

NOAS

Marc J. Randazza (NV Bar No. 12265)
Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)

RANDAZZA LEGAL GROUP, PLLC

4035 S. El Capitan Way
Las Vegas, NV 89147
Telephone: 702-420-2001
Facsimile: 305-437-7662
ecf@randazza.com

*Attorneys for Defendant,
Darrell T. Coker*

Electronically Filed
Aug 30 2017 11:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCO SASSONE,

Plaintiff,

vs.

DARRELL T. COKER, *et al.*,

Defendants.

Case No.: A-16-742853-C

Dept. XXXII

NOTICE OF APPEAL

Notice is hereby given that Defendant Darrell T. Coker hereby appeals to the Supreme Court of Nevada from the Court's Order Denying Defendant's Special Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRS 41.660, entered in this action on the 17th day of August 2017.

Dated: August 23, 2017.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)
4035 S. El Capitan Way
Las Vegas, NV 89147

*Attorneys for Defendant,
Darrell T. Coker*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August 2017, I served a true and correct copy of the foregoing document via the Eighth Judicial District Court's Odyssey electronic filing system or, if necessary, via electronic mail and U.S. Mail, on the attorneys listed below:

Dominic P. Gentile <DGentile@gcmaslaw.com>
Clyde DeWitt <clydedewitt@earthlink.net>
Lauren E. Paglini <LPaglini@gcmaslaw.com>
GENTILE CRISTALLI MILLER ARMENI SAVARESE
410 S. Rampart Blvd., Suite 420
Las Vegas, NV 89145

Riley A. Clayton, Esq.
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
<RClayton@lawHJC.com>

Respectfully submitted,



Employee,
Randazza Legal Group, PLLC

1 **ASTA**

2 Marc J. Randazza (NV Bar No. 12265)

3 Ronald D. Green (NV Bar No. 7360)

4 Alex J. Shepard (NV Bar No. 13582)

5 **RANDAZZA LEGAL GROUP, PLLC**

6 4035 S. El Capitan Way

7 Las Vegas, NV 89147

8 Telephone: 702-420-2001

9 Facsimile: 305-437-7662

ecf@randazza.com

10 *Attorneys for Defendant,*

11 *Darrell T. Coker*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MARCO SASSONE,

15 Plaintiff,

16 vs.

17 DARRELL T. COKER, *et al.*,

18 Defendants.

Case No.: A-16-742853-C

Dept. XXXII

CASE APPEAL STATEMENT

19
20 Defendant Darrell T. Coker hereby files his Case Appeal Statement
21 concerning the appeal of the district court's Order denying Defendant's
22 Special Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRS 41.660.

23 1. Defendant Darrell T. Coker is the appellant filing this case appeal
24 statement.

25 2. The judge issuing the order Defendants wishes to appeal is The
26 Honorable Rob Bare.

1 3. The sole appellant is Defendant Darrell T. Coker. His counsel is
2 Randazza Legal Group, PLLC, located 4035 S. El Capitan Way, Las Vegas, NV
3 89147.

4 4. Respondent is Marco Sassone. His counsel are Gentile Cristalli Miller
5 Armeni Savarese, located at 410 S. Rampart Bld., Suite 420, Las Vegas, NV
6 89145.

7 5. All attorneys who have appeared in this action are licensed to
8 practice in the State of Nevada.

9 6. Appellant was represented by Randazza Legal Group, PLLC in the
10 district court.

11 7. Appellant is represented by Randazza Legal Group, PLLC in this
12 appeal.

13 8. Appellant neither requested nor was granted leave to proceed in
14 forma pauperis.

15 9. Proceedings in the district court commenced on September 2,
16 2016, when Plaintiff filed his Complaint.

17 10. Plaintiff filed an Amended Complaint on October 3, 2016.

18 11. The Amended Complaint alleges causes of action for:
19 (1) deceptive trade practices; (2) violation of right of publicity; (3) violation of
20 Nevada RICO, § 207.400(1)(c)(1) and/or (2); (4) violation of Nevada RICO,
21 § 207.400(1)(j); and (5) violation of works of art.

22 12. Plaintiff later voluntarily dismissed his claims for violation of right of
23 publicity and violation of works of art, with prejudice.

24 13. Appellant filed a Special Motion to Dismiss these claims pursuant to
25 NRS 41.660, Nevada's Anti-SLAPP statute, and appeals the district court's denial
26 of this Motion.

1 14. This case has not previously been the subject of an appeal to or
2 original writ proceeding in the Supreme Court.

3 15. This appeal does not involve child custody or visitation.

4 16. This appeal does not involve the possibility of settlement.

5
6 Dated: August 23, 2017.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)

Ronald D. Green (NV Bar No. 7360)

Alex J. Shepard (NV Bar No. 13582)

4035 S. El Capitan Way

Las Vegas, NV 89147

Attorneys for Defendant,

Darrell T. Coker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August 2017, I served a true and correct copy of the foregoing document via the Eighth Judicial District Court's Odyssey electronic filing system or, if necessary, via electronic mail and U.S. Mail, on the attorneys listed below:

Dominic P. Gentile <DGentile@gcmaslaw.com>
Clyde DeWitt <clydedewitt@earthlink.net>
Lauren E. Paglini <LPaglini@gcmaslaw.com>
GENTILE CRISTALLI MILLER ARMENI SAVARESE
410 S. Rampart Blvd., Suite 420
Las Vegas, NV 89145

Riley A. Clayton, Esq.
HALL JAFFE & CLAYTON, LLP
7425 Peak Drive
Las Vegas, NV 89128
<RClayton@lawHJC.com>

Respectfully submitted,



Employee,
Randazza Legal Group, PLLC

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-16-742853-C

Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

§
§
§
§
§

Location: **Department 32**
Judicial Officer: **Bare, Rob**
Filed on: **09/02/2016**
Case Number History:
Cross-Reference Case Number: **A742853**

CASE INFORMATION

Statistical Closures

12/30/2016 Transferred (before trial)

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-16-742853-C
Court Department 32
Date Assigned 03/15/2017
Judicial Officer Bare, Rob





PARTY INFORMATION

| | | |
|------------------|----------------------------|-------------------------------------------------------------------------------------------|
| Plaintiff | Sassone, Marco | <i>Lead Attorneys</i> Gentile, Dominic P. <i>Retained</i> 702-880-0000(W) |
| Defendant | Coker Jr, Darrell R | |
| | Coker, Darrell T | Randazza, Marc J., ESQ <i>Retained</i> 702-420-2001(W) |
| | Jello's Jigglin LLC | Roberts, Kenneth M, ESQ <i>Retained</i> 7023881216(W) |
| | McCullough, Darryl | Ravenholt, Dirk A <i>Retained</i> 702-647-0110(W) |
| | Morello, Richard | |

DATE

EVENTS & ORDERS OF THE COURT

INDEX

| | | |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 09/02/2016 |  Complaint Filed By: Plaintiff Sassone, Marco <i>Civil Cover Sheet; Complaint; and Initial Appearance Fee Disclosure (NRS Chapter 19)</i> | |
| 10/03/2016 |  Amended Complaint Filed By: Plaintiff Sassone, Marco <i>Amended Complaint</i> | |
| 10/06/2016 |  Order Shortening Time Filed By: Plaintiff Sassone, Marco <i>Application for Prejudgment Writ of Attachment Without Notice; and Application for Order Shortening Time</i> | |
| 10/13/2016 |  Petition for Writ of Attachment (9:00 AM) (Judicial Officer: Israel, Ronald J.) | |

