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Attorney for *Plaintiffs*,
HOWARD and JENNA SHAPIRO

Electronically Filed
Sep 11 2017 11:47 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

| | | | |
|--------------------------------------|---|------------|---------------|
| HOWARD SHAPIRO and JENNA |) | CASE NO.: | A-14-706566-C |
| SHAPIRO, |) | DEPT. NO.: | XXVII |
| Plaintiffs, |) | | |
| |) | | |
| v. |) | | |
| |) | | |
| GLEN WELT, RHODA WELT, LYNN |) | | |
| WELT, MICHELLE WELT, individuals; |) | | |
| CHECKSNET.COM, a corporation; DOES I |) | | |
| through X, and ROE CORPORATIONS I |) | | |
| through X, inclusive, |) | | |
| |) | | |
| Defendants. |) | | |

NOTICE OF APPEAL

COMES NOW, Plaintiffs, HOWARD SHAPIRO and JENNA SHAPIRO, (hereinafter collectively referred to as "Plaintiffs"), by and through their attorney of record, ALEX B. GHIBAUDO, ESQ., of the law firm of ALEX B. GHIBAUDO, P.C., and pursuant to the Nevada Rule of Appellant Procedure 3, files the following Notice of Appeal from the above-captioned Court's Order Granting Glen Welt, Rhoda Welt, Lynn Welt & Michelle Welt's Renewed Motion to Dismiss, electronically filed on August 4, 2017; and of which the Notice of Entry of Order was filed on August 7, 2017.

1 (a) The party seeking the appeal are the Plaintiffs in the foregoing matter.

2 (b) The Order appealed if from the aforesaid Court's Order Granting Glenn Welt, Rhoda Welt,
3 Lynn Welt & Michelle Welt's Renewed Motion to Dismiss, electronically filed on August
4 4, 2017; the Notice of Entry of Order was filed on August 7, 2017.

5 (c) Appeal from the Order Granting Glen Welt, Rhoda Welt, Lynn Welt & Michelle Welt's
6 Renewed Motion to Dismiss is hereby taken to the Nevada Supreme Court.

7 This Notice of Appeal is accompanied by the filing fee of \$250.00 specified in NRAP 3(c).

8 DATED this 6th day of September, 2017.

9
10 ALEX B. GHIBAUDO, P.C.

11
12
13 By: /s/ Alex B. Ghibaud, Esq.
14 Alex B. Ghibaud, Esq.
15 Nevada Bar No.: 010592
16 703 S. 8th Street
17 Las Vegas, Nevada 89101
18 Attorney for *Plaintiffs*,
19 *HOWARD and JENNA SHAPIRO*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2017, I served a true and correct copy of the foregoing **NOTICE OF APPEAL**, via the Court designated electronic service, addressed to the following:

Michael P. Lowery, Esq.
WILSON ELSE MOSKOWITZ EDELMAN & DICKER, LLP
300 South Fourth Street, 11th Floor
Las Vegas, Nevada 89101
Attorneys for Defendants,
Glen Welt, Rhoda Welt, Lynn Welt and Michelle Welt

By: /s/ Joslyne Simmons
An Employee of ALEX B. GHIBAUDO, P.C.

DEPARTMENT 27
CASE SUMMARY
CASE NO. A-14-706566-C

Howard Shapiro, Plaintiff(s)
vs.
Glen Welt, Defendant(s)

§
§
§
§
§
§
§

Location: **Department 27**
Judicial Officer: **Allf, Nancy**
Filed on: **09/04/2014**
Cross-Reference Case Number: **A706566**
Supreme Court No.: **67363**
67596

CASE INFORMATION

Statistical Closures

08/04/2017 Motion to Dismiss by the Defendant(s)
01/02/2015 Motion to Dismiss by the Defendant(s)

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-14-706566-C
Court Department 27
Date Assigned 09/04/2014
Judicial Officer Allf, Nancy



PARTY INFORMATION

| | | |
|------------------|---|----------------------------------|
| Plaintiff | Shapiro, Howard | Pro Se 646-406-2087(H) |
| | Shapiro, Jenna | Pro Se 646-406-2087(H) |
| Defendant | Checksnet.com Removed: 01/02/2015 Dismissed | |
| | Welt, Glen | |
| | Welt, Lynn Removed: 01/02/2015 Dismissed | |
| | Welt, Michelle Removed: 01/02/2015 Dismissed | |
| | Welt, Rhoda Removed: 01/02/2015 Dismissed | |















DATE

EVENTS & ORDERS OF THE COURT

INDEX





| | | |
|------------|--|--|
| 09/04/2014 |  Complaint Filed By: Plaintiff Shapiro, Howard <i>Complaint</i> | |
| 09/04/2014 | Case Opened | |
| 09/05/2014 |  Initial Appearance Fee Disclosure Filed By: Plaintiff Shapiro, Howard <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i> | |

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CASE NO. A-14-706566-C












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|------------|--|
| 10/01/2014 |  Demand for Security of Costs Filed By: Defendant Welt, Rhoda <i>Rhoda Welt and Lynn Welt's Demand for Security of Costs</i> |
| 10/01/2014 |  Initial Appearance Fee Disclosure Filed By: Defendant Welt, Rhoda <i>Initial Appearance Fee Disclosure for Rhoda Welt and Lynn Welt</i> |
| 10/01/2014 |  Disclosure Statement Party: Defendant Welt, Rhoda <i>Rhoda Welt and Lynn Welt's NRCP 7.1 Disclosure Statement</i> |
| 10/08/2014 |  Affidavit of Service Filed By: Plaintiff Shapiro, Howard <i>Affidavit of Service</i> |
| 10/08/2014 |  Affidavit of Service Filed By: Plaintiff Shapiro, Howard <i>Affidavit of Service</i> |
| 10/08/2014 |  Affidavit of Service Filed By: Plaintiff Shapiro, Howard <i>Affidavit of Service</i> |
| 10/13/2014 |  Demand for Security of Costs Filed By: Defendant Welt, Glen <i>Glenn Welt & Michele Welt's Demand for Security of Costs</i> |
| 10/13/2014 |  Initial Appearance Fee Disclosure Filed By: Defendant Welt, Glen <i>Glenn Welt & Michele Welt's Initial Appearance Fee Disclosure</i> |
| 10/13/2014 |  Disclosure Statement Party: Defendant Welt, Glen <i>Glenn Welt & Michele Welt's NRCP 7.1 Disclosure Statement</i> |
| 10/21/2014 |  Affidavit Filed By: Plaintiff Shapiro, Howard <i>Affidavit of Service</i> |
| 10/28/2014 |  Summons Filed by: Plaintiff Shapiro, Howard <i>Summons</i> |
| 11/14/2014 |  Motion to Dismiss Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss</i> |
| 11/17/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Jenna <i>Undertaking for Security for Costs for Non-Resident</i> |
| 11/17/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Jenna |

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Undertaking for Security for Costs for Non-Resident

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|------------|---|
| 11/17/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Howard <i>Undertaking for Security for Costs for Non-Resident</i> |
| 11/17/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Howard <i>Undertaking for Security for Costs for Non-Resident</i> |
| 11/18/2014 |  Certificate of Mailing Filed By: Plaintiff Shapiro, Howard <i>Certificate of Mailing</i> |
| 11/19/2014 |  Notice Filed By: Plaintiff Shapiro, Howard <i>Notice of Posting Security Cost Bond</i> |
| 11/25/2014 |  Certificate of Service Filed by: Plaintiff Shapiro, Howard <i>Certificate of Service</i> |
| 12/02/2014 |  Opposition Filed By: Plaintiff Shapiro, Howard <i>Opposition to Motion to Dismiss</i> |
| 12/10/2014 |  Reply to Opposition Filed by: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Reply re Motion to Dismiss</i> |
| 12/11/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Howard <i>Undertaking for Security for Costs for Non-Resident</i> |
| 12/11/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Howard <i>Undertaking for Security for Costs for Non-Resident</i> |
| 12/11/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Jenna <i>Undertaking for Security for Costs for Non-Resident</i> |
| 12/11/2014 |  Undertaking for Security for Costs for Non-Resident Party: Plaintiff Shapiro, Jenna <i>Undertaking for Security for Costs for Non-Resident</i> |
| 12/12/2014 |  Supplement to Opposition Filed By: Plaintiff Shapiro, Howard <i>First Supplement to Opposition to Motion to Dismiss</i> |
| 12/12/2014 |  Notice Filed By: Plaintiff Shapiro, Howard <i>Notice of Posting Additional Security Cost Bonds</i> |















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CASE NO. A-14-706566-C

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|------------|--|
| 12/15/2014 |  Notice of Withdrawal of Motion Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Notice of Withdrawal of Motion</i> |
| 12/15/2014 |  Motion to Dismiss Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss</i> |
| 12/17/2014 | CANCELED Motion to Dismiss (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss re NRS 18.130(4).</i> |
| 12/18/2014 |  Opposition to Motion to Dismiss Filed By: Plaintiff Shapiro, Howard <i>Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Counter-motion for Attorney's Fees, Costs, and Sanctions</i> |
| 12/19/2014 |  Reply to Opposition Filed by: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt's Reply Re Motion to Dismiss</i> |
| 12/24/2014 | Motion to Dismiss (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss</i> |
| 12/24/2014 | Opposition and Countermotion (10:00 AM) (Judicial Officer: Allf, Nancy) <i>Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Counter-motion for Attorney's Fees, Costs, and Sanctions</i> |
| 12/24/2014 |  All Pending Motions (10:00 AM) (Judicial Officer: Allf, Nancy) |
| 12/29/2014 |  Supplemental Brief Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Supplement re Motion to Dismiss</i> |
| 12/30/2014 |  Status Check (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Status Check: Written Decision</i> |
| 01/02/2015 |  Order For Dismissal Without Prejudice <i>Order Granting Defendant's Motion to Dismiss</i> |
| 01/02/2015 |  Notice of Entry of Order Filed By: Defendant Welt, Glen <i>Notice of Entry of Order Granting Motion to Dismiss</i> |
| 01/02/2015 | Order of Dismissal Without Prejudice (Judicial Officer: Allf, Nancy) Debtors: Howard Shapiro (Plaintiff), Jenna Shapiro (Plaintiff) Creditors: Glen Welt (Defendant), Rhoda Welt (Defendant), Lynn Welt (Defendant), Michelle Welt (Defendant), Checksnet.com (Defendant) Judgment: 01/02/2015, Docketed: 01/08/2015 |
| 01/05/2015 |  Affidavit in Support Filed By: Defendant Welt, Glen <i>Affidavit in Support of Fees and Costs per NRS 41.670</i> |
| 01/08/2015 |  Substitution of Attorney |

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| | Filed by: Plaintiff Shapiro, Howard <i>Substitution of Attorney</i> |
| 01/15/2015 |  Memorandum Filed By: Plaintiff Shapiro, Howard <i>Respondent's to Defendants' Memorandum of Fees and Costs Under NRS 41.670</i> |
| 01/16/2015 |  Reply in Support Filed By: Defendant Welt, Glen <i>Reply in Support of Affidavit re Fees and Costs per NRS 41.670</i> |
| 02/02/2015 |  Voluntary Dismissal Filed by: Plaintiff Shapiro, Howard <i>Voluntary Dismissal</i> |
| 02/02/2015 |  Certificate of Service Filed by: Plaintiff Shapiro, Howard <i>Certificate of Electronic Service</i> |
| 02/02/2015 |  Notice of Appeal Filed By: Plaintiff Shapiro, Howard <i>Notice of Appeal</i> |
| 02/02/2015 | Voluntary Dismissal (Judicial Officer: Allf, Nancy) Debtors: Checksnet.com (Defendant) Creditors: Howard Shapiro (Plaintiff), Jenna Shapiro (Plaintiff) Judgment: 02/02/2015, Docketed: 02/10/2015 |
| 02/04/2015 |  Case Appeal Statement Filed By: Plaintiff Shapiro, Howard <i>Case Appeal Statement</i> |
| 02/13/2015 |  Notice of Appeal Filed By: Defendant Welt, Glen <i>Notice of Cross-Appeal</i> |
| 02/13/2015 |  Case Appeal Statement Filed By: Defendant Welt, Glen <i>Cross-Appeal Case Statement</i> |
| 02/20/2015 |  Order Granting Motion <i>Order Granting Defendants' Motion for Attorneys' Fee</i> |
| 02/20/2015 | Order (Judicial Officer: Allf, Nancy) Debtors: Howard Shapiro (Plaintiff), Jenna Shapiro (Plaintiff) Creditors: Glen Welt (Defendant), Rhoda Welt (Defendant), Lynn Welt (Defendant), Michelle Welt (Defendant), Checksnet.com (Defendant) Judgment: 02/20/2015, Docketed: 02/26/2015 Total Judgment: 5,054.68 |
| 02/23/2015 |  Notice of Entry of Order Filed By: Defendant Welt, Glen <i>Notice of Entry of Order Granting Motion for Attorneys' Fees</i> |
| 03/14/2015 |  Case Appeal Statement |

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|------------|---|
| |  Filed By: Defendant Welt, Glen <i>Defendants' Case Appeal Statement</i> |
| 03/14/2015 |  Notice of Appeal Filed By: Defendant Welt, Glen <i>Defendants' Notice of Appeal</i> |
| 03/14/2015 |  Case Appeal Statement Filed By: Defendant Welt, Glen <i>Defendants' Case Appeal Statement</i> |
| 07/06/2015 |  Transcript of Proceedings Party: Plaintiff Shapiro, Howard <i>Request for Transcript of Proceedings</i> |
| 07/31/2015 |  Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Glen Welt, Rhoda Welt, Lynn Welt & Michelle Welt's Motion to Dismiss; Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint and Countermotion for Attorney's Fees, Costs, and Sanctions - December 24, 2014</i> |
| 01/07/2016 |  Withdrawal of Attorney Filed by: Plaintiff Shapiro, Jenna <i>Withdrawal of Attorney of Record 1-7-16</i> |
| 07/29/2016 |  Substitution of Attorney Filed by: Defendant Welt, Glen <i>Substitution of Attorney</i> |
| 05/04/2017 |  NV Supreme Court Clerks Certificate/Judgment - Affd/Rev Part <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed in Part, Reversed in Part, Vacated in Part and Remand; Rehearing Denied</i> |
| 05/26/2017 |  Motion to Dismiss Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Renewed Motion to Dismiss</i> |
| 05/26/2017 |  Notice of Hearing Filed By: Defendant Welt, Glen <i>Notice of Hearing re Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Renewed Motion to Dismiss</i> |
| 06/20/2017 |  Opposition and Countermotion Filed By: Plaintiff Shapiro, Howard; Plaintiff Shapiro, Jenna <i>Plaintiff's Opposition to Defendants Special Motion to Dismiss and Counter-Motion for sanctions, attorney's fees, and cost</i> |
| 06/21/2017 |  Order <i>Order Continuing June 22, 2017 Hearing</i> |
| 06/21/2017 |  Reply to Opposition <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Reply re Renewed Motion to Dismiss</i> |
| 06/22/2017 |  Certificate of Service Filed by: Plaintiff Shapiro, Howard |

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Certificate of Service

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| 07/10/2017 |  Reply Filed by: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Supplemental Reply re Renewed Motion to Dismiss</i> |
| 07/19/2017 | Motion to Dismiss (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss</i> |
| 07/19/2017 | Opposition and Countermotion (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Plaintiff's Opposition to Defendants Special Motion to Dismiss and Counter-Motion for sanctions, attorney's fees, and costs</i> |
| 07/19/2017 |  All Pending Motions (9:30 AM) (Judicial Officer: Allf, Nancy) |
| 08/04/2017 |  Order Granting Filed By: Defendant Welt, Glen <i>Order Granting Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss</i> |
| 08/04/2017 | Order of Dismissal With Prejudice (Judicial Officer: Allf, Nancy) Debtors: Howard Shapiro (Plaintiff), Jenna Shapiro (Plaintiff) Creditors: Glen Welt (Defendant), Lynn Welt (Defendant), Michelle Welt (Defendant) Judgment: 08/04/2017, Docketed: 08/11/2017 |
| 08/07/2017 |  Notice of Entry of Order <i>Notice of Entry of Order</i> |
| 08/15/2017 |  Motion for Attorney Fees and Costs Filed By: Defendant Welt, Glen <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Motion for Attorneys Fees & to Amend Order Granting Summary Judgment</i> |
| 09/06/2017 |  Notice of Appeal Filed By: Plaintiff Shapiro, Howard; Plaintiff Shapiro, Jenna <i>Notice of Appeal</i> |
| 09/20/2017 | Motion for Attorney Fees (9:00 AM) (Judicial Officer: Allf, Nancy) <i>Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt s Motion for Attorneys Fees & to Amend Order Granting Summary Judgment</i> |

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. **A-14-706566-C** Dept **XXVII**
(Assigned by Clerk's Office)

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

| | |
|--|--|
| Plaintiff(s) (name/address/phone): <div style="text-align: center;">Howard Shapiro Jenna Shapiro</div> | Defendant(s) (name/address/phone): <div style="text-align: center;">Glen Welt, Rhoda Welt, Lynn Welt, and Checksnet.com</div> |
| Attorney (name/address/phone): <div style="text-align: center;">Eric P. Roy, Esq. 818 E. Charleston Blvd., Las Vegas, NV 89104 (702)423-3333 Nevada Bar No. 11869</div> | Attorney (name/address/phone): <div style="text-align: center;">Unknown</div> |

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

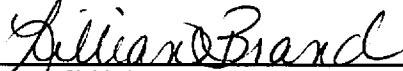
Civil Case Filing Types

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

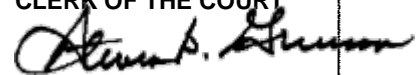
Business Court filings should be filed using the Business Court civil coversheet.

