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Attorney for Petitioners

Electronically Filed
Oct 03 2017 12:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD SHAPIRO and JENNA)	No. 73943
SHAPIRO,)	
)	
Petitioners,)	
)	
vs.)	
)	
GLEN WELT, RHODA WELT, LYNN)	
WELT, and MICHELLE WELT, et al.,)	
)	
Defendants,)	

DOCKETING STATEMENT

COMES NOW, Petitioners Howard Shapiro and Jenna Shapiro, (hereinafter referred to as "Petitioners"), by and through their attorney of record, ALEX B. GHIBAUDO, ESQ., of the law firm of ALEX B. GHIBAUDO, P.C., and hereby submit the following docketing statement pursuant to NRAP 14 et seq.

1. This is an appeal from a judgment rendered in the Eighth Judicial District Court, County of Clark, Department 27, Judge Nancy Alf, Case No. A-14-706566-C.
2. Attorney filing this docketing statement: Alex B. Ghibauda, Esq., of the law firm Alex B. Ghibauda, PC, located at 703 S. 8th Street, Las Vegas, Nevada 89101, phone no. 702-978-7090, clients Howard and Jenna Shapiro.

- 1 3. Attorney representing respondents is Michael P. Lowry, Esq., telephone no. 702-727-1400,
2 300 S. 4th Street, 11th Floor, Las Vegas, Nevada 89101, clients are Glen Welt, Rhonda
3 Welt, Lynn Welt and Michelle Welt.
- 4 4. Nature of disposition below: dismissal of action upon respondents special motion to
5 dismiss under NRS 41.660.
- 6 5. This appeal does not raise issues of child custody, venue, or termination of parental rights.
- 7 6. Prior proceedings in this Court is Supreme Shapiro v. Welt and Welt v. Shapiro, Court
8 Docket No. 67363 and 67596.
- 9 7. There are no other pending and prior proceedings in other courts related to this matter.
- 10 8. The court below dismissed Petitioners' defamation claim pursuant to NRS 41.660 et seq.
11 and upon Respondents' special motion to dismiss under Nevada's anti-SLAPP statute.
12
- 13 9. Issues on appeal:
14
 - 15 a. Should Nevada District Court's be allowed to rely upon California appellate court
16 law as binding authority to determine legal issues before those courts?
 - 17 b. Did Judge Nancy Alf commit clear legal error in failing to apply the standard in
18 Jacobs v. Adelson, Supreme Court Case No. 58740?
 - 19 c. Did the court below abuse its discretion in finding that NRS 41.637(3) applies to
20 speech on the Welts' website?
 - 21 d. Did the court below commit clear legal error in finding that NRS 41.637(3)
22 applies to speech on the Welts' website?
 - 23 e. Did the court below abuse its discretion in finding that NRS 41.637(4) applies to
24 speech on the Welts' website?
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- 1 f. Did the court below commit clear legal error in finding that NRS 41.637(4) applies
2 to speech on the Welts' website?
- 3 g. Did the court below commit clear legal error in applying California law to interpret
4 Shapiro v. Welt's guiding principles?
- 5 h. Did the court below abuse its discretion in applying California law to interpret
6 Shapiro v. Welt's guiding principles?
- 7 i. Is "invoking sovereign powers" an issue of public concern?
- 8 j. Did the court below commit clear legal error or abuse its discretion in finding that
9 "invoking sovereign powers" is an issue of public concern?
10
- 11 k. Did the court below commit clear legal error or abuse its discretion in applying the
12 Nevada's guiding principles as contained in the Shapiro v. Welt matter?
- 13 l. Did the court below commit clear legal error or abuse its discretion in finding that
14 the Welts' speech was "absolutely privileged"?
15
- 16 m. Did the court below commit clear legal error or abuse its discretion in determining
17 that Howard Shapiro sought to be appointed a "public official" or finding that
18 Howard Shapiro is a "limited public figure"?
19
- 20 n. Did the court below commit legal error or abuse its discretion in determining that
21 the Shapiro's failed to meet their burden of proof?
- 22 o. Did the court below commit clear legal error or abuse its discretion in failing to
23 state the factual basis for dismissal of the action from the bench or in a written
24 decision deferring instead to counsel for the Respondents to draft findings and a
25 decision on the court's behalf?
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- p. Is the order of dismissal appropriate as to form and substance under the circumstance?
 - q. Did the court below commit clear legal error or abuse its discretion by not applying this Court’s directive concerning the instant matter contained in the decision and order?
 - r. Is there a better standard that will help determine what is or is not an issue of public concern?
 - s. What is the proper interpretation of NRS 41.637(3) and NRS 41.637(4)?
 - t. What is a “good faith communication made in furtherance of right to petition or speak in direct connection with an issue of public concern or public interest”?
10. The following cases pending in this Court raising the same or similar issues are the following:
- a. ABRAMS VS. SANSON, Case No. 73838
 - b. VETERANS IN POLITICS INT’L, INC. VS. WILLICK, Case No. 7278
11. This appeal does not challenge the constitutionality of any statute.
12. This case concerns an issue of public policy, a substantial issue of first impression, issue related to free speech under the 1st Amendment to the United States Constitution and the Nevada Constitution, and an issue where en banc consideration is necessary to maintain uniformity of the Court’s decisions. The case involves the interpretation of Nevada’s Anti-SLAPP statute, the proper application of the same, and free speech and its limits.
13. This Court has already determined that this matter should be retained in the Nevada Supreme Court because of the constitutional law issues raised, the issue of free speech, and the fact that this is a matter of first impression.

1 14. This matter did not proceed to trial.

2 15. I do not intend to file a motion to disqualify any justice.

3 16. Date of entry of written judgment or order appealed from is August 4, 2017.

4 17. Date written notice of entry of judgment or was served by electronic means on August 7,
5 2017. Since the instant appeal was noticed, Respondents have submitted an amended order
6 which has yet to be filed as of this writing.
7

8 18. Time for filing the notice of appeal was not tolled by a post-judgment motion.

9 19. Notice of Appeal was filed on September 6, 2017.

10 20. NRAP 4(a) is the rule governing the time limit for filing any notice of appeal.

11 21. NRAP 3A(b)(1) is the rule or authority granting this Court jurisdiction to review the
12 judgment or order appealed from. This rule provides the basis for appeal because the
13 Shapiros challenge the dismissal of the action by the court below.
14

15 22. The following are all parties involved: Howard and Jenna Shapiro vs. Glen Welt, Rhoda
16 Welt, Lynn Welt, Michelle Welt. Though Checksnet.com was originally a party to the case
17 in the court below it is not a party on the appeal. Checksnet.com was voluntarily dismissed
18 per NRCp 41 on February 2, 2015.
19

20 23. The nature of the Shapiros' claim is in the nature of defamation.

21 24. The judgment or order from the court below adjudicated all the claims alleged and the
22 rights and liabilities of all the parties.
23

24 25. N/A

25 26. N/A
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1 27. See attachments.

2 DATED this 29th day of August, 2017.

3
4 ALEX B. GHIBAUDO, P.C.

5 By: /s/ Alex B. Ghibaud, Esq.

6 Alex B. Ghibaud, Esq.

7 Nevada Bar No.: 010592

8 703 S. 8th Street

9 Las Vegas, Nevada 89101

10 *Attorney for Appellants*

11
12 **VERIFICATION**

13 I declare under penalty of perjury that I have read this docketing statement, that
14 the information provided in this docketing statement is true and complete to the
15 best of my knowledge, information and belief, and that I have attached all required
16 documents to this docketing statement.
17

18
19 Howard Shapiro and Jenna Shapiro

Alex B. Ghibaud, Esq.

20 _____
21 Name of Appellants

Name of Counsel of Record

22 October 2, 2017

/s/ Alex Ghibaud

23 Dated

Signed

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25 Clark County, Nevada

26 _____
27 State and County where signed
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CERTIFICATE OF ELECTRONIC SERVICE

I certify that on the 2nd day of October, 2017, I served a copy of this completed docketing statement upon all counsel of record electronically through the Court’s eflex filing service and by email to the following:

Michael P. Lowery, Esq.
WILSON ELSE MOSKOWITZ, EDELMAN & DICKER, LLP
300 South 4th Street, 11th Floor
Las Vegas, Nevada 89101
Attorneys for Respondents

Dated this 2nd Day of October, 2017.

