IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC; LOUIS C. SCHNEIDER; AND THE LAW OFFICES OF LOUIS C. SCHNEIDER, LLC,

Respondents.

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CASE NO.: 73838 / 75834

RESPONDENTS' ANSWERING BRIEF

Appeal from Eighth Judicial District Court, Clark County
The Honorable Michelle Leavitt, District Judge
District Court Case No. A-17-749318-C

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

Respondent Veterans in Politics International, Inc. is a domestic non-profit corporation registered in the State of Nevada. Veterans in Politics International, Inc. does not have any parent company, and no publicly held corporation owns ten percent or more of Veterans in Politics International, Inc.'s stock.

The law firm whose partners or associates have or are expected to appear for Veterans in Politics International, Inc. is MCLETCHIE LAW.

DATED this 22nd day of February, 2019.

/s/ Margaret A. McLetchie
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I. ISSUES PRESENTED FOR REVIEW

A. Whether the district court properly applied Nevada's Anti-Strategic Lawsuit Against Public Participation ("Anti-SLAPP") statute to a lawsuit based on Respondents' exercising their First Amendment rights to criticize and express negative opinions about attorneys and their conduct.

B. Whether the district court correctly held that Respondents met their initial burden of proof, pursuant to Nev. Rev. Stat. §§ 41.660(3)(a) and Nev. Rev. Stat. 41.637(4), for each remaining cause of action at issue in Appellants' First Amended Complaint. Specifically, that:

1. Respondents demonstrated, by a preponderance of the evidence, that they were sued for making communications that were "truthful or [were] made without knowledge of [their] falsehood;"

2. Respondents demonstrated, by a preponderance of the evidence, that they were sued for making communications "in direct connection with an issue of public interest;" and

3. Respondents demonstrated, by a preponderance of the evidence, that they were sued for making communications "in a place open to the public or in a public forum."

C. Whether the district court correctly held that Appellants did not demonstrate with *prima facie* evidence a probability of prevailing on at least one of their claims.

D. Whether the district court correctly denied Appellants' request to conduct limited discovery prior to any decision being made on Respondents' Anti-SLAPP motions.

II. STATEMENT OF THE CASE

Despite the Abrams Parties' contentions that the Sanson Parties' communications are not entitled to Anti-SLAPP protection, the instant case is a

paradigmatic SLAPP. This case concerns a well-known, high-powered family law attorney who, upon discovering that the Sanson Parties dared criticize her performance in Nevada's courts, attempted to leverage the legal system to litigate the Sanson Parties into silence and pursue her personal vendetta against them.[1] The Abrams Parties have used this case as a vehicle for repeatedly disparaging the Sanson Parties via motion practice; but for Nevada's litigation privilege, such derogatory statements could themselves be grounds for a defamation claim.

The district court recognized the Abrams Parties' lawsuit for what it was—a meritless attempt to punish the Sanson Parties for expressing unflattering opinions of them. The district court correctly held that, by voicing true statements of fact and statements of opinion which are incapable of being defamatory, the Sanson Parties were engaging in speech protected by the First Amendment. (VI AA984-85 (Order, ¶¶ 55 - 58).) The district court also correctly held that the Abrams Parties' suit was based on this protected speech: the Sanson Parties' criticism constituted a good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern—the practices and conduct of attorneys and judges in Nevada's public courtrooms. (VI AA981-84 (Order, ¶¶ 38 - 54).) Further, the district court correctly held that the Abrams Parties failed to make a prima facie showing of

[1] Ms. Abrams even attempted to have Mr. Sanson *imprisoned* for his speech activities, pursuant to an order that was later vacated as unconstitutional. (III AA 490.)

a probability of success on the merits for any of their causes of action. (VI AA988-93 (Order, ¶¶ 70 - 96).) Because the Sanson Parties satisfied both prongs of Nevada's Anti-SLAPP test, the district court correctly granted the Sanson Parties special motion to dismiss. (VI AA993 (Order, ¶ 97).)

While the instant case may not be "a SLAPP situation involving a large corporation attempting to cover up a whistleblower or a well-funded politician trying to silence a critic," (OB, p. 4) Anti-SLAPP protection extends to a much broader range of communications than those. What matters is not the relative economic or political clout of the parties, but rather whether the SLAPP defendant exercised his or her right to make good faith communications in connection with an issue of public concern and was subsequently sued for it.

Likewise, the Anti-SLAPP statute does not exist to aid in the pointless exercise of differentiating "good guys" from "bad guys" in litigation. (*See* OB, p. 83.) After all, every litigant thinks he or she is the "good guy." Rather, Nevada's Anti-SLAPP statute exists to provide recourse for speakers who are sued for exercising their rights to free speech in connection with an issue of public concern, regardless of whether the speakers (or the plaintiffs who wish to silence them) are rich or poor, powerful or weak, well-connected or alienated, "good" or "bad," or anything else in between.

The Abrams Parties proffer four arguments for why this Court should vacate

the district court's order. First, they argue the district court should have done a "preliminary evaluation" of the Sanson Parties' statements before undergoing the two-prong analysis mandated by Nevada's Anti-SLAPP statute. (OB, pp. 38, 41-45.) Second, they argue the district court should have ruled that the Sanson Parties failed the first prong of Nevada's Anti-SLAPP analysis by failing to demonstrate by a preponderance of the evidence that the statements at issue were good faith communications in connection with public interest made in a public forum. (OB, pp. 48-62.) Third, they argue the district could should have held that the Abrams Parties demonstrated with prima facie evidence a probability of prevailing on their causes of action. (OB, pp. 63-82.) Fourth and finally, the Abrams Parties argue they are entitled to limited discovery in this case. (OB, pp. 46-48.)

None of these arguments are meritorious. First, Nevada's Anti-SLAPP statute clearly requires the district court to engage in a two-prong analysis of a special Anti-SLAPP motion to dismiss; there is no preliminary hurdle a defendant must clear to get the district court to engage in such analysis. Second, characterizing the Sanson Parties' communications as a "defamation campaign"—as the Abrams Parties' Opening Brief does *ad nauseum*—does not make them defamatory. The district court found that—despite Ms. Abrams' beliefs—the Sanson Parties' communications consisted of non-actionable opinion and true statements of fact. The district court also held that the statements were in direct connection with an issue of public

concern—the conduct of attorneys in open court. This issue is of great interest to millions of potential Clark County Family Court litigants because criticism of lawyers' and judges' behavior in open court is crucial to maintaining the integrity and accountability of the legal system. The district court also held that the statements, which were posted on a publicly-accessible website, were made in a public forum. Thus, the district court correctly held that the Sanson Parties met the requirements of the first prong of Nevada's Anti-SLAPP analysis by a preponderance of the evidence.

Third, as explained by the district court and *infra*, none of the Abrams Parties' causes of action have any chance of succeeding; thus, the Sanson Parties satisfy the second prong of Nevada's Anti-SLAPP analysis. Fourth and finally, limited discovery is not proper in this matter. The discovery requested by the Abrams Parties pertains to an alleged conspiracy between Mr. Sanson and Mr. Schneider, which necessarily fails because the Abrams Parties did not adequately plead the underlying torts on which their conspiracy claim is based. Because no amount of discovery could cure those defects, the Abrams Parties' request for discovery was properly denied. For these reasons, this Court should affirm the district court's decision in its entirety.

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III. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Although the Abrams Parties pad their Opening Brief with page after page of irrelevant facts, the facts this Court must consider in deciding the instant appeal are straightforward. On January 9, 2017, the Abrams Parties filed a complaint against the Sanson Parties alleging, inter alia, that the Sanson Parties' criticism of Ms. Abrams and her law firm's conduct on the Internet was defamatory. (I AA1-80.) To defend their First Amendment rights to express negative opinions of family court, family lawyers and their practices, the Sanson Parties moved to dismiss the suit pursuant to Nevada's Anti-SLAPP Statute. (II AA368-405.)

Following a June 5, 2017 hearing (VI AA884-950), the district court entered a minute order on June 22, 2017 granting the Sanson Parties' Anti-SLAPP Motion. (I RA1-3.) On July 24, 2017, that order was memorialized in writing. (VI AA971-994.) The district court more than adequately summarized the relevant factual and procedural details in its written order. Those relevant facts are discussed below.

A. Background Facts Regarding the Sanson Parties.

Steve W. Sanson is the President of Defendant Veterans in Politics International, Inc. ("VIPI"), a non-profit corporation that advocates on behalf of veterans and works to expose public corruption and wrongdoing. (VI AA976.) VIPI routinely publishes and distributes articles online and hosts a "weekly online" talk

show which features public officials and others who discuss veterans' political, judicial, and other issues of public concerns. (*Id.*)

B. Family Court Issues and The Sanson Parties Postings on Those Issues.

On October 5, 2016, acting in his capacity as President of VIPI, Mr. Sanson posted an article on the publicly-accessible website <veteransinpolitics.org> entitled "Nevada Attorney attacks a Clark County Family Court Judge in Open Court," containing the court video transcript of a September 29, 2016 hearing in the case entitled *Saiter v. Saiter*, Eighth Judicial District Court, Family Division, Clark County, Nevada, Case No. D-15-521372 (the "*Saiter* Hearing"). (I AA127-131 (the "Attack Article").) The *Saiter* Hearing involved a heated exchange between Ms. Abrams and Judge Jennifer L. Elliot. (*Id.*) The article that accompanied the video posting contained both written excerpts of said exchange and Mr. Sanson's opinions of Ms. Abrams' and Judge Elliot's behavior during the *Saiter* Hearing. (*Id*.)