9.4.14

Date


Signature of initiating party or representative

See other side for family-related case filings.



MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
E-mail: Michael.Lowry@wilsonelser.com
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
300 South Fourth Street, 11th Floor
Las Vegas, Nevada 89101-6014
Tel: 702.727.1400/Fax: 702.727.1401
Attorneys for Glenn Welt, Rhoda Welt,
Lynn Welt, and Michele Welt

DISTRICT COURT
CLARK COUNTY, NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO, Case A-14-706566-C
Dept. 27

Plaintiffs,

vs.

**Order Granting Glenn Welt, Rhoda Welt,
Lynn Welt & Michele Welt's Renewed
Motion to Dismiss**

GLEN WELT, RHODA WELT, LYNN WELT,
MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

On May 26, 2017 Defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt ("the Welts") moved to dismiss Howard and Jenna Shapiros' complaint ("the Shapiros"). The Shapiros opposed and filed a countermotion. Both motions were heard on July 19, 2017. Alex Ghibaudo appeared for the Shapiros, Michael Lowry appeared for the Welts.

The Welts' ask the court to decide if their speech is protected by either NRS 41.637(3) or NRS 41.637(4). The court concludes both statutes apply to the speech at issue. The speech was protected, shifting the burden of proof to the Shapiros. The Shapiros have not provided the evidence necessary to meet their burden. Consequently, the Welts' motion is granted and the Shapiros' countermotion is denied for the reasons described in this order.

I. This case concerns an intra-familial dispute in New Jersey.

This matter stems from comments made on a website regarding a conservatorship case litigated in New Jersey. Walter Shapiro is the father of plaintiff Howard Shapiro.¹ On August 5,

¹ To avoid confusion due to identical last names, the parties are referenced by their first names.

| | |
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| <input type="checkbox"/> Voluntary Dismissal | <input type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal | <input type="checkbox"/> Stipulated Judgment |
| <input type="checkbox"/> Stipulated Dismissal | <input type="checkbox"/> Default Judgment |
| <input checked="" type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration |

1 2014 Howard petitioned a New Jersey court to appoint him as Walter's conservator.² The
2 petition alleged Walter was allegedly no longer mentally fit to care for himself. The Welts are
3 relatives of Walter and opposed Howard's petition.³

4 The Nevada complaint alleges defamation arising from a website that concerns the New
5 Jersey petition, www.howardshapirovictims.com. The complaint attaches an email and letter
6 from Glenn Welt stating he will post the website for public viewing.⁴ Mr. Welt's stated goal is
7 to invite Howard Shapiro's "known victims to appear in court along with other caretakers,
8 neighbors, acquaintances and relatives you've threatened."

9 II. Nevada's anti-SLAPP statutes.

10 "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's
11 exercise of his or her First Amendment free speech rights."⁵ "The hallmark of a SLAPP lawsuit
12 is that it is filed to obtain a financial advantage over one's adversary by increasing litigation
13 costs until the adversary's case is weakened or abandoned."⁶ "When a plaintiff files a SLAPP
14 suit against a defendant, Nevada's anti-SLAPP statute allows the defendant to file a special
15 motion to dismiss in response to the action."⁷

16 Under the 2013 version of the statute in effect when the speech at issue in this case
17 occurred,⁸ a "person who engages in a good faith communication in furtherance of the right to
18 petition or the right to free speech in direct connection with an issue of public concern is immune
19 from any civil action for claims based upon the communication."⁹ Anti-SLAPP statutes are
20 invoked when "an action is brought against a person based upon a good faith communication in
21 furtherance of ... the right to free speech in direct connection with an issue of public concern"¹⁰
22 NRS 41.637 defines "[g]ood faith communication in furtherance of the right ... to free speech in
23

24 ² Petition attached as Exhibit A to motion.

25 ³ Answer attached as Exhibit B to motion.

26 ⁴ Complaint at Exhibits 3, 4.

27 ⁵ *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citations omitted).

28 ⁶ *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009).

⁷ *Stubbs*, 297 P.3d at 329 (citations omitted).

⁸ S.B. 286, 77th Leg., effective on October 1, 2013. The statutes were subsequently amended in the 2015 Legislative Session.

⁹ NRS 41.650.

¹⁰ NRS 41.660(1).

1 direct connection with an issue of public concern.” This term includes a “[w]ritten or oral
2 statement made in direct connection with an issue under consideration by a legislative, executive
3 or judicial body, or any other official proceeding authorized by law.”¹¹ It also includes
4 “[c]ommunication made in direct connection with an issue of public interest in a place open to
5 the public or in a public forum.”¹² These protections extend to any communication “which is
6 truthful or is made without knowledge of its falsehood.”¹³

7 *Delucchi v. Songer* recently addressed these definitions.¹⁴ *Delucchi* considered a case
8 from the Supreme Court of California “involving an interpretation of its own anti-SLAPP statute,
9 which we have previously recognized as similar in purpose and language to our anti-SLAPP
10 statute.”¹⁵ *City of Montebello v. Vasquez* concluded “[t]he Legislature did not limit the scope of
11 the anti-SLAPP statute to activity protected by the constitutional rights of speech and petition.”¹⁶
12 Instead, “[t]he Legislature spelled out the kinds of activity it meant to protect” in the statutes it
13 passed.¹⁷ As a result “courts determining whether conduct is protected under the anti-SLAPP
14 statute look not to First Amendment law, but to the statutory definitions” the Legislature
15 provided.¹⁸ This avoided the problem of requiring courts “to wrestle with difficult questions of
16 constitutional law.”¹⁹ *Vasquez* summarized that the defendant establishes the speech at issue is
17 protected if that speech is “within one of the four categories ... defining [the statutory] phrase,
18 ‘act in furtherance of a person’s right of petition or free speech under the United States or
19 California Constitution in connection with a public issue.’”²⁰

20 *Delucchi* found *Vasquez*’s “rationale persuasive and consistent with our own anti-SLAPP
21 caselaw.”²¹ *Delucchi* stated in Nevada, “a defendant’s conduct constitutes ‘good faith
22 communication in furtherance of the right to petition or the right to free speech in direct

23 ¹¹ NRS 41.637(3).

24 ¹² NRS 41.637(4).

25 ¹³ NRS 41.637.

26 ¹⁴ 133 Nev. Adv. Op. 42 (2017).

27 ¹⁵ *Id.* at 13 (quotations and citation omitted).

28 ¹⁶ 376 P.3d 624, 632 (Cal. 2016).

¹⁷ *Id.*

¹⁸ *Id.* at 633.

¹⁹ *Id.*

²⁰ *Id.* (first alteration in original) (quoting Cal. Civ. Proc. Code § 425.16(e) (2016)).

²¹ 133 Nev. Adv. Op. 42, at 15.

1 connection with an issue of public concern' if it falls within one of the four categories
2 enumerated in NRS 41.637 and 'is truthful or is made without knowledge of its falsehood.'"²²

3 **a. Standard of review.**

4 When resolving this motion the district court shall "[c]onsider such evidence, written or
5 oral, by witnesses or affidavits, as may be material in making a determination pursuant to
6 paragraphs (a) and (b)."²³ Under the 2013 version of the statute in effect when the speech at
7 issue in this case occurred, when a special motion to dismiss is filed, the district court must first
8 "[d]etermine whether the moving party has established, by a preponderance of the evidence, that
9 the claim is based upon a good faith communication in furtherance of the right to petition or the
10 right to free speech in direct connection with an issue of public concern."²⁴ If the moving party
11 meets its burden, the court then determines "whether the plaintiff has established by clear and
12 convincing evidence a probability of prevailing on the claim."²⁵ This standard is stringent.²⁶
13 The opposing party must provide actual, admissible evidence, not merely a narrative
14 disagreement with the moving party.²⁷

15 **III. The Welts meet their burden of proof.**

16 The Welts must first demonstrate the Shapiros' complaint is "based upon a good faith
17 communication in furtherance of the right to petition or the right to free speech in direct
18 connection with an issue of public concern."²⁸ Nevada's "based upon" requirement has not yet
19 been interpreted. In the absence of Nevada authority, it is appropriate to consider California
20 authority.²⁹ By borrowing from California, Nevada implicitly adopted California case law
21 interpreting that statute.³⁰

22 ²² *Id.*

23 ²³ NRS 41.660(3)(d).

24 ²⁴ NRS 41.660(3)(a).

25 ²⁵ NRS 41.660(3)(b).

26 ²⁶ *In re Jane Tiffany Living Trust 2001*, 124 Nev. 74, 79, 177 P.3d 1060, 1063 (2008) (quotation
25 omitted).

27 ²⁷ *John*, 125 Nev. at 762, 219 P.3d at 1287.

28 ²⁸ NRS 41.660(1).

29 ²⁹ *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

30 ³⁰ *International Game Technology, Inc. v. Dist. Ct.*, 122 Nev. 132, 153, 127 P.3d 1088, 1103
27 (2006) ("When the Legislature adopts a statute substantially similar to a federal statute, a
28 presumption arises that the legislature knew and intended to adopt the construction placed on the
federal statute by federal courts.")

1 NRS 41.660(1)'s "based upon" requirement is substantively identical to California's
2 "arise from" requirement. In California, it "means simply that the defendant's act underlying the
3 plaintiff's cause of action must itself have been an act in furtherance of the right of petition or
4 free speech."³¹ "[T]he critical point is whether the plaintiff's cause of action itself was based on
5 an act in furtherance of the defendant's right of petition or free speech."³² The focus "is not the
6 form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or
7 her asserted liability—and whether that activity constitutes protected speech or petitioning."³³

8 The Shaprios' complaint is "based upon" the Welts' website, satisfying this requirement.

9 **a. NRS 41.637(3) applies to the speech on the Welts' website.**

10 The core question under review by the New Jersey judicial body was whether Walter
11 needed a conservator and, if so, whether Howard was qualified and suitable for that role. NRS
12 41.637(3) protects a "[w]ritten or oral statement made in direct connection with an issue under
13 consideration by a ... judicial body."³⁴ No Nevada appellate court has yet addressed this
14 definition, so the court considers persuasive California case law interpreting its statute protecting
15 "any written or oral statement or writing made in connection with an issue under consideration or
16 review by a ... judicial body...."³⁵

17 **i. § 425.16(e)(2) is construed broadly.**

18 California has broadly defined the phrase "made in connection with an issue under
19 consideration or review." *Briggs v. Eden Council for Hope & Opportunity* arose from a dispute
20 between a landlord and a tenant-rights organization, known as ECHO.³⁶ The landlords sued
21 ECHO because, in part, it helped a tenant file a small claims action.³⁷ ECHO moved to dismiss,
22 arguing the statements giving rise to the lawsuit were made concerning matters under review by
23 a judicial body and thus protected. The Supreme Court of California was asked to decide if "a
24 defendant, [filing an anti-SLAPP motion to dismiss] a cause of action arising from a statement

25 ³¹ *City of Cotati v. Cashman*, 52 P.3d 695, 701 (Cal. 2002) (internal citations omitted).

26 ³² *Id.*

27 ³³ *Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) (emphasis in original).

28 ³⁴ NRS 41.637(3).

³⁵ Cal Code Civ Proc § 425.16(e)(2).

³⁶ 969 P.2d 564 (Cal. 1999).

³⁷ *Id.* at 566.

1 made before, or in connection with an issue under consideration by, a legally authorized official
2 proceeding, demonstrate separately that the statement concerned an issue of public
3 significance?" It concluded no, based upon the statute's plain language.

4 California's statute "expressly makes subject to a special motion to strike '[a] cause of
5 action against a person arising from any act of that person in furtherance of the person's right of
6 petition or free speech under the United States or California Constitution in connection with a
7 public issue...."³⁸ The statute defined this phrase to include "*any* written or oral statement or
8 writing made in connection with an issue under consideration or review by a ... judicial
9 body...."³⁹ *Briggs* concluded the plain language "encompasses any cause of action against a
10 person arising from any statement or writing made in, or in connection with an issue under
11 consideration or review by, an official proceeding or body."⁴⁰

12 Applying this definition, *Briggs* concluded the lawsuit was based upon protected activity.
13 ECHO's communications with the tenant concerning the small claim were "made in connection
14 with issues under consideration or review by official bodies or proceedings—specifically, HUD
15 or the civil courts."⁴¹ Even communications in preparation for or anticipation of a judicial
16 proceeding were protected.⁴²

17 *Briggs* specifically rejected the argument that the judicial proceeding must be of public
18 significance to qualify for protection. "[T]he statute requires simply *any* writing or statement
19 made in, or in connection with an issue under consideration or review by" a judicial body.⁴³

20 Thus these clauses safeguard free speech and petition conduct aimed at advancing
21 self government, as well as conduct aimed at more mundane pursuits. Under the
22 plain terms of the statute it is the context or setting itself that makes the issue a
23 public issue: all that matters is that the First Amendment activity take place in an
24 official proceeding or be made in connection with an issue being reviewed by an
authorized official proceeding to which it connects.⁴⁴

25 ³⁸ *Id.* at 568.

26 ³⁹ *Id.* (emphasis in original).

27 ⁴⁰ *Id.*

28 ⁴¹ *Id.* at 569.

⁴² *Id.*

⁴³ *Id.* at 570 (emphasis in original).

⁴⁴ *Id.* (emphasis in original).