/s/ Alex Ghibaud, Esq.

Signature

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</div> <div style="text-align: center;">Jenna Shapiro</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">Glen Welt, Rhoda Welt,</div> <div style="text-align: center;">Lynn Welt, and Checksnet.com</div>
Attorney (name/address/phone): <div style="text-align: center;">Eric P. Roy, Esq.</div> <div style="text-align: center;">818 E. Charleston Blvd., Las Vegas, NV 89104</div> <div style="text-align: center;">(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 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

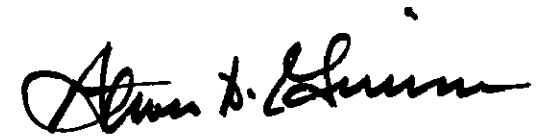
Business Court filings should be filed using the Business Court civil coversheet.

9.4.14

Date

Lillian Brand
 Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMD**

2 **ERIC P. ROY, ESQ.**

3 Nevada Bar No. 11869

4 **ALEX GHIBAUDO, ESQ.**

5 Nevada Bar No. 10592

6 **LAW OFFICES OF ERIC P. ROY**

7 818 E. Charleston Blvd.

8 Las Vegas, NV 89104

9 (702) 423-3333

10 (702) 924-2517

11 eric@ericroylawfirm.com

12 *Attorney for Plaintiff*

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

15 *****

16 HOWARD SHAPIRO and JENNA
17 SHAPIRO,

18 Plaintiffs,

19 v.

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

25 Defendant.

CASE NO.: A-14-706566-C

DEPT. NO.: XXVII

26 **COMPLAINT**

27 Plaintiff, Howard Shapiro ("Plaintiff"), through his attorney, Alex Ghibaud, Esq., of
28 The Law Offices of Eric Roy, and alleges as follows:

1. Plaintiff instituting this action is, and at all relevant times mentioned herein,
was a resident of the State of New Jersey.
2. Defendant Glenn Welt is, and at all relevant times mentioned herein, was a
Nevada resident residing in Clark County, Nevada.

Law Offices of Eric P. Roy
818 East Charleston Boulevard
Las Vegas, Nevada 89104
702.423.3333

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3. Defendant Rhoda Welt is, and at all relevant times mentioned herein, was a resident of the State of Georgia.
4. Defendant Lynn Welt is, and at all relevant times mentioned herein, was a resident of the State of Georgia.
5. Defendant Michelle Welt is, and at all relevant times mentioned herein, was a resident of the State of Georgia.
6. The true names or capacities, whether individual, corporate, association or otherwise, of Defendants, DOES I through DOES X, and ROE CORPORATION I through ROE CORPORATION X, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and therefore alleges that each of the said Defendants designated herein as DOE and ROE CORPORATION are responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint, to insert the true names and capacities of DOES I through DOE X and ROE CORPORATIONS I through ROE CORPORATIONS X, when the same have been ascertained and to join such Defendants in this action.
7. That on about April of 2011, Plaintiff was given power of attorney over Walter Shapiro, his father, who is now 81 years of age, to handle Walter's estate and health care.
8. That on or about April 24, 2014, Walter was diagnosed with Lewy Dementia.

- 1 9. That at that time, Plaintiff exercised his power of attorney over his father and
2 arranged for his father to live in a nursing home/assisted care facility, upon
3 doctors recommendations.
- 4 10. That Plaintiff disposed of his father's property to pay for Walter's care.
- 5 11. That at that time, Defendants Rhoda Welt and Lynn Welt went to New Jersey,
6 where Walter lives and where the nursing home/assisted care facility was
7 located, where they commenced a campaign of harassment of Plaintiff and
8 undue influence upon Walter.
- 9 12. That Defendants, in concert, reported to Adult Protective Services that Plaintiff
10 was abusing/neglecting his father.
- 11 13. That upon investigation, Adult Protective Services determined that Defendants
12 withdrew \$7,500.00 from Walter's account and forced them to return that
13 money immediately or they would be charged with abusing an elderly person.
- 14 14. That Defendants, all of them, continued their campaign of harassment and
15 undue influence, calling Plaintiff repeatedly, almost daily, and telling Walter
16 that Plaintiff was taking his money. That as a result, Walter called Plaintiff
17 every day to demand to know where his money was, despite the fact that
18 Walter is incapable of making his own decisions.
- 19 15. That on July 3, 2014, Plaintiff's brother, Walter's son, drove him to Roseland,
20 New Jersey, to reside at Solana at Roseland. That at that time, Defendants
21 Rhonda and Lynn Welt went back to their residence in Georgia.
- 22 16. That Plaintiff has since filed a petition for guardianship, a hearing for which is
23 scheduled for September 22, 2014.
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17. Since then, Defendants, in concert or individually, posted a website online, www.howardshaprovictims.com, which was copyrighted, in which it is alleged that:
- a. Plaintiff has stolen over \$780,000.00 in cash and assets taken, and the same awarded in liens and judgments. (See Exhibit 1).
 - b. That Plaintiff has filed several bankruptcies, that he has a criminal record, and 20 judgments made against him in the amount of \$361,871.00. That that money is owed to a public defender and a drug and rehabilitation center, in addition to multiple credit cards and other debts. (See Exhibit 1).
 - c. That Walter Shapiro's life is in danger because he gave Plaintiff power of attorney over him. That that decision cost Walter \$430,000.00, including a \$100,000.00 loan that Walter allegedly gave to Plaintiff.
 - d. That Plaintiff committed the following "heinous acts":
 - i. That Plaintiff abducted his father from his home and held him against his will;
 - ii. That Plaintiff sold his father's home for \$230,000.00 and kept the proceeds for himself;
 - iii. That Plaintiff tangible and intangible goods, including large sums of cash and furniture, from his father;
 - iv. That Plaintiff diverted all of Walter's retirement payments to himself.
 - v. That Plaintiff blocked Walter from any contact with his relatives;
 - vi. That Plaintiff left his father with no money;
 - vii. That Plaintiff prevented others from purchasing food for his father;

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- viii. That Plaintiff has threatened his father's life;
 - ix. That Plaintiff stole his father's money and bragged about traveling with it;
 - e. Plaintiff may be carrying concealed weapons; and
 - f. That Plaintiff is lying about his home and business, listing a specific address belonging to Plaintiff.
18. Defendants further provide a photograph of Plaintiff's vehicle and license plate number and encouraged the public to attend the adult guardianship proceedings indicated above.
19. That the website was "recorded by two (2) witnesses", believed to a combination of the other named Defendants.
20. That the webmaster is Defendant Glenn Welt, who informed Plaintiff by email that he was posting the website. (See Exhibit 2).
21. That various iterations of the website were previously posted. (See Exhibit 3).
22. That Defendant Glenn Welt, in concert with other named Defendants, attempted to extort Plaintiff in a letter dated August 11, 2014, by threatening public humiliation, civil action, and criminal charges if his demands are not met, which include returning cash and property allegedly stolen by Plaintiff, presumably to Defendant Glenn Welt. (See Exhibit 4).
23. That Defendants conduct is ongoing and persistent, requiring the instant legal action.

