IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL T. COKER, Defendant/Appellant, vs. MARCO SASSONE, Plaintiff/Respondent.	**Supreme Court No. 71317** Appeal from Case No. A-16-724853-C DEPT. XXVIII Eighth Judicial District

On Appeal from a Final Judgment
Of the Eighth Judicial District Court of the State of Nevada

RESPONDENT MARCO SASSONE'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons also must be disclosed pursuant to in NRAP 26.1(a). No corporate of other entities are nongovernmental parties in this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Marco Sassone
   Plaintiff/Respondent

2. Dominic P. Gentile (Nevada Bar No. 1923)
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JURISDICTIONAL STATEMENT

A.

Nevada Supreme Court

Respondent and Plaintiff Marco Sassone[1] ("Plaintiff Sassone") does not dispute the position taken by Appellant and Defendant Darrel T. Coker ("Defendant Coker") that this Court has jurisdiction pursuant to NEV. REV. STAT. 41.670(4). App. Brief[2] at ix-x.[3] Direct, interlocutory appeals to this court from a district court's denial of a motion brought under NEV. REV. STAT. § 41.660 (the "anti-SLAPP" law) are expressly allowed by that statute.

B.

The District Court

The district court clearly had jurisdiction over the underlying claim because the amount in controversy is substantially exceeds $15,000.00. See NEV. CONST.

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[1] Appellant's Opening Brief refers to Plaintiff Sassone as "Appellee." Consistent with the Nevada rules and customs, he is referenced here as "Respondent."

[2] Appellant Darrell T. Coker's Opening Brief, filed March 6, 2018, Document No. 18-08900.

[3] Defendant Coker's Appendix is divided into two volumes, Document Numbers 18-08902 and 18-08902, filed March 16, 2018. The pages are consecutively numbered. However, for convenience, they will be referenced, "App. Appx., Vol. I" and "App. Appx., Vol. II", respectively. The Respondent's Appendix, of which there is only one volume, will be designated "Resp. Appx."

Art. 6, § 6(1) and NEV. REV. STAT. § 4.370. Defendant Coker has never disputed that.

C.

Timeliness of Notice of Appeal

Notice of Appeal was filed August 30, 2017, Document No. 17-29126 in this court after the August 23, 2017 Notice of Ruling. App. Appx I. 327-36. *See* NEV. R. APP. PROC. 4(a)(1).

D.

Finality of the Order from which this Appeal was Taken

As noted, *infra*, the order denying the anti-SLAPP motion is final on its face.

ROUTING STATEMENT

NEV. REV. STAT. § 41.670(4) states, "If the court denies a special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court." However, that provision merely authorizes an interlocutory appeal. It does not independently require that this court retain jurisdiction as Appellant seems to suggest. App. Brief, p. xi. Thus, the matters of routing and retention of this appeal is, as noted, in the discretion of the court.

Defendant Coker contends that this case should be retained by the Supreme Court because it falls into the category of, "[m]atters raising as a principal issue a

question of statewide public importance . . . ." NEV. R. APP. PROC. 17(a)(14). That issue, Defendant Coker claims, is "whether the distribution of artistic works in the public domain constitutes a communication in direct connection with an issue of public concern under Nevada's Anti-SLAPP statute." Defendant Coker's contention is wrong for two reasons.

Reason one is simply that it is highly improbable that such a scenario will arise again. What is the likelihood that a fine-art scam will give rise to an anti-SLAPP claim?

Reason two is, fundamentally, that the claimed "public importance" is not present in this case. The "speech" that is central to this case is deceptive advertising and fraud – not fine art. Whether Defendant Coker was fraudulently hawking fake Rolex watches, fake Louis Vuitton handbags or, as he was, fake Marco Sassone lithographs, he comes to grief not because of what he was selling, but what he was saying about it. The fact that deceptive advertising and fraud constitute unprotected speech is known to most everyone, not just lawyers.