1 Subsequent decisions have also discussed when a communication is “made in connection
2 with an issue” being considered by a judicial body.⁴⁵ *People ex rel. 20th Century Ins. Co. v.*
3 *Bldg. Permit Consultants, Inc.* evaluated whether allegedly fraudulent repair estimates submitted
4 to an insurance company were “made in connection with an issue” being considered by a judicial
5 body.⁴⁶ They were not. “While some of the reports eventually were used in official proceedings
6 or litigation, they were not created ‘before,’ or ‘in connection with an issue under consideration
7 or review by a legislative, executive, or judicial body, or any other official proceeding authorized
8 by law.’”⁴⁷ “At the time defendants created and submitted their reports and claims, there was no
9 ‘issue under consideration’ pending before any official proceeding.”⁴⁸ California’s anti-SLAPP
10 protections did not extend so broadly as to protect communications merely “because they
11 eventually could be used in connection with an official proceeding....”⁴⁹

12 In *Paul v. Friedman* a securities broker successfully defended an arbitration proceeding
13 brought against him.⁵⁰ He then sued the lawyer who pursued the action, asserting the lawyer’s
14 investigation of the broker’s private life during the arbitration was harassing and that the lawyer
15 had publically revealed information allegedly obtained from that investigation. These actions
16 were not statutorily protected. “The statute does not accord anti-SLAPP protection to suits
17 arising from any act having any connection, however remote, with an official proceeding. The
18 statements or writings in question must occur in connection with ‘an issue under consideration or
19 review’ in the proceeding.”⁵¹

20 In short, it is insufficient to assert that the acts alleged were “in connection with”
21 an official proceeding. There must be a connection with an issue under review in
22 that proceeding. In *20th Century Insurance*, there was a connection to an issue but
23 no pending proceeding; here, there is a pending proceeding, but no connection to
24 an issue before the tribunal.⁵²

25 ⁴⁵ Cal Code Civ Proc § 425.16(e)(2).

26 ⁴⁶ 86 Cal. App. 4th 280, 282 (2000).

27 ⁴⁷ *Id.* at 284-285 (quoting Cal Code Civ Proc § 425.16(e)(1), (2)).

28 ⁴⁸ *Id.* at 285.

⁴⁹ *Id.*

⁵⁰ 95 Cal. App. 4th 853 (2002).

⁵¹ *Id.* at 866.

⁵² *Id.* at 867.

1 *Neville v. Chudacoff* concerned an employee leaving a business, Maxsecurity, to form a
2 competing business and, in the process, allegedly misappropriating trade secrets.⁵³ In May, 2005
3 Maxsecurity sent its customers a letter from its lawyer, Chudacoff, stating that the former
4 employee had breached his employment contract and warning the customers not to do business
5 with him. Maxsecurity filed suit against the former employee in September, 2005. The
6 employee cross-claimed for defamation arising from the letter. Maxsecurity moved to dismiss
7 the counterclaims, arguing they were based upon the letter and the letter was a protected
8 communication “in connection with an issue under consideration or review by a legislative,
9 executive, or judicial body....”⁵⁴ The court concluded “[t]he only reasonable inference from the
10 [Letter], however, is that Maxsecurity and Chudacoff were contemplating litigation against
11 Neville seriously and in good faith when the Letter was written.”⁵⁵

12 The former employee also argued the letter was not protected because it was not sent to
13 potential parties to the anticipated litigation. *Neville* explained “a statement is ‘in connection
14 with’ litigation ... if it relates to the substantive issues in the litigation and is directed to persons
15 having some interest in the litigation.”⁵⁶ This definition extended “to protect statements to
16 persons who are not parties or potential parties to litigation, provided such statements are made
17 ‘in connection with’ pending or anticipated litigation.”⁵⁷ All of the employee’s arguments were
18 rejected, letter was protected, and the counterclaim dismissed.

19 *McConnell v. Innovative Artists Talent & Literary Agency, Inc.* concerned a business
20 break-up where two employees, McConnell and Press, sought to leave and create their own
21 competing business.⁵⁸ They initiated suit seeking declaratory relief concerning sections of their
22 contract concerning their ability to terminate their own employment.⁵⁹ The next day
23 Innovative’s president, Harris, ordered them removed from the company’s offices and sent them
24 a letter advising that they had been given “new job duties” that, in effect, prevented them from

25 ⁵³ 160 Cal. App. 4th 1255 (2008).

26 ⁵⁴ *Id.* at 1262.

27 ⁵⁵ *Id.* at 1269.

28 ⁵⁶ *Id.* at 1266.

⁵⁷ *Id.* at 1270.

⁵⁸ 175 Cal. App. 4th 169 (2009).

⁵⁹ *Id.* at 173.

1 working at all.⁶⁰ The now former employees added causes of action for wrongful termination
2 and retaliation, both relying upon Harris's letter.⁶¹ Innovative moved to dismiss these causes of
3 action arguing the letter was a protected communication because it was made "in connection
4 with an issue under consideration" by a judicial body.⁶²

5 This argument was rejected. There was a judicial proceeding pending when the letter
6 was sent, but there was not a sufficient connection between the letter and an issue under
7 consideration. The day the letter was sent, the pending lawsuits "sought declaratory and
8 injunctive relief establishing that McConnell and Press were legally free to leave Innovative
9 whenever they chose." However, Harris's letter

10 was obviously directed at preventing McConnell from taking clients with him
11 when he left, not at establishing that McConnell was legally required to stay.
12 Indeed, the Harris letter on its face says nothing at all about McConnell's lawsuit,
13 and nothing at all about any claims Innovative might make in that lawsuit.
14 Consequently, it is difficult to find any basis to conclude that Innovative's letter
15 was written "in connection with an issue under consideration" in those lawsuits,
16 of which no mention at all was made.⁶³

17 Innovative responded the letter was part of its "efforts to investigate pending or
18 prospective claims and/or prepare for their potential resolution."⁶⁴

19 But the letters do not mention the lawsuits; do not mention any desire to
20 investigate; do not refer to any misconduct by McConnell and Press; and do not
21 mention "pending or prospective claims" or their "potential resolution." In short,
22 the McConnell/Press causes of action for retaliation and wrongful termination
23 could not have been based on protected litigation activity, in the form of
24 Innovative's investigation of pending claims, when no such investigative activity
25 is reflected in Harris's letter.⁶⁵

26 Several other California decisions decided whether certain communications were in
27 connection with an issue pending before a judicial body. In *Moore v. Shaw* an attorney drafted
28 an agreement to terminate a trust and was later sued because of it.⁶⁶ The attorney then moved to
29 dismiss certain causes of action, arguing they were protected communications. "We note Nancy
30 Shaw drafted the termination agreement in September 1999, one year before George's death and

31 ⁶⁰ *Id.* at 173-174.

32 ⁶¹ *Id.* at 174.

33 ⁶² *Id.*

34 ⁶³ *Id.* at 177-78.

35 ⁶⁴ *Id.* at 178.

36 ⁶⁵ *Id.*

37 ⁶⁶ 116 Cal. App. 4th 182 (2004).

1 nearly three years before Kenton filed his petition against her.”⁶⁷ Consequently her actions were
2 not made in connection with an issue under consideration by a judicial body and were not
3 protected.⁶⁸

4 In *Healy v. Tuscan Hills Landscape & Recreation Corp.* a HOA filed suit against one of
5 its unit owners and sent a letter to its membership about the topic of the lawsuit.⁶⁹ The unit
6 owner’s counterclaim for defamation arising from the letter was dismissed. “Because one
7 purpose of the letter was to inform members of the association of pending litigation involving the
8 association, the letter is unquestionably in connection with judicial proceedings and bears some
9 relation to judicial proceedings.”⁷⁰ *Contemporary Services Corp. v. Staff Pro Inc.* concluded an
10 email update to a group of customers concerning court rulings and favorable imposition of
11 sanctions in litigation against the company’s competitor was protected activity because it was in
12 connection with an issue under consideration or review by a judicial body.⁷¹

13 Applied to the facts at issue here, the complaint alleges the Welts’ website was created
14 after the judicial proceeding was commenced, satisfying NRS 41.637(3)’s first element. The
15 second element requires a connection between the speech and the issue under consideration. The
16 core question before the New Jersey court was whether Howard was qualified and suitable to be
17 Walter’s guardian. The speech on the website was directly connected to that issue. The Welts’
18 satisfy both elements of NRS 41.637(3).

19 **ii. NRS 41.637(3)’s direct connection requirement is satisfied.**

20 There is one material textual difference between the California and Nevada statutes.
21 California protects “any written or oral statement or writing made in connection with an issue
22 under consideration or review...”⁷² Nevada protects “any (3) Written or oral statement made in
23 *direct* connection with an issue under consideration...”⁷³ NRS 41.637(3) does not define when
24 a statement is “in direct connection” such that it qualifies for protection.

25 ⁶⁷ *Id.* at 197.

26 ⁶⁸ *Id.*

27 ⁶⁹ 137 Cal. App. 4th 1 (2006).

28 ⁷⁰ *Id.* at 5-6 (internal quotations omitted).

⁷¹ 152 Cal. App. 4th 1043, 1055-1056 (2007).

⁷² Cal. Civ. Proc. Code § 425.16(e)(2).

⁷³ Emphasis added.

1 When the plain language of the statute does not answer the question, the statute should be
2 construed “according to that which reason and public policy would indicate the legislature
3 intended.”⁷⁴ Statutes are to be construed “as a whole, so that all provisions are considered
4 together and, to the extent practicable, reconciled and harmonized. In addition, the court will not
5 render any part of the statute meaningless, and will not read the statute’s language so as to
6 produce absurd or unreasonable results.”⁷⁵

7 The “in direct connection” requirement was not part of the statute as originally enacted in
8 1993.⁷⁶ It was added in 1997,⁷⁷ but the legislative history is silent as to why. The 2013
9 amendments did not modify the language but did add it to the first sentence of NRS 41.637 and
10 the new NRS 41.637(4).⁷⁸

11 NRS 41.637(3) is a nearly verbatim copy of Cal. Civ. Proc. Code § 425.16(e)(2). In 1997
12 when NRS 41.637(3) was created, § 425.16(e)(2) could fairly be read to literally encompass *any*
13 speech having *any* connection to the issue under review or consideration. By adding the word
14 “direct” to § 425.16(e)(2)’s language, the Nevada Legislature implicitly rejected the California
15 standard and required more of a connection between the speech and the issue under review or
16 consideration by the judicial body. However, California case law since 1997 rejected an
17 interpretation of § 425.16(e)(2) that would protect *any* speech with *any* connection, as *Paul v.*
18 *Friedman* concluded.⁷⁹ California courts have instead interpreted § 425.16(e)(2) as requiring
19 what can fairly be described as a “direct connection,” like NRS 41.637(3). This textual
20 difference does not make a substantive difference to deciding the Welts’ motion.

21 **b. NRS 41.637(4) also applies to the speech on the Welts’ website.**

22 The Welts alternatively argue NRS 41.637(4) applies to the speech on the website. NRS
23 41.637(4) protects any “[c]ommunication made in direct connection with an issue of public
24
25

26 ⁷⁴ *Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010).

27 ⁷⁵ *Id.* at 534, 245 P.3d at 1153.

28 ⁷⁶ 1993 Nev. Stat., ch. 652 at 2848-2849.

⁷⁷ 1997 Nev. Stat., ch. 387 at 1365.

⁷⁸ 2013 Nev. Stat., ch. 176 at 623.

⁷⁹ 95 Cal. App. 4th 853, 866-67 (2002).

1 interest in a place open to the public or in a public forum,”⁸⁰ but only if that communication “is
2 truthful or is made without knowledge of its falsehood.”⁸¹

3 On appeal, the Supreme Court adopted “California’s guiding principles ... for
4 determining whether an issue is of public interest under NRS 41.637(4).”⁸² It specifically listed
5 five guiding principles.⁸³ The Supreme Court directed “the district court to apply California’s
6 guiding principles in analyzing whether the Welts’ statements were made in direct connection
7 with an issue of public interest under NRS 41.637(4).”⁸⁴ Applying these principles, the Welts’
8 speech on the website was within NRS 41.637(4)’s definition.

9 **i. How does California apply its guiding principles?**

10 *Shapiro* specifically cited *Piping Rock Partners*, a dispute between two real estate
11 investment trust (“REIT”) firms, Piping Rock Partners and David Lerner Associates.⁸⁵ Piping
12 Rock Partners’ sole shareholder, Germain, also “launched a public forum on his blog REIT
13 Wrecks to encourage discussion of non-traded REITs.”⁸⁶ “In response to a reader’s post about
14 DLA and Lerner, Germain posted a reply explaining that DLA and Lerner appeared to be
15 violating a regulation promulgated by the Financial Industry Regulatory Authority (FINRA).”⁸⁷
16 This generated “months of publicity,” a formal FINRA complaint, and two class action
17 lawsuits.⁸⁸

18 The firms each alleged the other then began online smear campaigns.⁸⁹ Piping Rock
19 Partners sued DLA, who moved to dismiss arguing its statements were protected by §
20 425.16(e)(3) as “any written or oral statement or writing made in a place open to the public or a
21 public forum in connection with an issue of public interest.”⁹⁰ The eight posts admittedly
22

23 ⁸⁰ NRS 41.637(4).

24 ⁸¹ NRS 41.637.

25 ⁸² *Shapiro*, 389 P.3d at 268.

26 ⁸³ *Id.* (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957,
968 (N.D. Cal. 2013)).

27 ⁸⁴ *Id.*

28 ⁸⁵ *Piping Rock Partners*, 946 F. Supp. 2d at 965.

⁸⁶ *Id.*

⁸⁷ *Id.* at 965.

⁸⁸ *Id.*

⁸⁹ *Id.* at 965-66.

⁹⁰ *Id.* at 967.

1 authored by a DLA representative were originally posted to the website Ripoff Reports.⁹¹ Piping
2 Rock Partners conceded Ripoff Reports was a public forum.⁹²

3 The court concluded the posts concerned an issue of public interest because they were “a
4 warning to consumers not to do business with plaintiffs because of their allegedly faulty business
5 practices.”⁹³ However, several of the factual statements in the posts were demonstrably false.
6 “California law does not require a statement to be serious or truthful in order to concern an issue
7 of public interest.”⁹⁴ By contrast, Nevada law protects only speech within defined categories
8 “which is truthful or is made without knowledge of its falsehood.”⁹⁵

9 DLA counterclaimed based upon 12 statements posted to Germain’s blog, who moved to
10 dismiss. He argued the statements were protected by § 425.16(e)(3) “because they were made on
11 public internet website, accessible by all. DLA and Lerner argue that REIT Wrecks is not public
12 because Germain controls the very website on which he posted the offending statements.”⁹⁶
13 DLA and Lerner’s argument was summarily rejected. “It is settled that Web sites accessible to
14 the public ... are public forums for purposes of the anti-SLAPP statute.”⁹⁷ The court did not
15 address whether the 12 posts concerned an issue of public interest because that was conceded.⁹⁸

16 *Piping Rock Partners* summarized California case law for determining whether speech
17 concerned an issue of public interest. It also indicates the Welts’ website was a public forum.
18 However, *Piping Rock Partners* provided limited guidance as to what speech concerned an issue
19 of public interest.

20 **c. Invoking sovereign powers as a conservator is an issue of public interest.**

21 The parties have not presented any California authority expressly determining whether
22 speech concerning the qualifications and suitability of a person who has petitioned for a
23 conservator appointment concerns “an issue of public interest.” However, *Young v. CBS Broad.*,

24
25 ⁹¹ *Id.* at 965-66.

26 ⁹² *Id.* at 967.

27 ⁹³ *Id.* at 969.

28 ⁹⁴ *Id.*

⁹⁵ NRS 41.637.

⁹⁶ *Piping Rock Partners*, 946 F. Supp. 2d at 974-95.

⁹⁷ *Id.* (quoting *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1366 (2010)).

⁹⁸ *Id.* at 976.