FIRST CAUSE OF ACTION

(DEFAMATION PER SE)

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- 3 24. Plaintiffs repeat and re-allege each and every allegation contained in
- 4 Paragraphs 1 through 23 as though fully set forth herein and further allege the
- 5 following.
- 6
- 7 25. That Defendants made false statements as indicated in paragraph 17, among
- 8 other statements and allegations.
- 9
- 10 26. That Defendants' statements were not privileged by any common law or
- 11 statutory privilege and were, and are, being made in a public forum.
- 12
- 13 27. Defendants' conduct was entirely malicious and vindictive in that it was driven
- 14 by their desire to control Walter and their animosity for Plaintiff because he has
- 15 exercised his power of attorney.
- 16
- 17 28. That Plaintiff is a business owner, with a business located in New Jersey.
- 18
- 19 29. That Defendants conduct, targeting Plaintiff's alleged "moral turpitude",
- 20 constitutes defamation per se.
- 21
- 22 30. As a result of Defendants' libelous writing, it is presumed economic damages
- 23 in excess of \$10,000.00 were suffered under *Clark County Sch. Dist. v. Virtual*
- 24 *Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 504, 2009 Nev. LEXIS
- 25 38, 17-18, 125 Nev. Adv. Rep. 31 (Nev. 2009).
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SECOND CAUSE OF ACTION

(DEFAMATION)

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- 3 31. Plaintiffs repeat and re-allege each and every allegation contained in
- 4 Paragraphs 24 through 30 as though fully set forth herein and further allege the
- 5 following.
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- 7 32. That Defendants made false statements as indicated in paragraph 17, among
- 8 other statements and allegations.
- 9
- 10 33. That Defendants' statements were not privileged by any common law or
- 11 statutory privilege and were, and are, being made in a public forum.
- 12
- 13 34. Defendants' conduct was entirely malicious and vindictive in that it was driven
- 14 by their desire to control Walter and their animosity for Plaintiff because he has
- 15 exercised his power of attorney.
- 16 35. That Plaintiff was harmed in an undetermined amount exceeding \$10,000.00.

THIRD CAUSE OF ACTION

(EXTORTION)

- 17
- 18
- 19 36. Plaintiff repeats and re-alleges each and every allegation contained in
- 20 Paragraphs 31 through 35 as though fully set forth herein and further allege the
- 21 following.
- 22
- 23 37. That Defendants intended to extort or gain money or property from Plaintiff ,
- 24 and/or intended to compel or induce Plaintiff to make, subscribe, execute, alter
- 25 or destroy any valuable security or instrument or writing affecting or intended
- 26 to affect any cause of action or defense, or any property.
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1 38. That Defendants attempt to gain money, property, or extort Plaintiff was by
2 threat, directly and indirectly, to accuse Plaintiff of a crime, to injure Plaintiff's
3 person and property, to publish or connive at publishing any libel, to expose or
4 impute to any person any disgrace, and to expose a secret, in the manner
5 indicated in paragraph 17 and Exhibit 4 of this complaint.
6

7 39. That Defendants conducted has proximately harmed Plaintiff in an
8 undetermined amount exceeding \$10,000.00.

9 **FOURTH CAUSE OF ACTION**
10 **(CIVIL CONSPIRACY)**

11 40. Plaintiff repeats and re-alleges each and every allegation contained in
12 Paragraphs 31 through 39 as though fully set forth herein and further allege the
13 following.
14

15 41. That Defendants' conspired amongst themselves to unlawfully harm Plaintiff
16 by constructing and posting www.howardshapirovictims.com.

17 42. That Defendants defrauded the public in furtherance of their scheme to extort
18 Plaintiff, as alleged in the second cause of action contained in this complaint,
19 by knowingly lying about Plaintiff in a public forum, namely
20 www.howardshapirovictims.com.
21

22 43. That Defendants' conduct caused Plaintiff substantial damage in an
23 undetermined amount exceeding \$10,000.00.
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FIFTH CAUSE OF ACTION

(FRAUD)

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- 3 44. Plaintiff repeats and re-alleges each and every allegation contained in
- 4 Paragraphs 40 through 43 as though fully set forth herein and further allege the
- 5 following.
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- 7 45. That Defendants made statements in a public forum as described in paragraph
- 8 17 of this complaint.
- 9
- 10 46. That Defendants knew that those statements were false, or that they had an
- 11 insufficient basis for making those representations as they had no contact or
- 12 communication with Plaintiff and Walter is incapacitated, making it impossible
- 13 for Defendants to rely on any statements made by Walter.
- 14 47. That Defendants intended to induce Plaintiff to pay money or turn over
- 15 property, as evidenced by Exhibit 5.
- 16
- 17 48. That the public justifiably relied upon those representations to formulate an
- 18 opinion of Plaintiff, putting pressure upon Plaintiff to cooperate with
- 19 Defendants.
- 20 49. That Defendants conduct harmed Plaintiff in an undetermined amount
- 21 exceeding \$10,000.00.
- 22

CAUSE OF ACTION

(PUNITIVE DAMAGES)

- 23
- 24
- 25 50. Plaintiff repeats and re-alleges each and every allegation contained in
- 26 Paragraphs 44 through 49 as though fully set forth herein and further alleges
- 27 the following.
- 28

51. That the Defendants actions were oppressive, fraudulent, and malicious.
Defendants lied about Plaintiff's alleged "moral turpitude" and criminal
behavior on a public forum that has injured Plaintiff's reputation and his
business' good standing and economic welfare in the community.

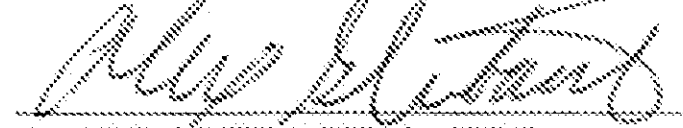
WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For an award of general damages in excess of \$10,000.00;
2. For an award of special damages in excess of \$10,000.00;
3. For an award of punitive damages in excess of \$10,000.00; and
4. For reasonable attorney's fees and cost of suit incurred;
5. For such further relief as the Court may deem just and proper under the
circumstances.

DATED this 29 day of August, 2014.

Respectfully submitted,

LAW OFFICES OF ERIC P. ROY



ALEX GHIBAUDO, ESQ.

Nevada Bar No. 10592

818 E. Charleston Blvd.

Las Vegas, NV 89104

(702) 423-3333

eric@ericroylawfirm.com

Attorney for Plaintiff

EXHIBIT 1

This website dedicated to helping victims of Howard Andrew Shapiro & warning others

Over \$780,000 in cash & assets taken, liens & judgements!

Howard Andrew Shapiro

age 46

a/k/a Howie Shapiro

623 Skyline Drive

Lake Hopatcong NJ 07849

Home Phone 973-406-2087

Cellular: 646-406-2087

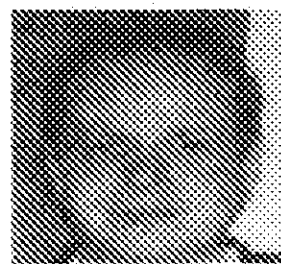
Wife: Jenna G. Shapiro, age 42

a/k/a Jenna Gail Thorland, Jenna T.

Shapiro

973-663-1203

howardshapiro@aol.com



2005 photo

Accomplice:

Adam Roy Shapiro, age 52

a/k/a Roy A. Shapiro

2330 Peppercom St.

Kissimmee FL 34741

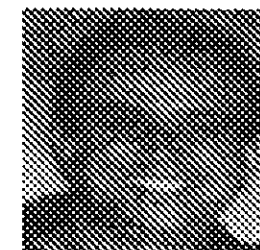
Home: 407-810-1645

Work: 863-676-1904

wife: Maryann Danielle Shapiro,

Age 50

AdamR1005@aol.com



2005 photo

Background check of **Howard A. Shapiro** reveals **criminal record, 2 bankruptcies (1998 & 2008) plus 20 judgements and liens against him in past 16 years totaling \$361,871** owed to a public defender, drug & rehab center, American Express, Aurora Electrical Supply, Beneficial New Jersey, Deterrent Technologies, JP Morgan Chase Bank, PNC Bank, Home Vest Capital, Household Finance Corporation, L&H. Plumbing & Heating, Monmouth Auto Body, SPT Electric Supply, Township of Jefferson and more.

Plus, Walter Shapiro made a \$430,000 mistake that may shorten his life. Loaned his son Howard \$100,000 and gave him Power of Attorney. Howard never repaid the loan, then desecrated the power with recent heinous acts:

- Abducted his father who was "screaming as he was dragged out of the house" *
Walter Shapiro owned and enjoyed his Lakewood, New Jersey home for over 40 years.
- Walter Shapiro was removed AFTER Lakewood Police advised AGAINST it.
- Sold the home for \$230,000 against his father's wishes & Howard pocketed ALL the money
- Confiscated all the home furnishings (with help from brother Adam Roy Shapiro and wife)
- Drained all his fathers bank accounts by as much as \$60,000
- Took expensive jewelry belonging to his father (& left for Walter Shapiro by his deceased wife)
- Diverted all future retirement payments for Walter Shapiro to himself. Payments include direct deposits from New York Times newspaper (where Walter Shapiro worked for 42 years), Worker's Union payments and Social Security payments.
- Blocked Walter Shapiro from seeing his sister (who flew from Atlanta but was forced to sit in the street for days due to threats from Howard Shapiro).
- Blocked visitation by other relatives.