Accordingly, this, the Supreme Court, is free to exercise its routing discretion, including, pursuant to NEV. R. APP. PROC. 17(c), "due regard . . . to the workload of each court."

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STATEMENT OF THE CASE

A.

Nature of the Case

This is an appeal from the district court's denial of a Special Motion to Dismiss, filed pursuant to NEV. REV. STAT. § 41.660 (Nevada's "anti-SLAPP law).

B.

Course of Proceedings and Disposition Below

On October 3, 2016, Plaintiff Sassone, a world-renowned artist, filed his Amended[4] Complaint in the Eighth Judicial District Court for Clark County, Nevada against Defendant Coker for *inter alia* violations of Nevada RICO Statutes. App. Appx., Vol. I, pp. 021-038, *et seq*. Shortly thereafter, Plaintiff Sassone applied for and obtained a Prejudgment Writ of Attachment.[5] After Defendant Coker removed the case to United States District Court, that court remanded it for failure of all defendants to join in the removal.[6]

After dismissal of several of the claims in the Complaint (and eventually, all of the defendants other than Defendant Coker), what remained was a three-count complaint: one count charging violation of Nevada's Deceptive Trade Practices

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[4] This is the operative Complaint at issue in this appeal. Plaintiff Sassone's Initial Complaint was filed on September 2, 2016. App. Appx., Vol. I, pp. 1-20.

[5] Respondent's Appendix, Vol. I, pp. 1-103, 104-07, 108-112.

[6] The Notice of Removal is found at App. Appx., Vol. 1, pp. 039-048; the remand order is found at App. Appx., Vol. I, pp 049-051.

Act, NEV. REV. STAT. § 598.0903, *et seq.* (First Claim for Relief); and two counts charging violations of Nevada's RICO law, NEV. REV. STAT. § 207.350, *et seq.* (Third and Fourth Claims for Relief).

Once back in state court, Defendant Coker's pleas in response to what was left of the complaint consisted of some Rule-12 motions not relevant to this appeal and, what is the topic of this appeal, Defendant Coker's Special Motion to Dismiss or anti-SLAPP motion. App. Appx., Vol. I, pp. 114-125.

The district court denied all of those motions, including the anti-SLAPP motion. App. Appx., Vol. I, pp. 325-36. As to the latter, the court found,

> Defendants have not met that burden [of establishing "that their conduct was a good faith communication that was either truthful or made without knowledge of its falsehood."]. 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.

Id. Defendant Coker gave timely notice of appeal from that ruling.[7]

SUMMARY OF ARGUMENT

A.

Defendant Coker's analysis of the applicable standard of review, to the extent he has articulated one, misses the mark because summary-judgment procedure no longer applies to an anti-SLAPP motion and has not since the 2013

[7] Notice of Appeal was filed August 30, 2017, Document No. 17-29126 in this court after the August 23, 2017 Notice of Ruling. App. Appx., Vol. I, 327-36. *See* NEV. R. APP. PROC. 4(a)(1).

amendment of the anti-SLAPP law. Rather, because the statute has wholly changed the respective burdens of proof, different standards of review apply: mixed question of fact and law as to the first prong of the statutory standard; and the substantial evidence standard as to the second.

B.

As to the merits, upon the filing of Defendant Coker's anti-SLAPP motion, the applicable statute[8] put him to the burden of "establish[ing], 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."[9] The district court justifiably found that Defendant Coker had failed in that burden.

In a nutshell, the complaint charged that Defendant Coker had sold a series of counterfeit lithographs that he falsely claimed were originals by Plaintiff Sassone, a famous and successful artist. Those fraudulent sales, the complaint charges, form the basis for Deceptive Trade Practice and RICO violations.

In response to the anti-SLAPP motion, Plaintiff Sassone established and Defendant Coker admitted that he had sold the subject fine art items. Plaintiff Sassone, the artist, identified the materials as counterfeit (something that would be obvious to anyone), including because they were advertised as lithographs, an art

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8 NEV. REV. STAT. § 41.660.

