plaintiff to show a probability of prevailing on the merits. Thus, when the anti-SLAPP motion arises from a claim of defamation and where the plaintiff is a public figure, the plaintiff must provide clear and convincing evidence of actual malice. It is insufficient for Plaintiff to rely on a lack of evidence provided by Defendants to establish actual malice.

Based upon the above ruling, Plaintiff's complaint is stricken in its entirety. Defendant shall prepare a judgment and submit it to the court within ten days. The court will address any request for attorneys' fees through a separate motion.

The court rules on the evidentiary objections as follows:
Plaintiff's objections to the Declaration of Robert Dempsey:

- Overruled
- Overruled
- Overruled
- Overruled
- Overruled

Plaintiff's objection to the Declaration of Douglas Applegate:

- Overruled
- Overruled

Defendants' objection the Declaration of David Gilliard:

- Overruled
- Overruled
- Overruled
- Sustained – lack of foundation

Defendants' objections to the Declaration of Darrell Issa:

- Overruled
- Overruled
- Overruled
- Overruled
- Overruled
- Overruled
- Overruled
- Overruled
- Overruled
- Sustained – lack of foundation

Defendants objections to the Declaration of Terry James Martin:

- Overruled
- Overruled

Defendants' objections to the Declaration of Eugene Ulm:

- Overruled

Defendants' objections to the Declaration of James Waldorf:

- Overruled
- Overruled
- Overruled

Plaintiff's objections to the Supplemental Declaration of Robert Dempsey:

General objection: Overruled

- Overruled
- Overruled
- Overruled
- Overruled
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- Overruled
- Overruled

Plaintiff's objections to the Supplemental Declaration of Douglas Applegate:

- Overruled

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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On March 17, 2017, I served a true copy of the following document(s):

[Proposed] Judgment Granting Special Motion to Strike Complaint

on the following party(ies) in said action:

Charles H. Bell, Jr.
Brian T. Hildreth
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Phone: (916) 442-7757
Fax: (916) 442-7759
Email: cbell@bmhlaw.com
Email: bhildreth@bmhlaw.com

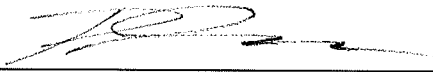
Attorney for Plaintiff Darrell E. Issa

- ☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.
- ☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- ☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.



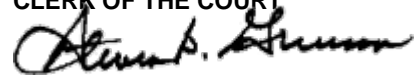
2 **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at
3 the email addresses listed based on a court order or an agreement of the parties to
4 accept service by email. No electronic message or other indication that the
5 transmission was unsuccessful was received within a reasonable time after the
6 transmission.

7 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
8 March 17, 2017, in Oakland, California.
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Prit Singh

(00302213)



1 CASE NO. A-16-746797-C
2 DEPT. NO. 30
3 DOCKET U
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 * * * * *

8
9 DANNY TARKANIAN,)
10 Plaintiff,)
11 vs.)
12 JACKY ROSEN, an individual;)
13 ROSEN FOR NEVADA, a 527)
14 Organization, and DOES I-X,)
15 and ROES ENTITIES VI-X,)
Defendants.)
_____)

16
17 REPORTER'S TRANSCRIPT
18 OF
19 PROCEEDINGS
20 BEFORE THE HONORABLE JERRY A. WIESE, II
21 DEPARTMENT XXX
22 DATED TUESDAY, APRIL 25, 2017
23

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

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* * * * *

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 25, 2017;

2 11:01 A.M.

3

4 P R O C E E D I N G S

5 * * * * *

6

7 THE CLERK: Counsel, can I have your
8 appearances, please.

9 MS. CALLIAS: Amanda Callias on behalf of
10 defendants, Congresswoman Jacky Rosen.

11 THE CLERK: Your bar number?

12 MR. SCHRAGER: She's pro hac actually.

13 THE CLERK: Are you going to be doing
14 argument?

15 MR. SCHRAGER: No.

16 THE CLERK: Okay. I need your -- come up
17 here. Let me get your name. I can't hear you very
18 well.

19 MS. CALLIAS: I'm cursed with a very soft
20 voice.

21 THE CLERK: Going to need you to move the mic
22 closer to you, too, because there's --

23 MR. SCHRAGER: Yes, I'll do it. I'll take
24 care of it.

25 THE CLERK: Your name is?

1 MS. CALLIAS: C-a-l-l-i-a-s
2 THE CLERK: And you're not a Nevada lawyer.
3 MS. CALLIAS: I am not.
4 THE CLERK: Okay.
5 MR. SCHRAGER: I am Bradley Schrager, local
6 counsel.
7 THE CLERK: Bradley. Thank you.
8 MR. SCHRAGER: Thank you.
9 THE COURT: We're still waiting for one
10 other.
11 MS. FOLEY: There she is.
12 THE COURT: Tell her who you are, guys.
13 MS. KNIGHT: Samira Knight, Bar No. 13167.
14 MS. FOLEY: Jenny Foley, Bar No. 9017.
15 MR. TARKANIAN: And Danny Tarkanian, Bar
16 No. 3614.
17 THE COURT: All right. You ready, Kristy?
18 THE COURT REPORTER: Yes.
19 THE COURT: So this is Tarkanian versus
20 Rosen. It's on for defendant's anti-SLAPP special
21 motion to dismiss under Rule 41.660. I -- I've read
22 the pleadings. I actually watched a YouTube video of
23 the -- the ad that is in dispute here. And I -- I
24 looked up the old case as well.
25 Was it Schneider?

1 MR. TARKANIAN: Yes.

2 THE COURT: I looked at the verdict and the
3 last couple days of transcripts in the Schneider case,
4 so ...

5 I'm happy to hear whatever you guys want to
6 tell me, though.

7 MS. CALLIAS: Your Honor, may I approach the
8 podium?

9 THE COURT: Sure.

10 MS. CALLIAS: I have a little bit of a --
11 cursed with a soft voice. So if I'm closer to the mic,
12 it's probably easier to hear me.

13 THE CLERK: You can put it down, too, if you
14 want.

15 MS. CALLIAS: Okay. Can you hear me all
16 right?

17 Your Honor, when I think about this case, it
18 reminds me of a statement that's been well-coined by
19 Harry Truman, "If you can't stand the heat, get out of
20 the kitchen." In the context of an -- of an anti-SLAPP
21 motion to dismiss, this is not just a well-coined
22 phrase. It's a phrase that has been used repeatedly by
23 courts and candidates to describe political campaigns
24 where the First Amendment's protection on virtually
25 unfettered political discussion about the

1 qualifications of candidates results in a
2 rough-and-tumble political brawl where it has been
3 well-established that short of proving actual malice,
4 candidates can "badmouth their opponents, hammering
5 with unfair and one-sided attacks."

6 In this suit, plaintiff, Danny Tarkanian, who
7 is a perennial candidate for office in Nevada, has sued
8 his most recent political opponent, Congresswoman Jacky
9 Rosen and her political campaign, for statements that
10 were made at the height of the 2016 race for Nevada's
11 3rd Congressional District. Those statements are that,
12 Danny Tarkanian set up 13 fake charities that preyed on
13 vulnerable seniors which were fronts for telemarketing
14 schemes and that seniors lost millions from the scams
15 Danny Tarkanian set up.

16 In order to win, plaintiff has to show that
17 these statements were false and that they were made
18 with actual malice, and he cannot show either of those
19 and has not in the briefs that were submitted to this
20 Court. And, in fact, those filings admit that three
21 substantially similar statements that were made in 2006
22 by Ross Miller and in 2012 by Steven Horsford's
23 campaign are in fact true.

24 Given the admissions that have been made in
25 this case, for the case to continue beyond this motion

1 to dismiss stage, you would have to first find that the
2 Rosen advertisements and the statements therein were
3 materially and meaningfully different from the Miller
4 statements and the Horsford statements. And then
5 second, you would have to articulate a legally sound
6 theory for finding that the Rosen statements are
7 actionable as defamation, whereas the Miller and
8 Horsford statements are not.

9 These findings are contrary to the First
10 Amendment and Nevada's anti-SLAPP statute which
11 recognizes that parsing of words is precluded when
12 we're looking at statements that are made under and
13 protected by the First Amendment and which finds that
14 in the political context and the tenor of speech, the
15 sort of implications that plaintiff has argued these
16 statements make just simply cannot be drawn. This is a
17 rough-and-tumble political brawl, and so we can't find
18 that the implications that plaintiffs have alleged
19 actually can be -- can be found by the average viewer.

20 What this case is really about is trying to
21 obtain a judgment that will further silence any of
22 plaintiff's critics, whether they choose to use the
23 statements in the Rosen advertisement or the statements
24 that were made in Miller or Horsford, from ever talking
25 about Mr. Tarkanian's role working for fraudulent

1 organizations which defrauded seniors.

2 The First Amendment simply doesn't allow this
3 sort of chilling of speech, and if this litigation is
4 allowed to proceed beyond the motion to dismiss that
5 was filed here and that we're here today for, that is
6 certainly what will happen.

7 In 2015 the Nevada legislature passed the
8 current version of anti-SLAPP statute which is the
9 strongest anti-SLAPP statute in the country, and it's
10 made it clear that cases that would chill political
11 speech have no place in Nevada's courtrooms. And
12 they've provided a quick and cheap exit ramp for
13 defendants who find themselves in the position that
14 Congresswoman Jacky Rosen does and that her political
15 campaign committee does today.

16 Plaintiffs have demonstrated by a
17 preponderance of the evidence that the challenged
18 speech is protected and that those communications were
19 made in good faith. In contrast, plaintiff has not
20 presented any of the elements that they need to succeed
21 on their claims.

22 First and foremost, there is no demonstration
23 in these pleadings that the statements were false. In
24 fact, plaintiff has admitted that substantially similar
25 statements which were made in the context of two other

1 political campaigns were in fact true.

2 In addition, there's been no evidence
3 presented that would show that plaintiffs can make a
4 clear and convincing case for actual malice which they
5 have to prove in order to succeed on their defamation
6 claims.

7 And lastly, there has been no evidence that
8 either of these statements would constitute any type of
9 extreme or outrageous conduct, particularly given the
10 fact that they were made in the course of a political
11 campaign where it is clear that candidates can badmouth
12 their opponents and hammer them with unfair and
13 one-sided attacks.

14 Accordingly, Your Honor, the defendants would
15 request that you dismiss this suit which is appropriate
16 under the anti-SLAPP statute given that plaintiffs have
17 not met their burden and defendants have met ours, and
18 that you would ensure that the protections that the
19 First Amendment grants on speech within the context of
20 campaigns and on public speech generally are
21 guaranteed.

22 THE COURT: Thank you.
23 Counsel?

24 MS. KNIGHT: Good afternoon, Your Honor.
25 Kind of want to take a quick -- I have medical issues,

1 so if I have to run out really quick, that would be
2 just because I have to, and then I'll come right back.

3 But I kind of want to start off with this,
4 kind of explaining --

5 Would you permit, Your Honor -- oh, right
6 there.

7 THE COURT: Wherever you'd like.

8 MS. KNIGHT: This case, Your Honor, is not
9 about the highest ideal of political speech. This is
10 about good faith, operating in good faith. This is
11 about the anti-SLAPP statute. This motion before this
12 Court is about the anti-SLAPP statute. There are
13 significant requirements that need to be made to
14 actually satisfy the anti-SLAPP statute to come forward
15 with this motion to dismiss. Nothing was brought
16 forward in the opposing party's statements that even
17 address the elements involving the anti-SLAPP statute.

18 There are two prongs that are required in
19 anti-SLAPP statute: One which involves the defendant
20 to prove their burden; the other one is for the
21 plaintiffs to prove their burden. But the first burden
22 of proof falls on the defendants.

23 When we look at the anti-SLAPP statute, it is
24 defendant must establish by the preponderance of the
25 evidence that the advertisement or -- regarding Danny

1 was there and made in good faith. The communication,
2 which is further defined in the statute that's relevant
3 to this case, is an electoral outcome or -- for a
4 public interest in a public forum which also comes to
5 the question of timing when we're discussing at what
6 point in time is this actual communication that falls
7 under this motion, taking that after -- after
8 November 8th, 2016, the election was over and there's
9 still remaining posts and the advertisements are still
10 up on YouTube and they're still constantly being
11 played. Every time it's being played, it's being
12 redistributed out.

13 Then you're talking about -- we go into --
14 obviously now they're talking about the right of free
15 speech, and then the element that they tend to leave
16 out is they try to compare to California and talking
17 about Nevada having the strictest anti-SLAPP statute.
18 Well, Nevada has pointed out in particular that after
19 you've met all those elements, that they have to prove
20 truthfulness or without knowledge of falsity.

21 Now, they don't bring up anything without
22 knowledge of falsity except to one sentence in the
23 reply. But that even being said, a good-faith standard
24 or without the knowledge of the falsity are both
25 something should be supplied with an affidavit by the

1 defendant. It is more of their -- and it's not -- the
2 Court cannot make a determination on if someone was
3 acting in good faith or without knowledge if we don't
4 even have an affidavit from the opposing party
5 establishing that. This is acting as a summary
6 judgment. This is acting as refraining someone's
7 constitutional rights to a litigation.

8 Further, we go into -- obviously they have
9 submitted plenty of evidence, but they can't satisfy
10 the first prong. They can't satisfy good faith. And
11 the supreme court has established that good faith is a
12 whole and in part essential element of the whole entire
13 statute.

14 So when we're talking about good faith, is it
15 good faith when someone posts a -- creates a
16 commercial, cites three different statements, not even
17 saying the statements are true or false at that point,
18 but if they cite three statements, starting one from
19 the *Las Vegas Review-Journal* from 2009 and one from the
20 *Las Vegas Sun* in 2006, one which is a commentary, and
21 the three statements don't -- are nowhere to be found
22 inside the actual commercial. Then you're looking at
23 they don't put quotation marks in a 30 -- in the
24 30-second commercial, but they're making an assumption
25 that within this 2009/2006 article that these are what

1 the articles actually said.

2 On top of that, is it good faith to put
3 something like that on the air one week before an
4 election when there is articles from 2009 and 2016
5 where a jury verdict came out in 2009?

6 They start bringing up other issues about
7 Horsford and other candidates. Well, why didn't they
8 use those statements? They could have. It's 2016.
9 They chose the one that's defamatory that alleges
10 and -- criminal conduct from Danny Tarkanian.

11 Now, did he not take action or did he take
12 action? The Nevada Supreme Court also says that that
13 doesn't create the truth.

14 Now, as you go further down, it's like we
15 were talking about, is the importance to ask what would
16 be considered good faith. The supreme court also
17 recently had an unpublished opinion because they ended
18 up determining that relying on a newspaper article is
19 not good faith. It is the Kishner -- what was it?
20 That this -- yeah, Schmitt Key Kefner (phonetic) where
21 the supreme court stated that relying on a newspaper
22 article is not good faith. And so -- and doesn't make
23 it true. And that's where they -- they base their
24 overturn on, even though another issue is up front.

25 So what we have to look at, Your Honor, is

1 what's really going on. They try to confuse the issue
2 about defamation. Defamation comes into Prong 2. The
3 standard of proof for defamation comes into Prong 2.
4 The issue of First Amendment, if they have a First
5 Amendment issue with the anti-SLAPP statute, they
6 should have brought a motion that's stating that the
7 anti-SLAPP statute is unconstitutional.

8 California does not require truthfulness and
9 doesn't require without knowledge. They cite and they
10 refer to most of their case law on that, and they focus
11 solely on the defamation argument. They brought
12 nothing before this Court to establish anything that
13 they've acted in good faith, on top of having
14 inadmissible evidence and relying on hearsay after
15 hearsay after hearsay as their establishment of their
16 point.

17 Further to distinct is now when we were
18 speaking about -- when we were talking about prior to
19 November 8th and after November 8th, they brought up an
20 issue about being a limited public figure. After --
21 after November 8th, 2016, Danny was no longer a public
22 interest, nor was he part of an electoral process.
23 Those are two of the requirements that sit under the
24 communication for the first prong and under the
25 anti-SLAPP statute.

1 So after that point, any type of
2 communication that's being distributed out is not
3 covered under the anti-SLAPP statute. And like we've
4 established, the YouTube videos, the websites, and the
5 Facebook is all still up, and they have been informed
6 about it. They've been constantly informed about it.

7 And then when you get down to it, is that --
8 so even in that particular sense on its own, that part
9 of it would satisfy itself.

10 But now coming forward to talking about where
11 we go to them proving truth. Well, they don't really
12 prove truth when it comes to the first prong. They try
13 to prove falsity or not falsity or our burden. They
14 constantly say it's our burden, our burden, our burden.
15 No. The anti-SLAPP specifically says it's the
16 plaintiff's burden on the first element. It is their
17 burden to prove -- to prove that they can satisfy to
18 where you would get to the actual causes of action.
19 And it could be any cause of action. It just happens
20 to be a defamation case that's tied to the second prong
21 in this case.

22 So that being said, without having their
23 ability to prove the truthfulness, their ability to
24 prove truthfulness, if they want to go without
25 knowledge, they have no affidavit. They are clearly

1 not acting in good faith. They have established that
2 this commercial is some type of substance of truth,
3 without it being any truth. And it sat one week
4 before -- one week before election and which they
5 admitted at.

6 At that point, if the Court wants to go
7 further, when we're talking about the First Amendment,
8 the First Amendment does not cover false information.
9 The -- also, the government has a compelling government
10 interest to actually protect fraud, and that would
11 become an issue of the second prong if that is their
12 concern. But they can't satisfy the first one. They
13 can't satisfy it. They have no evidence that supports
14 it. All the evidence they use is hearsay without
15 reliability. They have no affidavit to prove anything
16 that -- any type of substantial anything.

17 And if you go into the second prong when we
18 start talking about IIED and defamation, they still
19 don't have an affidavit establishing any of those
20 things. There's significant issues and facts that
21 should be seen before a jury and the case should be
22 heard further.

23 Now, if we have to go into the -- into the
24 second prong, when we're talking about their burden of
25 proof, where they started to discuss it is their

1 defamation claim and what their -- what their standard
2 of proof may be is they still can't do that. They have
3 relied on information and claims that have already been
4 proven to be false.

5 Now, if they have variations, the supreme
6 court, once again, has stated that that is an issue for
7 the jury to determine if it has any type of negative
8 affect. They cannot meet their elements. They can't
9 meet LLS defamation. They can't get past the first
10 prong. And it has been -- I think this is a frivolous
11 case, frivolous motion that was brought before this
12 Court, and that we should be entitled, as required
13 under the statute, to get attorney's fees, because on
14 top of anything in the worst-case scenario, anything
15 after November 8th on both issues of the first prong
16 and second prong should not be covered under the
17 anti-SLAPP statute.

18 But ultimately there should be no reason that
19 this -- this -- their motion should be granted on any
20 basis of any fact or any type of evidence provided by
21 this Court.

22 MR. TARKANIAN: Your Honor, Danny Tarkanian.
23 I'm the attorney also with the law firm, and I just
24 wanted to bring up some points concerning their reply
25 that they sent in that we haven't addressed yet. I

1 know my counsel just made some new arguments on the
2 case.

3 The first thing, that the Court --

4 MR. SCHRAGER: I'm sorry. Your Honor, are
5 you --

6 MR. TARKANIAN: I'm a lawyer for the law
7 firm.

8 MR. SCHRAGER: You are a lawyer. Have you
9 appeared in this case as a lawyer?

10 MR. TARKANIAN: I'm with the law firm.

11 MR. SCHRAGER: I just want to understand what
12 we're doing here, Your Honor.

13 THE COURT: I generally allow one attorney
14 for -- per side to make arguments, not gang up on me,
15 but sometimes it happens in trial. I don't think I
16 need it anyway.

17 MR. TARKANIAN: Well, this is -- case
18 probably will go up to appeal --

19 THE COURT: I know.

20 MR. TARKANIAN: -- and I would love to be
21 able to have on the record the response to their reply
22 that they submitted that we haven't had a chance to
23 address yet. And I'm not understanding if she hasn't
24 addressed that, why would that be wrong for another
25 attorney to address it if she was going to? We just

1 asked her to step down quicker so we could get out of
2 here by 11:30 so I would have a few minutes to address
3 the reply.

4 MR. SCHRAGER: The reply has been filed. The
5 response was made.

6 THE COURT: Yep.

7 MS. FOLEY: Your Honor, Mr. Tarkanian's also
8 the plaintiff in this matter.

9 THE COURT: He is.

10 MS. FOLEY: So maybe a bit of indulgence for
11 a few minutes to allow him as the plaintiff to speak.

12 THE COURT: You know what, I understand
13 the -- the dilemma. I'm going to ask you to sit
14 because I don't think I need it. And that's -- that's
15 the only reason.

16 I'm going to let you guys have the last word
17 because it was your motion.

18 MS. CALLIAS: Okay. Can you hear me from
19 here, Your Honor?

20 THE COURT: That's fine.

21 MS. CALLIAS: So, Your Honor, I just had a
22 few points that I wanted to -- that I wanted to respond
23 to. I think the first question here when we're talking
24 about good faith is what does good faith actually mean?
25 And in *Shapiro v. Wells* and in the statute itself, good

1 faith was described as a statement that is truthful or
2 one that is made without knowledge of its falsehood.

3 And when we talk about the issue of truthful
4 in this case, plaintiff has admitted in their
5 opposition briefs that there are substantially similar
6 statements which were made by the Miller and Horsford
7 campaigns, and those statements are in fact true. I
8 think there is no world in which statements that are
9 substantially similar have -- and plaintiff has
10 admitted are true in which you can find that the
11 statements that were at issue here in the Rosen ads are
12 not true. It's just truthfulness is good faith, and if
13 they're substantially similar statements that are true,
14 then these statements that were made in the Rosen ad
15 are true, and we've certainly met our burden.

16 MS. KNIGHT: Your Honor, I object to -- to
17 the way they're stating that. They're stating their --
18 they're stating that he's admitting to something that
19 was substantially similar which is not what's actually
20 stated in our pleading. He admitted to being a
21 resident agent. So just to make it clear for the
22 record.

23 THE COURT: I get it.

24 MS. CALLIAS: So I believe what was -- what
25 was stated in the actual pleadings is that the

1 statements that were made in the Miller and Horsford
2 campaign are in fact true. Those statements are
3 substantially similar to the statements in the Rosen
4 ads and so, therefore, the question of truthfulness in
5 this case is that those -- the Rosen statements are
6 true and, therefore, they're just not a question of
7 good faith. Truthfulness is enough to prove it. And
8 the First Amendment tells us that we can't parse
9 through the Rosen and -- the Rosen, Horsford, and
10 Miller statements, that as long as the gist of those
11 statements are all captured and the same, they are
12 true.

13 With respect -- so the question stops at --
14 at truthfulness. With respect to the knowledge of
15 falsehood, in our initial and opening brief, we cited
16 numerous newspapers, newspaper articles which were
17 in -- widely publicized and show that all of the public
18 knowledge out there supported the statements that were
19 made in the Rosen ad.

20 Specifically, there are two articles that
21 were cited to in an ad which would certainly go to show
22 a subjective knowledge of good faith with respect to
23 the statements that were made in the Rosen ad. There
24 are substantially similar statements made in both of
25 the articles that were cited. And so, under the

1 First -- under the defamation law and under the First
2 Amendment, if our statements have captured the gist,
3 then it certainly shows that they were made without
4 knowledge of their falsity.