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-16-742853-C

10/13/2016, 10/19/2016

Application for Prejudgment Writ of Attachment Without Notice; and Application for Order Shortening Time

10/18/2016



Supplement

Filed by: Plaintiff Sassone, Marco

Supplement to Application for Prejudgment Writ of Attachment Without Notice

10/25/2016



Order

Filed By: Plaintiff Sassone, Marco

Order Directing The Issuance of a Prejudgment Writ of Attachment Without Notice

11/28/2016



Notice of Posting Bond

Filed By: Plaintiff Sassone, Marco

Notice of Posting Bond

12/02/2016



Summons

Filed by: Plaintiff Sassone, Marco

Summons

12/02/2016



Summons

Filed by: Plaintiff Sassone, Marco

Summons

12/13/2016



Writ of Attachment

Filed by: Plaintiff Sassone, Marco

Amended Writ of Attachment

12/14/2016



Notice of Appearance

Party: Defendant Morello, Richard

Notice of Appearance

12/16/2016



Answer to Complaint

Filed by: Defendant Morello, Richard

Defendant Darryl McCullough's And The Jello's Jigglin, LLC. Answer to Plaintiff's Complaint

12/19/2016



Certificate of Mailing

Filed By: Defendant Coker, Darrell T

Certificate of Mailing

12/19/2016



Summons

Filed by: Plaintiff Sassone, Marco

Summons

12/30/2016



Notice of Appearance

Party: Defendant Coker, Darrell T

Notice of Appearance of Counsel

12/30/2016



Initial Appearance Fee Disclosure

Filed By: Defendant Coker, Darrell T

Initial Appearance Fee Disclosure (NRS Chapter 19)

12/30/2016



Removal to the US District Court

Filed by: Defendant Coker, Darrell T

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-16-742853-C

Notice of Removal to the United States District Court

| | |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12/30/2016 |  Ex Parte Application to Extend Time for Service Filed By: Plaintiff Sassone, Marco <i>Plaintiff's Ex Parte Motion for an Order Extending Time to Serve the Summons and Complaint and Allowing Plaintiff to Serve the Summons and Complaint on Defendants Darrell T. Coker and Darrell R. Coker by Publication</i> |
| 01/03/2017 |  Supplement Filed by: Plaintiff Sassone, Marco <i>Supplement to Plaintiff's Ex Parte Motion for an Order Extending Time to Serve the Summons and Complaint and Allowing Plaintiffs to Serve the Summons and Complaint on Defendants Darrell T. Coker and Darrell R. Coker by Publication</i> |
| 03/15/2017 |  Notice of Department Reassignment <i>Notice of Department Reassignment</i> |
| 03/15/2017 |  Motion to Dismiss Filed By: Defendant Coker, Darrell T <i>Defendant Darrell T. Coker's Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5)</i> |
| 03/15/2017 |  Peremptory Challenge Filed by: Defendant Coker, Darrell T <i>Peremptory Challenge of Judge</i> |
| 03/16/2017 |  Motion to Dismiss Filed By: Defendant Coker, Darrell T <i>Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRS 41.660</i> |
| 03/20/2017 |  Notice of Appearance Party: Plaintiff Sassone, Marco <i>Notice of Appearance of Attorney and Request for Notice</i> |
| 03/22/2017 |  Order of Remand from Federal Court <i>Order Remanding Case to State Court</i> |
| 03/23/2017 |  Joinder To Motion Filed By: Defendant McCullough, Darryl <i>Defendants Darryl Mccullough's and the Jello's Jigglin, LLC d/b/a Postal Annex's Joinder to Co-Defendant Darrell T. Coker's Motion to Dismiss</i> |
| 03/23/2017 |  Order Shortening Time Filed By: Plaintiff Sassone, Marco <i>Plaintiff's Motion to Strike Defendant Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660; And Application for Order Shortening Time</i> |
| 03/24/2017 |  Opposition to Motion Filed By: Defendant Coker, Darrell T <i>Opposition to Motion to Strike Defendant Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660</i> |
| 03/27/2017 |  Joinder Filed By: Defendant Jello's Jigglin LLC |

CASE SUMMARY

CASE NO. A-16-742853-C

Defendants McCullough's And The Jello's Jigglin, LLC D/B/A Postal Annex's Joinder To Co-Defendant Darrell T. Coker's Opposition To Motion To Strike Coker's Special Motion To Dismiss Pursuant To NRS 41.660

03/27/2017



Notice of Appearance

Party: Defendant Jello's Jigglin LLC
Notice of Appearance of Attorney and Request for Notice

03/28/2017



Joinder

Filed By: Defendant McCullough, Darryl
Defendants McCullough's and the Jello's Jigglin LLC D/B/A Postal Annex's Joinder to Co-Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff's Complaint Pursuant to NRS 41.660

03/29/2017



Notice of Withdrawal of Motion

Filed By: Plaintiff Sassone, Marco
Notice of Withdrawal of Plaintiff's Motion to Strike Defendant Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660; and Application for Order Shortening Time

04/03/2017



Stipulation and Order

Filed by: Plaintiff Sassone, Marco
Stipulation and Order to Extend Time for Plaintiff to Respond to (1) Defendant Darrell Coker's Motion to Dismiss Pursuant to NRCP 12(B)(1) & NRCP 12 (B)(5); and (2) Defendant Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660 (First Request)

04/04/2017



Notice of Entry of Order

Filed By: Plaintiff Sassone, Marco
Notice of Entry of Order

04/06/2017



Opposition

Filed By: Defendant Coker, Darrell T
Plaintiff's Opposition to Defendant Darrell T. Coker's Motion to Dismiss Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5)

04/10/2017



Opposition

Filed By: Plaintiff Sassone, Marco
Plaintiff's Opposition To Defendant Darrell T. Coker's Motion To Dismiss Plaintiff Sassone's Complaint Pursuant To NRS 41.660

04/25/2017

CANCELED Motion to Strike (9:30 AM) (Judicial Officer: Bare, Rob)

*Vacated - per Secretary
 Plaintiff's Motion to Strike Defendant Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660; And Application for Order Shortening Time*

05/24/2017



Reply in Support

Filed By: Defendant Coker, Darrell T
Defendant Darrell T. Coker's Reply in Support of Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5)

05/24/2017



Reply in Support

Filed By: Defendant Coker, Darrell T
Defendant Darrell T. Coker's Reply in Support of Special Motion to Dismiss Pursuant to NRS 41.660 and Incorporated Opposition to Countermotion for Fees and Costs

05/25/2017













Reply to Opposition




Filed by: Defendant Jello's Jigglin LLC; Defendant McCullough, Darryl
Defendants McCullough's and the Jello's Jigglin, LLC d/b/a Postal Annex's Reply to Plaintiff's