9 *Id.* at subsection 3(a).

form that he had never used. Worse, Defendant Coker was typically including fake certificates of authenticity. Defendant Coker (a convicted art-fraud felon) doubtfully claimed that he had purchased the items from some vaguely identified "bulk art supplier."

Given the above, it is no surprise that the district court found that Defendant Coker's side of the story was not sufficient to shoulder his preponderance-of-the-evidence burden of proof; and it denied the motion on that basis. Accordingly, the district court correctly found no need to reach the second inquiry, involving whether the plaintiff sufficiently established a probability of prevailing. [10]

Judge Bare exactly adhered to the statutory requirements, reaching the result that the evidence patently compelled. His order should be affirmed.

STANDARD OF REVIEW

Defendant Coker's analysis of the standard of review is incorrect in urging that *de novo* review is appropriate. Correctly, the standard is that of a mixed question of law and fact, as explained more fully below.

As Defendant Coker correctly observes, the new version of NEV. REV. STAT. § 41.660 (the "anti-SLAPP law) enacted in 2015 applies to this 2017 ruling in connection with a 2016 complaint.[11] However, Defendant Coker misses the mark

[10] *Id.* at subsection 3(b). The statute specifically directs that if the defendant fails to meet the preponderance-of-the-evidence burden articulated in subsection 3(a) that the motion must be denied without any further proceedings.

[11] App. Brief, p. 11, n.2.

in contending that *de novo* review applies.

As originally written, the relevant section of the anti-SLAPP law did not include the special motion to dismiss or the summary judgment standard. 1993 NEV. LAWS p. 2848-49. In 1997, the following language concerning the summary judgment standard was added:

> "3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:
>
> "(a) ***Treat the motion as a motion for summary judgment***;
>
> "(b) Stay discovery pending:
> "(1) A ruling by the court on the motion; and
>
> "(2) The disposition of any appeal from the ruling on the motion; and
>
> "(c) Rule on the motion within 30 days after the motion is filed.
>
> "4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits. . . ."

1997 NEV. LAWS 1997, Ch. 387, § 6 (Emphasis added.).

That portion of the statute now provides,

> "3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:
> "(a) Determine 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;
>
> "(b) If the court determines that the moving party has met

> the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim; . . . ."

2015 NEV. LAWS, Ch. 428 § 13 and 2013 NEV. LAWS, Ch. 176 § 3.

The current statute neither expressly (as it previously did) nor implicitly directs the court to apply summary judgment standards. Thus, Defendant Coker's contention that "[a]n Anti-SLAPP motion is treated as a motion for summary judgment," App. Brief p. 11, 1-5, is inaccurate; and the *Stubbs* and *John* cases cited in support of Appellant's erroneous assertion have been legislatively overruled.

As to the first prong of the test, then, addressed to the issue of whether the moving defendant has established anti-SLAPP standing "by a preponderance of the evidence," it should be a mixed question of law and fact. The appellate court's review of a district court's decision as to a mixed question of law and fact is appropriate where the district court's determination is based on factual conclusions but requires distinctively legal analysis. *Hernandez v. State*, 124 Nev. 639, 646, 188 P.3d 1126 (2008). In reviewing a mixed question of law and fact, an appellate court gives deference to the district court's findings of fact but independently reviews whether those facts satisfy the applicable legal standard. *Id.* at 647.

As to the second prong, which the court need not reach, the standard of review as to "whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim," the substantial evidence test should apply.

Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." *State Emp't Sec Dep't v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497 (1986). A decision that is not supported by substantial evidence is arbitrary and capricious. *See id.* Put differently, "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, n.4 188 P.3d 1084, 1088 (2008), citing *Manwill v. Clark Cty.*, 123 Nev. 238, 242, n.4, 162 P.3d 876 (2007), in turn citing *Ayala v. Caesars Palace*, 119 Nev. 232, 235, 71 P.3d 490 (2003).