5 Further, there is no requirement that I have
6 been able to find that that good-faith standard has to
7 be subjective or objective on the first prong. So
8 submitting article after article that was widely
9 publicized at the time that these Rosen statements were
10 issued which support factually the truth of the
11 statements certainly indicate that the defendants in
12 this case had no knowledge of the falsity of those
13 statements.

14 In terms of submitting a declaration, I think
15 it's important to look at the language of the statute
16 itself. Under NRS 41.660, Section 3(e), it provides
17 only for limited for -- limited discovery. And that's
18 important because the anti-SLAPP statute is designed
19 not just to present -- not just to prevent defendants
20 from having to undergo civil litigation, but from
21 having to participate in civil actions because even
22 though participation in discovery itself would
23 certainly chill protected speech. And in a political
24 context, it presents a particular danger where it's
25 very likely that if a defendant submitted a declaration

1 to prove good faith, that there would be a reason to
2 then depose them and to have an invasive discovery
3 process based on that declaration.

4 So it can't be that a statute which -- which
5 only authorizes limited discovery and certainly
6 indicates that a defendant should not have to be drug
7 through a discovery process would require a declaration
8 on the first -- on that first prong. And we certainly
9 don't need that at this stage because the statements
10 themselves cited widely publicized articles and there
11 was a plethora of information available to the
12 defendants which supported the statements that were
13 made.

14 And to the extent that we're talking about
15 whether or not those newspaper articles are reliable,
16 case after case looks at newspaper articles, and I
17 direct you specifically to *Conroy v. Spitzer*. I have
18 not seen the Schmitt case that was the cited, so I
19 can't speak to that. I don't know the contents of it.
20 I'm happy -- I didn't see it cited in the brief, and
21 I'm happy for counsel to give me a copy so I can look
22 at it. But I think it's very clear that in the context
23 of political campaigns when we're looking at speech,
24 often when looking at the knowledge that the defendants
25 had in that case, courts look at newspaper articles as

1 reliable indices of evidence as to what subjective
2 knowledge and objective knowledge was available.

3 And then lastly, Your Honor, with respect to
4 this question of the limited public figure, plaintiffs
5 have not provided any support for this argument. And
6 the support that we found indicated that the question
7 is simply, was Danny Tarkanian a public figure or a
8 limited public figure with respect to his candidacy for
9 Nevada's 3rd Congressional District? These ads relate
10 to that candidacy. These statements were made in that
11 context.

12 And so as long as that's the case, it doesn't
13 really matter if we are on November 9th or
14 November 8th. These statements fall under the
15 anti-SLAPP statute, and they also are protected by the
16 First Amendment. There's just no time frame there, and
17 certainly not a time frame that would end the day after
18 the election with respect to the anti-SLAPP statute's
19 protections and with respect to the First Amendment's
20 protections.

21 And then the last piece, I think there was a
22 statement in there that we haven't submitted a
23 declaration to show that we did not act with actual
24 malice. And, quite frankly, Your Honor, on that second
25 piece, that's just not our burden. Once we're talking

1 about actual malice, that is absolutely the plaintiff's
2 burden in this case, and there's no requirement that we
3 submit a declaration. If plaintiff is bringing a
4 case -- a defamation case, they need to be able to show
5 with clear and convincing evidence that there is some
6 sort of subjective knowledge of falsity or recklessness
7 on the part of defendants, and that's their burden.
8 And it is a heavy burden, but it is theirs and it was
9 not ours.

10 THE COURT: Okay. Thank you. So I
11 understand the importance of the -- the First Amendment
12 and the right of free speech. We don't often get
13 constitutional issues in the state court, but I
14 actually can appreciate the -- the opportunity to -- to
15 have a constitutional issue in front of me like this.

16 I think that Mr. Tarkanian was -- was clearly
17 a political figure and public figure during the
18 election. After the election's over, I don't know that
19 that is as clear. But I think that this -- these
20 communications, these ads are -- would be considered
21 political speech and subject to the anti-SLAPP statute.
22 But the bigger issue in my mind is the issue of whether
23 the ads are truthful or not and whether there was
24 actual malice on the part of Congresswoman Rosen and
25 then her staff.

1 But the -- the problem I have in looking at
2 the Miller and the Horsford ads, I don't think either
3 of those cases went to court and I don't think there
4 was ever any action as it related to those.

5 There was an action as it relates to the
6 Schneider case. In the Schneider case, the ads seem to
7 be very similar, and there was a jury verdict in favor
8 of Mr. Tarkanian. I think that information was public
9 and was out there. And the fact that
10 Congresswoman Rosen used statements that were similar
11 to an action that had already gone to court and was
12 found to be defamatory, I have a problem with that.
13 And I think that may form the basis for an argument of
14 actual malice.

15 I understand that certain information that
16 was in the ads can be proven truthful. Okay? So I
17 understand -- my understanding anyway, and maybe I'm
18 wrong, but my understanding is that Mr. Tarkanian set
19 up certain companies for certain people that ended up
20 being telemarketing, and these companies ended up
21 taking advantage of seniors. Okay. That doesn't mean
22 that Mr. Tarkanian is the one that preyed on vulnerable
23 seniors. And -- and I know the language in the ads is
24 a little bit goofy. That's -- that's what we do in
25 politics.

1 But he set up 13 fake charities. I don't
2 know that that's necessarily true. He set up a number
3 of companies that ended up having problems.

4 Seniors lost millions from scams that Danny
5 Tarkanian helped set up. I don't know that Danny
6 Tarkanian set up any scams. He set up businesses that
7 ended up taking advantage of people.

8 So I don't know that there's clearly truthful
9 statements in these ads. Because of that -- I mean, I
10 understand under the anti-SLAPP statute that we -- we
11 want to protect people's First Amendments right to free
12 speech, especially in the political venue. But I'm not
13 going to find at this point that he can't make out a
14 case.

15 I think that he has shown a reasonable
16 probability of success on the merits. And based on
17 that, I'm going to deny the special motion to dismiss.
18 I'm going to let the case go forward, and we may have
19 to go to a jury to decide whether or not the statements
20 that were made are truthful and whether the statements
21 that were made were made with actual malice, whether
22 there was a basis for those statements or not. At this
23 point, I'm not going to find as a matter of law that
24 the anti-SLAPP prevents the case.

25 So let me get -- if you guys can prepare the

1 order on that --

2 MS. FOLEY: Yes, Your Honor.

3 THE COURT: -- run it by defense counsel to
4 approve to form and content, please.

5 MS. FOLEY: Yes, Your Honor.

6 MS. KNIGHT: Appreciate it.

7 THE COURT: Supreme Court may disagree with
8 me, but I don't think so. I think there's sufficient
9 evidence in this case to -- to support the plaintiff's
10 claims that at least there's a possibility or
11 probability of success. So we'll have to see how it
12 plays out.

13 MR. SCHRAGER: Thank you, Your Honor.

14 MS. FOLEY: Thank you, Your Honor.

15 THE COURT: Thanks, guys.

16 (Thereupon, the proceedings
17 concluded at 11:32 a.m.)

18

19 -oOo-

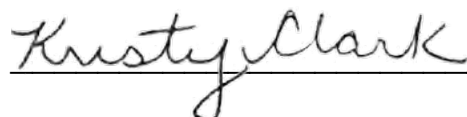
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21 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
22 PROCEEDINGS.

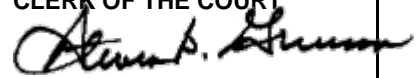
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KRISTY L. CLARK, CCR #708



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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

Case No: A-16-746797-C
Dept. No.: XXX

NOTICE OF ENTRY OF ORDER

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

///

///

///

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AA000433

1 NOTICE IS HEREBY GIVEN that an ORDER FOR DEFENDANTS' MOTION TO
2 DISMISS UNDER N.R.S. 41.660 was entered in the above-captioned matter on the 12th day of
3 June, 2017. A copy of the ORDER is attached hereto.

4 DATED this 12th day of June, 2017.

5 **WOLF, RIFKIN, SHAPIRO,**
6 **SCHULMAN & RABKIN, LLP**

7 By: /s/ Bradely S. Schrager

8 BRADLEY S. SCHRAGER, ESQ.

9 Nevada State Bar No. 10217

10 DANIEL BRAVO, ESQ.

11 Nevada Bar No. 13078

12 3556 E. Russell Road, Second Floor

13 Las Vegas, Nevada 89120

14 *Attorneys for Defendants*

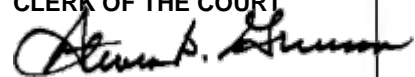
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12th day of June, 2017, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court
4 using the Odyssey eFileNV system and serving all parties with an email-address on record,
5 pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. and by depositing a
6 true copy of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas,
7 Nevada, said envelope addressed to:

8 Samira C. Knight, Esq.
9 TARKANIAN & KNIGHT
10 LAW GROUP, PLLC
11 7220 S. Cimarron Rd., Suite 110
12 Las Vegas, NV 89113

13 By: /s/ Dannielle R. Fresquez

14 Dannielle R. Fresquez, an Employee of WOLF,
15 RIFKIN, SHAPIRO, SCHULMAN &
16 RABKIN, LLP
17
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28



1 **ORDR**

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24 acallais@perkinscoie.com

25 *Attorneys for Defendants*

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

28 DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXX

**ORDER FOR DEFENDANTS' MOTION
TO DISMISS UNDER N.R.S. 41.660**

This matter having come before this Court on April 25, 2017, at 9:00 a.m., for Defendants' Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660, and Plaintiff's Opposition to Defendants' Anti SLAPP Special Motion to Dismiss Under N.R.S. 41.660 and Plaintiff's request for Attorney's Fees and Costs. Plaintiff, Danny Tarkanian ("Danny"), being present with counsel

AA000436

1 Samira C. Knight, Esq., and Jenny L. Foley, Esq. of Tarkanian & Knight Law Group, and
2 Defendants, Jacky Rosen and Rosen for Nevada (collectively "Defendants"), not present with
3 counsel Amanda Callais, Esq. of Perkins Coie appearing Pro Hac Vice, and Bradley Schragar of
4 Wolf Rifkin Shapiro Schulman & Rabkin, LLP, appearing as local counsel. This Court having
5 reviewed the papers and pleadings on file herein and having heard the arguments of counsel, the
6 Court does hereby enter the following:

7 **THE COURT FINDS¹** that when a party brings a Special Motion to Dismiss under NRS
8 41.660 (the "Anti-SLAPP Statute), the moving party has the initial burden to show, by a
9 preponderance of evidence, that the plaintiff's claims are "based upon a good faith communication
10 in furtherance of the right to petition or the right to free speech in direct connection with an issue of
11 public concern." NRS 41.660(1), (3)(a). A statement is made in "good faith" under the statute if it
12 "is truthful or is made without knowledge of its falsehood." NRS 41.637. If the defendant meets
13 this burden, the plaintiff then has the burden of showing, by *prima facie* evidence, that it has a
14 probability of prevailing on its claims. NRS 41.660(3)(b).

15 **THE COURT FURTHER FINDS** that Defendants' Anti-SLAPP Motion was filed, and
16 Defendants argued, among other things, that Plaintiff's Complaint was an improper restraint on
17 political speech. At issue in the Complaint are several statements made by Defendants during Jacky
18 Rosen's campaign for Nevada's Third Congressional District in 2016, including statements made in
19 a video published on the website Youtube.

20 Relevant to this Motion, the Complaint alleges *inter alia*, that the statements are defamatory.
21 Further, the Complaint alleges that Defendants knew or should have known that the statements were
22 defamatory because in 2009, Plaintiff Danny Tarkanian obtained a jury verdict in Clark County
23 against Mike Schneider for statements that the Complaint alleges are the same or substantially
24 similar to those at issue here. *See Danny Tarkanian v. Mike Schneider*, Case No. A500379 (the
25 "Schneider Case").

26
27 ¹ Herein, any findings of the Court that are, in truth, conclusions of law, or any conclusions of law that are, in
28 truth, findings, shall be treated as such.

1 **THE COURT FURTHER FINDS** that Plaintiff was a public figure for purposes of the
2 claims made in the Complaint

3 **THE COURT FURTHER FINDS** that the statements in question were made in a political
4 advertisement (the “Advertisement”) that aired during the 2016 general election and are political
5 speech, and thus constitute “communication[s] in furtherance of the right to petition or the right to
6 free speech in direct connection with an issue of public concern” under the Anti-SLAPP Statute.
7 NRS 41.637; *see Shapiro v. Welt*, 389 P.3d 262, 268 (Nev. 2017) (adopting five-factor test
8 articulated in *Piping Rock Partners*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013) in determining
9 whether statements are in direct connection with matters of public concern under Nevada’s Anti-
10 SLAPP Statute).

11 **THE COURT FURTHER FINDS** that the issues for this Court in the case generally will be
12 whether the statements in the Advertisement are truthful or not, and whether there was actual malice
13 on the part of the Defendants’ and their agents in making the statements; however, for purposes of
14 this Anti-SLAPP motion the Court need not resolve these issues now. Rather, the Court need only
15 address the respective burdens of the parties discussed above.

16 **THE COURT FURTHER FINDS** that Plaintiffs allege that Defendants made three
17 statements that are at issue in this case.

18 **THE COURT FURTHER FINDS** that some of the statements made by Michael Schneider
19 in 2004 State Senate race regarding Plaintiff that was adjudicated as defamatory in 2009 by a Clark
20 County jury, are similar to the statements made in Defendants’ Advertisement.

21 **THE COURT FURTHER FINDS** that the Defendants relied upon statements Ross Miller
22 and Steven Horsford made in their advertisements regarding Plaintiff in campaigns subsequent to the
23 statements in (the “Schneider Case”), that were never addressed in a court proceeding.

24 **THE COURT FURTHER FINDS** that Defendants have not met their burden under the first
25 prong of the Anti-SLAPP Statute, as they have not shown by a preponderance of evidence that the
26 three statements at issue were truthful or made without knowledge of its falsehood. The Court
27 cannot find, at this preliminary stage, that the statements at issue are true.

28 ///

THE COURT FURTHER FINDS that Plaintiff has shown prima facie evidence of a probability of success on his defamation claim, and the Court will let the case go forward, in the likelihood that a jury will have to determine—as the finder of fact—whether the challenged statements are truthful, and whether the challenged statements were made with actual malice. At the very least, the Court cannot find, as a matter of law, that Plaintiff cannot make out a case for defamation regarding the statements made by Defendants.

IT IS HEREBY ORDERED that Defendants' Anti-Slapp Motion to Dismiss is hereby **DENIED**.

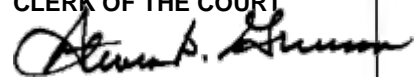
DATED this 2 day of June, 2017.

DISTRICT COURT JUDGE

Respectfully Submit by:

**WOLF RIFKIN SHAPIRO
SCHULMAN & RABKIN, LLP**

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Attorney for Defendants



1 **ORDR**

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24 acallais@perkinscoie.com

25 *Attorneys for Defendants*

26 **EIGHTH JUDICIAL DISTRICT COURT**

27 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

28 DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXX

**ORDER FOR DEFENDANTS' MOTION
TO DISMISS UNDER N.R.S. 41.660**

This matter having come before this Court on April 25, 2017, at 9:00 a.m., for Defendants' Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660, and Plaintiff's Opposition to Defendants' Anti SLAPP Special Motion to Dismiss Under N.R.S. 41.660 and Plaintiff's request for Attorney's Fees and Costs. Plaintiff, Danny Tarkanian ("Danny"), being present with counsel

AA000440

1 Samira C. Knight, Esq., and Jenny L. Foley, Esq. of Tarkanian & Knight Law Group, and
2 Defendants, Jacky Rosen and Rosen for Nevada (collectively "Defendants"), not present with
3 counsel Amanda Callais, Esq. of Perkins Coie appearing Pro Hac Vice, and Bradley Schragar of
4 Wolf Rifkin Shapiro Schulman & Rabkin, LLP, appearing as local counsel. This Court having
5 reviewed the papers and pleadings on file herein and having heard the arguments of counsel, the
6 Court does hereby enter the following:

7 **THE COURT FINDS¹** that when a party brings a Special Motion to Dismiss under NRS
8 41.660 (the "Anti-SLAPP Statute), the moving party has the initial burden to show, by a
9 preponderance of evidence, that the plaintiff's claims are "based upon a good faith communication
10 in furtherance of the right to petition or the right to free speech in direct connection with an issue of
11 public concern." NRS 41.660(1), (3)(a). A statement is made in "good faith" under the statute if it
12 "is truthful or is made without knowledge of its falsehood." NRS 41.637. If the defendant meets
13 this burden, the plaintiff then has the burden of showing, by *prima facie* evidence, that it has a
14 probability of prevailing on its claims. NRS 41.660(3)(b).

15 **THE COURT FURTHER FINDS** that Defendants' Anti-SLAPP Motion was filed, and
16 Defendants argued, among other things, that Plaintiff's Complaint was an improper restraint on
17 political speech. At issue in the Complaint are several statements made by Defendants during Jacky
18 Rosen's campaign for Nevada's Third Congressional District in 2016, including statements made in
19 a video published on the website Youtube.

20 Relevant to this Motion, the Complaint alleges *inter alia*, that the statements are defamatory.
21 Further, the Complaint alleges that Defendants knew or should have known that the statements were
22 defamatory because in 2009, Plaintiff Danny Tarkanian obtained a jury verdict in Clark County
23 against Mike Schneider for statements that the Complaint alleges are the same or substantially
24 similar to those at issue here. *See Danny Tarkanian v. Mike Schneider*, Case No. A500379 (the
25 "Schneider Case").

26
27 ¹ Herein, any findings of the Court that are, in truth, conclusions of law, or any conclusions of law that are, in
28 truth, findings, shall be treated as such.

1 **THE COURT FURTHER FINDS** that Plaintiff was a public figure for purposes of the
2 claims made in the Complaint

3 **THE COURT FURTHER FINDS** that the statements in question were made in a political
4 advertisement (the “Advertisement”) that aired during the 2016 general election and are political
5 speech, and thus constitute “communication[s] in furtherance of the right to petition or the right to
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7 NRS 41.637; *see Shapiro v. Welt*, 389 P.3d 262, 268 (Nev. 2017) (adopting five-factor test
8 articulated in *Piping Rock Partners*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013) in determining
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15 address the respective burdens of the parties discussed above.

16 **THE COURT FURTHER FINDS** that Plaintiffs allege that Defendants made three
17 statements that are at issue in this case.

18 **THE COURT FURTHER FINDS** that some of the statements made by Michael Schneider
19 in 2004 State Senate race regarding Plaintiff that was adjudicated as defamatory in 2009 by a Clark
20 County jury, are similar to the statements made in Defendants’ Advertisement.

21 **THE COURT FURTHER FINDS** that the Defendants relied upon statements Ross Miller
22 and Steven Horsford made in their advertisements regarding Plaintiff in campaigns subsequent to the
23 statements in (the “Schneider Case”), that were never addressed in a court proceeding.

24 **THE COURT FURTHER FINDS** that Defendants have not met their burden under the first
25 prong of the Anti-SLAPP Statute, as they have not shown by a preponderance of evidence that the
26 three statements at issue were truthful or made without knowledge of its falsehood. The Court
27 cannot find, at this preliminary stage, that the statements at issue are true.

28 ///

THE COURT FURTHER FINDS that Plaintiff has shown prima facie evidence of a probability of success on his defamation claim, and the Court will let the case go forward, in the likelihood that a jury will have to determine—as the finder of fact—whether the challenged statements are truthful, and whether the challenged statements were made with actual malice. At the very least, the Court cannot find, as a matter of law, that Plaintiff cannot make out a case for defamation regarding the statements made by Defendants.

IT IS HEREBY ORDERED that Defendants' Anti-Slapp Motion to Dismiss is hereby **DENIED.**

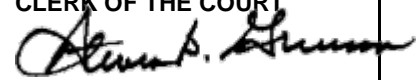
DATED this 2 day of June, 2017.

DISTRICT COURT JUDGE

Respectfully Submit by:

**WOLF RIFKIN SHAPIRO
SCHULMAN & RABKIN, LLP**

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Attorney for Defendants



Electronically Filed
Jun 19 2017 03:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

Case No: A-16-746797-C
Dept. No.: XXX

NOTICE OF APPEAL

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Pursuant to NRS 41.670(4), Defendants Jacky Rosen and Rosen for Nevada, by and
through their counsel, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, hereby appeal the:

///

///

1 Order Denying Defendants' Anti-SLAPP Motion to Dismiss entered on June 12, 2017.

2 DATED this 13th day of June, 2017.

3 **WOLF, RIFKIN, SHAPIRO,**
4 **SCHULMAN & RABKIN, LLP**

5 By: /s/ Bradley Schrager
6 BRADLEY S. SCHRAGER, ESQ.
7 Nevada State Bar No. 10217
8 DANIEL BRAVO, ESQ.
9 Nevada Bar No. 13078
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Las Vegas, Nevada 89120
Attorneys for Defendants

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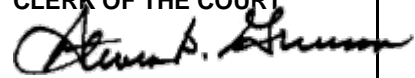
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13th day of June, 2017, a true and correct copy of **NOTICE**
3 **OF APPEAL** was served by electronically filing with the Clerk of the Court using the
4 Odyssey eFileNV system and serving all parties with an email-address on record, pursuant
5 to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. and by depositing a true copy
6 of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas, Nevada, said
7 envelope addressed to:

8 Samira C. Knight, Esq.
9 TARKANIAN & KNIGHT
10 LAW GROUP, PLLC
11 7220 S. Cimarron Rd., Suite 110
12 Las Vegas, NV 89113

13 By: /s/ Dannielle R. Fresquez

14 Dannielle R. Fresquez, an Employee of WOLF,
15 RIFKIN, SHAPIRO, SCHULMAN &
16 RABKIN, LLP
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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

Case No: A-16-746797-C
Dept. No.: XXX

CASE APPEAL STATEMENT

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Pursuant to NRS 41.670(4), Defendants Jacky Rosen and Rosen for Nevada (collectively “Defendants”), by and through their counsel, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, hereby appeal the Order Denying Defendants’ Anti-SLAPP Motion to Dismiss Entered on June 12, 2017.

AA000447

- 1 1. Appellants filing this appeal statement: Jacky Rosen and Rosen for Nevada
- 2 2. Judge issuing decision, judgment, or order appealed from: Hon. Jerry A. Weise, II
- 3 3. Appellant: Defendants Jacky Rosen and Rosen for Nevada
- 4 COUNSEL OF RECORD:
- 5 Bradley S. Schrager, Esq.
- 6 Daniel Bravo, Esq.
- 7 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
- 8 3556 E. Russell Road, Second Floor
- 9 Las Vegas, Nevada 89120
- 10 bschrager@wrslawyers.com
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- 13 Graham Wilson, Esq. (*Admitted Pro Hac Vice*)
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- 21 efrost@perkinscoie.com
- 22 acallais@perkinscoie.com
- 23 4. Respondent: Plaintiff Danny Tarkanian
- 24 COUNSEL OF RECORD:
- 25 Samira C. Knight, Esq.
- 26 Jenny L. Foley, Esq.
- 27 Tarkanian & Knight Law Group, PLLC
- 28 7220 S. Cimarron, Suite 110
- Las Vegas, Nevada 89113
- samira@tklawgroupnv.com
- jenny@tklawgroupnv.com
5. Out of State Counsel for Appellants were granted permission to appear by the District Court, Orders attached hereto as **Exhibit 1**. All other counsel identified above are licensed to practice in Nevada.
6. Appellant was represented by counsel in the district court.
7. Appellant is represented by counsel on appeal.
8. No request has been made to proceed in forma pauperis.
9. The Complaint in this matter was originally filed on November 17, 2016.
10. The state court proceeding is complaint for liber per se, slander per se, and intentional infliction of emotional distress. The order being appealed is the Order Denying

1 Defendants' Anti-SLAPP Motion to Dismiss, entered on June 12, 2017.

2 11. The case has not been subject of an appeal to or original writ proceeding in the
3 Supreme Court.