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-16-742853-C

Opposition to Darrell T. Coker's Special Motion to Dismiss Pursuant to NRS 41.660 and to the Joinder Thereto by Defendants Darryl Mccullough and the Jello's Jigglin, LLC

| | |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/30/2017 |  Minute Order (8:30 AM) (Judicial Officer: Bare, Rob) |
| 06/15/2017 |  Stipulation Filed by: Plaintiff Sassone, Marco <i>Stipulation to Extend Time to Hold Early Case Conference</i> |
| 06/15/2017 |  Notice of Entry of Order Filed By: Plaintiff Sassone, Marco <i>Notice of Entry of Order</i> |
| 06/20/2017 |  All Pending Motions (9:30 AM) (Judicial Officer: Bare, Rob) |
| 06/20/2017 | Motion to Dismiss (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendant Darrell T. Coker's Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5)</i> |
| 06/20/2017 | Motion to Dismiss (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRS 41.660</i> |
| 06/20/2017 | Joinder (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendants Darryl Mccullough's and the Jello's Jigglin, LLC d/b/a Postal Annex's Joinder to Co-Defendant Darrell T. Coker's Motion to Dismiss</i> |
| 06/20/2017 | Joinder (10:30 AM) (Judicial Officer: Bare, Rob) <i>Defendants McCullough's and the Jello's Jigglin LLC D/B/A Postal Annex's Joinder to Co-Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff's Complaint Pursuant to NRS 41.660</i> |
| 07/14/2017 |  Notice Filed By: Defendant Coker, Darrell T <i>Notice of Supplemental Authority</i> |
| 07/18/2017 |  Response Filed by: Plaintiff Sassone, Marco <i>Plaintiff's Response to Defendant Darrell T. Coker's Supplemental Authority in Support in Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5) and Special Motion to Dismiss Sassone's Complaint Pursuant to NRS 41.660</i> |
| 07/19/2017 |  Reply Filed by: Defendant Coker, Darrell T <i>Defendant Darrell T. Coker's Reply to Plaintiff's Response to Notice of Supplemental Authority in Support of Motion to Dismiss Plaintiff Sassone's Complaint Pursuant to NRCP 12(b)(1) & NRCP 12(b)(5)</i> |
| 07/20/2017 |  Minute Order (3:00 PM) (Judicial Officer: Bare, Rob) |
| 08/18/2017 |  Stipulation to Extend Time for Case Conference Filed by: Plaintiff Sassone, Marco <i>Stipulation to Extend Time to Hold Early Case Conference</i> |
| 08/21/2017 |  Notice of Entry of Order Filed By: Plaintiff Sassone, Marco |

DEPARTMENT 32
CASE SUMMARY
CASE NO. A-16-742853-C

| | | |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| | <i>Notice of Entry of Order</i> | |
| 08/23/2017 |  Order Filed By: Plaintiff Sassone, Marco <i>Order (1) Denying Defendant Darrell T. Coker's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCPP 12(b)(1) and NRCPP 12(b)(5) and Joinders Thereto; and (2) Denying Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff's Complaint Pursuant to NRS 41.660 and Joinders Thereto</i> | |
| 08/23/2017 |  Notice of Entry of Order Filed By: Plaintiff Sassone, Marco <i>Notice of Entry of Order</i> | |
| 08/23/2017 |  Notice of Appeal Filed By: Defendant Coker, Darrell T <i>Notice of Appeal and Case Appeal Statement</i> | |

| DATE | FINANCIAL INFORMATION | |
|------|--------------------------------------|-------------|
| | Attorney Gentile, Dominic P. | |
| | Total Charges | 5.00 |
| | Total Payments and Credits | 5.00 |
| | Balance Due as of 8/25/2017 | 0.00 |
| | Defendant Coker, Darrell T | |
| | Total Charges | 697.00 |
| | Total Payments and Credits | 697.00 |
| | Balance Due as of 8/25/2017 | 0.00 |
| | Defendant Jello's Jigglin LLC | |
| | Total Charges | 30.00 |
| | Total Payments and Credits | 30.00 |
| | Balance Due as of 8/25/2017 | 0.00 |
| | Defendant McCullough, Darryl | |
| | Total Charges | 223.00 |
| | Total Payments and Credits | 223.00 |
| | Balance Due as of 8/25/2017 | 0.00 |
| | Defendant Morello, Richard | |
| | Total Charges | 0.00 |
| | Total Payments and Credits | 0.00 |
| | Balance Due as of 8/25/2017 | 0.00 |
| | Plaintiff Sassone, Marco | |
| | Total Charges | 293.00 |
| | Total Payments and Credits | 293.00 |
| | Balance Due as of 8/25/2017 | 0.00 |

DISTRICT COURT CIVIL COVER SHEET A-16-742853-C

Clark County, Nevada

Case No. _____

XXVIII

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Marco Sassone

Attorney (name/address/phone):

Dominic P. Gentile410 South Rampart Boulevard, Suite 420Las Vegas, Nevada 89145Tel: (702) 880-0000Fax: (702) 778-9709

Defendant(s) (name/address/phone):

Darrell T. Coker, Darrell R. Coker, Jr., Richard Morello, Darryl McCullough, And The Jello's Jigglin, LLC d/b/a Postal Annex

Attorney (name/address/phone):

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

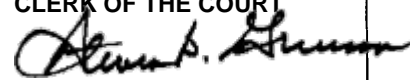
| Real Property | Torts | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 | Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort |
| Probate | Construction Defect & Contract | Judicial Review/Appeal |
| 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 <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 <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 Vehicles <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 | | Other Civil Filing |
| 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 checked="" type="checkbox"/> Other Civil Matters |

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

Date

Signature of initiating party or representative

See other side for family-related case filings.



ORDR
GENTILE CRISTALLI
MILLER ARMENI SAVARESE
DOMINIC P. GENTILE
Nevada Bar No. 1923
Email: dgentile@gcmaslaw.com
CLYDE DeWITT
Nevada Bar No. 9791
Email: clydedewitt@earthlink.net
LAUREN E. PAGLINI
Nevada Bar No. 14254
Email: lpaglini@gcmaslaw.com
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Attorneys for Plaintiffs, Marco Sassone

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCO SASSONE,

Plaintiff,

vs.

DARRELL T. COKER an individual,
DARRELL R. COKER, an individual,
DARRYL MCCULLOUGH an individual,
AND THE JELLO'S JIGGLIN, LLC d/b/a
Postal Annex, DOES 1-10, and ROE
ENTITIES 1-10, inclusive,

Defendants.

CASE NO. A-16-742853-C
DEPT. XXXII

ORDER

**(1) DENYING DEFENDANT
DARRELL T. COKER'S MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO
NRCF 12(b)(1) AND NRCF 12(b)(5)
AND JOINDERS THERETO;**

AND

**(2) DENYING DEFENDANT
DARRELL T. COKER'S SPECIAL
MOTION TO DIMSS PLAINTIFF'S
COMPLAINT PURSUANT TO NRS
41.660 AND JOINDERS THERETO.**

This matter came before this Court on June 20, 2017 for Defendant Darrell T. Coker's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCF 12(b)(1) and NRCF 12(b)(5), and Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff's Complaint Pursuant to NRS 41.660. Defendants Darryl McCullough and Jello's Jigglin LLC joined both Motions. Marc John Randazza, Esq. and Alex Shepard, Esq., Randazza Law Group, PLLC, appeared on behalf of

AUG 16 2017

1 Defendant Darrell T. Coker. Stephen Steele, Esq., Hall, Jaffe, & Clayton, LLP, appeared on
2 behalf of Defendants Darryl McCullough and The Jello's Jigglin, LLC d/b/a Postal Annex.
3 Clyde DeWitt, Esq. and Lauren E. Paglini, Esq., Gentile Cristalli Miller Armeni Savarese,
4 appeared on behalf of Plaintiff Marco Sassone.