On October 5, 2016, Ms. Abrams sent Judge Elliot an email about the article in which she complained that the article placed her in a bad light and requested that Judge Elliot force VIPI to take the article down. (VI AA977; *see also* III AA419-420.) Because Mr. Sanson believed that VIPI was within its rights to publish a video of a court proceeding, Mr. Sanson did not remove either the article or video. (VI AA977.) On October 8, 2016, Mr. Sanson was personally served with an October 6, 2016 Court Order Prohibiting Dissemination of Case Materials issued by Judge

Elliot in the *Saiter* case. (*Id.*; *see also* I AA135-36.) This order purported to seal all the documents and proceedings in the *Saiter* case on a retroactive basis. (I AA135-36.)

Despite disagreeing with Judge Elliot's order, Mr. Sanson temporarily took the video down. (VI AA977; *see also* III AA407-08.) On October 9, 2016, Mr. Sanson reposted the video to, among other websites, <veteransinpolitics.org> together with an article entitled "District Court Judge Bullied by Family Attorney Jennifer Abrams." The article contained a report on what had taken place and criticism of the practice of sealing court documents. (I AA133-37 (the "Bully Article").)

On November 6, 2016, Mr. Sanson posted another article to <veteransinpolitics.org> entitled "Law Frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices." (I AA139-49 (the "Seal-Happy Article").) This article was critical of Ms. Abrams' practice of sealing the records in many of her cases. (*Id.*)

On November 14, 2016, Mr. Sanson posted an article to <veteransinpolitics.org> entitled "Lawyers acting badly in a Clark County Family Court." (I AA151 (the "Acting Badly Article").) On November 14, 2016, Mr. Sanson posted a video of the *Saiter* Hearing to the video-hosting website YouTube. (VI AA977; *see also* III AA450.) In the description of said video, Mr. Sanson stated

his opinion that Ms. Abrams' conduct in open court constituted "bullying." (III AA450.) In this article, Mr. Sanson states his belief in the importance of public access to court proceedings. (*Id.*; *see also* IV AA977.)

On November 16, 2016, Mr. Sanson posted an article to <veteransinpolitics.org> criticizing Judge Rena Hughes for making a misleading statement to an unrepresented child in Family Court. (I AA153-57 (the "Deceives Article").) As the district court found, "this article reflects a core VIPI mission—exposing to the public and criticizing the behavior of officials." (VI AA977.) On December 21, 2016, the Sanson Parties posted three videos to YouTube entitled "The Abrams Law Firm 10 05 15," "The Abrams Law Firm Inspection part 1," and "The Abrams Law Firm Practices p 2." (VI AA978; *see also* I AA159-61.) In addition to being published on the VIPI website, all the above-listed articles were also simultaneously sent to VIPI email subscribers. (VI AA978.)

On December 22, 2016, Mr. Sanson allegedly had a conversation with David J. Schoen, and employee of the Abrams & Mayo Law Firm. (*Id.*) In this conversation, Mr. Sanson allegedly made several unflattering comments about Plaintiff Abrams to the public and criticizing the behavior of officials. (*Id.*)

C. The Abrams' Parties Attempts to Silence the Sanson Parties.

On January 9, 2017, the Abrams Parties filed a complaint against the Sanson Parties, as well as several other defendants. (I AA1-80; *see also* VI AA978.) The

complaint included purported causes of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, business disparagement, harassment, concert of action, civil conspiracy, RICO, and injunctive relief. (*Id.*) On January 27, 2017, the Abrams Parties filed a First Amended Complaint adding copyright infringement as a cause of action. (I AA85-164; VI AA978.)

In addition to attempting to silence the Sanson Parties with the district court litigation, the Abrams Parties also attempted to have Mr. Sanson imprisoned for VIPI's constitutionally-protected post regarding the *Saiter* Hearing. Specifically, on February 13, 2017, Ms. Abrams filed a Motion for an Order to Show Cause in *Saiter v. Saiter*, No. D-15-521372-D, ("OSC Motion"). (III AA474-94.) In that Motion, Ms. Abrams suggested that the Family Court hold Mr. Sanson in contempt and incarcerate him for over seven years. (*See generally id.*)

On March 21, 2017, the Honorable Judge Elliot entered an order denying Ms. Abrams' motion, and vacating the October 6, 2016 Order Prohibiting Dissemination, holding that it was facially overbroad, not narrowly drawn, and therefore unconstitutional. (III AA513-35.)

D. The Sanson Parties Prevail on an Anti-SLAPP Motion to Dismiss.

On April 28, 2017, the Sanson Parties filed a Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (the "Anti-SLAPP Motion."). (II AA368-IV

AA655 (Motion and supporting declarations and exhibits).) Following full briefing by the parties, the district court conducted a hearing on June 5, 2017. (VI AA884-950.)[2] On June 22, 2017, the district court entered a lengthy minute order granting the Sanson Parties' Anti-SLAPP Motion. (I RA1-3.) On July 24, 2017 the district court entered a written order memorializing its findings of fact and conclusions of law and granting the Sanson Parties' Anti-SLAPP Motion. (VI JA951-94.)

On August 21, 2017, the Abrams Parties filed a notice of appeal. (VI AA 995-998.) Specifically, the Abrams Parties appeal: (1) whether Nevada's anti-SLAPP statute applies to the Sanson Parties' conduct; (2) whether the Sanson Parties met their initial burden of proof under NRS 41.660(3)(a); (3) whether the Abrams Parties demonstrated with prima facie evidence a probability of prevailing on at least one of their claims; and (4) whether the Abrams Parties should have been permitted to conduct limited discovery prior to the district court ruling on the Sanson Parties' Anti-SLAPP Motion to Dismiss. (Opening Brief ("OB"), pp. 1-2.)

E. This Court Should Disregard Numerous Facts in The Abrams Parties' Opening Brief That Are Irrelevant to the Issues on Appeal.

The express language of Nev. R. App. P. 30(b) mandates that "all matters not essential to the decision of issues presented by the appeal shall be omitted." *State*

[2] Although not relevant to the instant appeal, the Sanson Parties also filed a Motion to Dismiss the Abrams' Parties Amended Complaint pursuant to Nev. R. Civ. P. 12(b)(5) (II AA205-65); the district court also entertained argument on that motion at the July 5, 2017 hearing. (VI AA884-950.)

v. Haberstroh, 119 Nev. 173, 179, 69 P.3d 676, 680 (2003), *as modified* June 9, 2003; *cf. United States v. Robinson*, 137 F.3d 652, 653, n.1 (1st Cir. 1998) ("In the absence of some showing that the disputed materials were relevant to actual decisionmaking being contested on appeal, an appellate court will not review aspects of the trial court file whose admission or exclusion has not been challenged"). Indeed, the Abrams Parties and their counsel "are under a duty to omit from the record on appeal all material that is not essential to decision of the questions on appeal." *Beattie v. Thomas*, 99 Nev. 579, 589, 668 P.2d 268, 274–75 (1983) (citing *Driscoll v. Erreguible*, 87 Nev. 97, 102, 482 P.2d 291, 294 (1971)).

It is beyond cavil that the district court's decision-making calculus cannot consider unknown, future events. In the instant case, the district court granted the Sanson Parties' Anti-SLAPP Motion to Dismiss via a minute order on June 22, 2017 (I RA1-3), and entered a written order memorializing this decision on July 24, 2017. (VI AA 971-94.) The district court's decision could therefore not possibly be based on anything that occurred after that date. However, the Abrams Parties include in both their Opening Brief and Appendix copious materials that post-date the district court's decision and are therefore by definition irrelevant to the issues on appeal. As the table below illustrates, the Abrams Parties repeatedly ignore their duty to omit irrelevant material from their Opening Brief and Appendix, and invite this Court to

consider facts and materials that are not relevant to the issues presented in the instant appeal:

Irrelevant Material Included in Opening Brief`	**Brief Cite**	**Appendix Cite**	**Why Material is Irrelevant**
Plaintiffs' Omnibus Opposition to Defendants' Motion for Attorney's Fees, Costs, and Sanctions dated 10/27/2017	OB, pp. 8, n. 11; 10, n. 20; 11, n. 21; 11, n. 23; 13-14; 14 n. 31; 29, n. 79	VII AA1144-1259	Postdates July 24, 2017 order currently on appeal and therefore could not have factored into district court's decision. Additionally, Judge Duckworth's Recusal Order was authored on September 5, 2017, which post-dates the decision on appeal in this case.
Motion to Disqualify Eighth Judicial District Court Elected Judiciary dated 1/24/2018	OB, pp. 6, n. 6; 13, n. 29; 14 n. 31; 33, n. 89; 34, n. 90; 34, n. 91; 34, n. 92; 34, n. 93; 35, n. 94; 35, n. 95; 35, n. 96; 35, n. 100	VII AA1266-1370	(see above)
Opposition to Motion to Disqualify dated 1/31/2018	OB, pp. 33, n. 89; 36, n. 101	VII AA1384-1393	(see above)
Court Minutes dated 2/7/2018.	OB, p. 36, n. 104	VIII AA1452	(see above)

Irrelevant Material Included in Opening Brief`	**Brief Cite**	**Appendix Cite**	**Why Material is Irrelevant**
Joinder to Louis Schneider's Opposition to Plaintiff's Motion to Disqualify dated 2/7/2018	OB, p. 33, n. 89	VIII AA1453-1469	(see above)
Reply to Oppositions to Motion to Disqualify dated 2/23/2018	OB, pp. 5, n. 5; 6, n. 6; 8, n. 11; 12, n. 24; 12, n. 28; 33, n. 89; 34, n. 90; 35, n. 96; 35, n. 97; 35, n. 98; 35, n. 99; 36, n. 102; 36, n. 103	VIII AA1471-1539	(see above)
Court Minutes dated 3/2/2018	OB, p. 37, n. 105	VIII AA1540	(see above)
Notice of Department Reassignment dated 3/5/2018	OB, p. 37, n. 105	VIII AA1541	(see above)
Opposition to Motion to Reassign Case to Judge Leavitt and Request for Written Decision and Order and Countermotion for Attorney's Fees dated 5/8/2018	OB, pp. 8, n. 11; 37, n. 109	IX AA1699-1707	(see above)
Court Minutes dated 5/25/2018	OB, p. 38, n. 110	IX AA1732	(see above)
Order dated 7/2/2018	OB, p. 38, n. 110	IX AA1733-1735	(see above)

Irrelevant Material Included in Opening Brief`	Brief Cite	Appendix Cite	Why Material is Irrelevant
Reference to Las Vegs Review-Journal article dated February 21, 2014.	OB, p. 13, n. 30	(not in appendix)	Allegations against the Sanson Parties in opinion column by Jane Ann Morrison dated February 21, 2014 are irrelevant to the case at bar.