4 12. This appeal does not involve child custody or visitation.

5 13. This appeal does not involve the possibility of settlement.

6 DATED this 13th day of June, 2017.

7 **WOLF, RIFKIN, SHAPIRO,**
8 **SCHULMAN & RABKIN, LLP**

9 By: /s/ Bradley Schrager
10 BRADLEY S. SCHRAGER, ESQ.
11 Nevada State Bar No. 10217
12 DANIEL BRAVO, ESQ.
13 Nevada Bar No. 13078
14 3556 E. Russell Road, Second Floor
15 Las Vegas, Nevada 89120
16 *Attorneys for Defendants*
17
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27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13th day of June, 2017, a true and correct copy of **NOTICE**
3 **OF APPEAL** was served by electronically filing with the Clerk of the Court using the
4 Odyssey eFileNV system and serving all parties with an email-address on record, pursuant
5 to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. and by depositing a true copy
6 of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas, Nevada, said
7 envelope addressed to:

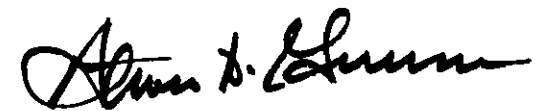
8 Samira C. Knight, Esq.
9 TARKANIAN & KNIGHT
10 LAW GROUP, PLLC
11 7220 S. Cimarron Rd., Suite 110
12 Las Vegas, NV 89113

13 By: /s/ Dannielle R. Fresquez

14 Dannielle R. Fresquez, an Employee of WOLF,
15 RIFKIN, SHAPIRO, SCHULMAN &
16 RABKIN, LLP
17
18
19
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21
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28

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

ORAP
BRADLEY S. SCHRAGER, ESQ.
Nevada State Bar No. 10217
DANIEL BRAVO, ESQ.
Nevada Bar No. 13078
WOLF, RIFKIN, SHAPIRO,
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bschrager@wrslawyers.com
dbravo@wrslawyers.com

MARC E. ELIAS, ESQ. (pro hac vice motion to be filed)
GRAHAM WILSON, ESQ. (pro hac vice motion to be filed)
ELISABETH C. FROST, ESQ. (pro hac vice motion to be filed)
PERKINS COIE LLP
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Washington, D.C. 20005
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gwilson@perkinscoie.com
efrost@perkinscoie.com

Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXI

**ORDER GRANTING EX PARTE
MOTION TO ASSOCIATE COUNSEL**

MARC ERIK ELIAS, ESQ., having filed his Motion to Associate Counsel under Nevada
Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a
Certificate of Good Standing for the District of Columbia, and the State Bar of Nevada Statement;
said application having been noticed, no objection having been made and the Court being fully
apprised in the premises, and good cause appearing, it is hereby:

1 ORDERED, that said application is hereby GRANTED, and MARC ERIK ELIAS, ESQ.,
2 is hereby admitted to practice in the above-entitled Court for the purposes of the above-entitled
3 matter only.

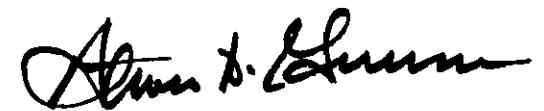
4 DATED this 28 day of February, 2017.

5
6
7 
8 DISTRICT COURT JUDGE 

9 Submitted by:

10 **WOLF, RIFKIN, SHAPIRO,**
11 **SCHULMAN & RABKIN, LLP**
12 **BRADLEY S. SCHRAGER, ESQ.**
13 Nevada State Bar No. 10217
14 **DANIEL BRAVO, ESQ.**
15 Nevada Bar No. 13078
16 3556 E. Russell Road, Second Floor
17 Las Vegas, Nevada 89120
18 *Attorneys for Defendants*

19
20
21
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25
26
27
28
29 
30 _____
31 Bradley S. Schrager, Esq.



CLERK OF THE COURT

ORAP
BRADLEY S. SCHRAGER, ESQ.
Nevada State Bar No. 10217
DANIEL BRAVO, ESQ.
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dbravo@wrslawyers.com

MARC E. ELIAS, ESQ. (pro hac vice motion to be filed)
GRAHAM WILSON, ESQ. (pro hac vice motion to be filed)
ELISABETH C. FROST, ESQ. (pro hac vice motion to be filed)
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efrost@perkinscoie.com

Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C

Dept. No.: XXI

**ORDER GRANTING EX PARTE
MOTION TO ASSOCIATE COUNSEL**

GRAHAM M. WILSON, ESQ., having filed his Motion to Associate Counsel under
Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel,
a Certificate of Good Standing for the District of Columbia, and the State Bar of Nevada
Statement; said application having been noticed, no objection having been made and the Court
being fully apprised in the premises, and good cause appearing, it is hereby:

EXHIBIT “1”

ORIGINAL

FILED

JAN 24 4 12 PM '08

CLERK OF THE COURT

1 **ACOM**
2 GUS W. FLANGAS, ESQ.,
3 Nevada Bar No. 004989
4 KIM D. PRICE, ESQ.
5 Nevada Bar No. 007873
6 FLANGAS McMILLAN LAW GROUP
7 3275 South Jones Boulevard, Suite 105
8 Las Vegas, Nevada 89146
9 Telephone: (702) 307-9500
10 Facsimile: (702) 382-9452
11 Attorneys for Plaintiff, Danny Tarkanian

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 DANNY TARKANIAN, an individual,
15 Plaintiff,

Case No.: A500379
Dept No.: II

16 vs.

17 MIKE SCHNEIDER, an individual;
18 DOES I-V, inclusive; and ROE ENTITIES
19 VI-X, inclusive,
20 Defendant.

21 **FIRST AMENDED COMPLAINT**

22 COMES NOW the Plaintiff, DANNY TARKANIAN, by and through his attorneys, GUS
23 W. FLANGAS, ESQ. and KIM D. PRICE, ESQ., of the FLANGAS MCMILLAN LAW GROUP,
24 and for his causes of action against the Defendants, alleges as follows

25 **FIRST CLAIM FOR RELIEF**
26 (Slander Per Se)

27 1. At all times material hereto, the Plaintiff, DANNY TARKANIAN, (hereinafter referred
28 to as the "Plaintiff") was and is a resident of Clark County, State of Nevada.

2. At all times material hereto, the Defendant, MIKE SCHNEIDER, was and is a resident
of Clark County, Nevada.

3. The true names and capacities of the Defendants named herein as DOES I-X, inclusive,
and ROE ENTITIES VI-X, inclusive, whether individual, corporate, associate or otherwise, are

CLERK OF THE COURT

JAN 24 2008

RECEIVED

AA000240

1 presently unknown to the Plaintiff who therefore sue the said Defendants by such fictitious names;
2 and when the true names and capacities of such DOES I through X, inclusive, and ROE ENTITIES
3 VI-X, inclusive, are discovered, the Plaintiff will ask leave to amend this Complaint to substitute the
4 true names of the said Defendants. The Plaintiff is informed, believes and therefore alleges that the
5 Defendants so designated herein are responsible in some manner for the events and occurrences
6 contained in this action.

7 4. The Plaintiff and Defendant were both candidates for election to the Nevada State Senate,
8 District 11.

9 5. On or about early October of 2004, the Plaintiff and Defendant appeared on a local
10 television show entitled "Face to Face with Jon Ralston" (hereinafter referred to as the "Ralston
11 Show").

12 6. While appearing on the Ralston Show, the Defendant made numerous false and
13 defamatory statements about the Plaintiff, to wit:

14 a. The Plaintiff turned state's evidence and testified against his "fellow"
15 telemarketers to keep from being personally charged with a crime.

16 b. The Plaintiff set up 19 fraudulent corporations for telemarketers.

17 c. The Plaintiff was under Grand Jury Investigation in two different locations and at
18 two different places of employment.

19 7. The defamatory statements made by the Defendant on the Ralston Show were a
20 publication of false statements of fact.

21 8. The Defendant's malicious and false statements were an assertion of a fact or an
22 expression of an opinion that suggested that the Defendant knew certain facts to be true or implied
23 that certain facts existed.

24 9. The Defendant knew the defamatory statements he made on the Ralston Show were false
25 and or were made with reckless disregard of whether they were false or not.

26 10. The Defendant's malicious and false statements are defamatory in that they tend to lower
27 the Plaintiff in the estimation of the community, excite derogatory opinions about the Plaintiff and
28 hold the Plaintiff up to contempt.

1 11. The Defendant's malicious and false statements are so likely to cause serious injury to
2 reputation and pecuniary loss that they constitute slander per se.

3 12. The Defendant's malicious and false statements are so likely to cause serious injury to
4 reputation and pecuniary loss that they are actionable without proof of damages in that the statements
5 impute the Plaintiff as having a lack of fitness for trade, business or profession.

6 13. The Plaintiff has suffered damage to his reputation and has suffered harm which
7 normally results from such a defamation.

8 14. The Plaintiff has been damaged in amount in excess of \$10,000.

9 15. It has become necessary for the Plaintiff to engage the services of an attorney to
10 commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as
11 damages.

12 16. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the
13 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the
14 Defendant in an amount in excess of \$10,000.

15 **SECOND CLAIM FOR RELIEF**
16 (Slander Per Se)

17 17. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
18 through 16 above and incorporates them as though fully set forth herein.

19 18. On or about October of 2004, the Defendant and/or his agents acting on his behalf caused
20 to be broadcast, certain radio advertisements which made defamatory statements about the Plaintiff,
21 to wit: the Plaintiff was involved in telemarketing fraud.

22 19. The defamatory statements made in the radio advertisements were a publication of false
23 statements of fact.

24 20. The malicious and false statement in the radio advertisements were an assertion of a fact
25 or an expression of an opinion that suggested that the Defendant knew certain facts to be true or
26 implied that certain facts existed.

27 21. The Defendant knew the defamatory statements made in the radio advertisements were
28 false and or were made with reckless disregard of whether they were false or not.

1 22. The malicious and false statements in the radio advertisements are defamatory in that
2 they tend to lower the Plaintiff in the estimation of the community, excite derogatory opinions about
3 the Plaintiff and hold the Plaintiff up to contempt.

4 23. The malicious and false statements in the radio advertisements are so likely to cause
5 serious injury to reputation and pecuniary loss that they constitute slander per se.

6 24. The malicious and false statements in the radio advertisements are so likely to cause
7 serious injury to reputation and pecuniary loss that they are actionable without proof of damages in
8 that the statements impute the Plaintiff as having a lack of fitness for trade, business or profession.

9 25. The Plaintiff has suffered damage to his reputation and has suffered harm which
10 normally results from such a defamation.

11 26. The Plaintiff has been damaged in amount in excess of \$10,000.

12 27. It has become necessary for the Plaintiff to engage the services of an attorney to
13 commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as
14 damages.

15 28. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the
16 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the
17 Defendant in an amount in excess of \$10,000.

18 **THIRD CLAIM FOR RELIEF**
19 (Slander Per Se)

20 29. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
21 through 28 above and incorporates them as though fully set forth herein.

22 30. On or about October of 2004, the Defendant and/or his agents acting on his behalf caused
23 to be disseminated, certain telephone recordings to voters in District 11 which made defamatory
24 statements about the Plaintiff, to wit: the Plaintiff was involved in telemarketing fraud and created
25 companies to defraud the elderly.

26 31. The defamatory statements made in the telephone recordings were a publication of false
27 statements of fact.

28 32. The malicious and false statements in the telephone recordings were an assertion of a fact

1 or an expression of an opinion that suggested that the Defendant knew certain facts to be true or
2 implied that certain facts existed.

3 33. The Defendant knew the defamatory statements made in the telephone recordings were
4 false and or were made with reckless disregard of whether they were false or not.

5 34. The malicious and false statements in the telephone recordings are defamatory in that
6 they tend to lower the Plaintiff in the estimation of the community, excite derogatory opinions about
7 the Plaintiff and hold the Plaintiff up to contempt.

8 35. The malicious and false statements in the telephone recordings are so likely to cause
9 serious injury to reputation and pecuniary loss that they constitute slander per se.

10 36. The malicious and false statements in the telephone recordings are so likely to cause
11 serious injury to reputation and pecuniary loss that they are actionable without proof of damages in
12 that the statements impute the Plaintiff as having a lack of fitness for trade, business or profession.

13 37. The Plaintiff has suffered damage to his reputation and has suffered harm which
14 normally results from such a defamation.

15 38. The Plaintiff has been damaged in amount in excess of \$10,000.

16 39. It has become necessary for the Plaintiff to engage the services of an attorney to
17 commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as
18 damages.

19 40. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the
20 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the
21 Defendant in an amount in excess of \$10,000.

22 **FOURTH CLAIM FOR RELIEF**
23 (Libel Per Se)

24 41. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
25 through 40 above and incorporates them as though fully set forth herein.

26 42. On or about October of 2004, the Defendant and/or his agents acting on his behalf caused
27 certain flyers to be sent to the voters in District 11 which made defamatory statements about the
28 Plaintiff, to wit:

- 1 a. "Why Did Danny Tarkanian betray the most vulnerable among the elderly?"
2 b. "Why did he [the Plaintiff] set up an organization to cheat us out over \$2 million
3 of our hard-earned retirement money?"

4 43. The defamatory statements contained in the flyers were a publication of false statements
5 of fact.

6 44. The malicious and false statements contained in the flyers were an assertion of a fact or
7 an expression of an opinion that suggested that the Defendant knew certain facts to be true or implied
8 that certain facts existed.

9 45. The Defendant knew the defamatory statements contained in the flyers were false and
10 or were made with reckless disregard of whether they were false or not.

11 46. The malicious and false statements contained in the flyers are defamatory in that they
12 tend to lower the Plaintiff in the estimation of the community, excite derogatory opinions about the
13 Plaintiff and hold the Plaintiff up to contempt.

14 47. The malicious and false statements contained in the flyers are so likely to cause serious
15 injury to reputation and pecuniary loss that they constitute slander per se.

16 48. The malicious and false statements contained in the flyers are so likely to cause serious
17 injury to reputation and pecuniary loss that they are actionable without proof of damages in that the
18 statements impute the Plaintiff as having a lack of fitness for trade, business or profession.

19 49. The Plaintiff has suffered damage to his reputation and has suffered harm which
20 normally results from such a defamation.

21 50. The Plaintiff has been damaged in amount in excess of \$10,000.

22 51. It has become necessary for the Plaintiff to engage the services of an attorney to
23 commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as
24 damages.

25 52. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the
26 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the
27 Defendant in an amount in excess of \$10,000.

28

FIFTH CLAIM FOR RELIEF
(Slander Per Se)

53. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 52 above and incorporates them as though fully set forth herein.

54. On or about the fall of 2004, the Defendant made numerous false and defamatory statements about the Plaintiff having his law license revoked or suspended with the implication that it was revoked or suspended due to wrongdoing on the part of the Plaintiff.

55. The defamatory statements about the Plaintiff's law license made by the Defendant were a publication of false statements of fact.

56. The Defendant's malicious and false statements about the Plaintiff's law license were an assertion of a fact or an expression of an opinion that suggested that the Defendant knew certain facts to be true or implied that certain facts existed.

57. The Defendant knew the defamatory statements he made about the Plaintiff's law license were false and or were made with reckless disregard of whether they were false or not.

58. The Defendant's malicious and false statements are defamatory in that they tend to lower the Plaintiff in the estimation of the community, excite derogatory opinions about the Plaintiff and hold the Plaintiff up to contempt.

59. The Defendant's malicious and false statements are so likely to cause serious injury to reputation and pecuniary loss that they constitute slander per se.

60. The Defendant's malicious and false statements are so likely to cause serious injury to reputation and pecuniary loss that they are actionable without proof of damages in that the statements impute the Plaintiff as having a lack of fitness for trade, business or profession.

61. The Plaintiff has suffered damage to his reputation and has suffered harm which normally results from such a defamation.

62. The Plaintiff has been damaged in amount in excess of \$10,000.

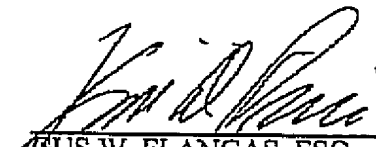
63. It has become necessary for the Plaintiff to engage the services of an attorney to commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as damages.

1 64. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the
2 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the
3 Defendant in an amount in excess of \$10,000.

4 **WHEREFORE**, the Plaintiff prays for judgment as follows:

- 5 1. For damages in an amount in excess of \$10,000;
6 2. For punitive damages in an amount in excess of \$10,000;
7 3. For reasonable attorney's fees and costs of suit; and
8 4. For such other and further relief as the Court may deem just and proper in the premises.

9 DATED this 24th day of January, 2008

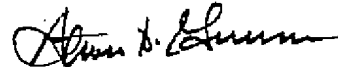
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11 
12 GUS W. FLANGAS, ESQ.
13 Nevada Bar No. 004989
14 KIM D. PRICE, ESQ.
15 Nevada Bar No. 007873
16 **FLANGAS MCMILLAN LAW GROUP**
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18 Las Vegas, Nevada 89146
19 Telephone: (702) 307-9500
20 *Attorneys for Plaintiff*
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George F. Hand, Esq.
Bremer, Whyte, Brown & O'Meara, LLP
7670 West Lake Mead Blvd., Ste. 225
Las Vegas, Nevada 89128
Attorneys for Defendant MIKE SCHNEIDER

Joyce Falana
An Employee for Flangas McMillan Law Group

EXHIBIT “2”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, JULY 31, 2009

APPEARANCES:

FOR THE PLAINTIFF:	GUS W. FLANGAS, ESQ.
	KIM D. PRICE, ESQ.

FOR THE DEFENDANT:	NELSON L. COHEN, ESQ.
	LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000250

INDEX

PLAINTIFF'S CLOSING ARGUMENT BY MR. FLANGAS	81
DEFENDANT'S CLOSING ARGUMENT BY MR. COHEN	103
PLAINTIFF'S REBUTTAL CLOSING ARGUMENT BY MR. FLANGAS	120

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>DEFENDANT'S WITNESS:</u>				
GARY GRAY	4	22	26	28

* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
(No exhibits admitted)	

1 during this trial I have done or said anything. No. 8, there
2 are two kind of evidence, direct and circumstantial. No. 9, in
3 determining whether any proposition has been proved. 10,
4 whenever evidence has been admitted.

5 No. 11, certain testimony has been read from a
6 deposition. 12, during the course of the trial you may have
7 heard reference to the word interrogatory. 13, if counsel for
8 the parties have stipulated. 14, the credibility or
9 believability. 15, discrepancies in a witness's testimony. 16,
10 whenever in these instructions I state that the burden or burden
11 of proof. 17, the preponderance or weight of evidence. Okay.
12 18 is a defamatory comment is made in reckless disregard. 19, a
13 communication is defamatory if it tends so to harm. 20, in
14 reviewing and allegedly defamatory statement.

15 21, expressions of opinion may suggest that the
16 speaker knows certain facts to be true. 22, in the normal case
17 to create liability for defamation there must be. 23, certain
18 classes of defamatory statements are considered so likely to
19 cause serious injury. 24, in order to establish a claim of
20 slander the plaintiff must prove the following elements. 25,
21 libel per se refers to. 26, each of several publications by the
22 defendant to a third-party. 27, for purposes of a defamation
23 action a, quote, limited purpose figure, unquote. 28, Plaintiff
24 Tarkanian is a, quote, limited purpose public figure, unquote.
25 29, as a public figure or limited purpose public figure. 30,

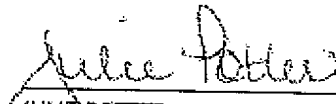
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

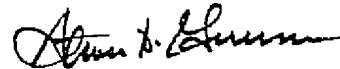
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

EXHIBIT “3”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)
)
Plaintiff,)
)
vs.)
)
MIKE SCHNEIDER,)
)
Defendant.)
)

CASE NO. A500379

DEPT NO. II

Transcript of
Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, JULY 31, 2009

APPEARANCES:

FOR THE PLAINTIFF:

GUS W. FLANGAS, ESQ.
KIM D. PRICE, ESQ.

FOR THE DEFENDANT:

NELSON L. COHEN, ESQ.
LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000255

1 agreed to advise them that it wasn't in evidence and the Court
2 couldn't supplement the evidence. So that was done and that
3 juror's note may be marked as Court's No. 3.

4 (Inside the presence of the jury)

5 The record shall reflect that the marshal has just
6 entered the courtroom and is returning the jury to the jury box
7 area.

8 Ladies and gentlemen, as you arrive in your seats, you
9 may be seated. That has now been accomplished.

10 Ladies and gentlemen of the jury, please answer yes or
11 no. Have you selected a foreperson?

12 JURY PANEL: Yes.

13 THE COURT: Would the foreperson please raise their
14 hand and state their name.

15 JURY SEAT NO. 1: Helen Henderson.

16 THE COURT: Ms. Henderson, have you returned with the
17 form of verdict at this time?

18 JURY SEAT NO. 1: Yes, we have.

19 THE COURT: The marshal is going to approach you.
20 Would you please turn it over to him.

21 JURY SEAT NO. 1: Sure.

22 THE MARSHAL: Thank you very much.

23 THE COURT: The clerk will now read the verdict aloud.

24 THE CLERK: District Court, Clark County, Nevada.

25 Case No. A500379, Department 2. Danny Tarkanian, an individual,

1 plaintiff, versus Mike Schneider, an individual, Does 1 through
2 5 inclusive, and Roe entities 6 through 10 inclusive, defendant.

3 Plaintiff's first claim for relief, slander per se
4 statements on Ralston Show. In regard to plaintiff's first
5 claim for relief, slander per se, No. 1, did the defendant make
6 false statements regarding the plaintiff? Yes.

7 If your response is no to No. 1, then proceed to
8 Question 6 and circle yes. If you answered yes to No. 1, then
9 proceed to No. 2.

10 No. 2, were the defendant's false statements
11 defamatory to the plaintiff? Yes. If your response is no to
12 No. 2, then proceed to No. 6 and circle yes. If you answered
13 yes to No. 2, then proceed to No. 3.

14 No. 3, did the defendant's false statements fall into
15 one of the four categories that constitutes slander per se, a)
16 that the plaintiff committed a crime, b) that the plaintiff has
17 contracted a loathsome disease, c) that the plaintiff lacked
18 fitness for his trade, business, profession, or office, or d)
19 that the plaintiff committed serious sexual misconduct? Yes.
20 If your response is no to No. 3, then proceed to Question No. 6
21 and circle yes. If you answered yes to No. 3, then proceed to
22 No. 4.

23 No. 4, did the defendant make false statements
24 regarding the plaintiff with actual malice that is, a) with
25 knowledge that the statements were false, or b) acting with

1 reckless disregard for the truth? Yes. If your response is no
2 to No. 4, then proceed to Question No. 6 and circle yes. If you
3 answered yes to No. 4, then proceed to No. 5.