1 *Inc.* determined that being appointed a conservator makes a person a public official, subject to
2 public scrutiny. California had previously determined a social worker qualified as a public
3 official. It found the conservator to be in a similar position. By accepting the appointment, the
4 conservator “became an agent of the state with the power to interfere in the personal interests of
5 a private citizen to whom she was not related and without that citizen’s consent.”⁹⁹ “A person
6 holding these sovereign powers over another unrelated person and using them for compensation
7 is subject to the public’s independent interest in her performance, and warrants public scrutiny
8 beyond that occasioned by the controversy with Mann.”¹⁰⁰

9 *Young* did not expressly analyze if the news report was a “written or oral statement or
10 writing made in a place open to the public or a public forum in connection with an issue of
11 public interest,”¹⁰¹ because the parties conceded it was.¹⁰² However, *Young*’s analysis of
12 whether a conservator is a public official indicates the qualifications and suitability of a
13 conservator are a matter of public interest because of the sovereign power a conservator invokes.
14 If so, for anti-SLAPP purposes, there is no rational basis distinguishing a person who is applying
15 to be a conservator from one who has successfully applied and been appointed. In both contexts,
16 speech concerning the conservator’s qualifications and suitability are issues of public interest.

17 **d. California has not yet created one, uniform analysis to determine whether**
18 **speech concerns an issue of public interest.**

19 The Welts argue alternatively that if applying for a court appointment as a conservator is
20 not a significant public interest on its own, then their speech still meets various standards used in
21 California courts to determine if speech concerns an issue of public interest. For instance, in
22 *Nygård, Inc. v. Uusi-Kerttula* an employer sued a former employee for statements about working
23 conditions that he made in a magazine interview. The court evaluated if the statements
24 concerned an issue of public interest. *Nygård* surveyed California case law and concluded “these
25 cases and the legislative history that discusses them suggest that ‘an issue of public interest’

26
27 ⁹⁹ 212 Cal. App. 4th 551, 561 (2012).

28 ¹⁰⁰ *Id.* at 562.

¹⁰¹ Cal. Code Civ. Proc. § 425.16(e)(3).

¹⁰² *Young*, 212 Cal. App. 4th at 559.

1 within the meaning of [§ 425.16(e)(3)] is *any issue in which the public is interested*.¹⁰³ “[T]he
2 issue need not be ‘significant’ to be protected by the anti-SLAPP statute—it is enough that it is
3 one in which the public takes an interest.”¹⁰⁴ As the public did have an interest in the company’s
4 working conditions, the statements were protected. Applied here, *Young*’s conclusions about the
5 public interest about how conservators exercise sovereign powers indicates Howard’s
6 qualifications and suitability to be a conservator were an issue of public concern.

7 *D.C. v. R.R.* concerned online threats against a teenager’s life based upon his sexual
8 orientation. The court noted although publically accessible websites are public forums, “not
9 every Web site post involves a public issue.”¹⁰⁵ *D.C.* summarized California case law, including
10 *Nygård*, and developed a three part analysis to determine whether an issue of public interest is
11 present. “A public issue is implicated if the subject of the statement or activity underlying the
12 claim (1) was a person or entity in the public eye; (2) could affect large numbers of people
13 beyond the direct participants; or (3) involved a topic of widespread, public interest.”¹⁰⁶ If the
14 “issue is of interest to only a private group, organization, or community, the protected activity
15 must occur in the context of an ongoing controversy, dispute, or discussion, such that its
16 protection would encourage participation in matters of public significance.”¹⁰⁷ *D.C.* concluded
17 the facts presented did not satisfy the standard for concerning a “public interest,” consequently
18 excluding the online threats from anti-SLAPP protections.

19 The Welts’ speech is still protected using the *D.C.* test. Howard petitioned a New Jersey
20 court to be appointed as Walter’s conservator. As *Young* indicates, this placed him in the public
21 eye, satisfying *D.C.*’s first factor. Even if Howard was not in the public eye, meaning the issue
22 is of interest “to only a private group, organization, or community,” there was an “ongoing
23 controversy, dispute, or discussion,” specifically Howard’s qualifications and suitability to be appointed
24 Walter’s conservator by a New Jersey court. Protecting the Welts’ speech concerning this
25 dispute “would encourage participation in matters of public significance” because of *Young*’s

26 ¹⁰³ *Nygård*, 159 Cal. App. 4th at 1042 (emphasis in original).

27 ¹⁰⁴ *Id.*

¹⁰⁵ 182 Cal. App. 4th 1190, 1226 (2010).

¹⁰⁶ *Id.* at 1226.

28 ¹⁰⁷ *Id.*

1 analysis noting the public's interest in how conservators exercise a state's sovereign power. If
2 those discussing a conservator's qualifications, suitability, or acts after appointment are outside
3 anti-SLAPP protections, public discourse is inhibited.

4 *Weinberg v. Feisel* created the five factor test that *Piping Rock Partners* cited.¹⁰⁸
5 Weinberg sued Feisel "for libel, slander, and intentional infliction of emotional distress after
6 defendant told others that plaintiff had stolen a valuable collector's item from him."¹⁰⁹ Feisel
7 moved to dismiss, arguing his speech concerned a matter of public interest because it deterred
8 crime.¹¹⁰ The court created the five part test and concluded, "[u]nder the circumstances, the fact
9 that defendant accused plaintiff of criminal conduct did not make the accusations a matter of
10 public interest."¹¹¹ The "defendant did not report his suspicions to law enforcement, and there is
11 no evidence that he intended to pursue civil charges against plaintiff."¹¹² The court characterized
12 the defendant's speech as "a private campaign, so to speak, to discredit plaintiff in the eyes of a
13 relatively small group of fellow collectors."¹¹³ As there was no allegation "that plaintiff is a
14 public figure or that he has thrust himself into any public issue, defendant's accusations related
15 to what in effect was a private matter."¹¹⁴

16 *Weinberg* also protects the Welts' website. First, as *Young* described, the sovereign
17 powers a conservator exercises are not a mere curiosity. A conservator uses those powers to take
18 involuntary control over another person's life. *Young*'s description of a conservator's power also
19 satisfies *Weinberg*'s second factor that the issue "should be something of concern to a substantial
20 number of people...."¹¹⁵ Third, there is a close relationship between the public interest in the
21 qualifications and suitability of conservators and the Welts' speech addressing Howard's own
22 qualifications and suitability. Fourth, the Welts' speech is directed at the public interest by
23 discussing Howard's qualifications and suitability and searching for information on that topic so
24

25 ¹⁰⁸ 110 Cal. App. 4th 1122, 1132-33 (2003).

26 ¹⁰⁹ *Id.* at 1126.

27 ¹¹⁰ *Id.*

28 ¹¹¹ *Id.* at 1127.

¹¹² *Id.* at 1126-27.

¹¹³ *Id.* at 1127.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1132.

1 as to provide it to the New Jersey court that considered Howard's petition. Fifth, and finally,
2 Howard put his qualifications and suitability to be a conservator in dispute by petitioning the
3 New Jersey court. The Welts then spoke on that topic.

4 California's varying standards for determining whether speech addresses an issue of
5 public concern all indicate the Welts' speech was protected because Howard's qualifications and
6 suitability to be Walter's conservator are very much issues of public concern.

7 **IV. The Shapiros' do not meet their burden of proof.**

8 The Welts met their burden to demonstrate the speech on the website is within NRS
9 41.637(3) and NRS 41.637(4)'s definitions. The burden of proof now shifts to the Shapiros. The
10 court must determine "whether the plaintiff has established by clear and convincing evidence a
11 probability of prevailing on the claim."¹¹⁶ "[A] plaintiff opposing an anti-SLAPP motion cannot
12 rely on allegations in the complaint, but must set forth evidence that would be admissible at
13 trial."¹¹⁷

14 **a. There is no probability of success for Jenna Shapiro's claims.**

15 The only statement on the Welts' website about Jenna Shapiro was that she is married to
16 Howard. Neither the complaint nor the Shapiros' opposition argues that factual statement is
17 inaccurate. Having offered no evidence, let alone clear and convincing evidence, Jenna has not
18 demonstrated a probability of success on her claims.

19 **a. There is no probability of success for Howard Shapiro's defamation claims.**

20 The complaint separately alleges both defamation and defamation per se.¹¹⁸ The court
21 agrees with all of the Welts' arguments. Howard has not met his burden of proof to demonstrate
22 a probability of success on his defamation cause of action.

23
24 ¹¹⁶ NRS 41.660(3)(b).

25 ¹¹⁷ *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4th 688, 699 (2007).

26 ¹¹⁸ They are actually just one cause of action. See *Munda v. Summerlin Life & Health Ins. Co.*,
27 127 Nev. 918, 922, 267 P.3d 771, 773 n.3 (2011) ("In their complaint, the Mundas pleaded
28 negligence per se as a separate cause of action from negligence; however, it is not a separate
cause of action, but rather a method of establishing the duty and breach elements of a negligence
claim."); *Cervantes v. Health Plan of Nev., Inc.*, 127 Nev. 789, 793, 263 P.3d 261, 264 (2011)
("Although Cervantes pleaded negligence and negligence per se in her complaint as separate
causes of action, they are in reality only one cause of action. Negligence per se is only a method
of establishing the duty and breach elements of a negligence claim.").

1 **i. The Welts' speech was absolutely privileged.**

2 Nevada has adopted and applied the litigation privilege. "We conclude that the absolute
3 privilege affords parties to litigation the same protection from liability that exists for an attorney
4 for defamatory statements made during, or in anticipation of, judicial proceedings."¹¹⁹ Applied
5 here, the Welts were participants in the New Jersey proceedings concerning their relative,
6 Walter.

7 The complaint acknowledges the Welts' website was created after Howard petitioned to
8 be appointed Walter's conservator. Consequently, the statements on the website were made in
9 the course of New Jersey judicial proceedings by participants to that proceeding. The statements
10 were intended to achieve, and logically relate to, the object of that litigation: objecting to
11 Howard's qualifications and suitability to be Walter's conservator.

12 The website's intent was also to locate potential witnesses and evidence relevant to the
13 question qualification and suitability question before the New Jersey court. The website first
14 specifically identifies this Howard Shapiro as opposed to other Howard Shapiros in the country.
15 It then states "[a]ll persons with knowledge of Howard A. Shapiro's actions against Walter
16 Shapiro or other illegal acts committed by Howard Shapiro are encouraged to appear in court.
17 You may also submit information via email."¹²⁰

18 If the attorneys to the New Jersey matter had posted a website identifying Howard and
19 asking potential witnesses to come forward, it would be absolutely privileged. In modern times,
20 posting a website is indistinguishable from mailing letters to Howard's known associates,
21 identifying him and asking these individuals if they have any information relevant to his
22 qualifications and suitability. The Supreme Court of Nevada has previously concluded if the
23 statement would be privileged if issued by a lawyer, it is privileged if issued by a party.¹²¹
24 "[T]here is no good reason to distinguish between communications between lawyers and
25 nonlawyers."¹²²

26 ¹¹⁹ *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 378, 213 P.3d 496, 499
27 (2009).

28 ¹²⁰ Exhibit 1 to Complaint, at 2.

¹²¹ *Clark Cnty. Sch. Dist.*, 125 Nev. at 384, 213 P.3d at 503.

¹²² *Id.* at 383, 213 P.3d at 502.

1 Nevada has limited its general litigation privilege in only one, narrow area when
2 statements are made to the media. *Jacobs v. Adelson* concerned a statement a defendant made to
3 a media outlet in response to coverage of a complaint against him.¹²³ “We adopt the majority
4 view that communications made to the media in an extrajudicial setting are not absolutely
5 privileged, at least when the media holds no more significant interest in the litigation than the
6 general public.”¹²⁴ This exception does not apply here. The Welts’ statements to their website
7 were not made to a media outlet in an extrajudicial setting. The statements were instead made in
8 direct relation to the New Jersey case in an attempt to locate relevant evidence and witnesses.

9 Applied here, the speech that is the basis for the Shapiros’ complaint was absolutely
10 privileged as communications made in the course of litigation. The website seeks to identify
11 potential witnesses and evidence that may be relevant to the New Jersey proceeding. The
12 website is not a statement issued to media sources, but instead seeks out those who have
13 information relevant to Howard’s qualifications and suitability. Consequently, the statements are
14 absolutely privileged, preventing Howard from demonstrating a probability of success on the
15 merits of his defamation cause of action.

16 **ii. Mr. Shapiro sought to be appointed as a public official and must show**
17 **clear and convincing evidence of actual malice.**

18 The Welts alternatively argue that Howard cannot demonstrate a probability of success
19 on the merits of his defamation claim because he was a public official. The Supreme Court of
20 Nevada has adopted “the *Gertz* test for determining whether a person is a general-purpose or a
21 limited-purpose public figure.”¹²⁵ *Gertz* “reiterated that the *New York Times* standard applies
22 only to public officials and public figure plaintiffs....”¹²⁶ *The New York Times Company v.*
23 *Sullivan* standard is quite high for public officials to sue for defamation.

24 To promote free criticism of public officials, and avoid any chilling effect from
25 the threat of a defamation action, the High Court concluded that a defendant could
26 not be held liable for damages in a defamation action involving a public official

27 ¹²³ 130 Nev. Adv. Op. 44, 325 P.3d 1282 (2014).

28 ¹²⁴ *Id.* at 1284.

¹²⁵ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002).

¹²⁶ *Id.* at 719, 57 P.3d at 91 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 343-47 (1974)).

1 plaintiff unless “actual malice” is alleged and proven by clear and convincing
evidence.¹²⁷

2 By applying to be Walter’s court-appointed conservator, Howard voluntarily subjected
3 himself to the public official standard. As previously discussed, *Young v. CBS Broad., Inc.*
4 determined that by becoming a conservator, the person “became an agent of the state with the
5 power to interfere in the personal interests of a private citizen to whom she was not related and
6 without that citizen’s consent.”¹²⁸ In that circumstance, a conservator is a public official subject
7 to the actual malice standard. “A person holding these sovereign powers over another unrelated
8 person and using them for compensation is subject to the public’s independent interest in her
9 performance, and warrants public scrutiny beyond that occasioned by the controversy with
10 Mann.”¹²⁹ “A person such as [the conservator] who by court appointment exercises that power
11 for the benefit of a nonrelative and for compensation thus does so as a public official for
12 purposes of defamation liability.”¹³⁰

13 Applied here, Howard sought the same type of control over Walter as was at issue in
14 *Young*. He sought to use the power and authority of the State of New Jersey to take control of
15 Walter’s personal and financial affairs. By seeking this power, Howard subjected himself to the
16 same type of public scrutiny that was invited in *Young*.

17 The Supreme Court of Idaho performed a somewhat similar analysis in *Bandelin v.*
18 *Pietsch*.¹³¹ A lawyer and former state legislator was appointed as the guardian of an incompetent
19 person. The lawyer was later prosecuted for contempt due to what the district court considered
20 negligence in his handling of the conservatorship. This was reported in the local news and the
21 lawyer subsequently sued the paper for defamation.

22 The court concluded the lawyer, as a guardian, was a public figure. The guardian could
23 not “maintain that he is not a public figure and was just an attorney handling the probate affairs
24 of a client. He was rather the court appointed guardian, a pivotal figure in the controversy
25

26 ¹²⁷ *Id.* at 718-19, 57 P.3d at 90 (citing 376 U.S. 254, 279-80 (1964)).

27 ¹²⁸ *Young*, 212 Cal. App. 4th at 561.

28 ¹²⁹ *Id.* at 562.

¹³⁰ *Id.*

¹³¹ 563 P.2d 395 (Idaho 1977).

1 regarding the accounting of the estate that gave rise to the defamation and invasion of privacy
2 actions.”¹³² As a public figure the lawyer was required to show actual malice, but could not.

3 Whether as a public official or figure, Howard must show the statements on the Welts’
4 website were made with actual malice.¹³³ To demonstrate a probability of success on the merits
5 of his defamation claim, Howard had to provide actual, clear and convincing evidence that the
6 Welts knew their statements were false or had serious doubts about the veracity of those
7 statements and published them anyway. Howard submitted no such evidence.