IV. STANDARD OF REVIEW

In reviewing a district court's order granting an Anti-SLAPP motion to dismiss, this Court engages in *de novo* review. *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d 746, 748–49 (2019) ("As amended, the special motion to dismiss again functions like a summary judgment motion procedurally, thus, we conclude de novo review is appropriate.").

V. LEGAL ARGUMENT

A. The District Court Properly Applied the Anti-SLAPP Legal Standard.

The district court, applying the two-part test outlined in Nev. Rev. Stat. § 41.660(3)(a) and this Court's interpreting case law, properly evaluated the statements at issue in this case and found that the Abrams Parties' claims were based upon good faith communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. (VI AA980.)

As a preliminary matter, the Abrams Parties mistake the applicable test in arguing that the district court, "before undertaking an anti-SLAPP analysis, should

have proceeded as follows: first, questioning whether the statements were made for an improper purpose; and second, questioning whether the statements were false and defamatory in nature when reviewed in context." (OB, p. 42.)

The Abrams Parties, however, do not cite any case law or statute that requires the district court to undergo a "preliminary analysis" as to whether the Anti-SLAPP statute "applies." This is because there is none—such an analysis is wholly subsumed by the first prong of the Anti-SLAPP analysis. The Abrams Parties' argument is nothing more than an attempt to evade the statutorily-mandated Anti-SLAPP analysis under which their suit was dismissed.

As the district court correctly explained, "[c]ourts must evaluate a special Anti-SLAPP motion to dismiss using a two-step process. First, the moving party must establish by a preponderance of the evidence 'that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.'" (VI AA 980 (Order, ¶ 34 (quoting Nev. Rev. Stat. § 41.660(3)(a))).) Statements made for an "improper purpose" or untrue statements made with knowledge of their falsehood are, by definition, not "good faith communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." *See* Nev. Rev. Stat. § 41.637 (defining such "good faith communications" as, *inter alia*, a "[c]ommunication made in direct connection with an issue of public interest in a

place open to the public or in a public forum which is truthful or is made without knowledge of its falsehood."). As detailed below, the statements at issue are all good faith communications because they were true statements of fact or statements of opinion made in a public forum regarding issues of public interest. Further, the district court properly found that the Abrams Parties did not establish a probability of success on the merits. Thus, this Court must affirm the district court's order in its entirety.

B. The District Court Correctly Held that the Sanson Parties Met Their Burdens Under the First Prong of the Anti-SLAPP Analysis.

To prevail in an Anti-SLAPP motion to dismiss, the moving party must first establish by a preponderance of the evidence "that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." Nev. Rev. Stat. § 41.660(3)(a). Nevada's Anti-SLAPP statute requires that a good faith communication must "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637. For the reasons discussed below, the district court properly found that the statements the Abrams Parties complain of were either statements of opinion—which this Court

has said cannot be false[3]—or were truthful. (VI AA984-85.) Additionally, as also discussed below, the district court correctly found that the statements pertained to an issue of public concern. (VI AA981-83.)

1. The Statements at Issue Are Truthful, Made Without Knowledge of Falsehood, or Non-Actionable Opinions Incapable of Being True of False.

Nevada's Anti-SLAPP statute requires that a good faith communication be "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637. The Abrams Parties argue the Sanson Parties "failed to offer any evidence that their defamatory posts were true or made without knowledge of their falsehood." (OB, p. 52.) This argument, however, ignores that statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as a false idea. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87. However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id*. The court must therefore ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id*. at 715.

[3] *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) ("Statements of opinion cannot be defamatory because there is no such thing as a false idea.") (internal quotation omitted); *see also Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341 (1983) ("[S]tatements of opinion as opposed to statements of fact are not actionable").

Although the Abrams Parties attempt to mischaracterize the Sanson Parties' articles as defamatory, the articles contain the Sanson Parties' non-actionable truthful statements and non-actionable opinions. Thus, as demonstrated below, these communications meet the threshold of good faith communication protected by Nev. Rev. Stat. § 41.637.

a) The "Attack Article" and Courtroom Video Are a Good Faith Communication.

The Abrams Parties contend that the Sanson Parties' October 5, 2016 "Attack Article" and contemporaneous YouTube video of the *Saiter* Hearing contained several false statements. (OB, p. 16.) The video cannot possibly be considered defamatory because it is a real video of an actual proceeding. *Kegel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009) ("the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim"). Further, the statements the Abrams Parties complain of either do not appear in the article or are statements of opinions (even as characterized by the Abrams Parties) which cannot be true or false.

i. Whether Ms. Abrams "Attacked" a Clark County Family Court Judge in Open Court is a Matter of Opinion and Thus Incapable of Being False.

The headline of the "Attack Article" reads "Nevada Attorney attacks a Clark

County Family Court Judge in Open Court." (I AA127.) Whether Ms. Abrams' heated exchanges with Judge Elliot in the September 29, 2016 hearing constituted an "attack" is a matter of opinion and thus incapable of being proven true or false. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87. Some observers, may interpret Abrams' interrupting Judge Elliot ("excuse me I was in the middle of a sentence") and questioning Judge Elliot's impartiality ("is there any relationship between you and [opposing counsel] Louis Schneider?") as an "attack." Even if Ms. Abrams interprets her actions as zealous advocacy and approves of her own behavior, this is an instance where the Abrams Parties have merely alleged that the Sanson Parties have voiced an opinion, and thus it is a good faith communication.

ii. Whether Ms. Abrams is Unethical is a Matter of Opinion and Thus Incapable of Being False.

The Abrams Parties argue that the "Attack Article," the Sanson Parties asserted that Ms. Abrams' "actions constituted unethical or unlawful conduct that must be reported to the Nevada State Bar." (OB, p. 16.) Nowhere in the "Attack Article" does Mr. Sanson call Abrams "unethical." (*See* I AA127-31.[4]) The Abrams

[4] Indeed, the Abrams Parties conceded at the June 5 hearing that the "Attack Article" does not call Ms. Abrams unethical:

> THE COURT: . . . I'm just – there's nowhere in here does it Ms. Abrams is unethical.
> MR. GILMORE: Point blank, you're right.

(VI AA924, ll. 9-11.)

Parties also assert the "Attack Article" "falsely represents that Judge Elliot 'found' Abrams to be 'unethical' and that Abrams permitted her client to mislead the Court." (OB, p. 16.) Again, however, these alleged statements ***do not appear anywhere in the article***. (I AA127-31.) In fact, the word "unethical" does not even appear in the article.

The word "ethical" appears three times: twice in written excerpts of Judge Elliot's statements in the September 29 hearing, and once in reference to a judicial duty to report attorney ethical problems. (*Id.*) Reprinting Judge Elliot's verbatim statements cannot be defamatory, nor can a statement that judges must report on lawyers who act unethically in their courtrooms. Furthermore, even if Mr. Sanson did call Abrams' behavior "unethical," it would be a constitutionally protected statement of opinion. *See Wait v. Beck's North Am., Inc*., 241 F. Supp.2d 172, 183 (N.D.N.Y. 2003) ("Statements that someone has acted unprofessionally or unethically generally are constitutionally protected statements of opinion."). Thus, these are good faith communications.

iii. Whether There is a "Problem" Requiring Ms. Abrams to be Reported to the Nevada State Bar is a Matter of Opinion and Thus Incapable of Being False.

Nowhere in the "Attack Article" does Mr. Sanson purport that there is a problem requiring Ms. Abrams to be reported to the Nevada State Bar. The article merely says "[i]f there is an ethical problem or the law has been broken by an

attorney the Judge is mandated by law to report it to the Nevada State Bar or a governing agency that could deal with the problem appropriately." (I AA130-31.) This is not a statement of fact about Ms. Abrams, and thus it is a good faith communication incapable of being proven true or false. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87. Even it were a statement about Ms. Abrams, a person is entitled to his or her own interpretation of the ethical rules, and while an attorney may simply view herself as zealous, others observing her behavior can reasonably find it both rude to the judge and unethical.

iv. Whether Ms. Abrams "Crossed The Line With a Clark County District Court Judge" is a Matter of Opinion and Thus Incapable of Being False.

In the "Attack Article," Mr. Sanson asks "what happens when a Divorce Attorney crosses the line with a Clark County District Court Judge Family Division?" (I AA127-28.) Again, whether Ms. Abrams "crossed the line" in her interactions with Judge Elliot in the September 29 hearing is a matter of opinion. Whereas some may view Ms. Abrams' interactions with Judge Elliot as perfectly acceptable advocacy, others, such as Mr. Sanson, view them as crossing an imagined line of decorum. Nobody can say, as a matter of objective fact, where this "line" is, much less whether someone has crossed it. Stating that Abrams "crossed a line" is merely an opinion, and thus a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

b) The "Bully Article" Is a Good Faith Communication.