- Left his father with NO MONEY to buy food
- Prevented others from buying food for his father
- Threatening statements to his father include "I will see you in your grave" and "I will bury you so deep, that no one will find you."
- Brags about taking his family to Hawaii with Walter's money & traveling "first class"

Police in a number of New Jersey jurisdictions have been alerted to these actions and that Howard Shapiro may be carrying concealed weapon(s).

Howard Shairo currently resides in a \$500,000 Lake Hopatcong, New Jersey home. D&B reports he is president of Howard A Shapiro Electrical Contractor Inc, 623 Skyline Dr, Lake Hopatcong NJ. Phone 973-663-1191 with \$479,000 annual revenue. **New Jersey has NO current record of corporation or any others registered to Howard A. Shapiro as of 8/17/2014.**

If you are a creditor who is owed monies as a result of Howard Shapiro's criminal, bankruptcy, lien or judgement history, take collection action **before all of the estimated \$430,000 in cash & assets taken from his father has disappeared.**

1st court date is Sept. 22, 2014 in New Jersey.

If information indicates appearance by Howard Shapiro, courtroom location & time will be posted HERE.

All persons with knowledge of Howard A. Shapiro's actions against Walter Shapiro or other illegal acts committed by Howard Shapiro are encouraged to appear in court. You may also submit information via email. Information is being forwarded to at least 4 attorneys representing injured parties, news media, government agencies and law enforcement as of 8/27/2014.

Attendees: You may be photographed for TV & other media.

If Howard Shapiro is arrested, incarcerated or ordered to pay monies for above actions, information will be posted HERE.

Howard Shapiro last seen driving black BMW 650i, New Jersey tag BMWGC



*Recorded by 2 witnesses, will be presented in court. Walter Shapiro had no knowledge of this website creation, nor is he a contributor, yet Howard Shapiro harassed his father about its existence.

Email if you have new information or questions: Glenn Welt

© 2014 Glenn Welt, Consumer Advocate who has worked with FBI, Secret Service, IRS, other law enforcement agencies
and media in arrests & convictions of criminals.

EXHIBIT 2

Alex

From: Howard [howardshapiro@aol.com]
Sent: Friday, August 22, 2014 12:45 PM
To: Alex
Subject: Fwd: Howard Shapiro Victims

Better and better.

Howard A. Shapiro
646.406.2087 Mobile

Begin forwarded message:

From: Glenn Welt <vip@glennwelt.com>
Date: August 22, 2014 at 3:10:29 PM EDT
To: howardshapiro@aol.com
Subject: Howard Shapiro Victims
Reply-To: vip@glennwelt.com

Congratulations Howie,

Your actions have been deemed worthy of your own website.
www.HowardShapiroVictims.com is now **LIVE** and will be indexed by all the major search engines.

I am personally inviting EVERY one of your known victims to appear in court along with other caretakers, neighbors acquaintances and relatives you've threatened.

If you don't want to appear in court, your attorney can be served on your behalf.

Glenn Welt

EXHIBIT 3

**This page dedicated to helping victims of Howard Andrew Shapiro
& warning others**

***At least \$300,000 cash & assets taken from Walter Shapiro plus
\$361,871 in liens & judgements by others!***

Howard Andrew Shapiro

age 46

a/k/a Howie Shapiro

623 Skyline Drive

Lake Hopatcong NJ 07849

Home Phone 973-406-2087

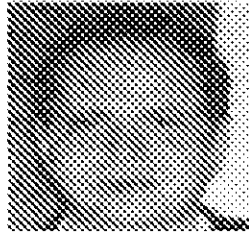
Cellular: 646-406-2087

Google Voice: 201-357-7331

Wife: Jenna G. Shapiro, age
42

973-663-1203

howardshapiro@aol.com



Accomplice:

Adam Roy Shapiro, age 52

a/k/a Roy A. Shapiro

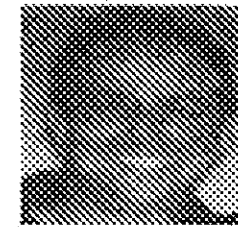
2330 Peppercorn St.

Kissimmee FL 34741

Home Phone 407-810-1645

wife: Maryann D. Shapiro

AdamR1005@aol.com



Background check of Howard A. Shapiro reveals a **criminal record**, **2 bankruptcies (1998 & 2008)** plus **20 judgements and liens** against him in past 16 years totaling **\$361,871** owed to a public defender, drug & rehab center, American Express, Aurora Electrical Supply, Beneficial New Jersey, Deterrent Technologies, JP Morgan Chase Bank, PNC Bank, Home Vest Capital, Household Finance Corporation, L&H Plumbing & Heating, Monmouth Auto Body, SPT Electric Supply, Township of Jefferson and more.

Walter Shapiro made a HUGE mistake by giving Power of Attorney to his son. Howard Shapiro desecrated the power:

- Removed his father Walter Shapiro under duress from the Lakewood, New Jersey home Walter owned and enjoyed for over 40 years.
- Placed his father in a facility against his will
- Sold the home for \$230,000 against his father's wishes & pocketed ALL the money
- Confiscated all the home furnishings (with help from brother Adam Roy Shapiro)
- Drained all his fathers bank accounts by as much as \$60,000
- Took expensive jewelry belonging to his father
- Diverted future retirement payments to himself (3 direct deposits from New York Times, Worker's Union, Social Security)
- Tried to block Walter Shapiro from seeing his sister or other relatives.
- **Left his father with NO MONEY to buy food**
- **Prevented others from buying food for his father**

Currently, Howie resides in a \$500,000 Lake Hopatcong, New Jersey home. Dun & Bradstreet report says he is president of Howard A Shapiro Electrical Contractor Inc, 623 Skyline Drive, Lake Hopatcong NJ 07849 Phone 973-663-1191 with 4 employees and annual revenue of \$479,000. **State of New Jersey has NO current record of corporation or other businesses registered to Howard Shapiro as of 8/17/2014.**

If you are creditor who is owed monies as a result of Howard Shapiro's bankruptcies, judgements or liens, try collecting from Howie **before the estimated \$300,000 disappears.**

One court date is being scheduled for Sept. 2014 in New Jersey. If information indicates that Howard Shapiro will appear, the exact location, time and date will be posted HERE.

All persons with knowledge of Howard Shapiro's actions against Walter Shapiro or other illegal acts committed by Howard Shapiro are encouraged to appear in court. You may also submit information via email.

If anyone still doubts the character of Howard Andrew Shapiro, consider this:

- **Threatening statements to his father include "I will see you in your grave" and "I will bury you so deep, that no one will find you."**
- **He brags about his gun collection, presumably as an intimidation tool.**
- **He brags about taking his family to Hawaii with Walter's money and traveling "first class".**

If Howard Shapiro is arrested, incarcerated or ordered to pay monies for above actions, information will be posted HERE.

Howie was last seen driving this black BMW 650i with New Jersey tag BMWGC
(a 2013 BMW is another of the many things taken from his father):



Howard Andrew Shapiro may need one of these:

AAA Bailmaster Bail Bonds 973-644-2200

Elite Bail Bonds 201-205-2351

Mr. G Bail Bonds 877-793-0514

© 2014 Glenn Welt

Email if you have information or questions: [Glenn Welt](#)

EXHIBIT 4

August 11, 2014

Mr. Howard Andrew Shapiro
623 Skyline Drive
Lake Hopatcong NJ 07640
Home Phone 973-406-2087
Cellular 646-406-2087
howardshapiro@aol.com

RE: State of New Jersey et al re. Howard A. Shapiro

Dear Cousin Howard,

I have been carefully monitoring the actions you have taken against your father, Walter Shapiro including the sale his home, emptying his bank accounts and possession of other assets. I'm also aware of involvement of your brother, Adam Shapiro.

You have two choices. Smart Choice is to return all the marital assets and monies you obtained from his bank accounts and sale of his Lakewood home. Dumb Choice is to force the legal system and numerous relatives to take actions which may include criminal charges, your arrest and incarceration.