4 No. 5, having found that the defendant slandered or
5 defamed the plaintiff, we find the defendant liable under the
6 first claim for relief and award the plaintiff the amount of
7 \$30,000.

8 No. 6, having found that plaintiff has not proven all
9 of the above criteria required to establish a claim for slander
10 per se, we the jury find defendant is not liable for plaintiff's
11 first claim for relief, slander per se, yes.

12 Dated July 31, 2009. Helen Henderson, Jury
13 Foreperson.

14 Plaintiff's fourth claim for relief, libel per se
15 statements contained in flyers. In regard to plaintiff's fourth
16 claim for relief, libel per se, No. 1, did the defendant make
17 false statements regarding the plaintiff? Yes. If your
18 response is no to No. 1, then proceed to Question No. 6 and
19 circle yes. If you answered yes to No. 1, then proceed to No.
20 2.

21 No. 2, were the defendant's false statements
22 defamatory to the plaintiff? Yes. If your response is no to
23 No. 2, then proceed to Question No. 6 and circle yes. If you
24 answered yes to No. 2, then proceed to No. 3.

25 No. 3, did the defendant's false statements fall into

1 one of the four categories that constitutes libel per se, a)
2 that the plaintiff committed a crime, b) that the plaintiff has
3 contracted a loathsome disease, c) that the plaintiff lacked
4 fitness for his trade, business, profession, or office, or d)
5 that the plaintiff committed serious sexual misconduct? Yes.
6 If your response is no to No. 3, then proceed to Question No. 6
7 and circle yes. If you answered yes to No. 3, then proceed to
8 No. 4.

9 No. 4, did the defendant make false statements
10 regarding the plaintiff with actual malice that is, a) with
11 knowledge that the statements were false, or b) acting with
12 reckless disregard for the truth? Yes. If your response is no
13 to No. 4, then proceed to Question No. 6 and answer yes. If you
14 answered yes to No. 4, then proceed to No. 5.

15 No. 5, having found that the defendant slandered or
16 defamed the plaintiff, we find the defendant liable under the
17 fourth claim for relief and award the plaintiff the amount of
18 \$10,000.

19 No. 6, having found that plaintiff has not proven all
20 of the above criteria required to establish a claim for slander
21 per se, we the jury find defendant is not liable for plaintiff's
22 fourth claim for relief, libel per se, yes.

23 Dated July 31, 2009. Helen Henderson, Foreperson.

24 Plaintiff's fifth claim for relief, slander per se,
25 statements regarding law license. In regard to plaintiff's

1 defamed the plaintiff, we find the defendant liable under the
2 first claim for relief and award the plaintiff the amount of
3 \$10,000.

4 No. 6, having found that plaintiff has not proven all
5 of the above criteria required to establish a claim for slander
6 per se, we the jury find defendant is not liable for plaintiff's
7 fifth claim for relief, slander per se, yes.

8 Dated July 31, 2009. Helen Henderson, Jury
9 Foreperson.

10 THE COURT: Excuse me. Can I see that?

11 The clerk has read those first three verdict forms
12 verbatim as written. The yes as to paragraph 6 on all three of
13 them is not circled.

14 THE CLERK: Verdict form, punitive damages. We the
15 jury find that plaintiff is entitled to punitive damages, yes.

16 Dated July 31, 2009, Helen Henderson, Jury Foreperson.

17 Ladies and gentlemen of the jury, is this your verdict
18 as read, so say you one, so say you all?

19 JURY PANEL: Yes.

20 THE COURT: Does the plaintiff wish to have the jury
21 polled?

22 MR. FLANGAS: No, Your Honor. Thank you.

23 THE COURT: Does the defendant?

24 MR. COHEN: Yes, Your Honor.

25 THE COURT: Very well. Ladies and gentlemen, the

1 clerk is going to make individual inquiry of each of you as to
2 your verdict.

3 THE CLERK: Helen Henderson, is this your verdict as
4 read?

5 JUROR SEAT NO. 1: Yes.

6 THE CLERK: Claire Letto --

7 THE COURT: Excuse me. Are these your verdicts as
8 read.

9 THE CLERK: Helen Henderson, are these your verdicts
10 as read?

11 JUROR SEAT NO. 1: Yes.

12 THE CLERK: Claire Letto, are these your verdicts as
13 read?

14 JUROR SEAT NO. 2: Yes.

15 THE CLERK: Ralph Smith, are these your verdicts as
16 read?

17 JUROR SEAT NO. 3: Yes.

18 THE CLERK: Margaret Ervin, are these your verdicts as
19 read?

20 JUROR SEAT NO. 4: Yes.

21 THE CLERK: Timothy Greene, are these your verdicts as
22 read?

23 JUROR SEAT NO. 5: Yes.

24 THE CLERK: Shara Hinden, are these your verdicts as
25 read?

1 JUROR SEAT NO. 6: Yes.

2 THE CLERK: Maria Van-Vianen, are these your verdicts
3 as read?

4 JUROR SEAT NO. 7: Yes.

5 THE CLERK: Eugene Hertzog, are these your verdicts as
6 read?

7 JUROR SEAT NO. 8: Yes.

8 THE COURT: Okay. Thank you, Ms. Clerk.

9 Would counsel please approach.

10 (Off-record bench conference)

11 THE COURT: Ladies and gentlemen, with your finding of
12 yes as to punitive damages, our state law requires that we go
13 into a second trial phase concerning an award for punitive
14 damages. That will occur on Monday at 10:30. So we will be
15 taking our evening recess at this time, returning Monday at
16 10:30 here on the 16th floor outside the double doors to go into
17 that second trial phase.

18 During this recess you're admonished not to talk or
19 converse among yourselves or with anyone else on any subject
20 connected with the trial, and you're not to read, watch, or
21 listen to any report of or commentary on the trial or any person
22 connected with the trial by any medium of information,
23 including, without limitation, newspaper, television, radio, and
24 Internet, and you're not to form or express any opinion on any
25 subject connected with the trial until the case is finally

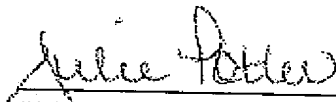
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

EXHIBIT “4”

FILED IN OPEN COURT
JUL 31 2009

EDWARD A. FRIEDLAND
CLERK OF THE COURT

BY

Nora Peña

DEPUTY

NORA PEÑA

DISTRICT COURT
CLARK COUNTY, NEVADA

DANNY TARKANIAN, an individual,

Plaintiff,

vs.

MIKE SCHNEIDER, an individual;
DOES I-V, inclusive; and ROE ENTITIES
VI-X, inclusive,

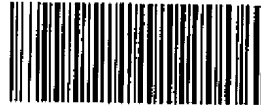
Defendant.

Case No.: A500379

Dept No.: II

SPECIAL VERDICT FORM

05A500379
338759



88

1 **PLAINTIFF'S FIRST CLAIM FOR RELIEF - SLANDER PER SE**

2 **STATEMENTS ON RALSTON SHOW**

3 In regard to Plaintiff's First Claim for Relief (Slander per se):

4 1. Did the Defendant make false statement(s) regarding the Plaintiff?

5 Yes or No?

Yes

6 If your response is no to #1 then proceed to question #6 and circle yes. If you answered yes to #1
7 then proceed to #2

8 2. Were the Defendant's false statement(s) defamatory to the Plaintiff?

9 Yes or No?

Yes

10 If your response is no to #2 then proceed to question #6 and circle yes. If you answered yes to #2
11 then proceed to #3

12 3. Did the Defendant's false statement(s) fall into one of the four categories that constitute
13 slander per se:

- 14 a. That the Plaintiff committed a crime;
15 b. That the Plaintiff has contracted a loathsome disease;
16 c. That the Plaintiff lacked fitness for his trade, business, profession or office; or
17 d. That the Plaintiff committed serious sexual misconduct?

18 Yes or No?

Yes

19 If your response is no to #3 then proceed to question #6 and circle yes. If you answered yes to
20 #3 then proceed to #4

21 4. Did the Defendant make false statement(s) regarding the Plaintiff with actual malice, that is,

- 22 a. With knowledge that the statement(s) were false; or
23 b. Acted with reckless disregard for the truth.

24 Yes or No?

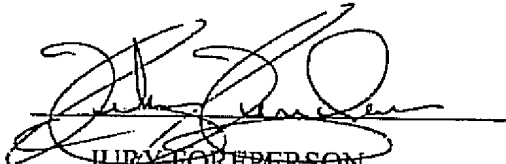
Yes

25 If your response is no to #4 then proceed to question #6 and circle yes. If you answered yes to #4
26 then proceed to #5

1 5. Having found that the Defendant slandered or defamed the Plaintiff, we find Defendant
2 liable under the First Claim for Relief and award the Plaintiff the amount of
3 \$ 30,000.

4 6. Having found that Plaintiff has not proven all of the above criteria required to establish a
5 claim for slander per se, we the jury find Defendant is not liable for Plaintiff's First Claim
6 for Relief (Slander per se) YES

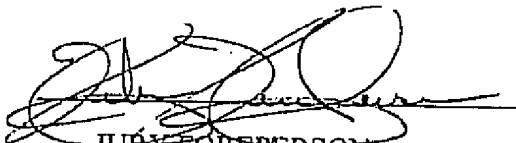
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8 Dated 7-31- 2009

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12 JURY FOREPERSON
13 HELEN HENDERSON
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1 5. Having found that the Defendant slandered or defamed the Plaintiff, we find Defendant
2 liable under the Fourth Claim for Relief and award the Plaintiff the amount of
3 \$10,000.

4 6. Having found that Plaintiff has not proven all of the above criteria required to establish a
5 claim for slander per se, we the jury find Defendant is not liable for Plaintiff's Fourth Claim
6 for Relief (Libel per se) YES

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8 Dated 7-31- 2009

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11 JURY FOREPERSON
12 Helen Henderson
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1
2 **PLAINTIFF'S FIFTH CLAIM FOR RELIEF - SLANDER PER SE**
3 **STATEMENTS REGARDING LAW LICENSE**

4 In regard to Plaintiff's Fifth Claim for Relief (Slander per se):

5 1. Did the Defendant make false statement(s) regarding the Plaintiff?

6 Yes or No?

Yes

7 If your response is no to #1 then proceed to question #6 and circle yes. If you answered yes to #1
8 then proceed to #2

9 2. Were the Defendant's false statement(s) defamatory to the Plaintiff?

10 Yes or No?

Yes

11 If your response is no to #2 then proceed to question #6 and circle yes. If you answered yes to #2
12 then proceed to #3

13 3. Did the Defendant's false statement(s) fall into one of the four categories that constitute
14 slander per se:

- 15 a. That the Plaintiff committed a crime;
16 b. That the Plaintiff has contracted a loathsome disease;
17 c. That the Plaintiff lacked fitness for his trade, business, profession or office; or
18 d. That the Plaintiff committed serious sexual misconduct?

19 Yes or No?

Yes

20 If your response is no to #3 then proceed to question #6 and circle yes. If you answered yes to #3
21 then proceed to #4

22 4. Did the Defendant make false statement(s) regarding the Plaintiff with actual malice, that is,

- 23 a. With knowledge that the statement(s) were false; or
24 b. Acted with reckless disregard for the truth.

25 Yes or No?

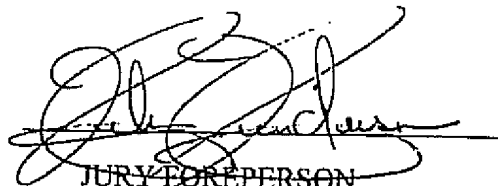
Yes

26 If your response is no to #4 then proceed to question #6 and circle yes. If you answered yes to #4
27 then proceed to #5

1 5. Having found that the Defendant slandered or defamed the Plaintiff, we find Defendant
2 liable under the Fifth Claim for Relief and award the Plaintiff the amount of
3 \$ 10,000.

4 6. Having found that Plaintiff has not proven all of the above criteria required to establish a
5 claim for slander per se, we the jury find Defendant is not liable for Plaintiff's Fifth Claim
6 for Relief (Slander per se) YES
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8 Dated 7-31- 2009

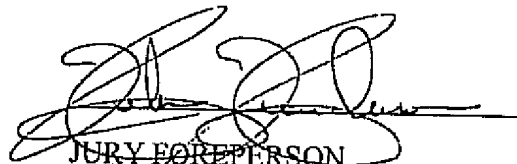

JURY FOREPERSON
Helga Henderson

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VERDICT FORM - PUNITIVE DAMAGES

We the Jury find that Plaintiff is entitled to punitive damages. Yes OR no (please circle one).

Dated 7-31- 2009


JURY FOREPERSON
Helen Hovverson

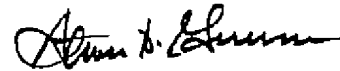
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DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

NOV 17 2016

AA000272

EXHIBIT “5”



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, JULY 31, 2009

APPEARANCES:

FOR THE PLAINTIFF:

GUS W. FLANGAS, ESQ.
KIM D. PRICE, ESQ.

FOR THE DEFENDANT:

NELSON L. COHEN, ESQ.
LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000274

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>DEFENDANT'S WITNESS:</u>				
GARY GRAY	4	22	26	28

* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
(No exhibits admitted)	

1 JUROR SEAT NO. 6: Yes.

2 THE CLERK: Maria Van-Vianen, are these your verdicts
3 as read?

4 JUROR SEAT NO. 7: Yes.

5 THE CLERK: Eugene Hertzog, are these your verdicts as
6 read?

7 JUROR SEAT NO. 8: Yes.

8 THE COURT: Okay. Thank you, Ms. Clerk.

9 Would counsel please approach.

10 (Off-record bench conference)

11 THE COURT: Ladies and gentlemen, with your finding of
12 yes as to punitive damages, our state law requires that we go
13 into a second trial phase concerning an award for punitive
14 damages. That will occur on Monday at 10:30. So we will be
15 taking our evening recess at this time, returning Monday at
16 10:30 here on the 16th floor outside the double doors to go into
17 that second trial phase.

18 During this recess you're admonished not to talk or
19 converse among yourselves or with anyone else on any subject
20 connected with the trial, and you're not to read, watch, or
21 listen to any report of or commentary on the trial or any person
22 connected with the trial by any medium of information,
23 including, without limitation, newspaper, television, radio, and
24 Internet, and you're not to form or express any opinion on any
25 subject connected with the trial until the case is finally

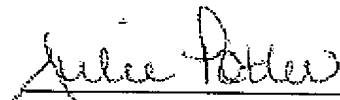
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

EXHIBIT “6”

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC

Attorneys at Law

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

October 25, 2016

Jacky Rosen
Rosen for Nevada
1000 N. Green Valley Parkway #440-177
Henderson, NV 89074

Re: CEASE and DESIST Defamatory Advertising

Dear Ms. Rosen:

I am writing to request that your campaign immediately CEASE and DESIST airing advertisements containing defamatory allegations against Danny Tarkanian. Specifically, your advertisement that maliciously, intentionally, falsely, and recklessly claims that Mr. Tarkanian has somehow scammed seniors.

This is not the first time that Mr. Tarkanian has been a victim of malicious attacks at the hands of his opponents. In 2004, his opponent was sued for defamation for making the same claims that you are making today. **A jury has already found this line of attack to be defamatory.** It is therefore utterly inconceivable that you would act with such a reckless disregard for the facts and cause these previously discredited, demonstrably false allegations to surface again today.

You know that your advertisements refer to legal work Mr. Tarkanian performed in setting up New Faith Foundation, including serving as registered agent for the corporation. Your co-advertiser's *own documentation* recognizes that "[a] registered agent is a person or entity - often an attorney - who can accept legal documents and notifications from a state office on behalf of a corporate entity. The registered agent may or may not be involved with the actual management of the company, however." Las Vegas Review Journal 10/15/12. Further, New Faith Foundation was noticeably not named as a defendant in an Federal Trade Commission action against Thadow, Inc. that settled, its press release stating: "NOTE: The stipulated final order is for settlement purposes only and does not constitute an admission by the defendant of a law violation."

A jury in Nevada has already found this falsehood to be defamatory. In 2004, Mr. Tarkanian's campaign opponent distributed a flier falsely accusing Mr. Tarkian of *precisely the same allegations* that you and the DCCC are maliciously making against him today. Mr. Tarkanian successfully sued his past opponent for defamation and the jury found in his favor and awarded damages. Mr. Tarkanian may take such actions again. Please see the following Las Vegas Review Journal summarizing the jury's determination in Mr. Tarkanian's defamation action settled by the defendant on the eve of judgment: <http://m.reviewjournal.com/jane-ann-morrison/state-senators-own-words-come-back-bite-him-defamation-case>. The suit ultimately resulted in a jury trial finding in Mr. Tarkanian's favor and awarding damages. In that case, the

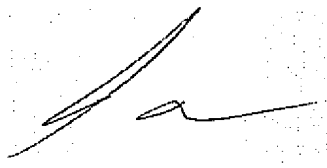
AA000279

defendant settled with Mr. Tarkanian on the eve of the jury's determination of punitive damages. By continuing to air this advertisement containing claims already found to have been defamatory, you are at risk of a similar action if you continue in this course of conduct.

If you continue airing this defamatory advertisement, you will be acting with malice, that is, with knowledge that the allegations are false or with reckless disregard as to whether the allegations are false or not. As stated above, a jury has already found these allegations to be false. You are hereby on notice regarding the falsity of your claims.

We urge you to recognize your reckless disregard for the facts and respectfully request that you immediately CEASE and DESIST airing this defamatory advertisement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a stylized flourish at the end.

Jason Torchinsky
Erin Clark
Counsel to Tarkanian for Congress

EXHIBIT “7”

JACKY ROSEN
 CONGRESS

New TV Ad: "Integrity"

Watch

Your Email Address Zip Code Join Jacky

Contribute to Support Our Campaign
IF YOU'RE VIEWING THIS PAGE WITH A CREDIT CARD, WE'LL PROCESS YOUR CONTRIBUTION IMMEDIATELY.

\$5 \$10 \$15 \$25 \$50 \$100 \$250

JACKY ROSEN

DEMOCRAT FOR CONGRESS

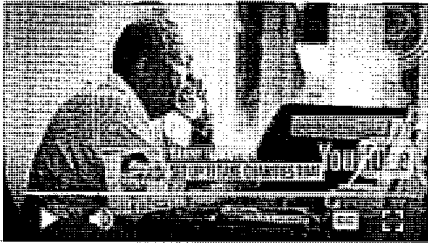
"I have been proud to call Southern Nevada home for more than 35 years. Through that time, I built my career as a computer software developer, raised a family, cared for my aging parents and served our community through work I am extremely proud of. I love Southern Nevada and I want to see us grow and thrive, but there are serious challenges holding us back. Our economy is growing, but there are still too few good paying jobs and incomes are not keeping up with the cost of living. We are failing our children with low standards of education and unacceptable graduation rates. We are failing our seniors as the cost of living increases and they can not afford to retire. We are failing in so many ways to carefully plan to protect and provide for our future.

I'm running for Congress because I feel that we can take these challenges and turn them into opportunities.

Opportunities to invest in solar and renewable energy, protect our environment and reduce utility bills. Opportunities to improve our education, creating a prepared workforce to attract businesses and professionals to come and invest in our community. Opportunities to protect our seniors and their retirement. We need innovation



Support Rosen for Nevada!



Chip in today to support Jacky Rosen in Nevada's 3rd district!

Jacky is running for Congress because career politicians in Washington are leaving Nevada families behind. Our community deserves a representative who will fight for them, not Washington special interests.

Your Contribution

Your contribution will benefit Jacky Rosen.

\$10	\$25	\$50	\$100
\$250	\$1,000	\$2,700	\$



March 19, 2017 at 3:12:52 PM UTC-7

Contribution Rules

1. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
2. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.
3. I am not a federal contractor.
4. I am at least eighteen years old.
5. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).

Paid for by ActBlue (actblue.com) and not authorized by any candidate or candidate's committee.

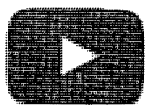
Contributions or gifts to ActBlue are not deductible as charitable contributions for Federal income tax purposes.

DONATE



Jacky Rosen Campaign Releases New Ad Highlighting Stark Contrast in Integrity

Jacky Rosen Ad: "Integrity"



Henderson, Nev. – Today, Henderson community leader Jacky Rosen's campaign for Congress is out with a new television ad highlighting the stark contrast in integrity between self-proclaimed "Tea Party radical" Danny Tarkanian and former

AA000284

EXHIBIT “8”

EXHIBIT “9”



Jacky Rosen Ad: "Integrity"



Rosen Press

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817 views

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More

3

0

Published on Oct 25, 2016

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Autoplay

Jacky Rosen Ad: "Just Like Them"

Rosen Press
1,251 viewsWHISPER
CHALLENGE WITH
KEVIN HART & THEBehzinga
Recommended for youJacky Rosen Ad:
"Solutions"Rosen Press
1,605 viewsDwayne Johnson "
The Rock" -
TransformationThe STARS
Recommended for youKLAS: Jacky Rosen
Discusses Her
Priorities in CD3Rosen Press
275 viewsFull Jon Ralston
interview with Jacky
RosenKTNV Channel 13 Las Vegas
300 viewsKevin Hart & The
Rock Funny
Moments 2017TurboEntertainment
Recommended for youOBJECTION! Master
These 18 Essential
CourtroomThe Legal Seagull
Recommended for youKanye West First
MTV interview
(2002)Killa M
Recommended for you

1:01:59

Jacky Rosen at CD 3
Town HallLetsTalkNevada
263 views

14:57

Video that will
change your life. I
have no words left.TheCorpfa
17,008,933 views

4:30

AA000288

Search

17



to Spot a Lie

Digiday

Recommended for you

3:47

**KLAS: Politics NOW:
Jacky Rosen Sits
Down With Steve**

Rosen Press

265 views

3:13

**Jacky Rosen -
Southern Nevada**

Jacky Rosen for Congress

492 views

1:47

**TME Exclusive
Interview with
Congresswoman**

TME

20 views

4:46

**CNN Announces
Obama as the Next
President Elect**

GettingtotheTruth2

1,290,373 views

12:31

**Jacky Rosen is a
Puppet (NV-03 TV)**

CLFSuperPAC

6,997 views

3:31

**Integrity - The Spirit
Called Youth**

integritybeurself

11,264 views

1:03

**Danny Tarkanian,
Jacky Rosen to face
off in Congressional**

KTNV Channel 13 Las Vegas

303 views

2:06

**KSNV: Jacky Rosen
Responds to Danny
Tarkanian's**

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EXHIBIT “10”



Quash Traffic Warrants from \$100

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Gloves are coming off — and being replaced by lace

August 9, 2009 - 9:00 pm

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What kind of tea-sipping, lace-dolly, pinky-finger-pointing kind of politics are we going to be left with if every failed candidate can run crying to the courts and get a \$150,000 tort jackpot just because his opponent said something mean about him?

A politician claiming he was libeled is like a boxer claiming he was assaulted. If you can't take a punch, don't get in the ring.

On Monday, state Sen. Mike Schneider's insurance company shelled out \$150,000 to settle a five-year libel case brought against him by Danny Tarkanian, son of the former UNLV basketball coach and the Las Vegas city councilwoman. A \$50,000 libel judgment was handed down by a Clark County jury the previous Friday, and the same jury was about to deliberate whether to assess punitive damages, which could have amounted to as much as \$300,000.

Tarkanian claimed he'd been defamed during his 2004 election campaign against Schneider, because his opponent sent out mailings saying he did work for telemarketing firms accused of scamming the elderly. It was suggested Tarkanian escaped by turning state's evidence.