The Abrams Parties next contend that Mr. Sanson made five different "false and defamatory" statements in the "Bully Article." (OB, p. 17.) However, the statements contained in the article are non-actionable statements of opinions, and thus good faith communications. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

i. Whether Ms. Abrams "Bullied" Judge Elliot Into Issuing the Order Prohibiting Dissemination of Case Material is a Matter of Opinion and Thus Incapable of Being False.

The subtitle to the "Bully Article" states "District Court Judge Bullied by Family Attorney Jennifer Abrams." (I AA133.) Under the law set forth above, this statement is a good faith communication of opinion, and thus incapable of being false.[5] Although the "bullied" characterization is an opinion, it is a truthful statement of fact that Abrams convinced Judge Elliot to issue the order that is discussed in the Bully Article. Moreover, as detailed above, Ms. Abrams' behavior was certainly an issue at the *Saiter* Hearing.

ii. Whether Ms. Abrams' In-Court Behavior is "Disrespectful and Obstructionist" is a Matter of Opinion and Thus Incapable of Being False.

In the "Bully Article," Mr. Sanson opined that Ms. Abrams' in-court behavior during the *Saiter* Hearing was "disrespectful and obstructionist." (I AA134.)

[5] The district court touched on the tenuous nature of the Abrams Parties' claim that referring to Ms. Abrams' behavior as "bullying" was incapable of being true or false, stating "I'm just kind of wondering how you can prove truth or false if someone is a bully." (VI AA921, ll. 7-8.)

Whether Ms. Abrams' behavior in the *Saiter* Hearing was "disrespectful" or "obstructionist" (or both) is a matter of opinion. There are no objective standards for what constitutes "disrespectful" or "obstructionist" behavior in the courtroom. Because this statement is opinion and not a statement of fact, it is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

iii. Whether Ms. Abrams "Misbehaved" in Court is a Matter of Opinion and Thus Incapable of Being False.

Whether Ms. Abrams "misbehaved" during the *Saiter* Hearing (*see* I AA134 (characterizing Ms. Abrams' conduct during the *Saiter* Hearing as "misbehavior")) is a matter of opinion. There are no objective standards for what constitutes "misbehavior" in the courtroom. Because this statement is opinion and not a statement of fact, it is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

iv. Whether Ms. Abrams' Behavior is "Embarrassing" is a Matter of Opinion and Thus Incapable of Being False.

Whether Ms. Abrams' behavior during the September 29, 2016 hearing was "embarrassing" is a matter of opinion. (I AA134 (characterizing Ms. Abrams'' in-court behavior as "embarrassing").) There are no objective standards for what constitutes "embarrassing" behavior in the courtroom. Because this statement is Mr. Sanson's opinion and not a statement of fact, it is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

v. Judge Elliot's Order Appears to be "An Attempt by Abrams to Hide Her Behavior From The Rest Of The Legal Community And The Public" is a Matter of Opinion and Thus Incapable of Being False.

Whether the order discussed in the "Bully Article" is part of an attempt by Ms. Abrams to "hide her behavior" from the legal community and the public (I AA134) is not a statement of fact. Rather, it is an expression of the Sanson Parties' opinion regarding Ms. Abrams' legal tactics. Thus, it is not defamatory, but rather a good faith communication of opinion. *See, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995) ("[T]he book's general tenor makes clear that Bugliosi's observations about Partington's trial strategies, and the implications that Partington contends arise from them, represent statements of personal viewpoint, not assertions of an objective fact").

c) The "Seal Happy" Article Is a Good Faith Communication.

The Abrams Parties contend that Mr. Sanson made nine different "false and misleading" statements in the "Seal Happy" Article. (OB, pp. 17-18; *see also* I AA139-49 (article).) However, the listed statements are non-actionable statements of opinions or true statements of fact, and thus good faith communications.

i. Whether Ms. Abrams "Appears to be 'Seal-Happy'" is a Matter of Opinion and Thus Incapable of Being False.

Whether Abrams is "seal-happy" is a matter of opinion. There are no objective standards for what constitutes being "seal-happy," nor should this Court entertain a

line-drawing problem of determining how many times a lawyer must request her cases be sealed before she becomes "seal-happy."[6] Rather, because "seal-happiness" is purely a matter of opinion, this statement is not a statement of fact, and thus is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

ii. Whether Ms. Abrams Seals Cases in Contravention of "Openness and Transparency" is a Matter of Opinion and Thus Incapable of Being False.

Whether sealing cases is an affront to "openness and transparency" is a matter of opinion. Some advocates for transparency and public access to the courts may view sealing cases as contravening the court's "openness and transparency," while others may view sealing cases as zealous advocacy that values a client's privacy interests. Thus, this statement is not a statement of fact and is instead a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

iii. Whether Ms. Abrams' Sealing of Cases is Intended "To Protect Her Own Reputation, Rather Than to Serve a Compelling Client Privacy or Safety Interest" is a Matter of Opinion and Thus Incapable of Being False.

As with the statement in the Bully Article regarding Abrams allegedly attempting "to hide her behavior from the rest of the legal community and the public," speculation regarding the motives behind Ms. Abrams' litigation tactics is

[6] Even if "seal happiness" were a factual determination, the Abrams Parties have not demonstrated that it places Ms. Abrams in a negative light. Indeed, potential litigants who desire their family court proceedings to transpire in private may seek out Ms. Abrams ***because*** she is "seal happy."

a statement of opinion, not fact, and therefore is a good faith communication. *See Partington*, 56 F.3d at 1153; a*ccord Gardner v. Martino*, 563 F.3d 981, 987 (9th Cir. 2009).

iv. Whether Ms. Abrams Engaged in "Judicial Browbeating" is a Matter of Opinion and Thus Incapable of Being False.

A statement about whether Ms. Abrams engaged in "judicial browbeating" is also not defamatory. This statement, interpreted in context, is one that a reasonable person would interpret as Mr. Sanson's negative opinion of Ms. Abrams convincing Judge Elliot to promulgate an overly-broad order prohibiting public distribution of video transcripts of the *Saiter* Hearing. Thus, is it a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

v. Whether Ms. Abrams Obtained an Order That "is Specifically Disallowed by Law" is a Matter of Opinion and Thus Incapable of Being False.

Disagreement about what the law does or does not allow is the bread and butter of the legal profession. If attorneys and members of the public were not permitted to disagree about the interpretation of law, then the entire practice of law would be obviated. Thus, this statement is good faith communication because it is a statement of opinion. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87. Furthermore, such an order was issues and was found unconstitutional.

vi. Whether Ms. Abrams Obtained the Order Against the "General Public" With "No Opportunity to be Heard" is a True Statement of Fact.

As noted above, a statement of fact that is "absolutely true, or substantially true" is not defamatory. *Pegasus*, 118 Nev. at 715, 52 P.3d at 88. In this instance, it is true that Ms. Abrams obtained the order described in the "Seal Happy" Article. (*see, e.g.*, I AA147-48.) And it is also true that Ms. Abrams obtained the order without allowing for any member of the public to weigh in on the order. Thus, this is a good faith communication of a true statement of fact. *Pegasus*, 118 Nev. at 715, 52 P.3d at 88.

vii. Whether Mr. Sanson and VIPI Were "Contacted by Judges, Attorneys and Litigants Eager to Share Similar Battle-Worn Experiences With Jennifer Abrams" is a True Statement of Fact.

This statement is a true statement of fact, and thus not actionable. (III AA 407 (Sanson Declaration, ¶ 5).) Moreover, it is unclear how Ms. Abrams would be able to know whether this is a false statement, as she was not a party to any of the conversations that took place between defendants and certain members of the legal community. Thus, this is a good faith communication. *Pegasus*, 118 Nev. at 715, 52 P.3d at 88.

viii. Whether Ms. Abrams Obtained an "Overbroad, Unsubstantiated Order to Seal and Hide the Lawyer's Actions" is a Matter of Opinion and Thus Incapable of Being False.

As discussed *supra*, this is merely an expression of the Sanson Parties'

opinion regarding Ms. Abrams' legal tactics and Judge Elliot's order, and thus is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

ix. Whether Ms. Abrams is an "Over-Zealous, Disrespectful Lawyer[] Who Obstruct[s] the Judicial Process and Seek[s] to Stop the Public From Having Access to Otherwise Public Documents is a Matter of Opinion and Thus Incapable of Being False.

Whether Ms. Abrams is "overzealous" or "disrespectful" are matters of opinion. There are no objective standards for what constitutes being "overzealous" or "disrespectful." Furthermore, whether sealing cases—a tactic which does, in fact, stop the public from having access to otherwise public records of legal proceedings—obstructs the judicial process is a matter of opinion that cannot be proven true or false. Thus, this statement cannot be defamatory and is instead a good faith communication. *See, e.g., Lieberman v. Fieger*, 338 F.3d 1076, 1081 (9th Cir. 2003) (comments made by attorney during televised interview that a psychiatrist who had served as expert witness in highly publicized murder trial was "Looney Tunes," "crazy," "nuts," and "mentally imbalanced," were protected under First Amendment as statements of opinion).

d) The "Acting Badly Article" Is a Good Faith Communication.

The Abrams Parties contend that Mr. Sanson defamed Ms. Abrams by "again accus[ing] Abrams of bullying Judge Elliot" in the *Saiter* case. (OB, p. 71.) As discussed above, however, whether a person's behavior is "bullying" is purely a

matter of opinion, and thus not susceptible to being either true or false. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

e) The "Deceives" Article Is a Good Faith Communication.