8 The defamation cause of action arises solely from the website’s statements.¹³⁴ The
9 complaint specifically lists the factual statements Howard believes were defamatory¹³⁵ and
10 attached as Exhibit 1 a printout of the website. The website lists Howard’s contact information.
11 The complaint does not allege these statements of fact are false. The website then states a
12 background check of Howard Shapiro revealed certain information. The Welts’ provided the
13 background check upon which this statement relied.¹³⁶ The website accurately stated the
14 information contained in the background check. The website also accurately noted the
15 foreclosure status of Howard’s home.¹³⁷

16 The website then states Walter loaned \$100,000 to Howard and executed a power of
17 attorney in his favor. The complaint does not deny the loan and the power of attorney is attached
18 to the New Jersey petition. The website also lists acts that were reasonably believed to be taken
19 by Howard concerning Walter that would be inconsistent with the acts of a conservator. As the
20 website notes, these statements arose from conversations with two witnesses.

21 Howard sought a court-appointed position that would make him a public official. As
22 someone seeking to be a public official, he must demonstrate actual malice to show a probability
23 of success on his defamation claim. He has not presented such evidence.

24
25
26 ¹³² *Id.* at 398

27 ¹³³ *Pegasus*, 118 Nev. at 722, 57 P.3d at 92-93.

¹³⁴ Complaint at ¶ 25.

¹³⁵ *Id.* at ¶ 17.

¹³⁶ Attached as Exhibit E to motion.

¹³⁷ *Lis Pendens* attached as Exhibit F to motion.

1 **iii. Mr. Shapiro is a limited-purpose public figure who lacks clear and**
2 **convincing evidence of actual malice.**

3 The Welts' third alternative argument is Howard is a limited-purpose public figure as to
4 the New Jersey conservatorship proceedings. "A limited-purpose public figure is a person who
5 voluntarily injects himself or is thrust into a particular public controversy or public concern, and
6 thereby becomes a public figure for a limited range of issues. The test for determining whether
7 someone is a limited public figure includes examining whether a person's role in a matter of
8 public concern is voluntary and prominent."¹³⁸

9 "Once the plaintiff is deemed a limited-purpose public figure, the plaintiff bears the
10 burden of proving that the defamatory statement was made with actual malice, rather than mere
11 negligence. This is to ensure that speech that involves matters of public concern enjoys
12 appropriate constitutional protection."¹³⁹ "Whether a plaintiff is a limited-purpose public figure
13 is a question of law...."¹⁴⁰

14 Applied here, Howard voluntarily petitioned a New Jersey court to appoint him as
15 Walter's conservator. This put his qualifications and suitability for that position at issue. The
16 statements on the website were explicitly designed to seek and obtain information that support
17 the Welts' position in that litigation: Howard was not qualified or suitable. Howard made
18 himself a limited-purpose public figure, but again has not presented clear and convincing
19 evidence of actual malice to create a probability of success on his defamation claim.

20 **b. Howard concedes other causes of action cannot prevail.**

21 The Shapiros' complaint also alleged causes of action for extortion, civil conspiracy,
22 "fraud," and punitive damages. The Shapiros' opposition did not address or provide evidence
23 concerning them. The court concludes the Shapiros cannot provide clear and convincing
24 evidence demonstrating a probability of success on these causes of action for the reasons
25 discussed in the Welts' briefing.¹⁴¹

26
27 ¹³⁸ *Pegasus*, 118 Nev. at 720, 57 P.3d at 91.

28 ¹³⁹ *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006).

¹⁴⁰ *Id.*

¹⁴¹ EDCR 2.20(e).

1 **V. The Welts are awarded their attorneys' fees, costs, and discretionary relief.**

2 If an anti-SLAPP special motion to dismiss is granted, the court "shall award reasonable
3 costs and attorney's fees to the person against whom the action was brought...."¹⁴² The Welts
4 are directed to submit a memorandum of costs and attorneys' fees with appropriate supporting
5 documentation.

6 The Welts also request \$10,000 each from Howard Shapiro and a separate \$10,000 each
7 from Jenna Shapiro. When an anti-SLAPP motion is granted, the district court "may award, in
8 addition to reasonable costs and attorney's fees ..., an amount of up to \$10,000 to the person
9 against whom the action was brought."¹⁴³ Texas has a similar statute indicating the purpose and
10 amount of this discretionary award should be "sufficient to deter the party who brought the legal
11 action from bringing similar actions described in this chapter."¹⁴⁴

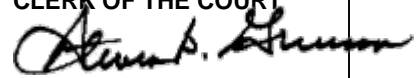
12 The court concludes the relief the Welts' request is appropriate in this situation to deter
13 the Shapiros from bringing similar actions in the future. These awards are merited by the facts
14 that led to this case. The Welts came to the assistance of an elderly family member who may be
15 suffering from mental decline and who may be vulnerable to exploitation. Undisputed
16 documentation submitted with their motion indicates they were not the only ones concerned
17 about Howard's qualifications and suitability to be Walter's conservator. Yet, their act of
18 kindness was met only with litigation both in New Jersey and Nevada. The Shapiros attempted
19 to use litigation to intimidate the Welts into silence. This action is precisely what the Nevada
20 Legislature sought to prevent via its anti-SLAPP statutes.

21 Per NRS 41.660(1)(b), the court exercises its discretion and awards \$10,000 to each of
22 the four plaintiffs from Howard Shapiro and awards a separate \$10,000 to each of the four
23 plaintiffs from Jenna Shapiro.

24
25
26
27 ¹⁴² NRS 41.660(1)(a).

28 ¹⁴³ NRS 41.660(1)(b).

¹⁴⁴ Texas Civil Practice and Remedies Code § 27.009(a)(2).



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DISTRICT COURT
CLARK COUNTY, NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO, Case A-14-706566-C
Dept. 27

Plaintiffs,

Notice of Entry of Order

vs.

GLEN WELT, RHODA WELT, LYNN WELT,
MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

Please take notice that an Order Granting Glenn Welt, Rhoda Welt, Lynn Welt &
Michele Welt's Renewed Motion to Dismiss was entered by the Court on August 4, 2017. A
copy is attached hereto.

DATED this 7th day of August, 2017.

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP

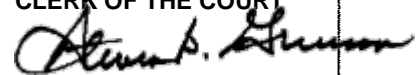
/s/ Michael P. Lowry
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☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

BY: /s/ Naomi E. Sudranski
An Employee of
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP



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Lynn Welt, and Michele Welt

DISTRICT COURT
CLARK COUNTY, NEVADA

HOWARD SHAPIRO and JENNA SHAPIRO, Case A-14-706566-C
Dept. 27

Plaintiffs,

vs.

**Order Granting Glenn Welt, Rhoda Welt,
Lynn Welt & Michele Welt's Renewed
Motion to Dismiss**

GLEN WELT, RHODA WELT, LYNN WELT,
MICHELLE WELT, individuals;
CHECKSNET.COM, a corporation; DOES I
through X, and ROE CORPORATIONS I
through X, inclusive,

Defendants.

On May 26, 2017 Defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt ("the Welts") moved to dismiss Howard and Jenna Shapiros' complaint ("the Shapiros"). The Shapiros opposed and filed a countermotion. Both motions were heard on July 19, 2017. Alex Ghibauda appeared for the Shapiros, Michael Lowry appeared for the Welts.

The Welts' ask the court to decide if their speech is protected by either NRS 41.637(3) or NRS 41.637(4). The court concludes both statutes apply to the speech at issue. The speech was protected, shifting the burden of proof to the Shapiros. The Shapiros have not provided the evidence necessary to meet their burden. Consequently, the Welts' motion is granted and the Shapiros' countermotion is denied for the reasons described in this order.

I. This case concerns an intra-familial dispute in New Jersey.

This matter stems from comments made on a website regarding a conservatorship case litigated in New Jersey. Walter Shapiro is the father of plaintiff Howard Shapiro.¹ On August 5,

¹ To avoid confusion due to identical last names, the parties are referenced by their first names.

| | |
|--|--|
| <input type="checkbox"/> Voluntary Dismissal | <input type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal | <input type="checkbox"/> Stipulated Judgment |
| <input type="checkbox"/> Stipulated Dismissal | <input type="checkbox"/> Default Judgment |
| <input checked="" type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration |

1 2014 Howard petitioned a New Jersey court to appoint him as Walter's conservator.² The
2 petition alleged Walter was allegedly no longer mentally fit to care for himself. The Welts are
3 relatives of Walter and opposed Howard's petition.³

4 The Nevada complaint alleges defamation arising from a website that concerns the New
5 Jersey petition, www.howardshapirovictims.com. The complaint attaches an email and letter
6 from Glenn Welt stating he will post the website for public viewing.⁴ Mr. Welt's stated goal is
7 to invite Howard Shapiro's "known victims to appear in court along with other caretakers,
8 neighbors, acquaintances and relatives you've threatened."

9 II. Nevada's anti-SLAPP statutes.

10 "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's
11 exercise of his or her First Amendment free speech rights."⁵ "The hallmark of a SLAPP lawsuit
12 is that it is filed to obtain a financial advantage over one's adversary by increasing litigation
13 costs until the adversary's case is weakened or abandoned."⁶ "When a plaintiff files a SLAPP
14 suit against a defendant, Nevada's anti-SLAPP statute allows the defendant to file a special
15 motion to dismiss in response to the action."⁷

16 Under the 2013 version of the statute in effect when the speech at issue in this case
17 occurred,⁸ a "person who engages in a good faith communication in furtherance of the right to
18 petition or the right to free speech in direct connection with an issue of public concern is immune
19 from any civil action for claims based upon the communication."⁹ Anti-SLAPP statutes are
20 invoked when "an action is brought against a person based upon a good faith communication in
21 furtherance of ... the right to free speech in direct connection with an issue of public concern"¹⁰
22 NRS 41.637 defines "[g]ood faith communication in furtherance of the right ... to free speech in
23

24 ² Petition attached as Exhibit A to motion.

25 ³ Answer attached as Exhibit B to motion.

26 ⁴ Complaint at Exhibits 3, 4.

27 ⁵ *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citations omitted).

28 ⁶ *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009).

⁷ *Stubbs*, 297 P.3d at 329 (citations omitted).

⁸ S.B. 286, 77th Leg., effective on October 1, 2013. The statutes were subsequently amended in the 2015 Legislative Session.

⁹ NRS 41.650.

¹⁰ NRS 41.660(1).

1 direct connection with an issue of public concern.” This term includes a “[w]ritten or oral
2 statement made in direct connection with an issue under consideration by a legislative, executive
3 or judicial body, or any other official proceeding authorized by law.”¹¹ It also includes
4 “[c]ommunication made in direct connection with an issue of public interest in a place open to
5 the public or in a public forum.”¹² These protections extend to any communication “which is
6 truthful or is made without knowledge of its falsehood.”¹³

7 *Delucchi v. Songer* recently addressed these definitions.¹⁴ *Delucchi* considered a case
8 from the Supreme Court of California “involving an interpretation of its own anti-SLAPP statute,
9 which we have previously recognized as similar in purpose and language to our anti-SLAPP
10 statute.”¹⁵ *City of Montebello v. Vasquez* concluded “[t]he Legislature did not limit the scope of
11 the anti-SLAPP statute to activity protected by the constitutional rights of speech and petition.”¹⁶
12 Instead, “[t]he Legislature spelled out the kinds of activity it meant to protect” in the statutes it
13 passed.¹⁷ As a result “courts determining whether conduct is protected under the anti-SLAPP
14 statute look not to First Amendment law, but to the statutory definitions” the Legislature
15 provided.¹⁸ This avoided the problem of requiring courts “to wrestle with difficult questions of
16 constitutional law.”¹⁹ *Vasquez* summarized that the defendant establishes the speech at issue is
17 protected if that speech is “within one of the four categories ... defining [the statutory] phrase,
18 ‘act in furtherance of a person’s right of petition or free speech under the United States or
19 California Constitution in connection with a public issue.’”²⁰

20 *Delucchi* found *Vasquez*’s “rationale persuasive and consistent with our own anti-SLAPP
21 caselaw.”²¹ *Delucchi* stated in Nevada, “a defendant’s conduct constitutes ‘good faith
22 communication in furtherance of the right to petition or the right to free speech in direct

23 ¹¹ NRS 41.637(3).

24 ¹² NRS 41.637(4).

25 ¹³ NRS 41.637.

26 ¹⁴ 133 Nev. Adv. Op. 42 (2017).

27 ¹⁵ *Id.* at 13 (quotations and citation omitted).

28 ¹⁶ 376 P.3d 624, 632 (Cal. 2016).

¹⁷ *Id.*

¹⁸ *Id.* at 633.

¹⁹ *Id.*

²⁰ *Id.* (first alteration in original) (quoting Cal. Civ. Proc. Code § 425.16(e) (2016)).

²¹ 133 Nev. Adv. Op. 42, at 15.

1 connection with an issue of public concern' if it falls within one of the four categories
2 enumerated in NRS 41.637 and 'is truthful or is made without knowledge of its falsehood.'"²²

3 **a. Standard of review.**

4 When resolving this motion the district court shall "[c]onsider such evidence, written or
5 oral, by witnesses or affidavits, as may be material in making a determination pursuant to
6 paragraphs (a) and (b)."²³ Under the 2013 version of the statute in effect when the speech at
7 issue in this case occurred, when a special motion to dismiss is filed, the district court must first
8 "[d]etermine whether the moving party has established, by a preponderance of the evidence, that
9 the claim is based upon a good faith communication in furtherance of the right to petition or the
10 right to free speech in direct connection with an issue of public concern."²⁴ If the moving party
11 meets its burden, the court then determines "whether the plaintiff has established by clear and
12 convincing evidence a probability of prevailing on the claim."²⁵ This standard is stringent.²⁶
13 The opposing party must provide actual, admissible evidence, not merely a narrative
14 disagreement with the moving party.²⁷

15 **III. The Welts meet their burden of proof.**

16 The Welts must first demonstrate the Shapiros' complaint is "based upon a good faith
17 communication in furtherance of the right to petition or the right to free speech in direct
18 connection with an issue of public concern."²⁸ Nevada's "based upon" requirement has not yet
19 been interpreted. In the absence of Nevada authority, it is appropriate to consider California
20 authority.²⁹ By borrowing from California, Nevada implicitly adopted California case law
21 interpreting that statute.³⁰

22 ²² *Id.*

23 ²³ NRS 41.660(3)(d).

24 ²⁴ NRS 41.660(3)(a).

25 ²⁵ NRS 41.660(3)(b).

26 ²⁶ *In re Jane Tiffany Living Trust 2001*, 124 Nev. 74, 79, 177 P.3d 1060, 1063 (2008) (quotation
25 omitted).

27 ²⁷ *John*, 125 Nev. at 762, 219 P.3d at 1287.

28 ²⁸ NRS 41.660(1).

29 ²⁹ *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

30 ³⁰ *International Game Technology, Inc. v. Dist. Ct.*, 122 Nev. 132, 153, 127 P.3d 1088, 1103
27 (2006) ("When the Legislature adopts a statute substantially similar to a federal statute, a
28 presumption arises that the legislature knew and intended to adopt the construction placed on the
federal statute by federal courts.")