Tarkanian admitted he was a registered agent for several telemarketing companies that were indicted on fraud charges, but he claimed he merely did legal work for the companies and knew nothing of any fraud.

Now, libel is not merely the act of saying something unkind about another. There are legal elements that must be established, and for a public figure, such as a candidate for state Senate, the bar is especially high. Or it was.

To prove libel, a statement must be false. It must be defamatory and damaging. It must be disseminated to a third party. You must prove all of them. Not just one.

Was the information false? He did incorporate companies later investigated. He was not prosecuted. How do you prove falsity?

These were circumstances ripe for innuendo and connecting the dots. Does that make what Schneider said provably false? Or is it a matter of interpretation and connotation and splitting hairs over what words were used?

In fact, a piece of evidence at trial offered still another view of things. When Tarkanian ran for another office in 2006, he sent out a flier claiming he was exonerated in the telemarketing probe. That prompted former federal prosecutor Lelf Reid — yes, son of the Senate majority leader — to send a scathing letter saying that claim was "patently false, defamatory, and holds him in a false light."



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Reid went on to note "there is a significant difference between not being indicted for illegal activity and not being involved at all."

As for defamation, Tarkanian's a lawyer and a politician. How much lower in esteem can one get?

Damages? He lost the state Senate election as a Republican running in a heavily Democratic district. Has he lost any legal clients because of the allegations? If so, where's the evidence?

As a public figure, Tarkanian had to prove actual malice or willful negligence. The first is a given in a political campaign and the second is pretty hard to prove in a rapid-fire, rough-and-tumble race. Jurors have to be mind-readers.

The biggest chunk of the jury award, \$30,000, was for what Schneider said about the telemarketing probe on an obscure cable television program called "Face to Face with Jon Ralston." That brings us to dissemination. Was there a single witness presented who actually saw the program? Might be hard to find.

Schneider said in a statement: "I was very disappointed with the jury's verdict in the Tarkanian case against me. I believe this decision will have devastating ramifications on future campaigns and a chilling effect on free speech in general.

"I am fairly confident we would have reversed the decision at the Supreme Court. However, this matter has been a five-year ordeal and it was time to put it to rest."



What does it say about justice when winning in court comes down to outlasting your opponent's willingness to expend time, money and personal aggravation?

In a political campaign, the bar should be much, much higher. A politician should be allowed to lie about an opponent — and then get caught in the act.

Yes, there have been recent campaigns in which incumbents were subjected to outright lies. Even if enough gullible voters were swayed by the dirty tricks, that is no reason to jettison our free-wheeling, bare-knuckled political donnybrooks for lace-glove treatment.

What one candidate says about another says more about that person's character than it says about his opponent. If we assume voters are too stupid to figure it out, eventually, democracy is a failed experiment.

Thomas Mitchell is editor of the Review-Journal and writes about the role of the press and access to public information. He may be contacted at 383-0261 or via e-mail at tmitchell@reviewjournal.com. Read his blog at lvj.com/blogs/mitchell.

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EXHIBIT “11”



CODE OF CIVIL PROCEDURE - CCP

PART 2. OF CIVIL ACTIONS [307 - 1062.20] (Part 2 enacted 1872.)

TITLE 6. OF THE PLEADINGS IN CIVIL ACTIONS [420 - 475] (Title 6 enacted 1872.)

CHAPTER 2. Pleadings Demanding Relief [425.10 - 429.30] (Chapter 2 repealed and added by Stats. 1971, Ch. 244.)

ARTICLE 1. General Provisions [425.10 - 425.55] (Article 1 added by Stats. 1971, Ch. 244.)

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) (1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "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" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not

more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

(Amended by Stats. 2014, Ch. 71, Sec. 17. Effective January 1, 2015.)

EXHIBIT “12”

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10 *Attorney for Plaintiff*

11 **DISTRICT COURT FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 DANNY TARKANIAN,

14 Plaintiff,

15 vs.

16 JACKY ROSEN, an individual;
17 ROSEN FOR NEVADA, a 527
18 Organization, and DOES 1-X and
19 ROES ENTITIES VI-X,

20 Defendant.

Case No.: A-16-746797-C

Dept. No.: IV

21 **AFFIDAVIT OF DANNY TARKANIAN**

22 **STATE OF NEVADA**)
23 : SS.
24 **COUNTY OF _____**)

25 1. I Danny Tarkanian being duly deposed and sworn do herein testify as follows:

26 2. That from 1988-1995, I was a practicing attorney in Las Vegas, Nevada,
27 performing transactional law, including preparing corporate documents and acting as a
28 resident agent for numerous companies.

3. In approximately 1994, a young man whom I had known as a former ball boy
at UNLV in the early 1980's, retained my services to prepare corporate documents, act as a
resident agent and perform other minor legal duties.

4. From 1994 through the middle of 1995, the former ball boy referred additional
clients to my law office for the same legal services I was providing to him.

1 5. I was not involved with the companies the young man was involved with or
2 with his friend's companies except to perform the minor legal work stated above.

3 6. I never visited their offices nor had any knowledge of their day to day
4 operations.

5 7. The only compensation I received from these companies was for the minor
6 legal work I performed.

7 8. I did not set up any fake charities or any other fake entity.

8 9. Every charity and entity I set up was legal. Every charity and entity was filed
9 with the Nevada Secretary of State's office.

10 10. I was not involved in any front for telemarketing schemes.

11 11. I did not help set up any scam that preyed on seniors nor did I have any
12 involvement in scams that cost seniors millions of dollars.

13 12. In approximately June of 1995, I moved from Las Vegas, Nevada to Fresno,
14 California. I stopped practicing law and accepted an assistant coaching position with my
15 father's basketball team at Fresno State.

16 13. In approximately 1998, while living in Fresno and coaching basketball at
17 Fresno State, I learned that the former ball boy mentioned above had been arrested for
18 telemarketing fraud.

19 14. I was never questioned, subpoenaed, officially investigated, or indicted for any
20 involvement in my clients' personal businesses.

21 15. In 2004, I ran for Nevada State Senate against Mike Schneider ("Mr.
22 Schneider").

23 16. During the campaign, Mr. Schneider made several false statements claiming I
24 was involved in illegal telemarketing activities.

25 17. I subsequently filed a lawsuit in Clark County District Court, Case No.
26 A500379, against Mr. Schneider.

27 18. In July of 2009, a unanimous jury reached a verdict in my favor, finding by
28 clear and convincing evidence that three (3) statements made by Schneider on a local

1 television show "Face to Face with Jon Ralston" and two (2) statements made by Mr.

2 Schneider in flyers mailed to the voters of District 11, were false and defamatory and that the
3 statements constituted Slander Per Se and Libel Per se;

4 19. After receiving a successful jury verdict, we were to hold a second trial
5 regarding punitive damages. However, instead of holding another trial, we settled the amount
6 of punitive damages I would be awarded because of Mr. Schneider's Defamatory Statements.

7 20. In July of 2015, I decided to run for Congress in Nevada's 3rd District.

8 21. In June of 2016, I won the Republican nomination for Congress in Nevada's
9 3rd District.

10 22. My opponent in the General Election was Defendant Jacky Rosen.

11 23. Approximately ten (10) days before the General Election,¹ Defendants aired an
12 advertisement on multiple media platforms, including, but not limited, to television,
13 YouTube, Facebook, and Defendants' website stating that I had been involved in fraudulent
14 telemarketing schemes that targeted senior citizens.

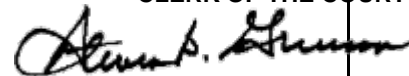
15 24. As soon as I learned of Defendants' defamatory and false advertisement, I sent
16 Defendant Rosen a "Cease and Desist Letter" requesting her to take down her defamatory ad.

17 25. I never received a response from Defendant Rosen to the Cease and Desist
18 Letter.

19 26. Defendants did not stop disseminating the defamatory advertisement.
20 Defendants, continue to air the defamatory advertisement on multiple television and social
21 media outlets.

22 27. As a result of the advertisements, I lost the election to Defendant Rosen by one
23 percent (1%).
24
25
26
27
28

AA000300



RPLY

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EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
and ROES ENTITIES VI-X,

Defendants.

Case No: A-16-746797-C

Dept. No.: XXX

**REPLY IN SUPPORT OF ANTI-SLAPP
SPECIAL MOTION TO DISMISS UNDER
N.R.S. 41.660**

I. INTRODUCTION

This action is about three statements made in a 30-second campaign advertisement (the
“Advertisement”) in the last few weeks of the 2016 race between Congresswoman Jacky Rosen

AA000301

1 and her opponent, Plaintiff Danny Tarkanian, to represent Nevada's 3rd Congressional District.
2 The statements at issue are that: (1) Tarkanian "set up 13 fake charities that preyed on vulnerable
3 seniors," (2) which were "fronts for telemarketing schemes," and (3) "[s]eniors lost millions from
4 scams Danny Tarkanian set up." Compl. ¶ 11. Tarkanian concedes that (at the very least) he is a
5 "limited" public figure. Pl.'s Opp. to Defs.' Anti-SLAPP Special Mot. to Dismiss Under N.R.S.
6 41.660 ("Pl.'s Opp.") at 14, 23. As such, to succeed on his claims, he must show *both* that the
7 statements at issue were untruthful *and* they were made with "actual malice." As his brief in
8 opposition demonstrates, he can do neither, and this case must be dismissed.

9 *First*, Tarkanian cannot show that the statements were false. To the contrary, he admits that
10 *substantially identical statements* made by political opponents in the course of his prior failed bids
11 for office are not defamatory and "do, in fact, state the truth." Pl.'s Opp. at 23. Specifically,
12 Tarkanian concedes that Ross Miller's 2006 statement that Tarkanian "served as the resident agent
13 and attorney for many fraudulent telemarketing organizations who bilked senior citizens out of
14 millions of dollars," *id.*, and the 2012 statements of Stephen Horsford's campaign that "Tarkanian
15 worked for telemarketing scammers," and "has been involved, as a businessman and lawyer, with
16 at least 13 fraudulent charities," *id.* at 22, were true statements and could not support the claims
17 that he now brings against Defendants, *id.* at 23.

18 This admission is fatal to his claims. It is difficult to believe that *any* viewer, much less the
19 average viewer, would have discerned any meaningful or significant difference between the
20 statements at issue in the Advertisement here and those previously made by Miller and Horsford's
21 campaign. *See Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991) ("[T]he statement
22 is not considered false unless it would have a different effect on the mind of the reader from that
23 which the pleaded truth would have produced.") (quotation marks and citation omitted). And the
24 First Amendment prohibits the very kind of parsing of minor differences in word choices in
25 political speech that would be necessary to adjudicate Tarkanian's claims, particularly where he
26 has acknowledged that virtually identical statements were true. *See, e.g., Pegasus v. Reno*
27 *Newspapers, Inc.*, 118 Nev. 706, 715 n.17 (Nev. 2002) (explaining that the key is whether "the
28 gist of the story, or the portion of the story that carries the 'sting' of the article, is true") (citations

1 omitted); *Reed v. Gallagher*, 248 Cal. App. 4th 841, 861 (Cal. Ct. App. 2016) (noting it is well-
2 established that a “slight discrepancy” or “semantic hypertechnicality” cannot be the basis for a
3 successful defamation action); *Desert Sun Publ’g Co. v. Sup. Ct.*, 97 Cal. App. 3d 49, 52 (Cal. Ct.
4 App. 1979) (“A political publication may not be dissected and judged word for word or phrase by
5 phrase.”).

6 Tarkanian’s baseless protests aside, it is well-established that the First Amendment
7 “[provides] its fullest and most urgent application[,]” to speech made in the context of political
8 campaigns, *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989), including speech
9 relevant to a candidate’s qualifications and character. *See, e.g., Schatz v. Republican State*
10 *Leadership Comm.*, 669 F.3d 50, 52 (1st Cir. 2012) (“[C]riticizing public officials and hopefuls for
11 public office, is a core freedom protected by the First Amendment and probably presents the
12 strongest case for applying the *New York Times* rule.”) (quotation marks and citation omitted);
13 *Vogel v. Felice*, 127 Cal. App. 4th 1006, 1016 (Cal. Ct. App. 2005) (“Public discussion about the
14 qualifications of those who hold or wish to hold positions of public trust presents the strongest
15 possible case for applications of the safeguards afforded by the First Amendment.”) (citations and
16 quotation marks omitted). The First Amendment’s protections in this area are so significant, that,
17 “[p]rovided that they do not act with actual malice, [candidates] can badmouth their opponents,
18 hammering them with unfair and one-sided attacks . . . [as] more speech, not damages, is the right
19 strike-back against superheated or false rhetoric.” *Schatz*, 669 F.3d at 52 (citing *Harte-Hanks*
20 *Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 686-87 (1989)). Thus, “[t]he overwhelming
21 weight of authority is that . . . recovery by a candidate is highly unusual.” *Beilenson v. Sup. Ct.*, 44
22 Cal. App. 4th 944, 955 (Cal. Ct. App. 1996) (citing cases). To permit this action to go forward on
23 the flimsy basis presented in Tarkanian’s response brief in a regime with an anti-SLAPP statute
24 such as Nevada’s would be unprecedented and unsustainable under both the plain terms of the
25 statute and the First Amendment, and would invite precisely the type of litigation that the anti-
26 SLAPP statute is meant to discourage.

27 *Second*, even if Tarkanian could make a prima facie case that the statements at issue were
28 false (and for the reasons discussed, he plainly cannot), to survive the Anti-SLAPP Motion to

1 Dismiss, he must also make a prima facie showing that it is probable that he will prove, by *clear*
2 *and convincing* evidence, that the statements were made with actual malice. *See, e.g., Reed*, 248
3 Cal. App. 4th at 193-94; *Christian Research Inst. v. Alnor*, 148 Cal. App. 4th 71, 84 (Cal. Ct. App.
4 2007); *see also Pegasus*, 118 Nev. at 721-22. “Clear and convincing evidence” in this context
5 means that the evidence must be “so clear as to leave no substantial doubt” and “sufficiently
6 strong to command the unhesitating assent of every reasonable mind.” *Reed*, 248 Cal. App. 4th at
7 861-62 (citations and quotation marks omitted); *Wynn v. Smith*, 117 Nev. 6, 17 (Nev. 2001).

8 Tarkanian does not and cannot meet this burden. Instead, he appears to largely conflate the
9 requirement that he prove falsity with the requirement that he “establish a probability that [he] will
10 be able to produce clear and convincing evidence of actual malice.” *Reed*, 248 Cal. App. 4th at
11 193. But, “[t]here is a ‘significant difference between proof of actual malice and mere proof of
12 falsity.’” *Id.* at 194 (quoting *Bose Corp. v. Consumers Union*, 466 U.S. 485, 511 (1984)). While a
13 court could, “in an appropriate case, infer actual malice from a statement that was so obviously
14 false that any reasonable person would have known that the statement was untrue,” *Reed*, 248 Cal.
15 App. 4th at 862, this is plainly not that case. As discussed, Tarkanian admits that substantially
16 similar statements made by prior political opponents were, in fact, true. Numerous newspaper
17 articles discussed Tarkanian’s involvement with the telemarketing companies (many of which
18 included statements from Tarkanian admitting that he incorporated the companies, and none of
19 which Tarkanian has challenged); a U.S. Attorney who worked on the underlying fraud cases
20 published a letter chastising Tarkanian for falsely claiming no involvement and reaffirming that
21 Tarkanian set up at least 13 fraudulent charities; public documents demonstrate that Tarkanian did
22 in fact incorporate several entities later found to be fraudulent schemes; and the nearly identical
23 statements from the Miller and Horsford campaigns that Tarkanian admits are true were widely
24 circulated and never subject to legal challenge. *See* discussion *infra* at 7-9; *see also* Defs.’ Anti-
25 SLAPP Special Mot. to Dismiss Under N.R.S. 41.660 (“Defs.’ Mot.”) at 7-8, 12-15.

26 Nor is Tarkanian’s argument that a jury verdict from a 2009 case that involved a series of
27 allegedly defamatory statements made in a different campaign by a different candidate, most of
28 which do not remotely resemble the statements in the Advertisement, “clear and convincing”

1 evidence that Defendants knew the statements in the Advertisement were false or harbored serious
2 doubts as to their veracity. Not only was it impossible for an outside observer (or anyone other
3 than the jury itself) to know precisely which statements at issue in the 2009 case—which were
4 presented to the jury as a package, not individually—were deemed untrue, but all of the post-trial
5 evidence discussed above (including, not least of all, the later statements by Tarkanian’s political
6 opponents that he admits were true and which are substantially identical to the statements in the
7 Advertisement now at issue) strongly refutes this argument. Under these circumstances, Tarkanian
8 has plainly failed to meet his burden of demonstrating a probability that he will be able to establish
9 actual malice by clear and convincing evidence. *See, e.g., Reed*, 248 Cal. App. 4th at 862-63.

10 In sum, through this action, Tarkanian impermissibly seeks to use the courts to “bring[] a
11 disquieting stillness to the sound and fury of legitimate political debate.” *Beilenson*, 44 Cal. App.
12 4th at 956. This is precisely the type of case that is regularly and appropriately dismissed using the
13 anti-SLAPP procedure. It is plain from his opposition brief that he can show neither that the
14 statements are false (indeed, he admits that substantially similar statements made by prior political
15 opponents were true), nor that they were made with actual malice. Accordingly, this action should
16 be dismissed with prejudice, and Defendants’ costs and fees awarded.

17 II. ARGUMENT

18 A. Defendants Have Established By A Preponderance of the Evidence That 19 Tarkanian’s Suit Falls Squarely Within Nevada’s Anti-SLAPP Statute

20 1. The Preponderance Of The Evidence Shows That The Challenged 21 Statements Were Made In Good Faith

22 Tarkanian’s argument that Defendants have not met the first prong of the Nevada anti-
23 SLAPP test because they have failed to show that the challenged statements were made in good
24 faith is without merit. Under Nevada law, an anti-SLAPP communication is made in “good faith”
25 where it is “truthful or made without knowledge of its falsehood.” N.R.S. 41.637; *Shapiro v. Welt*,
26 389 P.3d 262, 267 (Nev. 2017). Defendants’ opening memorandum and supporting exhibits amply
27 demonstrated that the statements in question were truthful or, at a minimum, made without
28 knowledge of any falsehood. Specifically, in support of their motion:

- Defendants cited several substantially similar prior statements by political opponents that Tarkanian admits were true statements. Defs.’ Mot. at 7-8, 14-15, 17; Pl.’s Opp. at 23.
- Defendants submitted nine newspaper articles which reported that Tarkanian incorporated and/or was the registered agent for at least 13 entities that were found to be fraudulent telemarketing schemes that solicited millions of dollars from seniors. Ex. A to Decl. of B. Schrager in Support of Defs.’ Mot. (“Schrager Decl. 1”) (stating that Tarkanian was a “registered agent for companies that acted as fronts for fraudulent charities,” “worked for telemarketing scammers,” and “set[] up a business that bilked elderly people out of money”); Ex. B (explaining that “Tarkanian has plenty of his own baggage . . . Questionable business practices. A telemarketing fraud investigation into his former law clients”); Ex. C (Tarkanian “incorporated at least four business entities later found by state and federal authorities to be fronts for telemarketing schemes”); Ex. D (similar); Ex. E (similar); Ex. H (similar); Ex. J (similar); Ex. S (similar). At least four of these articles included direct admissions from Tarkanian of these facts (none of which were challenged as inaccurate in anyway by Tarkanian in his opposition brief). Schrager Decl. 1, Ex. D (“I did legal work for these companies”); Ex. H (“Tarkanian admitted he was a registered agent for several telemarketing companies that were indicted on fraud charges,”); Ex. J (“he was merely an attorney who did legal work on behalf of [the telemarketing companies]”); Ex. S (“Tarkanian testified at trial today that he helped set up 75 to 100 businesses” at least four of which were involved in fraud).
- Defendants submitted a letter from a former assistant U.S. Attorney further confirming those facts. Schrager Decl. 1, Ex. P (“It is patently false for you to claim that you had no involvement at all in this illegal activity.”); *id.* (“you incorporated at least thirteen fraudulent charities for your client”). Although the letter was made public over ten years ago, it has never been the subject of any legal action by Tarkanian.
- Defendants submitted two sets of pleadings from court cases demonstrating that individuals in charge of the companies in question were indicted and convicted of fraud. Schrager Decl. 1, Ex. Q; Ex. R.

These materials provided ample support that the statements that—(1) Tarkanian “set up 13 fake charities that preyed on vulnerable seniors,” which were (2) “fronts for telemarketing schemes,” and that (3) “[s]eniors lost millions from scams Danny Tarkanian set up,” Compl. ¶ 11—were truthful (or, at a minimum, made without knowledge of any falsehood), and more than suffice to satisfy Defendants’ burden of demonstrating, by a preponderance of the evidence, that the statements at issue were truthful statements made in good faith and, thus, fall squarely within the ambit of Nevada’s anti-SLAPP statute.¹

¹ Tarkanian does not dispute that Nevada’s Anti-SLAPP statute specifically protects (footnote continued)

1 Notably, Tarkanian has not argued that Defendants’ supporting evidence—including the
2 sources that quote Tarkanian directly and confirm his role in incorporating the fraudulent
3 charities—are inaccurate or misrepresent his statements. Rather, Tarkanian argues generally that
4 these sources would not be admissible evidence at trial and, therefore, cannot be considered by
5 this Court. Pl.’s Opp. at 11 (asserting all of Defendants’ exhibits are “not admissible as to the rules
6 of evidence, as they lack proper foundation, authenticity, as well as include hearsay documents”).
7 This general assertion is plainly insufficient to sustain an objection to any of the materials
8 submitted by Defendants. “When objecting to the admission of evidence [under Nevada law], a
9 party must state the specific grounds for the objection.” *In re J.D.N.*, 283 P.3d 842, 846 (Nev.
10 2012). “This specificity requirement applies not only to the grounds for objection, but also to the
11 particular part of the evidence being offered for admission.” *Id.* Because Tarkanian has failed to
12 make *any* “specific objection, it is impossible for . . . [the] court to make a proper ruling because it
13 is unclear what evidentiary question is at issue.” *Id.* Likewise, it is impossible for Defendants to
14 adequately address any evidentiary objections, as there are no specific objections to refute.
15 Because Tarkanian failed to properly lodge his objections when he had the opportunity,
16 Defendants’ evidence, which is plainly relevant, is admissible, *see* N.R.S. § 48.025 (stating that
17 relevant evidence is admissible), and Tarkanian’s argument here fails.²

18
19
20 statements made by candidates during the course of a political campaign “aimed at procuring any
21 . . . electoral action, result or outcome,” N.R.S. § 41.637 (1), or that the Advertisement clearly falls
22 into that category.

