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HOWARD SHAPIRO and JENNA
SHAPIRO,
Appellants,
v.
GLEN WELT, RHODA WELT, LYNN
WELT, MICHELLE WELT,
individuals; DOES I through X, and
ROE CORPORATIONS I through X,
inclusive,
Respondents.

S. CT. DOCKET NO.: 73943

ALEX B. GHIBAUDO, ESQ.
Nevada Bar No.: 10592
ALEX B. GHIBAUDO, P.C.
703 South 8th Street
Las Vegas, Nevada 89101
Ph. (702) 385-2036
Fax: (702) 924-6553
Email: alex@abgps.com
Attorney for Appellants

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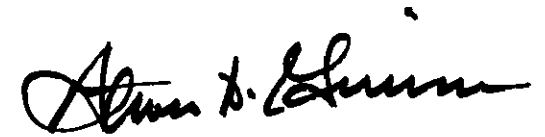
APPENDIX VOLUME 1

NO.	DESCRIPTION	BATES NO.
1.	Complaint	SHAPIRO000001- SHAPIRO000023
2.	Defendants' Renewed Motion to Dismiss	SHAPIRO000024- SHAPIRO000107
3.	Plaintiffs' Opposition to Defendants' Special Motion to Dismiss and Counter-Motion for Sanctions, Attorney's Fees and Costs	SHAPIRO000108- SHAPIRO000131

DATED this 20th day of February, 2018.

ALEX B. GHIBAUDO, P.C.

By: /s/ Alex B. Ghibaudo, Esq.
ALEX B. GHIBAUDO, ESQ.
Nevada Bar No.: 10592
703 South 8th Street
Las Vegas, Nevada 89101
Attorney for Appellants



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.

- 1 3. Defendant Rhoda Welt is, and at all relevant times mentioned herein, was a
2 resident of the State of Georgia.
- 3 4. Defendant Lynn Welt is, and at all relevant times mentioned herein, was a
4 resident of the State of Georgia.
- 5 5. Defendant Michelle Welt is, and at all relevant times mentioned herein, was a
6 resident of the State of Georgia.
- 7
8 6. The true names or capacities, whether individual, corporate, association or
9 otherwise, of Defendants, DOES I through DOES X, and ROE
10 CORPORATION I through ROE CORPORATION X, are unknown to
11 Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff
12 is informed and believes and therefore alleges that each of the said Defendants
13 designated herein as DOE and ROE CORPORATION are responsible in some
14 manner for the events and happenings referred to and caused damages
15 proximately to Plaintiff as herein alleged, and that Plaintiff will ask leave of
16 this Court to amend this Complaint, to insert the true names and capacities of
17 DOES I through DOE X and ROE CORPORATIONS I through ROE
18 CORPORATIONS X, when the same have been ascertained and to join such
19 Defendants in this action.
20
21
22 7. That on about April of 2011, Plaintiff was given power of attorney over Walter
23 Shapiro, his father, who is now 81 years of age, to handle Walter's estate and
24 health care.
25
26 8. That on or about April 24, 2014, Walter was diagnosed with Lewy Dementia.
27
28

- 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.
- 24
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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)

- 1
- 2
- 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).
- 26
- 27
- 28

SECOND CAUSE OF ACTION

(DEFAMATION)

- 1
- 2
- 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.
- 6
- 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.
- 27
- 28

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.howardshaprovictims.com.
17

18 42. That Defendants defrauded the public in furtherance of their scheme to extort
19 Plaintiff, as alleged in the second cause of action contained in this complaint,
20 by knowingly lying about Plaintiff in a public forum, namely
21 www.howardshaprovictims.com.
22

23 43. That Defendants' conduct caused Plaintiff substantial damage in an
24 undetermined amount exceeding \$10,000.00.
25
26
27
28

FIFTH CAUSE OF ACTION

(FRAUD)

- 1
- 2
- 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.
- 6
- 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.

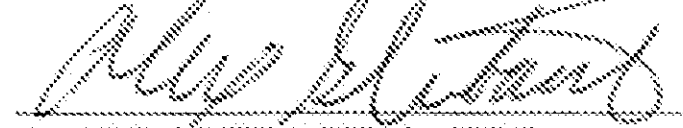
WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

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

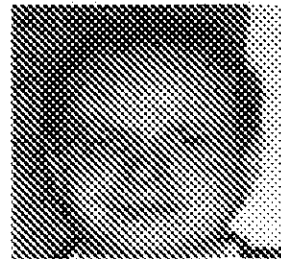
Wife: Jenna G. Shapiro, age 42

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

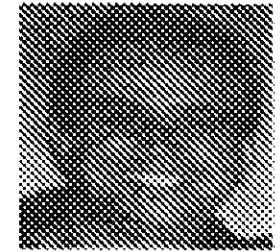
Home: 407-810-1645

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

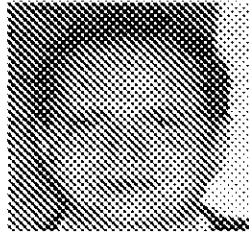
Cellular: 646-406-2087

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

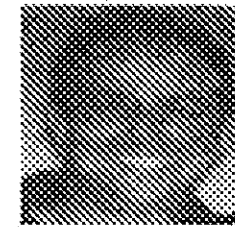
2330 Peppercorn St.

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 609-406-2087
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 the marital assets are not returned by August 18, 2014.

Sincerely,

Glenn M. Wett

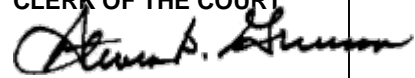
Henderson, Nevada

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P.S. If you have any questions, please contact your local Sharp distributor or visit our website at www.sharp.com. We will be happy to help you with any questions you may have.

© 2014 Sharp Corp.

Email if you have any questions: sharp@sharp.com



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

**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.

Defendants Glenn Welt, Rhoda Welt, Lynn Welt and Michele Welt move to dismiss
Plaintiffs' complaint. The complaint arises from statements made in direct connection to a New
Jersey conservatorship proceeding involving the parties. The complaint sought to silence
Plaintiffs' critics in the New Jersey case, a result expressly barred by Nevada's anti-SLAPP
statutes. The complaint must now be dismissed, with prejudice.

DATED this 26th day of May, 2017.

WILSON ELSEER MOSKOWITZ
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

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

3 This matter stems from comments made on a website regarding a conservatorship case
4 litigated in New Jersey. Walter Shapiro is the father of plaintiff Howard Shapiro.¹ On August 5,
5 2014 Howard petitioned a New Jersey court to appoint him as Walter's conservator.² The
6 petition alleged Walter was allegedly no longer mentally fit to care for himself. The Welts are
7 relatives of Walter and opposed Howard's petition.³ Allen Shapiro, Walter's brother, also
8 vehemently opposed Howard's petition.⁴ It appears even Walter opposed the petition based upon
9 his statements to his court appointed attorney requesting that Michele Welt be appointed as
10 conservator of his property.⁵ Although not stated in the petition, Glenn Welt is Walter's nephew.

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

17 **a. The district court previously granted this motion.**

18 This is the Welts' second special motion to dismiss. The first was granted on January 2,
19 2015. The Shapiros appealed and a panel of the Supreme Court reversed in part, vacated in part,
20 and remanded with instructions on February 2, 2017. Remittitur issued on April 25, 2017.

21 **II. Nevada's anti-SLAPP statutes protect the Welts' free speech rights to participate in**
22 **public discourse by prohibiting lawsuits such as Plaintiffs have filed.**

23 The Shapiros' complaint sought to silence their critics to gain an advantage in their New
24 Jersey litigation. Nevada law does not permit this type of intimidation.

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

26 ² Petition attached as Exhibit A.

27 ³ Answer attached as Exhibit B.

28 ⁴ Statement attached as Exhibit C.

⁵ December 11, 2014 letter from Benjamin H. Mabie, attached as Exhibit D.

⁶ Complaint at ¶ 20.

⁷ *Id.* at Exhibits 3, 4.

1 **a. Nevada’s anti-SLAPP statutes protect free speech rights.**

2 “A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant’s
3 exercise of his or her First Amendment free speech rights.”⁸ “The hallmark of a SLAPP lawsuit
4 is that it is filed to obtain a financial advantage over one’s adversary by increasing litigation
5 costs until the adversary’s case is weakened or abandoned.”⁹ “When a plaintiff files a SLAPP
6 suit against a defendant, Nevada’s anti-SLAPP statute allows the defendant to file a special
7 motion to dismiss in response to the action.”¹⁰

8 When this complaint was filed, the Nevada Legislature’s most recent amendments to the
9 anti-SLAPP statutes were enacted in 2013.¹¹ “A person who engages in a good faith
10 communication in furtherance of the right to petition or the right to free speech in direct
11 connection with an issue of public concern is immune from any civil action for claims based
12 upon the communication.”¹² This statute is designed to protect the free speech rights of citizens
13 who wish to participate in the marketplace of ideas.

14 Anti-SLAPP statutes are invoked when “an action is brought against a person based upon
15 a good faith communication in furtherance of ... the right to free speech in direct connection
16 with an issue of public concern”¹³ NRS 41.637 defines “[g]ood faith communication in
17 furtherance of the right ... to free speech in direct connection with an issue of public concern.”
18 This term includes a “[w]ritten or oral statement made in direct connection with an issue under
19 consideration by a legislative, executive or judicial body, or any other official proceeding
20 authorized by law.”¹⁴ It also includes “[c]ommunication made in direct connection with an issue
21 of public interest in a place open to the public or in a public forum.”¹⁵ These protections extend
22 to any communication “which is truthful or is made without knowledge of its falsehood.”¹⁶

23
24 ⁸ *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citations omitted).

25 ⁹ *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009).

26 ¹⁰ *Stubbs*, 297 P.3d at 329 (citations omitted).

27 ¹¹ S.B. 286, 77th Leg., effective on October 1, 2013. The statutes were subsequently amended in
28 the 2015 Legislative Session.

¹² NRS 41.650.

¹³ NRS 41.660(1).

¹⁴ NRS 41.637(3).

¹⁵ NRS 41.637(4).

¹⁶ NRS 41.637.

1 **b. The Legislature specified the standard of review for anti-SLAPP motions.**

2 Substantively, when resolving this motion the district court shall “[c]onsider such
3 evidence, written or oral, by witnesses or affidavits, as may be material in making a
4 determination pursuant to paragraphs (a) and (b).”¹⁷ After the 2013 amendments, when a special
5 motion to dismiss is filed, the district court must first “[d]etermine whether the moving party has
6 established, by a preponderance of the evidence, that the claim is based upon a good faith
7 communication in furtherance of the right to petition or the right to free speech in direct
8 connection with an issue of public concern.”¹⁸ If the moving party meets its burden, the court
9 then determines “whether the plaintiff has established by clear and convincing evidence a
10 probability of prevailing on the claim.”¹⁹ This standard is quite stringent.

11 [C]lear and convincing evidence must produce “satisfactory” proof that is so
12 strong and cogent as to satisfy the mind and conscience of a common man, and
13 so to convince him that he would venture to act upon that conviction in matters
14 of the highest concern and importance to his own interest. It need not possess
15 such a degree of force as to be irresistible, but there must be evidence of tangible
16 facts from which a legitimate inference ... may be drawn. ... [T]he evidence
17 must eliminate any serious or substantial doubt about the correctness of the
18 conclusions to be drawn from the evidence.²⁰

19 The opposing party must provide actual, admissible evidence, not merely a narrative
20 disagreement with the moving party.²¹ This clear and convincing evidence must demonstrate the
21 communications were not a matter of reasonable concern to the moving party.²² For comparison,
22 in *John*, a school district’s communications were part of an investigation of a school security
23 officer for unprofessional conduct.²³ The Supreme Court concluded that the communications at
24 issue “were of reasonable concern to the district because they addressed the school environment
25 as it applied to staff and students and they impacted the school district’s potential legal
26 liability.”²⁴ The opposing party failed to show that “the communications were not matters of

27 ¹⁷ NRS 41.660(3)(d).

28 ¹⁸ NRS 41.660(3)(a).

¹⁹ NRS 41.660(3)(b).

²⁰ *In re Jane Tiffany Living Trust 2001*, 124 Nev. 74, 79, 177 P.3d 1060, 1063 (2008) (quotation omitted).

²¹ *John*, 125 Nev. at 762, 219 P.3d at 1287.

²² *Id.*

²³ *Id.* at 750, 219 P.3d at 1279.

²⁴ *Id.* at 762, 219 P.3d at 1287.

reasonable concern to the school district.”²⁵ The special motion to dismiss was appropriately granted.

c. The Shapiros’ complaint is based upon protected speech.

For the speech on the Welts’ website to be protected, the Welts must demonstrate the Shapiros’ complaint is “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.”²⁶

Nevada’s “based upon” requirement has not yet been judicially interpreted.

In the absence of Nevada authority, it is appropriate to consider California authority. “Nevada’s anti-SLAPP statute was enacted in 1993, shortly after California adopted its statute, and both statutes are similar in purpose and language.”²⁷ *Shapiro* reaffirmed this link. “Because this court has recognized that California’s and Nevada’s anti-SLAPP statutes are similar in purpose and language, we look to California law for guidance on this issue.”²⁸ By borrowing from California, Nevada implicitly adopted California case law interpreting that statute.²⁹

NRS 41.660(1)’s “based upon” requirement is substantively identical to California’s “arise from” requirement. In California, it “means simply that the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of the right of petition or free speech.”³⁰ “[T]he critical point is whether the plaintiff’s cause of action itself was based on an act in furtherance of the defendant’s right of petition or free speech.”³¹ The focus “is not the form of the plaintiff’s cause of action but, rather, the defendant’s *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.”³²

²⁵ *Id.*

²⁶ NRS 41.660(1).

²⁷ *John*, 125 Nev. at 752, 219 P.3d at 1281.

²⁸ *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

²⁹ *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.”)

³⁰ *City of Cotati v. Cashman*, 52 P.3d 695, 701 (Cal. 2002) (internal citations omitted).

³¹ *Id.*

³² *Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) (emphasis in original).

1 The motive for the speech is irrelevant. “[C]auses of action do not arise from motives;
2 they arise from acts.”³³ “[T]he defendant’s purported motive in undertaking speech and
3 petitioning activities is irrelevant in determining whether the plaintiff’s cause of action is based
4 on those activities.”³⁴ California’s anti-SLAPP statute “applies to claims ‘based on’ or ‘arising
5 from’ statements or writings made in connection with protected speech or petitioning activities,
6 regardless of any motive the defendant may have had in undertaking its activities, or the motive
7 the plaintiff may be ascribing to the defendant’s activities.”³⁵

8 The Shaprios are suing based upon the Welts’ website. If the speech on that website is
9 protected, then the Welts are immune from suit.³⁶

10 **III. NRS 41.637(3) protects the speech on the Welts’ website because it was in direct**
11 **connection with an issue under consideration by a judicial body.**

12 The complaint Howard filed the petition for a guardianship over Walter, “[s]ince then,
13 Defendants ... posted a website online, www.howardshapirovictims.com....”³⁷

14 NRS 41.637(3) protects a “[w]ritten or oral statement made in direct connection with an
15 issue under consideration by a ... judicial body.”³⁸ No Nevada appellate court has yet addressed
16 this definition. California’s similar statute protects “any written or oral statement or writing
17 made in connection with an issue under consideration or review by a ... judicial body....”³⁹

18 **a. California applies its similar statute to protect speech like the Welts’.**

19 California has applied these definitions broadly to protect speech concerning issues under
20 consideration or review before a judicial body. *Briggs v. Eden Council for Hope & Opportunity*
21 arose from a dispute between a landlord and a tenant-rights organization, known as ECHO.⁴⁰
22 The landlords sued ECHO because, in part, it helped a tenant file a small claims action.⁴¹ ECHO
23 moved to dismiss, arguing the statements giving rise to the lawsuit were made concerning

24 ³³ *Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 1186 (2011).

25 ³⁴ *Tuszyńska v. Cunningham*, 199 Cal.App.4th 257, 271 (2011).

26 ³⁵ *Id.* at 269.

³⁶ NRS 41.650.

³⁷ Complaint at ¶¶ 16-17.

27 ³⁸ NRS 41.637(3).

³⁹ Cal Code Civ Proc § 425.16(e)(2).

28 ⁴⁰ 969 P.2d 564 (Cal. 1999).

⁴¹ *Id.* at 566.

1 matters under review by a judicial body and thus protected. The Supreme Court of California
2 was asked to decide if “a defendant, [filing an anti-SLAPP motion to dismiss] a cause of action
3 arising from a statement made before, or in connection with an issue under consideration by, a
4 legally authorized official proceeding, demonstrate separately that the statement concerned an
5 issue of public significance?” It concluded no, based upon the statute’s plain language.

6 California’s statute “expressly makes subject to a special motion to strike ‘[a] cause of
7 action against a person arising from any act of that person in furtherance of the person’s right of
8 petition or free speech under the United States or California Constitution in connection with a
9 public issue....”⁴² The statute defined this phrase to include “any written or oral statement or
10 writing made in connection with an issue under consideration or review by a ... judicial
11 body....”⁴³ *Briggs* concluded the plain language “encompasses any cause of action against a
12 person arising from any statement or writing made in, or in connection with an issue under
13 consideration or review by, an official proceeding or body.”⁴⁴

14 Applying this definition, *Briggs* concluded the lawsuit was based upon protected activity.
15 ECHO’s communications with the tenant concerning the small claim were “made in connection
16 with issues under consideration or review by official bodies or proceedings—specifically, HUD
17 or the civil courts.”⁴⁵ Even communications in preparation for or anticipation of a judicial
18 proceeding were protected.⁴⁶

19 *Briggs* specifically rejected the argument that the judicial proceeding must be of public
20 significance to qualify for protection. “[T]he statute requires simply any writing or statement
21 made in, or in connection with an issue under consideration or review by” a judicial body.⁴⁷

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

26 ⁴² *Id.* at 568.

27 ⁴³ *Id.* (emphasis in original).

28 ⁴⁴ *Id.*

⁴⁵ *Id.* at 569.

⁴⁶ *Id.*

⁴⁷ *Id.* at 570 (emphasis in original).

1 clearly and unambiguously resorted to an easily understandable concept of what
2 constitutes a public issue. Specifically, it *equated* a public issue with the
authorized official proceeding to which it connects.⁴⁸

3 Subsequent decisions have also discussed when a communication is “made in connection
4 with an issue” being considered by a judicial body.⁴⁹ *People ex rel. 20th Century Ins. Co. v.*
5 *Bldg. Permit Consultants, Inc.* evaluated whether allegedly fraudulent repair estimates submitted
6 to an insurance company were “made in connection with an issue” being considered by a judicial
7 body.⁵⁰ The defendant argued estimates and reports “were prepared for submission to clients and
8 their legal counsel who ultimately submitted them to 20th Century in support of their earthquake
9 claims. The majority of these damage reports were prepared in anticipation of litigation. These
10 damage reports often became the subject of discovery requests in pending lawsuits.”⁵¹ This
11 argument was rejected. “While some of the reports eventually were used in official proceedings
12 or litigation, they were not created ‘before,’ or ‘in connection with an issue under consideration
13 or review by a legislative, executive, or judicial body, or any other official proceeding authorized
14 by law.’”⁵² “At the time defendants created and submitted their reports and claims, there was no
15 ‘issue under consideration’ pending before any official proceeding.”⁵³ California’s anti-SLAPP
16 protections did not extend so broadly as to protect communications merely “because they
17 eventually could be used in connection with an official proceeding....”⁵⁴

18 In *Paul v. Friedman* a securities broker successfully defended an arbitration proceeding
19 brought against him.⁵⁵ He then sued the lawyer who pursued the action, asserting the lawyer’s
20 investigation of the broker’s private life during the arbitration was harassing and that the lawyer
21 had publically revealed information allegedly obtained from that investigation. The lawyer
22 argued his actions were protected because arose from the arbitration. This argument was
23 rejected. “The statute does not accord anti-SLAPP protection to suits arising from any act
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25 ⁴⁸ *Id.* (emphasis in original).

26 ⁴⁹ Cal Code Civ Proc § 425.16(e)(2).

27 ⁵⁰ 86 Cal. App. 4th 280, 282 (2000).

28 ⁵¹ *Id.* at 284.

⁵² *Id.* at 284-285 (quoting Cal Code Civ Proc § 425.16(e)(1), (2)).

⁵³ *Id.* at 285.

⁵⁴ *Id.*

⁵⁵ 95 Cal. App. 4th 853 (2002).

1 having any connection, however remote, with an official proceeding. The statements or writings
2 in question must occur in connection with ‘an issue under consideration or review’ in the
3 proceeding.”⁵⁶ Harassing the opposing party and publically disclosing private information that
4 was not “under consideration or review” was not within the statute’s definition.

5 In short, it is insufficient to assert that the acts alleged were “in connection with”
6 an official proceeding. There must be a connection with an issue under review in
7 that proceeding. In *20th Century Insurance*, there was a connection to an issue but
no pending proceeding; here, there is a pending proceeding, but no connection to
an issue before the tribunal.⁵⁷

8 *Neville v. Chudacoff* concerned an employee leaving a business, Maxsecurity, to form a
9 competing business and, in the process, allegedly misappropriating trade secrets.⁵⁸ In May, 2005
10 Maxsecurity sent its customers a letter from its lawyer, Chudacoff, stating that the former
11 employee had breached his employment contract and warning the customers not to do business
12 with him. Maxsecurity filed suit against the former employee in September, 2005. The
13 employee cross-claimed for defamation arising from the letter. Maxsecurity moved to dismiss
14 the counterclaims, arguing they were based upon the letter and the letter was a protected
15 communication “in connection with an issue under consideration or review by a legislative,
16 executive, or judicial body....”⁵⁹ The court concluded “[t]he only reasonable inference from the
17 [Letter], however, is that Maxsecurity and Chudacoff were contemplating litigation against
18 Neville seriously and in good faith when the Letter was written.”⁶⁰

19 The former employee also argued the letter was not protected because it was not sent to
20 potential parties to the anticipated litigation. *Neville* explained “a statement is ‘in connection
21 with’ litigation ... if it relates to the substantive issues in the litigation and is directed to persons
22 having some interest in the litigation.”⁶¹ This definition extended “to protect statements to
23 persons who are not parties or potential parties to litigation, provided such statements are made
24
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26 ⁵⁶ *Id.* at 866.

27 ⁵⁷ *Id.* at 867.

28 ⁵⁸ 160 Cal. App. 4th 1255 (2008).

⁵⁹ *Id.* at 1262.

⁶⁰ *Id.* at 1269.