You may scare your father and others with your statements. I've been under oath with the FBI for over 14 years, worked with Secret Service, IRS and numerous law enforcement agencies all over the United States. I've helped in the arrests, prosecutions, putting dangerous criminals in prison and obtained full restitution for victims.

Recent example: Look at webaiz. I created the website, got the Governor of Nevada involved and arranged for the main suspect to be arrested while being recorded for multiple airings on CBS TV. Shapiro was jailed, lost his entire business, faces multiple felony charges that can result in prison time. His arrest, publicity and public humiliation may have caused substantial embarrassment and other problems for members of his family.

I've opposed a State Attorney General and multi-billion dollar public companies in federal courts. I won EVERY time. I could cite many more examples but I think you are intelligent enough to get the message.

I will personally come after you in every legal and media way if you do not return the marital assets of your father (my uncle) by choosing the Smart Choice.

You will be contacted by my legal representative, the media and by me if this matter is not resolved by August 18, 2014.

Sincerely,

Glenn M. Wett

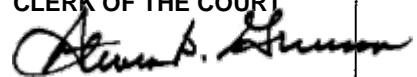
Henderson, Nevada

22. *Chlorophyll *a** and *Chlorophyll *b** (mg/g dry weight)

Fig. 1 will represent other pending transactions against which there is some degree of uncertainty relative to timing and size and which will be covered when there is no longer any uncertainty about the amount of cash.

© 2014 Cengage Learning

Email if you have any questions: Gina.Williams@hawaii.gov



1 MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
2 E-mail: Michael.Lowry@wilsonelser.com
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
3 300 South Fourth Street, 11th Floor
Las Vegas, Nevada 89101-6014
4 Tel: 702.727.1400/Fax: 702.727.1401
Attorneys for Glenn Welt, Rhoda Welt,
5 Lynn Welt, and Michele Welt

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

Notice of Entry of Order

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

15 Defendants.

16 Please take notice that an Order re Glenn Welt, Rhoda Welt, Lynn Welt & Michele
17 Welt's Motion for Attorneys' Fees & to Amend Order Granting Summary Judgment was entered
18 by the Court on September 20, 2017. A copy is attached hereto.

19 DATED this 25th day of September, 2017.

20 WILSON ELSE MOSKOWITZ
21 EDELMAN & DICKER LLP

22 /s/ Michael P. Lowry
MICHAEL P. LOWRY, ESQ.
Nevada Bar No. 10666
23 E-mail: Michael.Lowry@wilsonelser.com
300 South Fourth Street, 11th Floor
24 Las Vegas, Nevada 89101-6014
Tel: 702.727.1400/Fax: 702.727.1401
25 Attorneys for Glenn Welt, Rhoda Welt,
26 Lynn Welt, and Michele Welt

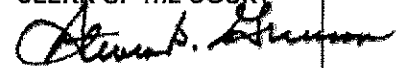
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, I certify that I am an employee of Wilson Elser Moskowitz
3 Edelman & Dicker LLP, and that on September 25, 2017, I served **Notice of Entry of Order** as
4 follows:

- 5 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
6 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 7 ☒ via electronic means by operation of the Court's electronic filing system, upon
8 each party in this case who is registered as an electronic case filing user with the
9 Clerk;

10 Alex B. Ghibaud, Esq.
11 Alex B. Ghibaud, PC
12 703 S. 8th St.
13 Las Vegas, NV 89101
14 Tel: 702.778.1238
15 *Attorney for Plaintiffs*

16
17 BY: /s/ Pam Lamper
18 An Employee of
19 WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
20
21
22
23
24
25
26
27
28



1 MICHAEL P. LOWRY, ESQ.
2 Nevada Bar No. 10666
3 E-mail: Michael.Lowry@wilsonelser.com
4 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP
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6 Las Vegas, Nevada 89101-6014
7 Tel: 702.727.1400/Fax: 702.727.1401
8 Attorneys for Glenn Welt, Rhoda Welt,
9 Lynn Welt, and Michele Welt

DISTRICT COURT

CLARK COUNTY, NEVADA

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

12 vs.

Order re Glenn Welt, Rhoda Welt, Lynn
Welt & Michele Welt's Motion for
Attorneys' Fees & to Amend Order Granting
Summary Judgment

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

18 Defendants.

19 On August 15, 2017 defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt's
20 ("the Welts") moved for 1) their attorneys' fees and costs; and 2) to fix typographical errors in
21 the order granting summary judgment. The motion was properly served. The court received no
22 opposition. The motion was heard on September 20, 2017. Michael Lowry appeared for the
23 Welts, there was no appearance for the Shapiros. Having considered the merits of the motion, it
24 is granted.

25 **I. The Welts are awarded \$49,202.50 for fees and \$1,246.40 for costs incurred.**

26 On August 4, 2017 the court entered an order granting the Welts' motion to dismiss per
27 NRS 41.637(3) and NRS 41.637(4). In that circumstance, NRS 41.670(1)(a) states the court
28 "shall award reasonable costs and attorney's fees to the person against whom the action was
brought...." The August 4, 2017 order directed the Welts "to submit a memorandum of costs

1 and attorneys' fees with appropriate supporting documentation."¹ The Welts did so on August
2 15, 2017. Again, the court has received no opposition or response from the Shapiros.

3 **a. The attorney fees are proper and supported.**

4 The Welts seek a total of \$49,202.50 in attorneys' fees. These consist of 186.1 hours by
5 lead counsel Michael Lowry at a rate of \$250.00 per hour and 11.9 hours by associate attorney
6 Amanda Ebert at a rate of \$225.00 per hour. The Welts are awarded the full \$49,202.50
7 requested.

8 NRS 41.670(1)(a) permits an award of only "reasonable" attorney's fees. *Brunzell v.*
9 *Golden Gate Nat. Bank* provides the analysis by which to evaluate if the attorneys' fees were
10 reasonable. *Brunzell* requires district courts to consider at least four factors.

- 11 (1) the qualities of the advocate: his ability, his training, education, experience,
12 professional standing and skill;
13 (2) the character of the work to be done: its difficulty, its intricacy, its importance,
14 time and skill required, the responsibility imposed and the prominence and
15 character of the parties where they affect the importance of the litigation;
16 (3) the work actually performed by the lawyer: the skill, time and attention given
17 to the work;
18 (4) the result: whether the attorney was successful and what benefits were
19 derived.²

20 These factors help evaluate whether the attorney's fees requested are appropriate for the
21 facts and circumstances of the individual case. They are designed to protect opposing parties
22 from exorbitant rates from less qualified lawyers, dubious billing activities, or poor quality work.
23 The court previously addressed these factors in its February 20, 2015 order granting attorneys'
24 fees concerning the Welts' first motion to dismiss. The analysis remains largely the same.

25 The Welts' lead counsel, Michael Lowry, is a licensed attorney practicing in Nevada
26 since 2007 and has represented the Welts since this case was filed. He has charged the same
27 \$250 rate throughout this case. Associate Amanda Ebert has practiced in Nevada since 2012 and
28 was billed at \$225 an hour, reflecting the attorneys' differing experience levels.

As the February 20, 2015 order noted, "[t]he character of the work done was intricate,
and required research into a developing area of law."³ This analysis still applies. Since the

¹ August 4, 2017 Order at 23:3-5.

² *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

³ February 20, 2015 Order at 2:1-2.

1 original order, the Supreme Court of Nevada modified the factors to be considered in deciding
2 motions like the Welts brought. This modification required extensive analysis of the California
3 case law Nevada adopted. This analysis also satisfies the third *Brunzell* factor as the work
4 actually performed reflects a level of skill, time, and attention that matches the intricate nature
5 the analysis that was required.

6 Finally, the fourth factor is also satisfied. The Welts' position was successfully
7 advocated, resulting in a favorable decision. The decision benefitted the Welts in that it
8 terminated the lawsuit against them.

9 **i. NRS 41.670(1)(a) is unambiguous and requires an award of all**
10 **reasonable fees.**

11 "When a statute is clear on its face, we will not look beyond the statute's plain
12 language."⁴ Where the statute is unambiguous, a court may not deviate from the statute's plain
13 meaning or read additional language into the statute.⁵ Here, NRS 41.670(1)(a) states the "shall
14 award reasonable costs and attorney's fees to the person against whom the action was
15 brought...." The statute contains no language limiting the award of attorney's fees to those
16 within certain categories.