5
6 Regarding Defendant's Motion to Dismiss per NRCP 12(b)(1) and NRCP 12(b)(5), and
7 joinder thereto, this Court finds that federal preemption does not apply and that this matter is
8 appropriately in state court. In order for state law to be preempted by the federal Copyright Act,
9 two conditions must be satisfied: (1) the content of the protected right must fall within the
10 subject matter of copyright, and (2) the right asserted under state law must be equivalent to the
11 exclusive rights of copyright holders under the Copyright Act. *Laws v. Sony Music Entm't, Inc.*,
12 448 F.3d 1134 (9th Cir. 2006). To satisfy the equivalent rights part of the preemption test the
13 alleged misappropriation must be equivalent to rights within the general scope of copyright as
14 specified by Section 106 of the Copyright Act. *Del Madera Properties v. Rhodes & Gardner,*
15 *Inc.*, 820 F.2d 973, 977 (9th Cir. 1987). Section 106 provides a copyright owner with the
16 exclusive rights of reproduction, preparation of derivative works, distribution, and display. *Id.* To
17 survive preemption, the state cause of action must protect rights which are qualitatively different
18 from the copyright rights. *Id.* That is, the state claim must have an extra element which changes
19 the nature of the action. *Id.* That extra element must not be part and parcel of the copyright
20 claim. *Id.* "[T]wo district courts have held that common law fraud is not preempted by [the
21 Copyright Act] because the element of misrepresentation is present." *Valente-Kritzer Video v.*
22 *Pinckney*, 881 F.2d 772, 776 (9th Cir. 1989) (citing *Tracy v. Skate Key, Inc.*, 697 F.Supp. 748,
23 751 (S.D.N.Y.1988)); *Brignoli v. Balch Hardy & Scheinman, Inc.*, 645 F.Supp. 1201, 1205
24 (S.D.N.Y.1986). That conclusion appears to be consistent with congressional intent. *Valente-*
25 *Kritzer Video*, 881 F.2d at 776 (citing H.R. Rep. No. 94 1476, 94th Cong., 2d Sess. 132,
26
27
28

1 reprinted in 1976 U.S. Code Cong. & Admin. News 5659, 5748 (“[T]he general laws of
2 defamation and fraud, would remain unaffected as long as the causes of action contain elements .
3 . . . that are different in kind from copyright infringement.”)).

4 In this case, Plaintiff has alleged that the Defendants were engaged in a criminal
5 enterprise creating fraudulent copies of his paintings, forging his signature on those copies,
6 forging certificates of authenticity, and then misrepresenting to the public that they were original.
7 Under the relevant case law, the extra element must transform the nature of the action from
8 copyright to fraud. This Court finds that the allegations in Plaintiff’s Complaint accomplish that,
9 thereby making the nature of these claims qualitatively different than a copyright claim. As such,
10 federal preemption does not apply.

12 Defendants additionally argue that the deceptive trade practice claim and the RICO
13 claims are not sufficiently plead. During the June 20, 2017 hearing, Plaintiff’s counsel indicated
14 he was willing and able to file a Second Amended Complaint to address these pleading
15 deficiencies in order to clarify the allegations. The Court will allow such amendment. This
16 amendment must also adequately address the involvement of Defendants Darryl McCullough
17 and Jello’s Jigglin, LLC. The operative Amended Complaint does not specifically allege that
18 these Defendants had any knowledge of or involvement in the alleged criminal enterprise, which
19 would be a requisite element to the deceptive trade practice claim and the RICO claims. As such,
20 if these Defendants are to remain in this lawsuit, the Second Amended Complaint must
21 sufficiently allege claims against these Defendants that are sufficient under NRCP 12.

24 Regarding Defendant’s Motion to Dismiss per NRS 41.660 and joinders thereto, this
25 Court finds that the Defendants have failed to meet their burden. NRS 41.660(3)(a) provides that,
26 upon a special motion to dismiss, the Court shall “[d]etermine whether the moving party has
27 established, by a preponderance of the evidence, that the claim is based upon a good faith
28

1 communication in furtherance of the right to petition or the right to free speech in direct
2 connection with an issue of public concern.” NRS 41.637 requires said good faith
3 communication[s] to be truthful or made without knowledge of its falsehood. Here, the
4 allegations that are the basis of this lawsuit are that Defendants were engaged in a criminal
5 enterprise creating fraudulent copies of his paintings, forging his signature on those copies,
6 forging certificates of authenticity, and then misrepresenting to the public that they were original.
7 When bringing an Anti-SLAPP motion to dismiss pursuant to NRS 41.660, it is the Defendants’
8 burden to establish, by a preponderance of the evidence, that their conduct was a good faith
9 communication that was either truthful or made without knowledge of its falsehood. Defendants
10 have not met that burden. Given that the Defendants failed to meet the first element of this
11 analysis, the burden does not shift to the Plaintiff, and the Court need not evaluate whether the
12 Plaintiff has shown a probability of prevailing on the claim. Thus, both Motions to Dismiss and
13 their respective Joinders are denied.
14

15
16 The Court having reviewed and considered Defendant Darrell T. Coker’s Motion to
17 Dismiss Plaintiff’s Complaint Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and Defendant
18 Darrell T. Coker’s Special Motion to Dismiss Plaintiff’s Complaint Pursuant to NRS 41.660
19 filed by Defendant, the Joinders filed by Defendants Darryl McCullough and Jello’s Jigglin’
20 LLC and Opposition filed by Plaintiff; the other papers and pleadings already on file herein, and
21 good cause appearing therefore,

22 IT IS HEREBY ORDERED that, Defendants’ Motion to Dismiss Plaintiff’s Complaint
23 Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and joinders thereto are hereby DENIED. This
24 Court finds that federal preemption does not apply and the matter is appropriately in state court.

25 IT IS FURTHER ORDERED that, Defendants’ Motion to Dismiss Plaintiff’s Complaint
26 Pursuant to NRS 41.660(3)(a) and joinders thereto are hereby DENIED. This Court finds that it
27 is the Defendants burden to establish, by a preponderance of the evidence, that their conduct was
28 a good faith communication that was either truthful or made without knowledge of its falsehood.

1 Defendants have not met this burden;

2 IT IS FURTHER ORDERED that Plaintiff shall have thirty (30) days from the date of
3 notice of entry of this order to file the Second Amended Complaint to address the pleading
4 deficiencies in order to clarify the allegations; and

5 IT IS FURTHER ORDERED that in its Second Amended Complaint, Plaintiff must
6 adequately address the involvement of Defendants Darryl McCullough and The Jello's Jigglin,
7 LLC.