THE COURT'S RULING ON THE ANTI-SLAPP MOTION

If there were ever a case where the appellant has unreasonably bombarded the court with irrelevant information, this is it. On the last seven pages of the second volume of the appendix (App. Appx., Vol. II, pp. 330-36), finally appears the order from which this appeal is taken – after scores of pages of irrelevant materials such as the unsuccessful effort to remove the case, and more.

In any event, the District Court's ruling on the anti-SLAPP motion in a nutshell found that Defendant Coker failed in his burden with respect to the first prong and, accordingly, found no need to consider the second prong:

> "Regarding Defendant's Motion to Dismiss per NRS 41.660 and joinders thereto, this Court finds that the Defendants have failed to meet 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."

App. Appx., Vol. II, pp. 330, 332-33.

DISCUSSION

A.

WHAT THIS CASE IS AND IS NOT ABOUT

It is axiomatic that deceptive advertising is not protected by the First Amendment.[12] Defendant Coker does not and could not claim otherwise. And

[12] *E.g.*, *In re R. M. J.*, 455 U.S. 191, 203, 102 S. Ct. 929, 937, 71 L. Ed. 2d 64 (1982) ("Truthful advertising related to lawful activities is entitled to the protections of the First Amendment. But when the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions."); *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 39 (D.C. Cir. 2014) "[T]the First Amendment does not shield deceptive, false, or

deceptive advertising is what this case is about. It is immaterial that Defendant Coker was selling fake fine art; it were his misrepresentations about it that form the gravamen of this case. If he had said truthfully that he was selling mere photocopies, there would be no case.

B.

STATEMENT OF FACTS

The district court had before it facts sufficient to compel the finding that it made; and finding otherwise could not have been justified finding otherwise. The evidence before the district court, to which there were no objections,[13] was as follows:

i.

This case pitted Plaintiff Sassone, a world-renowned artist who produces oil paintings and serigraphs in limited numbers, App. Appx., Vol. I, p. 150, against

(continued)

fraudulent speech that proposes a commercial transaction."); *Commodity Trend Service, Inc. v. Commodity Futures Trading Commission*, 233 F.3d 981, 993 (7th Cir. 2000) ("Misleading or deceptive advertising may be prohibited in addition to fraudulent commercial speech."), collecting cases.

[13] Thus, evidentiary objections obviously are waived. *E.g.*, "[Party] waived these evidentiary objections by failing to raise them during the proceedings below. *See Guy v. State*, 108 Nev. 770, 780, 839 P.2d 578, 584 (1992) (refusing to consider hearsay arguments on appeal that were not raised below); accord *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ('A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal."). *Estate of Adams By & Through Adams v. Fallini*, 132 Nev. Adv. Op. 81, 386 P.3d 621, 626 (2016).

Defendant Daniel Coker, a felon who, before the events underlying this action, had been convicted of art counterfeiting.[14]

In October 2014, Plaintiff Sassone learned that his art was being offered for sale through internet auction sites, such as *Icollector.com* and *LiveAuctioneers.com*, as "Original, Signed Lithographs with a Certificate of Authenticity." App. Appx., Vol. I, p.150. Because Plaintiff Sassone had never produced lithographs, he immediately recognized them as counterfeits. *Id.* Worse, he learned that the lithographs were being offered at a very low price – far below the market value of his authentic works. *Id.* All of the counterfeit items listed were identified as an "ORIGINAL SIGNED LITHOGRAPH BY ARTIST MARCO SASSONE." *Id.*

In 1979, Plaintiff Sassone's work had been depicted in a monograph book entitled, SASSONE. *Id.* That is significant because a number of the above-referenced listings were so carelessly produced that the page numbers of the monograph from which they were copied appeared on the pictures listed. *Id.*

Obviously concerned about the damage to his reputation and to the value of his art works that would be occasioned by flooding the market with counterfeits of