17 For instance, if the Legislature had wished to limit the categories of recoverable fees,
18 NRS 41.670(1)(a) could have mirrored Guam's anti-SLAPP statute. If a Guam court grants an
19 anti-SLAPP motion to dismiss, it shall award the "costs of litigation, including reasonable
20 attorney and expert witness fees, incurred in connection with the motion...."⁶ NRS 41.670(1)(a)
21 contains no similar restriction. Even had it, Guam's limiting language is broadly interpreted to
22 include far more than merely drafting and arguing the motion itself.⁷

24 ⁴ *Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d 364, 366 (2013).

25 ⁵ *Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41, 302 P.3d 1144, 1148 (2013).

26 ⁶ 7 Guam Code § 17106(g)(1) (2014).

27 ⁷ *Enriquez v. Smith*, 2015 Guam 29, ¶ 34 ("Smith's initial appeal arguing that the trial court be
28 compelled to address her anti-SLAPP motion on the merits, as well as her defense of the appeal
in the present case are certainly covered by the statutory mandate. Additionally, because the
award of attorney's fees and sanctions are a mandatory result of success on a CPGA motion,
Smith's counterclaims regarding these issues are also sufficiently connected to her motion to
warrant compensation for preparation of these arguments.").

1 **ii. If NRS 41.670 is ambiguous, Legislative intent requires an award of**
2 **all reasonable attorneys' fees.**

3 “If the statutory language fails to address the issue, this court construes the statute
4 according to that which reason and public policy would indicate the legislature intended.”⁸ “The
5 Legislature’s intent is the primary consideration when interpreting an ambiguous statute.”⁹
6 “When construing an ambiguous statutory provision, this court determines the meaning of the
7 words used in a statute by examining the context and the spirit of the law or the causes which
8 induced the legislature to enact it.”¹⁰

9 The Supreme Court has previously discussed the Legislature’s intent in enacting
10 Nevada’s anti-SLAPP statutes. The Court concluded “[a] SLAPP suit is a meritless lawsuit that
11 a party initiates primarily to chill a defendant’s exercise of his or her First Amendment free
12 speech rights.”¹¹ “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial
13 advantage over one’s adversary by increasing litigation costs until the adversary’s case is
14 weakened or abandoned.”¹² “When amending Nevada’s anti-SLAPP statute in 1997, the
15 Legislature explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating,
16 and punishing individuals for their involvement in public affairs.”¹³ “The Legislature further
17 reasoned that the number of SLAPP lawsuits in Nevada had increased, and therefore,
18 implementation of an anti-SLAPP statute was essential to protect citizens’ constitutional
19 rights.”¹⁴

20 “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over
21 one’s adversary by increasing litigation costs until the adversary’s case is weakened or
22 abandoned.”¹⁵ If NRS 41.670(1)(a) is interpreted to restrict a successful defendant to recovering
23 only those attorney’s fees in specific categories of work, a financial motivation would still exist
24 to file the SLAPP lawsuit to gain a financial advantage. The defendants, who should never have

25 ⁸ *Hardy Cos. v. SNMARK, LLC*, 126 Nev. Adv. Op. 49, 245 P.3d 1149, 1153 (2010) (quotation
26 and citation omitted).

27 ⁹ *Id.*

28 ¹⁰ *Id.* (quotation and citation omitted).

¹¹ *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citations omitted).

¹² *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009)..

¹³ *Id.*, 219 P.3d at 1281 (citing 1997 Nev. Stat., ch. 387, preamble, at 1364).

¹⁴ *Id.*

¹⁵ *Id.*, 219 P.3d at 1280.

1 been sued, would still be forced to spend money on attorney's fees defending themselves from a
2 non-meritorious lawsuit but could recover only a fraction of those fees. This limitation would
3 conflict with the Legislature's stated intent to protect Nevadans' ability to participate in public
4 affairs.

5 **iii. Reasonable appellate attorneys' fees and costs are also recoverable.**

6 The Welts' also request their attorneys' fees and costs incurred on the first appeal in this
7 case. Multiple courts construing anti-SLAPP fee shifting statutes have concluded the prevailing
8 defendants may also recover their reasonable attorney's fees and costs incurred appealing a
9 ruling on an anti-SLAPP motion. In Guam, "the trial court erred in denying Smith's request for
10 attorney's fees associated with the appeal..."¹⁶ Multiple state and federal courts interpreting
11 California's anti-SLAPP statute have reached the same conclusion.¹⁷ Washington¹⁸ and
12 Oregon¹⁹ have also ruled this way. These conclusions are consistent with NRS 41.670(1)(a), as
13 it contains no language excluding reasonable costs and attorneys' fees on appeal from the award.

14 **b. The costs are proper, supported, and documented.**

15 The Welts further seek \$1,276.40 for court filing fees, all of which is verified against
16 both the district court and Supreme Court docketing system. The Welts could recover these costs
17 via both NRS 41.670(1)(a) and NRS 18.020(3). NRS 18.005(1) defines the term "costs" to
18 include clerks' fees such as the Welts document here. The court concludes these costs were
19 reasonable, necessary, and actually incurred. It awards the Welts \$1,276.40 for these costs.

20 **II. The typographical errors in the order granting summary judgment.**

21 The Welts' motion noted two typographical errors in the order granting summary
22 judgment and asked to correct them per NRCP 59(e). The court found a third when signing the
23
24

25 ¹⁶ *Enriquez*, 2015 Guam at ¶ 35.

26 ¹⁷ *Manufactured Home Communities, Inc. v. Cnty. of San Diego*, 655 F.3d 1171, 1181 (9th Cir. 2011); *Metabolife Int'l, Inc. v. Wornick*, 213 F. Supp. 2d 1220, 1222 (S.D. Cal. 2002); *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 54 Cal. Rptr. 2d 830, 835 (App. 1996).

27 ¹⁸ "[W]here a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on appeal." *Davis*, 325 P.3d at 275.

28 ¹⁹ *Northon v. Rule*, 637 F.3d 937 (9th Cir. 2011) (applying ORS § 31.152(3) and permitting attorneys' fees for appeal).

1 original order. The court all three should be corrected for clarity. The Welts are to submit an
2 amended order correcting these typographical errors.

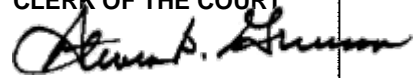
3
4 The Order re Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion for
5 Attorneys' Fees & to Amend Order Granting Summary Judgment in A-14-706566-C is
6 DATED this 20 day of Sept, 2017.

7
8
9 Nancy L. Allis
DISTRICT JUDGE

10
11 Submitted by:

12 WILSON ELSEER MOSKOWITZ
13 EDELMAN & DICKER-LLP

14 MICHAEL P. LOWRY, ESQ.
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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.

**Amended 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.

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
25 official proceeding. ... The Legislature when crafting the clause two definition
26 clearly and unambiguously resorted to an easily understandable concept of what
27 constitutes a public issue. Specifically, it *equated* a public issue with the
28 authorized official proceeding to which it connects.⁴⁴

³⁸ *Id.* at 568.

³⁹ *Id.* (emphasis in original).

⁴⁰ *Id.*

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
dismiss certain causes of action, arguing they were protected communications. "We note Nancy
Shaw drafted the termination agreement in September 1999, one year before George's death and

⁶⁰ *Id.* at 173-174.

⁶¹ *Id.* at 174.

⁶² *Id.*

⁶³ *Id.* at 177-78.

⁶⁴ *Id.* at 178.

⁶⁵ *Id.*

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. Tuscany 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.*

26 ⁶⁹ 137 Cal. App. 4th 1 (2006).

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

27 ⁷¹ 152 Cal. App. 4th 1043, 1055-1056 (2007).

28 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.*,

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
24 appointed Walter’s conservator by a New Jersey court. Protecting the Welts’ speech concerning
25 this dispute “would encourage participation in matters of public significance” because of

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

27 ¹⁰⁴ *Id.*

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

28 ¹⁰⁶ *Id.* at 1226.