8 DATED this 17 day of August, 2017.

10 
DISTRICT COURT JUDGE

11 Prepared and submitted by:

12 GENTILE CRISTALLI
13 MILLER ARMENTI SAVARESE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

14 
DOMINIC P. GENTILE
15 Nevada Bar No. 1923
16 CLYDE DEWITT
17 Nevada Bar No. 9791
18 LAUREN P. PAGLINI
Nevada Bar No. 14254
410 S. Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Attorneys for Plaintiff Marco Sassone

1 Approved as to form and content:

2 RANDAZZA LEGAL GROUP, PLLC

3 

4 MARC J. RANDAZZA

Nevada Bar No. 12265

5 RONALD GREEN

Nevada Bar No. 7360

6 4035 S. El Captain Way

Las Vegas, NV 89147

7 *Attorneys for Defendant, Darrell T. Coker*

8 HALL, JAFFE & CLAYTON, LLP

9

10 RILEY A. CLAYTON

Nevada Bar No. 5260

7425 Peak Drive

12 Las Vegas, Nevada 89128

Attorneys for Defendants

13 *Darryl McCullough and*

The Jello's Jigglin, LLC

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Approved as to form and content:

2 RANDAZZA LAW GROUP, PLLC

3
4 MARC J. RANDAZZA

Nevada Bar No. 12265

5 RONALD GREEN

Nevada Bar No. 7360

6 4035 S. El Captain Way

Las Vegas, NV 89147

7 *Attorneys for Defendant, Darrell T. Coker*

8 HALL, JAFFE & CLAYTON, LLP

9
10  RILEY A. CLAYTON

Nevada Bar No. 5260

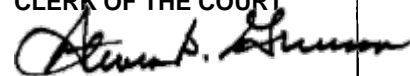
11 7425 Peak Drive

12 Las Vegas, Nevada 89128

Attorneys for Defendants

13 *Darryl McCullough and*

The Jello's Jigglin, LLC



1 **NEOJ**
GENTILE CRISTALLI
2 MILLER ARMENI SAVARESE
DOMINIC P. GENTILE
3 Nevada Bar No. 1923
Email: dgentile@gcmaslaw.com
4 CLYDE DEWITT
Nevada Bar No. 9791
5 Email: clydedewitt@earthlink.net
LAUREN E. PAGLINI
6 Nevada Bar No. 14254
Email: lpaglini@gcmaslaw.com
7 410 S. Rampart Blvd., Suite 420
Las Vegas, NV 89145
8 Tel: (702) 880-0000
Fax: (702) 778-9709
9 *Attorneys for Plaintiff Marco Sassone*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 MARCO SASSONE,

13 Plaintiff,

14 vs.

15
16 DARRELL T. COKER an individual,
DARRELL R. COKER, an individual,
17 RICHARD MORELLO an individual,
DARRYL MCCULLOUGH an individual,
18 AND THE JELLO'S JIGGLIN, LLC d/b/a
Postal Annex, DOES 1-10, and ROE
19 ENTITIES 1-10, inclusive,

20 Defendants.

CASE NO. A-16-742853-C
DEPT. XXXII

NOTICE OF ENTRY OF ORDER

21
22 PLEASE TAKE NOTICE that an *Order (1) Denying Defendant Darrell T. Coker's*
23 *Motion to Dismiss Plaintiff's Complaint Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and*
24 *Joinders Thereto and (2) Denying Defendant Darrell T. Coker's Special Motion to Dismiss*
25 *Plaintiff's Complaint Pursuant to NRS 41.660 and Joinders Thereto*, a copy of which is attached
26 hereto, was entered in the above-entitled matter on

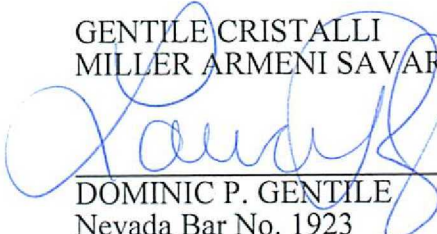
27 ///

28 ///

1 the 23rd day of August, 2017.

2 Dated this 23rd day of August, 2017.

3 GENTILE CRISTALLI
4 MILLER ARMENI SAVARESE

5 
6 DOMINIC P. GENTILE

7 Nevada Bar No. 1923

8 CLYDE DEWITT

9 Nevada Bar No. 9791

10 LAUREN E. PAGLINI

11 Nevada Bar No. 14254

12 410 S. Rampart Blvd., Suite 420

13 Las Vegas, Nevada 89145

14 Tel: (702) 880-0000

15 *Attorneys for Plaintiff Marco Sassone*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

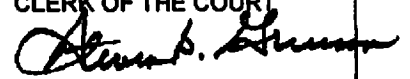
CERTIFICATE OF SERVICE

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on the 23rd day of August, 2017, she caused to be served, a copy of **NOTICE OF ENTRY OF ORDER**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve**, system addressed to:

Marc J. Randazza, Esq.
Ronald D. Green, Esq.
Alex J. Shepard, Esq.
Randazza Law Group, PLLC
4035 S. El Capitan Way
Las Vegas, NV 89147
Email: ecf@randazza.com
Attorneys for Darrell T. Coker

Riley A. Clayton, Esq.
Hall, Jaffe & Clayton, LLP
7425 Peak Drive
Las Vegas, NV 89128
Email: RClayton@lawHJC.com
Attorneys for Defendants
Darryl McCullough and
The Jello's Jigglin, LLC


An employee of
GENTILE CRISTALLI
MILLER ARMENI SAVARESE



ORDR
GENTILE CRISTALLI
MILLER ARMENI SAVARESE
DOMINIC P. GENTILE
Nevada Bar No. 1923
Email: dgentile@gcmaslaw.com
CLYDE DeWITT
Nevada Bar No. 9791
Email: clydedewitt@earthlink.net
LAUREN E. PAGLINI
Nevada Bar No. 14254
Email: lpaglini@gcmaslaw.com
410 South Rampart Boulevard, Suite 420
Las Vegas, Nevada 89145
Tel: (702) 880-0000
Attorneys for Plaintiffs, Marco Sassone

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCO SASSONE,

Plaintiff,

vs.

DARRELL T. COKER an individual,
DARRELL R. COKER, an individual,
DARRYL MCCULLOUGH an individual,
AND THE JELLO'S JIGGLIN, LLC d/b/a
Postal Annex, DOES 1-10, and ROE
ENTITIES 1-10, inclusive,

Defendants.

CASE NO. A-16-742853-C
DEPT. XXXII

ORDER

(1) **DENYING DEFENDANT
DARRELL T. COKER'S MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO
NRCF 12(b)(1) AND NRCF 12(b)(5)
AND JOINDERS THERETO;**

AND

(2) **DENYING DEFENDANT
DARRELL T. COKER'S SPECIAL
MOTION TO DIMSS PLAINTIFF'S
COMPLAINT PURSUANT TO NRS
41.660 AND JOINDERS THERETO.**

This matter came before this Court on June 20, 2017 for Defendant Darrell T. Coker's Motion to Dismiss Plaintiff's Complaint Pursuant to NRCF 12(b)(1) and NRCF 12(b)(5), and Defendant Darrell T. Coker's Special Motion to Dismiss Plaintiff's Complaint Pursuant to NRS 41.660. Defendants Darryl McCullough and Jello's Jigglin LLC joined both Motions. Marc John Randazza, Esq. and Alex Shepard, Esq., Randazza Law Group, PLLC, appeared on behalf of

1 Defendant Darrell T. Coker. Stephen Steele, Esq., Hall, Jaffe, & Clayton, LLP, appeared on
2 behalf of Defendants Darryl McCullough and The Jello's Jigglin, LLC d/b/a Postal Annex.
3 Clyde DeWitt, Esq. and Lauren E. Paglini, Esq., Gentile Cristalli Miller Armeni Savarese,
4 appeared on behalf of Plaintiff Marco Sassone.