Although the reader of the Abrams Parties' Opening Brief is required to hunt around for the precise statements the Abrams Parties contend are false in the "Deceives Article," it appears that the Abrams Parties contend that Mr. Sanson falsely stated that Ms. Abrams sealed family cases to "cover [her] own bad behavior[]." (*See* OB, p. 71.) However, as discussed *supra*, this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is a good faith communication. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

2. The Statements at Issue Are Directly Connected with an Issue of Public Concern.

The district court correctly held that the Sanson Parties' communications concerned matters of public interest. (VI AA981 (Order, ¶ 38).) The district court enumerated several bases for this determination. It noted that criticism of a professional's on-the-job performance—particularly with regard to criticizing attorneys who practice in the public's courtrooms—is an issue of public concern. (VI AA981, 983 (Order, ¶¶ 39, 46).) The district court's order correctly reflected that "[s]peech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community." (VI AA981 (Order, ¶¶ 40 (quoting *Snyder v. Phelps*, 562 U.S. 443, 451 (2001))).) The

Order noted that the Ninth Circuit Court of Appeals has broadened "the category of speech that touches on a matter of public concern." (VI AA981 (Order, ¶ 41 (internal citations omitted)).) The Order further emphasized that "the operation of Nevada's courtrooms is a matter of great public concern" and that reporting on (and criticism of) courtroom happenings is a tradition rooted in the First Amendment, which gives courts "a measure of accountability" and the public "confidence in the administration of justice." (VI AA981-82 (Order, ¶¶ 42-45 (internal citations omitted)).)

In their Opening Brief, the Abrams Parties enumerate the five factor *Weinberg* test and briefly argue that each one weighs against the communications at issue being made in direct connection with issues of public interest. (OB, pp. 54 – 57.) However, the Abrams Parties' narrow interpretation of "public interest" is at odds with the mandate that courts construe "public interest" broadly in the Anti-SLAPP context. *See* §5(B)(2)(a), *infra*. In light of this mandate, the *Weinberg* factors weigh in favor of the communications at issue being directly connected to a matter of public interest. Furthermore, the Abrams Parties fail to address the massive interest the public has in the operation of its courtrooms and those who practice in them. Thus, the Sanson Parties met their burden of establishing that their communications were directly connected with an issue of public interest.

a) Issues of Public Interest Must be Defined Broadly.

This Court recently reaffirmed the principle underpinning the district court's determination that the communications at issue in this case concern matters of public interest: ***issues of public interest are defined broadly***. *Coker*, 432 P.3d at 751. *See also Nygard, Inc. v. Uusi-Kerttula*, 72 Cal. Rptr. 3d 210, 220 (Cal. Ct. App. 2008) ("an issue of public interest within the meaning of [California's anti-SLAPP statute] is ***any issue in which the public is interested***") (emphasis in original). As one court explained, "any doubt about whether the challenged statements relate to a matter of public interest must be resolved in favor of favoring freedom of speech, because 'the question whether something is an issue of public interest must be 'construed broadly.'" *Choyce v. SF Bay Area Indep. Media Ctr.*, No. 13-CV-01842-JST, 2013 WL 6234628, at *8 (N.D. Cal. Dec. 2, 2013) (citing *Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal.App. 4th 4501, 464 (Cal. App. 2012), *review denied* (Apr. 25, 2012)).

b) Attorney Conduct in Court Is of Concern to a Substantial Number of People.

The Abrams Parties argue that "Ms. Abrams' work as a family law lawyer does not impact a substantial number of people, but rather a relatively small specific audience." (OB, p. 56.) This argument ignores that Ms. Abrams conduct in court is of concern to those in Clark County who may potentially find themselves in Family Court. This includes the millions of Clark County residents who are married,

divorced, have (or are) children, or otherwise may require the services of a family law attorney. These potential consumers are entitled to a broad range of opinions to determine which attorney they should retain. *See Chaker v. Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496, 502 (Cal. App. 2012) (criticism of plaintiff's character and business practices plainly fall within in the rubric of consumer information and are thus public interests); *see also Healthsmart Pacific, Inc. v. Kabateck*, 7 Cal. App. 5th 416, 430, 212 Cal.Rptr.3d 589, 599 (Cal. App. 2016) ("members of the public, as consumers of medical services, have an interest in being informed of issues concerning particular doctors and healthcare facilities").

The Abrams Parties make the dubious argument that "stating that something is attorney misconduct is not the same as discussing the general topic of [attorney] misconduct; only the latter is potentially subject to anti-SLAPP protection." (OB, p. 58.) To support this contention, they cite to the unpublished case *Weiss v. Occidental Coll.*, No. B170384, 2004 WL 2502188, at *5 (Cal. Ct. App. Nov. 8, 2004). The Abrams Parties' creative use of brackets disguises the fact that *Weiss* did not concern allegations regarding the conduct of attorneys in taxpayer-funded public courtrooms, which itself is a matter of public interest.[7] Rather, *Weiss* concerned allegations

[7] This Court has explained the public interest in attorney misconduct in the context of attorney disciplinary proceedings, which pertain to individual, rather than general, attorney misconduct: "[T]he paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather ***to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as***

spectator misconduct at a college baseball game. *Id*. at *1. It cannot seriously be argued that the misbehavior of individual baseball fans is in the same ballpark of public interest as attorneys' in-court performance, which is regulated by a quasi-governmental agency—the State Bar[8]—and is one of the pillars upon which the American legal system stands.

Were this Court to entertain the Abrams Parties' argument, it would usher in a situation where an individual attorney's misconduct, no matter how grievous or notorious (and no matter how high-profile the attorney), would be definitionally excluded from Anti-SLAPP protection unless it were couched in a general discussion of attorney misconduct. This, of course, would have a massive chilling effect on journalists and commentators who wish to comment on eminently newsworthy stories of individual attorney misconduct. Worse yet, this chilling effect would hinder consumers' abilities to make an informed choice about which attorney they should retain. This is particularly important in the context of family law, where laypeople depend on their lawyers to successfully navigate them through contentious, high-stakes, ultra-personal litigation. *See, e.g., Davis v. Avvo, Inc.*, No. Cl 1-1571RSM, 2012 WL 1067640, at *3 (W.D. Wash. Mar. 28, 2012) ("The Court

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a whole." *State Bar of Nevada v. Claiborne*, 104 Nev. 115,210, 756 P.2d 464, 526 (1988) (emphasis added).

[8] As the State Bar of Nevada's website explains, its mission is "to govern the legal profession, to serve [its] members, and ***to protect the public interest***." (III AA537 (emphasis added).)

has no difficulty finding that the Avvo.com website is 'an action involving public participation,' in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer").

c) The Sanson Parties Did Not Turn "Otherwise Private Information" Into a Matter of Public Concern.

The Abrams Parties argue that "Respondents sought to *make* Abrams a matter of public interest by publicizing false and defamatory information about her on the internet." (OB, p. 57 (emphasis in original).) However, they do not explain how the Sanson Parties turned "otherwise private information" into a matter of public concern. This is because the Sanson Parties did no such thing—Ms. Abrams' litigation tactics and courtroom behavior are not private information, but rather part of the public record.

The public's interest in the administration of justice in its courtrooms is rooted in both the First Amendment and the need for courts to "have a measure of accountability and for the public to have confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *see also Stephens Media LLC v. Eighth Judicial District Court*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (Nev. 2009) (Public access inherently promotes public scrutiny of the judicial process, which enhances both the fairness of criminal proceedings and the public confidence in the criminal justice system."); *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437 (1966) ("Whatever differences may exist about interpretations

of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.").

3. The Statements at Issue Were Made in a Public Forum.

The district court correctly held that the communications at issue, published simultaneously on VIPI's publicly-accessible website and via email to VIPI email subscribers, were made in a public forum. (VI AA983-84 (Order, ¶¶ 48 - 54).) The Abrams Parties make two arguments against this ruling: first, that "newspapers, newsletters and other media outlets are not public forums;" (OB, p. 60) and second, that republication of communications made on a publicly-accessible website in private email brings all those communications outside of a public forum. (OB, pp. 61-62.) Neither of these arguments holds water.

a) Newspapers, Newsletters, and Media Outlets Such as Publicly-Accessible Websites are Public Forums.

The Abrams Parties baldly claim that "[m]eans of communication where access is selective, such as most newspapers, newsletters and other media outlets, are not public forums." (OB, p. 60 (quoting *Weinberg v. Feisel*, 2 Cal. Rpt. 3d 385, 391 (2003).) However, this position is "at odds with the definition of a 'public forum' under the plain meaning of the phrase and under the California Constitution." *Damon v. Ocean Hills Journalism Club,* 85 Cal.App.4th 468, 478, 102 Cal.Rptr.2d 205 (2000). Accordingly, this position has been wholly undermined since the

California Supreme Court decided *Weinberg* in 2003.[9]

For example, California courts have held that newspapers are public forums under California's Anti-SLAPP law because "the opinions they express are readily available to members of the public and contribute to the public debate." *Nygard* 159 Cal.App.4th at 1037. *See also Moreau v. Daily Indep*., No. 1:12-CV-01862-LJO, 2013 WL 85362, at *4 (E.D. Cal. Jan. 8, 2013) (holding article published both in print and on publicly-accessible website was a communication made in a public forum). Indeed, one California court has unambiguously stated that a "Web site accessible to the public is a public forum for purposes of [California's Anti-SLAPP statute]." *Buddha Voice Broad. All. v. Sioeng*, No. B249055, 2014 WL 4230163, at *6 (Cal. Ct. App. Aug. 27, 2014) (citing *Barrett v. Rosenthal*, 40 Cal.4th 33, 41, n. 4 (2006); *Vogel v. Felice*, *127* Cal.App.4th 1006, 1015 (2005); *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 895 (2004)).