23
24
25 ² Despite Tarkanian’s failure to lodge any specific objections, the materials submitted by
26 Defendants in support of their brief are of the type courts routinely find admissible when
27 evaluating anti-SLAPP motions to dismiss. *See, e.g., Conroy v. Spitzer*, 70 Cal. App. 4th 1446,
28 1453 (Cal. Ct. App. 1999) (“Newspapers are generally thought to be reliable sources of
information”); *id.* at 1452 (accepting the trial court’s reliance on public reports, a reprimand letter,
newspaper articles, and plaintiff’s statements as competent evidence); *Reed*, 248 Cal. App. 4th at
850-51 (referencing a newspaper article); *see also* N.R.S. § 51.035; *Woods v. State*, 101 Nev. 128,
136-37 (Nev. 1985) (“Newspaper articles are not inadmissible under the hearsay rule if they are
offered not for the truth of their contents but for the fact of their publication.”). The statements
made by Tarkanian in the newspaper articles are statements of a party opponent and are also
exempted from hearsay. *See* N.R.S. § 51.035. All of the evidence presented in support of the Anti-
SLAPP Motion were further authenticated by an attorney affidavit (though, in any event,
authentication is insufficient to warrant completely disregarding evidence at this stage, *see*
(footnote continued)

Furthermore, the statements in the Advertisement are themselves plainly admissible and Tarkanian has conceded that substantially identical statements made by other candidates during the course of Tarkanian's prior attempts to win public office were truthful. Specifically, Tarkanian admits that two statements that made about him by the Horsford campaign during his 2012 run for congress, and one statement by his opponent Miller in his 2006 campaign for secretary of state, "do, in fact, state the truth." Pl.'s Opp. at 23. As the chart below demonstrates, there are no material differences between these statements and the three statements at issue in this case.

Miller Statement	Horsford Statement 1	Horsford Statement 2	Statements at Issue Here
"(Tarkanian) served as the resident agent and attorney for many fraudulent telemarketing organizations who bilked senior citizens out of millions of dollars." Pl.'s Opp. at 23.	"Tarkanian worked for telemarketing scammers." Pl.'s Opp. at 22.	"(Tarkanian) has been involved, as a businessman and lawyer, with at least 13 fraudulent charities." Pl.'s Opp. at 22.	Tarkanian -- "set up 13 fake charities that preyed on vulnerable seniors," -- "fronts for telemarketing schemes," -- "[s]eniors lost millions from scams Danny Tarkanian set up," Compl. ¶ 11.

It is simply implausible to assert (as Tarkanian necessarily must to prevail) that there is a meaningful difference between the Miller and Horsford statements and the statements at issue here. Indeed, if anything, one might argue that the language used in the Advertisement—i.e., that Tarkanian "set up" these fraudulent organizations, from which seniors lost millions—is narrower than Miller's assertion that Tarkanian "served as the resident agent and attorney," or than the

Fashion 21 v. Coal. for Humane Immigrant Rights of Los Angeles, 117 Cal. App. 4th 1138, 1147 (Ca. Ct. App. 2004) (refusing to reverse on authentication issue)); *see also* Soonhee A. Bailey and Jeffrey Jaeger, *Courtroom Hdbk. on Nv. Evid. Short Trial Rules*, Rule 17 (2016) ("Unless an objection is based upon a reasonable belief about its authenticity, the presiding judge shall admit the report, document or other item into evidence without requiring authentication or foundation by a live witness."). Finally, these exact types of documents (and indeed, in some cases the exact same documents, such as the Reid letter discussed above) were deemed admissible, introduced, and relied upon by both parties in Tarkanian's 2009 defamation action against Mike Schneider. *See* Second Decl. of B. Schrager in Support of Defs.' Reply ("Schrager Decl. 2,"), Ex. A (7/28/2009 Tr. at 2, 56-59, 108-109, 110-112; 7/29/2009 Tr. at 67-69).

1 Horsford campaign’s assertion that Tarkanian “worked for” and “has been involved, as a
2 businessman and lawyer” with the same. Each of these constructions could be read to implicate
3 Tarkanian in a much broader range of activities than merely “setting up” the organizations, as
4 asserted by the Advertisement. There is similarly no merit to the assertion that Tarkanian “set up”
5 such companies would connote, to the mind of the average viewer, that Tarkanian was guilty of a
6 crime, and certainly not any more so that the language used by Miller or the Hosford campaign
7 (i.e., that Tarkanian “served as a resident agent and attorney,” “worked” for, or “has been
8 involved, as a businessman and lawyer” for the same). *Compare Conroy*, 70 Cal. App. 4th at 1453
9 (finding candidate’s argument that opponent’s use of the term “guilty” in publication to supporters
10 did not “denote[]” that the plaintiff was in fact “found guilty of a crime,” deeming plaintiff’s
11 “definition of ‘guilty’ as overly narrow,” and affirming trial court’s grant of anti-SLAPP motion).

12 Moreover, it is well-established that this type of parsing of words—strictly construing one
13 statement as defamatory, while acknowledging that another, substantially similar statement is
14 not—cannot sustain Tarkanian’s defamation claims. To the contrary, when determining whether a
15 statement is false in a defamation case, courts do not look at the literal truth of “each word or
16 detail in a statement [to] determine[] whether or not it is defamatory; rather, the determinative
17 question is whether the ‘gist or sting’ of the statement is true or false.” *Oracle USA, Inc. v. Rimini*
18 *St., Inc.*, 6 F. Supp. 3d 1108, 1131 (D. Nev. 2014) (quoting *Ringler Assocs. v. Maryland Cas. Co.*,
19 80 Cal. App. 4th 1165, 1180-82 (Cal. Ct. App. 2000)); *see also Masson*, 501 U.S. at 517; *Reed*,
20 248 Cal. App. 4th at 861; *Pegasus*, 118 Nev. at 715 n.17; *Reader’s Digest Assn. v. Sup. Ct.*, 37
21 Cal.3d 244, 262 n.13 (Cal. Ct. App. 1984). Thus, where challenged statements are substantially
22 true and “*not spun out of whole cloth*,” dismissal under the anti-SLAPP statute is necessary and
23 appropriate. *Paterno v. Sup. Ct.*, 163 Cal. App. 4th 1342, 1355 (2008) (quotation marks and
24 citation omitted); *see also Annette F. v. Sharon S.*, 119 Cal. App. 4th 1146, 1169-70 (Cal. Ct. App.
25 2004).

26 Because Tarkanian acknowledges that substantially similar statements were, in fact, true,
27 the Court need not consider his additional argument that the presentation of the statements in the
28 Advertisement demonstrate that they were not made in good faith, Pl.’s Opp. at 11, but, in any

1 event, this argument is also without merit.

2 *First*, Tarkanian’s contention that the Advertisement’s statements (1) that Tarkanian “set
3 up 13 fake charities that preyed on vulnerable seniors,” and that (2) “[s]eniors lost millions from
4 scams Danny Tarkanian set up,” were falsely presented as quotes from a 2009 Las Vegas Review
5 Journal article, *see id.*, is simply incorrect. Even a cursory review of the Advertisement reveals
6 that the statements do not appear in quotation marks. Schrager Decl. 2, Ex. B. Moreover, in a
7 defamation case, the statement is measured by its “probable effect upon the mind of the average
8 reader.” *MacLeod v. Tribune Pub. Co.*, 52 Cal. 2d 536, 547 (Cal. 1959). *See also Weller v. Am.*
9 *Broad. Companies, Inc.*, 232 Cal. App. 3d 991, 1002–03 (Cal. Ct. App. 1991). It is simply not
10 plausible that the average reader would assume that these statements were direct quotes from the
11 cited article, where the statements were not in quotation marks (especially where the
12 Advertisement does include other language in quotation marks, which Tarkanian admits appears in
13 the cited news article). Pl.’s Opp. at 12.

14 *Further*, even if some viewers had the impression that these statements were quotes from
15 the cited newspaper, the well-established standards applicable to Tarkanian’s claims would make
16 this fact irrelevant. As noted, the key question is whether “the gist of the story, or the portion of
17 the story that carries the ‘sting’ of the [statement], is true.” *Pegasus*, 118 Nev. at 715 n.17 (quoting
18 *Masson*, 501 U.S. at 517); *see also Oracle USA*, 6 F. Supp. 3d at 1131. Thus, “‘slight inaccuracy
19 in the details’ or a “‘slight discrepancy’ of facts . . . [do] not defeat a substantial truth defense.”
20 *Reed*, 248 Cal. App. 4th at 860-61 (quoting *Masson*, 501 U.S. at 516-17, and *Gilbert v. Sykes*, 147
21 Cal. App. 4th 13, 28 (Cal. Ct. App. 2007)). *See also Wellman v. Fox*, 108 Nev. 83, 88 (Nev. 1992).
22 Indeed, in *Issa v. Applegate*, Case No. 37-2016-39144-CU, slip op. at 2 (Cal. Super. Ct. 2017), a
23 recent case in which a California trial court dismissed, pursuant to an anti-SLAPP motion, a
24 defamation case brought by one political candidate against another, the court found that, even
25 where a political advertisement contained language *in quotes* that did not actually appear in the
26 article cited in the advertisement, the plaintiff failed to establish the falsity of the statement

1 because the evidence showed that the gist of the statement was factually accurate.³

2 Here, the “gist” of the statements are not just plainly true (a fact that is sufficient on its
3 own to defeat Tarkanian’s argument), but are further supported by the cited newspaper article,
4 which expressly states that Tarkanian “did work for telemarketing firms accused of scamming the
5 elderly,” “Tarkanian admitted he was a registered agent for several telemarketing companies that
6 were indicted on fraud charges,” and explained that a former prosecutor had stated of Tarkanian’s
7 involvement with the companies that “there is a significant difference between not being indicted
8 for illegal activity and not being involved at all.” Schrager Decl. 1, Ex. H. Thus, the gist of the
9 Advertisement’s statements at issue here, i.e., that Tarkanian “set up” “fake charities” that “preyed
10 on vulnerable seniors,” is plainly in line with the assertions in the article.⁴ Moreover, the 2006 Las
11 Vegas Sun article also cited in the Advertisement states that “Tarkanian incorporated at least four
12 business entities later found by state and federal authorities to be fronts for telemarketing
13 schemes,” that the businesses “bilked millions of dollars from hundreds of victims across the
14 country,” and that Tarkanian admitted that he “did legal work for those companies.” Schrager
15 Decl. 1, Ex. D. Together, these sources amply meet Defendants’ burden of demonstrating, by a
16 preponderance of the evidence, that the statements were true or based on reliable evidence (and
17 thus made in good faith). *See, e.g., Conroy*, 70 Cal. App. 4th at 1448-49.

18 Moreover, even if the articles cited in the Advertisement did not provide sufficient support
19 for the statements made in the Advertisement (which Defendants deny), there is no requirement
20 that disseminators of political speech identify all of the sources for the truth of the statements
21 asserted in the speech itself. Indeed, in some defamation cases, the declarant is specifically

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23 ³ This decision (a tentative decision incorporated by reference into the Court’s final
24 judgment) is attached for the Court’s reference as Schrager Decl. 2, Ex. 3 to this Reply.

25 ⁴ Tarkanian also appears to argue that the statements at issue are not true to the overall
26 “gist” of the article, which discusses the 2009 defamation trial. This argument, however, misses
27 the point. There is no requirement that the statements reflect the gist of the full article; rather, the
28 only requirement is that they reflect the gist of the “*portion of the story* that carries the ‘sting’ of
the [statement].” *Pegasus*, 118 Nev. at 715 n.17 (quoting *Masson*, 501 U.S. at 517) (emphasis
added). In this case, the relevant portions of the article are the statements cited herein.

1 protected from revealing their sources. *Cf. Mitchell v. Superior Court*, 37 Cal. 3d 268, 276 (Cal.
2 1984) (discussing qualified privilege that reporters have from revealing confidential sources and
3 stating that there is “neither an absolute duty to disclose nor an absolute privilege to withhold”).
4 And, as demonstrated by the numerous documents submitted in support of Defendants’ opening
5 brief, there was ample support for the statements made in the Advertisement.

6 With respect to the remaining statement that Tarkanian challenges—that the companies he
7 incorporated were “fronts for telemarketing schemes”—Tarkanian’s argument that this statement
8 was not made in good faith because it is only a partial quote from the 2006 Las Vegas Sun article
9 it cites similarly fails. As a threshold matter, Tarkanian admits that the statement “fronts for
10 telemarketing schemes” does, in fact, appear in the article. Pl.’s Opp. at 12. As such, it is plainly
11 true on its face and is certainly sufficient to support a finding of good faith. It also accurately
12 portrays the full gist of the statement from which it is excerpted, which reports that “[i]n 1994,
13 Tarkanian incorporated at least four business entities later found by state and federal authorities to
14 be *fronts for telemarketing schemes*.” Schragar Decl. 1, Ex. D (emphasis added).

15 Tarkanian’s remaining argument boils down to his frustration that the Advertisement does
16 not highlight that Tarkanian was never charged with a crime or found to be a participant in the
17 underlying telemarketing scheme. But Tarkanian has produced no authority which says that a
18 political candidate must spend its resources to paint its opponent in a more favorable light. This
19 lack of authority is unsurprising, given that it is well-established that “defamation by omissions” is
20 simply not actionable. *Paterno*, 163 Cal. App. 4th at 1352–53. A plaintiff cannot force a defendant
21 “‘to write an objective account’ or tell the [other side] of the story.” *Id.* at 1353 (quoting *Reader’s*
22 *Digest*, 37 Cal.3d at 259).

23 Instead, the appropriate response is for the plaintiff to engage in counter-speech to provide
24 his own explanation to the public of the relevant facts. *See id.*; *see also, e.g., Brown v. Hartlage*,
25 456 U.S. 45, 61 (1952) (“[W]e depend for . . . correction not on the conscience of judges and
26 juries but on the competition of other ideas”) (citation omitted); *id.* (“In a political campaign, a
27 candidate’s factual blunder is unlikely to escape the notice of and correction by, the erring
28 candidate’s political opponent[,]” and “[t]he preferred First Amendment remedy of ‘more speech,

1 not enforced silence,’ thus has special force.”) (citations omitted). As discussed in Defendants’
2 opening brief, as a candidate for public office, Tarkanian had ample channels available to him for
3 such counter-speech, and he used them broadly. Defs.’ Mot. at 10-11. That was his appropriate
4 remedy; Tarkanian’s attempt to now litigate this matter by pursuing a claim for defamation and
5 intentional infliction of emotional distress is a classic SLAPP suit, and it has no place in this
6 Court. *See Beilenson*, 44 Cal. App. 4th at 956; *see also, e.g., Issa*, Case No. 37-2016-39144-CU,
7 slip op. at 3 (dismissing defamation claim against a political opponent under California’s anti-
8 SLAPP law); *Reed*, 248 Cal. App. 4th at 847 (same); *Conroy*, 70 Cal. App. 4th at 1449 (same);
9 *Desert Sun Publ’g*, 97 Cal. App. 3d at 54 (dismissing a defamation claim against political
10 opponent on summary judgment).

11 **2. The Challenged Statements Constitute Quintessential Political Speech**
12 **Squarely Protected By The First Amendment And Within The Anti-**
13 **Slapp Statute**

14 Tarkanian’s assertion that the challenged statements, made at the height of a political
15 campaign and lodged against a political opponent, are not protected by the First Amendment is
16 contrary to decades of incontrovertible jurisprudence. The U.S. Supreme Court long ago
17 recognized that the First Amendment “has its fullest and most urgent application precisely to”
18 speech related to “campaigns for public office.” *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271-72
19 (1971); *see also Eu*, 489 U.S. at 223 (same). This is because the First Amendment was “fashioned
20 to assure the unfettered interchange of ideas for the bringing about of political and social changes
21 desired by the people.” *Monitor Patriot Co.*, 401 U.S. at 271-72 (quoting *Roth v. United States*,
22 354 U.S. 476, 484 (1957)). It accordingly protects speech related to “every conceivable aspect of
23 [a political candidate’s] public and private life” that could be relevant to his fitness for office. *Id.*
24 at 274; *see also, e.g., Schatz*, 669 F.3d at 52 (“[C]riticizing public officials and hopefuls for public
25 office, is a core freedom protected by the First Amendment and probably presents ‘the strongest
26 case’ for applying ‘the *New York Times* rule.’”) (citation and quotation marks omitted); *Vogel*, 127
27 Cal. App. 4th at 1016 (“Public discussion about the qualifications of those who hold or wish to
28 hold positions of public trust presents the strongest possible case for applications of the safeguards

1 afforded by the First Amendment.”) (internal citations and quotation marks omitted); *Conroy*, 70
2 Cal. App. 4th at 1451 (same); *Desert Sun Publ’g*, 97 Cal. App. 3d at 50 (finding “the publication
3 of a letter, which, in substance, charges a candidate for public office with engaging in political
4 chicanery is protected by the First Amendment”).

5 Thus, the Supreme Court long ago expressly recognized that “[t]he application of the
6 traditional concepts of tort law to the conduct of a political campaign is bound to raise dangers for
7 freedom of speech” and “[a] community that imposed legal liability on all statements in a political
8 campaign deemed ‘unreasonable’ by a jury would have abandoned First Amendment law as we
9 know it.” *Monitor Patriot Co.*, 401 U.S. at 275. “[V]ehement, caustic, and sometimes
10 unpleasantly sharp attacks’ . . . must be protected if the guarantees of the First and Fourteenth
11 Amendments are to prevail.” *Id.* at 277 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270
12 (1964)).⁵ Nevada’s anti-SLAPP statute expressly reflects this well-established law, specifically
13 defining as a protected communication, any communication “aimed at procuring any . . . electoral
14

15 ⁵ As several courts have recognized, this standard is also solidly grounded in historical
16 tradition and core constitutional values. It reflects a “‘profound national commitment’ [that]
17 encompasses the constitutionally protected right not only to make responsible, but also to make
18 irresponsible charges against those in or seeking public office.” *Desert Sun Publ’g*, 97 Cal. App.
19 3d at 51. It is nothing less than “an essential part of our national heritage that an irresponsible slob
20 can stand on a street corner and, with impunity, heap invective on all of us in public office.” *Id.*
21 While it is true that, “[a]t such times, the line between liberty and license blurs . . . our dedication
22 to basic principles of liberty and freedom of expression will tolerate nothing less. The alternative
23 is censorship and tyranny.” *Id.* Thus, “Abe Lincoln, Horace Greeley, Williams Jennings Bryan,
24 Teddy Roosevelt, Franklin Roosevelt, and Barry Goldwater were assailed by their opponents as
25 being crazy. Washington, Jefferson, Andrew Jackson, Woodrow Wilson, and Grover Cleveland
26 were subject to planted stories concerning their sexual escapades.” *Beilenson*, 44 Cal. App. 4th at
27 954 n.3. “In the presidential race of 1800, Thomas Jefferson hurled invectives against John Adams
28 accusing him of excessive vanity, extreme jealousy, seeking to establish an Adams dynasty, and
plotting against George Washington. Adams called Jefferson, among other things, a drunk, a
coward, as being of mixed blood, an anti-Christian, and supporter of the French Jacobins.” *Id.* at
954 n.4 (citation omitted). And in the race against Congresswoman Rosen, Tarkanian himself
superimposed accusations that Rosen was a liar on images of seniors that he took from a Rosen
campaign ad. Schrager Decl. 1, Ex. M; Ex. O. In the original ad, the seniors were specifically
expressing their dislike for Tarkanian in support of Rosen. Schrager Decl. 1, Ex. M; Ex. O.
Tarkanian’s use of the images was not only unauthorized, it was so upsetting to one of the seniors
that she had to go to the hospital after seeing it. Schrager Decl. 1, Ex. M.

1 action, result or outcome” and those “made in direct connection with an issue of public interest in
2 a place open to the public or in a public forum.” N.R.S. § 41.637 (1), (4); Defs.’ Mot. at 9; *see also*
3 *Rosenauro v. Scherer*, 88 Cal. App. 4th 260, 273–74 (Cal. Ct. App. 2001), *as modified* (Apr. 5,
4 2001) (“It is well settled that [the anti-SLAPP statute] applies to actions arising from statements
5 made in political campaigns by politicians and their supporters, including statements made in
6 campaign literature.”) (citations omitted). Accordingly, the statements at issue here, all made in
7 the context of Representative Rosen’s bid for Congress against Tarkanian, are plainly protected by
8 the First Amendment and are squarely within the reach of Nevada’s anti-SLAPP statute.

9 Despite the weight of authority on this point, Tarkanian argues that the First Amendment
10 does not protect false speech. This is an academic point for the purposes of this action, where the
11 statements at issue are, in fact, true. That said, Tarkanian’s argument, as a matter of First
12 Amendment law, is simply wrong. *See, e.g., St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).
13 This is doubly so for speech made during the context of a political campaign, which is
14 unquestionably protected by the First Amendment, except in those extremely rare cases where the
15 defendant can prove, by clear and convincing evidence that the speech was made with actual
16 malice. *Id.*; *see also, e.g., Schatz*, 669 F.3d at 52 (“Provided that they do not act with actual
17 malice, they can badmouth their opponents, hammering them with unfair and one-sided attacks—
18 remember, speaking out on political issues, especially criticizing public officials and hopefuls for
19 public office, is a core freedom protected by the First Amendment and probably presents the
20 strongest case for applying the *New York Times* rule.”) (citations omitted). Indeed, in the context
21 of a political campaign, courts have repeatedly and consistently affirmed that *even false and*
22 *exaggerated rhetoric* is entitled to First Amendment protection. *See, e.g., id.*; *see also Annette F.*,
23 119 Cal. App. 4th at 1168 (explaining *New York Times v. Sullivan* “is based on a recognition that
24 ‘erroneous statement is inevitable in free debate’ and ‘must be protected’ to give freedom of
25 expression the ‘breathing space’ it needs to survive,” thus “the Supreme Court has chosen to
26 ‘protect some falsehood in order to protect speech that matters’”) (quoting *New York Times*, 376
27 U.S. at 271-72, and *Gertz v. Welch*, 418 U.S. 323, 341 (1974)).

28 Given the above, it is not surprising that cases brought by political rivals alleging

1 defamation in the context of campaign speech are routinely dismissed pursuant to anti-SLAPP
2 motions. Examples of this abound and, in most cases, the statements at issue clearly go far beyond
3 those at issue in this case. For example, in *Beilenson v. Superior Court*, a losing congressional
4 candidate sued his opponent for libel, asserting that statements in campaign mailers that he “ripped
5 off” taxpayers by maintaining a law practice while also in public office, and that he had “a serious
6 conflict of interest and [had] breach[ed] public trust” because he took money from private interests
7 through his outside legal work, were defamatory. 44 Cal. App. 4th at 947. Defendant filed an anti-
8 SLAPP motion to dismiss the case. In response, plaintiff argued that it was both legal and ethical
9 to maintain his law practice while working for the state and also to take fees from his private
10 clients. *Id.* at 951-52. Thus, the statements’ implication—that his actions were a “conflict of
11 interest” and “a breach of public trust”—were untrue and defamed him. *Id.* Despite finding that it
12 was, in fact, legal and ethical for the plaintiff to maintain a private law practice, the court granted
13 the anti-SLAPP motion and dismissed the action, explaining that, “[h]yperbole, distortion,
14 invective, and tirades are as much a part of American politics as kissing babies and distributing
15 bumper stickers and pot holders,” and that, “to ensure the preservation of a citizen’s right of free
16 expression, [the court] must allow wide latitude.” *Id.* at 954-55.