¹⁰⁷ *Id.*

1 *Young*'s analysis noting the public's interest in how conservators exercise a state's sovereign
2 power. If those discussing a conservator's qualifications, suitability, or acts after appointment
3 are outside 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 to
22 Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt Howard Shapiro and awards a separate
23 \$10,000 to each to Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt 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).

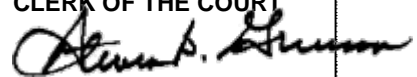
The Amended Order Granting Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss in A-14-706566-C is DATED this 20 day of Sept, 2017.

Nancy L. All
DISTRICT JUDGE

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

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.

**Order re Glenn Welt, Rhoda Welt, Lynn
Welt & Michele Welt's Motion for
Attorneys' Fees & to Amend Order Granting
Summary Judgment**

On August 15, 2017 defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt's ("the Welts") moved for 1) their attorneys' fees and costs; and 2) to fix typographical errors in the order granting summary judgment. The motion was properly served. The court received no opposition. The motion was heard on September 20, 2017. Michael Lowry appeared for the Welts, there was no appearance for the Shapiros. Having considered the merits of the motion, it is granted.

I. The Welts are awarded \$49,202.50 for fees and \$1,246.40 for costs incurred.

On August 4, 2017 the court entered an order granting the Welts' motion to dismiss per NRS 41.637(3) and NRS 41.637(4). In that circumstance, NRS 41.670(1)(a) states the court "shall award reasonable costs and attorney's fees to the person against whom the action was brought...." The August 4, 2017 order directed the Welts "to submit a memorandum of costs

1 and attorneys' fees with appropriate supporting documentation."¹ The Welts did so on August
2 15, 2017. Again, the court has received no opposition or response from the Shapiros.

3 **a. The attorney fees are proper and supported.**

4 The Welts seek a total of \$49,202.50 in attorneys' fees. These consist of 186.1 hours by
5 lead counsel Michael Lowry at a rate of \$250.00 per hour and 11.9 hours by associate attorney
6 Amanda Ebert at a rate of \$225.00 per hour. The Welts are awarded the full \$49,202.50
7 requested.

8 NRS 41.670(1)(a) permits an award of only "reasonable" attorney's fees. *Brunzell v.*
9 *Golden Gate Nat. Bank* provides the analysis by which to evaluate if the attorneys' fees were
10 reasonable. *Brunzell* requires district courts to consider at least four factors.

- 11 (1) the qualities of the advocate: his ability, his training, education, experience,
12 professional standing and skill;
13 (2) the character of the work to be done: its difficulty, its intricacy, its importance,
14 time and skill required, the responsibility imposed and the prominence and
15 character of the parties where they affect the importance of the litigation;
16 (3) the work actually performed by the lawyer: the skill, time and attention given
17 to the work;
18 (4) the result: whether the attorney was successful and what benefits were
19 derived.²

20 These factors help evaluate whether the attorney's fees requested are appropriate for the
21 facts and circumstances of the individual case. They are designed to protect opposing parties
22 from exorbitant rates from less qualified lawyers, dubious billing activities, or poor quality work.
23 The court previously addressed these factors in its February 20, 2015 order granting attorneys'
24 fees concerning the Welts' first motion to dismiss. The analysis remains largely the same.

25 The Welts' lead counsel, Michael Lowry, is a licensed attorney practicing in Nevada
26 since 2007 and has represented the Welts since this case was filed. He has charged the same
27 \$250 rate throughout this case. Associate Amanda Ebert has practiced in Nevada since 2012 and
28 was billed at \$225 an hour, reflecting the attorneys' differing experience levels.

As the February 20, 2015 order noted, "[t]he character of the work done was intricate,
and required research into a developing area of law."³ This analysis still applies. Since the

¹ August 4, 2017 Order at 23:3-5.

² *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

³ February 20, 2015 Order at 2:1-2.

1 original order, the Supreme Court of Nevada modified the factors to be considered in deciding
2 motions like the Welts brought. This modification required extensive analysis of the California
3 case law Nevada adopted. This analysis also satisfies the third *Brunzell* factor as the work
4 actually performed reflects a level of skill, time, and attention that matches the intricate nature
5 the analysis that was required.

6 Finally, the fourth factor is also satisfied. The Welts' position was successfully
7 advocated, resulting in a favorable decision. The decision benefitted the Welts in that it
8 terminated the lawsuit against them.

9 **i. NRS 41.670(1)(a) is unambiguous and requires an award of all**
10 **reasonable fees.**

11 "When a statute is clear on its face, we will not look beyond the statute's plain
12 language."⁴ Where the statute is unambiguous, a court may not deviate from the statute's plain
13 meaning or read additional language into the statute.⁵ Here, NRS 41.670(1)(a) states the "shall
14 award reasonable costs and attorney's fees to the person against whom the action was
15 brought...." The statute contains no language limiting the award of attorney's fees to those
16 within certain categories.

17 For instance, if the Legislature had wished to limit the categories of recoverable fees,
18 NRS 41.670(1)(a) could have mirrored Guam's anti-SLAPP statute. If a Guam court grants an
19 anti-SLAPP motion to dismiss, it shall award the "costs of litigation, including reasonable
20 attorney and expert witness fees, incurred in connection with the motion...."⁶ NRS 41.670(1)(a)
21 contains no similar restriction. Even had it, Guam's limiting language is broadly interpreted to
22 include far more than merely drafting and arguing the motion itself.⁷

23
24 ⁴ *Egan v. Chambers*, 129 Nev. Adv. Op. 25, 299 P.3d 364, 366 (2013).

25 ⁵ *Williams v. United Parcel Servs.*, 129 Nev. Adv. Op. 41, 302 P.3d 1144, 1148 (2013).

26 ⁶ 7 Guam Code § 17106(g)(1) (2014).

27 ⁷ *Enriquez v. Smith*, 2015 Guam 29, ¶ 34 ("Smith's initial appeal arguing that the trial court be
28 compelled to address her anti-SLAPP motion on the merits, as well as her defense of the appeal
in the present case are certainly covered by the statutory mandate. Additionally, because the
award of attorney's fees and sanctions are a mandatory result of success on a CPGA motion,
Smith's counterclaims regarding these issues are also sufficiently connected to her motion to
warrant compensation for preparation of these arguments.").

1 **ii. If NRS 41.670 is ambiguous, Legislative intent requires an award of**
2 **all reasonable attorneys' fees.**

3 “If the statutory language fails to address the issue, this court construes the statute
4 according to that which reason and public policy would indicate the legislature intended.”⁸ “The
5 Legislature’s intent is the primary consideration when interpreting an ambiguous statute.”⁹
6 “When construing an ambiguous statutory provision, this court determines the meaning of the
7 words used in a statute by examining the context and the spirit of the law or the causes which
8 induced the legislature to enact it.”¹⁰

9 The Supreme Court has previously discussed the Legislature’s intent in enacting
10 Nevada’s anti-SLAPP statutes. The Court concluded “[a] SLAPP suit is a meritless lawsuit that
11 a party initiates primarily to chill a defendant’s exercise of his or her First Amendment free
12 speech rights.”¹¹ “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial
13 advantage over one’s adversary by increasing litigation costs until the adversary’s case is
14 weakened or abandoned.”¹² “When amending Nevada’s anti-SLAPP statute in 1997, the
15 Legislature explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating,
16 and punishing individuals for their involvement in public affairs.”¹³ “The Legislature further
17 reasoned that the number of SLAPP lawsuits in Nevada had increased, and therefore,
18 implementation of an anti-SLAPP statute was essential to protect citizens’ constitutional
19 rights.”¹⁴

20 “The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over
21 one’s adversary by increasing litigation costs until the adversary’s case is weakened or
22 abandoned.”¹⁵ If NRS 41.670(1)(a) is interpreted to restrict a successful defendant to recovering
23 only those attorney’s fees in specific categories of work, a financial motivation would still exist
24 to file the SLAPP lawsuit to gain a financial advantage. The defendants, who should never have

25 ⁸ *Hardy Cos. v. SNMARK, LLC*, 126 Nev. Adv. Op. 49, 245 P.3d 1149, 1153 (2010) (quotation
26 and citation omitted).

27 ⁹ *Id.*

28 ¹⁰ *Id.* (quotation and citation omitted).