As the *Nygard* court stated, the "fundamental purpose underlying the anti-SLAPP statute, which seeks to protect against lawsuits brought primarily to chill the valid exercise of constitutional rights … would not be served if we were to construe

[9] The Abrams Parties' reliance on *Toler v. Dostal*, No. A118793, 2009 WL 1163492, at *6 (Cal. Ct. App. Apr. 30, 2009) for the proposition that "[I]f publication of statements is derived from means of communication where access is selective or restricted, the forum is not public," is misplaced. Access to the communications at issue in this appeal is not selective or restricted, as they are located on VIPI's *publicly-accessible* website.

the statute to make [it] inapplicable to all newspapers, magazines, and other public media merely because the publication is arguably one-sided." *Nygard*, 159 Cal.App.4th at 1038. Thus, because the communications at issue in the instant appeal were published on VIPI's website—which can be accessed by anyone capable of entering a URL into an address bar or clicking on a hyperlink—they were made in a public forum.

b) Private Republication of Communications Made in a Public Forum Do Not Strip Those Communications of Having Been Made in a Public Forum.

The Abrams Parties further argue that because the Sanson Parties published identical communications on their publicly-accessible social media accounts and website, as well as "in a non-public forum [email]," they "lost the benefit of claiming immunity under the anti-SLAPP statute." (OB, pp. 60-61.) To support this contention, the Abrams Parties cite to *Lippincott v. Whisenhunt*, a case in which the Texas Supreme Court held that because Texas's Anti-SLAPP law does not require the communication at issue be public, "the defendant did not have to show his [emailed statements] were in a public forum for purposes of meeting his initial burden of proof under the anti-SLAPP analysis." (OB, pp. 61-62 (quoting *Lippincott* v. *Whisenhunt*, 462 S.W.3d 507, 509-10 (Tex. 2015)).

Aside from pertaining to a different state's differently-written anti-SLAPP statute, *Lippincott* is distinguishable because the defendant in that case did not claim

to make any statements in a public forum—the allegedly defamatory communications were exclusively made over the course of several private emails. *Lippincott*, 462 S.W.3d at 508. Here, by contrast, the Sanson Parties made the communications at issue via email *and* by posting them on VIPI's publicly-accessible website. Essentially, the Abrams Parties argue that because Nev. Rev. Stat. 41.637(4) requires communication in a place open to the public or in a public forum, any communication made via email is automatically stripped of anti-SLAPP protection even if the exact same communication was simultaneously made in an undeniably public forum, such as a publicly-accessible website.

Such a position is untenable. Under the Restatement (Second) of Torts, "[a] single communication heard at the same time by two or more third persons ***is a single publication***." Restatement (Second) of Torts § 577A (1977) (emphasis added). Thus, a communication made both publicly and privately is made in a public forum. To hold otherwise would take ***any*** public communication outside the ambit of anti-SLAPP protection so long as it was repeated once in private.

Such a result would have a devastating chilling effect on speech. For instance, it is common practice for newspapers—which have long been considered a public

forum or open to the public[10]—to both publish articles online and email them to individuals who have chosen to subscribe to the newspaper's email notification services. It defies logic that, by attempting to broaden its audience through email distribution of publicly-accessible articles, a publication waives its right to anti-SLAPP protection. Thus, this Court should affirm the district court's decision that the communications at issue here, simultaneously posted to VIPI's publicly-accessible website and privately emailed to VIPI subscribers, were made in a public forum and therefore subject to Anti-SLAPP protection.

C. The District Court Correctly Held that the Abrams Parties Failed to Meet their Burden of Establishing that their Claims Have at Least "Minimal Merit" Under the Second Prong of the Anti-SLAPP Analysis.

As the Abrams Parties note, the plaintiff must show that each claim has "minimal merit" to survive the second prong of the district court's Anti-SLAPP analysis. (OB, p. 63 (citing *Park v. Bd. of Trustees of Cal. State. Univ.*, 393 P.3d 905 (Cal. 2017)).) The district court correctly held that, even after dismissal of four

[10] *See Rall v. Tribune 365 LLC*, 31 Cal. App. 5th 479, 242 Cal. Rptr. 3d 633, 645 (Ct. App. 2019) (statements published in Los Angeles Times were published in a public forum); *Nygard*, 159 Cal. App. 4th at 1037–38 ("a newspaper or magazine need not be an open forum to be a public forum—it is enough that it can be purchased and read by members of the public"); *Damon v. Ocean Hills Journalism Club*, 85 Cal. App. 4th 468, 478, 102 Cal. Rptr. 2d 205, 212 (2000) ("a 'public forum' includes a communication vehicle that is widely distributed to the public and contains topics of public interest, regardless whether the message is 'uninhibited' or 'controlled.'")

frivolous claims at oral argument,[11] the remainder of the Abrams Parties' claims lacked minimal merit. (VI AA988-93 (Order, ¶¶ 70 – 96).)

1. Defamation

In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus*, 118 Nev. 706 at 718, 57 P.3d at 90. (citation omitted); *accord Flowers v. Carville*, 266 F. Supp. 2d 1245, 1251 (D. Nev. 2003).

The Abrams Parties cite to *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993) for the proposition that a statement is defamatory when it "would tend to lower the subject in the estimation of the community, excite derogatory opinions about [her], and hold [her] up to contempt." (OB, p. 67, n.183.) However, this is not the only measure of whether a statement is actionable for the purpose of a defamation suit—in determining whether a statement is actionable, "the

[11] The Abrams Parties argue that the district court should not have "relied, in part, on the Abrams Parties' dismissal of certain claims as evidence that their remaining claims somehow lack minimal merit." (OB, p. 65, n. 180.) However, the Abrams Parties' inclusion of plainly frivolous (RICO), non-existent (harassment and injunctive relief), and non-jurisdictional (copyright infringement) causes of action in their Complaint raises an inference that the Complaint was filed for the improper purpose of intimidating the Sanson Parties into silence.

court must ask 'whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact.'" *Pegasus*, 118 Nev. At 715, 57 P.3d at 88 a(internal citations omitted). In short, opinions alone are not actionable.

Here, as thoroughly discussed above (*see* § V(B)(1), *supra*) the alleged speech the Abrams Parties complain of (OB, pp. 68-71) consists of opinions, rhetorical hyperbole, and true facts, none of which satisfy the first element of a defamation claim. Thus, the district court correctly found that the Abrams Parties never established a probability of success on their defamation claim. (VI AA988.)

2. False Light

As this Court has explained, the false light tort requires that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. 662, 685, 335 P.3d 125, 141 (2014) (quoting Restatement (Second) of Torts § 652E (1977); *vacated on other grounds by Franchise Tax Bd. of Cal. v. Hyatt*, 136 S.Ct. 1277 (2016)). "False light, like defamation, requires at least an implicit false statement of objective fact." *Flowers v. Carville*, 310 F.3d 1118, 1132 (9th Cir. 2002) (citation omitted).

"The false light privacy action differs from a defamation action in that the

injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is damage to reputation." *Rinsley v. Brandt*, 700 F.2d 1304, 1307 (10th Cir. 1983). Nevada courts require that plaintiffs suffer mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson v. Sprint Nextel Corp.*, 2014 WL 553314 at *5 (D. Nev. Feb. 10, 2017).

The district court correctly found that the Abrams Parties failed "to allege facts sufficient to show that the VIPI Defendants placed them in a false light that would be 'highly offensive to a reasonable person' … [or that] they have suffered emotional distress[.]" (VI AA990 (Order, ¶ 81).) Perhaps most glaringly absent from the Abrams Parties assertions (OB, pp. 72-74) is any allegation that the Sanson Parties' statements invaded Ms. Abrams' privacy. Instead, their false light claim is tethered to the statements the Sanson Parties made regarding Ms. Abrams' in-court behavior and litigation practices—statements which, as discussed above, were not false or defamatory, and pertained to actions Ms. Abrams took in Nevada's public courtrooms. (*See* OB, pp. 73-74.)

As noted above, the Abrams Parties also failed to allege sufficient facts to show that Ms. Abrams suffered emotional distress from any of the statements. (VI AA990 (Order, ¶ 81).) The Abrams Parties point only to a conclusory assertion in a declaration from Ms. Abrams that she "suffered severe emotional distress" as a result

of the Sanson Parties' statements. (OB, p. 74, n.206 (citing V AA755).) A conclusory, self-serving assertion that Ms. Abrams suffered emotional distress, without any other indicia that such suffering occurred, is insufficient to establish a prima facie case of false light (or other torts which have severe emotional distress as an element).[12] Thus, the Abrams Parties have not demonstrated that their false light claim has any chance of prevailing.

3. Business Disparagement

The Abrams Parties emphasize the Sanson Parties' supposed "malice" in attempting to argue that their business disparagement claim has minimal merit. (*See generally* OB, pp. 75-76.) This intentionally elides the most important reason their business disparagement claim must fail—the Abrams Parties simply did not plead special damages, which the Abrams Parties themselves admit are an essential

[12] *See, e.g.*, *Eckenrode v. Rubin & Yates, LLC*, No. 2:13-CV-00317-GMN, 2014 WL 4092266, at *9 (D. Nev. July 28, 2014) ("A plaintiff must demonstrate more than transitory symptoms of emotional distress because unsupported self-serving statements by a plaintiff are insufficient"); *Oakley, Inc. v. McWilliams*, 584 F. App'x 528, 529 (9th Cir. 2014) (affirming summary judgment against intentional infliction of emotional distress claim based exclusively on counterclaimant's "own self-serving and uncorroborated declarations"); *Leon v. Saldana*, No. 5:12-CV-0510-SVW-SP, 2014 WL 12699387, at *3 (C.D. Cal. Sept. 29, 2014) (self-serving declaration "wholly inadequate" to justify award of noneconomic damages); *compare Johnson v. Ocwen Loan Servicing LLC*, No. 3:16-CV-2213-M, 2017 WL 6806688, at *6 (N.D. Tex. Nov. 16, 2017), report and recommendation adopted in part, rejected in part, No. 3:16-CV-2213-M, 2018 WL 295792 (N.D. Tex. Jan. 4, 2018) ("detailed, specific recount of [plaintiff's] personal experiences" sufficient to demonstrate severe emotional distress).

element of business disparagement. (*Id*., p. 75 (citing *Virtual Educ. Software, Inc.*, 125 Nev. at 386, 213 P.3d at 504).)