5
6 Regarding Defendant's Motion to Dismiss per NRCP 12(b)(1) and NRCP 12(b)(5), and
7 joinder thereto, this Court finds that federal preemption does not apply and that this matter is
8 appropriately in state court. In order for state law to be preempted by the federal Copyright Act,
9 two conditions must be satisfied: (1) the content of the protected right must fall within the
10 subject matter of copyright, and (2) the right asserted under state law must be equivalent to the
11 exclusive rights of copyright holders under the Copyright Act. *Laws v. Sony Music Entm't, Inc.*,
12 448 F.3d 1134 (9th Cir. 2006). To satisfy the equivalent rights part of the preemption test the
13 alleged misappropriation must be equivalent to rights within the general scope of copyright as
14 specified by Section 106 of the Copyright Act. *Del Madera Properties v. Rhodes & Gardner,*
15 *Inc.*, 820 F.2d 973, 977 (9th Cir. 1987). Section 106 provides a copyright owner with the
16 exclusive rights of reproduction, preparation of derivative works, distribution, and display. *Id.* To
17 survive preemption, the state cause of action must protect rights which are qualitatively different
18 from the copyright rights. *Id.* That is, the state claim must have an extra element which changes
19 the nature of the action. *Id.* That extra element must not be part and parcel of the copyright
20 claim. *Id.* "[T]wo district courts have held that common law fraud is not preempted by [the
21 Copyright Act] because the element of misrepresentation is present." *Valente-Kritzer Video v.*
22 *Pinckney*, 881 F.2d 772, 776 (9th Cir. 1989) (citing *Tracy v. Skate Key, Inc.*, 697 F.Supp. 748,
23 751 (S.D.N.Y.1988)); *Brignoli v. Balch Hardy & Scheinman, Inc.*, 645 F.Supp. 1201, 1205
24 (S.D.N.Y.1986). That conclusion appears to be consistent with congressional intent. *Valente-*
25 *Kritzer Video*, 881 F.2d at 776 (citing H.R. Rep. No. 94 1476, 94th Cong., 2d Sess. 132,
26
27
28

1 reprinted in 1976 U.S. Code Cong. & Admin. News 5659, 5748 (“[T]he general laws of
2 defamation and fraud, would remain unaffected as long as the causes of action contain elements .
3 . . that are different in kind from copyright infringement.”)).

4 In this case, Plaintiff has alleged that the Defendants were engaged in a criminal
5 enterprise creating fraudulent copies of his paintings, forging his signature on those copies,
6 forging certificates of authenticity, and then misrepresenting to the public that they were original.
7 Under the relevant case law, the extra element must transform the nature of the action from
8 copyright to fraud. This Court finds that the allegations in Plaintiff’s Complaint accomplish that,
9 thereby making the nature of these claims qualitatively different than a copyright claim. As such,
10 federal preemption does not apply.

12 Defendants additionally argue that the deceptive trade practice claim and the RICO
13 claims are not sufficiently plead. During the June 20, 2017 hearing, Plaintiff’s counsel indicated
14 he was willing and able to file a Second Amended Complaint to address these pleading
15 deficiencies in order to clarify the allegations. The Court will allow such amendment. This
16 amendment must also adequately address the involvement of Defendants Darryl McCullough
17 and Jello’s Jigglin, LLC. The operative Amended Complaint does not specifically allege that
18 these Defendants had any knowledge of or involvement in the alleged criminal enterprise, which
19 would be a requisite element to the deceptive trade practice claim and the RICO claims. As such,
20 if these Defendants are to remain in this lawsuit, the Second Amended Complaint must
21 sufficiently allege claims against these Defendants that are sufficient under NRCP 12.

24 Regarding Defendant’s Motion to Dismiss per NRS 41.660 and joinders thereto, this
25 Court finds that the Defendants have failed to meet their burden. NRS 41.660(3)(a) provides that,
26 upon a special motion to dismiss, the Court shall “[d]etermine whether the moving party has
27 established, by a preponderance of the evidence, that the claim is based upon a good faith
28

1 communication in furtherance of the right to petition or the right to free speech in direct
2 connection with an issue of public concern.” NRS 41.637 requires said good faith
3 communication[s] to be truthful or made without knowledge of its falsehood. Here, the
4 allegations that are the basis of this lawsuit are that Defendants were engaged in a criminal
5 enterprise creating fraudulent copies of his paintings, forging his signature on those copies,
6 forging certificates of authenticity, and then misrepresenting to the public that they were original.
7 When bringing an Anti-SLAPP motion to dismiss pursuant to NRS 41.660, it is the Defendants’
8 burden to establish, by a preponderance of the evidence, that their conduct was a good faith
9 communication that was either truthful or made without knowledge of its falsehood. Defendants
10 have not met that burden. Given that the Defendants failed to meet the first element of this
11 analysis, the burden does not shift to the Plaintiff, and the Court need not evaluate whether the
12 Plaintiff has shown a probability of prevailing on the claim. Thus, both Motions to Dismiss and
13 their respective Joinders are denied.
14

15
16 The Court having reviewed and considered Defendant Darrell T. Coker’s Motion to
17 Dismiss Plaintiff’s Complaint Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and Defendant
18 Darrell T. Coker’s Special Motion to Dismiss Plaintiff’s Complaint Pursuant to NRS 41.660
19 filed by Defendant, the Joinders filed by Defendants Darryl McCullough and Jello’s Jigglin’
20 LLC and Opposition filed by Plaintiff; the other papers and pleadings already on file herein, and
21 good cause appearing therefore,

22 IT IS HEREBY ORDERED that, Defendants’ Motion to Dismiss Plaintiff’s Complaint
23 Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and joinders thereto are hereby DENIED. This
24 Court finds that federal preemption does not apply and the matter is appropriately in state court.

25 IT IS FURTHER ORDERED that, Defendants’ Motion to Dismiss Plaintiff’s Complaint
26 Pursuant to NRS 41.660(3)(a) and joinders thereto are hereby DENIED. This Court finds that it
27 is the Defendants burden to establish, by a preponderance of the evidence, that their conduct was
28 a good faith communication that was either truthful or made without knowledge of its falsehood.

1 Defendants have not met this burden;

2 IT IS FURTHER ORDERED that Plaintiff shall have thirty (30) days from the date of
3 notice of entry of this order to file the Second Amended Complaint to address the pleading
4 deficiencies in order to clarify the allegations; and

5 IT IS FURTHER ORDERED that in its Second Amended Complaint, Plaintiff must
6 adequately address the involvement of Defendants Darryl McCullough and The Jello's Jigglin,
7 LLC.