1 NRS 41.660(1)'s "based upon" requirement is substantively identical to California's
2 "arise from" requirement. In California, it "means simply that the defendant's act underlying the
3 plaintiff's cause of action must itself have been an act in furtherance of the right of petition or
4 free speech."³¹ "[T]he critical point is whether the plaintiff's cause of action itself was based on
5 an act in furtherance of the defendant's right of petition or free speech."³² The focus "is not the
6 form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or
7 her asserted liability—and whether that activity constitutes protected speech or petitioning."³³

8 The Shaprios' complaint is "based upon" the Welts' website, satisfying this requirement.

9 **a. NRS 41.637(3) applies to the speech on the Welts' website.**

10 The core question under review by the New Jersey judicial body was whether Walter
11 needed a conservator and, if so, whether Howard was qualified and suitable for that role. NRS
12 41.637(3) protects a "[w]ritten or oral statement made in direct connection with an issue under
13 consideration by a ... judicial body."³⁴ No Nevada appellate court has yet addressed this
14 definition, so the court considers persuasive California case law interpreting its statute protecting
15 "any written or oral statement or writing made in connection with an issue under consideration or
16 review by a ... judicial body...."³⁵

17 **i. § 425.16(e)(2) is construed broadly.**

18 California has broadly defined the phrase "made in connection with an issue under
19 consideration or review." *Briggs v. Eden Council for Hope & Opportunity* arose from a dispute
20 between a landlord and a tenant-rights organization, known as ECHO.³⁶ The landlords sued
21 ECHO because, in part, it helped a tenant file a small claims action.³⁷ ECHO moved to dismiss,
22 arguing the statements giving rise to the lawsuit were made concerning matters under review by
23 a judicial body and thus protected. The Supreme Court of California was asked to decide if "a
24 defendant, [filing an anti-SLAPP motion to dismiss] a cause of action arising from a statement

25 ³¹ *City of Cotati v. Cashman*, 52 P.3d 695, 701 (Cal. 2002) (internal citations omitted).

26 ³² *Id.*

27 ³³ *Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) (emphasis in original).

28 ³⁴ NRS 41.637(3).

³⁵ Cal Code Civ Proc § 425.16(e)(2).

³⁶ 969 P.2d 564 (Cal. 1999).

³⁷ *Id.* at 566.

1 made before, or in connection with an issue under consideration by, a legally authorized official
2 proceeding, demonstrate separately that the statement concerned an issue of public
3 significance?" It concluded no, based upon the statute's plain language.

4 California's statute "expressly makes subject to a special motion to strike '[a] cause of
5 action against a person arising from any act of that person in furtherance of the person's right of
6 petition or free speech under the United States or California Constitution in connection with a
7 public issue...."³⁸ The statute defined this phrase to include "*any* written or oral statement or
8 writing made in connection with an issue under consideration or review by a ... judicial
9 body...."³⁹ *Briggs* concluded the plain language "encompasses any cause of action against a
10 person arising from any statement or writing made in, or in connection with an issue under
11 consideration or review by, an official proceeding or body."⁴⁰

12 Applying this definition, *Briggs* concluded the lawsuit was based upon protected activity.
13 ECHO's communications with the tenant concerning the small claim were "made in connection
14 with issues under consideration or review by official bodies or proceedings—specifically, HUD
15 or the civil courts."⁴¹ Even communications in preparation for or anticipation of a judicial
16 proceeding were protected.⁴²

17 *Briggs* specifically rejected the argument that the judicial proceeding must be of public
18 significance to qualify for protection. "[T]he statute requires simply *any* writing or statement
19 made in, or in connection with an issue under consideration or review by" a judicial body.⁴³

20 Thus these clauses safeguard free speech and petition conduct aimed at advancing
21 self government, as well as conduct aimed at more mundane pursuits. Under the
22 plain terms of the statute it is the context or setting itself that makes the issue a
23 public issue: all that matters is that the First Amendment activity take place in an
24 official proceeding or be made in connection with an issue being reviewed by an
authorized official proceeding to which it connects.⁴⁴

25 ³⁸ *Id.* at 568.

26 ³⁹ *Id.* (emphasis in original).

27 ⁴⁰ *Id.*

28 ⁴¹ *Id.* at 569.

⁴² *Id.*

⁴³ *Id.* at 570 (emphasis in original).

⁴⁴ *Id.* (emphasis in original).

1 Subsequent decisions have also discussed when a communication is “made in connection
2 with an issue” being considered by a judicial body.⁴⁵ *People ex rel. 20th Century Ins. Co. v.*
3 *Bldg. Permit Consultants, Inc.* evaluated whether allegedly fraudulent repair estimates submitted
4 to an insurance company were “made in connection with an issue” being considered by a judicial
5 body.⁴⁶ They were not. “While some of the reports eventually were used in official proceedings
6 or litigation, they were not created ‘before,’ or ‘in connection with an issue under consideration
7 or review by a legislative, executive, or judicial body, or any other official proceeding authorized
8 by law.’”⁴⁷ “At the time defendants created and submitted their reports and claims, there was no
9 ‘issue under consideration’ pending before any official proceeding.”⁴⁸ California’s anti-SLAPP
10 protections did not extend so broadly as to protect communications merely “because they
11 eventually could be used in connection with an official proceeding....”⁴⁹

12 In *Paul v. Friedman* a securities broker successfully defended an arbitration proceeding
13 brought against him.⁵⁰ He then sued the lawyer who pursued the action, asserting the lawyer’s
14 investigation of the broker’s private life during the arbitration was harassing and that the lawyer
15 had publically revealed information allegedly obtained from that investigation. These actions
16 were not statutorily protected. “The statute does not accord anti-SLAPP protection to suits
17 arising from any act having any connection, however remote, with an official proceeding. The
18 statements or writings in question must occur in connection with ‘an issue under consideration or
19 review’ in the proceeding.”⁵¹

20 In short, it is insufficient to assert that the acts alleged were “in connection with”
21 an official proceeding. There must be a connection with an issue under review in
22 that proceeding. In *20th Century Insurance*, there was a connection to an issue but
23 no pending proceeding; here, there is a pending proceeding, but no connection to
24 an issue before the tribunal.⁵²

25 ⁴⁵ Cal Code Civ Proc § 425.16(e)(2).

26 ⁴⁶ 86 Cal. App. 4th 280, 282 (2000).

27 ⁴⁷ *Id.* at 284-285 (quoting Cal Code Civ Proc § 425.16(e)(1), (2)).

28 ⁴⁸ *Id.* at 285.

⁴⁹ *Id.*

⁵⁰ 95 Cal. App. 4th 853 (2002).

⁵¹ *Id.* at 866.

⁵² *Id.* at 867.

1 *Neville v. Chudacoff* concerned an employee leaving a business, Maxsecurity, to form a
2 competing business and, in the process, allegedly misappropriating trade secrets.⁵³ In May, 2005
3 Maxsecurity sent its customers a letter from its lawyer, Chudacoff, stating that the former
4 employee had breached his employment contract and warning the customers not to do business
5 with him. Maxsecurity filed suit against the former employee in September, 2005. The
6 employee cross-claimed for defamation arising from the letter. Maxsecurity moved to dismiss
7 the counterclaims, arguing they were based upon the letter and the letter was a protected
8 communication “in connection with an issue under consideration or review by a legislative,
9 executive, or judicial body....”⁵⁴ The court concluded “[t]he only reasonable inference from the
10 [Letter], however, is that Maxsecurity and Chudacoff were contemplating litigation against
11 Neville seriously and in good faith when the Letter was written.”⁵⁵

12 The former employee also argued the letter was not protected because it was not sent to
13 potential parties to the anticipated litigation. *Neville* explained “a statement is ‘in connection
14 with’ litigation ... if it relates to the substantive issues in the litigation and is directed to persons
15 having some interest in the litigation.”⁵⁶ This definition extended “to protect statements to
16 persons who are not parties or potential parties to litigation, provided such statements are made
17 ‘in connection with’ pending or anticipated litigation.”⁵⁷ All of the employee’s arguments were
18 rejected, letter was protected, and the counterclaim dismissed.

19 *McConnell v. Innovative Artists Talent & Literary Agency, Inc.* concerned a business
20 break-up where two employees, McConnell and Press, sought to leave and create their own
21 competing business.⁵⁸ They initiated suit seeking declaratory relief concerning sections of their
22 contract concerning their ability to terminate their own employment.⁵⁹ The next day
23 Innovative’s president, Harris, ordered them removed from the company’s offices and sent them
24 a letter advising that they had been given “new job duties” that, in effect, prevented them from

25 ⁵³ 160 Cal. App. 4th 1255 (2008).

26 ⁵⁴ *Id.* at 1262.

27 ⁵⁵ *Id.* at 1269.

28 ⁵⁶ *Id.* at 1266.

⁵⁷ *Id.* at 1270.

⁵⁸ 175 Cal. App. 4th 169 (2009).

⁵⁹ *Id.* at 173.

1 working at all.⁶⁰ The now former employees added causes of action for wrongful termination
2 and retaliation, both relying upon Harris's letter.⁶¹ Innovative moved to dismiss these causes of
3 action arguing the letter was a protected communication because it was made "in connection
4 with an issue under consideration" by a judicial body.⁶²

5 This argument was rejected. There was a judicial proceeding pending when the letter
6 was sent, but there was not a sufficient connection between the letter and an issue under
7 consideration. The day the letter was sent, the pending lawsuits "sought declaratory and
8 injunctive relief establishing that McConnell and Press were legally free to leave Innovative
9 whenever they chose." However, Harris's letter

10 was obviously directed at preventing McConnell from taking clients with him
11 when he left, not at establishing that McConnell was legally required to stay.
12 Indeed, the Harris letter on its face says nothing at all about McConnell's lawsuit,
13 and nothing at all about any claims Innovative might make in that lawsuit.
14 Consequently, it is difficult to find any basis to conclude that Innovative's letter
15 was written "in connection with an issue under consideration" in those lawsuits,
16 of which no mention at all was made.⁶³

17 Innovative responded the letter was part of its "efforts to investigate pending or
18 prospective claims and/or prepare for their potential resolution."⁶⁴

19 But the letters do not mention the lawsuits; do not mention any desire to
20 investigate; do not refer to any misconduct by McConnell and Press; and do not
21 mention "pending or prospective claims" or their "potential resolution." In short,
22 the McConnell/Press causes of action for retaliation and wrongful termination
23 could not have been based on protected litigation activity, in the form of
24 Innovative's investigation of pending claims, when no such investigative activity
25 is reflected in Harris's letter.⁶⁵

26 Several other California decisions decided whether certain communications were in
27 connection with an issue pending before a judicial body. In *Moore v. Shaw* an attorney drafted
28 an agreement to terminate a trust and was later sued because of it.⁶⁶ The attorney then moved to
29 dismiss certain causes of action, arguing they were protected communications. "We note Nancy
30 Shaw drafted the termination agreement in September 1999, one year before George's death and

31 ⁶⁰ *Id.* at 173-174.

32 ⁶¹ *Id.* at 174.

33 ⁶² *Id.*

34 ⁶³ *Id.* at 177-78.

35 ⁶⁴ *Id.* at 178.

36 ⁶⁵ *Id.*

37 ⁶⁶ 116 Cal. App. 4th 182 (2004).

1 nearly three years before Kenton filed his petition against her.”⁶⁷ Consequently her actions were
2 not made in connection with an issue under consideration by a judicial body and were not
3 protected.⁶⁸

4 In *Healy v. Tuscan Hills Landscape & Recreation Corp.* a HOA filed suit against one of
5 its unit owners and sent a letter to its membership about the topic of the lawsuit.⁶⁹ The unit
6 owner’s counterclaim for defamation arising from the letter was dismissed. “Because one
7 purpose of the letter was to inform members of the association of pending litigation involving the
8 association, the letter is unquestionably in connection with judicial proceedings and bears some
9 relation to judicial proceedings.”⁷⁰ *Contemporary Services Corp. v. Staff Pro Inc.* concluded an
10 email update to a group of customers concerning court rulings and favorable imposition of
11 sanctions in litigation against the company’s competitor was protected activity because it was in
12 connection with an issue under consideration or review by a judicial body.⁷¹

13 Applied to the facts at issue here, the complaint alleges the Welts’ website was created
14 after the judicial proceeding was commenced, satisfying NRS 41.637(3)’s first element. The
15 second element requires a connection between the speech and the issue under consideration. The
16 core question before the New Jersey court was whether Howard was qualified and suitable to be
17 Walter’s guardian. The speech on the website was directly connected to that issue. The Welts’
18 satisfy both elements of NRS 41.637(3).

19 **ii. NRS 41.637(3)’s direct connection requirement is satisfied.**

20 There is one material textual difference between the California and Nevada statutes.
21 California protects “any written or oral statement or writing made in connection with an issue
22 under consideration or review...”⁷² Nevada protects “any (3) Written or oral statement made in
23 *direct* connection with an issue under consideration...”⁷³ NRS 41.637(3) does not define when
24 a statement is “in direct connection” such that it qualifies for protection.

25 ⁶⁷ *Id.* at 197.

26 ⁶⁸ *Id.*

27 ⁶⁹ 137 Cal. App. 4th 1 (2006).

28 ⁷⁰ *Id.* at 5-6 (internal quotations omitted).

⁷¹ 152 Cal. App. 4th 1043, 1055-1056 (2007).

⁷² Cal. Civ. Proc. Code § 425.16(e)(2).

⁷³ Emphasis added.

1 When the plain language of the statute does not answer the question, the statute should be
2 construed “according to that which reason and public policy would indicate the legislature
3 intended.”⁷⁴ Statutes are to be construed “as a whole, so that all provisions are considered
4 together and, to the extent practicable, reconciled and harmonized. In addition, the court will not
5 render any part of the statute meaningless, and will not read the statute’s language so as to
6 produce absurd or unreasonable results.”⁷⁵

7 The “in direct connection” requirement was not part of the statute as originally enacted in
8 1993.⁷⁶ It was added in 1997,⁷⁷ but the legislative history is silent as to why. The 2013
9 amendments did not modify the language but did add it to the first sentence of NRS 41.637 and
10 the new NRS 41.637(4).⁷⁸

11 NRS 41.637(3) is a nearly verbatim copy of Cal. Civ. Proc. Code § 425.16(e)(2). In 1997
12 when NRS 41.637(3) was created, § 425.16(e)(2) could fairly be read to literally encompass *any*
13 speech having *any* connection to the issue under review or consideration. By adding the word
14 “direct” to § 425.16(e)(2)’s language, the Nevada Legislature implicitly rejected the California
15 standard and required more of a connection between the speech and the issue under review or
16 consideration by the judicial body. However, California case law since 1997 rejected an
17 interpretation of § 425.16(e)(2) that would protect *any* speech with *any* connection, as *Paul v.*
18 *Friedman* concluded.⁷⁹ California courts have instead interpreted § 425.16(e)(2) as requiring
19 what can fairly be described as a “direct connection,” like NRS 41.637(3). This textual
20 difference does not make a substantive difference to deciding the Welts’ motion.

21 **b. NRS 41.637(4) also applies to the speech on the Welts’ website.**

22 The Welts alternatively argue NRS 41.637(4) applies to the speech on the website. NRS
23 41.637(4) protects any “[c]ommunication made in direct connection with an issue of public
24
25

26 ⁷⁴ *Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010).

27 ⁷⁵ *Id.* at 534, 245 P.3d at 1153.

28 ⁷⁶ 1993 Nev. Stat., ch. 652 at 2848-2849.

⁷⁷ 1997 Nev. Stat., ch. 387 at 1365.

⁷⁸ 2013 Nev. Stat., ch. 176 at 623.

⁷⁹ 95 Cal. App. 4th 853, 866-67 (2002).

1 interest in a place open to the public or in a public forum,”⁸⁰ but only if that communication “is
2 truthful or is made without knowledge of its falsehood.”⁸¹

3 On appeal, the Supreme Court adopted “California’s guiding principles ... for
4 determining whether an issue is of public interest under NRS 41.637(4).”⁸² It specifically listed
5 five guiding principles.⁸³ The Supreme Court directed “the district court to apply California’s
6 guiding principles in analyzing whether the Welts’ statements were made in direct connection
7 with an issue of public interest under NRS 41.637(4).”⁸⁴ Applying these principles, the Welts’
8 speech on the website was within NRS 41.637(4)’s definition.