17 Similarly, in *Reed v. Gallagher*, a losing candidate for the California Assembly brought a
18 defamation action against his winning opponent for statements in a political advertisement that he
19 was “unscrupulous,” had been “ordered to pay back fees he improperly collected from and elderly
20 client,” and that he was a “crook.” 248 Cal. App. 4th at 848. In reviewing these statements on an
21 anti-SLAPP motion to dismiss, the court found that, with respect to the statement regarding fees,
22 despite inaccuracies in the statement (plaintiff paid back fees as part of a settlement, not pursuant
23 to a court order), it was substantially true and, as such, plaintiff could not show a probability of
24 succeeding on the merits of his claim. *Id.* at 860-61. Moreover, with respect to the related
25 accusation that plaintiff was a “crook,” the court explained that because it was made in the context
26 of a political campaign, “the audience would naturally anticipate the use of rhetorical hyperbole,”
27 *id.* at 859, and granted the anti-SLAPP motion to dismiss. *Id.* at 864.

28 Likewise, in *Conroy v. Spitzer*, the plaintiff filed a defamation suit against a political rival

1 for statements made by his opponent regarding a sexual harassment suit that had been lodged
2 against the plaintiff. 70 Cal. App. 4th at 1448-49. In a campaign mailer, the defendant had stated
3 that it was a “fact” that the plaintiff (1) had been found guilty of sexual harassment, (2) was
4 attempting to delay the lawsuit regarding the sexual harassment allegations until after the election,
5 and (3) that taxpayer money had been spent and would be spent on his legal fees. *Id.* at 1449. The
6 plaintiff argued that the use of the term “guilty” was defamatory because it gave the impression
7 that he had committed a crime—when in fact he had only been reprimanded by a committee of the
8 General Assembly, of which he was a member. *Id.* at 1452-53. The court found that his
9 construction of “guilty” was “overly narrow” and the statements at issue were not defamatory. *Id.*
10 Moreover, it found that the facts about the sexual harassment proceedings were well documented
11 in numerous newspapers and, as such—even if they were not true—the defendant’s statements
12 were based on reliable evidence such that the plaintiff could not prove actual malice. *Id.* The court
13 affirmed the dismissal of the defamation claims and an award of fees and costs. *Id.* at 1449, 1455.

14 Similarly, in *Issa v. Applegate*, the plaintiff, a U.S. Representative, sued his political
15 opponent for statements made in political advertisements. Among other things, the defendant
16 asserted that the plaintiff had “line[d] his own pockets” while in office. The plaintiff argued that
17 this statement purported to quote an article in the New York Times that did not actually contain
18 the quote and that it had a defamatory implication. Case No. 37-2016-39144-CU, slip op. at 2. The
19 court rejected this argument, finding it was sufficient that there was evidence that the plaintiff’s
20 net worth had increased while in office (even though the quote did not in fact appear in the
21 article). *Id.* Likewise, the court also dismissed the plaintiff’s challenge to an allegedly “doctored
22 quote” from a newspaper article that the damage from 9/11 “simply was an aircraft.” *Id.* at 2-3.
23 The plaintiff asserted that the quote smeared his reputation, and that the full context of the quote
24 was not provided. *Id.* The court concluded that, although not an exact quote, the statement was
25 substantially similar to a quote in a newspaper article (i.e., “simply was a plane crash”), and that
26 the plaintiff’s challenge was not actionable. *Id.* at 3.

1 **B. Tarkanian Cannot Demonstrate a Probability of Success on the Merits of His**
2 **Defamation Claims**

3 Tarkanian fails to carry his burden of providing prima facie evidence that he has a
4 probability of prevailing on his defamation claims for at least two reasons. *First*, Tarkanian *admits*
5 that statements that are substantially similar (indeed, virtually identical) to the statements
6 challenged in this suit are true. Pl.'s Opp. at 23. It is well-settled under Nevada law, that "[t]here
7 can be no liability for defamation without proof of falsity." *Gordon v. Dalrymple*, No. 3:07-CV-
8 00085-LRH-RA, 2008 WL 2782914, at *3 (D. Nev. July 8, 2008). *Second*, Tarkanian, a perennial
9 candidate for office and a congressional candidate at the time the challenged statements were
10 made, is a public figure. As such, he must make a prima facie showing that it is probable he will
11 prove, with clear and convincing evidence, that Defendants made the statements at issue with
12 actual malice. He has failed to make this showing. As a result, the defamation claims should be
13 dismissed pursuant to the anti-SLAPP law.

14 **1. Tarkanian Has Not and Cannot Make a Prima Facie Case for**
15 **Defamation Because the Statements In Question Are Not False**

16 To survive Defendants' anti-SLAPP motion to dismiss on his defamation claims,
17 Tarkanian must demonstrate with prima facie evidence, in pertinent part, "(1) a false and
18 defamatory statement by [the] defendant[s] concerning [him]." *Pegasus*, 118 Nev. at 718; *see also*
19 N.R.S. § 41.660 (3)(b). "A statement may only be defamatory if it contains a factual assertion that
20 can be proven false." *Pacquiao v. Mayweather*, 803 F. Supp. 2d 1208, 1211 (D. Nev. 2011); *see*
21 *also Gordon*, 2008 WL 2782914, at *3. Indeed, it is well-established that "[a] public figure ...
22 who seeks to recover damages for a defamatory statement bears the burden of proving the
23 challenged statement was false." *Vogel*, 127 Cal. App. 4th at 1021.

24 Tarkanian makes no argument and presents no proof that the Advertisement's statements
25 are false.⁶ Rather, he asserts that, *in the context* of the Advertisement (e.g., placement, font,

26 ⁶ Tarkanian does not appear to make the argument that the statements in the Advertisement
27 "were in fact substantially false, i.e., diverged from the true facts in and to such manner and
28 degree as to produce a more damaging effect on the mind of the reader than would the truth,"
 (footnote continued)

1 juxtaposition to certain pictures, etc.), the statements could potentially be taken to imply a
2 defamatory meaning: specifically, that Tarkanian engaged in criminal or fraudulent activity. Pl.’s
3 Opp. 18-22. While it is true that in some cases courts do evaluate whether alleged defamatory
4 statements imply a defamatory meaning, that is not so in a case like this where the plaintiff has all
5 but admitted that the alleged statements are true. *See* discussion *supra* at 8-11. Indeed, as the
6 Nevada Supreme Court explained in *Wellman v. Fox*, 108 Nev. 83, 88 (Nev. 1992), “factual
7 assertions are not actionable unless they have no basis in truth.” *Id.* at 88 (citing *Milikovich v.*
8 *Lorain Journal Co.*, 497 U.S. 1 (1990)); *see also Pegasus*, 118 Nev. at 715 (“Nor is a statement
9 defamatory if it is absolutely true, or substantially true.”).

10 Nor does the mere existence of some ambiguity in the meaning of a statement suffice to
11 carry a defamation plaintiff’s burden of demonstrating that the statements at issue were false. *See*,
12 *e.g., Vogel*, 127 Cal. App. 4th at 1021-22 (rejecting argument that ambiguity in statement was
13 sufficient to establish plaintiff’s ability to prove the statement’s substantial falsity where plaintiff
14 failed to plainly refute the defamatory imputation by stating the true facts, and granting anti-
15 SLAPP motion to dismiss); *Annette F.*, 119 Cal. App. 4th at 1167-68 (affirming grant of anti-
16 SLAPP motion to dismiss even though defendant’s statement that the plaintiff “was a ‘convicted
17 perpetrator of domestic violence’ *could be* [wrongly] interpreted to imply that [she] had been
18 convicted of a crime . . . the dictionary meaning of the word ‘convict’ *does not necessarily*

19 _____
20 *Vogel*, 127 Cal. App. 4th at 1021, but even if he had, any such argument must be rejected. As
21 discussed *supra* at 8-11, the statements are substantively indistinguishable from prior statements
22 made by Tarkanian’s former political competitors, each of which Tarkanian concedes are true.
23 Pl.’s Opp. at 23. The small differences in wording between the Miller, Hosford and Rosen
24 statements are of no legal consequence. It has long been the law that a defamation plaintiff cannot
25 make its necessary showing of falsity so long as “the *substance* of the charge [is] true, irrespective
26 of slight inaccuracy in the details.” *Vogel*, 127 Cal. App. 4th at 1021 (quoting *Masson*, 501 U.S. at
27 516-17). In this case, the issue is not even one of small inaccuracies, it is merely a difference in
word choices, none of which vary “to such manner and degree as to produce a more damaging
effect on the mind of the [audience],” *id.*, than the statements that Tarkanian admits are truthful.
See discussion *supra* at 8-11. If anything, the assertion in the Advertisement that Tarkanian “set
up” fraudulent organizations, from which seniors lost millions—is narrower than the assertion that
Tarkanian “served as the resident agent and attorney”, or that Tarkanian “worked for” and “has
been involved, as a businessman and lawyer” with the same. *See id.*

1 connote a finding of guilt of a crime”) (emphasis added); *Conroy*, 70 Cal. App. 4th at 1453
2 (finding candidate’s argument that opponent’s use of the term “guilty” in publication to supporters
3 did not “denote[]” that the plaintiff was in fact “found guilty of a crime, deeming plaintiff’s
4 “definition of ‘guilty’ [as] overly narrow,” and affirming trial court’s grant of anti-SLAPP
5 motion).⁷

6 Moreover, because the statements at issue were made in the context of a clearly-marked
7 advertisement sponsored by a political opponent in the course of a political campaign, Tarkanian’s
8 argument cannot be sustained. It is well-settled that, “[w]here potentially defamatory statements
9 are published in a setting . . . in which the audience may anticipate efforts by the parties to
10 persuade others to their positions by the use of epithets, fiery rhetoric or hyperbole, language
11 which generally might be considered as statements of fact may well assume the character of
12 statements of opinion.” *Reed*, 248 Cal. App. 4th at 859 (quoting *Gregory v. McDonnell Douglas*
13 *Corp.*, 17 Cal. 3d 596, 601 (Cal. Ct. App. 1976)) (alteration in original). This is particularly true
14 for statements made during a political campaign, a context in which “hyperbole, distortion,
15 invective, and tirades are as much a part of American politics as kissing babies.” *Beilenson*, 44
16 Cal. App. 4th at 954; *see also, e.g., Desert Sun Publ’g*, 97 Cal. App. 3d at 53 (finding no libel
17 action for statements in a letter “of the kind typically generated in a spirited dispute in which the
18 loyalties and subjective motives of rivals are attacked and defended” (citation and quotation marks
19 omitted)); *Reed*, 248 Cal. App. 4th at 859 (finding that explicit statements that candidate was a
20 “crook” made in the context of a political campaign did not imply defamatory meaning given that
21 “a political campaign, [is] a context in which the audience would naturally anticipate the use of
22 rhetorical hyperbole”); *Rosenaaur*, 88 Cal. App. 4th at 264–65 (“In the context of a heated
23

24 ⁷ For similar reasons, Tarkanian’s contention that the font, background, or accompanying
25 photo of Tarkanian in the Advertisement render the statements defamatory is without merit. The
26 average viewer would easily understand the Advertisement to be a political ad, in which similar
27 presentation is commonplace. *See, e.g., Reed*, 248 Cal. App. 4th at 860 (rejecting argument by
28 political candidate that “the image of the ... ad, which, when viewed in combination with the
voiceover narration, implies [an actionable falsity]”).

1 confrontation at a shopping center between political opponents, a foe’s charge of “thief” would be
2 reasonably interpreted as loose figurative language and hyperbole, not a claim that the plaintiff
3 actually had a criminal past.”). Indeed, given the broad First Amendment protections applicable to
4 political speech in the context of a political campaign, “[p]rovided that they do not act with actual
5 malice, [political candidates] can badmouth their opponents” *Schatz*, 669 F.3d at 52 (citing
6 *Harte-Hanks*, 491 U.S. at 686-87). *See also Beilenson*, 44 Cal. App. 4th at 955 (“It is abhorrent
7 that many political campaigns are mean-spirited affairs that shower the voters with invective
8 instead of insight. . . . But to ensure the preservation of a citizen’s right of free expression, we
9 must allow wide latitude.”).

10 Nevada law also recognizes this principle. Specifically, in *Wellman v. Fox*, the Nevada
11 Supreme Court evaluated whether statements published in a flyer in the context of a union election
12 were defamatory. The plaintiffs argued that the statements in the flyer that: (1) plaintiffs were a
13 “gang,” (2) their “leader” had been thrown off the union board for fraudulently obtaining funds,
14 and (3) their “gang” was “replete with nepotism” and “included a strikebreaker,” were defamatory
15 because they falsely implied that plaintiffs were thieves, dishonest, crooked, untrustworthy and, in
16 some instances, the statements overstated the truth. 108 Nev. at 85-86. They further asserted that
17 they had never been convicted of a crime or involved with a criminal gang. *Id.* at 85. Despite all of
18 this, the Court found that the majority of the statements in question were not actionable as
19 defamation because they were based in truth. *Id.* at 88. It further found—even with regard to the
20 statements that were *not* based in truth—that such statements were the type of “exaggerated
21 statements [that] are permissible in contexts in which the statements would be interpreted by a
22 reasonable person as mere rhetorical hyperbole.” *Id.* The Court specifically found that “the context
23 of a union *election*” was precisely such a context. *Id.* (emphasis added).⁸

24
25 ⁸ Defendants are aware of only one Nevada case which found that statements made by a
26 political opponent in the context of a political campaign attack ad could have an implied
27 defamatory meaning. In *Miller v. Jones*, 114 Nev. 1291 (Nev. 1998), the Court found that the
28 statement that a mayoral candidate “was driving” a car in which cocaine had been found could
have an implied defamatory meaning where the candidate was not actually driving the car at the

(footnote continued)

1 The parallels between *Wellman* and this case are striking. Like the plaintiffs in *Wellman*,
2 Tarkanian asserts that the statements in the Advertisement are defamatory because they could be
3 understood to imply that he is a criminal and/or that he has engaged in fraudulent behavior. Pl.’s
4 Opp. at 19-21. But, just like the majority of the statements in *Wellman*, the statements at issue here
5 are true and, as such, are not actionable as defamation. *See* discussion *supra* at 8-11. Further, and
6 even if the Court were to find persuasive Tarkanian’s argument that the statements in the
7 Advertisement are somehow meaningfully different from the statements by Miller and the
8 Horsford campaign, as in *Wellman* any such difference would merely be “exaggerated statements”
9 “interpreted by a reasonable person as mere rhetorical hyperbole.” 108 Nev. at 88. Indeed, the
10 *Wellman* analysis reveals that the key contextual element for Defendants’ statements is not the
11 way the statements were presented in the Advertisement as Tarkanian argues.⁹ Instead, it is the

12 _____
13 time that the cocaine was discovered but, rather, had driven the car prior to that. *Miller* is
14 distinguishable for several reasons. First, it did not involve a case where the plaintiff conceded that
15 virtually identical statements were true and non-actionable. Second, *Miller* pre-dated Nevada’s
16 anti-SLAPP statute and is a clear outlier, as the vast majority of defamation cases brought by
17 political actors in similar cases are routinely dismissed as unsustainable under either the First
18 Amendment or, where available, anti-SLAPP statutes. *See* discussion *supra* at 13-17. Moreover, as
Justice Shearing’s dissent in *Miller* notes, the decision in *Miller* is out of line with the court’s
decision in *Wellman*, which is strikingly analogous to the instant case, has no dissents, and which
this Court is bound to follow.

19 ⁹ In support of his argument that the Court may look at the implied meaning of the
20 statements at issue, Tarkanian relies primarily on *Hawran v. Hixson*, 209 Cal. App. 4th 256 (Cal.
21 Ct. App. 2012) and *Weller v. American Broadcasting Cos., Inc.*, 232 Cal. App. 3d 991 (Cal. Ct.
22 App. 1991). Pl.’s Opp. at 18-19. These cases are not applicable here, as neither involves
23 statements made in a political campaign which, as discussed, are treated markedly different by the
24 courts. Moreover, to the extent that these cases are relevant, they actually support *Defendants’*
25 position. The key finding in both was that the mechanisms by which the statements were presented
26 were “usually intended to be factual, as opposed to rhetorical, persuasive, or evaluative.” *Hawran*,
27 209 Cal. App. 4th at 292; *see also Weller*, 232 Cal. App. 3d at 1004 (noting that presentation in
28 the form of a neutral broadcast would almost certainly be understood as factual, unlike hyperbole
or satire). To the contrary, and as courts have universally recognized, in the context of a political
campaign, neither the general public nor the candidate has any expectation that statements made
against opponents will be factual. Rather, the rhetorical and persuasive are to be expected and are
broadly protected by the First Amendment to ensure that our founders’ commitment to the
bedrock principles of free discourse to advocate for political and social change are not
impermissibly chilled by overzealous policing of the spirited discourse that often accompanies
important efforts to do just that.

1 fact that they were made in the context of a campaign, an environment in which the average
2 viewer would expect “use of epithets, fiery rhetoric or hyperbole.” *Reed*, 248 Cal. App. 4th at 859.
3 And a defamatory meaning could simply not be implied. *See* discussion *supra* at 18-21.

4 **2. Tarkanian Fails To Make A Prima Facie Case For Actual Malice**

5 Because Tarkanian has failed to make a prima facie case that the statements at issue were
6 false, the Court need not consider whether he has demonstrated that he would be able to show, by
7 clear and convincing evidence, that Defendants made the statements with actual malice. *Nygard,*
8 *Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1054 (Cal. Ct. App. 2008); *see also Paterno*, 163
9 Cal. App. 4th at 1345-46. But even if the Court were to reach this prong, Tarkanian has failed to
10 carry his burden here as well. Whether Tarkanian is a “public figure” (as the case law squarely
11 supports, *see* Defs.’ Mot. at 13-14, *see also Monitor Patriot Co.*, 401 U.S. at 271 (finding that
12 candidates for office are public figures subject to the *New York Times* standard)), or a “limited”
13 public figure (i.e., subject to the *New York Times v. Sullivan* standard for statements made in
14 relation to his candidacy for Congress), to succeed on his defamation claim he must show, by clear
15 and convincing evidence, that the statements he challenges were published with actual malice.¹⁰
16 *Rosenaaur*, 88 Cal. App. 4th at 274 (quoting *Beilenson*, 44 Cal. App. 4th at 950); *Conroy*, 70 Cal.
17 App. 4th at 1451; *Wynn*, 117 Nev. at 17.

18
19 ¹⁰ Tarkanian does not directly contest that he is a public figure and that he must make a
20 showing of actual malice. Rather, he concedes that he is a limited public figure for the purposes of
21 his defamation claims, but asserts that his status changed as soon as the election occurred. Pl.’s
22 Opp. at 14-15. That is to say, Tarkanian claims that, on November 9th, he ceased to be a public
23 figure. Tarkanian cites no authority for this position and, in fact, there are numerous cases
24 indicating just the opposite. *See, e.g., Rosenblatt v. Baer*, 383 U.S. 75, 87 n.14 (1966) (“It is not
25 seriously contended, and could not be, that the fact that respondent no longer supervised the Area
26 when the column appeared has decisional significance here.”); *Jones v. New Haven Register, Inc.*,
27 763 A.2d 1097, 1098–1104 (Conn. Super. Ct. 2000) (finding that a former candidate may remain
28 so well known that he is can become “general” purpose public figure even twenty years after the
alleged defamation); *Redmond v. Sun Pub. Co., Inc.*, 239 Kan. 30 (Kan. 1986) (rejecting the
argument that plaintiff-candidate returned to private status one day after an election defeat); *A. S.*
Abell Co. v. Barnes, 265 A.2d 207, 216–18 (Md. 1970) (defeated candidate’s public figure status
was not forfeited in an short period after her defeat); *Perkins v. Mississippi Publishers Corp.*, 241
So. 2d 139, 142 (Miss. 1970) (passage of a few weeks since an election did not terminate plaintiff-
candidate’s public figure status, particularly where he was also “widely known” in the state).

1 In the anti-SLAPP context, this means that Tarkanian must make a prima facie showing
2 that he will be able to prove, by *clear and convincing* evidence, that the statements were made
3 with either knowledge of their falsity or entertained serious doubts as to their truth. *See Reed*, 248
4 Cal. App. 4th at 193-94; *Pegasus*, 118 Nev. at 722; *see also Christian Research Inst.*, 148 Cal.
5 App. 4th at 84 (dismissing defamation claim under anti-SLAPP statute for failure to show “actual
6 malice” with clear and convincing evidence) (citing *Bose*, 466 U.S. at 511). “Clear and convincing
7 evidence” means that the evidence must be “so clear as to leave no substantial doubt” and “[i]t
8 must be sufficiently strong to command the unhesitating assent of every reasonable mind.” *Reed*,
9 248 Cal. App. 4th at 861-62 (citations and quotation marks omitted); *see also Wynn*, 117 Nev. at
10 17. “There is a ‘significant difference between proof of actual malice and mere proof of falsity.’”
11 *Reed*, 248 Cal. App. 4th at 194 (quoting *Bose*, 466 U.S. at 511). “The test is subjective one,
12 relying as it does on what the defendant *believed* and *intended to convey*, and not what a
13 reasonable person would have understood the message to be.” *Pegasus*, 118 Nev. at 722
14 (quotation marks and citation omitted). Tarkanian does not and cannot make this showing for
15 several reasons.

16 As discussed, the statements in question were plainly true. Accordingly, there is no
17 situation in which Tarkanian could show actual malice. Nevertheless, even if the statements were
18 not true, Tarkanian has failed to introduce any evidence that Defendants knew the statements were
19 false or published them in reckless disregard of such falsity. The crux of Tarkanian’s actual malice
20 argument centers on the 2009 jury verdict that Tarkanian obtained against former political
21 opponent Mike Schneider, which Tarkanian argues is proof that Defendants knew that the
22 statements in the Advertisement were false. Specifically, Tarkanian argues that Defendants were
23 aware that the statements in this case were false because the 2006 Las Vegas Sun and 2009 Las
24 Vegas Review-Journal articles cited in the Advertisement discusses the jury verdict. Pl.’s Opp. 24-
25 25. Further, Tarkanian argues that the cease and desist letter that he sent to Defendants specifically
26 mentioned the verdict, and also should have alerted them to the fact that the statements were false.
27 Pl.’s Opp. 24-25. Tarkanian’s argument is unavailing for multiple reasons.

28 *First*, any knowledge of the verdict is meaningless, given that it is not a final judgment and

1 has no preclusive effect. *See Richardson ex rel. Richardson v. Navistar Intern. Transp. Corp.*, 8
2 P.3d 263, 265 (Utah 2000) (jury verdict has “no binding or preclusive effect” because the case was
3 settled before the judgment was final). Moreover, given that it involved materially different
4 statements and different parties, as discussed at length in Defendants’ motion, it simply is not
5 relevant to the statements at issue here and certainly could not have alerted Defendants’ to the fact
6 that the statements used in the Advertisement were false.¹¹

7 *Second*, neither the 2006 Las Vegas Sun article, 2009 Las Vegas Review-Journal article,
8 nor the cease and desist letter identify the specific statements deemed defamatory in the Schneider
9 case. Accordingly, there was no way to know from reading these sources whether the statements
10 in the Schneider case were substantially similar to the statements at issue in this action. Indeed,
11 given that *both* the 2009 Las Vegas Review-Journal article and the article *cited in the cease and*
12 *desist letter* actually discuss statements that are materially *different* from the statements here, it is
13 more likely that both sources would have assured Defendants that the statements in the
14 Advertisement—which were virtually identical to non-actionable statements made by Tarkanian’s
15 prior political opponents and supported by several sources, including not only the media cited in
16 the Advertisement itself, but also multiple other news articles, a public letter from a former
17 assistant U.S. Attorney that was never the subject of any legal action by Tarkanian, and public
18 records, *see* discussion *supra* at 5-11—that the verdict in the Schneider case had no bearing on the

19
20
21 ¹¹ Tarkanian asserts that Defendants misrepresented the statements at issue in the
22 Schneider case. This is simply not true. Defendants provided the Court with both the Amended
23 Complaint as well as the Special Verdict form in the Schneider case, and argued that because the
24 Special Verdict form did not separate the statements at issue, it was impossible for anyone not in
25 the jury room during deliberations to know which statement the jury found to be false. Schrager
26 Decl. 1, Ex. U. This argument would make no sense if the case involved no statements remotely
27 similar to those at issue here. Moreover, to the extent that Tarkanian makes this argument because
28 Defendants primarily discuss the statements in the 2009 case that were markedly different from
those at issue here, Defendants plainly note at page 15 of their opening brief that the lawsuit was
based “in part” on these statements. This is similarly noted in Defendants’ opposition to Plaintiffs’
motion to continue. Defs.’ Opp. to Pl.’s Mot to Continue at 5 (noting that the Schneider case “also
challenged entirely different statements”).