¹¹ *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citations omitted).

¹² *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009)..

¹³ *Id.*, 219 P.3d at 1281 (citing 1997 Nev. Stat., ch. 387, preamble, at 1364).

¹⁴ *Id.*

¹⁵ *Id.*, 219 P.3d at 1280.

1 been sued, would still be forced to spend money on attorney's fees defending themselves from a
2 non-meritorious lawsuit but could recover only a fraction of those fees. This limitation would
3 conflict with the Legislature's stated intent to protect Nevadans' ability to participate in public
4 affairs.

5 **iii. Reasonable appellate attorneys' fees and costs are also recoverable.**

6 The Welts' also request their attorneys' fees and costs incurred on the first appeal in this
7 case. Multiple courts construing anti-SLAPP fee shifting statutes have concluded the prevailing
8 defendants may also recover their reasonable attorney's fees and costs incurred appealing a
9 ruling on an anti-SLAPP motion. In Guam, "the trial court erred in denying Smith's request for
10 attorney's fees associated with the appeal...."¹⁶ Multiple state and federal courts interpreting
11 California's anti-SLAPP statute have reached the same conclusion.¹⁷ Washington¹⁸ and
12 Oregon¹⁹ have also ruled this way. These conclusions are consistent with NRS 41.670(1)(a), as
13 it contains no language excluding reasonable costs and attorneys' fees on appeal from the award.

14 **b. The costs are proper, supported, and documented.**

15 The Welts further seek \$1,276.40 for court filing fees, all of which is verified against
16 both the district court and Supreme Court docketing system. The Welts could recover these costs
17 via both NRS 41.670(1)(a) and NRS 18.020(3). NRS 18.005(1) defines the term "costs" to
18 include clerks' fees such as the Welts document here. The court concludes these costs were
19 reasonable, necessary, and actually incurred. It awards the Welts \$1,276.40 for these costs.

20 **II. The typographical errors in the order granting summary judgment.**

21 The Welts' motion noted two typographical errors in the order granting summary
22 judgment and asked to correct them per NRCP 59(e). The court found a third when signing the
23
24

25 ¹⁶ *Enriquez*, 2015 Guam at ¶ 35.

26 ¹⁷ *Manufactured Home Communities, Inc. v. Cnty. of San Diego*, 655 F.3d 1171, 1181 (9th Cir.
2011); *Metabolife Int'l, Inc. v. Wornick*, 213 F. Supp. 2d 1220, 1222 (S.D. Cal. 2002); *Dove*
Audio, Inc. v. Rosenfeld, Meyer & Susman, 54 Cal. Rptr. 2d 830, 835 (App. 1996).

27 ¹⁸ "[W]here a prevailing party is entitled to attorney fees below, they are entitled to attorney fees
if they prevail on appeal." *Davis*, 325 P.3d at 275.

28 ¹⁹ *Northon v. Rule*, 637 F.3d 937 (9th Cir. 2011) (applying ORS § 31.152(3) and permitting
attorneys' fees for appeal).

1 original order. The court all three should be corrected for clarity. The Welts are to submit an
2 amended order correcting these typographical errors.

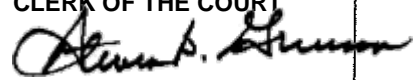
3
4 The Order re Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Motion for
5 Attorneys' Fees & to Amend Order Granting Summary Judgment in A-14-706566-C is
6 DATED this 20 day of Sept, 2017.

7
8
9 Nancy L. Allie
DISTRICT JUDGE

10
11 Submitted by:

12 WILSON ELSEER MOSKOWITZ
13 EDELMAN & DICKER LLP

14 MICHAEL P. LOWRY, ESQ.
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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.

Notice of Entry of Amended Order

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 Amended Order Granting Glenn Welt, Rhoda Welt, Lynn Welt
& Michele Welt's Renewed Motion to Dismiss was entered by the Court on September 20, 2017.
A copy is attached hereto.

DATED this 25th day of September, 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/ Pam Lamper
An Employee of
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP



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8 Attorneys for Glenn Welt, Rhoda Welt,
9 Lynn Welt, and Michele Welt

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

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

18 Defendants.

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

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

28 **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.

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 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 (2006) ("When the Legislature adopts a statute substantially similar to a federal statute, a 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. ... The Legislature when crafting the clause two definition
clearly and unambiguously resorted to an easily understandable concept of what
constitutes a public issue. Specifically, it equated a public issue with the
authorized official proceeding to which it connects.⁴⁴

25 ³⁸ *Id.* at 568.

26 ³⁹ *Id.* (emphasis in original).

27 ⁴⁰ *Id.*

27 ⁴¹ *Id.* at 569.

28 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

60 *Id.* at 173-174.

61 *Id.* at 174.

62 *Id.*

63 *Id.* at 177-78.

64 *Id.* at 178.

65 *Id.*

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. Tuscany 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.*

26 ⁶⁹ 137 Cal. App. 4th 1 (2006).

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

27 ⁷¹ 152 Cal. App. 4th 1043, 1055-1056 (2007).

28 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).

¹⁰⁰ *Id.* at 562.

28 ¹⁰¹ 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
24 appointed Walter’s conservator by a New Jersey court. Protecting the Welts’ speech concerning
25 this dispute “would encourage participation in matters of public significance” because of

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

27 ¹⁰⁴ *Id.*

28 ¹⁰⁵ 182 Cal. App. 4th 1190, 1226 (2010).

¹⁰⁶ *Id.* at 1226.

¹⁰⁷ *Id.*

1 *Young*'s analysis noting the public's interest in how conservators exercise a state's sovereign
2 power. If those discussing a conservator's qualifications, suitability, or acts after appointment
3 are outside 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 many 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 to
22 Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt Howard Shapiro and awards a separate
23 \$10,000 to each to Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt 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).

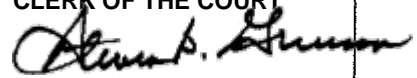
The Amended Order Granting Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss in A-14-706566-C is DATED this 20 day of Sept, 2017.

Nancy L. Allg
DISTRICT JUDGE

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

Notice of Entry of Amended Order

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 Amended Order Granting Glenn Welt, Rhoda Welt, Lynn Welt
& Michele Welt's Renewed Motion to Dismiss was entered by the Court on September 20, 2017.
A copy is attached hereto.

DATED this 25th day of September, 2017.

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP


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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/ Pam Lamper
An Employee of
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6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

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

18 Defendants.

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

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

28 **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.

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 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 (2006) ("When the Legislature adopts a statute substantially similar to a federal statute, a 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. ... The Legislature when crafting the clause two definition
clearly and unambiguously resorted to an easily understandable concept of what
constitutes a public issue. Specifically, it equated a public issue with the
authorized official proceeding to which it connects.⁴⁴

25 ³⁸ *Id.* at 568.

26 ³⁹ *Id.* (emphasis in original).

27 ⁴⁰ *Id.*

27 ⁴¹ *Id.* at 569.

28 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. Tuscany 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.*

26 ⁶⁹ 137 Cal. App. 4th 1 (2006).

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

27 ⁷¹ 152 Cal. App. 4th 1043, 1055-1056 (2007).

28 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.*,

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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).

¹⁰⁰ *Id.* at 562.

28 ¹⁰¹ 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
24 appointed Walter’s conservator by a New Jersey court. Protecting the Welts’ speech concerning
25 this dispute “would encourage participation in matters of public significance” because of

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

27 ¹⁰⁴ *Id.*

28 ¹⁰⁵ 182 Cal. App. 4th 1190, 1226 (2010).

¹⁰⁶ *Id.* at 1226.

¹⁰⁷ *Id.*

1 *Young*'s analysis noting the public's interest in how conservators exercise a state's sovereign
2 power. If those discussing a conservator's qualifications, suitability, or acts after appointment
3 are outside 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 many 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 to
22 Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt Howard Shapiro and awards a separate
23 \$10,000 to each to Glenn Welt, Rhoda Welt, Lynn Welt, and Michele Welt 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).

The Amended Order Granting Glenn Welt, Rhoda Welt, Lynn Welt & Michele Welt's Renewed Motion to Dismiss in A-14-706566-C is DATED this 20 day of Sept, 2017.

Nancy L. Allg
DISTRICT JUDGE

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