9 **i. How does California apply its guiding principles?**

10 *Shapiro* specifically cited *Piping Rock Partners*, a dispute between two real estate
11 investment trust (“REIT”) firms, Piping Rock Partners and David Lerner Associates.⁸⁵ Piping
12 Rock Partners’ sole shareholder, Germain, also “launched a public forum on his blog REIT
13 Wrecks to encourage discussion of non-traded REITs.”⁸⁶ “In response to a reader’s post about
14 DLA and Lerner, Germain posted a reply explaining that DLA and Lerner appeared to be
15 violating a regulation promulgated by the Financial Industry Regulatory Authority (FINRA).”⁸⁷
16 This generated “months of publicity,” a formal FINRA complaint, and two class action
17 lawsuits.⁸⁸

18 The firms each alleged the other then began online smear campaigns.⁸⁹ Piping Rock
19 Partners sued DLA, who moved to dismiss arguing its statements were protected by §
20 425.16(e)(3) as “any written or oral statement or writing made in a place open to the public or a
21 public forum in connection with an issue of public interest.”⁹⁰ The eight posts admittedly
22

23 ⁸⁰ NRS 41.637(4).

24 ⁸¹ NRS 41.637.

25 ⁸² *Shapiro*, 389 P.3d at 268.

26 ⁸³ *Id.* (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957,
968 (N.D. Cal. 2013)).

27 ⁸⁴ *Id.*

28 ⁸⁵ *Piping Rock Partners*, 946 F. Supp. 2d at 965.

⁸⁶ *Id.*

⁸⁷ *Id.* at 965.

⁸⁸ *Id.*

⁸⁹ *Id.* at 965-66.

⁹⁰ *Id.* at 967.

1 authored by a DLA representative were originally posted to the website Ripoff Reports.⁹¹ Piping
2 Rock Partners conceded Ripoff Reports was a public forum.⁹²

3 The court concluded the posts concerned an issue of public interest because they were “a
4 warning to consumers not to do business with plaintiffs because of their allegedly faulty business
5 practices.”⁹³ However, several of the factual statements in the posts were demonstrably false.
6 “California law does not require a statement to be serious or truthful in order to concern an issue
7 of public interest.”⁹⁴ By contrast, Nevada law protects only speech within defined categories
8 “which is truthful or is made without knowledge of its falsehood.”⁹⁵

9 DLA counterclaimed based upon 12 statements posted to Germain’s blog, who moved to
10 dismiss. He argued the statements were protected by § 425.16(e)(3) “because they were made on
11 public internet website, accessible by all. DLA and Lerner argue that REIT Wrecks is not public
12 because Germain controls the very website on which he posted the offending statements.”⁹⁶
13 DLA and Lerner’s argument was summarily rejected. “It is settled that Web sites accessible to
14 the public ... are public forums for purposes of the anti-SLAPP statute.”⁹⁷ The court did not
15 address whether the 12 posts concerned an issue of public interest because that was conceded.⁹⁸

16 *Piping Rock Partners* summarized California case law for determining whether speech
17 concerned an issue of public interest. It also indicates the Welts’ website was a public forum.
18 However, *Piping Rock Partners* provided limited guidance as to what speech concerned an issue
19 of public interest.

20 **c. Invoking sovereign powers as a conservator is an issue of public interest.**

21 The parties have not presented any California authority expressly determining whether
22 speech concerning the qualifications and suitability of a person who has petitioned for a
23 conservator appointment concerns “an issue of public interest.” However, *Young v. CBS Broad.*,

24
25 ⁹¹ *Id.* at 965-66.

26 ⁹² *Id.* at 967.

27 ⁹³ *Id.* at 969.

28 ⁹⁴ *Id.*

⁹⁵ NRS 41.637.

⁹⁶ *Piping Rock Partners*, 946 F. Supp. 2d at 974-95.

⁹⁷ *Id.* (quoting *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1366 (2010)).

⁹⁸ *Id.* at 976.

1 *Inc.* determined that being appointed a conservator makes a person a public official, subject to
2 public scrutiny. California had previously determined a social worker qualified as a public
3 official. It found the conservator to be in a similar position. By accepting the appointment, the
4 conservator “became an agent of the state with the power to interfere in the personal interests of
5 a private citizen to whom she was not related and without that citizen’s consent.”⁹⁹ “A person
6 holding these sovereign powers over another unrelated person and using them for compensation
7 is subject to the public’s independent interest in her performance, and warrants public scrutiny
8 beyond that occasioned by the controversy with Mann.”¹⁰⁰

9 *Young* did not expressly analyze if the news report was a “written or oral statement or
10 writing made in a place open to the public or a public forum in connection with an issue of
11 public interest,”¹⁰¹ because the parties conceded it was.¹⁰² However, *Young*’s analysis of
12 whether a conservator is a public official indicates the qualifications and suitability of a
13 conservator are a matter of public interest because of the sovereign power a conservator invokes.
14 If so, for anti-SLAPP purposes, there is no rational basis distinguishing a person who is applying
15 to be a conservator from one who has successfully applied and been appointed. In both contexts,
16 speech concerning the conservator’s qualifications and suitability are issues of public interest.

17 **d. California has not yet created one, uniform analysis to determine whether**
18 **speech concerns an issue of public interest.**

19 The Welts argue alternatively that if applying for a court appointment as a conservator is
20 not a significant public interest on its own, then their speech still meets various standards used in
21 California courts to determine if speech concerns an issue of public interest. For instance, in
22 *Nygård, Inc. v. Uusi-Kerttula* an employer sued a former employee for statements about working
23 conditions that he made in a magazine interview. The court evaluated if the statements
24 concerned an issue of public interest. *Nygård* surveyed California case law and concluded “these
25 cases and the legislative history that discusses them suggest that ‘an issue of public interest’

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27 ⁹⁹ 212 Cal. App. 4th 551, 561 (2012).

28 ¹⁰⁰ *Id.* at 562.

¹⁰¹ Cal. Code Civ. Proc. § 425.16(e)(3).

¹⁰² *Young*, 212 Cal. App. 4th at 559.

1 within the meaning of [§ 425.16(e)(3)] is *any issue in which the public is interested*.¹⁰³ “[T]he
2 issue need not be ‘significant’ to be protected by the anti-SLAPP statute—it is enough that it is
3 one in which the public takes an interest.”¹⁰⁴ As the public did have an interest in the company’s
4 working conditions, the statements were protected. Applied here, *Young*’s conclusions about the
5 public interest about how conservators exercise sovereign powers indicates Howard’s
6 qualifications and suitability to be a conservator were an issue of public concern.

7 *D.C. v. R.R.* concerned online threats against a teenager’s life based upon his sexual
8 orientation. The court noted although publically accessible websites are public forums, “not
9 every Web site post involves a public issue.”¹⁰⁵ *D.C.* summarized California case law, including
10 *Nygård*, and developed a three part analysis to determine whether an issue of public interest is
11 present. “A public issue is implicated if the subject of the statement or activity underlying the
12 claim (1) was a person or entity in the public eye; (2) could affect large numbers of people
13 beyond the direct participants; or (3) involved a topic of widespread, public interest.”¹⁰⁶ If the
14 “issue is of interest to only a private group, organization, or community, the protected activity
15 must occur in the context of an ongoing controversy, dispute, or discussion, such that its
16 protection would encourage participation in matters of public significance.”¹⁰⁷ *D.C.* concluded
17 the facts presented did not satisfy the standard for concerning a “public interest,” consequently
18 excluding the online threats from anti-SLAPP protections.

19 The Welts’ speech is still protected using the *D.C.* test. Howard petitioned a New Jersey
20 court to be appointed as Walter’s conservator. As *Young* indicates, this placed him in the public
21 eye, satisfying *D.C.*’s first factor. Even if Howard was not in the public eye, meaning the issue
22 is of interest “to only a private group, organization, or community,” there was an “ongoing
23 controversy, dispute, or discussion,” specifically Howard’s qualifications and suitability to be appointed
24 Walter’s conservator by a New Jersey court. Protecting the Welts’ speech concerning this
25 dispute “would encourage participation in matters of public significance” because of *Young*’s

26 ¹⁰³ *Nygård*, 159 Cal. App. 4th at 1042 (emphasis in original).

27 ¹⁰⁴ *Id.*

¹⁰⁵ 182 Cal. App. 4th 1190, 1226 (2010).

¹⁰⁶ *Id.* at 1226.

28 ¹⁰⁷ *Id.*

1 analysis noting the public's interest in how conservators exercise a state's sovereign power. If
2 those discussing a conservator's qualifications, suitability, or acts after appointment are outside
3 anti-SLAPP protections, public discourse is inhibited.

4 *Weinberg v. Feisel* created the five factor test that *Piping Rock Partners* cited.¹⁰⁸
5 Weinberg sued Feisel "for libel, slander, and intentional infliction of emotional distress after
6 defendant told others that plaintiff had stolen a valuable collector's item from him."¹⁰⁹ Feisel
7 moved to dismiss, arguing his speech concerned a matter of public interest because it deterred
8 crime.¹¹⁰ The court created the five part test and concluded, "[u]nder the circumstances, the fact
9 that defendant accused plaintiff of criminal conduct did not make the accusations a matter of
10 public interest."¹¹¹ The "defendant did not report his suspicions to law enforcement, and there is
11 no evidence that he intended to pursue civil charges against plaintiff."¹¹² The court characterized
12 the defendant's speech as "a private campaign, so to speak, to discredit plaintiff in the eyes of a
13 relatively small group of fellow collectors."¹¹³ As there was no allegation "that plaintiff is a
14 public figure or that he has thrust himself into any public issue, defendant's accusations related
15 to what in effect was a private matter."¹¹⁴

16 *Weinberg* also protects the Welts' website. First, as *Young* described, the sovereign
17 powers a conservator exercises are not a mere curiosity. A conservator uses those powers to take
18 involuntary control over another person's life. *Young*'s description of a conservator's power also
19 satisfies *Weinberg*'s second factor that the issue "should be something of concern to a substantial
20 number of people...."¹¹⁵ Third, there is a close relationship between the public interest in the
21 qualifications and suitability of conservators and the Welts' speech addressing Howard's own
22 qualifications and suitability. Fourth, the Welts' speech is directed at the public interest by
23 discussing Howard's qualifications and suitability and searching for information on that topic so
24

25 ¹⁰⁸ 110 Cal. App. 4th 1122, 1132-33 (2003).

26 ¹⁰⁹ *Id.* at 1126.

27 ¹¹⁰ *Id.*

28 ¹¹¹ *Id.* at 1127.

¹¹² *Id.* at 1126-27.

¹¹³ *Id.* at 1127.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1132.

1 as to provide it to the New Jersey court that considered Howard's petition. Fifth, and finally,
2 Howard put his qualifications and suitability to be a conservator in dispute by petitioning the
3 New Jersey court. The Welts then spoke on that topic.

4 California's varying standards for determining whether speech addresses an issue of
5 public concern all indicate the Welts' speech was protected because Howard's qualifications and
6 suitability to be Walter's conservator are very much issues of public concern.

7 **IV. The Shapiros' do not meet their burden of proof.**

8 The Welts met their burden to demonstrate the speech on the website is within NRS
9 41.637(3) and NRS 41.637(4)'s definitions. The burden of proof now shifts to the Shapiros. The
10 court must determine "whether the plaintiff has established by clear and convincing evidence a
11 probability of prevailing on the claim."¹¹⁶ "[A] plaintiff opposing an anti-SLAPP motion cannot
12 rely on allegations in the complaint, but must set forth evidence that would be admissible at
13 trial."¹¹⁷

14 **a. There is no probability of success for Jenna Shapiro's claims.**

15 The only statement on the Welts' website about Jenna Shapiro was that she is married to
16 Howard. Neither the complaint nor the Shapiros' opposition argues that factual statement is
17 inaccurate. Having offered no evidence, let alone clear and convincing evidence, Jenna has not
18 demonstrated a probability of success on her claims.

19 **a. There is no probability of success for Howard Shapiro's defamation claims.**

20 The complaint separately alleges both defamation and defamation per se.¹¹⁸ The court
21 agrees with all of the Welts' arguments. Howard has not met his burden of proof to demonstrate
22 a probability of success on his defamation cause of action.

23
24 ¹¹⁶ NRS 41.660(3)(b).

25 ¹¹⁷ *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4th 688, 699 (2007).

26 ¹¹⁸ They are actually just one cause of action. See *Munda v. Summerlin Life & Health Ins. Co.*,
27 127 Nev. 918, 922, 267 P.3d 771, 773 n.3 (2011) ("In their complaint, the Mundas pleaded
28 negligence per se as a separate cause of action from negligence; however, it is not a separate
cause of action, but rather a method of establishing the duty and breach elements of a negligence
claim."); *Cervantes v. Health Plan of Nev., Inc.*, 127 Nev. 789, 793, 263 P.3d 261, 264 (2011)
("Although Cervantes pleaded negligence and negligence per se in her complaint as separate
causes of action, they are in reality only one cause of action. Negligence per se is only a method
of establishing the duty and breach elements of a negligence claim.").

1 **i. The Welts' speech was absolutely privileged.**

2 Nevada has adopted and applied the litigation privilege. "We conclude that the absolute
3 privilege affords parties to litigation the same protection from liability that exists for an attorney
4 for defamatory statements made during, or in anticipation of, judicial proceedings."¹¹⁹ Applied
5 here, the Welts were participants in the New Jersey proceedings concerning their relative,
6 Walter.

7 The complaint acknowledges the Welts' website was created after Howard petitioned to
8 be appointed Walter's conservator. Consequently, the statements on the website were made in
9 the course of New Jersey judicial proceedings by participants to that proceeding. The statements
10 were intended to achieve, and logically relate to, the object of that litigation: objecting to
11 Howard's qualifications and suitability to be Walter's conservator.

12 The website's intent was also to locate potential witnesses and evidence relevant to the
13 question qualification and suitability question before the New Jersey court. The website first
14 specifically identifies this Howard Shapiro as opposed to other Howard Shapiros in the country.
15 It then states "[a]ll persons with knowledge of Howard A. Shapiro's actions against Walter
16 Shapiro or other illegal acts committed by Howard Shapiro are encouraged to appear in court.
17 You may also submit information via email."¹²⁰

18 If the attorneys to the New Jersey matter had posted a website identifying Howard and
19 asking potential witnesses to come forward, it would be absolutely privileged. In modern times,
20 posting a website is indistinguishable from mailing letters to Howard's known associates,
21 identifying him and asking these individuals if they have any information relevant to his
22 qualifications and suitability. The Supreme Court of Nevada has previously concluded if the
23 statement would be privileged if issued by a lawyer, it is privileged if issued by a party.¹²¹
24 "[T]here is no good reason to distinguish between communications between lawyers and
25 nonlawyers."¹²²

26 ¹¹⁹ *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 378, 213 P.3d 496, 499
27 (2009).

28 ¹²⁰ Exhibit 1 to Complaint, at 2.

¹²¹ *Clark Cnty. Sch. Dist.*, 125 Nev. at 384, 213 P.3d at 503.

¹²² *Id.* at 383, 213 P.3d at 502.

1 Nevada has limited its general litigation privilege in only one, narrow area when
2 statements are made to the media. *Jacobs v. Adelson* concerned a statement a defendant made to
3 a media outlet in response to coverage of a complaint against him.¹²³ “We adopt the majority
4 view that communications made to the media in an extrajudicial setting are not absolutely
5 privileged, at least when the media holds no more significant interest in the litigation than the
6 general public.”¹²⁴ This exception does not apply here. The Welts’ statements to their website
7 were not made to a media outlet in an extrajudicial setting. The statements were instead made in
8 direct relation to the New Jersey case in an attempt to locate relevant evidence and witnesses.