[14] More specifically, Coker was convicted of Fraud and Racketeering arising from a large art counterfeit fraud in the State of Florida. App. Appx., Vol. I, p. 175-76. As a result, he was sentenced to serve a term of sixty months in Florida State Prison and ordered to pay restitution to victims not to exceed $165,000.00 and prohibited from participating in any "illegal auctions." App. Appx., Vol. I, pp.179-196.

his works – especially, as noted, because he sold them in limited numbers – Plaintiff Sassone enlisted four acquaintances to make controlled purchases of some of the counterfeits, allowing him an opportunity to inspect them. *Id.*

Each of the four of them made what might be termed an "undercover" purchase from either *ICollectors.com* or *LiveActuioneers.com* of what was advertised as an "Original Signed Lithograph by Artist Marco Sassone" or something akin to that; all of them received counterfeits; and three of them were furnished with a "Certificate of Authenticity,"[15] obviously bogus because Plaintiff Sassone never made a lithograph. App. Appx., Vol. I, p.150.

Defendant Coker's side of the story is found in a two-page declaration and is worth reading. App. Appx., Vol. II, p. 231-32.

First, he says, "Regarding the lithographs at issue in this case, I bought all of these copies of the paintings from a bulk art supplier named Michael Schofield. [¶] I never personally created any of the copies of any of the works in question. [¶] . . . [¶] I admit that I sold these copies. However, I did not think that doing so would be an issue because I thought the reproductions that I bought from the bulk supplier were legitimate or otherwise legal to buy and sell." *Id.*,

[15] Declarations of each of the four "undercover shoppers" establish the particulars of his or her purchase: Collin Clark, App. Appx., Vol. I, pp. 158-60; Jelena Popovic, App. Appx., Vol. I, pp. 163-64; Diane Nelson-Menniger, App. Appx., Vol. I, pp. 167-68; and Sarah Burton-Sosa, App. Appx., Vol. I, pp. 171-72.

To attempt to bolster his story, Defendant Coker adds, "I have copies of the canceled checks I used to pay Mr. Schofield for the copies of these paintings, they are attached as ***Exhibit 1***." *Id.* (Emphasis in the original.). However, what as attached was not canceled checks; rather it was four pages of copies of check stubs and carbon copies of checks; and not all were written to Michael Schofield. App. Appx., Vol. II, pp. 233-37.

ii.

Notably, because Defendant Coker admitted selling the subject works of art that were advertised as "originals" (that, in fact, were counterfeit), he is bound by that admission. *E.g.*, *Kula v. Karat*, Inc., 91 Nev. 100, 105, 531 P.2d 1353, 1356 (1975) (Appellant is bound by admission contained in his pleadings.).

Beyond that, however, it is no wonder that the court declined to buy Defendant Coker's story. Not only is he a convicted felon, which certainly impacts negatively on his credibility in general;[16] it does so even more so where it is a conviction for the same kind of scam involved in this case. And one would think

[16] *E.g.*, *Branch v. State*, 408 P.3d 563 (Nev. 2018) ("Under NRS 50.095, "[e]vidence of a prior conviction may be admitted for the purpose of impeachment if the conviction involved a sentence of death or imprisonment for more than one year, and the conviction is not more than ten years old."); *Warren v. State*, 121 Nev. 886, 896, 124 P.3d 522, 529 (2005) (NRS 50.095 does not limit impeachment to only evidence of felonies relevant to truthfulness or veracity."). It is also admissible pursuant to NRS 48.045(2) because the conduct is identical. On appeal, Defendant Coker makes much of the fact that the conviction is over ten years old. The time to do that would have been at the district court.

that more could be told about Mr. Schofield than vaguely that he is a "bulk art supplier."

Therefore, there is no reason that this court should not afford the required deference to the district court in its fact finding.

C.