The district court explicitly held that "the Abrams Parties fail to specifically allege special damages as required by Rule 9(g) of the Nevada Rules of Civil Procedure." (VI AA990 (Order, ¶ 83).) The Abrams Parties do not dispute this; rather, they note that, "as it pertains to special damages, Abrams specifically said in her declaration that her firm suffered 'economic damages . . . in the form of lost time, lost business, etc.'" (OB, p. 76 (citing V AA754 (Ex. 4 to Omnibus Opposition. at ¶ 16. [sic])).) This argument is unavailing for two reasons: (1) Ms. Abrams' declaration cannot cure the complaint's fatal failure to allege special damages; and, (2) even if Ms. Abrams' declaration were construed as an amendment to her complaint, it does not allege with sufficient specificity the damages supposedly suffered.

In Nevada, "a party may amend the party's pleading only by leave of court or by written consent of the adverse party." Nev. R. Civ. P. 15(a). Notably, this rule does not authorize parties to amend their pleadings via declarations attached as exhibits to oppositions to the adverse parties' motions to dismiss. *Cf. Grayson v. O'Neill*, 308 F.3d 808, 817 (7th Cir. 2002) ("a plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment.") Despite this, the Abrams Parties argue that they have satisfied the Nev R. Civ. P.

9(g) requirement that special damages be pleaded specifically because they claimed in such a declaration to "have suffered economic damages … in the form of lost time, lost business, etc." (V AA 755 (Ex. 4 to Omnibus Opposition, ¶15).)

This Court cannot countenance this argument. To allow such a *de facto* amendment of pleadings would render Nev. R. Civ. P. 15(a) a nullity. Furthermore, it would turn all motions to dismiss into nothing more than a means of instructing Plaintiffs on how to keep meritless causes of action on life support. That would defeat the purposes of Nevada's Anti-SLAPP statute and Nev. R. Civ. P. 12—encouraging free speech and saving the courts' resources by putting a swift end to baseless claims. The Abrams Parties did not bother to move for leave to amend; thus, as pleaded, their cause of action for business disparagement does not satisfy the heightened pleading standard imposed by Nev. R. Civ. P. 9(g).

Even if this Court were to improperly construe Ms. Abrams' declaration as an amendment to the Abrams Parties' complaint, the vague, conclusory allegation that she and her firm have suffered damages is not specific enough to satisfy the heightened pleading standard imposed by Nev. R. Civ. P. 9(g). *See, e.g. Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956–57, 35 P.3d 964, 969 (2001) ("The mention of [special damages] in a complaint's general prayer for relief is insufficient to meet this requirement").

The federal courts' interpretations[13] of the nearly-identical federal rule underscores that general allegations—such as those proffered by Ms. Abrams in her declaration—are insufficient to satisfy the requirement that special damages be pleaded specifically. *See, e.g. Elec. Waveform Lab Inc. v. Work-Loss Data Inst., LLC*, No. SACV150794AGAGRX, 2015 WL 12684232, at *4 (C.D. Cal. Aug. 25, 2015) (allegation that Plaintiff "has suffered and continues to suffer lost profits and damages to its business reputation and goodwill" insufficient to satisfy Fed. R. Civ. P. 9(g)); *Glob. Res. Mgmt. Consultancy, Inc. v. Geodigital Int'l Corp.*, No. 215CV08477ODWAFMX, 2016 WL 1065796, at *5 (C.D. Cal. Mar. 17, 2016) (claim that Plaintiff "suffered monetary damages" "falls well short of the specificity needed to satisfy Rule 9(g)"); *Youngevity Int'l Corp. v. Smith*, No. 16-CV-704-BTM-JLB, 2017 WL 6389776, at *9 (S.D. Cal. Dec. 13, 2017) (requiring Plaintiff to "identify particular customers and transactions of which it was deprived as a result of the libel" to satisfy Fed. R. Civ. P. 9(g)). The Abrams Parties failed to specifically plead special damages in accordance with Nev. R. Civ. P. 9(g), thus the district court

[13] *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), *as modified* (Jan. 25, 2006) ("federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when this court examines its rules."); *see also Greene v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark*, 115 Nev. 391, 393, 990 P.2d 184, 185 (1999) (citing *Bowyer v. Taack*, 107 Nev. 625, 817 P.2d 1176 (1991)) ("Federal court interpretations of Federal Rules of Civil Procedure, as counterparts to the Nevada Rules of Civil Procedure, are persuasive but not controlling authority.")

did not err in holding that their business disparagement claim lacked minimal merit.

4. Intentional Infliction of Emotional Distress

The district court correctly determined that the Abrams Parties' claim of Intentional Infliction of Emotional Distress ("IIED") had no chance of prevailing, as they failed "to allege facts sufficient to show that the VIPI Defendants conduct was 'extreme and outrageous' or that the Abrams Parties suffered emotional distress, much less the 'severe or extreme' emotional distress required to prevail on a claim of IIED." (VI AA989 (Order, ¶ 77).) The Abrams Parties argue that this was in error because the Sanson Parties' conduct—posting negative opinions of Ms. Abrams on the Internet—was extreme and outrageous, and that the "vitriolic tone" of the Sanson Parties' articles creates "issues of fact regarding the outrageousness of their conduct[.]" (OB, p. 78.) The Abrams Parties also argue—without pointing to any facts to indicate Ms. Abrams actually suffered emotional distress—that "medical records are not mandatory in order to establish a claim for intentional infliction of emotional distress if the acts of the defendant are sufficiently severe." (*Id.*, p. 77.)

The district court was correct in determining that the Sanson Parties' conduct was not extreme or outrageous. (VI AA989 (Order, ¶ 77).) "For conduct to be extreme and outrageous, it must rise to a level outside all possible bounds of decency and be regarded as utterly intolerable in a civilized community." *Perrigo v. Premium Asset Servs., LLC*, No. 2:14-CV-1052-GMN-PAL, 2015 WL 4597569, at *6, n. 1

(D. Nev. July 28, 2015) (citing *Maduike v. Agency Rent–A–Car*, 114 Nev. 1, 953 P.2d 24, 26 (1998)). "Liability for emotional distress will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Candelore v. Clark Cty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992) (citation omitted).

In the instant case, the entirety of the conduct that allegedly caused Ms. Abrams'[14] emotional distress is mere expression; even if this Court were to construe Mr. Sanson's negative opinions of Ms. Abrams as "insults" or "threats," such conduct is neither extreme nor outrageous. The expression of unflattering opinions—or even insults—on the Internet is not merely tolerated in our "civilized community," it is commonplace. Indeed, it is arguably the cornerstone of modern political discourse. Thus, the Abrams Parties failed to plead this element of IIED and their claim is meritless as a matter of law.

The district court was also correct in holding that the Abrams Parties did not sufficiently plead severe or extreme emotional distress resulting from the Sanson Parties' conduct. (VI AA989 (Order, ¶ 77).) "To establish severe emotional distress, the plaintiff must demonstrate that the stress is so intense that no reasonable person could be expected to endure it—general physical or emotional discomfort is insufficient." *Perrigo*, 2015 WL 4597569, at *6, n. 1 (citing *Watson v. Las Vegas*

[14] As noted by the district court, corporate entities (such as Appellant law firm) do not have human emotions and thus cannot prevail on claims which have emotional distress as an element. (VI AA989 (Order, ¶ 76).)

Valley Water Dist., 378 F.Supp.2d 1269, 1279 (D.Nev.2005) *aff'd*, 268 F. App'x 624 (9th Cir. 2008)).

"A plaintiff may fail to establish severe emotional distress if she fails to seek medical or psychiatric assistance." *Watson*, 378 F. Supp. 2d at 1279 (citing *Miller v. Jones*, 114 Nev. 1291, 970 P.2d 571, 577 (1998)). In their Complaint, the Abrams Parties did not even allege that Ms. Abrams suffered severe emotional distress, much less that she sought medical or psychiatric assistance for it. Rather, the only indicia that Ms. Abrams suffered *any* emotional distress are the non-specific, boilerplate assertions in her Complaint, which fail to allege that her distress was severe (I AA26 (Complaint, ¶¶ 94-95)) and a self-serving declaration which states in conclusory, non-specific fashion that Ms. Abrams suffered severe emotional distress. (V AA755 (Abrams Declaration, ¶ 16).) As explained in § V(C)(2), *supra*, such naked allegations fall far short of demonstrating severe emotional distress. The Abrams Parties simply failed to plead the elements of IIED, and thus their claim for IIED has no chance of prevailing.

5. Negligent Infliction of Emotional Distress

The district court also properly dismissed the Abrams Parties' claim for negligent infliction of emotional distress. ("NIED") (VI AA989.) Hidden in the Abrams Parties' argument regarding IIED is an attempt to revive their futile NIED claim. (OB, p. 78.) This claim fails for the same reason the Abrams Parties' IIED

claim fails—failure to demonstrate severe emotional distress. (VI AA 989 (Order, ¶ 79).) While it is heartening to read that Ms. Abrams takes challenges to her (and her firm's) ethics "very, very seriously," (OB, p. 78, n. 216) that does not mean being subjected to criticism is extreme, outrageous, or actually caused Ms. Abrams severe emotional distress.