8 DATED this 17 day of August, 2017.

9
10 
DISTRICT COURT JUDGE

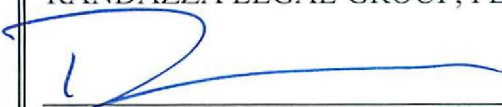
11 Prepared and submitted by:

12 GENTILE CRISTALLI
13 MILLER ARMENI SAVARESE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

14 
DOMINIC P. GENTILE
15 Nevada Bar No. 1923
16 CLYDE DEWITT
17 Nevada Bar No. 9791
18 LAUREN P. PAGLINI
Nevada Bar No. 14254
410 S. Rampart Blvd., Suite 420
Las Vegas, Nevada 89145
Attorneys for Plaintiff Marco Sassone

1 Approved as to form and content:
2 RANDAZZA LEGAL GROUP, PLLC

3 
4 MARC J. RANDAZZA
5 Nevada Bar No. 12265
6 RONALD GREEN
7 Nevada Bar No. 7360
8 4035 S. El Captain Way
9 Las Vegas, NV 89147
10 *Attorneys for Defendant, Darrell T. Coker*

11 HALL, JAFFE & CLAYTON, LLP

12 RILEY A. CLAYTON
13 Nevada Bar No. 5260
14 7425 Peak Drive
15 Las Vegas, Nevada 89128
16 *Attorneys for Defendants*
17 *Darryl McCullough and*
18 *The Jello's Jigglin, LLC*

1 Approved as to form and content:

2 RANDAZZA LAW GROUP, PLLC

3
4 MARC J. RANDAZZA

Nevada Bar No. 12265

5 RONALD GREEN

Nevada Bar No. 7360

6 4035 S. El Captain Way

Las Vegas, NV 89147

7 *Attorneys for Defendant, Darrell T. Coker*

8 HALL, JAFFE & CLAYTON, LLP

9
10  *15965 FOR
RILEY A. CLAYTON

Nevada Bar No. 5260

11 7425 Peak Drive

12 Las Vegas, Nevada 89128

Attorneys for Defendants

13 *Darryl McCullough and*

The Jello's Jigglin, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 13, 2016

A-16-742853-C Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

| | | | |
|-------------------------|----------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| October 13, 2016 | 9:00 AM | Petition for Writ of Attachment | Application for Prejudgment Writ of Attachment Without Notice; and Application for Order Shortening Time |
|-------------------------|----------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT: Gentile, Dominic P. Attorney

JOURNAL ENTRIES

- Also present, Mr. Donald Dibble, investigator. Mr. Gentile noted the investigator from his office is present today. Mr. Dibble sworn and testified. 1-19 exhibits presented and admitted only for the purpose of this hearing to establish the writ of attachment. (See worksheet). Court noted the first home being over \$900,000.00 and upon inquiry, Mr. Gentile noted he would be asking for the second home, however the appraisal was not done. Colloquy regarding NRS 31.030 and not asking for less than the value of the property. COURT ORDERED, Matter CONTINUED, to chambers for Counsel to supplement.

10/19/16 (CHAMBERS) APPLICATION FOR PREJUDGMENT WRIT OF ATTACHMENT
WITHOUT NOTICE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 19, 2016

A-16-742853-C Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

| | | | |
|-------------------------|----------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| October 19, 2016 | 3:00 AM | Petition for Writ of Attachment | Application for Prejudgment Writ of Attachment Without Notice; and Application for Order Shortening Time |
|-------------------------|----------------|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Upon review of the papers and pleadings on file in this Matter and supplement that was received. COURT ORDERED, Application for Prejudgment Writ of Attachment Without Notice, GRANTED as to the 936 Angel Star Lane, Las Vegas, Nv 89145 property, with BOND of \$150,000.00 to be posted by Plaintiff. Plaintiff no longer seeking the Writ of Attachment for the Camino Gardens property. Proposed order to be signed in chambers.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Dominic Gentile, Esq. (Gentile, C, M...) kk 10/21/16.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 30, 2017

A-16-742853-C Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

May 30, 2017 8:30 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Denise Duron

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of Court, for judicial economy, the Motions to Dismiss and Joinders currently scheduled for June 1, 2017, is RESCHEDULED to June 20, 2017 at 10:30 a.m.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Dominic P. Gentile, Esq. {Gentile, Cristalli, Miller, Armeni, & Savarese}, Riley A. Clayton, Esq. {Hall Jaffe & Clayton}, and Marc J. Randazza {Randazza Legal Group, PLLC} _ (dd-05/30/17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

June 20, 2017

A-16-742853-C Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

June 20, 2017 9:30 AM All Pending Motions

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Louisa Garcia

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Dewitt, Clyde Attorney
Paglini, Lauren E. Attorney
Randazza, Marc J., ESQ Attorney
Shepard, Alex J. Attorney

JOURNAL ENTRIES

- DEFT DARRELL T. COKER S SPECIAL MOTION TO DISMISS PLAINTIFF SASSONE S COMPLAINT PURSUANT TO NRS 41.660 DEFTS DARRYL MCCULLOUGH S AND THE JELLO S JIGGLING, LLC D/B/ A/ POSTAL ANNEX S JOINDER TO C0-DEFT DARRELL T. COKER S MOTION TO DISMISS DEFTS MCCULLOUGH S AND THE JELLO S JIGGLING LLC D/B/ A/ POSTAL ANNEX S JOINDER TO CO-DEF DARRELL T. COKER S SPECIAL MOTION TO DISMISS PLTF S COMPLAINT PURSUANT TO NRS 41.660 DEFT DARRELL T. COKER S MOTION TO DISMISS PLTF SASSONE S COMPLAINT PURSUANT TO NRCP 12(B)(1) & NRCP 12(B) (5)

Court provided procedural overview of the case and summarized pleadings. Following arguments by counsel regarding federal preemption, sufficiency of claims, standing and anti-slapp statute, COURT ORDERED, matter TAKEN UNDER ADVISEMENT; the Court will further review the papers and pleadings and issue a written decision from Chambers.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

July 20, 2017

A-16-742853-C Marco Sassone, Plaintiff(s)
vs.
Darrell Coker, Defendant(s)

July 20, 2017 3:00 PM Minute Order

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before this Court on June 20, 2017 for Defendant Darrell T. Coker s Motion to Dismiss Plaintiff s Complaint Pursuant to NRCP 12(b)(1) and NRCP 12(b)(5) and Defendant Darrell T. Coker s Special Motion to Dismiss Plaintiff s Complaint Pursuant to NRS 41.660. Defendants Darryl McCullough and Jello s Jigglin LLC joined both Motions. After carefully considering the arguments and evidence submitted, Court issued its Decision this 18th day of July, 2017. COURT ORDERED Defendant s Motions to Dismiss are DENIED.