9 Applied here, the speech that is the basis for the Shapiros’ complaint was absolutely
10 privileged as communications made in the course of litigation. The website seeks to identify
11 potential witnesses and evidence that may be relevant to the New Jersey proceeding. The
12 website is not a statement issued to media sources, but instead seeks out those who have
13 information relevant to Howard’s qualifications and suitability. Consequently, the statements are
14 absolutely privileged, preventing Howard from demonstrating a probability of success on the
15 merits of his defamation cause of action.

16 **ii. Mr. Shapiro sought to be appointed as a public official and must show**
17 **clear and convincing evidence of actual malice.**

18 The Welts alternatively argue that Howard cannot demonstrate a probability of success
19 on the merits of his defamation claim because he was a public official. The Supreme Court of
20 Nevada has adopted “the *Gertz* test for determining whether a person is a general-purpose or a
21 limited-purpose public figure.”¹²⁵ *Gertz* “reiterated that the *New York Times* standard applies
22 only to public officials and public figure plaintiffs....”¹²⁶ *The New York Times Company v.*
23 *Sullivan* standard is quite high for public officials to sue for defamation.

24 To promote free criticism of public officials, and avoid any chilling effect from
25 the threat of a defamation action, the High Court concluded that a defendant could
26 not be held liable for damages in a defamation action involving a public official

27 ¹²³ 130 Nev. Adv. Op. 44, 325 P.3d 1282 (2014).

28 ¹²⁴ *Id.* at 1284.

¹²⁵ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002).

¹²⁶ *Id.* at 719, 57 P.3d at 91 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 343-47 (1974)).

1 plaintiff unless “actual malice” is alleged and proven by clear and convincing
evidence.¹²⁷

2 By applying to be Walter’s court-appointed conservator, Howard voluntarily subjected
3 himself to the public official standard. As previously discussed, *Young v. CBS Broad., Inc.*
4 determined that by becoming a conservator, the person “became an agent of the state with the
5 power to interfere in the personal interests of a private citizen to whom she was not related and
6 without that citizen’s consent.”¹²⁸ In that circumstance, a conservator is a public official subject
7 to the actual malice standard. “A person holding these sovereign powers over another unrelated
8 person and using them for compensation is subject to the public’s independent interest in her
9 performance, and warrants public scrutiny beyond that occasioned by the controversy with
10 Mann.”¹²⁹ “A person such as [the conservator] who by court appointment exercises that power
11 for the benefit of a nonrelative and for compensation thus does so as a public official for
12 purposes of defamation liability.”¹³⁰

13 Applied here, Howard sought the same type of control over Walter as was at issue in
14 *Young*. He sought to use the power and authority of the State of New Jersey to take control of
15 Walter’s personal and financial affairs. By seeking this power, Howard subjected himself to the
16 same type of public scrutiny that was invited in *Young*.

17 The Supreme Court of Idaho performed a somewhat similar analysis in *Bandelin v.*
18 *Pietsch*.¹³¹ A lawyer and former state legislator was appointed as the guardian of an incompetent
19 person. The lawyer was later prosecuted for contempt due to what the district court considered
20 negligence in his handling of the conservatorship. This was reported in the local news and the
21 lawyer subsequently sued the paper for defamation.

22 The court concluded the lawyer, as a guardian, was a public figure. The guardian could
23 not “maintain that he is not a public figure and was just an attorney handling the probate affairs
24 of a client. He was rather the court appointed guardian, a pivotal figure in the controversy
25

26 ¹²⁷ *Id.* at 718-19, 57 P.3d at 90 (citing 376 U.S. 254, 279-80 (1964)).

27 ¹²⁸ *Young*, 212 Cal. App. 4th at 561.

28 ¹²⁹ *Id.* at 562.

¹³⁰ *Id.*

¹³¹ 563 P.2d 395 (Idaho 1977).

1 regarding the accounting of the estate that gave rise to the defamation and invasion of privacy
2 actions.”¹³² As a public figure the lawyer was required to show actual malice, but could not.

3 Whether as a public official or figure, Howard must show the statements on the Welts’
4 website were made with actual malice.¹³³ To demonstrate a probability of success on the merits
5 of his defamation claim, Howard had to provide actual, clear and convincing evidence that the
6 Welts knew their statements were false or had serious doubts about the veracity of those
7 statements and published them anyway. Howard submitted no such evidence.

8 The defamation cause of action arises solely from the website’s statements.¹³⁴ The
9 complaint specifically lists the factual statements Howard believes were defamatory¹³⁵ and
10 attached as Exhibit 1 a printout of the website. The website lists Howard’s contact information.
11 The complaint does not allege these statements of fact are false. The website then states a
12 background check of Howard Shapiro revealed certain information. The Welts’ provided the
13 background check upon which this statement relied.¹³⁶ The website accurately stated the
14 information contained in the background check. The website also accurately noted the
15 foreclosure status of Howard’s home.¹³⁷

16 The website then states Walter loaned \$100,000 to Howard and executed a power of
17 attorney in his favor. The complaint does not deny the loan and the power of attorney is attached
18 to the New Jersey petition. The website also lists acts that were reasonably believed to be taken
19 by Howard concerning Walter that would be inconsistent with the acts of a conservator. As the
20 website notes, these statements arose from conversations with two witnesses.

21 Howard sought a court-appointed position that would make him a public official. As
22 someone seeking to be a public official, he must demonstrate actual malice to show a probability
23 of success on his defamation claim. He has not presented such evidence.

24
25
26 ¹³² *Id.* at 398

¹³³ *Pegasus*, 118 Nev. at 722, 57 P.3d at 92-93.

¹³⁴ Complaint at ¶ 25.

¹³⁵ *Id.* at ¶ 17.

¹³⁶ Attached as Exhibit E to motion.

¹³⁷ *Lis Pendens* attached as Exhibit F to motion.

1 **iii. Mr. Shapiro is a limited-purpose public figure who lacks clear and**
2 **convincing evidence of actual malice.**

3 The Welts' third alternative argument is Howard is a limited-purpose public figure as to
4 the New Jersey conservatorship proceedings. "A limited-purpose public figure is a person who
5 voluntarily injects himself or is thrust into a particular public controversy or public concern, and
6 thereby becomes a public figure for a limited range of issues. The test for determining whether
7 someone is a limited public figure includes examining whether a person's role in a matter of
8 public concern is voluntary and prominent."¹³⁸

9 "Once the plaintiff is deemed a limited-purpose public figure, the plaintiff bears the
10 burden of proving that the defamatory statement was made with actual malice, rather than mere
11 negligence. This is to ensure that speech that involves matters of public concern enjoys
12 appropriate constitutional protection."¹³⁹ "Whether a plaintiff is a limited-purpose public figure
13 is a question of law...."¹⁴⁰

14 Applied here, Howard voluntarily petitioned a New Jersey court to appoint him as
15 Walter's conservator. This put his qualifications and suitability for that position at issue. The
16 statements on the website were explicitly designed to seek and obtain information that support
17 the Welts' position in that litigation: Howard was not qualified or suitable. Howard made
18 himself a limited-purpose public figure, but again has not presented clear and convincing
19 evidence of actual malice to create a probability of success on his defamation claim.

20 **b. Howard concedes other causes of action cannot prevail.**

21 The Shapiros' complaint also alleged causes of action for extortion, civil conspiracy,
22 "fraud," and punitive damages. The Shapiros' opposition did not address or provide evidence
23 concerning them. The court concludes the Shapiros cannot provide clear and convincing
24 evidence demonstrating a probability of success on these causes of action for the reasons
25 discussed in the Welts' briefing.¹⁴¹

26
27 ¹³⁸ *Pegasus*, 118 Nev. at 720, 57 P.3d at 91.

28 ¹³⁹ *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006).

¹⁴⁰ *Id.*

¹⁴¹ EDCR 2.20(e).

1 **V. The Welts are awarded their attorneys' fees, costs, and discretionary relief.**

2 If an anti-SLAPP special motion to dismiss is granted, the court "shall award reasonable
3 costs and attorney's fees to the person against whom the action was brought...."¹⁴² The Welts
4 are directed to submit a memorandum of costs and attorneys' fees with appropriate supporting
5 documentation.

6 The Welts also request \$10,000 each from Howard Shapiro and a separate \$10,000 each
7 from Jenna Shapiro. When an anti-SLAPP motion is granted, the district court "may award, in
8 addition to reasonable costs and attorney's fees ..., an amount of up to \$10,000 to the person
9 against whom the action was brought."¹⁴³ Texas has a similar statute indicating the purpose and
10 amount of this discretionary award should be "sufficient to deter the party who brought the legal
11 action from bringing similar actions described in this chapter."¹⁴⁴

12 The court concludes the relief the Welts' request is appropriate in this situation to deter
13 the Shapiros from bringing similar actions in the future. These awards are merited by the facts
14 that led to this case. The Welts came to the assistance of an elderly family member who may be
15 suffering from mental decline and who may be vulnerable to exploitation. Undisputed
16 documentation submitted with their motion indicates they were not the only ones concerned
17 about Howard's qualifications and suitability to be Walter's conservator. Yet, their act of
18 kindness was met only with litigation both in New Jersey and Nevada. The Shapiros attempted
19 to use litigation to intimidate the Welts into silence. This action is precisely what the Nevada
20 Legislature sought to prevent via its anti-SLAPP statutes.

21 Per NRS 41.660(1)(b), the court exercises its discretion and awards \$10,000 to each of
22 the four plaintiffs from Howard Shapiro and awards a separate \$10,000 to each of the four
23 plaintiffs from Jenna Shapiro.

27 ¹⁴² NRS 41.660(1)(a).

28 ¹⁴³ NRS 41.660(1)(b).

¹⁴⁴ Texas Civil Practice and Remedies Code § 27.009(a)(2).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 24, 2014

A-14-706566-C Howard Shapiro, Plaintiff(s)
vs.
Glen Welt, Defendant(s)

December 24, 2014 10:00 AM Motion to Dismiss

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiff Howard Shapiro present telephonically.

Arguments by counsel regarding the merits of the motion, opposition and countermotion. Colloquy regarding status of guardianship litigation and procedure there. Mr. Lowry stated a tentative settlement has been reached however it requires Court approval. Matter trialed for Mr. Ghibaudo to speak to his client off the record regarding the New Jersey litigation.

MATTER RECALLED. Mr. Ghibaudo stated, as to the New Jersey litigation, there is an order out of New Jersey, there is a conservator that has been appointed to handle the finances, however, his client is solely in charge of any and all medical decisions concerning his father, Defendants Lynn, Rhoda and Michelle Welt have agreed to that, and Defendant Glen Welt has not been involved in any of the litigation in New Jersey but he is handling the website. Further arguments by counsel. COURT ORDERED, Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss and the Counter-motion for Attorney's Fees, Costs, and Sanctions CONTINUED FOR WRITTEN DECISION, if there is an update to the New Jersey litigation then Court would welcome a supplement and the filed document should be faxed or emailed to the Judicial Executive Assistant or Law Clerk.

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litigation in New Jersey but he is handling the website. Further arguments by counsel. COURT ORDERED, Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss and the Counter-motion for Attorney's Fees, Costs, and Sanctions CONTINUED FOR WRITTEN DECISION, if there is an update to the New Jersey litigation then Court would welcome a supplement and the filed document should be faxed or emailed to the Judicial Executive Assistant or Law Clerk.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 24, 2014

A-14-706566-C Howard Shapiro, Plaintiff(s)
vs.
Glen Welt, Defendant(s)

December 24, 2014 10:00 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Traci Rawlinson

REPORTER:

PARTIES

PRESENT: Ghibaudo, Alex, ESQ Attorney
 Lowry, Michael P. Attorney
 Shapiro, Howard Plaintiff

JOURNAL ENTRIES

- GLENN WELT, RHODA WELT, LYNN WELT & MICHELE WELT'S MOTION TO DISMISS...OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND COUNTER-MOTION FOR ATTORNEY'S FEES, COSTS, AND SANCTIONS

Plaintiff Howard Shapiro present telephonically.

Arguments by counsel regarding the merits of the motion, opposition and countermotion. Colloquy regarding status of guardianship litigation and procedure there. Mr. Lowry stated a tentative settlement has been reached however it requires Court approval. Matter trialed for Mr. Ghibaudo to speak to his client off the record regarding the New Jersey litigation.

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ORDERED, Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion to Dismiss and the Counter-motion for Attorney's Fees, Costs, and Sanctions CONTINUED FOR WRITTEN DECISION, if there is an update to the New Jersey litigation then Court would welcome a supplement and the filed document should be faxed or emailed to the Judicial Executive Assistant or Law Clerk.

CONTINUED FOR CHAMBER'S DECISION.....12/30/2014 (CHAMBERS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 30, 2014

A-14-706566-C Howard Shapiro, Plaintiff(s)
vs.
Glen Welt, Defendant(s)

December 30, 2014 3:00 AM Status Check

HEARD BY: Allf, Nancy **COURTROOM:**

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Order Granting Motion to Dismiss filed January 2, 2015.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

July 19, 2017

A-14-706566-C Howard Shapiro, Plaintiff(s)
vs.
Glen Welt, Defendant(s)

July 19, 2017

9:30 AM

All Pending Motions

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn Griffiths

REPORTER:

PARTIES

PRESENT:

Ghibaudo, Alex, ESQ
Lowry, Michael P.

Attorney
Attorney

JOURNAL ENTRIES

- GLENN WELT, RHODA WELT, LYNN WELT & MICHELE WELT'S RENEWED MOTION TO DISMISS...PLAINTIFF'S OPPOSITION TO DEFENDANTS SPECIAL MOTION TO DISMISS AND COUNTER-MOTION FOR SANCTIONS, ATTORNEY'S FEES, AND COSTS

Arguments by counsel regarding the merits of and opposition to the motion and countermotion. Court stated its findings and ORDERED, Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss GRANTED; Plaintiff's Opposition to Defendants Special Motion to Dismiss and Counter-Motion for sanctions, attorney's fees, and costs DENIED; Defendant will be tasked with preparing the findings of fact and conclusions of law in support of the order to dismiss. Mr. Ghibaudo requested Court state the facts that support granting of the motion to dismiss. Court noted it directed defense counsel to prepare the findings of fact and conclusions of law based on the papers filed in this case and if Mr. Esposito wishes to challenge that Court would entertain that.



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

ALEX B. GHIBAUDO, ESQ.
703 S. 8TH ST.
LAS VEGAS, NV 89101

DATE: September 7, 2017
CASE: A-14-706566-C

RE CASE: HOWARD SHAPIRO; JENNA SHAPIRO vs. GLEN WELT; RHODA WELT; LYNN WELT; MICHELLE WELT; CHECKSNET.COM

NOTICE OF APPEAL FILED: September 6, 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; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING GLENN WELT, RHODA WELT, LYNN WELT & MICHELE WELT'S RENEWED MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

HOWARD SHAPIRO; JENNA SHAPIRO,

Plaintiff(s),

vs.

GLEN WELT; RHODA WELT; LYNN WELT;
MICHELLE WELT; CHECKSNET.COM,

Defendant(s),

Case No: A-14-706566-C

Dept No: XXVII

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 7 day of September 2017.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

ALEX B. GHIBAUDO, PC
783 S 8TH ST.
LAS VEGAS, NV 89101-7006

Bar # 010592

90-7162/3222

183

DATE

9/4/17

PAY TO THE
ORDER OF

Clerk of the Nevada Sup. Court \$ 250⁰⁰

Two hundred Fifty and 00/100

DOLLARS



CHASE

JPMorgan Chase Bank, N.A.
www.Chase.com

MEMO

Filing fee

Alex Stenard

⑆322271627⑆

916620680⑈0183