ARGUMENT

In light of the above together and under the proper standard of review – giving deference to the district court's findings of fact –Defendant Coker clearly failed in his burden to "establish[], by a preponderance of the evidence, that the [Plaintiff's] 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), and that it is 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." NEV. REV. STAT. § 41.637(4).[17]

[17] There is a subtlety here. Section 41.660(3)(a) requires proof that the communication be made in "direct connection with an issue of public ***concern***"; while 41.637(4) defines "[g]ood faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public ***concern***" as one that is "in direct connection with an issue of public ***interest***." Examination of various, readily available lexicons suggests that the two are interchangeable.

i.

Good Faith Communication? There is nothing in the record even remotely suggesting that this court should not defer to the trial court's factual finding that the communication was not in good faith. Indeed, as noted, the court had compelling reasons to reject Defendant Coker's tall tale.

ii.

In Furtherance of the Right to Free Speech? As noted, false advertising is not protected by the First Amendment. When the district court correctly found the advertising to be false, that properly ended the inquiry.

iii.

In Direct Connection with an Issue of Public Interest? Whether there is a public interest (or public concern) about niche advertising is an open question. But indeed, as to false or misleading advertising, the public interest is in its suppression.

When the legislature first enacted Nevada's anti-SLAPP law in 1997, its preamble says much to guide the court as to its intent.[18] Thus, the concern of the

[18] "Whereas, The framers of the United States Constitution and the constitution of the State of Nevada, recognizing that ***participation by citizens in government*** is an inalienable right which is essential to the survival of democracy, secured its protection by giving the people the right to petition the government for redress of grievances in the First Amendment to the United States Constitution and in section 10 of article 1 of the constitution of the State of Nevada; and

"Whereas, The communications, information, opinions, reports, testimony,

legislature pertained to political public affairs, calling into doubt whether the legislature intended the anti-SLAPP law to apply to advertising (or commercial speech) of any kind, much less communications in connection with a private, commercial transaction. Granted, advertising has First Amendment protection,

(continued)

claims and argument provided by citizens to their government are ***essential to wise governmental decisions and public policy, the public health, safety and welfare, effective law enforcement, the efficient operation of governmental programs, the credibility and trust afforded government and the continuation of our representative form of government***; and

"Whereas, Civil actions are being filed against many citizens, businesses and organizations based on their ***valid exercise of their right to petition***; and

"Whereas, Such lawsuits, called "Strategic Lawsuits Against Public Participation," or 'SLAPPs,' are typically dismissed, but often not before the defendant is put to great expense, harassment and interruption of their productive activities; and

"Whereas, The number of SLAPPs has increased significantly over the past 30 years; and

"Whereas, SLAPPs are an abuse of the judicial process in that they are used to censor, chill, intimidate or punish persons for ***involving themselves in public affairs***; and

"Whereas, The threat of financial liability, litigation costs and other personal losses from groundless civil actions ***seriously affects governmental, commercial and individual rights by significantly diminishing public participation in government, in public issues and in voluntary service***; and

"Whereas, Although courts have recognized and discouraged SLAPPs, protection of this important right has not been uniform or comprehensive; and

"Whereas, It is essential to our form of government that the constitutional rights of citizens to participate fully in ***the process of government*** be protected and encouraged; now, therefore, . . ."

1997 NEV. LAWS Ch. 387 (Emphasis added.).

albeit limited.[19] However, there is a serious question as to whether the anti-SLAPP law was designed to go that far.

CONCLUSION

The district court correctly denied Defendant Coker's Special Motion to Dismiss. Plaintiff Sassone respectfully requests that this Court affirm the district court's Order.

Dated: May 4, 2018.

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[19] Courts have granted commercial speech "a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978).

CERTIFICATE OF COMPLIANCE

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

1. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point Times New Roman font.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 4532 words and does not exceed 30 pages.

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

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requirements of the Nevada Rules of Appellate Procedure.

Dated: May 4, 2018.

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CERTIFICATE OF MAILING

The undersigned, an employee of Gentile Cristalli Miller Armeni Savarese, hereby certifies that on May 4, 2018 served a copy of the foregoing document to all interested parties by electronic service and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

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