1 truth of the statements in the Advertisement.¹²

2 As previously explained, the Schneider case was based on allegations of defamatory
3 statements that go far beyond and significantly differ from the statements at issue in this case.
4 Further, each of these statements was not presented to the jury for evaluation of their truth one-by-
5 one. Instead, the statements were grouped together into three separate categories throughout the
6 litigation, beginning with Tarkanian's complaint and continuing to the Special Verdict Form
7 submitted to the jury. Schrager Decl. 1, Ex. G; Ex. U. The first category of statements consisted of
8 three statements that Schneider made in an appearance on the Ralston show during the course of
9 the campaign, specifically that: (1) Tarkanian "turned state's evidence"; (2) set up 19 fraudulent
10 corporations; and (3) "was under Grand Jury Investigation." Schrager Decl. 1, Ex. G. The second
11 category consisted of two statements that were purportedly included on flyers distributed by the
12 Schneider campaign, specifically: (1) "Why did Danny Tarkanian betray the most vulnerable
13 among the elderly?"; and (2) "Why did he set up an organization to cheat us out of over \$2 million
14 of out hard earned retirement money?" Schrager Decl. 1, Ex. G.¹³ Tarkanian's actual malice
15 argument in this case is dependent upon his being able to successfully argue, *first*, that the
16 statements in the Advertisement are in fact equivalent to the statements at issue in the Schneider
17 litigation and, *second*, that, based on clear and convincing evidence, Defendants knew that the jury
18 had found the specific equivalent statements to be defamatory or harbored serious doubts as to
19 their truth as a result. He has not and cannot show either.

20 *First*, the statements are substantially different from those at issue in the Advertisement.
21 *Second*, Tarkanian has failed to produce any evidence that would tend to show, *much less*
22 *demonstrate by clear and convincing evidence*, that Defendants were both aware that the same

23
24 ¹² In fact, the only indication as to substantive statements at issue in the 2009 defamation
25 suit contained in the cease and desist letter is a citation to a blog page in which a columnist
26 provides a highly slanted discussion of the suit, which appears to be as much opinion as it is fact
and, accordingly, was entirely insufficient to provide Defendants' with the knowledge Tarkanian
would impute to them, and certainly not sufficient to meet the "clear and convincing" standard.

27 ¹³ There is no way for Defendants or the Court to evaluate the statements in the flyers,
28 because Tarkanian did not submit them to the Court and they are no longer publicly available.

1 statements were adjudged defamatory or that they had serious doubts as to their truth. To the
2 contrary, the “evidence” that Tarkanian presents, at best, leaves “substantial doubt” on this front
3 and is not “sufficiently strong to command the unhesitating assent of every reasonable mind” for
4 several reasons. *Reed*, 248 Cal. App. 4th at 861-62 (citations and quotation marks omitted). Most
5 plainly, the articles that Tarkanian cites provided no way for anyone to determine which of the
6 statements at issue in the Schneider litigation were specifically found to be defamatory, or how the
7 combination of these statements influenced a finding of defamation. And although it is well-
8 settled that a defamation defendant need not investigate the truth of a statement in order to prevail
9 over an actual malice argument, *Pegasus*, 118 Nev. at 723, even a close review of the papers and
10 transcripts from the Schneider case does not support a finding that the statements at issue in the
11 Advertisement here were false. To the contrary, the trial transcripts demonstrate that the bulk of
12 the testimony focused on Schneider’s statements that Tarkanian “turned state evidence” and “was
13 under Grand Jury investigation”—two statements not at all at issue in the instant litigation.
14 Schrager Decl. 2, Ex. A (7/28/2009 Tr. at 42-44, 46-51, 63-64; 7/29/2009 Tr. at 16, 19, 27-28, 37-
15 38, 40, 42, 46, 51-53, 56, 114-117, 139; 7/30/209 Tr. at 40-42, 46; 7/31/2009 Tr. at 22-24). And,
16 given that statements bearing much stronger resemblance to Defendants’ had been published as
17 recently as 2012 without challenge, *see, e.g.*, Schrager Decl. 1, Ex. A; Ex. B, there is simply no
18 plausible argument that a fact finder could conclude that the 2009 case sufficed to alert Defendants
19 that the statements in the Advertisement were false or that they acted with actual malice,
20 particularly under the applicable heightened standard.

21 Finally, although an anti-SLAPP movant need not show that the plaintiff had an improper
22 motive in filing suit, it is worth noting that, not only does Tarkanian’s actual malice argument fall
23 woefully short, it also makes plain his actual motives for filing suit in the first place. Specifically,
24 Tarkanian repeatedly argues that the Schneider case should have alerted Defendants *not* that
25 specific statements in the Advertisement were *false*, but that the *general discussion* regarding
26 Tarkanian’s involvement in entities that defrauded seniors had a defamatory *implication* and was
27 therefore off-limits from further political discourse. Indeed, Tarkanian’s cease and desist letter
28 states just that. *See* Pl.’s Ex. 6 (“A jury has found this *line of attack* to be defamatory.”) (emphasis

1 added). Thus, it is clear that Tarkanian's true motive in bringing this suit is to insulate himself
2 from similar political attacks in the future, by chilling political speech that even he admitted
3 during the course of the Schneider litigation was well within the bounds of the public's right to
4 know. Schrager Decl. 2, Ex A (7/30/2009 Tr. at 74) ("Q. [Directed to Tarkanian:] [d]o the voters
5 have a right to know about your legal background and who you do business with?" A. "Sure.").
6 But the U.S. Supreme Court has long held that such speech is broadly protected. *Eu*, 489 U.S. at
7 223; *Harte-Hanks*, 491 U.S. at 686-87. And because Tarkanian can show neither that the
8 statements were substantially false nor made with actual malice, he may seek no remedy in this
9 Court. Defendant's Anti-SLAPP Motion should be granted, and the defamation claims dismissed.

10 **C. Tarkanian Has Provided No Evidence To Support His Intentional Infliction**
11 **Of Emotional Distress Claim**

12 Tarkanian's argument that he has presented sufficient evidence of intentional infliction of
13 emotional distress because "accusing a political opponent of criminal activity is extreme and
14 outrageous," Pl.'s Opp. at 28, completely misses the mark. As explained in Defendants' opening
15 brief, "extreme and outrageous conduct is that which is outside all possible bounds of decency and
16 is regarded as utterly intolerable in a civilized community." *Chehade Refai v. Lazaro*, 614 F.
17 Supp. 2d 1103, 1121 (D. Nev. 2009) (quoting *Maduikie v. Agency Rent-A-Car*, 114 Nev. 1 (Nev.
18 1998) (per curiam)).

19 Yet, courts have repeatedly found that in the context of a political campaign accusations of
20 wrong doing, criminality, fraud are not only tolerable, but are to be expected and must be
21 permitted in order to maintain the protections of free speech. *See, e.g., Harte-Hanks*, 1 U.S. at 687
22 ("When a candidate enters the political arena, he or she 'must expect that the debate will
23 sometimes be rough and personal.'"); *Schatz*, 669 F.3d at 52 ("Campaigning for public office
24 sometimes has the feel of a contact sport, with candidates, political organizations, and others
25 trading rhetorical jabs and sound-bite attacks in hopes of landing a knockout blow at the polls. It is
26 not for the thin-skinned or the fainthearted, to use two apropos clichés."); *Desert Sun Publ'g*, 97
27 Cal. App. 3d at 54 ("Once an individual decides to enter the political wars, he subjects himself to
28 this kind of treatment[, and] deeply ingrained in our political history is a tradition of free-

1 wheeling, irresponsible, bare knuckled, Pier 6, political brawls”). Indeed, court after court has
2 rejected as actionable claims by political actors when their opponents or the media did in fact
3 *actually* call them a criminal or a crook. *Vogel*, 127 Cal. App. 4th at 1010; *Reed*, 248 Cal. App.
4 4th at 859; *Rosenaaur*, 88 Cal. App. 4th at 264–265; *Shulman v. Hunderfund*, 905 N.E.2d 1159,
5 1160 (N.Y. 2009). Here, of course, the Advertisement does no such thing. And if actually *calling*
6 an opponent a “crook” or “guilty” (when they have not in fact been convicted of a crime) is not
7 “extreme and outrageous” in the political context, it is plain that airing an Advertisement that
8 one’s opponent takes to merely imply the same cannot possibly suffice to meet this standard.

9 In any event, Tarkanian bears the burden of making a prima facie showing that he can
10 prevail on this claim, as well as his defamation claim. He has plainly failed to carry this burden.
11 As explained above, Tarkanian has failed to show any reckless behavior on Defendants’ part. And,
12 his bare assertion in his opposition brief—not even in his sworn affidavit, *see* Pl.’s Ex. 12
13 (containing no mention of emotional distress)—that the statements at issue have “in fact, caused
14 severe emotional distress,” simply cannot serve as evidence of such stress. *Ademiluyi v. Phillips*,
15 No. 2:14-CV-00507-MMD, 2015 WL 5146898, at *4 (D. Nev. Sept. 2, 2015) (explaining that “[a]
16 plaintiff must show severe or extreme emotional distress through objectively verifiable indicia,”
17 and, as such, “[b]rief assertions of . . . in declarations or depositions are insufficient to raise
18 genuine issues of material fact.”). Thus, Tarkanian has plainly failed to present any evidence that
19 he can put forth a prima facie case for intentional infliction of emotional distress. *See Maduike v.*
20 *Agency Rent-A-Car*, 114 Nev. 1, 5 (Nev. 1998) (affirming involuntary dismissal of intentional
21 infliction of emotional distress claim where plaintiff failed to present prima facie case of
22 outrageous conduct).

23 **D. Tarkanian Is Not Entitled to Fees**

24 Finally, Tarkanian’s argument that he is entitled to fees under the anti-SLAPP statute must
25 also be rejected. As demonstrated, Defendants’ Anti-SLAPP Motion was far from frivolous. It is
26 supported by ample Supreme Court and anti-SLAPP precedent, and “[t]he overwhelming weight
27 of authority” is that cases such as this one involving political rivals—including cases in which the
28 speech at issue is objectively more damaging than the statements at issue here—involve “protected

1 speech and, as such, recovery by a candidate is highly unusual.” *Beilenson*, 44 Cal. App. 4th at
2 955 (citing cases); *see also, e.g., Issa*, Case No. 37-2016-39144-CU, slip op. at 3 (dismissing
3 defamation claim against a political opponent under California’s anti-SLAPP law); *Reed*, 248 Cal.
4 App. 4th at 847 (same); *Conroy*, 70 Cal. App. 4th at 1449 (same); *Rosenaaur*, 88 Cal. App. 4th at
5 264–265 (same).

6 In other words, this is a textbook SLAPP case, in which Tarkanian ultimately seeks, not to
7 vindicate a legitimate legal wrong, but rather to dissuade political opponents from attacking his
8 integrity based on his prior involvement with fraudulent telemarketing companies. Indeed, given
9 that Tarkanian *admits* in his opposition brief that substantially identical statements to the
10 statements at issue here are true, Pl.’s Opp. at 23, there is plainly no basis for his claims against
11 Defendants and his Complaint should be dismissed in its entirety.

12 III. CONCLUSION

13 Tarkanian brought this lawsuit against Defendants to punish a successful political
14 opponent for airing an advertisement during a congressional campaign that did nothing more than
15 discuss Tarkanian’s much publicized involvement with companies that defrauded seniors of
16 millions of dollars. This was unquestionably core political speech concerning an issue of public
17 interest, falling squarely within the reach of Nevada’s anti-SLAPP statute. Because Tarkanian
18 cannot show that he is likely to prevail on the merits of these claims, Defendants are entitled to a
19 prompt order of dismissal, as well as their reasonable attorney’s fees and costs incurred in
20 defending this case.

21 DATED this 20th day of April, 2017.

22 **WOLF, RIFKIN, SHAPIRO,**
23 **SCHULMAN & RABKIN, LLP**

24 By: /s/ Bradley S. Schrager

25 BRADLEY S. SCHRAGER, ESQ.

26 Nevada State Bar No. 10217

27 DANIEL BRAVO, ESQ.

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Las Vegas, Nevada 89120

Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 20th day of April, 2017, a true and correct copy of **REPLY IN**
3 **SUPPORT OF ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER N.R.S. 41.660** was
4 served by electronically filing with the Clerk of the Court using the Electronic Service
5 system and serving all parties with an email-address on record, pursuant to Administrative
6 Order 14-2 and Rule 9 of the N.E.F.C.R. and by depositing a true copy of the same for
7 mailing, postage pre-paid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed
8 to:

9 Samira C. Knight, Esq.
10 TARKANIAN & KNIGHT
11 LAW GROUP, PLLC
12 220 S. Cimarron Rd., Suite 110
Las Vegas, NV 89113

13
14 By: /s/ Dannielle R. Fresquez

Dannielle R. Fresquez, an Employee of WOLF,
15 RIFKIN, SHAPIRO, SCHULMAN &
16 RABKIN, LLP
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1 **DECL**
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14 *Attorneys for Defendants*

15
16 **EIGHTH JUDICIAL DISTRICT COURT**
17 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

18 DANNY TARKANIAN,
19
20 Plaintiff,

21 vs.

22 JACKY ROSEN, an individual; ROSEN FOR
NEVADA, a 527 Organization and DOES I-X
23 and ROES ENTITIES VI-X

24 Defendants.

Case No: A-16-746797-C

Dept. No.: XXX

**SECOND DECLARATION OF BRADLEY
SCHRAGER IN SUPPORT OF
DEFENDANTS' REPLY IN SUPPORT OF
ANTI-SLAPP SPECIAL MOTION TO
DISMISS UNDER N.R.S. 41.660**

25 **DECLARATION OF BRADLEY SCHRAGER, ESQ.**

26 I, Bradley Schrager, Esq., under penalty of perjury, declare as follows:

27 1. I am an attorney with the law firm of Wolf, Rifkin, Shapiro, Shulman & Rabkin,
28 LLP, duly admitted to practice law in the state of Nevada, and counsel for Defendants in the

AA000332

1 above-captioned action. I make this declaration of personal, firsthand knowledge and, if called and
2 sworn as a witness, I could and would testify competently thereto. I have personal knowledge of
3 the facts stated herein and submit this Declaration in support of Defendants' Reply in Support of
4 Anti-Slapp Special Motion to Dismiss Under N.R.S. 41.660.

5 1. Attached as Exhibit A is a true and correct copy of excerpts from the transcripts for
6 the jury trial in *Tarkanian v. Schneider*, No. A500379 (Nev. Dist. Ct., Clark County).

7 2. Attached as Exhibit B are true and correct screenshots of the statements at issue in
8 this litigation as presented in the "Integrity" advertisement. A true and correct recording of the
9 advertisement is available on YouTube at: https://www.youtube.com/watch?v=U-It58_yRrE.

10 3. Attached as Exhibit C is a true and correct copy of the Judgment Granting the
11 Defendants' Special Motion to Strike the Complaint (also known as an anti-SLAPP motion) in the
12 matter of *Issa v. Applegate*, Case No. 37-2016-39144-CU, slip op. (Cal. Super. Ct. March 20,
13 2017).
14

15 Under penalties of perjury under the laws of the United States of America and the State of
16 Nevada, I declare that the foregoing is true and correct to my own knowledge.

17 DATED this 20th day of April, 2017.

18 /s/ Bradley S. Schrager
19 BRADLEY S. SCHRAGER, ESQ.
20 Nevada State Bar No. 10217
21
22
23
24
25
26
27
28

Exhibit A


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

DANNY TARKANIAN,)	
)	
Plaintiff,	)	CASE NO. A500379
)	
vs.	)	DEPT NO. II
)	
MIKE SCHNEIDER,)	
)	
Defendant.	)	Transcript of
	)	Proceedings

BEFORE THE HONORABLE VALORIE VEGA, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

TUESDAY, JULY 28, 2009

APPEARANCES:

FOR THE PLAINTIFF: GUS W. FLANGAS, ESQ.

FOR THE DEFENDANT: NELSON L. COHEN, ESQ.
LUCIAN J. GRECO, ESQ.

RECORDED BY: LISA LIZOTTE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

AA000335

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PLAINTIFF'S OPENING STATEMENT BY MR. FLANGAS	10
DEFENDANT'S OPENING STATEMENT BY MR. COHEN	18

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

PLAINTIFF'S WITNESS:

MICHAEL SCHNEIDER	25	75	100/110	106
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* * * * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

EXHIBITS:

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7.	58
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20.	112
37.	54

1 Foley on board full-time, this was all done in a short relative
2 period of time, roughly about a three-week period; is that
3 correct?

4 A Correct.

5 Q Is that yes?

6 A Yes.

7 Q And during the course of the campaign you appeared on
8 the -- you appeared with Mr. Tarkanian on the Face to Face with
9 the Jon Ralston show; is that correct?

10 A Correct.

11 Q And it's framed as kind of a debate, but it's more of
12 a question and answer by -- by Mr. Ralston; is that correct?

13 A Correct.

14 Q And when you appeared on the Ralston show, you made a
15 statement about Mr. Tarkanian in response to a question that Mr.
16 Tarkanian had turned state's evidence against his fellow
17 telemarketers; is that correct?

18 A Correct, I asked that question.

19 Q And then to walk away; is that correct?

20 A Correct.

21 Q And, in fact, the statement goes, well, if you go
22 state's evidence and testify against your fellow telemarketers,
23 you know, and walk away, you know; is that correct?

24 A That's correct.

25 Q And that was in response to a question by Mr. Ralston;

1 is that true?

2 A I can't remember.

3 Q Is it also true that you made mention on the Ralston
4 show that Mr. Tarkanian had put together 19 fraudulent
5 corporations?

6 A Correct.

7 Q And it's also true that your intent when you made
8 those statements, number one, we'll talk about the turning
9 state's evidence. Your intent at that time was to communicate
10 to the viewing audience that Mr. Tarkanian had done this to save
11 his own skin; is that correct?

12 A No. But what is correct --

13 Q No, sir.

14 MR. FLANGAS: If I may approach the witness, Your
15 Honor.

16 THE COURT: Yes, you may.

17 MR. FLANGAS: Okay. Counsel, I'll be beginning on
18 page 183 at line 13.

19 BY MR. FLANGAS:

20 Q And it says question by me. It says, okay, now you
21 said that if you turn state's evidence and testify against your
22 fellow telemarketers, you know, and walk away, is that what you
23 said?

24 Answer, that's what I said.

25 Question, first of all, you said fellow telemarketers,

1 are you thinking that it's true, do you believe it to be true
2 that Mr. Tarkanian was a telemarketer?

3 Answer, no, his involvement in the business was
4 setting up the corporations, putting the board of directors for
5 the corporation together, and getting that corporation ready to
6 go for the telemarketing business.

7 Question, so that makes him a fellow telemarketer?

8 Answer, he was involved in the whole thing, so yes.

9 All right. And as you stated earlier, your intent
10 here was to convey that Mr. Tarkanian had testified against his
11 fellow telemarketers to save his own skin, true?

12 Your answer is, true.

13 MR. FLANGAS: May I approach again, Your Honor?

14 THE COURT: Yes.

15 MR. FLANGAS: Just for the record, counsel, I'll also
16 be looking at page 93, and I'll be starting at line 24.

17 BY MR. FLANGAS:

18 Q Question, all right, now when you said -- are you
19 aware that you said that on the Ralston show that Mr. Tarkanian
20 was turning state's evidence against his fellow telemarketers --

21 Answer, if that's what I said, that's what I said, I
22 don't remember my exact words.

23 Question, was the reason you said it was to
24 communicate to the general public that Mr. Tarkanian was
25 essentially trying to save his own skin by turning state's

1 A Correct.

2 Q Now, you --

3 A I would like to say something, though, counsel.

4 Q I don't have a question. I'm sorry.

5 THE COURT: Mr. Schneider, unfortunately, when you're
6 a witness, you have to wait for the questions to come. When Mr.
7 Flangas concludes his direct examination of you, then your
8 counsel will have an opportunity to question you.

9 BY MR. FLANGAS:

10 Q Sir, you also intended that statement about turning
11 state's evidence to be a fact; is that correct?

12 A A fact as I knew it to be.

13 Q And you intended your viewing audience to view it as a
14 fact; is that correct?

15 A I intended it to be a question that Mr. Tarkanian
16 could answer. It says if --

17 MR. FLANGAS: Your Honor, I have no --

18 THE WITNESS: -- if you turn state's evidence,
19 counselor. And he had an opportunity to answer that question.

20 MR. FLANGAS: May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. FLANGAS: And I'm going to be looking at page 185
23 again, counsel, and I'm going to be starting on line 9.

24 BY MR. FLANGAS:

25 Q Question, so it's your belief you were stating a fact

1 that Mr. Tarkanian had testified against fellow telemarketers;
2 correct?

3 Answer, I believe I stated the truth.

4 Question, as a fact?

5 Answer, as I knew it, absolutely.

6 Question, and you believe that to be a fact?

7 Answer, yes.

8 Is that what that says?

9 A That's what that says.

10 Q Sir, let's talk about now the statements you made
11 about Mr. Tarkanian forming 19 fraudulent corporations. Now,
12 when you made that statement, you intended to have your viewing
13 audience believe that Mr. Tarkanian knowingly formed those 19
14 corporations with the intent to defraud other -- to defraud
15 other people; is that correct?

16 A Correct.

17 Q And you wanted that to be a fact, as well; correct?

18 A I wanted it to be in there that 19 corporations were
19 formed that defrauded people.

20 Q And you wanted that statement -- and you wanted your
21 viewing audience to view that as a fact; correct?

22 A And Mr. Tarkanian to have --

23 MR. FLANGAS: Your Honor, could I --

24 THE WITNESS: -- an opportunity to answer.

25 MR. FLANGAS: -- ask that the witness be responsive to

**In the
Supreme Court of the State of Nevada**

JACKY ROSEN, AN
INDIVIDUAL; AND ROSEN FOR
NEVADA, A 527
ORGANIZATION,

Appellants,

vs.

DANNY TARKANIAN,

Respondent,

Electronically Filed
Jun 06 2018 08:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73274

District Court Case No.: A746797

Appellants' Appendix

Volume II of II

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DATED this 4th day of June, 2018.

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**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2018, a true and correct copy of the foregoing **Appellants' Appendix Vol. II of II** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system and by depositing a true copy of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Jenny L. Foley, Ph.D., Esq.
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10080 Alta Drive, Ste. 110
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By: /s/ Dannielle Fresquez

Dannielle Fresquez, an Employee of
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