Furthermore, the argument that the communications' "vitriolic tone … creates issues of fact regarding … whether [the Sanson Parties] breached a duty of care owed to Abrams to avoid exposing her to an unreasonable risk of emotional distress" (OB, p. 78) is meritless. This is because, while the Abrams Parties claim that the Sanson Parties owed a duty of care to Ms. Abrams "to avoid exposing her to an unreasonable risk of emotional distress," (OB, p. 78) they point to absolutely no authority indicating that such a duty actually exists. While the Abrams Parties may be correct that breach of duty and causation are classically questions of fact (OB, p. 78, n. 215), whether a legal duty actually exists is a question of law. *See Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 777, 291 P.3d 150, 153 (2012) ("Whether Costco owed a duty to Foster is a question of law that this court reviews de novo").

In the instant case, the Abrams Parties did not allege in their Complaint that the Sanson Parties owed them *any* duty of care, much less that the Sanson Parties breached one. Rather, this cause of action consisted of a single, blanket statement that "[t]o whatever extent the infliction of emotional distress asserted in [the IIED

claim] was not deliberate, it was a result of the reckless and wanton actions of the Defendants[.]" (I AA26 (Complaint, ¶ 97).) A NIED claim which does not sufficiently allege damages or identify the duty of care allegedly breached by the defendant must fail as a matter of law, and therefore the Abrams Parties have not demonstrated any possibility of prevailing on the merits of this claim.

6. Accessory Liability (Concert of Action and Civil Conspiracy)

As the district court properly found, the Abrams Parties failed to establish a probability of success on their accessory liability claims for concert of action and civil conspiracy because both claims are tethered to their other unsustainable tort claims. (VI AA991 (Order, ¶¶ 85-89).) The Abrams Parties have failed to establish that the district court's dismissal was improper, even under the rigorous de novo standard of review this Court must apply.

a. Concert of Action

Although the Abrams Parties still seek review of the district court's dismissal of their claim for concert of action, their Opening Brief provides this Court with no analysis regarding why the court's dismissal of the claim was improper. (*See* OB, pp. 79-81.) This is likely because the Abrams Parties have no probability of success on this claim.

To prevail on a claim for concert of action, a plaintiff must establish that a defendant acted with another, or defendants acted together, "to commit a tort while

acting in concert with one another or pursuant to a common design. *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (1998) (citation omitted). A plaintiff must also show the defendants agreed "to engage in an inherently dangerous activity, with a known risk of harm, that could lead to the commission of a tort." *GES, Inc. v. Corbitt*, 117 Nev. 265, 270-71, 21 P.3d 11, 15 (Nev. 2001).

The Abrams Parties cannot make this showing. The alleged tortious conduct at issue in this case is not inherently dangerous—indeed, it is expressive conduct that is protected by the First Amendment. Thus, the district court did not err in holding that this claim lacked minimal merit.

b. Civil Conspiracy

The one accessory liability the Abrams Parties do explore in their Opening Brief—civil conspiracy—was also properly dismissed by the district court. (VI AA991 (Order, ¶¶ 87-89).) "An actionable civil conspiracy 'consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.'" *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)).

The Abrams Parties' civil conspiracy claim is predicated on their allegations that the Sanson Parties disparaged them, defamed Ms. Abrams, placed her in a false

light, and caused her emotional distress by engaging in an alleged "smear campaign." (OB, p. 81.) Because each of those underlying causes of action fails, the civil conspiracy claim likewise fails, and the Abrams Parties cannot rely on the conclusory assertion that the behavior they complain of is unlawful—which it is not—to satisfy their pleading burden, let alone to establish a prima facie case.

Moreover, the Abrams Parties failed to allege any damages resulting from the Sanson Parties' actions. The only evidence that the Abrams Parties present of damages resulting from the Sanson Parties' actions is Ms. Abrams' self-serving declaration "that she suffered damages as a result of the wrongful actions undertaken by Sanson and Schneider." (OB, p. 81 (citing V AA754.)) As discussed above, however, "unsupported self-serving statements by a plaintiff are insufficient" to sustain a claim for emotional distress. *Eckenrode v. Rubin & Yates, LLC*, No. 2:13-CV-00317-GMN, 2014 WL 4092266, at *9 (D. Nev. July 28, 2014). Thus, the district court properly held that this claim lacked minimal merit.

D. The District Court Correctly Declined to Permit the Abrams Parties to Conduct Limited Discovery Prior to Deciding on the Sanson Parties' Anti-SLAPP Motions.

Because the Abrams Parties failed to demonstrate the discovery they requested is necessary to satisfy their burden under Nev. Rev. Stat. § 41.660(3), the district court properly declined to permit them to conduct discovery in this matter. The Abrams Parties allege that the district court "ignored" their requests for limited

discovery because "the district court seemingly had no concern with Schneider's use of Sanson to try to extort concessions in the *Saiter* divorce case by use of an out-of-court defamation campaign." (OB, p. 32.) The Abrams Parties further object that they were not permitted "any discovery, into Schneider's payments to Sanson, or the source of funding for the 'sponsored ads' of the *Saiter* Hearing video on VIPI's social media pages, or the scheme between Schneider and Sanson to improperly influence Judge Elliot and to extort concessions from Abrams in the *Saiter* case." (*Id*.)

To those ends, the Abrams Parties argue that "the district court did not have discretion to *deny* the limited discovery requested by the Abrams Parties in direct response to the anti-SLAPP motions. (OB, p. 47 (emphasis in original).) However, the Abrams Parties misapprehend the relevant statute, which conditions the grant of limited discovery "***upon a showing*** by a party that information necessary to meet or oppose the burden [of the second prong of the Anti-SLAPP analysis] is in the possession of another party or a third party and is not reasonably available without discovery." Nev. Rev. Stat. § 41.660(4) (emphasis added).

The Abrams Parties failed to make any showing that the discovery requested is necessary to meet their burden. This is because the requested discovery pertains not to the threshold issue of whether the Sanson Parties committed the torts of defamation, false light, business disparagement, or infliction of emotional distress

but rather to the issue of whether there was a conspiracy or concerted action between Mr. Sanson and Mr. Schneider to commit those torts against the Abrams Parties. This argument puts the cart before the horse: "a cause of action for defamation is a necessary predicate to a cause of action for conspiracy to defame." *Flowers v. Carville,* 266 F.Supp.2d at 1349. The district court had all the evidence it ever needed to determine whether the statements at issue were defamatory—the statements themselves—and determined that they were all either true statements of fact, opinion incapable of being true or false, or were made without knowledge of their falsehood. (VI AA985, 988 (Order, ¶¶ 57-58, 74).)

The district court correctly determined that the Abrams Parties did not demonstrate with prima facie evidence a probability of prevailing on their defamation claim (or any other claim on which accessory liability could be premised). This, in turn, foreclosed the possibility of prevailing on a conspiracy (or concert of action) claim based on those causes of action. Therefore, the district court correctly declined to permit the Abrams Parties to go on a fishing expedition for information pertaining to their baseless accessory liability claims.

VI. CONCLUSION

Despite the Abrams Parties' contentions, the law demands a more nuanced

analysis than "we're good, they're bad, therefore we win." (*See* OB, p. 83.)[15] By filling their Opening Brief and Appendix with irrelevant allegations and salacious accusations intended to tarnish the Sanson Parties' image, the Abrams Parties invite this Court to turn its Anti-SLAPP jurisprudence into a popularity contest. This Court should decline the Abrams Parties' invitation to strip protection away from the type of speech that most needs it—unpopular, unflattering opinions of a renowned attorney who, unsurprisingly, reacted in a censorious and litigious fashion. Far from using Nevada's Anti-SLAPP statute as a "weapon to victimize" the Abrams Parties (*Id*.), the Sanson Parties used Nevada's Anti-SLAPP statute for its intended purpose: to protect their right to voice opinions in direct connection with an issue of public concern against those who view baseless lawsuits as a cudgel to silence them.

Nevada's Anti-SLAPP statute makes no distinctions between the classes of plaintiffs (or defendants) to whom it applies. The plaintiff need not be a "large corporation attempting to cover up a whistleblower or a well-funded politician trying to silence a critic." (OB, p. 4.) The plaintiff can be *anyone* who tries to silence a critic via frivolous litigation, including a lawyer who believes the First Amendment entitles her—but not her detractors—to voice said criticism. Likewise, the defendant can be *anyone*—including controversial figures like the Sanson Parties—whose

[15] Indeed, by the Abrams Parties' standards, but for the litigation privilege, they would be liable for defamation for expressing their opinion that Mr. Schneider and Mr. Sanson are "the bad guys here." (OB, p. 83.)

right to free speech on a matter of public concern is threatened by spurious litigation. *See Vess v. Ciba-Geigy Corp*., 317 F.3d 1098, 1109 (9th Cir. 2003) ("California and federal courts have repeatedly permitted defendants to move to strike under the anti-SLAPP statute despite the fact that they were neither small nor championing individual interests.")

Therefore, this Court must affirm the district court's decision in its entirety.

DATED this 22nd day of February, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Nev. R. App. P. 28.2:

I hereby certify that this brief complies with the formatting requirements of Nev. R. App. P. 32(a)(4), the typeface requirements of Nev. R. App. P. 32(a)(5) and the type style requirements of Nev. R. App. P. 32(a)(6) because the RESPONDENTS' ANSWERING BRIEF has been prepared in a proportionally spaced typeface (14 point Times New Roman font).

I further certify that this RESPONDENTS' ANSWERING BRIEF complies with the type-volume limitation of Nev. R. App. P. 32(a)(7)(A)(ii) because it contains 13,877 words.

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

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 22nd day of February, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENTS' ANSWERING BRIEF was filed electronically with the Nevada Supreme Court on the 22nd day of February, 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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