⁶¹ *Id.* at 1266.

1 ‘in connection with’ pending or anticipated litigation.⁶² All of the employee’s arguments were
2 rejected, letter was protected, and the counterclaim dismissed.

3 *McConnell v. Innovative Artists Talent & Literary Agency, Inc.* concerned a business
4 break-up where two employees, McConnell and Press, sought to leave and create their own
5 competing business.⁶³ They initiated suit seeking declaratory relief concerning sections of their
6 contract concerning their ability to terminate their own employment.⁶⁴ The next day
7 Innovative’s president, Harris, ordered them removed from the company’s offices and sent them
8 a letter advising that they had been given “new job duties” that, in effect, prevented them from
9 working at all.⁶⁵ The now former employees added causes of action for wrongful termination
10 and retaliation, both relying upon Harris’s letter.⁶⁶ Innovative moved to dismiss these causes of
11 action arguing the letter was a protected communication because it was made “in connection
12 with an issue under consideration” by a judicial body.⁶⁷

13 This argument was rejected. There was a judicial proceeding pending when the letter
14 was sent, but there was not a sufficient connection between the letter and an issue under
15 consideration. The day the letter was sent, the pending lawsuits “sought declaratory and
16 injunctive relief establishing that McConnell and Press were legally free to leave Innovative
17 whenever they chose.” However, Harris’s letter

18 was obviously directed at preventing McConnell from taking clients with him
19 when he left, not at establishing that McConnell was legally required to stay.
20 Indeed, the Harris letter on its face says nothing at all about McConnell’s lawsuit,
21 and nothing at all about any claims Innovative might make in that lawsuit.
22 Consequently, it is difficult to find any basis to conclude that Innovative’s letter
23 was written “in connection with an issue under consideration” in those lawsuits,
24 of which no mention at all was made.⁶⁸

25 Innovative responded the letter was part of its “‘efforts to investigate pending or
26 prospective claims and/or prepare for their potential resolution.’”⁶⁹

27 ⁶² *Id.* at 1270.

28 ⁶³ 175 Cal. App. 4th 169 (2009).

⁶⁴ *Id.* at 173.

⁶⁵ *Id.* at 173-174.

⁶⁶ *Id.* at 174.

⁶⁷ *Id.*

⁶⁸ *Id.* at 177-78.

⁶⁹ *Id.* at 178.

1 But the letters do not mention the lawsuits; do not mention any desire to
2 investigate; do not refer to any misconduct by McConnell and Press; and do not
3 mention “pending or prospective claims” or their “potential resolution.” In short,
4 the McConnell/Press causes of action for retaliation and wrongful termination
could not have been based on protected litigation activity, in the form of
Innovative’s investigation of pending claims, when no such investigative activity
is reflected in Harris’s letter.⁷⁰

5 Several other decisions decided whether certain communications were in connection with
6 an issue pending before a judicial body. In *Moore v. Shaw* an attorney drafted an agreement to
7 terminate a trust and was later sued because of it.⁷¹ The attorney then moved to dismiss certain
8 causes of action, arguing they were protected communications. “We note Nancy Shaw drafted
9 the termination agreement in September 1999, one year before George’s death and nearly three
10 years before Kenton filed his petition against her.”⁷² Consequently her actions were not made in
11 connection with an issue under consideration by a judicial body and were not protected.⁷³

12 In *Healy v. Tuscany Hills Landscape & Recreation Corp.* a HOA filed suit against one of
13 its unit owners and sent a letter to its membership about the topic of the lawsuit.⁷⁴ The unit
14 owner’s counterclaim for defamation arising from the letter was dismissed. “Because one
15 purpose of the letter was to inform members of the association of pending litigation involving the
16 association, the letter is unquestionably in connection with judicial proceedings and bears some
17 relation to judicial proceedings.”⁷⁵ *Contemporary Services Corp. v. Staff Pro Inc.* concluded an
18 email update to a group of customers concerning court rulings and favorable imposition of
19 sanctions in litigation against the company’s competitor was protected activity because it was in
20 connection with an issue under consideration or review by a judicial body.⁷⁶

21 Applying California’s case law in Nevada, the complaint alleges the Welts’ website was
22 created after the judicial proceeding was commenced. Second, the speech on the website was
23 connected to the issue under review in the judicial proceeding: was Howard qualified and
24 suitable to be Walter’s guardian? The Welts’ satisfy this element of NRS 41.637(3).

25 ⁷⁰ *Id.*

26 ⁷¹ 116 Cal. App. 4th 182 (2004).

27 ⁷² *Id.* at 197.

28 ⁷³ *Id.*

⁷⁴ 137 Cal. App. 4th 1 (2006).

⁷⁵ *Id.* at 5-6 (internal quotations omitted).

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

1 **b. The Welts’ satisfy NRS 41.637(3)’s direct connection requirement.**

2 There is one material textual difference between the California and Nevada statutes.
3 California protects “any written or oral statement or writing made in connection with an issue
4 under consideration or review...”⁷⁷ Nevada protects “any (3) Written or oral statement made in
5 *direct* connection with an issue under consideration...”⁷⁸ NRS 41.637(3) does not define when
6 a statement is “in direct connection” such that it qualifies for protection.

7 When the plain language of the statute does not answer the question, the statute should be
8 construed “according to that which reason and public policy would indicate the legislature
9 intended.”⁷⁹ Statutes are to be construed “as a whole, so that all provisions are considered
10 together and, to the extent practicable, reconciled and harmonized. In addition, the court will not
11 render any part of the statute meaningless, and will not read the statute’s language so as to
12 produce absurd or unreasonable results.”⁸⁰

13 The “in direct connection” requirement was not part of the statute as originally enacted in
14 1993.⁸¹ It was added as part of amendments in 1997 that created NRS 41.637(3),⁸² however the
15 legislative history is silent as to why. The 2013 amendments did not modify the language but did
16 add it to the first sentence of NRS 41.637 and the new NRS 41.637(4).⁸³

17 NRS 41.637(3) is a nearly verbatim copy of Cal. Civ. Proc. Code § 425.16(e)(2). In 1997
18 when NRS 41.637(3) was created, § 425.16(e)(2) could fairly be read to literally encompass *any*
19 speech having *any* connection to the issue under review or consideration. By adding the word
20 “direct” to § 425.16(e)(2)’s language, the Nevada Legislature implicitly rejected this standard
21 and intended to require more of a connection than California between the speech and the issue
22 under review or consideration by the judicial body. However, California case law since 1997
23 rejected an interpretation of § 425.16(e)(2) that would protect *any* speech with *any* connection.

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25

⁷⁷ Cal. Civ. Proc. Code § 425.16(e)(2).

26 ⁷⁸ Emphasis added.

27 ⁷⁹ *Hardy Cos. v. SNMARK, LLC*, 126 Nev. 528, 533, 245 P.3d 1149, 1153 (2010).

28 ⁸⁰ *Id.* at 534, 245 P.3d at 1153.

⁸¹ 1993 Nev. Stat., ch. 652 at 2848-2849.

⁸² 1997 Nev. Stat., ch. 387 at 1365.

⁸³ 2013 Nev. Stat., ch. 176 at 623.

1 The case law instead interpreted § 425.16(e)(2) as requiring what can fairly be described as a
2 “direct connection,” like NRS 41.637(3).

3 *Paul v. Friedman* specifically rejected *any* connection interpretation. “The statute does
4 not accord anti-SLAPP protection to suits arising from any act having any connection, however
5 remote, with an official proceeding. The statements or writings in question must occur in
6 connection with ‘an issue under consideration or review’ in the proceeding.”⁸⁴ “In short, it is
7 insufficient to assert that the acts alleged were ‘in connection with’ an official proceeding. There
8 must be a connection with an issue under review in that proceeding.”⁸⁵

9 Stated again, the core question under review by the New Jersey judicial body was
10 whether Walter needed a conservator and, if so, whether Howard was qualified and suitable for
11 that role. The Welts’ website directly concerned Howard’s suitability and sought information
12 from others that might reflect upon that topic. NRS 41.637(3) protects that speech.

13 **IV. NRS 41.637(4) also protects the Welts’ speech because it was made in direct**
14 **connection with an issue of public interest, in a public forum.**

15 NRS 41.637(4) protects any “[c]ommunication made in direct connection with an issue
16 of public interest in a place open to the public or in a public forum,”⁸⁶ but only if that
17 communication “is truthful or is made without knowledge of its falsehood.”⁸⁷ On appeal, the
18 Supreme Court did not determine whether the Welts’ website was within NRS 41.637(4). It
19 instead adopted a framework to determine what is “an issue of public interest.” It noted
20 “California ‘courts have established guiding principles for what distinguishes a public interest
21 from a private one.’”⁸⁸ In California

- 22 (1) “public interest” does not equate with mere curiosity;
23 (2) a matter of public interest should be something of concern to a substantial
24 number of people; a matter of concern to a speaker and a relatively small specific
audience is not a matter of public interest;

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26 ⁸⁴ 95 Cal. App. 4th 853, 866 (2002).

27 ⁸⁵ *Id.* at 867.

28 ⁸⁶ NRS 41.637(4).

⁸⁷ NRS 41.637.

⁸⁸ *Shapiro*, 389 P.3d at 268 (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)).

(3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;

(4) the focus of the speaker’s conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and

(5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.⁸⁹

Shapiro adopted these “California’s guiding principles ... for determining whether an issue is of public interest under NRS 41.637(4).”⁹⁰ “On remand, we instruct the district court to apply California’s guiding principles in analyzing whether the Welts’ statements were made in direct connection with an issue of public interest under NRS 41.637(4).”⁹¹

a. How does California apply its guiding principles?

Piping Rock Partners was a dispute between two real estate investment trust (“REIT”) firms, Piping Rock Partners and David Lerner Associates.⁹² Piping Rock Partners’ sole shareholder, Germain, also “launched a public forum on his blog REIT Wrecks to encourage discussion of non-traded REITs.”⁹³ “In response to a reader’s post about DLA and Lerner, Germain posted a reply explaining that DLA and Lerner appeared to be violating a regulation promulgated by the Financial Industry Regulatory Authority (FINRA).”⁹⁴ This generated “months of publicity,” a formal FINRA complaint, and two class action lawsuits.⁹⁵

The firms each alleged the other then began online smear campaigns.⁹⁶ Piping Rock Partners sued DLA, who moved to dismiss arguing its statements were protected by § 425.16(e)(3) as “any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.”⁹⁷ The eight posts admittedly authored by a DLA representative were originally posted to the website Ripoff Reports.⁹⁸ Piping Rock Partners conceded Ripoff Reports was a public forum.⁹⁹

⁸⁹ *Id.* (quoting *Piping Rock Partners*, 946 F. Supp. 2d at 968).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Piping Rock Partners*, 946 F. Supp. 2d at 965.

⁹³ *Id.*

⁹⁴ *Id.* at 965.

⁹⁵ *Id.*

⁹⁶ *Id.* at 965-66.

⁹⁷ *Id.* at 967.

⁹⁸ *Id.* at 965-66.

⁹⁹ *Id.* at 967.

1 The court concluded the posts concerned an issue of public interest because they were “a
2 warning to consumers not to do business with plaintiffs because of their allegedly faulty business
3 practices.”¹⁰⁰ However, several of the factual statements in the posts were demonstrably false.
4 “California law does not require a statement to be serious or truthful in order to concern an issue
5 of public interest.”¹⁰¹ By contrast, Nevada law protects only speech within defined categories
6 “which is truthful or is made without knowledge of its falsehood.”¹⁰²

7 DLA counterclaimed based upon 12 statements posted to Germain’s blog, who moved to
8 dismiss. He argued the statements were protected by § 425.16(e)(3) “because they were made on
9 public internet website, accessible by all. DLA and Lerner argue that REIT Wrecks is not public
10 because Germain controls the very website on which he posted the offending statements.”¹⁰³
11 DLA and Lerner’s argument was summarily rejected. “It is settled that Web sites accessible to
12 the public ... are public forums for purposes of the anti-SLAPP statute.”¹⁰⁴ The court did not
13 address whether the 12 posts concerned an issue of public interest because that was conceded.¹⁰⁵

14 *Piping Rock Partners* summarized California case law for determining whether speech
15 concerned an issue of public interest. It indicates the Welts’ website was a public forum.
16 However, the decision provides no guidance as to whether the speech on that website concerned
17 an issue of public interest.

18 **b. Invoking sovereign powers as a conservator is an issue of public interest.**

19 To the Welts’ knowledge, California has not expressly determined whether speech
20 concerning the qualifications and suitability of a person who has petitioned for a conservator
21 appointment concerns “an issue of public interest.” It has, however, determined that being
22 appointed a conservator makes a person a public official, subject to public scrutiny.

23 In *Young v. CBS Broad., Inc.* the plaintiff was a professional conservator and was
24 appointed as a conservator for an elderly woman named Mann.¹⁰⁶ After the conservatorship

25 ¹⁰⁰ *Id.* at 969.

26 ¹⁰¹ *Id.*

26 ¹⁰² NRS 41.637.

27 ¹⁰³ *Piping Rock Partners*, 946 F. Supp. 2d at 974-95.

27 ¹⁰⁴ *Id.* (quoting *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1366 (2010)).

28 ¹⁰⁵ *Id.* at 976.

28 ¹⁰⁶ 212 Cal. App. 4th 551, 553 (2012).

1 terminated, a local television station aired a report accusing the conservator of abusing her
2 authority and mistreating Mann. The conservator filed a defamation suit against the television
3 station, who responded with an anti-SLAPP motion.

4 The television station argued the conservator was a public official who must prove it
5 “published the defamatory statements about her with actual malice, or, in other words, with
6 knowledge of the statements’ falsity or in reckless disregard of their truth or falsity.”¹⁰⁷ The
7 conservator was not a direct employee of the government, but this factor was not dispositive.

8 [T]he touchstone for public official status is the extent to which the plaintiff’s
9 position is likely to attract or warrant scrutiny by members of the public. Such
10 scrutiny may follow either because of the prominence of the position in the
official hierarchy, or because the duties of the position tend naturally to have a
relatively large or dramatic impact on members of the public.¹⁰⁸

11 California had previously determined a social worker qualified as a public official. It
12 found the conservator to be in a similar position. She

13 exercised significant sovereign power in assuming control of Mann’s affairs.
14 Pursuant to APS’s request and court authority, she became the face of government
assigned to take control of Mann’s personal and financial affairs. This is an
15 extraordinary power for the court to bestow upon a person. Of course, it is done
with cause and under procedures designed to safeguard the individual as much as
16 possible. But it is only through the power of the state that a person such as a
conservator can “co-opt” another person’s independent discretion and his or her
liberty, and, in addition, force the affected person to pay for it.¹⁰⁹

17
18 By accepting the appointment, the conservator “became an agent of the state with the power to
19 interfere in the personal interests of a private citizen to whom she was not related and without
20 that citizen’s consent.”¹¹⁰ “A person holding these sovereign powers over another unrelated
21 person and using them for compensation is subject to the public’s independent interest in her
22 performance, and warrants public scrutiny beyond that occasioned by the controversy with
23 Mann.”¹¹¹

24 Young did not expressly analyze if the news report was a “written or oral statement or
25 writing made in a place open to the public or a public forum in connection with an issue of

26 ¹⁰⁷ *Id.* at 560.

27 ¹⁰⁸ *Id.* (quoting *Kahn v. Bower*, 232 Cal.App.3d 1599, 1611 (1991)).

28 ¹⁰⁹ *Id.* at 561.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 562.

1 public interest,”¹¹² because the parties conceded it was.¹¹³ However, *Young*’s analysis of
2 whether a conservator is a public official indicates the qualifications and suitability of a
3 conservator are a matter of public interest because of the sovereign power a conservator invokes.
4 If so, for anti-SLAPP purposes, there is no rational basis distinguishing a person who is applying
5 to be a conservator from one who has successfully applied and been appointed. In both contexts,
6 speech concerning the conservator’s qualifications and suitability are issues of public interest.

7 **c. California has not yet created one, uniform analysis to determine whether**
8 **speech concerns an issue of public interest.**

9 California courts have not yet formed a consensus about how to determine if speech
10 concerns an issue of public interest. In *Nygård, Inc. v. Uusi-Kerttula* an employer sued a former
11 employee for statements about working conditions that he made in a magazine interview. The
12 court evaluated if the statements concerned an issue of public interest. *Nygård* surveyed
13 California case law and concluded “these cases and the legislative history that discusses them
14 suggest that ‘an issue of public interest’ within the meaning of [§ 425.16(e)(3)] is *any issue in*
15 *which the public is interested*.”¹¹⁴ “[T]he issue need not be ‘significant’ to be protected by the
16 anti-SLAPP statute—it is enough that it is one in which the public takes an interest.”¹¹⁵ As the
17 public did have an interest in the company’s working conditions, the statements were protected.
18 If this standard is applied in Nevada, *Young*’s conclusions about the public interest about how
19 conservators exercise sovereign powers indicates Howard’s qualifications and suitability to be a
20 conservator were an issue of public concern.

21 *D.C. v. R.R.* concerned online threats against a teenager’s life based upon his sexual
22 orientation. The court noted although publically accessible websites are public forums, “not
23 every Web site post involves a public issue.”¹¹⁶ *D.C.* summarized California case law, including
24 *Nygård*, and developed a three part analysis to determine whether an issue of public interest is
25 present. “A public issue is implicated if the subject of the statement or activity underlying the

26 ¹¹² Cal. Code Civ. Proc. § 425.16(e)(3).

27 ¹¹³ *Young*, 212 Cal. App. 4th at 559.

28 ¹¹⁴ *Nygård*, 159 Cal. App. 4th at 1042 (emphasis in original).

¹¹⁵ *Id.*

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

1 claim (1) was a person or entity in the public eye; (2) could affect large numbers of people
2 beyond the direct participants; or (3) involved a topic of widespread, public interest.”¹¹⁷ If the
3 “issue is of interest to only a private group, organization, or community, the protected activity
4 must occur in the context of an ongoing controversy, dispute, or discussion, such that its
5 protection would encourage participation in matters of public significance.”¹¹⁸ *D.C.* concluded
6 the facts presented did not satisfy the standard for concerning a “public interest,” consequently
7 excluding the online threats from anti-SLAPP protections.

8 If the *D.C.* test is applied in Nevada, the Welts’ speech is still protected. Howard
9 petitioned a New Jersey court to be appointed as Walter’s conservator. As *Young* indicates, this
10 placed him in the public eye, satisfying *D.C.*’s first factor. Even if Howard was not in the public
11 eye, meaning the issue is of interest “to only a private group, organization, or community,” there
12 was an “ongoing controversy, dispute, or discussion,” specifically Howard’s qualifications and
13 suitability to be Walter’s conservator by a New Jersey court. Protecting the Welts’ speech
14 concerning this dispute “would encourage participation in matters of public significance”
15 because of *Young*’s analysis noting the public’s interest in how conservators exercise a state’s
16 sovereign power. If those discussing a conservator’s qualifications, suitability, or acts after
17 appointment are outside anti-SLAPP protections, public discourse is inhibited.

18 *Weinberg v. Feisel* created the five factor test that *Piping Rock Partners* cited.¹¹⁹
19 Weinberg sued Feisel “for libel, slander, and intentional infliction of emotional distress after
20 defendant told others that plaintiff had stolen a valuable collector’s item from him.”¹²⁰ Feisel
21 moved to dismiss, arguing his speech concerned a matter of public interest because it deterred
22 crime.¹²¹ The court created the five part test and concluded, “[u]nder the circumstances, the fact
23 that defendant accused plaintiff of criminal conduct did not make the accusations a matter of
24 public interest.”¹²² The “defendant did not report his suspicions to law enforcement, and there is
25

26 ¹¹⁷ *Id.* at 1226.

27 ¹¹⁸ *Id.*

28 ¹¹⁹ 110 Cal. App. 4th 1122, 1132-33 (2003).

¹²⁰ *Id.* at 1126.

¹²¹ *Id.*

¹²² *Id.* at 1127.

1 no evidence that he intended to pursue civil charges against plaintiff.”¹²³ The court characterized
2 the defendant’s speech as “a private campaign, so to speak, to discredit plaintiff in the eyes of a
3 relatively small group of fellow collectors.”¹²⁴ As there was no allegation “that plaintiff is a
4 public figure or that he has thrust himself into any public issue, defendant’s accusations related
5 to what in effect was a private matter.”¹²⁵

6 *Weinberg* also protects the Welts’ website. First, as *Young* described, the sovereign
7 powers a conservator exercises are not a mere curiosity. A conservator uses those powers to take
8 involuntary control over another person’s life. *Young*’s description of a conservator’s power also
9 satisfies *Weinberg*’s second factor that the issue “should be something of concern to a substantial
10 number of people....”¹²⁶ Third, there is a close relationship between the public interest in the
11 qualifications and suitability of conservators and the Welts’ speech addressing Howard’s own
12 qualifications and suitability. Fourth, the Welts’ speech is directed at the public interest by
13 discussing Howard’s qualifications and suitability and searching for information on that topic so
14 as to provide it to the New Jersey court that considered Howard’s petition. Fifth, and finally,
15 Howard put his qualifications and suitability to be a conservator in dispute by petitioning the
16 New Jersey court. The Welts then spoke on that topic.

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

20 **V. Plaintiffs lack clear and convincing evidence that they can prevail.**

21 The Welts have met their burden to demonstrate “by a preponderance of the evidence,
22 that the claim is based upon a good faith communication in furtherance of the right to petition or
23 the right to free speech in direct connection with an issue of public concern.”¹²⁷ The burden of
24 proof now shifts to the Shapiros. The court must determine “whether the plaintiff has established
25

26 ¹²³ *Id.* at 1126-27.

27 ¹²⁴ *Id.* at 1127.

28 ¹²⁵ *Id.*

¹²⁶ *Id.* at 1132.

¹²⁷ NRS 41.660(3)(a).

1 by clear and convincing evidence a probability of prevailing on the claim.”¹²⁸ “[A] plaintiff
2 opposing an anti-SLAPP motion cannot rely on allegations in the complaint, but must set forth
3 evidence that would be admissible at trial.”¹²⁹ The Shapiros lack the clear and convincing
4 evidence required to demonstrate a probability of prevailing upon any of their claims.

5 **a. Jenna alleges no claims against the Welts.**

6 The only statement on the Welts’ website concerning Jenna Shapiro was that she is
7 married to Howard. The complaint does not allege this factual statement is inaccurate. As the
8 website does not otherwise concern Jenna at all, she has failed to prove any claim. Her causes of
9 action must be dismissed with prejudice.

10 **b. Howard’s defamation and defamation per se fail for multiple reasons.**

11 The complaint alleges both defamation and defamation per se. These causes of action are
12 allegedly separates but the analysis of both is combined because they fail for identical reasons.

13 **i. The Welts’ speech was are absolutely privileged.**

14 Nevada has adopted and applied the litigation privilege.

15 A party to a private litigation ... is absolutely privileged to publish defamatory
16 matter concerning another in communications preliminary to a proposed judicial
17 proceeding, or in the institution of or during the course and as a part of, a judicial
proceeding in which he participates, if the matter has some relation to the
proceeding.¹³⁰

18 “We conclude that the absolute privilege affords parties to litigation the same protection from
19 liability that exists for an attorney for defamatory statements made during, or in anticipation of,
20 judicial proceedings.”¹³¹ Applied here, the Welts were participants in the New Jersey
21 proceedings concerning their relative, Walter.

22 The complaint acknowledges the Welts’ website was created after Howard petitioned to
23 be appointed Walter’s conservator. Consequently, the statements on the website were made in
24 the course of New Jersey judicial proceedings by participants to that proceeding. The statements
25

26 ¹²⁸ NRS 41.660(3)(b).

27 ¹²⁹ *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4th 688, 699 (2007).

28 ¹³⁰ RESTATEMENT OF TORTS (SECOND) § 587 (1965).

¹³¹ *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 378, 213 P.3d 496, 499 (2009).

1 were intended to achieve, and logically relate to, the object of that litigation: objecting to
2 Howard's qualifications and suitability to be Walter's conservator.

3 The website's intent was also to locate potential witnesses and evidence relevant to the
4 question qualification and suitability question before the New Jersey court. The website first
5 specifically identifies this Howard Shapiro as opposed to other Howard Shapiros in the country.
6 It then states "[a]ll persons with knowledge of Howard A. Shapiro's actions against Walter
7 Shapiro or other illegal acts committed by Howard Shapiro are encouraged to appear in court.
8 You may also submit information via email."¹³²

9 If the attorneys to the New Jersey matter had posted a website identifying Howard and
10 asking potential witnesses to come forward, it would be absolutely privileged. In modern times,
11 posting a website is indistinguishable from mailing letters to Howard's known associates,
12 identifying him and asking these individuals if they have any information relevant to his
13 qualifications and suitability. The Supreme Court of Nevada has previously concluded if the
14 statement would be privileged if issued by a lawyer, it is privileged if issued by a party.¹³³
15 "[T]here is no good reason to distinguish between communications between lawyers and
16 nonlawyers."¹³⁴

17 Nevada has limited its general litigation privilege in only one, narrow area when
18 statements are made to the media. *Jacobs v. Adelson* concerned a statement a defendant made to
19 a media outlet in response to coverage of a complaint against him.¹³⁵ After the statement was
20 made, the plaintiff amended the complaint to allege defamation per se. The district court
21 concluded the statements were absolutely privileged and dismissed that cause of action. This
22 was narrowly reversed on appeal. "We adopt the majority view that communications made to
23 the media in an extrajudicial setting are not absolutely privileged, at least when the media holds
24 no more significant interest in the litigation than the general public."¹³⁶

25
26 ¹³² Exhibit 1 to Complaint, at 2.

27 ¹³³ *Clark Cnty. Sch. Dist.*, 125 Nev. at 384, 213 P.3d at 503.

28 ¹³⁴ *Id.* at 383, 213 P.3d at 502.

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

¹³⁶ *Id.* at 1284.

1 This exception does not apply here. The Welts' statements to their website were not
2 made to a media outlet in an extrajudicial setting. The statements were instead made in direct
3 relation to the New Jersey case in an attempt to locate relevant evidence and witnesses.

4 Applied here, the speech that is the basis for the Shapiros' complaint was absolutely
5 privileged as communications made in the course of litigation. The website seeks to identify
6 potential witnesses and evidence that may be relevant to the New Jersey proceeding. The
7 website is not a statement issued to media sources, but instead seeks out those who have
8 information relevant to Howard's qualifications and suitability. Consequently, the statements are
9 absolutely privileged and the Shapiros cannot demonstrate a probability of success on the merits.

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

12 The Supreme Court of Nevada has adopted "the *Gertz* test for determining whether a
13 person is a general-purpose or a limited-purpose public figure."¹³⁷ *Gertz* "reiterated that the *New*
14 *York Times* standard applies only to public officials and public figure plaintiffs...."¹³⁸ The *New*
15 *York Times Company v. Sullivan* standard is quite high for public officials to sue for defamation.

16 To promote free criticism of public officials, and avoid any chilling effect from
17 the threat of a defamation action, the High Court concluded that a defendant could
18 not be held liable for damages in a defamation action involving a public official
19 plaintiff unless "actual malice" is alleged and proven by clear and convincing
20 evidence.¹³⁹

21 By applying to be Walter's court-appointed conservator, Howard has voluntarily
22 subjected himself to the public official standard. As previously discussed, *Young v. CBS Broad.,*
23 *Inc.* determined that by becoming a conservator, the person "became an agent of the state with
24 the power to interfere in the personal interests of a private citizen to whom she was not related
25 and without that citizen's consent."¹⁴⁰ In that circumstance, a conservator is a public official
26 subject to the actual malice standard. "A person holding these sovereign powers over another
27 unrelated person and using them for compensation is subject to the public's independent interest

27 ¹³⁷ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002).

28 ¹³⁸ *Id.* at 719, 57 P.3d at 91 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 343-47 (1974)).

¹³⁹ *Id.* at 718-19, 57 P.3d at 90 (citing 376 U.S. 254, 279-80 (1964)).

¹⁴⁰ *Young*, 212 Cal. App. 4th at 561.

1 in her performance, and warrants public scrutiny beyond that occasioned by the controversy with
2 Mann.”¹⁴¹ “A person such as [the conservator] who by court appointment exercises that power
3 for the benefit of a nonrelative and for compensation thus does so as a public official for
4 purposes of defamation liability.”¹⁴²

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

9 The Supreme Court of Idaho performed a somewhat similar analysis in *Bandelin v.*
10 *Pietsch*.¹⁴³ A lawyer and former state legislator was appointed as the guardian of an incompetent
11 person. The lawyer was later prosecuted for contempt due to what the district court considered
12 negligence in his handling of the conservatorship. This was reported in the local news and the
13 lawyer subsequently sued the paper for defamation.

14 The court concluded the lawyer, as a guardian, was a public figure. The guardian could
15 not “maintain that he is not a public figure and was just an attorney handling the probate affairs
16 of a client. He was rather the court appointed guardian, a pivotal figure in the controversy
17 regarding the accounting of the estate that gave rise to the defamation and invasion of privacy
18 actions.”¹⁴⁴ As a public figure the lawyer was required to show actual malice, but could not.

19 Whether as a public official or figure, Howard must show the statements on the Welts’
20 website were made with actual malice.

21 Actual malice is proven when a statement is published with knowledge that it was
22 false or with reckless disregard for its veracity. Reckless disregard for the truth
23 may be found when the defendant entertained serious doubts as to the truth of the
24 statement, but published it anyway. This test is a subjective one, relying as it does
25 on what the defendant believed and intended to convey, and not what a reasonable
person would have understood the message to be. Recklessness or actual malice
may be established through cumulative evidence of negligence, motive, and
intent.¹⁴⁵

26 ¹⁴¹ *Id.* at 562.

27 ¹⁴² *Id.*

27 ¹⁴³ 563 P.2d 395 (Idaho 1977).

28 ¹⁴⁴ *Id.* at 398

¹⁴⁵ *Pegasus*, 118 Nev. at 722, 57 P.3d at 92-93.

1 To succeed, Howard must provide actual, clear and convincing evidence that the Welts
2 knew their statements were false or had serious doubts about the veracity of those statements and
3 published it anyway. He cannot meet this standard.

4 The defamation cause of action arises solely from the website's statements.¹⁴⁶ The
5 complaint specifically lists the factual statements Howard believes were defamatory¹⁴⁷ and
6 attached as Exhibit 1 a printout of the website. The website lists Howard's contact information.
7 The complaint does not allege these statements of fact are false. The website then states a
8 background check of Howard Shapiro revealed certain information. The background check upon
9 which this statement relied is attached to this motion.¹⁴⁸ The website accurately stated the
10 information contained in the background check. The website also accurately noted the
11 foreclosure status of Howard's home.¹⁴⁹

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

17 Howard sought a court-appointed position that would make him a public official. As
18 someone seeking to be a public official, he must demonstrate actual malice. He cannot and his
19 complaint must be dismissed per Nevada's anti-SLAPP statute.

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

22 Alternatively, Howard is a limited-purpose public figure as to the New Jersey
23 conservatorship proceedings. "A limited-purpose public figure is a person who voluntarily
24 injects himself or is thrust into a particular public controversy or public concern, and thereby
25 becomes a public figure for a limited range of issues. The test for determining whether someone

26
27 ¹⁴⁶ Complaint at ¶ 25.

¹⁴⁷ *Id.* at ¶ 17.

¹⁴⁸ Attached as Exhibit E.

¹⁴⁹ *Lis Pendens* attached as Exhibit F.

1 is a limited public figure includes examining whether a person's role in a matter of public
2 concern is voluntary and prominent.”¹⁵⁰

3 “Once the plaintiff is deemed a limited-purpose public figure, the plaintiff bears the
4 burden of proving that the defamatory statement was made with actual malice, rather than mere
5 negligence. This is to ensure that speech that involves matters of public concern enjoys
6 appropriate constitutional protection.”¹⁵¹ “Whether a plaintiff is a limited-purpose public figure
7 is a question of law...”¹⁵²

8 Applied here, Howard voluntarily petitioned a New Jersey court to appoint him as
9 Walter's conservator. This put his qualifications and suitability for that position at issue. The
10 statements on the website were explicitly designed to seek and obtain information that support
11 the Welts' position in that litigation: Howard was not qualified or suitable. Whether as a public
12 official, figure, or limited-purpose public figure, Howard lacks clear and convincing evidence of
13 actual malice. All of his defamation claims fail as a matter of law.

14 **c. Extortion is not recognized as a civil cause of action.**

15 The complaint alleges the Welts attempted to extort Howard by threatening to publish
16 information on the website.¹⁵³ This allegation apparently relies upon NRS 200.560, however the
17 statute does not authorize or create a civil cause of action. “Long ago the courts of these United
18 States established that criminal statutes cannot be enforced by civil actions.”¹⁵⁴

19 There is a limited exception for narrowly drawn criminal statutes, however the exception
20 does not apply to NRS 200.560. For example, in *Collins v. Palczewski* the plaintiff sued based
21 upon NRS 197.200, “a criminal statute which prohibits oppression under color of office.”¹⁵⁵ The
22 court refused to apply the exception rule to this statute. NRS 197.200 “provides protection to the
23 general population of Nevada against the oppressive, injurious or confiscatory actions of state
24
25

26 ¹⁵⁰ *Pegasus*, 118 Nev. at 720, 57 P.3d at 91.

27 ¹⁵¹ *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006).

28 ¹⁵² *Id.*

¹⁵³ Complaint at ¶¶ 37-38.

¹⁵⁴ *Collins v. Palczewski*, 841 F. Supp. 333, 340 (D. Nev. 1993) (string citation omitted).

¹⁵⁵ *Id.*

1 officers.... Section 197.200 does not mention any particular class of citizen. Thus, § 197.200 is
2 strictly criminal in nature and possess no civil implications.”¹⁵⁶

3 NRS 200.560 is general in nature. It does not specify or mention any particular class of
4 citizen. Howard may not rely upon it to create a civil cause of action.

5 Other jurisdictions have also refused to recognize a civil cause of action for “extortion.”
6 Instead extortion is recognized, in almost all jurisdictions, as a crime, not a civil cause of
7 action.¹⁵⁷ For example, courts in Colorado,¹⁵⁸ Delaware,¹⁵⁹ Florida,¹⁶⁰ Hawaii,¹⁶¹ New Jersey,¹⁶²
8 Pennsylvania,¹⁶³ and Texas¹⁶⁴ have refused to recognize such a claim. The Pennsylvania court
9 elegantly summarized the status of the case law. “[N]either the Restatement nor Prosser on Torts
10 delineates a cause of action for civil extortion. Although there are a ‘handful’ of reported cases
11 which consider the existence of the tort, none stand for the proposition that it exists at common
12 law.”¹⁶⁵

13 Nevada does not recognize “extortion” as a civil case of action. The fourth cause of
14 action alleging extortion is not exempt from Nevada’s anti-SLAPP statutes.

15 **d. Civil Conspiracy**

16 The fourth cause of action claims the four defendants engaged in a civil conspiracy. It
17 claims “Defendants conspired amongst themselves to unlawfully harm Plaintiff by constructing
18 and posting www.howardshapirovictims.com.”¹⁶⁶ It also asserts “Defendants defrauded the

19 ¹⁵⁶ *Id.*

20 ¹⁵⁷ *See Scheidler v. National Organization for Women, Inc.*, 537 US 393, 410 (2003) (“[T]he
21 Model Penal Code and a majority of States recognize the **crime** of extortion....”) (emphasis
added).

22 ¹⁵⁸ *Natural Wealth Real Estate, Inc. v. Cohen*, 2006 U.S. Dist. LEXIS 87439, 2006 WL 3500624
(D. Colo. 2006).

23 ¹⁵⁹ *Rader v. ShareBuilder Corp.*, 772 F. Supp. 2d 599, 606 (D. Del. 2011).

24 ¹⁶⁰ *Bass v. Morgan, Lewis & Bockius*, 516 So.2d 1011 (Fla. App. 1987).

25 ¹⁶¹ *Myers v. Cohen*, 687 P.2d 6 (Haw. App. 1984) (rev’d on other grounds 688 P.2d 1145
(1984)).

26 ¹⁶² *Pegasus Blue Star Fund, LLC v. Canton Prods.*, 2009 U.S. Dist. LEXIS 93080, 2009 WL
3246616 (D.N.J. 2009).

27 ¹⁶³ *Second & Ashbourne Assocs. v. Cheltenham Twp.*, 1989 U.S. Dist. LEXIS 8823 (E.D. Pa.
1989).

28 ¹⁶⁴ *B.F. Jackson, Inc. v. Costar Realty Info., Inc.*, 2009 U.S. Dist. LEXIS 54101 (S.D. Tex.
2009).

¹⁶⁵ *Supra*, note 163.

¹⁶⁶ Complaint at ¶ 41.

1 public in furtherance of their scheme to extort Plaintiff ... by knowingly lying about Plaintiff in a
2 public forum, namely www.howardshapirovictims.com.¹⁶⁷

3 Under Nevada law, an actionable civil conspiracy “consists of a combination of two or
4 more persons who, by some concerted action, intend to accomplish an unlawful objective for the
5 purpose of harming another, and damages results from the act or acts.”¹⁶⁸ To prevail in a civil
6 conspiracy action, a plaintiff must prove an explicit or tacit agreement between the tortfeasors.¹⁶⁹

7 Fundamentally, the statements on www.howardshapirovictims.com were not designed to
8 accomplish an unlawful objective to harm another: they were designed to accomplish a lawful
9 objective of locating evidence and witnesses relevant to what was an ongoing judicial proceeding
10 in New Jersey. As such, they are protected and the civil conspiracy claim fails.

11 Second, civil conspiracy is a derivative claim. It exists only if other claims remain
12 viable. Here, as all of Howard’s other substantive causes of action fail, so too must the civil
13 conspiracy claim fail as a matter of law. In *Sahara Gaming Corp. v. Culinary Workers Union*
14 *Local 226*¹⁷⁰ Sahara alleged certain defamatory statements. It acknowledged, however, the civil
15 conspiracy claim was derivative of the defamation claim. If the defamatory statements were
16 privileged, the civil conspiracy claim necessarily failed. The Court adopted this position in
17 affirming summary judgment regarding the privileged nature of the statements. The result that a
18 civil conspiracy claim is derivative and fails if the root cause of action fails is consistent with
19 opinions of other jurisdictions. This ruling was consistent with the majority of jurisdictions.¹⁷¹

20 ¹⁶⁷ *Id.* at ¶ 42.

21 ¹⁶⁸ *Hilton Hotels Corp. v. Butch Lewis Prods.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993).

22 ¹⁶⁹ *GES, Inc. v. Corbitt*, 117 Nev. 265, 271-72, 21 P.3d 11, 15 (2001).

23 ¹⁷⁰ 115 Nev. 212, 984 P.2d 164 (1999).

24 ¹⁷¹ *Miyashiro v. Roehrig, Roehrig, Wilson & Hara*, 228 P.3d 341, 363 (Hawai’I App. 2010) (claim for civil conspiracy failed due to failure of predicate claim upon which civil conspiracy was based); *Chu v. Hong*, 249 S.W.3d 441, 444 (Tex. 2008) (“Conspiracy is a derivative tort requiring an unlawful means or purpose, which may include an underlying tort.”); *Rusheen v. Cohen*, 128 P.3d 713, 722 (Cal. 2006) (“Additionally, a civil conspiracy does not give rise to a cause of action unless an independent civil wrong has been committed.”); *Larobina v. McDonald*, 876 A.2d 522, 531 (Conn. 2005) (“[T]here is no independent claim of civil conspiracy. Rather, [t]he action is for damages caused by acts committed pursuant to a formed conspiracy rather than by the conspiracy itself.... Thus, to state a cause of action, a claim of civil conspiracy must be joined with an allegation of a substantive tort.”) (citation omitted); *McPheters v. Maile*, 64 P.3d 317, 321 (Idaho 2003) (“The essence of a cause of action for civil conspiracy is the civil wrong committed as the objective of the conspiracy, not the conspiracy

1 **e. The complaint does not allege facts supporting a “fraud” cause of action.**

2 The complaint’s final substantive cause of action is labeled “fraud.” It alleges
3 “Defendants intended to induce Plaintiff to pay money or turn over property...” and then “the
4 public justifiably relied upon those representations to formulate an opinion of Plaintiff, putting
5 pressure upon Plaintiff to cooperate with Defendants.”¹⁷²

6 These allegations indicate Howard is pleading fraudulent inducement. The elements of
7 fraudulent inducement must be proven by clear and convincing evidence: (1) a false
8 representation made by the defendant; (2) defendant’s knowledge or belief that the representation
9 is false (or insufficient basis for making the representation); (3) defendant’s intention to induce
10 the plaintiff to act or to refrain from acting in reliance upon the misrepresentation; (4) plaintiff’s
11 justifiable reliance upon the misrepresentation; and (5) damage to the plaintiff resulting from
12 such reliance.¹⁷³ Nevada has also “recognized that fraud is never presumed; it must be clearly
13 and satisfactorily proved.”¹⁷⁴

14 The complaint fails to adequately plead a fraudulent inducement cause of action. “In all
15 averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated
16 with particularity. Malice, intent, knowledge, and other condition of mind of a person may be
17 averred generally.”¹⁷⁵ “In actions involving fraud, the circumstances of the fraud are required by
18 NRCP 9(b) to be stated with particularity. The circumstances that must be detailed include
19 averments to the time, the place, the identity of the parties involved, and the nature of the fraud
20 or mistake.”¹⁷⁶ *Swartz v. KPMG LLP* discussed the federal counterpart to NRCP 9(b) and
21 concluded “Rule 9(b) does not allow a complaint to merely lump multiple defendants together
22 but ‘require[s] plaintiffs to differentiate their allegations when suing more than one defendant . . .

23
24 itself.”); *Granewich v. Harding*, 985 P.2d 788, 792 (Or. 1999) (“For reasons explained more
25 fully below, neither ‘conspiracy’ nor ‘aid and assist’ is a separate theory of recovery. Rather,
26 conspiracy to commit or aiding and assisting in the commission of a tort are two of several ways
27 in which a person may become jointly liable for another’s tortious conduct.”).

28 ¹⁷² Complaint at ¶¶ 47-48.

¹⁷³ *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290-91, 89 P.3d 1009,
1018 (2004).

¹⁷⁴ *Id.*

¹⁷⁵ NRCP 9(b).

¹⁷⁶ *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981).

1 and inform each defendant separately of the allegations surrounding his alleged participation in
2 the fraud.’”¹⁷⁷

3 Howard’s complaint does not specifically identify or allege any particular conduct by the
4 Welts. The complaint instead impermissibly lumps all four together and does not state the time,
5 place, manner or nature of the fraud he individually asserts against each individual defendant.

6 Second, even if the facts in the complaint were true, Plaintiffs have not pled a fraudulent
7 inducement claim. To allege a claim, Howard must demonstrate *he* justifiably relied upon a
8 fraudulent representation. Yet Howard’s complaint does not allege he relied upon anything said
9 on the Welts’ website. He instead alleges unidentified members of the public may have relied
10 upon an unspecified statement on that website. If so, then these unidentified members of the
11 public may have standing, but Howard does not.

12 **f. Punitive damages are not a cause of action.**

13 The final cause of action listed in the complaint is entitled “punitive damages.” Punitive
14 damages are not a substantive cause of action in Nevada, they are merely a remedy.¹⁷⁸ To even
15 qualify for punitive damages, there must first be a viable underlying cause of action.¹⁷⁹ Howard
16 cannot demonstrate a probability of prevailing on a claim that does not exist.

17 **VI. The Welts should be reimbursed their attorneys’ fees and costs for this case.**

18 If an anti-SLAPP special motion to dismiss is granted, the court “shall award reasonable
19 costs and attorney’s fees to the person against whom the action was brought....”¹⁸⁰ The Welts
20 should also receive further relief. “The court may award, in addition to reasonable costs and
21 attorney’s fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person
22 against whom the action was brought.”¹⁸¹ Texas has a similar statute. There, the purpose and

23
24 ¹⁷⁷ 476 F.3d 756, 764-65 (9th Cir. 2007) (alterations in original) (quoting *Haskin v. R.J. Reynolds Tobacco Co.*, 995 F. Supp. 1437, 1439 (M.D. Fla. 1998)).

25 ¹⁷⁸ 22 AM. JUR. 2D DAMAGES § 551 (2003) (“[A]s a rule, there is no cause of action for punitive
26 damages itself; a punitive-damages claim is not a separate or independent cause of action.”
(footnotes omitted)).

27 ¹⁷⁹ *Wolf v. Bonanza Investment Co.*, 77 Nev. 138, 143, 360 P.2d 360, 362 (1961) (“[I]n the
28 absence of a judgment for actual damages, there [cannot be] a valid judgment for exemplary
damages.”)

¹⁸⁰ NRS 41.660(1)(a).

¹⁸¹ NRS 41.660(1)(b).

1 amount of this discretionary award should be “sufficient to deter the party who brought the legal
2 action from bringing similar actions described in this chapter.”¹⁸²

3 The Welts should each receive \$10,000 from Howard Shapiro and a separate \$10,000
4 each from Jenna Shapiro. The statute permits an award “to the person against whom the action
5 was brought.”¹⁸³ Howard Shapiro brought this action against all four Welts and Jenna Shapiro
6 also brought her own causes of action against all four. This permits the Welts to obtain \$10,000
7 each from each Shapiro.

8 These awards are merited by the disturbing facts of this case. The Welts came to the
9 assistance of an elderly family member who may be suffering from mental decline and who may
10 be vulnerable to exploitation. Their act of kindness was been met only with litigation both in
11 New Jersey and Nevada. Family members with greater financial resources have effectively
12 attempted to use litigation to intimidate the Welts into silence. This action is precisely what the
13 Nevada Legislature sought to prevent via its anti-SLAPP statutes.

14 **VII. Plaintiffs’ complaint must be dismissed with prejudice, the Welts awarded their**
15 **attorneys’ fees and costs and an appropriate deterrent award entered.**

16 The Shapiros filed this lawsuit in an attempt to silence their opposition in a New Jersey
17 conservatorship dispute over a potentially vulnerable family member. This type of litigation is
18 precisely what Nevada’s current anti-SLAPP statute was designed to prevent. The motion
19 should be granted and the Welts provided the relief the anti-SLAPP statutes provides them.

20 DATED this 26th day of May, 2017.

21 WILSON ELSER MOSKOWITZ
22 EDELMAN & DICKER LLP

23 /s/ Michael P. Lowry
24 MICHAEL P. LOWRY, ESQ.
25 Nevada Bar No. 10666
26 E-mail: Michael.Lowry@wilsonelser.com
27 300 South Fourth Street, 11th Floor
28 Las Vegas, Nevada 89101-6014
Tel: 702.727.1400/Fax: 702.727.7401
Attorneys for Glenn Welt, Rhoda Welt,
Lynn Welt, and Michele Welt

¹⁸² Texas Civil Practice and Remedies Code § 27.009(a)(2).

¹⁸³ NRS 41.660(1)(b).

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 May 26, 2017, I served **Glenn Welt, Rhoda Welt, Lynn**
4 **Welt & Michele Welt's Renewed Motion to Dismiss** as follows:

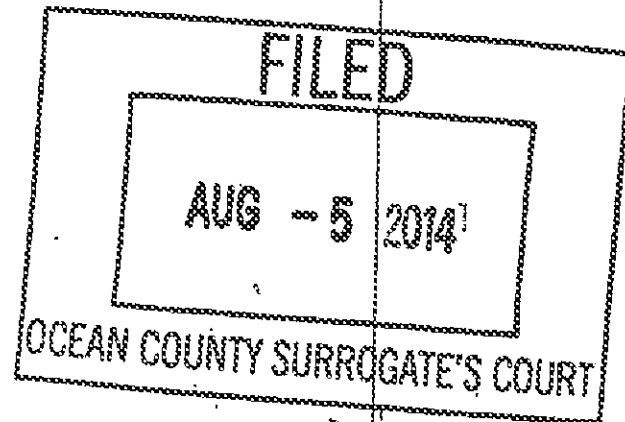
- 5 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
6 envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- 7 ☒ via electronic means by operation of the Court's electronic filing system, upon
8 each party in this case who is registered as an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

10 Alex B. Ghibaud, Esq.
11 G Law
12 7720 Cimarron Rd., Suite 110B
13 Las Vegas, NV 89113
14 Tel: 702.778.1238
15 *Attorney for Plaintiffs*

16
17 BY: /s/ Michael P. Lowry
18 An Employee of
19 WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP
20
21
22
23
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26
27
28

EXHIBIT "A"

DAVID A. SEMANCHIK, ESQ.
1130 Hooper Avenue
Toms River, New Jersey 08753
(732) 240-4055
Attorney for Plaintiff
DAS5336



IN THE MATTER OF : SUPERIOR COURT OF NEW JERSEY
WALTER SHAPIRO : OCEAN COUNTY - PROBATE PART
: CHANCERY DIVISION
An Alleged Mentally : DOCKET NO.: 206637
Incapacitated Person : Civil Action
: VERIFIED COMPLAINT FOR APPOINTMENT OF
: FULL GUARDIAN AND FURTHER RELIEF

RECEIVED AUG - 8 2014

I, HOWARD SHAPIRO, whose principal address is 623 Skyline Drive, Lake Hopatcong, New Jersey 07849, by way of Complaint says:

1. Plaintiff, Howard Shapiro, is the son of Walter Shapiro and is familiar with the facts pertaining to the alleged incapacitated person.
2. The alleged incapacitated person, Walter Shapiro, is presently residing at 345 Eagle Rock Avenue #229, Roseland, NJ 07068. His former address was 159 St. Nicholas Avenue, Lakewood, NJ 08701.
3. Walter Shapiro is an 81 year old Caucasian male with a date of birth of January 28, 1933. Walter Shapiro is currently suffering from significant cognitive deficits and impaired insight and is in need of a full permanent legal guardian.
4. The known Next-of-Kin and/or interested parties to be noticed in the within matter, to the best of Plaintiff's knowledge, are as follows:

<u>NAME:</u>	<u>ADDRESS:</u>	<u>RELATIONSHIP:</u>
Helen C. Dodick	P.O. Box 812 Trenton, NJ 08625	Office of Public Guardian
Howard Shapiro	623 Skyline Drive Lake Hopatcong, NJ 0749	Son
Adam Shapiro	2330 Peppercorn St. Kissimmee, Florida 34741	Son
Allen Shapiro	990 Rao Dr. Monroe, Georgia 30065	Brother
Rhoda Welt	1040 Fieldgate Lane Roswell, Georgia 30075	Sister
Lynn Welt	1040 Fieldgate Lane Roswell, Georgia 30075	Niece
Michele Welt	580 Elgaen Ct. Roswell, Georgia 30075	Niece

5. Upon information and belief Walter Shapiro has been diagnosed with Lewy Body Dementia by a physician at Shady Oak Hospital in Long Island, NY.

6. Walter Shapiro is mentally incapacitated and unable to govern and/or manage her affairs as will appear from the reports of Dr. Beverlee A. Tegeder, dated July 1, 2014, (attached hereto as Exhibit A) and Dr. Martin Whiteman, dated July 7, 2014, (attached hereto as Exhibit B), which are incorporated herein by reference.

7. The financial estate of Walter Shapiro is more particularly set forth in the Affidavit of Estate, which is incorporated herein by reference. (See, Exhibit C).

8. Upon information and belief, the nieces of Walter Shapiro, Lynn Welt and Michele Welt, have requested to remove Walter Shapiro from the State of New Jersey. Walter's

son and Power of Attorney, Howard Shapiro, objects to any attempt to move Walter Shapiro from this jurisdiction.

WHEREFORE, Plaintiff demands Judgment:

- a. Adjudicating Walter Shapiro to be mentally incapacitated as a result of unsoundness of mind;
- b. Appointing a Full Guardian for Walter Shapiro;
- c. Appointing a Full Guardian to enable such person to have access and management over the alleged incapacitated person's Social Security and other monthly income and also to marshal his financial estate pending the Return Date for the full Hearing; and
- d. To set a Bond as applicable; and
- e. To provide for Accountings as ordered by the Court;
- f. Allowance of the costs of this proceeding to be paid from the estate of the incapacitated person;
- g. Allowance of Attorney's fees, the undersigned Counsel as Plaintiff; Physicians for their examination and/or reports; and as otherwise approved by the Court; and
- h. For such other relief as the Court deems equitable and just.

DATED: July 29, 2014

DAVID A. SEMANCHIK,
Attorney for Plaintiff

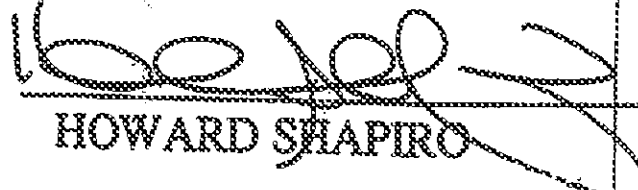
VERIFICATION

STATE OF NEW JERSEY:

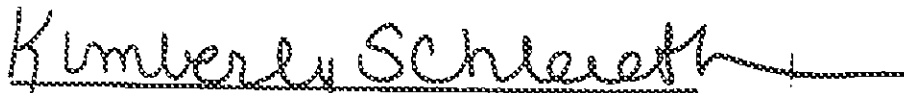
COUNTY OF ^{Morris} ~~OCEAN~~ SS:

I, HOWARD SHAPIRO, of full age, being duly sworn according to law, upon my oath,
depose and say:

1. I am the Plaintiff in the above-entitled matter and am familiar with the facts
pertaining to Walter Shapiro as set forth in the Complaint.


HOWARD SHAPIRO

Sworn and Subscribed to before me
this 31st day of July, 2014


Notary Public of New Jersey
Commission Expires:

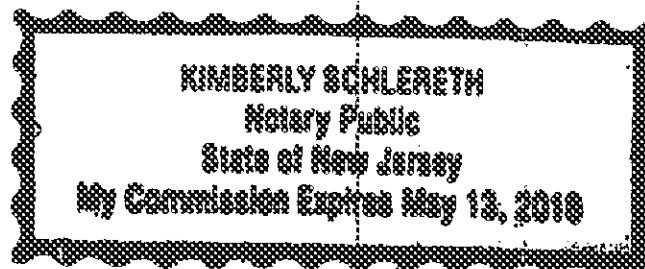


EXHIBIT A

RECEIVED JUL 02 2014

Beverlee A. Tegeder, Psy.D.
509 Main Street
Toms River, NJ 08753
N.J. Licensed Psychologist # 3472
(732) 244-4440

David Semanchik,
Attorney at Law
1130 Hooper Avenue
Toms River, NJ 08753

Re: Walter Shapiro

July 1, 2014

CERTIFICATION

Beverlee A. Tegeder, Psy.D. here by certifies the following:

1. I am a permanent resident of the state and a psychologist licensed to practice in the state of New Jersey (N.J. License #3472). I received a degree of Doctorate of Psychology from Rutgers University in New Jersey.
2. I am not a relative either through blood or marriage of the alleged incompetent. I am not the proprietor, director, or chief executive of any institution for the care and treatment of the insane in which the alleged incompetent is living or in which it is proposed to place him. I am not employed by the management of any such institution as a resident psychologist, nor do I have any financial interest therein.
3. I am not treating, nor have I treated the alleged incompetent in the past. I examined Walter Shapiro on June 27, 2014 and the findings of said examination are attached and incorporated as part of this certification.
4. It is my professional opinion that Walter Shapiro is incompetent and unable to govern all of his affairs. The basis for this opinion is found in the attached report.
5. Walter Shapiro is capable of attending a guardianship hearing; however, he would be unable to fully participate and comprehend such a proceeding.

6. I certify that the foregoing statements are true and I understand that if any of the above statements are willfully false I am subject to punishment.

Beverlee A. Tegeder, Psy.D. 7/1/14
Beverlee A. Tegeder, Psy.D. / Date
N.J. Licensed Psychologist

Beverlee A. Tegeder, Psy.D.
509 Main Street
Toms River, NJ 08753
N.J. Licensed Psychologist # 3472
(732) 244-4440

Competency Evaluation

Client's Name Walter Shapiro
Date of Birth: 1/26/32
Address: 159 St. Nicholas Avenue
 Lakewood, NJ
Date of Evaluation: 6/27/14

Reason for Referral:

Mr. Walter Shapiro was referred for a competency evaluation by Mr. David Semanchik, Attorney, who has been retained by his son, Howard Shapiro, in a guardianship matter. Howard Shapiro reported that his father, Walter Shapiro, had recently been admitted to a psychiatric facility in Long Island as a result of paranoid delusions. Walter Shapiro was discharged after 8 days, and he was prescribed Aricept and Seroquil. Howard Shapiro indicated that his father presently has a health care worker with him 24 hours a day. Howard Shapiro had attempted to place his father in an assistive living facility; however, his father became paranoid and the police had to intervene. The purpose of this evaluation was to determine Mr. Shapiro's mental competency and his ability to manage his affairs.

Clinical Observations & Interview:

Mr. Walter Shapiro was evaluated by the examiner in the living room of his home at 159 St. Nicholas Avenue in Lakewood, New Jersey. Mr. Shapiro greeted the examiner upon her arrival for the scheduled appointment, and he readily agreed to participate with the interview and assessment. Mr. Shapiro presented in a cordial manner and was cooperative. He appeared relaxed and comfortable in the examiner's company.

Mr. Shapiro is an 82 year old Caucasian male with balding grey hair, a mustache and hazel eyes. Mr. Shapiro was casually dressed for the assessment wearing jeans, a blue shirt, and sneakers. Mr. Shapiro has difficulty hearing so it was necessary for the examiner to speak loudly and to face him. His hygiene was good. Mr. Shapiro is an average built man weighing approximately 195 pounds, and he is 5' 5" feet tall. Mr. Shapiro is ambulatory, and he is able to care for his personal hygiene.

Mr. Shapiro spoke in moderate volume and at an even pace, and he frequently smiled during the testing session. He maintained good eye contact with the examiner, and his speech was clear and understandable with no articulation problems evident. Mr. Shapiro displayed poor concentration and an adequate attention span. Mr. Shapiro's mood was positive and his affect was full.

Mr. Shapiro indicated that he has lived in his present home for the past 42 years. He reported that his wife, Bertha, passed away 9 years ago. Mr. Shapiro told the examiner that his son recently set up a health care worker to stay with him 24 hours daily. Mr. Shapiro indicated that he has two sons; Adam and Howard.

Mr. Shapiro reported that he attended Tildon High School in Brooklyn, and he graduated in 1951. He then attended a trade school. Mr. Shapiro indicated that he worked as a compositor for the New York Times. He indicated that he worked evenings at the New York Times for 42 years until his retirement in 1998.

Mr. Shapiro indicated that he receives approximately \$40,000 year in combined income from social security, pension income, and union pension. He indicated that he pays his own bills each month, and he is able save money each month.

When asked about his medical history and medical concerns, Mr. Shapiro indicated that he had recently been hospitalized at a "Jewish Hospital in Long Island" and he was then transferred to South Oaks Psychiatric Facility. Mr. Shapiro indicated that he was told that he was "incompetent." Mr. Shapiro could not recall the medication that was prescribed to him upon his discharge. He told the examiner that he takes medication for his high blood pressure, "a pill for dementia," and a sleeping pill. Mr. Shapiro's health care worker provided the examiner with his medication information. Mr. Shapiro is prescribed: quetiapine fumarate (25 mg), donepezil HCL (5 mg), amlodipine besylate (10 mg), pravastatin sodium (20 mg), and enalapril maleate (10 mg).

When asked how he spends his time, Mr. Shapiro indicated that he spends his days shopping, watching sporting events on television, and getting out for lunch. Mr. Shapiro also enjoys sitting outside every day and enjoying the outdoors. Mr. Shapiro does not have a valid N.J. driver's license. He reported that he has a good appetite, and he has been sleeping well at night since he has been prescribed sleeping medication. Mr. Shapiro described his moods as irritable at times. He did not verbalize or exhibit any symptoms of anxiety. At the time of the evaluation, no hallucinations, delusions or paranoid thinking were indicated.

Folstein Mini-Mental Status Exam

Mr. Shapiro was cooperative during the assessment, and he appeared well motivated to do his best on the tasks presented. He exhibited an adequate attention span and poor concentration. Mr. Shapiro knows the day, date, month, year and season. He knows the place, address, city, county and state. He could register three words after one trial, and he

was able to recall two of the three words after distraction. He can count backwards from 100 by serial 7's for one problem. He is unable to repeat a sentence presented aloud. He could name simple objects such as pencil and watch. He could follow a three-step command. He is unable to follow a written command. He is able to write a complete sentence; however, he cannot adequately copy a design of two intersecting pentagons. Mr. Shapiro's Folstein Mental State Examination Score is 22/30 consistent with mild cognitive impairment.

Controlled Oral Word Association Test (COWAT)

Mr. Walter Shapiro was administered the Controlled Oral Word Association Test (COWAT). He responded in a slow, deliberate manner and was persistent in his efforts. He is able to name 12 words beginning with the letter "F", 5 words beginning with the letter "A", and 10 words beginning with the letter "S." He has five repetitions. Mr. Shapiro obtained a score of 27 indicating impaired executive functioning. Impaired executive functioning impacts the ability to think abstractly, order actions towards a goal, and adapt to the unexpected resulting in an inability to carry out activities of daily living as well as independent activities. Impaired executive functioning may impact activities such as the capacity to execute health care decisions, the ability to exercise self-control and the ability to manage finances and bills.

Clock Drawing Test

Mr. Shapiro was administered the Clock Drawing Test, a screening for cognitive impairment and dementia. Errors on his drawing were as follows: omission of numbers, drawing numbers outside of the circle, hands of the clock the same size, and unable to make any denotation of time. Mr. Shapiro's drawing was reflective of moderate visuospatial disorganization, and his results are indicative of moderate cognitive impairment.

Summary and Recommendations:

Mr. Walter Shapiro is an 82 year old Caucasian male who presently resides in his own home in Lakewood, New Jersey. Mr. Shapiro was recently diagnosed with dementia, and he has a health care worker with him 24 hours daily. Mr. Shapiro was cooperative and motivated to do his best on the assessment. He exhibited an adequate attention span and poor concentration. Mr. Shapiro reported having a good appetite and good sleeping habits. He does not present symptoms of anxiety. No hallucinations, delusions or paranoid thinking were indicated.

On the Folstein Mini-Mental Status Exam, Mr. Shapiro receives a score of 22/30 consistent with mild cognitive dysfunction. On the Controlled Oral Word Association Test (COWAT), he obtained a score of 27 indicating impaired executive functioning. Impaired executive functioning may impact activities such as the capacity to execute health care decisions, the ability to exercise self-control and the ability to manage

finances and bills. Results of the Clock Drawing Test are reflective of moderate visuospatial disorganization and are indicative of moderate cognitive impairment.

In conclusion, Mr. Shapiro is unable to make rational decisions about his well being. He is unable to make simple and complicated medical decisions that require informed consent. He does not have an understanding of his financial resources and needs. Based on this evaluation, Mr. Walter Shapiro is mentally incompetent. He is capable of attending a guardianship hearing; however, he would be unable to fully participate and comprehend such a proceeding.

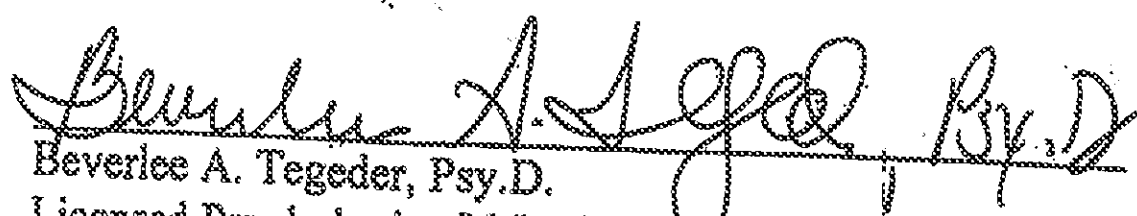

Beverlee A. Tegeder, Psy.D.
Licensed Psychologist (N.J. License #3472)

EXHIBIT B

LAW OFFICE OF DAVID A. SEMANCHIK
1130 Hooper Avenue, Suite 1
Toms River, NJ 08753
(888) 691-1099
David A. Semanchik, Esq.
Attorney for Plaintiff
DAS5336

IN THE MATTER OF
WALTER SHAPIRO

An Alleged Incapacitated
Person

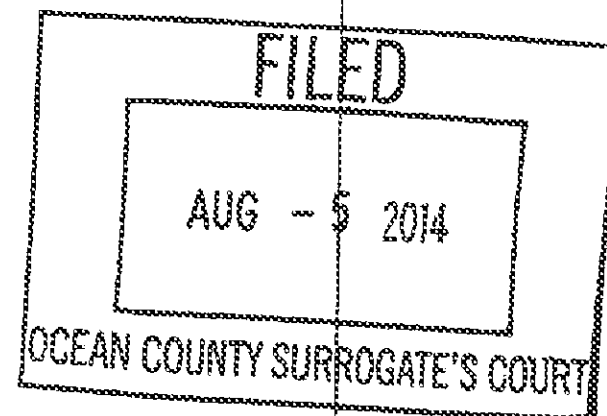
: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION - OCEAN COUNTY

: PROBATE PART

: DOCKET NO.: 206637

: CIVIL ACTION

: CERTIFICATION OF MARTIN WHITEMAN, D.O.



RECEIVED AUG - 8 2014

I, Martin Whiteman, D.O., being of full age certify as follows:

1. I am a permanent resident of the state of New Jersey and a physician licensed to practice medicine in the state of New Jersey for twenty-one years. I received a degree of Doctor of Osteopathy from the New York College of Osteopathic Medicine.
2. Pursuant to Rule 4:86-3, I hereby certify to the Court that I am not disqualified pursuant to said Rule and I am not related, either through blood or marriage, to the alleged incapacitated person, WALTER SHAPIRO, or to a proprietor, director or Chief Executive Officer of any institution for the care and treatment of the ill in which the alleged incapacitated person is living, or in which it is proposed to place him, or who is professionally employed by the management thereof as a resident physician or a psychologist or who is financially interested therein.

3. I am WALTER SHAPIRO'S examining physician. On July 2, 2014 I examined him in his home located at 159 St. Nicholas Avenue, Lakewood, NJ 08701 to evaluate his mental capacity and ability to govern his affairs.
4. WALTER SHAPIRO is an 82 year old gentleman with hazel eyes and grey hair with fronto-parietooceipital male pattern balding and a thick grey mustache.
5. WALTER SHAPIRO has a diagnosis of dementia, probable dementia with Lewy bodies, which is based on my evaluation and available clinical history, which is set forth in more detail in my attached report. His overall prognosis for any significant improvement in his cognitive status appears poor.
6. Based on my examination and the available clinical history, it is my medical opinion that WALTER SHAPIRO is unfit and unable to manage his affairs and is mentally incompetent. The particular circumstances and factual, medical basis for my opinion is set forth in my report.
7. Although WALTER SHAPIRO appears capable of attending a guardianship hearing, he would not likely be fully capable of comprehending or participating in such a proceeding due to his cognitive deficits and recurrent paranoid delusions.
8. I certify that the foregoing statements are true and I understand that if any of the above statements are willfully false I am subject to punishments.

Date: July 7, 2014


Martin Whiteman, D.O.

ADULT AND GERIATRIC NEUROLOGY
GUARDIANSHIPS & MEDICOLEGAL SERVICES

Phone 732-399-9477
Fax 732-279-0424

Diplomate, American Board
of Psychiatry & Neurology

MENTAL CAPACITY REPORT OF WALTER SHAPIRO
ALLEGED INCAPACITATED PERSON

IDENTIFYING DATA AND REASON FOR EVALUATION

Walter Shapiro is an 82 year-old-gentleman who was referred by the Ocean County Adult Protective Services' social worker Ms. Tiffany Tamasco. Mr. Shapiro was recently hospitalized in a psychiatric hospital in New York for eight days and diagnosed with dementia with Lewy bodies. He was examined in his home in Lakewood, New Jersey.

BACKGROUND INFORMATION

The following information was obtained during my telephone conversation with Mr. Shapiro's son Walter. Mr. Shapiro was fully independent and resided alone until being hospitalized at South Oaks Hospital in Amityville, New York. His wife died eight years ago. A precipitous decline in his condition became apparent when he recently drove to visit his girlfriend in Queens, New York. She reported that his paranoia had escalated to the point that he began sleeping with a knife and destroyed all the mirrors in his car with a hammer. When Walter took his father to the local emergency room in Queens, a psychiatric consultant deemed him not to be of immediate danger to himself or others. When Walter disagreed with their assessment of his father, he was referred for an outpatient geriatric psychiatry evaluation at South Oaks Hospital. After their evaluation, he was immediately admitted and underwent testing. Mr. Shapiro was diagnosed with Lewy body dementia. He was advised to stop driving and to have twenty-four hour supervision. Walter has noted a decline in his father's short-term memory, although his remote memory remains intact. In April of this year he had delusions of objects moving around in his house. His father's girlfriend reported him acting out his nightmares. He had been flailing his arms during his sleep. On one occasion he stood up over her holding a flashlight in the middle of the night saying that the television evangelists were telling her what to do. Mr. Shapiro has not been bathing or changing his clothes regularly. Over the past year he has exhibited a shuffling type gait, which he attributed to his "bad knees". He fell once about a month ago when he was dizzy. On a referral from his primary care physician Dr. Axelrod, Walter had previously taken him to see a neurologist. He had underwent cognitive testing, an MRI and an EEG, but was not given a diagnosis. Mr. Shapiro also has hypertension and hypercholesterolemia. Walter reported his current medications as Aricept, Seroquel, Vasotec, and Pravachol. Although Mr. Shapiro's sister in Georgia has been attempting to get him to move near her, Walter wants him to move into an assisted living facility near him in Lake Hopatcong, New Jersey. Since his hospitalization, Mr. Shapiro has resided in his home with a twenty-four hour aide. He has continued to exhibit significant paranoid delusions. He believed that Walter was coming to kill him and his girlfriend. He also accused Walter of stealing jewelry from his house. Walter had informed him that he removed the jewelry for security when he was hospitalized. He also had been observed sitting outside all day because he was "scared to be in the house". When he recently became extremely agitated, he ran out and took refuge in a neighbor's house. He also had withdrawn over \$7,500 from his bank account and given it to his niece for no apparent reason. After the niece was confronted about it, she eventually returned the money.

INTERVIEW AND MENTAL STATUS EXAMINATION

Mr. Walter Shapiro reported taking medications for hypertension, hypercholesterolemia and insomnia. He also uses a hearing aid in his ear. He did not know the names of his medications, but his aide showed me his medication containers, which listed generic formulations of Aricept, Seroquel, Vasotec, Norvasc, and Pravachol. Mr. Shapiro believed that Seroquel was for his sleep and reported to me that he had taken one shortly before my evaluation at 11:30 AM. He reported having "two people around the clock, twenty-four hours a day". He said, "I started to get a little weaker". He added that he "lost the privilege of driving. Without driving I need help to carry groceries". He reported that he manages his own finances and denied needing any assistance in doing so. When I inquired about his memory he said "very good long-term, better than short-term". He added, "I took a test a couple of weeks ago by a memory doctor and I was told that I did quite well". He retired in 1998 after working forty-two years as a composer for the New York Times. He showed me a picture of him and his girlfriend who resides in Queens. He stated his wife died nine years ago and her husband died ten years ago. He has two sons, ages 47 and 54 in Lake Hopatcong, New Jersey and Kissimmee, Florida respectively.

On examination he appeared alert and oriented to his street address, the town, county, state, month, season and year. He reported the date as the third and the day Thursday. He performed serial seven's as "100 - 93 - 85 - 78 - 71 - 68". He was unable to recall any of three objects after a several minute delay. He named two simple objects, repeated a given phrase and followed a three-step verbal and a written command. He was unable to copy a diagram of two intersecting pentagons but wrote a simple sentence. He scored 22/30 on the Folstein Mini-Mental State Exam. He named the current President and Vice President of the United States. He named the previous President but not the Vice President. He stated there were thirty-five nickels in \$1.35 of all nickels but correctly stated the number of nickels, dimes and quarters in one dollar respectively. When I asked him to tell me about any recent major news events he said, "Obama talked about the three kids that were abducted and killed in California". He added, "they want to send arms to the Syrian rebels". When I asked him to tell me about any major news events that occurred in New York City over the past fifteen years he said, "9-11, two planes crashed into the North and South Towers of the World Trade Center". When I inquired how it occurred he said, "the planes were hijacked and forced them to fly into it". He stated al-Qaeda was believed responsible. When I asked if they apprehended those believed to be responsible he said, "they caught a few, they caught the master mind, I believe he was killed by one of the drone planes, they bombed it". In addition, the Saint Louis University Mental Status Examination for Detecting Mild Cognitive Impairment and Dementia was performed. He scored 15/30 on this examination. During this exam he solved a problem requiring him to total two objects being purchased and give the correct change from one hundred dollars. He recalled two of five objects after a several minute delay. He named twelve animals one minute. He did not perform a digit span of three or four backwards. He was unable to place the hour markers or hands correctly on a clock face. After being read a brief story, he answered two of four questions correctly regarding it.

BRIEF NEUROLOGICAL EXAMINATION

His cranial nerves (II - VII) appeared essentially intact except for decreased hearing. His strength appeared good in both his arms and legs. His sensation was intact to pinprick and vibration in both his arms and legs. His deep tendon reflexes were symmetrically active in both his arms and legs except absent at both ankles. His gait was slightly small-stepped, although fairly steady.

DIAGNOSIS AND RECOMMENDATIONS

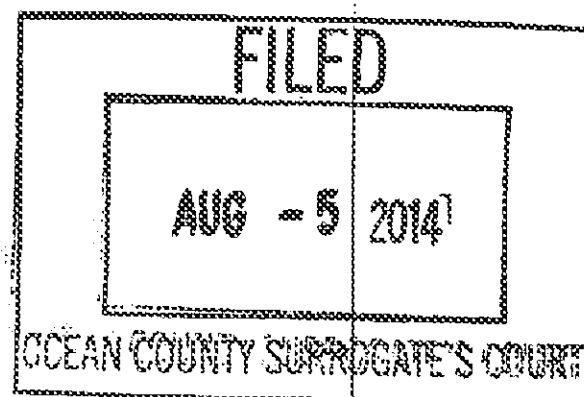
Walter Shapiro has evidence of mild cognitive deficits with a history of recent severe recurrent paranoid delusions. His scores of 22/30 on the Folstein Mini-Mental State Exam and 15/30 on the Saint Louis University Mental Status Examination were both within the range of a dementia. He exhibited significant short-term memory loss, impaired calculations, an impaired general fund of knowledge, constructional apraxia, and a diminished word fluency (naming twelve animals in one minute). According to his son Walter Shapiro, he had undergone prior cognitive testing, an MRI of the brain and EEG. Although it's a clinical diagnosis and not demonstrated on testing, I concur that he likely has dementia with Lewy bodies. The differential diagnosis includes a vascular dementia, Alzheimer's disease, Vitamin B12 deficiency, and hypothyroidism, although the latter two may have been excluded during his prior testing. Based on my evaluation and available clinical information, it is my medical opinion that Walter Shapiro should be adjudicated incompetent for medical, legal and financial decisions and should have a responsible legal guardian appointed to provide for his needs.

Date: July 7, 2014


Martin Whiteman, D.O.

EXHIBIT C

DAVID A. SEMANCHIK, ESQ.
1130 Hooper Avenue
Toms River, New Jersey 08753
(732) 240-4055
Attorney for Plaintiff
DAS5336



IN THE MATTER OF:

WALTER SHAPIRO

An Alleged Mentally
Incapacitated Person

: SUPERIOR COURT OF NEW JERSEY
: OCEAN COUNTY - PROBATE PART
: CHANCERY DIVISION

: DOCKET NO.: 206637

Civil Action

AFFIDAVIT OF ESTATE

RECEIVED AUG - 8 2014

STATE OF NEW JERSEY:

SS:

COUNTY OF OCEAN :

I, HOWARD SHAPIRO, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the Plaintiff in the above-entitled matter and somewhat familiar with the facts and circumstances pertaining to this matter. I have a Power of Attorney that was signed by Walter Shapiro on April 28, 2011, a copy of which is attached hereto, appointing me as Walter Shapiro's Durable Power of Attorney.

2. To the best of our knowledge, the assets of the estate are as follows:

INCOME

1. Social Security - Monthly:	\$ 1,875.00
2. CWA/ITA Pension	\$ 1,210.60
3. Metlife Pension	\$ 768.68
TOTAL KNOWN MONTHLY INCOME:	\$ 3,854.28

ASSETS

BANK ACCOUNTS:

1. Santander Bank	\$ 230,810.55
TOTAL LIQUID ASSETS:	\$ 230,810.55

PERSONAL PROPERTY

1. Contents of assisted living unit (estimate)

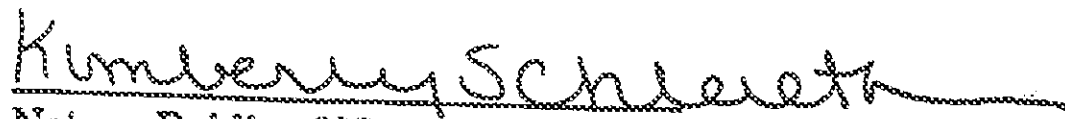
\$2,000.00

TOTAL ESTATE:

\$232,810.55

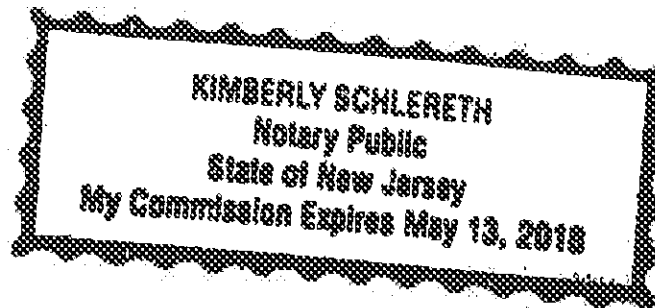

HOWARD SHAPIRO

Sworn and Subscribe to before me
this 31st day of July, 2014



Notary Public of New Jersey

Commission Expires:



DURABLE POWER OF ATTORNEY
(BROAD FORM)

KNOW ALL MEN BY THESE PRESENTS:

That, WALTER SHAPIRO residing at 159 St. Nicholas Avenue, in the Township of Lakewood, County of Ocean and State of New Jersey, as Principal does make, constitute and appoint Howard Andrew Shapiro, as his true and lawful attorney-in-fact for him in his name, place and stead for the following uses and purposes:

1. In the event that Howard Andrew Shapiro is unable, unwilling, or unavailable to act as my lawful attorney-in-fact, then I nominate, constitute and appoint, Adam Roy Shapiro, to act as my attorney-in-fact with the same powers.

2. To enter into, on my behalf, any kind or type of agreement or contract, written or oral, and perform the same which in my said attorney-in-fact's absolute judgment is deemed in my interest.

3. To buy and sell any and/or all securities of any kind or type now or hereafter belonging to me, including, without being by way of limitation, stocks, bonds, debentures, etc., and to effect such sale or purchase to make, execute and/or deliver any assignments, bills of sale or otherwise that may be necessary.

4. To deposit or withdraw any and all monies in any financial institution of any kind or type which shall come into my attorney-in-fact's hands.

My attorney-in-fact is specifically authorized "to conduct banking transactions" as set forth in section 2 of P.L. 1991-95 (C.46:2B-11) in accordance with the full authority conferred by that statute.

For the purpose of this paragraph, the term "monies" shall include every kind of chose in action which is redeemable in money, including, without being by way of limitation, checks, drafts, promissory notes, bills of exchange, certificates of deposit and withdrawal orders.

5. To demand, sue for, collect, recover, apply for and receive all goods, claims, monies, chose in action, proceeds, collateral, or interest of any kind or type either now due or that may hereafter be due, or belong to me, and to make, execute and deliver receipts, releases or discharges therefore, together with the right to engage accountants, attorneys at law, workmen and others, either in connection with this right for such other purposes my attorney-in-fact shall deem proper, and to pay the same such remuneration as my attorney-in-fact shall deem proper, giving and granting unto said attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present with full power of substitution and revocation, hereby ratifying and confirming all that said attorney-in-fact or substitute shall lawfully do or cause to be done by virtue hereof.

6. To borrow, from time to time, such sums of money at such rate or rates of interest, for such period or periods, and on such terms as my attorney-in-fact may deem proper in his, her or their absolute discretion, and, in connection therewith, to subject, to mortgage, liens, pledge or

hypothecation, either my real property or my personal property, all or any part thereof, and, in connection therewith, execute in my name, acknowledge and deliver all necessary documents including, without being by way of limitation, mortgages, notes, deeds of trust, etc., containing such conditions, terms, conveyances, provisions, and warranties as my attorney-in-fact may deem proper to evidence and secure the loans so procured.

7. I specifically authorize my attorney-in-fact to enter into and deposit in and/or remove anything in any safe deposit box that I may have in my name alone, or that I may have access to in my own right.

8. To contract to sell any and all real estate which I may own, wherever located, and to that end to negotiate completely the terms of the sale, including price, method of payment, and all related items and to execute a Deed or Deeds, Affidavit of Title or Affidavits of Title, and all related documents sufficient to effect conveyance of my real estate and to receive any and all proceeds of sale, whether cash, check or mortgage, in my attorney-in-fact's own name and to deal with the proceeds in all respects as if the absolute owner thereof.

9. In addition to the foregoing powers and in expansion of same, my attorney-in-fact is specifically further authorized to purchase and/or mortgage any real estate on my behalf, and execute in my name all documents of every kind and type necessary to effect said purchase or mortgage transaction or refinancing, including Deed, Affidavit of Title, Survey Affidavit, etc., Change, Closing Statements, mortgage, mortgage bonds and notes, and any and all other necessary documents.

10. To conduct, engage in, and transact any and all lawful business of whatever name or kind for me, on my behalf, and in my name.

I specifically authorize my attorney-in-fact to manually sign my signature in connection with the exercise of this Power of Attorney without the addition of any notations indicating that the signature was other than my own. I specifically make this authorization because I recognize the difficulty that sometimes attends the use of the Power of Attorney and I wish to minimize such difficulty to the greatest extent possible.

The power to exercise the authority herein conferred shall not be affected by my disability as Principal as defined in N.J.S.A. 46:2B-8b, or any similar Statute which applies in this or any other jurisdiction.

11. In further addition to the foregoing powers and in expansion of same, my attorney-in-fact is specifically authorized to consult with my physicians as to my condition and treatment and to consent, on my behalf, to the performance of any medical procedures which he or she may reasonably feel appropriate in the circumstances including my personal care, medical treatment, hospitalization and health care, and to withhold or withdraw any type of medical procedure even though my death will ensue.

My attorney-in-fact shall have the same access to any medical records that relate to me that I have, including the right to disclose the contents to others.

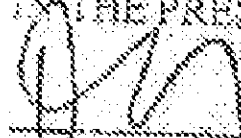
My attorney-in-fact shall also have full power to make a disposition of any part or of all of my body for medical purposes and/or to authorize an autopsy and direct the disposition of my remains.

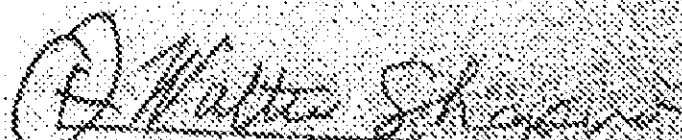
These powers in paragraph 11, shall be used to effect my wishes as set forth in the following Intervivos Direction to family and physicians: I do not want my life to be prolonged, nor do I want life sustaining treatment, including hydration and nutrition, to be provided or continued if my agent believes the burdens of treatment outweigh the expected benefits. I want my attorney-in-fact to consider the relief of suffering, the expense involved, and quality, as well as the possible extension of my life in making these decisions concerning life sustaining treatment. I specifically authorize the use of pain relieving drugs even if it may hasten my death.

If a Guardian needs to be appointed, I nominate the following to serve as Guardian: Howard Andrew Shapiro if available and if not, then I nominate Adam Roy Shapiro.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of April, 2011.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Jonathan Rudnick Esq



WALTER SHAPIRO

STATE OF NEW JERSEY

ss:

COUNTY OF MONMOUTH

BE IT REMEMBERED, that on this 28th day of April, 2011 before me the subscriber, personally appeared WALTER SHAPIRO, who I am satisfied is the person named in and who executed the within instrument, and thereupon he acknowledged that he signed, sealed and delivered the same as his act and deed for the uses and purposes therein expressed.


Jonathan Rudnick Esq

Prepared by:
CARTON & RUDNICK
788 Shrewsbury Avenue
Building 2 - Suite 204
Tinton Falls, New Jersey 07724
(732) 842-2070

EXHIBIT "B"

Christopher D. Olszak, Esq.
NJ Attorney ID#017292001
Law Office of Olszak & Olszak, L.L.C.
Leisure Square Mall
1000 State Highway No. 70
Lakewood, New Jersey 08701
(732) 367-7775
Attorney for Respondents, Rhoda Wasserstrom and Lynn Welt

IN THE MATTER OF
WALTER SHAPIRO,
An Alleged Mentally
Incapacitated Person.

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION-PROBATE PART
: OCEAN COUNTY
:
: DOCKET NO. 206637
:
: Civil Action
:
: ANSWER AND COUNTERCLAIM

The Respondents, Rhoda Wasserstrom and Lynn Welt, are the sister and niece of the alleged incapacitated person, Walter Shapiro, and reside at 1040 Fieldgate Lane, Roswell, Georgia, 30075. The Respondents, by way of Answer to Plaintiff's Complaint, say that:

1. The Respondents admit the allegations of paragraph 1.
2. The Respondents admit the allegations of paragraph 2 in part. Walter Shapiro's domicile is 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701. The Respondents neither admit nor deny the remaining allegations of paragraph 2 and the Plaintiff is left to his proofs.
3. The Respondents admit the allegations of paragraph 3 in part. Walter Shapiro is an 81 year old Caucasian with a date of birth of January 28, 1933. The Respondents deny that Walter Shapiro is currently suffering from significant cognitive deficits and impaired insight and is in need of a full permanent legal guardian and the Plaintiff is left to his proofs.

4. The Respondents deny the allegations of paragraph 4 and believe that there is another interested party must be added to the Complaint. Specifically, Walter has a girlfriend, Alice Walker, who resides at 13640 242 Street, Rosedale, New York, 11422.

5. The Respondents neither admit nor deny the remaining allegations of paragraph 5 and the Plaintiff is left to his proofs. The Respondents note that the Plaintiff has not submitted any physician report or notes from a doctor at Shady Oak Hospital in Long Island that allegedly diagnoses Walter Shapiro with Lewy Body Dementia.

6. The Respondents deny the allegations of paragraph 6 and the Plaintiff is left to his proofs. The Respondents deny that the information contained in the reports support the physicians' opinions that Walter Shapiro is unable to make decisions about his well being and that he is mentally incompetent.

7. The Respondents neither admit nor deny the allegations of paragraph 7 and the Plaintiff is left to his proofs.

8. The Respondents deny the allegations of paragraph 8.

WHEREFORE, Respondents, Rhoda Wasserstrom and Lynn Welt, demand judgment:

A. Dismissing the Complaint with prejudice, or in the alternative, appointing a third-party other than Howard Andrew Shapiro of Adam Shapiro to serve as Guardian of Walter Shapiro;

B. For attorney fees and costs to together with attorney fees and costs of suit,

C. Allowing remittance of reasonable costs and fees from the assets of Walter Shapiro of against Howard Andrew Shapiro individually; and

D. For such other relief as the Court deems equitable and just.

COUNTERCLAIM

ACCOUNTING

1. Howard Andrew Shapiro was named as the attorney-in-fact for Walter Shapiro pursuant to a durable power of attorney dated April 28, 2011. A copy of Walter Shapiro's power of attorney dated April 28, 2011 is attached hereto as "Exhibit A."

2. Walter Shapiro's power of attorney dated April 28, 2011 did not authorize his attorney-in-fact to make gifts of his assets.

3. After obtaining power of attorney from his father, Howard Andrew Shapiro closed all of Walter Shapiro's bank accounts and restricted Walter's access to his funds.

4. Upon information and belief, Howard Andrew Shapiro used Walter Shapiro's money to purchase a BMW for himself within the last three months.

5. Upon information and belief, Howard Andrew Shapiro's mortgage encumbering his house located at 623 Skyline Drive, Lake Hopatcong, New Jersey, 07849, is subject to a pending foreclosure action and the Respondents are concerned that he will use or has used Walter's money for himself and to pay his own debts. A copy of a lis pendens filed in Morris County on September 24, 2013 is attached hereto as "Exhibit B".

6. On or about July 7, 2014, Howard Andrew Shapiro and Adam Shapiro removed Walter Shapiro from his residence located at 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701 and immediately listed the house for sale by owner.

7. Upon information and belief, Walter Shapiro did not wish to sell his residence located at 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701.

8. Upon information and belief, Howard Andrew Shapiro entered into a contract to sell Walter's residence located at 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701 as attorney-in-fact for Walter Shapiro.

9. On or about July 17, 2014, Howard Andrew Shapiro as attorney-in-fact for Walter Shapiro, sold the real property and premises located at 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701 for less than fair market value to David Holtz for Two Hundred Thirty Thousand (\$230,000.00) Dollars. A copy of the deed July 17, 2014 is attached hereto as "Exhibit C".

10. Upon information and belief, Howard Andrew Shapiro intentionally delayed filing the present guardianship until after the closing occurred on 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701 so that the Court would not inquire as to the adequacy of the sale price or whether or not the sale was in Walter's best interest.

WHEREFORE, Plaintiffs demand judgment:

A. Requiring Howard Andrew Shapiro to account to the Plaintiffs and the Court for all acts, expenditures, and financial transactions that he has taken in regard to Walter Shapiro's assets since April 28, 2011, including, but not limited to, his bank accounts, jewelry, his automobile, the proceeds from the sale of 159 St. Nicholas Avenue, Lakewood, Ocean County, New Jersey, 08701, and the sale of the contents of the house;

B. Requiring Howard Andrew Shapiro to return any of Walter Shapiro's assets that may have been transferred into Howard's name alone;

C. Allowing remittance of reasonable costs and fees from the assets of Walter Shapiro of against Howard Andrew Shapiro individually; and

D. For such other relief as the Court may deem appropriate and necessary under the circumstances.

Law Office of Olszak and Olszak, L.L.C.

Date: _____

By Christopher D. Olszak, Esq.
Attorney for Respondents
Rhoda Wasserstrom and Lynn Welt

CERTIFICATION OF FILING AND SERVICE

I certify that the within pleading has been filed and served within the time prescribed by the Rules of Court.

TRIAL COUNSEL DESIGNATION

Pursuant to Rule 4:25-4, Christopher D. Olszak, Esq. of the Law Office of Olszak and Olszak, L.L.C. is hereby designated as trial counsel on behalf of the Respondents, Rhoda Wasserstrom and Lynn Welt.

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify, pursuant to Rule 4:5-1, that the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, with the exception of a possible future need to declare the estate insolvent, and that aside from Alice Walker, no other parties should be jointed in this action. I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

OLSZAK & OLSZAK, L.L.C.
Attorney for the Respondents
Rhoda Wasserstrom and Lynn Welt

Dated: September 3, 2014

By: _____
Christopher D. Olszak, Esquire

EXHIBIT "C"

For: Court Record
Re: Guardianship of Walter Shapiro
From: Allan E. Shapiro, Brother of Walter

In my assessment of Walter Shapiro's needs, I find the following persons unsuitable to manage the welfare and financial affairs of Walter Shapiro.

Said persons:

Howard Shapiro, Walter's son
Adam Shapiro, Walter's son
Jenna Shapiro, Howard's spouse
Maryann Shapiro, Adam's spouse

I strongly recommend an independent senior advocate case manager who is close to wherever Walter resides.

The past behaviors and history of their interactions with Walter and their financial instabilities attest to my recommendations.

Maryann and Jenna Shapiro willfully discouraged Walter from visiting their homes or having any contact with his grandchildren. Howard rarely contacted his father but only through emails via Walter's friend, Alice Walker, in order to conceal this. Adam would secretly call Walter on his cell phone while driving so as his wife would not be aware.

However, all of the above mentioned persons and their children were not adverse to receiving monies and gifts from Walter. I find these hypocritical behaviors deceitful, perverse and lacking in moral character.

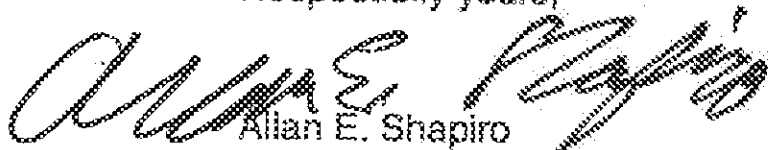
Further investigation revealed that the listed persons have a poor history of attending to financial obligations in a responsible manner.

When I was made aware of Howard Shapiro willfully abusing the joint checking account funded by Walter's Social Security and pension deposits, I notified Social Services and Adult Protective Services in Toms River, New Jersey, to the dismay of Jenna Shapiro. Another suspicious behavior by Howard Shapiro was the coercion of Walter to purchase a new expensive BMW SUV which Adam agreed was probably for the future benefit of Howard. It seemed inappropriate for an 81 year old person and is likely presently in Howard's possession.

Howard also possesses the only keys to Walter's home which was recently rifled through by the above persons and their children to secure items they may have desired. Walter had first been abducted from his home in order to do this.

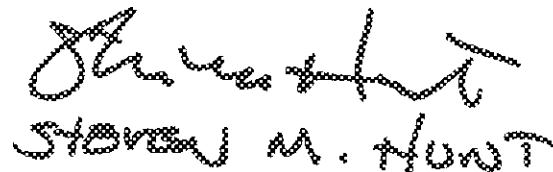
In view of my impressions, I strongly object to Walter's sons, their spouses, or children to be appointed by the court to any form of guardianship for Walter Shapiro.

Respectfully yours,



Allan E. Shapiro
Lt. Col. US Army (Retired)
Psychiatric Clinical Nurse Specialist
990 Rao Drive
Monroe GA 30655

Witnessed by:



STEVEN M. HUNT

Residing at:

930 Rao Dr
Monroe, GA 30655

Walton County, Georgia

This 12th day in the August
year 2014

EXHIBIT "D"

**LAW OFFICES OF
BENJAMIN H. MABLE, III**

A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEY AT LAW

GLEN COVE PROFESSIONAL BUILDING

769 U.S. HIGHWAY NINE

BERKELEY TOWNSHIP, NEW JERSEY 08721-2540

TELEPHONE: (732) 606-9100 • FACSIMILE: (732) 606-9696

Benjamin H. Mable, III*

Madeline M. Buczynski

December 11, 2014

SENT VIA FACSIMILE (732) 506-5087 AND REGULAR MAIL

The Honorable John A. Peterson, Jr., J.S.C.

Ocean County Courthouse

118 Washington Street

PO Box 2191

Toms River, New Jersey 08754-2191

RE: IMO Walter Shapiro
Docket No. #206637

Dear Judge Peterson:

This office serves as the Court Appointed Attorney as it relates to the above referenced matter. Please accept this letter as a Supplemental Report to our report forwarded to the Court on November 5, 2014.

Pursuant to ongoing discussions between all the parties, on November 17, 2014 Mr. Walter Shapiro was examined by Dr. Dennis Coffey, Psy. D. from South Jersey Psychology. In his report Dr. Coffey states that Mr. Shapiro was seen in a nursing facility in Roseland, New Jersey where he has been since July 2014. Mr. Shapiro gave Dr. Coffey a tour of the facility as soon as he arrived and stated that he loves it there. According to Dr. Coffey, Mr. Shapiro did not have any problem following the topic of conversation or participating in the interview, his mood was normal and affect appropriate according to the report. Mr. Shapiro indicated that he had "bad hallucinations" and was told that "he needed help and he got help". Mr. Shapiro stated that his son took him to Solana at Roseland and he did not want to be there but after a 10 day trial he loved it. According to Dr. Coffey, Mr. Shapiro stated that Howard sold his home without his knowledge and "never let him do back to the house", and believes that Howard took \$30,000.00 in cash from his bank account. It is the medical opinion of Dr. Coffey that Walter Shapiro would benefit from the appointment of a Conservatorship of his choosing to assist him in the management of his affairs. Dr. Coffey states that there is no need for a guardian to be appointed at this time.

As previously stated in this office's aforementioned Court Appointed Attorney report and based on the foregoing, as Mr. Walter Shapiro's Court Appointed Counsel, we oppose the declaration of incapacity of Walter Shapiro. However, Mr. Shapiro has no objection to the appointment of a Conservator of his property. At this time of this report Mr. Shapiro's niece, Ms. Michele Welt is Mr. Shapiro's choice to serve as his Conservator.

If the Court requires any additional information, I will provide the same at the final hearing. As always, if you have any questions with regards to this or any other matter, please do not hesitate to contact me at your convenience at (732) 606-9100.

By copy of this letter all interested parties below will be receiving copies of the same.

Very truly yours,
Law Offices of Benjamin H. Mable, III, LLC

BENJAMIN H. MABLE, III

BHM:esa

Cc: David Semanchik, Esq.
Christopher Olszak, Esq.
James Gluck, Esq.

File

*Licensed to Practice Before the United States Supreme Court, in the State of New Jersey and the District of Columbia
*Rule 1:40 Qualified Mediator *Member of the National Academy of Elder Law Attorneys

SHAPIRO000089

LAW OFFICES OF
BENJAMIN H. MABIE, III
A PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEY AT LAW
 GLEN COVE PROFESSIONAL BUILDING
 769 U.S. HIGHWAY NINE
 BERKELEY TOWNSHIP, NEW JERSEY 08721-2540
 TELEPHONE: (732) 606-9100 • FACSIMILE: (732) 606-9696

DATE: 12-11-14

MULTIPLE FAX TRANSMISSION COVER SHEET

CLIENT/MATTER: no father Shapiro FROM: Endr.

Total Number of Pages including this page: 2

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Firm: _____

City: _____

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3. Name: Christopher Dwyer

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City: _____

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2. Name: David Demarchi

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City: _____

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Firm: _____

City: _____

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EXHIBIT "E"

Background Report

Howard Shapiro

Report Expiration
December 30, 2014

Name Howard Shapiro
Age 46
Date of Birth 9/1/1967
Phone Number 973-663-1203
Additional Phone Numbers 732-364-6348, 610-539-3802
Most Recent Address 623 Skyline Dr, Lake Hopatcong, NJ 07849-2473
Criminal Records 1 records found
Aliases/Name Variations Howard A Shapiro, Howard Andrew Shapiro

Email:

h****@axx.cxx	Howard Shapiro 159 Saint Nicholas Ave Lakewood, NJ 08701
h****@hxxxxxx.cxx	Howard Shapiro 159 Saint Nicholas Ave Lakewood, NJ 08701
s****@nj.rr.com	Howard Shapiro 159 Saint Nicholas Ave Lakewood, NJ 08701-3008
s****@address.com	Howard.Shapiro 159 Saint Nicholas Ave Lakewood, NJ 08701
s****@aol.com	Howard Shapiro 159 Saint Nicholas Ave Lakewood, NJ 08701

6 addresses were found

Address	City, State, Zip	Phone	Added	Updated
623 Skyline Dr	Lake Hopatcong, NJ 07849-2473	973-663-1203		
623 Skyline Dr	Jefferson Lake, NJ 07849-2473	973-663-1203		
623 Skyline Dr	Jeffrsn Twp, NJ 07849-2473	973-663-1203		
159 Saint Nicholas Ave	Lakewood, NJ 08701-3008	732-364-6348		
194 N Whitehall Rd	Norristown, PA 19403-2868	610-539-3802		
991 Jessica Ct	Lakewood, NJ 08701-3654	732-364-6348		

SHAPIRO000092

Social Network Profiles

Social Network search results include Facebook, LinkedIn and Twitter profiles. Social networks require that you give us permission to run a Social Network search. No one in your network will be notified and your account information is not added to our search database.

No social network profiles were found

Work Information

Work Information listings are compiled from databases containing over 75 million professional contacts.

1 potential work result was found

Name: Howard Shapiro
Job Title: Regional Sales Manager
Company Name: Staples
Address: Jersey City, NJ 07310-
Email Addresses: s****@staplescom.com

Possible Relatives

Possible relatives are people who are likely relatives of Howard Shapiro based on matching surname and shared addresses. Please note that this will not include all relatives.

4 possible relatives were found

Name	Age	Address
Jenna G Shapiro	42	623 Skyline Dr Lake Hopatcong, NJ 07849-2473
Howard Barry Shapiro	57	25234 Finchgrove Ln Katy, TX 77494-6474
Walter B Shapiro	81	159 Saint Nicholas Ave Lakewood, NJ 08701-3008
Berta W Shapiro	77	159 Saint Nicholas Ave Apt A Lakewood, NJ 08701-3008

Neighbors

Neighbors are people who, based on known addresses, currently live or have lived near Howard Shapiro's current and previous addresses.

19 neighbors were found

Name	Age	Address
------	-----	---------

Marc Amy Ingoglia	40	621 Skyline Dr Lake Hopatcong, NJ 07849-2473
Aurora P Sabala		626 Skyline Dr Lake Hopatcong, NJ 07849-2451
Elizabeth Klantschi		615 Skyline Dr Lake Hopatcong, NJ 07849-2473
Fritz Elizabeth Klantschi	56	615 Skyline Dr Lake Hopatcong, NJ 07849-2473
Yisroel Moshe Scheinerman	45	156 Saint Nicholas Ave Lakewood, NJ 08701-3007
Malika A Scheinerman	67	156 Saint Nicholas Ave Lakewood, NJ 08701-3007
Nancy B Snyder	60	164 Saint Nicholas Ave Lakewood, NJ 08701-3007
Deena L Holland	65	151 Saint Nicholas Ave Lakewood, NJ 08701-3008
Seymour S Holland	74	151 Saint Nicholas Ave Lakewood, NJ 08701-3008
Nicholas P Ditomassi	46	193 N Whitehall Rd Norristown, PA 19403-2870
Patricia L Ditomassi	46	193 N Whitehall Rd Norristown, PA 19403-2870
Lydia M Trecroce	84	195 N Whitehall Rd Norristown, PA 19403-2870
Bhavik R Patel	40	192 N Whitehall Rd Norristown, PA 19403-2868
Ranchhodbhai J Patel	68	192 N Whitehall Rd Norristown, PA 19403-2868
Trinidad M Zavala	32	192 N Whitehall Rd Norristown, PA 19403-2868
Julio C Saavedra		990 Jessica Ct Lakewood, NJ 08701-3654
Maria Perez	99+	992 Jessica Ct Lakewood, NJ 08701-3654
Luis Forero	31	992 Jessica Ct Lakewood, NJ 08701-3654
Luis E Forero Sr	72	992 Jessica Ct Apt 46 Lakewood, NJ 08701-3654

Criminal Records

Name Howard A Shapiro
Birthdate 9/1967
Offense: Failure To Stop At Red Signal
Offense Date: 10/1/2011
Offense: Obedience To Traffic-Control Devices
Offense Date: 10/1/2011
Location Pennsylvania
Court Criminal Court

Case Number MJ-38121-TR-0005045-2011

Offender ID PU80545391445881366MJ-38121-TR-0005045-201120111006

[Click here to run more criminal searches. FREE with your membership.](#)

Motor Accidents

Motor Accidents records are known automobile accidents and the associated individuals.

A comprehensive search of motor accidents was run and Howard Shapiro was not associated with any motor accidents.

No motor accidents were found

Employment History

No employment history was found

Business Ownership

Business ownership records are compiled from public filings, commercial records and SEC registrations.

A comprehensive search of business records was run and Howard Shapiro was not listed as an owner of any businesses. This does not necessarily reflect employment with a company.

No owned businesses found

Property Ownership

Property ownership records are compiled from nationwide real property records commonly found with the county tax assessor.

A comprehensive search of real property records for Howard Shapiro was run and no listings were found.

No owned properties were found

Bankruptcies

Bankruptcy is the declared inability to pay creditors. Bankruptcies records are compiled from local, state, and federal courts to include Chapter 7, 11, and 13 bankruptcies. Please note that these records cannot be used to determine an individual's eligibility for credit, insurance, employment or other purposes under the Fair Credit Report Act (FCRA). [Learn more](#) about FCRA compliance.

2 bankruptcies were found

Chapter Description: Chapter 7

Filing Date: 6/5/2008

Resolution Date: 9/12/2008

Court: New Jersey - Newark

Type: Individual

Filer Type: Individual

Debtors: Howard A Shapiro

Attorneys: Dean G Sutton Att At Law

Dean G Sutton

Trustees: Jay L Lubetkin

Chapter Description: Chapter 7

Filing Date: 6/9/1998

Resolution Date: 9/21/1998

Court: New Jersey - Trenton

Type: Individual

Filer Type: Individual

Debtors: Hs Security Systems

Hs Security Systems

Attorneys: Michele Lombardo

Carbone Lombardo

Trustees: Karen E Bezner

Judgments + Liens

A court-ordered lien is a legal claim issued to secure payment when someone fails to pay state and/or federal taxes. Depending on the jurisdiction, judgments are generally found within the lower courts often referred to as Small Claims and Municipal Courts. Please note that these records cannot be used to determine an individual's eligibility for credit, insurance, employment or other purposes under the Fair Credit Report Act (FCRA). [Learn more](#) about FCRA compliance.

20 judgments or liens were found

Type Civil New Filing (ID: DC00540608)
Amount \$15,000
Filing Date 5/12/2008
Debtors Howard Shapiro
Creditors Deterrent Technologi Es Inc

Type Civil Judgment (ID: DC01103007)
Civil New Filing (ID: DC01103007)
Amount \$10,180
Filing Date 3/31/2008
Debtors Howard Shapiro
Creditors American Express Tra Vel Relat
American Express Tra Vel Relat E

Type Civil New Filing (ID: DC00313808)
Amount \$14,999
Filing Date 3/14/2008
Debtors Howard Shapiro
Creditors Aurora Electrical Su Pply

Type Civil Judgment (ID: DC00965807)
Civil New Filing (ID: DC00965807)
Amount \$2,288
Filing Date 12/27/2007
Debtors Howard A Shapiro
Creditors Jet Line Products In C

Type Civil Judgment (ID: L00438406)
Vacated Judgment (ID: L00438406)
Amount \$81,019
Filing Date 6/20/2007
Debtors Howard A Shapiro
Creditors Pnc Bank Na

Type Civil Judgment (ID: L00057207)
Amount \$53,481
Filing Date 5/29/2007
Debtors Howard Shapiro
Creditors Home Vest Capital Llc

Type Judgment (ID: J-247139-2006)
Amount \$107,001
Filing Date 9/22/2006
Debtors Howard A Shapiro
Creditors Pnc Bank Na

Type Civil Suit (ID: L 002096 06)
Amount \$39,002
Filing Date 8/2/2006
Debtors Howard A Shapiro
Creditors Jpmorgan Chase Bank Na

Type Civil Suit (ID: L 004384 06)
Amount N/A
Filing Date 5/25/2006
Debtors Howard A Shapiro
Creditors Pnc Bank N A

Type Civil Suit (ID: L 000318 06)
Amount N/A
Filing Date 1/25/2006

Debtors Howard Shapiro
Jenna Shapairo
Creditors Township Of Jefferson

Type Public Defender Lien (ID: PD-174537-2003)
Amount \$50
Filing Date 7/16/2003
Debtors Howard Shapiro
Creditors Office Of The Public Defender

Type Civil Suit (ID: DC-005864-2001)
Amount \$595
Filing Date 7/9/2001
Debtors Howard Shapiro
Creditors Springfield Rehab

Type Civil Suit (ID: DC 003652 1998)
Amount \$6,569
Filing Date 4/17/1998
Debtors Howard A Shapiro
Creditors L & H Plumbing & Heating Supp

Type Judgment (ID: DC 000629 1998)
Amount \$5,475
Filing Date 3/24/1998
Debtors Howard Shapiro
Creditors Beneficial New Jersey

Type Civil Suit (ID: DC 000629 1998)
Amount \$5,647
Filing Date 1/8/1998
Debtors Howard Shapiro
Creditors Beneficial New Jersey

Type Judgment
Amount \$8,509
Filing Date 5/23/1996
Debtors Howard A Shapiro
Creditors Household Finance Corporationi

Type Civil Suit
Amount \$8,018
Filing Date 4/16/1996
Debtors Howard A Shapiro
Creditors Household Finance Corporation

Type Civil Suit

Amount \$413
Filing Date 10/5/1995
Debtors Howard Shapiro
Creditors Edwin J O Malley Jr
Gregory A Surman

Type Civil Suit
Amount \$1,025
Filing Date 2/8/1995
Debtors Howard Shapiro
Creditors Monmouth Auto Body
Tartan Inc.

Type Civil Suit (ID: L 000139 1995)
Amount \$2,600
Filing Date 1/23/1995
Debtors Howard A Shapiro
Creditors Spt Electric Supply Co Inc.

Professional Licenses

License Number: 34EI01190500
License Type: Electrical Contractor
Status: Active
Issuing State: New Jersey
Issue Date: 1/6/1993
Expiration Date: 3/31/2009
Address: 623 Skyline Dr
Lake Hopatcong, NJ 07849-2473

License Number: 34EI01190500
License Type: Electrical Contractor
Status: Active
Issuing State: New Jersey
Issue Date: 1/6/1993
Expiration Date: 3/31/2006
Address: 159 Saint Nicholas Ave
Lakewood, NJ 08701-3008

In addition, a broader search for professional licenses was run for Howard Shapiro in Lake Hopatcong, NJ who may also have the following licenses:

First Name: Howard
Last Name: Shapiro
License Number: 34EI01190500
License Type: Contractor: Electrical Contractor
Status: Expired
Issuing State: NJ
Issue Date: 03/29/2012

Expiration Date: 02/28/2012
Address: Lake Hopatcong, NJ

First Name: Howard
Last Name: Shapiro
License Number: 34EI01190500
License Type:
Status: Expired
Issuing State: NJ
Issue Date: 03/29/2009
Expiration Date: 02/27/2009
Address: Lake Hopatcong, NJ 07849

Professional Licenses

In addition, a broader search for professional licenses was run for Howard Shapiro in Lake Hopatcong, NJ who may also have the following licenses:

First Name: Howard
Last Name: Shapiro
License Number: 34EI01190500
License Type: Contractor: Electrical Contractor
Status: Expired
Issuing State: NJ
Issue Date: 03/29/2012
Expiration Date: 02/28/2012
Address: Lake Hopatcong, NJ

First Name: Howard
Last Name: Shapiro
License Number: 34EI01190500
License Type:
Status: Expired
Issuing State: NJ
Issue Date: 03/29/2009
Expiration Date: 02/27/2009
Address: Lake Hopatcong, NJ 07849

Registered Aircrafts

No aircrafts were found

Registered Watercrafts

No watercrafts were found

FAA Certification

No FAA certifications were found

UCC Filings

Filing Number 22468062

Location New Jersey

Filing Date 7/9/2004

Debtors Howard A Shapiro

Secureds

Commerce Bank N A

Commerce Bank, N.A.

Td Bank, N.A. Successor By Merger To Commerce Bank, N.A.

Collateral

07/09/2004 22468062 - Equipment All And Proceeds;account(s) All And Proceeds;general Intangible(s) All And Proceeds;inventory All And Proceeds;chattel Paper All And Proceeds

EXHIBIT "F"



Morris County
Document Summary Sheet

MORRIS COUNTY
PO BOX 315
COURT STREET
MORRISTOWN NJ 07963 0315

MORRIS COUNTY, NJ
Joan Bramhall
LPF-OR BOOK 22426 PG 304
RECORDED 09/24/2013 11:37:33
FILE NUMBER 2013077756
RCPT # 908187; RECD BY: eRecord
RECORDING FEES 104.00
INDEX FEE 54.00
Official Use Only

Transaction Identification Number

2084864 1298890

Submission Date(mm/dd/yyyy)	09/24/2013
No. of Pages (excluding Summary Sheet)	2
Recording Fee (excluding transfer tax)	\$104.00
Realty Transfer Tax	\$0.00
Total Amount	\$104.00

Return Address *(For recorded documents)*

PHELAN, HALLINAN & SCHMIDT, P.C.
400 FELLOWSHIP ROAD
SUITE 100
MT. LAUREL NJ 08054

Document Type LIS PENDEN/FORECLOSURE

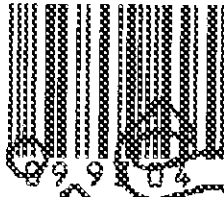
Municipal Codes

JEFFERSON TWP 1414

Batch Type

L2 - LEVEL 2 (WITH IMAGES)

Bar Code(s)



Additional Information (Official Use Only)

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**Morris County
Document Summary Sheet**

LIS PENDEN/FORECL OSURE	Type	LIS PENDEN/FORECLOSURE			
	Consideration				
	Submitted By	PHELAN, HALLINAN & SCHMIEG, P.C.			
	Document Date	06/19/2013			
	Reference Info				
	Book ID	Book	Beginning Page	Instrument No	Recorded/File Date
	M	18098	235		
	DEFENDANT	Name Address			
		HOWARD SHAPIRO			
		FICTITIOUS SPOUSE			
		JENNA THORSLAND SHAPIRO			
		FICTITIOUS SPOUSE			
		CITIBANK, NA			
		JPMORGAN CHASE BANK, N.A.			
		HOME VEST CAPITAL LLC			
	VALLEY NATIONAL BANK				
	PNC BANK, NA				
	UNIVERSAL SUPPLY GROUP INC				
	UNKNOWN TENANTS				
	BANK OF AMERICA				
PLAINTIFF	Name Address				
	US BANK NATIONAL ASSOCIATION				
	BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2005-AC2				

*** DO NOT REMOVE THIS PAGE.**
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Morris County
Document Summary Sheet

Parcel Info

Property Type

Tax Dist.

Block

Lot

Qualifier

Municipality

This is not a certified copy

** DO NOT REMOVE THIS PAGE.*

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146957
Phelan Hallinan & Diamond, PC
400 Fellowship Road, Suite 100
Mt. Laurel, NJ 08054
Phone: 856-813-5500
Attorneys for Plaintiff

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR BEAR STEARNS ASSET
BACKED SECURITIES I TRUST 2005-AC2
ASSET-BACKED CERTIFICATES, SERIES
2005-AC2
PLAINTIFF

Vs.

HOWARD SHAPIRO,
MRS. HOWARD SHAPIRO, HIS WIFE;
JENNA THORSLAND SHAPIRO,
MR. SHAPIRO, HUSBAND OF JENNA
THORSLAND SHAPIRO;
CITIBANK, NA;
JPMORGAN CHASE BANK, N.A.;
HOME VEST CAPITAL LLC, SUCCESSOR IN
INTEREST TO BANK OF AMERICA, NA;
VALLEY NATIONAL BANK;
PNC BANK, NA;
UNIVERSAL SUPPLY GROUP INC.;
UNKNOWN TENANTS
DEFENDANT(S)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY

DOCKET NO: F-019298-12

CIVIL ACTION
NOTICE OF LIS PENDENS

TO WHOM IT MAY CONCERN

Notice is hereby given of the commencement and pendency of the above-entitled Civil Action, the general objects of which are:

1. To foreclose the following mortgage covering the premises hereinafter described, to wit:

Mortgage made by HOWARD SHAPIRO and JENNA THORSLAND SHAPIRO and given to UNION FEDERAL BANK OF INDIANAPOLIS dated November 19, 2004 and recorded December 3, 2004 in the Office of the MORRIS County Clerk in Book 18098, Page 235. Said mortgage was subsequently assigned to Plaintiff herein.

2. To recover possession of the lands and premises hereinafter described.

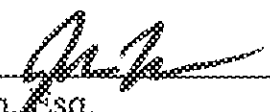
The land and premises to be affected by said suit are described in Exhibit "A" annexed hereto.

3. The Foreclosure Complaint in the above-entitled action was filed in the Office of the Clerk of the Superior Court of New Jersey on June 6, 2013.

PHELAN HALLINAN & DIAMOND, PC

Date: June 19, 2013

By:


John D. Krohn, Esq.
Attorney for Plaintiff

All that certain lot, tract or parcel of land, lying and situated at 523 Skyline Drive, Township of Jefferson, Morris County and State of New Jersey, bounded and described as follows:

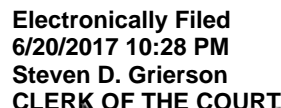
Beginning at a point on the Easterly line of Skyline Drive, said point being located a distance of 1,859.24' from the intersection of the Easterly line of Skyline Drive and the terminus of a curve leading from Hunters Ridge and from said point running THENCE

1. North 60 degrees 00 minutes 34 seconds East 156.46' to a point; THENCE
2. South 00 degrees 28 minutes 23 seconds East 135.1' to a point; THENCE
3. South 70 degrees 17 minutes 48 seconds West 103.35' to a point on the Easterly line of Skyline Drive; THENCE
4. Along the Easterly line of Skyline Drive North 19 degrees 42 minutes 12 seconds West 32.85' to a point of curvature; THENCE
5. Still further along the Easterly line of Skyline Drive on a curve to the left having a radius of 375.00' and an arc length of 67.33' to the point and place of beginning

Being known and designated as Lot 25 Block 250.05 as shown on the Tax Maps of the Township of Jefferson. Being also known as Lot 25 Block 250.05 as shown on a certain map entitled "Jefferson Village Final Plat Phase B" situated in the Township of Jefferson, Morris County, New Jersey. Filed in the Morris County Clerks Office.

Description prepared in accordance with survey of Keller & Kirkpatrick, dated 9/25/03.

Legal taken from the deed as referenced in the mortgage.



Albert P. Garrison

And Jenna Shapiro

)

) Dept.: XXVII

Defendants.



Points and Authorities

i. Introduction

This case originates from a petition Howard Shapiro filed in a New Jersey court to appoint him as conservator for his father, Walter Shapiro. The defendants, Glen Welt, Rhoda Welt, Lynn Welt, and Michelle Welt, opposed the petition. During the course of the conservatorship matter, Howard received an email from Glen stating that Howard's "actions have been deemed worthy of [his] own website" and declaring that Glen was "personally inviting EVERY one of [Howard's] known victims to appear in court along with other caretakers, neighbors[,] acquaintances[,] and relatives [Howard] threatened."

The Welts published a website that contained several allegations regarding Howard's past debts, criminal history, and alleged mistreatment of his father, in addition to Howard's personal information. Further, the website stated that it is "dedicated to helping victims of Howard Andrew Shapiro & warning others" and encouraged any person "with knowledge of Howard A. Shapiro's actions against Walter Shapiro or other illegal acts committed by Howard Shapiro. . . to appear in court."

Howard and Jenna Shapiro filed a complaint in Nevada alleging various causes of action related to the Welts' statements on the website. The Shapiros' causes of action included, among other allegations, defamation per se, defamation, extortion, civil conspiracy, and fraud. The Welts subsequently filed a motion to dismiss pursuant to NRS 41.660, Nevada's anti-SLAPP statute. The Welts argued that the website constituted a good-faith communication in furtherance of the right to free speech in direct connection with an issue of public concern pursuant to NRS 41.637. Citing to NRS 41.637(3) and (4), the Welts argued that the statements on the website were protected as statements made in direct connection with an



1 issue under consideration by a judicial body and as communications made in direct
2 connection with an issue of public interest in a place open to the public or in a public forum.

3 This court issued an order granting the Welts' motion to dismiss. This court concluded
4 that the Welts met their burden to show by a preponderance of the evidence that the Shapiros'
5 complaint was filed in an attempt to prevent a good-faith communication in connection with
6 an issue of public concern. Specifically, the district court concluded that the website was a
7 "communication regarding an ongoing lawsuit concerning the rights of an elderly individual,
8 and a matter of public concern under NRS 41.637(4)." Additionally, the district court
9 concluded that the Shapiros failed to show a probability that they would prevail on the
10 lawsuit. This court relied on the Nevada Supreme Court's decision in *Jacobs v. Adelson* to
11 conclude that the Welts' statements would likely be protected by the absolute litigation
12 privilege.
13

14 The Plaintiffs timely appealed this court's order. After briefing and oral argument, the
15 Nevada Supreme Court concluded that this court erred in its analysis of whether the Welts'
16 statements concerned an issue of public interest, and explicitly adopted the California
17 guidelines, as enunciated in *Piping Rock Partners*, for determining whether an issue is of
18 public interest under NRS 41.637(4). The Court also concluded that this court failed to
19 conduct a case specific, fact-intensive inquiry that focused on and balanced the underlying
20 principles of the absolute litigation privilege as required by *Jacobs*.
21

22 Therefore, the Nevada Supreme Court reversed, in part, this court's order granting the
23 Welts' special motion to dismiss pursuant to NRS 41.660 and remanded with instructions to
24 apply California's guiding principles for determining whether an issue is of public interest
25 under NRS 41.637(4) and, prior to determining whether the Shapiros have met their burden of
26
27
28



1 proving a likelihood of success on the merits, to conduct a fact-intensive inquiry that balances
2 the underlying principles of the absolute litigation privilege as required by *Jacobs*.

3 **ii. Nevada's Anti-SLAPP Statute: History And Policy**

4 Nevada's Anti-SLAPP statute creates a substantive immunity from suit and procedural
5 mechanism to give shape to that immunity when a Plaintiff's claim seeks to suppress ***First***
6 ***Amendment rights***. "A SLAPP suit is characterized as a meritless suit filed primarily to
7 discourage the named defendant's exercise of First Amendment rights."¹ NRS 41.660 was
8 first created by the Nevada Legislature in 1993² and was amended in 1997.³ In 2013, the
9 Nevada Legislature gave Nevada's Anti-SLAPP statute its present shape and strength when it
10 passed Senate Bill 286.⁴ The 2013 amendment added, inter alia, NRS 41.637(4), which
11 protects a Defendant's exercise of his First Amendment rights ***in connection with an issue of***
12 ***public interest***. The Statute was most recently amended in 2015, making it more closely
13 resembling California's statute.⁵

14 Nevada's Anti-SLAPP statute reflects the Legislature's recognition that permitting
15 lawsuits against citizens and corporations for exercising their First Amendment rights chills
16
17
18
19

20
21 ¹ S.B. 286, 2013 Leg. Sess., 77th Sess. (Nev. 2013).

22 ² See S.B. 405, 1993 Leg. Sess., 67th Sess. (Nev. 1993).

23 ³ See A.B. 485, 1997 Leg. Sess., 67th Sess. (Nev. 1997).

24 ⁴ See S.B. 286, 2013 Leg. Sess. 77th Sess. (Nev. 2013).

25 ⁵ See S.B. 444, 2-15 Leg. Sess., 78th Sess. (Nev. 2015). The final version of the bill added the
26 ability for either party to take discovery, in the event that it is deemed necessary, and lowered
27 a Plaintiff's burden of proof from "clear and convincing evidence" to "prima facie evidence".
28



1 free speech.⁶ The process is the punishment. Dragging out a frivolous suit aimed at First
2 Amendment protected activity not only intimidates Defendants from any further speech, but
3 stands to chill other speakers or journalists.

4 As the discussion above demonstrates, a Defendant is immune from suit under
5 Nevada's anti-SLAPP statute so long as the targeted speech is made in connection with an
6 issue of public interest. The resolution of this case turns upon whether Defendants speech
7 was so made.
8

9 **iii. NRS 41.660: Its Mechanism**

10 Under NRS 41.660 et seq.:

11 *1. If an action is brought against a person based upon a good faith*
12 *communication in furtherance of the right to petition or the right to free*
13 *speech in direct connection with an issue of public concern:*

14 *(a) The person against whom the action is brought may file a special*
15 *motion to dismiss*

16 ...

17 *2. A special motion to dismiss must be filed within 60 days after service of the*
18 *complaint, which period may be extended by the court for good cause shown.*

19 *3. If a special motion to dismiss is filed pursuant to subsection 2, the court*
20 *shall:*

21 *(a) Determine whether the moving party has established, by a*
22 *preponderance of the evidence, that the claim is based upon a good*
23 *faith communication in furtherance of the right to petition or the*
24 *right to free speech in direct connection with an issue of public*
25 *concern;*

26 *(b) If the court determines that the moving party has met the burden*
27 *pursuant to paragraph (a), determine whether the plaintiff has*
28 *demonstrated with prima facie evidence a probability of prevailing*
on the claim;

⁶ See Senate Committee on Judiciary hearing on Nev. SB 286, at 4 (Mar. 28, 2013); Assembly Committee on Judiciary hearing on Nev. SB 286, at 4-7 (May 5, 2013).



1 ...
2 (e) *Except as otherwise provided in subsection 4, stay discovery*
3 *pending:*

4 (1) *A ruling by the court on the motion; and*

5 (2) *The disposition of any appeal from the ruling on the motion; and*

6 (f) *Rule on the motion within 20 judicial days after the motion is served*
7 *upon the plaintiff.*

8 ...
9 4. *Upon a showing by a party that information necessary to meet or oppose the*
10 *burden pursuant to paragraph (b) of subsection 3 is in the possession of*
11 *another party or a third party and is not reasonably available without*
12 *discovery, the court shall allow limited discovery for the purpose of*
13 *ascertaining such information.*

14 5. *If the court dismisses the action pursuant to a special motion to dismiss filed*
15 *pursuant to subsection 2, the dismissal operates as an adjudication upon the*
16 *merits.*

17 ...
18 Nev. Rev. Stat. Ann. § 41.660 et seq.

19 The statute provides a clear procedure for the legitimate defamation Plaintiff to follow.

20 The procedure is not alien. Nevada's courts treat it like an early motion for summary
21 judgment.⁷ Like Nev. R. Civ. P. 56(f), the statute permits a Plaintiff to request the ability to
22 take additional discovery, if it is targeted and focused.⁸ However, it does not permit complete
23 fishing expeditions or abusive discovery-only discovery necessary to oppose (or even bring)
24 the motion.

25 The Nevada Legislature and Judiciary have historically looked to California for
26 guidance on crafting and applying its Anti-SLAPP statute. The Nevada Supreme Court has

27 _____
28 ⁷ See *Stubs v. Strickland*, 297 P.3rd 326, 329 (Nev. 2013).

⁸ See NRS 41.660(4).



1 explicitly stated that “we consider California caselaw because California’s Anti-SLAPP
2 statute is similar in purpose and language to Nevada’s anti-SLAPP statute.”⁹ Furthermore, the
3 Legislature explicitly incorporated California case law in amending the statute in 2015 when
4 it defined a Plaintiff’s evidentiary burden on the second prong of analysis for a special motion
5 to dismiss. The Plaintiff’s burden is that of “prima facie” evidence, which is defined as “the
6 same burden of proof that a plaintiff has been required to meet pursuant to California’s Anti-
7 Strategic Lawsuit Against Public Participation law as of the effective date of this act.”¹⁰

8
9 California courts have also noted that “because unnecessarily protracted litigation
10 would have a chilling effect upon the exercise of First Amendment rights, speedy resolution
11 of cases involving free speech is desirable.”¹¹ Thus, summary judgment was deemed to be a
12 “favored” remedy in defamation cases.¹² Hence, in matters implicating speech a special
13 motion to dismiss¹³ under Nevada’s Anti-SLAPP statute promotes the speedy resolution of
14
15

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17 ⁹ See *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 756 (2009); see also *Shapiro v. Welt*,
18 133 Nev. Adv. Rep. 6 (Nev. 2017).

19 ¹⁰ See S.B. 444, 2015 Leg. Sess., 78th Sess. (Nev. 2015) at sec. 12.5(2).

20 ¹¹ *Good Government Group, Inc. v. Superior Court of Los Angeles County*, 22 Cal. 3d 672,
21 685, 586 P.2d 572, 578 (Cal. 1978); citing *Dombrowski v. Pfister*, 380 U.S. 479, 486-487
22 (1965).

23 ¹² See *id.*; see also *Reader’s Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 252, 690 P.2d
24 610, 614 208 Cal. Rptr. 137, 141, 1984 Cal. LEXIS 125, *10, 11 Media L. Rep. 1065 (Cal.
25 1984) (“summary judgment was a ‘favored’ remedy in defamation cases involving the issue
26 of ‘actual malice’ under the New York Times standard.”); *Jensen v. Hewlett-Packard Co.*, 14
Cal. App. 4th 958, 965, 18 Cal. Rptr. 2d 83, 86 (Cal. App. 4th Dist. 1993) (affirming a nonsuit,
i.e. a judgement after opening statements, as similarly a “favored remedy”).

27 ¹³ A “special motion to dismiss” under Nev. Rev. Stat. Ann. § 41.637 et seq. and Nev. Rev.
28 Stat. Ann. § 41.660 and Nev. Rev. Stat. Ann. § 41.637 is commonly referred to as an anti-
SLAPP motion.



1 cases involving free speech early on, sans protracted, expensive, litigation where a Plaintiff
2 has a meritless lawsuit or one that is unlikely to succeed on the merits.

3 Unfortunately for Defendants, they fail in the first instance: that is, their speech is not
4 protected. Specifically, it is not protected by the litigation privilege and it is of no public
5 interest. It is not so much as a close call. It is baffling that the Defendants have renewed their
6 motion to dismiss considering the decision in *Shapiro v. Welt*. Indeed, if anything, an anti-
7 SLAPP motion has become far more difficult to prevail on after the *Shapiro* decision for the
8 Defendants. This is because the factors adopted by the Nevada Supreme Court limit speech
9 that is protected by Nevada's anti-SLAPP statute and address those circumstances where
10 speech is of no public interest, as the Welts' speech is in this case.

11
12
13 **iv. NRS 41.637-Defining “good faith communication in furtherance of the**
14 **right to petition or the right to free speech in direct connection with an**
15 **issue of public concern**

16 Nev. Rev. Stat. Ann. § 41.637 et seq. provides the meaning of “*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*”. It states the following:

19 “*Good faith communication in furtherance of the right to petition or the right to*
20 *free speech in direct connection with an issue of public concern*” means any:

- 21 1. *Communication that is aimed at procuring any governmental or*
22 *electoral action, result or outcome;*
23 2. *Communication of information or a complaint to a Legislator, officer or*
24 *employee of the Federal Government, this state or a political subdivision*
25 *of this state, regarding a matter reasonably of concern to the respective*
26 *governmental entity;*



3. *Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or*

4. *Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,*

which is truthful or is made without knowledge of its falsehood.

Nev. Rev. Stat. Ann. § 41.637. For the purposes of the instant case, subsections 3 and 4 are implicated. The following discussion centers on those two factors. If broken down into simple elements, in order to shift the burden to Defendants, Plaintiffs must show:

- a) A “good faith communication”
- b) In furtherance of the right to free speech
- c) In direct connection with an issue of public concern¹⁴
- d) Made in a place open to the public or in a public forum
- e) Which is truthful or is made without knowledge of its falsehood.

¹⁴ In *Shapiro v. Welt*, the Nevada Supreme Court adopted California's guiding principles, as enunciated in *Piping Rock Partners*, for determining whether an issue is of public interest under NRS 41.637(4). Those principles are as follows: (1) "public interest" does not equate with mere curiosity; (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest; (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient; (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6 (Nev. 2017).



1 **v. The Welts’ speech fails the first element. That is, it is not a good faith**
2 **communication.**

3 Depending on the exact setting, good faith may require an honest belief or purpose,
4 faithful performance of duties, observance of fair dealing standards, or an absence of
5 fraudulent intent. Black’s Law Dictionary (7th ed. 1999) has defined good faith as “A state of
6 mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or
7 obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade
8 or business, or (4) absence of intent to defraud or to seek unconscionable advantage”.

9
10 Good faith imports an absence of bad faith (*mala fides*) more than anything, that can
11 be treated as equivalent to ‘honestly and decently’. Bad faith implies or involves actual
12 or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to
13 fulfill some duty or some contractual obligation, not prompted by an honest mistake as to
14 one's rights or duties, but by some interested or sinister motive.¹⁵

15
16 Here, Defendants contend that the publication of the website at issue was a good faith
17 effort to investigate and detail the claims made in the underlying conservatorship action in
18 New Jersey. However, this statement, which is intended to transform what is objectively an
19 outrageous and libelous publication into a statement made in “good faith”, is betrayed by the
20 letter Glen Welt tendered to Howard Shapiro prior to the publication of that website, which
21 was clearly in the nature of an attempt to extort money and force the Shapiro’s hand. Viewed
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26 ¹⁵ *Hüigenberg v. Northup*, 134 Ind. 92, 33 N. E. 780; *Morton v. Immigration Ass'n*, 79 Ala.
27 617; *Coleman v. Billings*, 89 111. 191; *Lewis v. Holmes*, 109 La. 1030, 34 South. 66, 61 L. R.
28 A. 274; *Harris v. Harris*, 70 Pa. 174; *Penn Mut. L. Ins. Co. v. Trust Co.*, 73 Fed. 653, 19 C. C.
A. 310, 38 L. R. A. 33, 70; *Insurance Co. v. Edwards*, 74 Ga. 230.



1 in its totality, it is difficult to see how the contents of the publication were made in “good
2 faith” – they were not.

3 **vi. “In furtherance of the right to free speech”**

4 This court must question whether the Shapiros’ claims should be characterized as a
5 SLAPP (“Strategic Lawsuit Against Public Participation”). The quintessential SLAPP is filed
6 by an economic powerhouse to dissuade its opponent from exercising its constitutional right
7 to free speech or to petition. The objective of the litigation is not to prevail but to exact
8 enough financial pain to induce forbearance. As its name suggests, it is a strategic lawsuit
9 designed to stifle dissent or public participation.
10

11 A claim filed in response to, or in retaliation for, threatened or actual litigation is not
12 subject to the anti-SLAPP statute simply because it may be viewed as an oppressive litigation
13 tactic.¹⁶ That a cause of action arguably may have been triggered by protected activity does
14 not entail that it is one arising from such.¹⁷ The statutory phrase “cause of action . . . arising
15 from” means simply that the defendant’s act underlying the plaintiff’s cause of action must
16 itself have been an act in furtherance of the right of petition or free speech.¹⁸ In the anti-
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21 ¹⁶ *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th
22 921, 924 [116 Cal. Rptr. 2d 187]

23 ¹⁷ *City of Cotati v. Cashman*, 29 Cal. 4th 69, 78, 52 P.3d 695, 701, 124 Cal. Rptr. 2d 519, 527,
24 2002 Cal. LEXIS 5702, *19, 2002 Cal. Daily Op. Service 7957, 2002 Daily Journal DAR
25 9950 (Cal. Aug. 29, 2002)

26 ¹⁸ *City of Cotati v. Cashman*, 29 Cal. 4th 69, 78, 52 P.3d 695, 701-702, 124 Cal. Rptr. 2d 519,
27 527-528, 2002 Cal. LEXIS 5702, *20, 2002 Cal. Daily Op. Service 7957, 2002 Daily Journal
28 DAR 9950 (Cal. Aug. 29, 2002); citing *ComputerXpress, Inc. v. Jackson*, supra, 93
Cal.App.4th at p. 1001



1 SLAPP context, the critical point is whether the plaintiff's cause of action itself was based on
2 an act in furtherance of the defendant's right of petition or free speech.¹⁹ "A defendant meets
3 this burden by demonstrating that the act underlying the plaintiff's cause fits one of the
4 categories spelled out in section 425.16, subdivision (e)"²⁰

5
6 As discussed above, here, at issue is the litigation privilege and the notion that the
7 Defendants' speech was protected. If Defendants fail to show either, an anti-SLAPP motion is
8 inappropriate and this court must deny the relief requested.

9 **vii. The Defendants' cannot take cover under the litigation privilege.**

10 It should be noted at the outset that "[t]he absolute litigation privilege's purpose is not
11 to protect those making defamatory comments but 'to lessen the chilling effect on those who
12 seek to utilize the judicial process to seek relief.'"²¹ Thus, the litigation privilege is not
13 intended to provide cover to anyone under any circumstances. As is the case with any rule,
14 there are exceptions, there are provisions that narrow the rule, clauses that foreclose that
15 possibility that those not intended to be protected are not. That is the case with the litigation
16 privilege in Nevada.
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24 ¹⁹ Id.

25 ²⁰ *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1043 [61 Cal. Rptr. 2d 58];
26 see also *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 820 [33 Cal. Rptr. 2d 446].)

27 ²¹ *Jacobs v. Adelson*, 325 P.3d 1282, 1286, 2014 Nev. LEXIS 53, *8-10, 38 I.E.R. Cas.
28 (BNA) 1690, 164 Lab. Cas. (CCH) P61,481, 98 Empl. Prac. Dec. (CCH) P45,087, 130 Nev.
Adv. Rep. 44, 2014 WL 2451201 (Nev. May 30, 2014)



1 In their motion, Defendants rely on California case law to support their contention that
2 the content on the website at issue (www.howardshapirovictims.com) is protected speech.²²

3 What Defendants fail to do is address Nevada case law that is on point. Nevada has long
4 recognized the existence of an absolute privilege for defamatory statements made during
5 judicial and quasi-judicial proceedings.²³ This privilege, which acts as a complete bar to
6 defamation claims based on privileged statements, recognizes that
7

8 [c]ertain communications, although defamatory, should not serve as a basis for
9 liability in a defamation action and are entitled to an absolute privilege because
10 'the public interest in having people speak freely outweighs the risk that
11 individuals will occasionally abuse the privilege by making false and malicious
12 statements.'²⁴

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17 ²² Citing *Briggs v. Eden Council for Hope & Opportunity*, 969 P.2d 564 (Cal. 1999); *People*
18 *ex rel. 20th Century Ins. Co. v. Bldg. Permit Consultants, Inc.*, 86 Cal. App. 4th 280, 282
19 (2000); *Paul v. Friedman*, 95 Cal. App. 4th 853 (2002); *Neville v. Chudacoff*, 160 Cal. App.
20 4th 1255 (2008); *McConnell v. Innovative Artists Talent & Literary Agency, Inc.*, 175 Cal.
21 App. 4th 169 (2009);

22 ²³ *Jacobs v. Adelson*, 325 P.3d 1282, 1285, 2014 Nev. LEXIS 53, *5-7, 38 I.E.R. Cas. (BNA)
23 1690, 164 Lab. Cas. (CCH) P61,481, 98 Empl. Prac. Dec. (CCH) P45,087, 130 Nev. Adv.
24 Rep. 44, 2014 WL 2451201 (Nev. May 30, 2014); citing, *Clark Cnty. Sch. Dist. v. Virtual*
25 *Educ. Software, Inc. (VESI)*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009); *Fink v. Oshins*,
26 118 Nev. 428, 432-33, 49 P.3d 640, 643-44 (2002); *Circus Circus Hotels*, 99 Nev. at 60, 657
27 P.2d at 104.

28 ²⁴ *Id.*; citing, *Cucinotta*, 129 Nev. at , 302 P.3d at 1101 (quoting *Circus Circus Hotels*, 99
Nev. at 61, 657 P.2d at 104); see also *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440
(2002), overruled on other grounds by *Buzz Stew, L.L.C.*, 124 Nev. at 228 n.6, 181 P.3d at
672 n.6. An absolute privilege constitutes "an immunity, which protects against even the
threat that a court or jury will inquire into a communication." *Hampe*, 118 Nev. at 409, 47
P.3d at 440.



1 An absolute privilege constitutes "an immunity, which protects against even the threat that a
2 court or jury will inquire into a communication."²⁵

3 In order for the absolute privilege to apply to defamatory statements made in the
4 context of a judicial or quasi-judicial proceeding, "(1) a judicial proceeding must be
5 contemplated in good faith and under serious consideration, and (2) the communication must
6 be related to the litigation."²⁶ Therefore, the privilege applies to communications made by
7 either an attorney or a non-attorney that are related to ongoing litigation or future litigation
8 contemplated in good faith.²⁷ When the communications are made in this type of litigation
9 setting and are in some way pertinent to the subject of the controversy, the absolute privilege
10 protects them even when the motives behind them are malicious and they are made with
11 knowledge of the communications' falsity.²⁸

14 But the Nevada Supreme Court has also recognized that "[a]n attorney's statements to
15 someone who is not directly involved with the actual or anticipated judicial proceeding will
16 be covered by the absolute privilege only if the recipient of the communication is
17 'significantly interested' in the proceeding."²⁹ Therefore, in Nevada, *the content of*

21 ²⁵ *Jacobs v. Adelson*, 325 P.3d 1282, 1285, 2014 Nev. LEXIS 53, *5-7, 38 I.E.R. Cas. (BNA)
22 1690, 164 Lab. Cas. (CCH) P61,481, 98 Empl. Prac. Dec. (CCH) P45,087, 130 Nev. Adv.
Rep. 44, 2014 WL 2451201 (Nev. May 30, 2014).

23 ²⁶ *Id.*; citing *VESI*, 125 Nev. at 383, 213 P.3d at 503.

24 ²⁷ *Id.*

25 ²⁸ *Id.*; citing *VESI*, 125 Nev. at 383, 213 P.3d at 503.; citing *VESI* 125 Nev. at 382, 213 P.3d
26 at 502; *Circus Circus Hotels*, 99 Nev. at 60, 657 P.2d at 104.

27 ²⁹ *Id.*; citing, *Fink*, 118 Nev. at 436, 49 P.3d at 645-46 (quoting *Andrews v. Elliot*, 109 N.C.
28 App. 271, 426 S.E.2d 430, 433 (N.C. Ct. App. 1993)).



1 *Defendants’ website is protected speech if and only if the audience that the website targets*
2 *is ‘significantly interested’ in the proceeding.*

3 According to the Defendants, the website’s stated goal is to “invite Howard Shapiro’s
4 known victims to appear in court along with other caretakers, neighbors, acquaintances and
5 relatives you’ve threatened.”³⁰ This does not cloak the contents of the website with the
6 protections afforded speech under Nevada’s anti-SLAPP statute. Even taking their word for it,
7 and if the stated purpose of the website is taken at face value (which is a stretch), Defendants
8 fail to explain how Howard Shapiro’s purported “victims” are “significantly interested” in the
9 conservatorship proceeding.
10

11 They do not because they cannot. Presumably, Defendants contend that the
12 “significant interest” referred to in the *Jacobs* case is a general interest in the operation of the
13 courts. However, this construction would necessarily swallow the rule: that is, there would be
14 no instance where the public at large would not be significantly interested in a matter under
15 consideration by a judicial body because *everything* that happens in the courts is of interest to
16 the public. This would render the “significant interest” proscription to the general rule hollow.
17 Rather, “general interest” means an interest in the outcome of the litigation. *Jacobs v. Adelson*
18 and *Fink v. Oshins* addressed this specifically.
19
20

21 In *Jacobs v. Adelson*, Jacobs argued that the district court improperly applied the
22 absolute privilege because the statements were made outside of the judicial proceedings to
23 disinterested persons, including the media and the press, and were thus unrelated to the
24

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27 ³⁰ Defendants motion, page 2, lines 14-16.
28



1 litigation. Jacobs argued that the press lacked any legal interest in the outcome of the
2 underlying case and so had no functional ties to his claims or Adelson's defenses. Adelson,
3 argued that the district court properly dismissed Jacobs' defamation claim because his
4 statements³¹ were absolutely privileged since they were made during the course of the judicial
5 proceeding and were directly related to the subject of the underlying lawsuit—Jacobs' claim
6 for wrongful termination. Adelson also argued that statements made to the media should be
7 included in the scope of Nevada's absolute privilege rule.
8

9 The Nevada Supreme Court turned to the policy considerations underlying the
10 litigation privilege to resolve the matter. Specifically, the Court stated that statements to the
11 media (which was the target audience) "do little, if anything, to promote the truth finding
12 process in a judicial proceeding . . . [They] do not generally encourage open and honest
13 discussion between the parties and their counsel in order to resolve disputes; indeed, such
14 statements often do just the opposite."³² Furthermore, the Court considered whether allowing
15 such defamation claims would hinder investigations or the detailing of claims.³³ Since
16 statements to the press do very little to promote the truth finding process, do not encourage
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21 ³¹ Sheldon Adelson sent an email to the Wall Street Journal stating, "While I have largely
22 stayed silent on the matter to this point, the recycling of his allegations must be addressed . .
23 .We have a substantial list of reasons why Steve Jacobs was fired for cause and interestingly
24 he has not refuted a single one of them. Instead, he has attempted to explain his termination
by using outright lies and fabrications which seem to have their origins in delusion." This
statement led Jacobs to amend his complaint and add a cause of action for defamation per se.

25 ³² *Jacobs v. Adelson*, 325 P.3d 1282, 1286, 2014 Nev. LEXIS 53, *8, 38 I.E.R. Cas. (BNA)
26 1690, 164 Lab. Cas. (CCH) P61,481, 98 Empl. Prac. Dec. (CCH) P45,087, 130 Nev. Adv.
Rep. 44, 2014 WL 2451201 (Nev. May 30, 2014)

27 ³³ *Id.*
28



1 settlement, indeed the opposite, and because allowing defamation claims in that context do
2 not hinder the investigation or detailing of claims, the Nevada Supreme Court declined to
3 extend the privilege in that context.

4
5 Application of those underlying policy considerations to this case necessarily render a
6 similar result: that is, that the litigation privilege should not be extended under these
7 circumstances. The contents of the website do little if anything to promote the truth finding
8 process (the net was cast too wide, the statements too outrageous, and the message was not
9 focused and driven), it certainly does not promote settlement, and allowing the Shapiro's
10 claim does not, in fact did not, hinder the Defendants investigation into their claims or
11 prohibit them from detailing those claims. Therefore, the litigation privilege must not be
12 extended to the Defendants in this matter.

13
14 Defendants may argue that the *Jacobs* case was limited to the "media context".
15 However, in *Fink v. Oshins*, the Nevada Supreme Court recognized that communications are
16 not sufficiently related to judicial proceedings when they are made to someone without an
17 interest in the outcome.³⁴ Here, the stated targets of the Defendants website have no interest in
18 the *outcome* of the litigation. In other words, though the public may arguably have a
19 legitimate interest in the operation of its courts and the conduct of its officers, *it does not have*
20 *any interest in who has guardianship over Walter Shapiro.*

21
22 **viii. The contents of the website at issue do not constitute communications**
23 **made in direct connection with an issue of public interest.**
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28 ³⁴ *Fink v. Oshins*, 118 Nev. 428, 49 P.3d 640, 2002 Nev. LEXIS 64, 118 Nev. Adv. Rep. 45
(Nev. July 17, 2002)



1 In *Shapiro v. Welt*, the Nevada Supreme Court adopted California's guiding principles,
2 as enunciated in *Piping Rock Partners*, for determining whether an issue is of public interest
3 under NRS 41.637(4). Those principles are as follows:

- 4 (1) "public interest" does not equate with mere curiosity;
- 5 (2) a matter of public interest should be something of concern to a substantial
6 number of people; a matter of concern to a speaker and a relatively small
7 specific audience is not a matter of public interest;
- 8 (3) there should be some degree of closeness between the challenged statements
9 and the asserted public interest—the assertion of a broad and amorphous
10 public interest is not sufficient;
- 11 (4) the focus of the speaker's conduct should be the public interest rather than a
12 mere effort to gather ammunition for another round of private controversy;
13 and
- 14 (5) a person cannot turn otherwise private information into a matter of public
15 interest simply by communicating it to a large number of people.

16 *Shapiro v. Welt*, 133 Nev. Adv. Rep. 6 (Nev. 2017).

17 The focus here is whether the contents of the website, i.e., the allegations made against
18 Howard Shapiro, are of public interest without regard to the target audience. The question
19 necessarily turns on whether Howard Shapiro is of interest to the public. Recognizing that the
20 factors delineated in the Shapiro foreclose a favorable result for the Defendants (Howard
21 Shapiro and the underlying conservatorship proceeding was determined to be of no public
22 interest by the Nevada Supreme Court – hence the outcome of the appeal in this matter),
23 Defendants now seek to cast Howard Shapiro as a “public figure”.

24 Defendants frame the question thusly:

25 the core question under review by the New Jersey judicial body was whether
26 Walter needed a conservator and, if so, whether Howard was qualified and
27 suitable for that role. The Welts’ website directly concerned Howard’s
28 suitability and sought information from others that might reflect upon that
topic. NRS 41.637(3) protects that speech.



1
2 Defendants acknowledge that neither California nor Nevada courts have “expressly
3 determined whether speech concerning the qualifications and suitability of a person who has
4 petitioned for a conservator appointment concerns ‘an issue of public interest.’ California
5 courts, according to Defendants, have weighed in on whether “being appointed a conservator
6 makes a person a public official, subject to public scrutiny.” Defendants then launch into a
7 lengthy discussion on California courts’ view on the subject.

8
9 The problem is that when the website was published, Howard Shapiro was not
10 appointed a conservator. Rather, the matter was still under consideration. Therefore, the cases
11 cited by Defendants in support of their contention that “[i]nvolving sovereign powers is an
12 issue of public interest” are distinguished in a material way from the facts of this case and
13 inapplicable. What remains is *Shapiro v. Welt*, a case that is very much on point.

14
15 Application of the Shapiro factors to this case yield a single result: that the
16 conservatorship proceeding in New Jersey and Howard Shapiro’s involvement in that
17 proceeding is of no interest to the public. First, since the public has no significant interest in
18 the outcome of the litigation, the proceedings are necessarily a “mere curiosity”. Second, by
19 their very own description of the purpose and intent of the website and its contents, i.e.,
20 reaching out to Howard Shapiro’s “victims”, Defendants necessarily limit the target audience
21 to a very few people; indeed, the communication is limited to “a small specific audience” –
22 hardly the “substantial number” envisaged in the *Shapiro* case. Third, since there is no public
23 interest, there can be no degree of closeness between the statements and the public interest.
24 Fourth, the focus of the Welts’ statements, by their own admission, is an effort to gather
25 ammunition for a pending controversy, not the public interest, in violation of the fourth factor
26
27
28



1 contained in the *Shapiro* matter. The fifth factor involves the communication of private
2 information to a large number of people. The statements at issue here fail this factor because
3 the statements are not targeted at a large number of people.

4
5 For the foregoing reasons, the statements contained in the Defendants website are not
6 protected speech.

7 **A. Once The Burden Is Shifted To The Plaintiff, The Plaintiff Must Demonstrate**
8 **With Prima Facie Evidence A Probability Of Prevailing On The Claim**

9 **i. Introduction**

10 A prima facie case is a cause of action that is sufficiently established by a party's
11 evidence to justify a verdict in his or her favor.³⁵ The elements that must be satisfied by
12 Plaintiff to overcome this burden are:

- 13 1. Prima Facie Evidence
- 14 2. Sufficient to make it probable that Plaintiffs will prevail on their claim

15
16 In a motion to dismiss under NRCP 12(b)(5) or FRCP 12(b)(6), a plaintiff's obligation
17 to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and
18 conclusions, and a formulaic recitation of a cause of action's elements will not do.³⁶ Factual
19 allegations must be enough to raise a right to relief above the speculative level on the
20 assumption that all of the complaint's allegations are true.³⁷ Thus stating a claim which
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24 ³⁵ See, e.g., *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007); *Swierkiewicz v. Sorema*
25 *N.A.*, 534 U.S. 506 (2002); *Hernandez v. New York*, 500 US 352 (1991).

26 ³⁶ *Id.*

27 ³⁷ *Id.*



1 satisfies NRCP 8(a)(1)'s "plain statement" provision requires a complaint with enough factual
2 matter to suggest the elements of a cause of action are satisfied.³⁸ *Once a claim has been*
3 *stated adequately, it may be supported by showing any set of facts consistent with the*
4 *allegations in the complaint.*³⁹ In *Twombly*, the United States Supreme Court characterized
5 this as a "plausible grounds" standard.⁴⁰
6

7 NRS 41.660(4) demands sufficient evidence, on the face of the complaint, to justify a
8 probability of success.⁴¹ The commonly understood meaning of the word "probable", in the
9 legal context, is that there is reasonable basis for belief. Under NRS 41.660, that reasonable
10 basis is found in the factual allegations pled in the complaint, on its face. This is distinguished
11 from the "plausible grounds" standard in that NRS 41.660 demands some evidence while the
12 former requires no evidence, only a naked statement that evidence exists, or is likely to exist,
13 taken at face value.
14

15 Though this can get complicated where the case presents a close call, here no such
16 case exists. Almost categorically, Plaintiffs have met their burden under either the "plausible
17 grounds" standard enunciated in *Twombly*, or NRS 41.660's "probability of success
18 supported by sufficient evidence" standard. The following elaborates this point.
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23 ³⁸ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007).

24 ³⁹ *Id.*

25 ⁴⁰ *Id.*

26 ⁴¹ The difference between the words *plausible* and *probable* is found in their root. To say that
27 something is probable is to cloth it with the appearance of truth while something is probable
28 when it is credible, provable or demonstrable. It is the difference between naked belief and a
fact likely to be proven.



1 **ii. Plaintiffs’ Defamation Claim**

2 The core of the Shapiros’ claims is defamation. Under Nevada law, the elements of a
3 defamation claim are: 1) a false and defamatory statement by a defendant concerning the
4 plaintiff; 2) an unprivileged publication of this statement to a third person; 3) fault of the
5 defendant, amounting to at least negligence; and 4) actual or presumed damages.⁴²
6

7 Statements of opinion cannot be defamatory because there is no such thing as a false
8 idea.⁴³ To constitute any sort of actionable statement the material publicized must actually
9 contain facts, as distinguished from opinions or conclusions.⁴⁴ Whether the objectionable
10 statements constitute fact or opinion is a matter of law.”⁴⁵
11

12 Here, the statements contained in the website at issue are not opinion. They are cast in
13 the form of statements of fact, all of which are either blatant lies or embellishment. The
14 malicious intent behind those statements is supported by the “extortion letter” attached to the
15 Shapiros’ complaint. Though malice is supported by actual evidence, because the Shapiro’s
16 are not public figures, as discussed supra, Plaintiffs need not allege and prove actual malice
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21 ⁴² *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2003).

22 ⁴³ *Id.*
23

24 ⁴⁴ See *Miller v. Jones*, 114 Nev. 1291, 1296, 970 P.2d 571, 575 (1998) (recognizing the
25 distinction between fact and opinion in defamation claims); *Wellman v. Fox*, 108 Nev. 83, 86,
26 825 P.2d 208, 210 (1992) (recognizing the distinction between fact and opinion in libel
27 claims); *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995) (distinguishing between
28 statements of facts and personal conclusions or interpretations of those facts).

⁴⁵ *Wellman*, 108 Nev. At 87, 825 P.2d at 210.



1 with clear and convincing evidence.⁴⁶ Therefore, the first prong of Plaintiffs' defamation
2 claim is satisfied, whether by utilizing the plausibility or plausibility standard discussed supra.

3 The second prong is discussed in the first prong of the anti-SLAPP motion analysis.
4 That is, the communication is not privileged because it is not a good faith communication
5 made in furtherance of the right to petition in direct connection with a matter of public
6 interest. Therefore, the second prong of the Plaintiffs' defamation claim is satisfied.

7 The third prong of Plaintiffs' defamation claim is satisfied by reference to the
8 outrageous nature of the false statement of facts made which allege acts of moral turpitude
9 and felonious crimes that are abhorrent, such as elder abuse, and the "extortion letter" sent by
10 Glen Welt, which reveals his true malicious intent. Thus, more than negligence exists: on its
11 face the complaint demonstrates intentional, malicious conduct.
12

13 Finally, damages are presumed in light of the outrageous nature of the statements
14 made and the malicious intent behind them. Such conduct exposes Defendants to punitive
15 damages, satisfying the final prong of the Plaintiffs' defamation claim.
16

17 Thus, Plaintiffs can show by clear and convincing evidence that their defamation
18 claim has a high probability of success on the merits. All other claims and causes of action
19 stem from the Shapiros' defamation claim.
20

21 **Conclusion.**

22 For the foregoing reasons, Plaintiffs urge this court denying Defendants motion to
23 dismiss and award the statutorily required attorney's fees. In addition, Plaintiffs request this
24

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27
28 ⁴⁶ *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719 (2003); citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).



1 court sanction defendants in accordance with NRS 41.670 upon submission of a memorandum
2 of fees and costs and further briefing on sanctions is submitted for this courts consideration

3 DATED this 17th day of June, 2017.
4
5

6 */s/ Alex Ghibaud*

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