Regarding Defendant s Motion to Dismiss per NRCP 12, this Court finds that federal preemption does not apply and that this matter is appropriately in state court. In order for state law to be preempted by the federal Copyright Act, two conditions must be satisfied: the content of the protected right must fall within the subject matter of copyright, and the right asserted under state law must be equivalent to the exclusive rights of copyright holders under the Copyright Act. *Laws v. Sony Music Entm't, Inc.*, 448 F.3d 1134 (9th Cir. 2006). To satisfy the equivalent rights part of the preemption test the alleged misappropriation must be equivalent to rights within the general scope of copyright as specified by section 106 of the Copyright Act. *Del Madera Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 977 (9th Cir. 1987). Section 106 provides a copyright owner with the exclusive rights of reproduction, preparation of derivative works, distribution, and display. *Id.* To survive preemption, the state cause of action must protect rights which are qualitatively different

from the copyright rights. *Id.* The state claim must have an extra element which changes the nature of the action. *Id.* That extra element must not be part and parcel of the copyright claim. *Id.* [T]wo district courts have held that common law fraud is not preempted by [the Copyright Act] because the element of misrepresentation is present. *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 776 (9th Cir. 1989)(citing *Tracy v. Skate Key, Inc.*, 697 F.Supp. 748, 751 (S.D.N.Y.1988); *Brignoli v. Balch Hardy & Scheinman, Inc.*, 645 F.Supp. 1201, 1205 (S.D.N.Y.1986)). This conclusion appears to be consistent with congressional intent. *Valente-Kritzer Video*, 881 F.2d at 776 (citing H.R.Rep. No. 94 1476, 94th Cong., 2d Sess. 132, reprinted in 1976 U.S.Code Cong. & Admin.News 5659, 5748 ([T]he general laws of defamation and fraud, would remain unaffected as long as the causes of action contain elements ... that are different in kind from copyright infringement.)).

In this case, Plaintiff is alleging that the Defendants were engaged in a criminal enterprise creating fraudulent copies of his paintings, forging his signature on those copies, forging certificates of authenticity, and then misrepresenting to the public that they were original. Under the relevant case law, the extra element must transform the nature of the action from copyright to fraud. This Court finds that the allegations in Plaintiff's Complaint accomplish that, thereby making the nature of these claims qualitatively different than a copyright claim. As such, federal preemption does not apply.

Defendants additionally argue that the deceptive trade practice claim and the RICO claims are not sufficiently plead. During the June 20, 2017 hearing, Plaintiff's counsel indicated he was willing and able to file a Second Amended Complaint to address these pleading deficiencies in order to clarify the allegations. The Court will allow such amendment. This amendment must also adequately address the involvement of Defendants Darryl McCullough and Jello's Jigglin LLC. The operative Amended Complaint does not specifically allege that these Defendants had any knowledge of or involvement in the alleged criminal enterprise, which would be a requisite element to the deceptive trade practice claim and the RICO claims. As such, if these Defendants are to remain in this lawsuit, the Second Amended Complaint must sufficiently allege claims against these Defendants that are sufficient under NRCP 12.

Regarding Defendant's Motion to Dismiss per NRS 41.660, this Court finds that the Defendants have failed to met their burden. NRS 41.660(3)(a) provides that, upon a special motion to dismiss, the Court shall [d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. NRS 41.637 requires said good faith communication[s] to be truthful or..made without knowledge of its falsehood. Here, the allegations that are the basis of this lawsuit are that Defendants were engaged in a criminal enterprise creating fraudulent copies of his paintings, forging his signature on those copies, forging certificates of authenticity, and then misrepresenting to the public that they were original. When bringing an Anti-SLAPP motion to dismiss pursuant to NRS 41.660, it is the Defendants' burden to establish, by a preponderance of the evidence, that their conduct was a good faith communication that was either truthful or made without knowledge of its falsehood. Defendants have not met that burden. Given that the Defendants failed to meet the first element of this analysis, the burden does not shift to the Plaintiff, and the Court need not evaluate whether the

Plaintiff has shown a probability of prevailing on the claim.

Thus, both Motions to Dismiss and their respective Joinders are denied.

Plaintiff's counsel is directed to submit a proposed order. The Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for August 16, 2017 in chambers for the order. Parties need not appear.

Plaintiff is ordered to file a Second Amended Complaint within 30 days of the Notice of Entry of the Court Order reflecting this Decision, in order to address the discussed listed above.

CLERK'S NOTE: Minutes distributed 7/20/17, via e-mail, as follows:

criminalattorney@drsLtd.com

efc@randazza.com

dgentile@gcmaLaw.com

kenroberts@drsLtd.com

EXHIBIT(S) LIST

Case No.: **A742853**

Hearing Date: **10/13/16**

Dept. No.: **XXVIII**

Judge: **Ronald J. Israel**

Court Clerk: **Kathy Klein**

PLAINTIFF'S: **Marco Sassone**

Recorder: **Judy Chappell**

Counsel for Plaintiff: **Dominic Gentile, Esq.**

VS.

DEFENDANT'S: **Darrell Coker**

Counsel for Defendant:

HEARING BEFORE THE COURT

PLAINTIFF'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|----------------|-------------------------------------|--------------|-----------|---------------|
| 1 | Property Records | 10/13/16 | | 10/13/16 |
| 2 | " | 10/13/16 | | 10/13/16 |
| 3 | Photo | 10/13/16 | | 10/13/16 |
| 4 | Darrell Coker Inc. | 10/13/16 | | 10/13/16 |
| 5 | Art & Jewelry House, LLC | 10/13/16 | | 10/13/16 |
| 6 | Photo | 10/13/16 | | 10/13/16 |
| 7 | Photo | 10/13/16 | | 10/13/16 |
| 8 | FFN Cert Art & Jewelry | 10/13/16 | | 10/13/16 |
| 9 | " " Art-Jewelry | 10/13/16 | | 10/13/16 |
| 10 | Proof of Payment | 10/13/16 | | 10/13/16 |
| 11 | Criminal History | 10/13/16 | | 10/13/16 |
| 12 | Judgment | 10/13/16 | | 10/13/16 |
| 13 | Criminal Record Search | 10/13/16 | | 10/13/16 |
| 14 | Reg. of Actions Re Darrell T. Coker | 10/13/16 | | 10/13/16 |
| 15 | " " " " " R. Coker | 10/13/16 | | 10/13/16 |
| 16 | Internal Memorandum Re Wilson | 10/13/16 | | 10/13/16 |
| 17 | " " Re Coker | 10/13/16 | | 10/13/16 |

PLAINTIFF'S EXHIBITS

[illegible]



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARC J. RANDAZZA
4035 S. EL CAPITAN WY.
LAS VEGAS, NV 89147

DATE: August 25, 2017
CASE: A-16-742853-C

RE CASE: MARCO SASSONE vs. DARRELL T. COKER; DARRELL R. COKER; RICHARD MORELLO; DARRYL MCCULLOUGH; THE JELLO'S JIGGLIN, LLC dba POSTAL ANNEX

NOTICE OF APPEAL FILED: August 23, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

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 INCLUDED);
DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER (1) DENYING
DEFENDANT DARRELL T. COKER'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT
PURSUANT TO NRCP 12(B)(1) AND NRCP 12(B)(5) AND JOINDERS THERETO; AND (2)
DENYING DEFENDANT DARRELL T. COKER'S SPECIAL MOTION TO DIMISS PLAINTIFF'S
COMPLAINT PURSUANT TO NRS 41.660 AND JOINDERS THERETO.; NOTICE OF ENTRY OF
ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

MARCO SASSONE,

Plaintiff(s),

vs.

DARRELL T. COKER; DARRELL R. COKER;
RICHARD MORELLO; DARRYL
MCCULLOUGH; THE JELLO'S JIGGLIN,
LLC dba POSTAL ANNEX,

Defendant(s),

Case No: A-16-742853-C

Dept No: XXXII

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 25 day of August 2017.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk