

CODE: \$2515  
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Electronically Filed  
Nov 14 2017 02:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF WASHOE**

CARL LACKEY,

Plaintiff,

vs.

BEAR LEAGUE, a California Corporation,  
ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE WALL  
OF SHAME, CAROLYN STARK, an individual  
dba NDOW WATCH KEEPING THEM  
TRANSPARENT, and DOES 1-20, INCLUSIVE.

Defendants.


CASE NO.: CV17-00434

DEPT. NO.: 4

**NOTICE OF APPEAL**

Notice is hereby given that Defendant, CAROLYN STARK, by and through her counsel, STEPHANIE RICE, ESQ. and WINTER STREET LAW GROUP, hereby appeal to the Supreme Court of Nevada from the Order denying Defendant Carolyn Stark's Special Motion to Dismiss/ Anti-SLAPP pursuant to NRS Chapter 41 and NRCP 12 as to claims of defamation, civil conspiracy and intentional infliction of emotional distress, entered herein on November 8, 2017.

DATED this 8<sup>th</sup> day of November, 2017.

  
STEPHANIE RICE, ESQ. (SBN 11627)  
WINTER STREET LAW GROUP  
*Attorneys for Defendant  
Carolyn Stark*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **NOTICE OF APPEAL** on all parties to this action by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

       Personal Delivery

       Facsimile (FAX) and/or Email:

       Federal Express or other overnight delivery

       Messenger Service

       Certified Mail with Return Receipt Requested

X Electronically filed

addressed as follows:

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Sacramento, CA 95811

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 8<sup>th</sup> day of November, 2017.

  
AN EMPLOYEE OF WINTER STREET LAW GROUP

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3 IN THE MATTER OF THE ESTATE OF:  
4 CARL LACKEY v. BEAR LEAGUE, et al

5 CASE NO. CV17-00434

DEPT. NO. 4

EXHIBIT INDEX

6 EXHIBIT #	DESCRIPTION	LENGTH
7 1	Notice of Entry of Order ( as to Carolyn Stark) and 8 Order	17

# EXHIBIT 1

# EXHIBIT 1



1 **CODE: 2540**  
2 DEL HARDY, ESQ.(SBN 1172)  
3 STEPHANIE RICE, ESQ. (SBN 11627)  
4 WINTER STREET LAW GROUP  
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9 *Attorneys for Defendant Carolyn Stark*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**

12 **CARL LACKEY,**  
13 **Plaintiff,**  
14 **vs.**

**CASE NO.: CV17-00434**  
**DEPT. NO.: 4**


15 **BEAR LEAGUE, a California Corporation,**  
16 **ANNE BRYANT, an individual, MARK E.**  
17 **SMITH, an individual dba LAKE TAHOE WALL**  
18 **OF SHAME, CAROLYN STARK, an individual**  
19 **dba NDOW WATCH KEEPING THEM**  
20 **TRANSPARENT, and DOES 1-20, INCLUSIVE.**

21 **Defendants.**

22 **NOTICE OF ENTRY OF ORDER (AS TO CAROLY STARK)**

23 **NOTICE IS HEREBY GIVEN that an ORDER was entered in the above-entitled matter on**  
24 **October 20, 2017, a copy of which is attached hereto.**

25 Dated this 21<sup>st</sup> day of November, 2017.

26   
27 **DEL HARDY, ESQ. (SBN 1172)**  
28 **STEPHANIE RICE, ESQ. (SBN 11627)**  
**WINTER STREET LAW GROUP**  
*Attorneys for Defendant*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
3 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
4 document(s) described as NOTICE OF ENTRY OF ORDER (AS TO CAROLYN STARK) on all  
5 parties to this action by:

6 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection  
7 and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
8 ordinary business practices.

9 \_\_\_\_\_ Personal Delivery

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14 ☒ Electronically filed

15 addressed as follows:

16 Sean P. Rose, Esq.  
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22 **AFFIRMATION**

23 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
24 document and attached exhibits, if any, do not contain the Social Security Number of any  
25 person.

26 DATED this 8<sup>th</sup> day of November, 2017.

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28 EMPLOYEE OF WINTER STREET LAW GROUP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

CARL LACKEY,

Plaintiff,

v.

BEAR LEAGUE, a California Corporation,  
ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE  
WALL OF SHAME, CAROLYN STARK,  
individual dba NDOW WATCH KEEPING  
THEM TRANSPARENT, and DOES 1-20  
Inclusive.

Defendants.

Case No. CV17-00434

Department No.: 4

**ORDER**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant"), an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On April 19, 2017, Stark, by and through her counsel Del Hardy, Esq. and Stephanie Rice, Esq.,

1 of Winter Street Law Group, filed *Special Motion to Dismiss/Anti-SLAPP*, moving to dismiss all  
2 claims as to her, pursuant to NRS 41.635 et. seq. and NRCP 12. On May 8, 2017, Lackey filed  
3 *Opposition to Stark's Special Motion to Dismiss/Anti-SLAPP*. On May 9, Lackey filed *Errata* to  
4 his *Opposition*. Stark filed a *Reply* on May 15, 2017. The Court heard oral arguments on July 26,  
5 2017, and took the matter under advisement.

6 Stark asserts the Court should dismiss all claims against her under NRS 41.637 (Nevada's  
7 Anti-SLAPP Legislation). Stark contends the public policy concern is in the trapping and  
8 euthanizing bears by the Nevada Department of Wildlife (hereinafter "NDOW"). Stark argues  
9 she did not make any of the alleged defamatory statements, and therefore she is immune from  
10 liability under the Communications Decency Act, 47 USC 230 (hereinafter "CDA"). Even  
11 assuming the statements were attributable to her, Stark addresses each statement, asserting they  
12 are clearly opinions and some are not even directly against Lackey. Stark contends Lackey's  
13 claims fail as a matter of law as there is no conduct alleged attributable to her. Stark asserts the  
14 conspiracy claim is subject to dismissal under Nevada's intra-cooperate conspiracy doctrine.

15 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First  
16 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP  
17 statute does not apply because the statements do not involve a public interest. The statements are  
18 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under  
19 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking  
20 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with  
21 both violence and murder. Lackey contends Stark's reliance on the CDA is misplaced, as Stark is  
22 also an information content provider. As an individual who operates NDOW WATCH's Facebook  
23 page, any posting made by NDOW WATCH is essentially Stark's posting. Further, Stark has  
24 personally made postings. Even though Lackey contends the burden has not shifted pursuant to  
25 Nevada's Anti-SLAPP legislation, Lackey nonetheless argues, he will be successful on his claims.

26 ///

27 ///



- 1 (3) there should be some degree of closeness between the challenged statements  
2 and the asserted public interest—the assertion of a broad and amorphous public  
3 interest is not sufficient;  
4 (4) the focus of the speaker's conduct should be the public interest rather than a  
5 mere effort to gather ammunition for another round of private controversy; and  
6 (5) a person cannot turn otherwise private information into a matter of public  
7 interest simply by communicating it to a large number of people.

8 Id.

9 The FAC attributes the following statements to Stark/NDOW WATCH:

- 10 • (q): He and his family directly benefit by him moving bears to a hunting  
11 area if they are issued a license and the killing of them in the name of public  
12 safety must simply be something that excites him—all of it in conflict with  
13 NDOW's mission. Additionally, if we can establish that he or his family benefits  
14 financially from selling bear parts or selling the location where he recently  
15 released a bear – he should go to jail. Commenter: Colleen Hemingway on  
16 NDOW WATCH's Facebook post.  
17 • (r) "Yes he should go to jail! The treatment of our bears is paramount  
18 cruelty. Moving mothers without their cubs, moving them to hunt zones, moving  
19 them great distances knowing full well there are no food sources or water and  
20 that they will try to return home! Animal cruelty is a felony in all 50 states. Him  
21 and his NDOW murders need to go to jail and stay there. Commenter: JoAnn  
22 Hill on NDOW WATCH's Facebook post.  
23 • (s) "It's time for the Nevada Engineered bear hunt." Commenter: Mary  
24 LoBuono Bryden on NDOW WATCH's Facebook post.  
25 • (u) This page is what's wrong with Tahoe, you should try another tactic to  
26 educate our community. No one wants to be bullied and threatened to understand  
27 a valid argument. You are creating fear and tearing neighborhoods apart. Perhaps  
28 spending so much energy in a negative way should be forwarded to create a  
positive change. No one should live in fear! This whole thing is comparable to  
the Salem witch trial of 1692!! Commenter: Kevin Dangers Bouchard on  
NDOW WATCH's post (trolls who support Carl Lackey).  
• (y) Lackey is such an incompetent asshole! Fire his ass!! Commenter: Karen  
Lietzell-Vick on NDOW WATCH's Facebook Post.

19 First the Court considers whether the alleged conduct is illegal as a matter of law, and  
20 therefore does not fall within the protection of Nevada's anti-SLAPP legislation. 18 USC § 2261A  
21 (the federal stalking statute) provides in relevant part, whoever,

22 (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with  
23 intent to kill, injure, harass, or intimidate another person, uses the mail, any  
24 interactive computer service or electronic communication service or electronic  
communication system of interstate commerce, or any other facility of interstate or  
foreign commerce to engage in a course of conduct that--

- 25 (A) places that person in reasonable fear of the death of or serious bodily  
injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or  
26 (B) causes, attempts to cause, or would be reasonably expected to cause  
substantial emotional distress to a person described in clause (i), (ii), or (iii)  
27 of paragraph (1)(A),

28 shall be punished as provided in section 2261(b) of this title.

1 Here, the Court cannot conclude as a matter of law that the statements were made with the requisite  
2 intent. The Court does not find that suggesting someone should be imprisoned necessarily places  
3 a person in reasonable harm or fear of death or would cause a person severe emotional distress.

4 Second, the Court considers the Shapiro factors to determine whether the statements were  
5 made in the public interest. Stark's articulated public interest is the treatment of wildlife in Lake  
6 Tahoe, specifically the concern of the trapping and euthanizing bears by NDOW. [See Special  
7 Mot. Dismiss/Anti-SLAPP, at 5:11-15]. The Court finds this interest does not equate with mere  
8 curiosity. Further, Stark has provided local newspaper articles to support showing the treatment of  
9 Nevada wildlife is of public concern. [See Mot. Dismiss, Ex. 1, 2; Opp. Mot. Dismiss, Ex. 2-5].

10 In order to evaluate the degree of closeness between the asserted public interest and  
11 speaker's statements/conduct, the Court must evaluate the specific statements (Q, R, S, U, Y)  
12 attributed to Stark. When determining whether these statements are related to the public interest,  
13 the court should focus on the specific nature of the speech rather than the generalities that might  
14 be abstracted from it. Statement Q's main focus concerns potential benefits Lackey may receive,  
15 and hypothesizes that Lackey should go to jail if they can prove he sells bear parts. Statement Q is  
16 not directly related to the stated public interest. Statement S merely states "[i]t's time for the  
17 Nevada Engineered Bear Hunt!" This appears to be a satirical comment, but arguably relates to  
18 the public interest of trapping and euthanizing bears. Statement U (which appears to be in favor of  
19 Lackey) does not relate to the stated interest of bear treatment, as it merely critiques how other  
20 commenters are attempting to set forth their messages. Statement Y, commenting that Lackey is  
21 an "incompetent asshole," is not related to the public interest concerning the treatment of bears,  
22 but rather is a personal attack on Lackey's character. Statement R contains some assertions that  
23 relate to the public interest (as it alleges bears are being relocated to hunt zones and areas without  
24 any food or water); however its main focus appears to be an attack on Lackey's character, by  
25 calling him a murderer and demanding he go to jail.

26 Further, in order to shift the burden to Lackey, Stark must prove, by the preponderance of  
27 the evidence, that the statements are true or were made without knowledge of their falsehood. See  
28

1 NRS 41.637; NRS 41.660. In this respect, Stark has provided an affidavit that states: "I have only  
2 personally posted true facts on the Facebook page, except these matters of opinion, of which I have  
3 stated as such." [Aff. Stark, at ¶ 4]. Additionally, Stark attests, "I believe that the statements made  
4 by others on the Facebook page 'NDOW WATCH Keeping them Transparent' are statements of  
5 opinion or contain substantial truth. [Aff. Stark, at ¶ 15]. Statement R was made by JoAnn Hill.  
6 The Court finds that Stark has failed to meet her burden to prove statement R's truthfulness or that  
7 it was not made without knowledge of its falsity. Stark does not specifically address the factual  
8 allegations in R nor make any specific indication as to why the statement made by JoAnn Hill is  
9 true, or made without knowledge of its falsity. Similarly, Stark's affidavit does not specifically  
10 address statement S. While Exhibit A to the reply (an article entitled "Tensions High Over Bear  
11 Management in Nevada Side of Tahoe Basin) discusses Nevada bear hunts, there is no indication  
12 that "it was time" for the Nevada bear hunt to find by the preponderance of evidence the statement  
13 is true. Therefore, the Court finds Stark has failed to meet her burden to show the claim is based  
14 upon a good faith communication in furtherance of the right to petition or the right to free speech  
15 in direct connection with an issue of public concern. As such, the Court will deny Stark's motion  
16 to dismiss under Nevada's Anti-SLAPP statute.

#### 17 NRCP 12

18 Next the Court considers Stark's 12(B) motion to dismiss. Although evidence was provided  
19 for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to dismiss into  
20 a motion for summary judgment by considering matters outside the pleadings at this stage of the  
21 case.

22 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim  
23 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the  
24 pleader seeks." "A complaint must set forth sufficient facts to establish all necessary elements of  
25 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief  
26 sought." Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

27 ///



Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a claim upon which relief should be granted. A motion to dismiss should be granted only if “it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a motion to dismiss, the court must take all allegations in the complaint as true and draw all inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” Hotel Employees & Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

***Communications Decency Act***

First, the Court address arguments concerning the CDA. The CDA immunizes interactive computer services or users from any cause of action that would make them liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”).<sup>1</sup> The CDA defines “interactive computer service” to mean, “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” Courts have consistently found Facebook operates as an interactive computer service.<sup>2</sup>

The CDA, however, does not immunize an interactive computer service if it also functions

<sup>1</sup> See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc., 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer service provider).

<sup>2</sup> See e.g. Fraley v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d 1354, 1359 (D.C. Cir. 2014).

1 as an information content provider for the portion of the statement or publication at issue.<sup>3</sup>  
2 "Information content provider" means "any person or entity that is responsible, in whole or in part,  
3 for the creation or development of information provided through the Internet or any other  
4 interactive computer service." 47 USC 230(3). A website may lose immunity under the CDA by  
5 making a material contribution to the creation or development of content.<sup>4</sup>

6 Thus, passive websites or websites that permit comments (without encouraging or  
7 developing the content at issue) have not been deemed information content providers for the  
8 purposes of CDA.<sup>5</sup> Therefore, absent some solicitation/encouragement for the defamatory  
9 remarks, an interactive website/user will not be liable for the content that originated from a third  
10 party.

11 Here, the FAC alleges both specific comments of third parties as well as generally states  
12 that NDOW WATCH has made and continues to make false statement regarding Lackey and  
13 initiates public comment threads on Facebook slandering Lackey. [FAC, at 3:18-28]. It further  
14 alleges that Stark and NDOW WATCH published and encourage statements. [FAC, at 8].  
15 Facebook permits a comment by both the webpage (in this case NDOW WATCH) as well as third  
16 party users. An original post may contain a reply, as well as a reply to the reply, and can continue,

17 <sup>3</sup> Carafano, 339 F.3d at 1123-25 (finding 47 USC 230(c)(1) would bar plaintiff's claims unless defendant "created or  
18 developed the particular information at issue"); see also Anthony v. Yahoo! Inc., 421 F.Supp. 2d 1257, 1262-1263  
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service's alleged creation of false profiles  
which induced plaintiff to maintain his membership there).

19 <sup>4</sup> Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 (9th Cir. 2016)(noting Roommates.Com, 521 F.3d at 1171, clarified "the  
20 language used in Carafano [Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could  
be a developer of content where it encouraged users to provide illegal content"). See e.g., Fraleigh v. Facebook, Inc.,  
21 830 F.Supp.2d 785, 801-02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d 1354, 1359 (D.C. Cir. 2014). In Fair  
Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1172 (9th Cir. 2008), the court  
22 discussed when a website may also act as an information content provider: "The salient fact in Carafano was that the  
website's classifications of user characteristics did absolutely nothing to enhance the defamatory sting of the message,  
23 to encourage defamation or to make defamation easier: The site provided neutral tools specifically designed to match  
romantic partners depending on their voluntary inputs. By sharp contrast, Roommate's website is designed to force  
24 subscribers to divulge protected characteristics and discriminatory preferences, and to match those who have rooms  
with those who are looking for rooms based on criteria that appear to be prohibited by the FHA."

25 <sup>5</sup> See e.g., Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F.Supp.2d 1112, 1125-26 (D. Nev. 2013)("passive" message  
boards with only occasional curation by message board moderators warrant immunity under section 230");  
26 Spreadbury v. Bitterroot Pub. Library, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012)(defendant that had offered a  
simple generic prompt for readers to comment on, where it did not develop or select the comments, or encourage  
27 readers to make defamatory statements was entitled to summary judgment on claims that are premised on third party  
comments); Piping Rock, 946 F.Supp.2d at 957 (held to the extent that the party bases its claims on statements made  
28 by the blog users other than defendant (creator and contributor to the blog), defendant was immune from liability for  
posts he did not author under the CDA).

1 the Court supposes, indefinitely. Given the nature of Facebook, the Court cannot conclude for the  
2 purposes of a motion to dismiss that Stark did not encourage the third party users' statements.  
3 Therefore, at this time, the Court cannot find Stark is immunized from liability for the third party  
4 comments under the CDA.<sup>6</sup>

### 5 *Defamation*

6 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate  
7 the necessary elements of the claim so the defending party has adequate notice of the nature of the  
8 claim. Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.  
9 8(a), decisions interpreting N.R.C.P. 8(a)'s federal counterpart are highly instructive here,  
10 especially as these federal opinions were decided prior the US Supreme Court's adoption of the  
11 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic  
12 Corporation v. Twombly, 550 U.S. 544 (2007).

13 Although, Some federal courts, applying FRCP 8, have required defamation to be pled with  
14 more specificity, such as dictating the claim must set forth an adequate identification of the  
15 communication, who made the statements, to whom they were made, and when the statements  
16 were made. See Bushnell Corporation v. ITT Corporation, 973 F.Supp. 1276 (D.Kan.1997);  
17 Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569, 573–74 (D. Vt. 1998); Blanck v.  
18 Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220 Fed. Appx. 697 (9th Cir. 2007).

19 Other federal courts have expressed disfavor about requiring a higher pleading requirement  
20 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,  
21 1027 (D. Nev. 2013).

22 As the Nevada Supreme Court has not adopted the higher pleading standards many courts  
23 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a  
24 claim for damages is not premised on defamation per se, special damages must be pled with

25  
26 <sup>6</sup> See e.g. Hy Cite Corp. v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148–49 (D. Ariz.  
27 2005)(declining to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that  
28 defendants added editorial comments, titles, and original content to third-party complaints posted on defendants'  
website); Whitney Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding  
whether Defendants were entitled to CDA immunity remained in question because the complaint plead Defendants'  
involvement in creating or developing the alleged defamatory content posted on their website).

1 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225  
2 (1981).

3       The general elements of a defamation claim require a plaintiff to prove: “(1) a false and  
4 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to  
5 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.  
6 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are  
7 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation  
8 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,  
9 occupation or profession.’” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), affd.  
10 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

11       When a public figure or a limited public figure is involved, a plaintiff must plead and prove  
12 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public  
13 figures are those individuals who achieve such pervasive fame or notoriety that they become a  
14 public figure for all purposes and in all contexts,” as well as those who hold government office.  
15 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure  
16 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and  
17 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.  
18 556, 573–74, 138 P.3d 433, 446 (2006).

19       The FAC generally alleges Stark is doing business as NDOW WATCH. The FAC states  
20 that NDOW WATCH has and continues to initiate public comment threads on its Facebook page  
21 slandering Lackey in his official capacity as a state employee and urging and encouraging the  
22 public at large to shame and harass Lackey so that he will lose his job and/or feel threatened enough  
23 to leave the community. The FAC alleges NDOW WATCH acted intentionally and with malice  
24 with the primary purpose being to harm, threaten, intimidate, cause fear, anxiety, embarrassment  
25 and damage to his reputation by publishing false and vicious comments accusing Lackey of  
26 criminal conduct (including accepting bribes and conspiracy) designed to incite public outrage.  
27 The FAC lists some, but allegedly not all of the comments made by NDOW WATCH and the other  
28

1 defendants (see above for statements alleged attributable to Stark/NDOW WATCH). The FAC  
2 asserts Lackey is either a limited purpose public figure or a private individual. The FAC sets forth  
3 that the defendants published and encouraged statements despite having actual knowledge that  
4 such statements were false, or with reckless disregard for their veracity. The FAC states defendants  
5 know the inflammatory false information they were posting was malicious, false, and accusatory  
6 of criminal conduct and had the purposes of harming, threatening, intimidating and or harassing  
7 plaintiff and his livelihood. It further alleges Lackey has suffered damages and has incurred  
8 attorneys' fees.

9 The specific statements attributed to Stark are Statements Q, R, S, U, Y. Generally,  
10 whether a statement is capable of defamatory construction is a question of law. K-Mart Corp. v.  
11 Washington, 109 Nev. 1180, 886P.2d 274 (1993). "Statements of opinion as opposed to statements  
12 of fact are not actionable," however, "expressions of opinion may suggest that the speaker knows  
13 certain facts to be true or may imply that facts exist which will be sufficient to render the message  
14 defamatory if false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous  
15 or a 'mixed type,' which is an opinion, which gives rise to the inference that the source has based  
16 the opinion on underlying, undisclosed defamatory facts;" and when a statement is ambiguous,  
17 "the question of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117  
18 Nev. 107, 113, 17 P.3d 422, 426 (2001).

19 Statement Q, R, and S, contain both what appears to be the commentators' opinions.  
20 However these statements also either contain factual allegations or opinions that imply the  
21 comments are based on facts (such as Lackey is selling bear parts, and moving bears to hunt zones).  
22 The Court finds, drawing all inferences in favor of Lackey, the statements are actionable and  
23 defamatory per se, as they attack his livelihood and allege criminal conduct. Likewise, Statement  
24 Y ("Lackey is such an incompetent asshole!! Fire his ass!!") may either be construed as an opinion  
25 or defamatory statement, as the Court is not privy of the nature in which it was made (such as  
26 whether it was responding to "facts" on another post). See Branda v. Sanford, 97 Nev. 643, 645,  
27 637 P.2d 1223, 1224 (1981).

1 Statement U appears to be in support of Lackey, although neither Lackey nor NDOW is  
2 mentioned. The statement critiques "Tahoe" and criticizes the way the "page" is trying to educate  
3 people. Therefore, the Court does not find this is a statement is actionable.

4 The Court finds Lackey has stated a claim for defamation. Further, as to the specific  
5 statements in front of the Court at this time (Q, R, S, U, Y), the Court only finds that Statement U,  
6 as a matter of law, is not actionable, as it is not even about Lackey.

7 ***Civil Conspiracy***

8 Civil conspiracy "consists of a combination of two or more persons who, by some  
9 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
10 and damage results from the act or acts." Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,  
11 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants  
12 continuously over the past several years have acted in concert with one another to accomplish the  
13 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their  
14 supporters post a threat to his safety and as a result he has suffered damages. The Court finds  
15 Lackey has properly alleged a claim for civil conspiracy against Stark. Lackey has pled the  
16 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,  
17 Lackey incorporates by reference the other allegations in his complaint. In addition to the conduct  
18 attributed to Stark, the FAC likewise sets forth specific Facebook threats/comments attributed to  
19 the other defendants.

20 Further, the Court does not find the "intra-corporate conspiracy doctrine" bars this claim.  
21 See Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)(finding  
22 agents and employees of a corporation cannot conspire with their corporate principal or employer  
23 where they act in their official capacities on behalf of the corporation and not as individuals for  
24 their individual advantage). Here, the FAC alleges that Stark conspired with the other defendants,  
25 not NDOW WATCH.

26 ///

27 ///

1                   ***Intentional Infliction of Emotional Distress:***

2           The elements of a claim for intentional infliction of emotional distress are: 1) that the  
3 defendant's conduct was extreme and outrageous; (2) that the defendant either intended or  
4 recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered  
5 severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately  
6 caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).  
7 "[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is  
8 regarded as utterly intolerable in a civilized community." Maduikie v. Agency Rent-A-Car, 114  
9 Nev. 1, 4, 953 P.2d 24, 26 (1998).

10           Based on the allegations set forth above, the FAC alleges, defendants have engaged in  
11 willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing  
12 emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as  
13 a result of defendants' conduct and remains fearful of physical harm or violence directed at him.  
14 Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly  
15 stated a claim for intentional infliction of emotional distress against Stark as the FAC alleges,  
16 among other allegations, that NDOW WATCH has initiated public comment to encourage the  
17 public to shame and harass Lackey so he will lose his job and/or feel threatened enough to leave  
18 the community. Thus, a jury could find this is extreme and outrageous conduct. The Court  
19 incorporates by reference is analysis of the CDA and defamation as set forth above.

20                   ***Negligent Infliction of Emotional Distress<sup>7</sup>***

21           A claim for negligent infliction of emotional distress requires a showing that defendant  
22 owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause  
23 of the plaintiff's injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116  
24 Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.  
25 213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court cited favorably in Turner

26  
27 <sup>7</sup> Although this third claim for relief is titled as "Intentional Infliction of Emotional Distress," because the FAC  
28 alleges that Defendants acted negligently under this heading, the Court assumes it should be titled Negligent  
Intentional Infliction of Emotional Distress.

1 supra, the explanation of the duty required when a person complains they are the direct victim of  
2 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220-21  
3 (2002):

4 The distinction between the "bystander" and the "direct victim" cases is found in  
5 the source of the duty owed by the defendant to the plaintiff.' 'Bystander' claims  
6 are typically based on breach of a duty owed to the public in general, whereas a  
7 right to recover for emotional distress as a 'direct victim' arises from the breach of  
8 a duty that is assumed by the defendant or imposed on the defendant as a matter of  
9 law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 "In cases where emotional distress damages are not secondary to physical injuries, but  
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the  
12 absence of physical impact, proof of 'serious emotional distress' causing physical injury or illness  
13 must be presented." Barnettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional  
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants' negligence.  
16 However, the Court finds the FAC has failed to plead that Stark owed Lackey a duty. As such, the  
17 Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Carolyn Stark's *Special Motion to Dismiss/Anti-SLAPP*  
20 brought under NRS 41.635 et seq. is DENIED.

21 IT IS HEREBY FURTHER ORDERED that Carolyn Stark's *Special Motion to Dismiss*  
22 brought under NRCP 12 is DENIED as to claims of defamation, civil conspiracy and intentional  
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim  
24 shall be DISMISSED.

25 IT IS HEREBY FURTHER ORDERED that Carolyn Stark shall file an Answer to the First  
26 Amended Complaint within twenty (20) days of the date of this Order.

27 DATED this 20 day of October, 2017.

28  
Connie J. Stunhimes  
DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
STATE OF NEVADA, COUNTY OF WASHOE; that on the 20<sup>th</sup> day of  
October, 2017, I filed the attached document with  
the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document  
by the method(s) noted below:

       Personal delivery to the following: [NONE]

X Electronically filed with the Clerk of the Court, using the eFlex system which  
constitutes effective service for all eFiled documents pursuant to the efile User  
Agreement:

Thomas Brennan, Esq.  
Attorney at Law

Sean Rose, Esq.  
Attorney at Law

Del Hardy, Esq.  
Attorney at Law

Stephanie Rice, Esq.  
Attorney at Law

Cameron Bordner, Esq.  
Attorney at Law

Robin D. Shofner, Esq.  
Attorney at Law

       Transmitted document to the Second Judicial District Court mailing  
system in a sealed envelope for postage and certified mailing with the United States  
Postal Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service – [NONE]

       Inter-Office Mail – [NONE]

DATED this 20<sup>th</sup> day of October, 2017.

Maureen

CODE: 1310  
DEL HARDY, ESQ. (SBN 1172)  
STEPHANIE RICE, ESQ. (SBN 11627)  
WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503  
Telephone: (775) 786-5800  
*Attorneys for Defendant Carolyn Stark*

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

CARL LACKEY,

Plaintiff,

vs.

BEAR LEAGUE, a California Corporation,  
ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE WALL  
OF SHAME, CAROLYN STARK, an individual  
dba NDOW WATCH KEEPING THEM  
TRANSPARENT, and DOES 1-20, INCLUSIVE.

Defendants.

CASE NO.: CV17-00434

DEPT. NO.: 4

**CASE APPEAL STATEMENT**

COMES NOW, Defendant CAROLYN STARK, by and through her undersigned attorneys of record, hereby respectfully submits this Case Appeal Statement as follows:

**1. Name of appellant(s) filing this case appeal statement:**

Defendant, CAROLYN STARK

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable Judge Connie Steinheimer

**3. Identify each appellant and the name and address of counsel for each appellant:**

Appellant Herein: CAROLYN STARK

Counsel Name & Address: DEL HARDY, ESQ.  
STEPHANIE RICE, ESQ.  
RICHARD SALVATORE, ESQ.  
WINTER STREET LAW GROUP  
96 & 98 Winter Street  
Reno, Nevada 89503

1 **4. Identify each respondent and the name and address of appellate counsel, if**  
2 **known, for each respondent (if the name of a respondent's appellate counsel is**  
3 **unknown, indicate as much and provide the name and address of that**  
4 **respondent's trial counsel):**

5 Respondent Herein: CARL LACKEY

6 Appellate Counsel: Unknown

7 Respondents' Trial Counsel: SEAN P. ROSE, ESQ.  
8 Rose Law Office  
9 150 W. Huffaker Lane, Suite 101  
10 Reno, Nevada 89511  
11 Trial Counsel for Above-Named Respondent

12 THOMAS R. BRENNAN, ESQ.  
13 Durney & Brennan, Ltd.  
14 6900 S. McCarran Blvd., Suite 2060  
15 Reno, Nevada 89509  
16 Trial Counsel for Above-Named Respondent

17 **5. Indicate whether any attorney identified above in response to question 3 or 4 is**  
18 **not licensed to practice law in Nevada and, if so, whether the district court granted**  
19 **that attorney permission to appear under SCR 42:**

20 At all times herein, all attorneys identified in response to questions 3 and 4 above  
21 are believed to be licensed to practice law in Nevada. There was no grant of  
22 permission to appear under SCR 42 granted by the District Court in this matter.

23 **6. Indicate whether appellant was represented by appointed or retained counsel in**  
24 **the district court:**

25 Appellant herein was represented by retained counsel in the District Court.

26 **7. Whether appellant is represented by appointed or retained counsel on appeal:**

27 Appellant herein is represented by retained counsel on appeal.

28 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**  
the date of entry of the district court order granting such leave:

N/A, appellant herein was never granted leave to proceed in forma pauperis.

1 **9. Indicate the date the proceedings commenced in the district court (e.g., date**  
2 **complaint, indictment, information, or petition was filed):**

3 Plaintiff Carl Lackey filed the Complaint on March 1, 2017.

4 **10. Provide a brief description of the nature of the action and result in the district**  
5 **court, including the type of judgment or order being appealed and the relief**  
6 **granted by the district court:**

7 This is a case where Carl Lackey, an employee of the Nevada Department of Wildlife  
8 ("NDOW") and public figure responsible for the bear population in Northern Nevada, filed this  
9 action against Appellant and others, to silence Appellant and others from public comment and  
10 communications regarding Mr. Lackey and his actions on behalf of NDOW. Specifically, Mr.  
11 Lackey challenges a social media ("Facebook") page known as "NDOW Watch Keeping Them  
12 Transparent" maintained by Appellant. Appellant, an animal rights and bear advocate,  
13 maintains the Facebook page to accommodate the public interest in NDOW and its employee,  
14 Mr. Lackey's, handling of the bears that are captured in the Lake Tahoe area, the subsequent  
15 release of the bears into a strange territory, and the fact that the release area also happens to  
16 be areas where NDOW issues bear hunting licenses. The timing of the capture and release of  
17 those bears into that hunting area has raised concerns among many citizens. However, Mr.  
18 Lackey has not sued Appellant for defamation of statement she made, but rather, what other  
19 people have posted on the Facebook page which Appellant maintains. In other words, the crux  
20 of Mr. Lackey's Complaint is nothing more than an attempt to silence the criticism and  
21 conversation of concerned residents and community members regarding Mr. Lackey's conduct  
22 and actions as the public employee tasked with leading bear capture and control matters in  
23 Northern Nevada.

24 This is exactly the type of case that the Anti-SLAPP (Strategic Lawsuits Against Public  
25 Participation) was designed to protect. Appellant filed a Special Motion to Dismiss pursuant to  
26 NRS Chapter 41 (Anti-SLAPP) and NRCP 12 on April 19, 2017, with Mr. Lackey's Opposition  
27 being filed May 8, 2017 and Appellant's filed her Reply and submitted this matter for decision  
28

1 on May 15, 2017. Thereafter, instead of ruling on the matter within twenty (20) judicial days  
2 after the motion was served on the Plaintiff pursuant to NRS 41.660(3)(f), on June 30, 2017, the  
3 District Court Ordered that the matter be set for oral arguments. Oral arguments were held on  
4 July 26, 2017 after which, the District Court took the matter under advisement. The District  
5 Court then issued its Order denying Appellant's Special Motion to Dismiss as to the three (3)  
6 claims on appeal herein and granted the same as to an additional cause of action for Negligent  
7 Infliction of Emotional Distress on October 20, 2017. A Notice of Entry of Order was filed  
8 thereon on November 8, 2017. Accordingly, Appellant herein files the instant interlocutory  
9 appeal of this anti-SLAPP matter in accordance with NRS 41.670(4).

10 **11. Indicate whether the case has previously been the subject of an appeal to or**  
11 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme**  
12 **Court docket number of the prior proceeding:**

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


15 **12. Indicate whether this appeal involves child custody or visitation:**

16 This appeal does not involve child custody or visitation.

17 **13. If this is a civil case, indicate whether this appeal involves the possibility of**  
18 **settlement:**

19 While the undersigned is always hopeful that the possibility of settlement exists  
20 in all matters, in light of the contentious nature of this action, the realistic  
21 possibility of settlement in this case is unlikely, but always available for  
22 consideration.

23 DATED this 8<sup>th</sup> day of November, 2017.

24   
25 STEPHANIE RICE, ESQ. (SBN 11627)  
26 DEL HARDY, ESQ. (SBN 1172)  
27 Attorneys for Appellant, Carolyn Stark  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **CASE APPEAL STATEMENT** on all parties to this action by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

       Personal Delivery

       Facsimile (FAX) and/or Email:

       Federal Express or other overnight delivery

       Messenger Service

       Certified Mail with Return Receipt Requested

  X   Electronically filed

addressed as follows:

Sean P. Rose, Esq.  
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150 W. Huffaker Lane, Suite 101  
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F: 775-657-8517

Cameron Bordner, Esq.  
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Reno, Nevada 89523

Thomas R. Brennan, Esq.  
Durney & Brennan, Ltd.  
6900 S. McCarran Blvd., Suite 2060  
Reno, NV 89509  
F: 775-322-3014

Robin Shofner, Esq.  
Molsby & Bordner, LLP  
1830 15<sup>th</sup> Street, Ste. 100  
Sacramento, CA 95811

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 8<sup>th</sup> day of November, 2017.



AN EMPLOYEE OF WINTER STREET LAW GROUP

**SECOND JUDICIAL DISTRICT COURT****STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV17-00434****Case Description: CARL LACKEY VS BEAR LEAGUE, ET AL (D4)****Case Number: CV17-00434 Case Type: OTHER TORT - Initially Filed On: 3/1/2017****Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - CONNIE J. STEINHEIMER - D4	Active
PLTF - CARL LACKEY - @1305782	Active
DEFT - ANNE BRYANT - @1305780	Active
DEFT - CAROLYN STARK dba NDOWL WATCH KEEPING THEM TRANSPARENT - @1307108	Active
DEFT - MARK E SMITH - @1305781	Active
DEFT - BEAR LEAGUE - @1268652	Active
ATTY - Cameron D. Bordner, Esq. - 13831	Active
ATTY - Sean P. Rose, Esq. - 5472	Active
ATTY - Stephanie Rice, Esq. - 11627	Active
ATTY - Thomas Richard Brennan, Esq. - 481	Active
ATTY - Robin D. Shofner, Esq. - 13758	Active
ATTY - Del L. Hardy, Esq. - 1172	Active

**Disposed Hearings**

- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 5/16/2017 at 09:03:00  
Extra Event Text: DEFT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP FILED 4-19-17  
Event Disposition: S200 - 6/30/2017
- Department: D4 -- Event: CONFERENCE CALL -- Scheduled Date & Time: 5/24/2017 at 16:15:00  
Event Disposition: D435 - 5/24/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 6/26/2017 at 10:49:00  
Extra Event Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED)  
Event Disposition: S200 - 6/26/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 6/26/2017 at 10:50:00  
Extra Event Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED)  
Event Disposition: S200 - 6/26/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 7/26/2017 at 14:30:00  
Extra Event Text: - BEAR LEAGUE, BRYANT, SMITH AND STARK'S MOTION TO DISMISS (ANTI-SLAPP) TAKEN UNDER ADVISEMENT AFTER ORAL ARGUMENT  
Event Disposition: S200 - 10/23/2017
- Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 7/26/2017 at 14:30:00  
Extra Event Text: ON MOTIONS TO DISMISS  
Event Disposition: D840 - 7/26/2017

**Actions**Filing Date - Docket Code & Description**Report Does Not Contain Sealed Cases or Confidential Information**

- 1 3/1/2017 - \$1425 - \$Complaint - Civil  
Additional Text: Transaction 5974772 - Approved By: CSULEZIC : 03-01-2017:14:40:12
- 2 3/1/2017 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$260.00 was made on receipt DCDC567724.
- 3 3/31/2017 - 1090 - Amended Complaint  
Additional Text: FIRST AMENDED COMPLAINT FOR DAMAGES - Transaction 6026938 - Approved By: TBRIITON : 03-31-2017:10:22:13
- 4 3/31/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6027039 - Approved By: NOREVIEW : 03-31-2017:10:24:50
- 5 4/4/2017 - 4090 - \*\* Summons Issued  
Additional Text: 6
- 6 4/17/2017 - 1067 - Affidavit of Service  
Additional Text: Carolyn Stark & NDOW Watch Keeping them Transparent - Transaction 6053906 - Approved By: CSULEZIC : 04-17-2017:10:02:27
- 7 4/17/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6053911 - Approved By: NOREVIEW : 04-17-2017:10:03:19
- 8 4/19/2017 - 1030 - Affidavit in Support...  
Additional Text: AFFIDAVIT OF CAROLYN STARK - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 9 4/19/2017 - 2315 - Mtn to Dismiss ...  
Additional Text: (CAROLYN STARK) SPECIAL MOTION TO DISMISS/ANTI-SLAPP - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 10 4/19/2017 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: DEFT CAROLYN STARK - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 11 4/20/2017 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$213.00 was made on receipt DCDC572884.
- 12 4/20/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6061091 - Approved By: NOREVIEW : 04-20-2017:08:26:53
- 13 4/24/2017 - 4085 - Summons Filed  
Additional Text: ANNE BRYANT - APRIL 13, 2017; 2:05 PM - Transaction 6066073 - Approved By: YVILORIA : 04-24-2017:11:53:21
- 14 4/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6066134 - Approved By: NOREVIEW : 04-24-2017:11:55:54
- 15 4/24/2017 - 4085 - Summons Filed  
Additional Text: CAROLYN STARK SERVED ON 04/10/17 - Transaction 6066252 - Approved By: TBRIITON : 04-24-2017:12:53:19
- 16 4/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6066294 - Approved By: NOREVIEW : 04-24-2017:12:54:12
- 17 5/8/2017 - 2645 - Opposition to Mtn ...  
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP1 - Transaction 6090491 - Approved By: TBRIITON : 05-09-2017:09:08:44
- 18 5/9/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6090677 - Approved By: NOREVIEW : 05-09-2017:09:09:52



- 19 5/9/2017 - 1650 - Errata...  
Additional Text: ERRATA TO PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAP - Transaction 6090965 - Approved By: CSULEZIC : 05-09-2017:11:20:30
- 20 5/9/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6091231 - Approved By: NOREVIEW : 05-09-2017:11:21:18
- 21 5/15/2017 - 3860 - Request for Submission  
Additional Text: Transaction 6101482 - Approved By: YVILORIA : 05-16-2017:08:55:51  
DOCUMENT TITLE: DEFT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP FILED 4-19-17  
PARTY SUBMITTING: DEL L HARDY ESQ  
DATE SUBMITTED: MAY 16, 2017  
SUBMITTED BY: YVILORIA  
DATE RECEIVED JUDGE OFFICE:
- 22 5/15/2017 - 3795 - Reply...  
Additional Text: DEFENDANT CAROLYN STARK'S REPLY TO ANTI-SLAPP MOTION  
DFX: EXHIBITS PRESENTED INCORRECTLY, NO INDEX OF EXHIBITS AND EXHIBITS ARE ALPHABETICAL - - Transaction 6101485 - Approved By: YVILORIA : 05-16-2017:08:58:01
- 23 5/16/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6101683 - Approved By: NOREVIEW : 05-16-2017:08:56:48
- 24 5/16/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6101687 - Approved By: NOREVIEW : 05-16-2017:08:58:57
- 25 5/23/2017 - 2315 - Mtn to Dismiss ...  
Additional Text: (ANN BRYANT) SPECIAL MOTION TO DISMISS/MOTION TO DISMISS Transaction 6115133 - Approved By: CSULEZIC : 05-24-2017:08:51:15
- 26 5/23/2017 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: ANN BRYANT - Transaction 6115133 - Approved By: CSULEZIC : 05-24-2017:08:51:15
- 27 5/23/2017 - 1520 - Declaration  
Additional Text: (ANNE BRYANT) DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6115136 - Approved By: CSULEZIC : 05-24-2017:08:54:49
- 28 5/24/2017 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$213.00 was made on receipt DCDC576117.
- 29 5/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6115251 - Approved By: NOREVIEW : 05-24-2017:08:52:13
- 30 5/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6115263 - Approved By: NOREVIEW : 05-24-2017:08:55:55
- 31 5/24/2017 - 1005 - Acceptance of Service  
Additional Text: CAMERON BORDNER, ESQ. FOR MARK SMITH, LAKE TAHOE WALL OF SHAME, AND BEAR LEAGUE ON 5/24/17 - Transaction 6116442 - Approved By: PMSEWELL : 05-24-2017:14:51:57
- 32 5/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6116602 - Approved By: NOREVIEW : 05-24-2017:14:54:09
- 33 5/30/2017 - 3880 - Response...  
Additional Text: RESPONSE AFTER MAY 24, 2017 CONFERENCE CALL - Transaction 6123175 - Approved By: YVILORIA : 05-30-2017:15:04:32
- 34 5/30/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6123288 - Approved By: NOREVIEW : 05-30-2017:15:05:23

- 35 6/5/2017 - 1520 - Declaration  
Additional Text: DECLARATION OF MARK E. SMITH IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 36 6/5/2017 - 1520 - Declaration  
Additional Text: DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 37 6/5/2017 - 2315 - Mtn to Dismiss ...  
Additional Text: (MARK SMITH) SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 38 6/5/2017 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: MARK E. SMITH - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 39 6/6/2017 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$213.00 was made on receipt DCDC577033.
- 40 6/6/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6133617 - Approved By: NOREVIEW : 06-06-2017:09:07:12
- 41 6/13/2017 - 1520 - Declaration  
Additional Text: DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 42 6/13/2017 - 1520 - Declaration  
Additional Text: DECLARATION OF ANN BRYANT IN SUPPORT OF DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 43 6/13/2017 - 2315 - Mtn to Dismiss ...  
Additional Text: (BEAR LEAGUE) SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 44 6/13/2017 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: BEAR LEAGUE - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 45 6/14/2017 - PAYRC - \*\*Payment Receipted  
Additional Text: A Payment of \$213.00 was made on receipt DCDC577825.
- 46 6/14/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6147320 - Approved By: NOREVIEW : 06-14-2017:08:00:45
- 47 6/23/2017 - 2645 - Opposition to Mtn ...  
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT ANN BRYANT'S SPECIAL MOTION TO DISMISS - Transaction 6165007 - Approved By: CSULEZIC : 06-23-2017:16:49:56
- 48 6/23/2017 - 2645 - Opposition to Mtn ...  
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6165098 - Approved By: TBRITTON : 06-26-2017:08:27:10
- 49 6/23/2017 - 3860 - Request for Submission  
Additional Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED) - Transaction 6165117 - Approved By: TBRITTON : 06-26-2017:08:29:53  
PARTY SUBMITTING: CAMERON D. BORDNER, ESQ.  
DATE SUBMITTED: JUNE 26, 2017  
SUBMITTED BY: TBRITTON  
DATE RECEIVED JUDGE OFFICE:
- 50 6/23/2017 - 3860 - Request for Submission

Additional Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED) - Transaction 6165117 -

Approved By: TBRIITON : 06-26-2017:08:29:53

PARTY SUBMITTING: CAMERON D. BORNDER, ESQ.

DATE SUBMITTED: JUNE 26, 2017

SUBMITTED BY: TBRIITON

DATE RECEIVED JUDGE OFFICE:

51 6/23/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165119 - Approved By: NOREVIEW : 06-23-2017:16:50:57

52 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165312 - Approved By: NOREVIEW : 06-26-2017:08:28:14

53 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165317 - Approved By: NOREVIEW : 06-26-2017:08:30:56

54 6/26/2017 - 4302 - Withdrawal ...

Additional Text: WITHDRAWAL OF REQUEST FOR SUBMISSION OF MOTION - Transaction 6165858 - Approved By: YVILORIA : 06-26-2017:11:13:00

55 6/26/2017 - 4302 - Withdrawal ...

Additional Text: WITHDRAWAL OF REQUEST FOR SUBMISSION OF MOTION - Transaction 6165858 - Approved By: YVILORIA : 06-26-2017:11:13:00

56 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165989 - Approved By: NOREVIEW : 06-26-2017:11:14:02

57 6/26/2017 - S200 - Request for Submission Complet

Additional Text: WITHDRAWN 6/26/17

58 6/26/2017 - S200 - Request for Submission Complet

Additional Text: WITHDRAWN 6/26/17

59 6/27/2017 - 2645 - Opposition to Mtn ...

Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6168248 - Approved By: YVILORIA : 06-27-2017:11:50:06

60 6/27/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6168648 - Approved By: NOREVIEW : 06-27-2017:11:52:32

61 6/30/2017 - S200 - Request for Submission Complet

*No additional text exists for this entry.*

62 6/30/2017 - 3347 - Ord to Set

Additional Text: ORDER TO SET HEARING (ON ALL MOTIONS TO DISMISS) - Transaction 6176419 - Approved By: NOREVIEW : 06-30-2017:15:49:46

63 6/30/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6176428 - Approved By: NOREVIEW : 06-30-2017:15:50:41

64 7/3/2017 - 3790 - Reply to/in Opposition

Additional Text: (ANN BRYANT) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6177697 - Approved By: YVILORIA : 07-03-2017:14:09:14

65 7/3/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6177794 - Approved By: NOREVIEW : 07-03-2017:14:10:14

66 7/3/2017 - 3790 - Reply to/in Opposition

Additional Text: (MARK SMITH) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6178055 - Approved By: YVILORIA : 07-03-2017:15:57:32

- 67 7/3/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6178061 - Approved By: NOREVIEW : 07-03-2017:15:58:24
- 68 7/7/2017 - 3790 - Reply to/in Opposition  
Additional Text: (BEAR LEAGUE) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS - Transaction 6184984 - Approved By: YVILORIA : 07-07-2017:16:47:03
- 69 7/7/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6185279 - Approved By: NOREVIEW : 07-07-2017:16:48:17
- 70 7/10/2017 - 1250E - Application for Setting eFile  
Additional Text: ORAL ARGUMENTS ON MOTIONS TO DISMISS - JULY 26, 2017 AT 2:30 P.M. (1.5 HOURS) - Transaction 6185895 - Approved By: NOREVIEW : 07-10-2017:10:19:49
- 71 7/10/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6185901 - Approved By: NOREVIEW : 07-10-2017:10:20:49
- 72 7/26/2017 - 4105 - Supplemental ...  
Additional Text: Plaintiff's Supplement to Opposition to Defendant Mark E. Smith's Special Motion to Dismiss - Transaction 6215081 - Approved By: YVILORIA : 07-26-2017:11:43:12
- 73 7/26/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6215131 - Approved By: NOREVIEW : 07-26-2017:11:43:59
- 74 7/27/2017 - 4185 - Transcript  
Additional Text: Oral Argument - 7-26-17 - Transaction 6219320 - Approved By: NOREVIEW : 07-27-2017:17:17:38
- 75 7/27/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6219321 - Approved By: NOREVIEW : 07-27-2017:17:18:38
- 76 8/2/2017 - MIN - \*\*\*Minutes  
Additional Text: ORAL ARGUMENTS ON MOTIONS TO DISMISS - 7/26/17 - Transaction 6228612 - Approved By: NOREVIEW : 08-02-2017:14:11:48
- 77 8/2/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6228620 - Approved By: NOREVIEW : 08-02-2017:14:12:55
- 78 10/20/2017 - 3025 - Ord Granting/Denying in Part  
Additional Text: STARK'S SPECIAL MTN TO DISMISS/ANTI-SLAPP IS DENIED-STARK'S SPECIAL MTN TO DISMISS UNDER NRCP 12 IS DENIED AS TO CERTAIN CLAIMS AND GRANTED AS TO CERTAIN CLAIMS-STARKS HAS 20 DAYS TO FILE AN ANSWER - Transaction 6358318 - Approved By: NOREVIEW : 10-20-2017:17:53:36
- 79 10/20/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6358319 - Approved By: NOREVIEW : 10-20-2017:17:56:25
- 80 10/23/2017 - 3025 - Ord Granting/Denying in Part  
Additional Text: ORDER REGARDING ANNE BRYANT'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6360763 - Approved By: NOREVIEW : 10-23-2017:17:21:43
- 81 10/23/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6360765 - Approved By: NOREVIEW : 10-23-2017:17:24:05
- 82 10/23/2017 - 3025 - Ord Granting/Denying in Part  
Additional Text: ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6360766 - Approved By: NOREVIEW : 10-23-2017:17:26:14
- 83 10/23/2017 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*

- 84 10/23/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6360767 - Approved By: NOREVIEW : 10-23-2017:17:27:04
- 85 11/8/2017 - 2540 - Notice of Entry of Ord  
Additional Text: Transaction 6385514 - Approved By: NOREVIEW : 11-08-2017:08:58:29
- 86 11/8/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6385518 - Approved By: NOREVIEW : 11-08-2017:09:00:53
- 87 11/9/2017 - 1310 - Case Appeal Statement  
Additional Text: Transaction 6388316 - Approved By: YVILORIA : 11-09-2017:10:15:08
- 88 11/9/2017 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: Transaction 6388316 - Approved By: YVILORIA : 11-09-2017:10:15:08
- 89 11/9/2017 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of \$34.00 was made on receipt DCDC591878.
- 90 11/9/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6388338 - Approved By: NOREVIEW : 11-09-2017:10:17:45
- 91 11/9/2017 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: Bond ID: SAB-17-00079; Total Bond Amount: \$500.00.  
  
Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 09-NOV-2017 in the amount of \$500.00 on case ID CV17-00434.
- 92 11/9/2017 - 1350 - Certificate of Clerk  
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6389160 - Approved By: NOREVIEW : 11-09-2017:13:46:20

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

CARL LACKEY,  
Plaintiff,

v.

BEAR LEAGUE, a California Corporation,  
ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE  
WALL OF SHAME, CAROLYN STARK,  
individual dba NDOW WATCH KEEPING  
THEM TRANSPARENT, and DOES 1-20  
Inclusive.

Defendants.

Case No. CV17-00434

Department No.: 4

**ORDER**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant"), an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On April 19, 2017, Stark, by and through her counsel Del Hardy, Esq. and Stephanie Rice, Esq.,

1 of Winter Street Law Group, filed *Special Motion to Dismiss/Anti-SLAPP*, moving to dismiss all  
2 claims as to her, pursuant to NRS 41.635 et. seq. and NRCP 12. On May 8, 2017, Lackey filed  
3 *Opposition to Stark's Special Motion to Dismiss/Anti-SLAPP*. On May 9, Lackey filed *Errata* to  
4 his *Opposition*. Stark filed a *Reply* on May 15, 2017. The Court heard oral arguments on July 26,  
5 2017, and took the matter under advisement.

6 Stark asserts the Court should dismiss all claims against her under NRS 41.637 (Nevada's  
7 Anti-SLAPP Legislation). Stark contends the public policy concern is in the trapping and  
8 euthanizing bears by the Nevada Department of Wildlife (hereinafter "NDOW"). Starks argues  
9 she did not make any of the alleged defamatory statements, and therefore she is immune from  
10 liability under the Communications Decency Act, 47 USC 230 (hereinafter "CDA"). Even  
11 assuming the statements were attributable to her, Stark addresses each statement, asserting they  
12 are clearly opinions and some are not even directly against Lackey. Stark contends Lackey's  
13 claims fail as a matter of law as there is no conduct alleged attributable to her. Stark asserts the  
14 conspiracy claim is subject to dismissal under Nevada's intra-cooperate conspiracy doctrine.

15 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First  
16 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP  
17 statute does not apply because the statements do not involve a public interest. The statements are  
18 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under  
19 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking  
20 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with  
21 both violence and murder. Lackey contends Stark's reliance on the CDA is misplaced, as Stark is  
22 also an information content provider. As an individual who operates NDOW WATCH's Facebook  
23 page, any posting made by NDOW WATCH is essentially Stark's posting. Further, Stark has  
24 personally made postings. Even though Lackey contends the burden has not shifted pursuant to  
25 Nevada's Anti-SLAPP legislation, Lackey nonetheless argues, he will be successful on his claims.

26 ///

27 ///

## ANTI-SLAPP

“A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights.” Stubbs v. Strickland, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013). “Under Nevada's anti-SLAPP statutes, a defendant may file a special motion to dismiss if the defendant can show ‘by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.’” Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017)(quoting NRS 41.660(3)(a)). The term “good faith communication” includes “[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.” NRS 41.637(4). If a defendant makes this initial showing, the burden shifts to the plaintiff to show “with prima facie evidence a probability of prevailing on the claim.” Id.; NRS 41.660(3)(b).

When determining whether the conduct is protected under the anti-SLAPP statute, the court should not look to First Amendment law, but to Nevada’s anti-SLAPP legislation. See Delucchi v. Songer, 133 Nev. Adv. Op. 42, 396 P.3d 826, 833 (Nev. 2017). Thus, when analyzing whether the defendant's conduct constitutes “good faith communication” the court must determine whether “if it falls within one of the four categories enumerated in NRS 41.637, and whether it is truthful or is made without knowledge of its falsehood.” Delucchi, 133 Nev. Adv. Op. at 15, 396 P.3d at 833. However, if the alleged conduct is illegal as a matter of law, then the conduct is not protected activity within the anti-SLAPP context.

To determine whether an issue is one of public interest as used in NRS 41.637(4), the Nevada Supreme Court adopted the guiding principles California utilizes. Shapiro, 133 Nev. Adv. Op. 6, 389 P.3d at 268 (citing Piping Rock Partners, Inc. v. David Lerner Assocs. Inc., 946 F.Supp.2d 957, 968 (N.D. Cal 2013)). Specifically,

- (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;



1 (3) there should be some degree of closeness between the challenged statements  
2 and the asserted public interest—the assertion of a broad and amorphous public  
3 interest is not sufficient;  
4 (4) the focus of the speaker's conduct should be the public interest rather than a  
5 mere effort to gather ammunition for another round of private controversy; and  
6 (5) a person cannot turn otherwise private information into a matter of public  
7 interest simply by communicating it to a large number of people.

8 Id.

9 The FAC attributes the following statements to Stark/NDOW WATCH:

- 10 • (q): He and his family directly benefit by him moving bears to a hunting  
11 area if they are issued a license and the killing of them in the name of public  
12 safety must simply be something that excites him—all of it in conflict with  
13 NDOW's mission. Additionally, if we can establish that he or his family benefits  
14 financially from selling bear parts or selling the location where he recently  
15 released a bear – he should go to jail. Commenter: Colleen Hemingway on  
16 NDOW WATCH's Facebook post.
- 17 • (r) "Yes he should go to jail! The treatment of our bears is paramount  
18 cruelty. Moving mothers without their cubs, moving them to hunt zones, moving  
19 them great distances knowing full well there are no food sources or water and  
20 that they will try to return home! Animal cruelty is a felony in all 50 states. Him  
21 and his NDOW murders need to go to jail and stay there. Commenter: JoAnn  
22 Hill on NDOW WATCH's Facebook post.
- 23 • (s) "It's time for the Nevada Engineered bear hunt." Commenter: Mary  
24 LoBuono Bryden on NDOW WATCH's Facebook post.
- 25 • (u) This page is what's wrong with Tahoe, you should try another tactic to  
26 educate our community. No one wants to be bullied and threatened to understand  
27 a valid argument. You are creating fear and tearing neighborhoods apart. Perhaps  
28 spending so much energy in a negative way should be forwarded to create a  
positive change. No one should live in fear! This whole thing is comparable to  
the Salem witch trial of 1692!! Commenter: Kevin Dangers Bouchard on  
NDOW WATCH's post (trolls who support Carl Lackey).
- (y) Lackey is such an incompetent asshole! Fire his ass!! Commenter: Karen  
Lietzell-Vick on NDOW WATCH's Facebook Post.

First the Court considers whether the alleged conduct is illegal as a matter of law, and  
therefore does not fall within the protection of Nevada's anti-SLAPP legislation. 18 USC § 2261A  
(the federal stalking statute) provides in relevant part, whoever,

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with  
intent to kill, injure, harass, or intimidate another person, uses the mail, any  
interactive computer service or electronic communication service or electronic  
communication system of interstate commerce, or any other facility of interstate or  
foreign commerce to engage in a course of conduct that--

- (A) places that person in reasonable fear of the death of or serious bodily  
injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or
- (B) causes, attempts to cause, or would be reasonably expected to cause  
substantial emotional distress to a person described in clause (i), (ii), or (iii)  
of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.

1 Here, the Court cannot conclude as a matter of law that the statements were made with the requisite  
2 intent. The Court does not find that suggesting someone should be imprisoned necessarily places  
3 a person in reasonable harm or fear of death or would cause a person severe emotional distress.

4 Second, the Court considers the Shapiro factors to determine whether the statements were  
5 made in the public interest. Stark's articulated public interest is the treatment of wildlife in Lake  
6 Tahoe, specifically the concern of the trapping and euthanizing bears by NDOW. [See Special  
7 Mot. Dismiss/Anti-SLAPP, at 5:11-15]. The Court finds this interest does not equate with mere  
8 curiosity. Further, Stark has provided local newspaper articles to support showing the treatment of  
9 Nevada wildlife is of public concern. [See Mot. Dismiss, Ex. 1, 2; Opp. Mot. Dismiss, Ex. 2-5].

10 In order to evaluate the degree of closeness between the asserted public interest and  
11 speaker's statements/conduct, the Court must evaluate the specific statements (Q, R, S, U, Y)  
12 attributed to Stark. When determining whether these statements are related to the public interest,  
13 the court should focus on the specific nature of the speech rather than the generalities that might  
14 be abstracted from it. Statement Q's main focus concerns potential benefits Lackey may receive,  
15 and hypothesizes that Lackey should go to jail if they can prove he sells bear parts. Statement Q is  
16 not directly related to the stated public interest. Statement S merely states "[i]t's time for the  
17 Nevada Engineered Bear Hunt!" This appears to be a satirical comment, but arguably relates to  
18 the public interest of trapping and euthanizing bears. Statement U (which appears to be in favor of  
19 Lackey) does not relate to the stated interest of bear treatment, as it merely critiques how other  
20 commenters are attempting to set forth their messages. Statement Y, commenting that Lackey is  
21 an "incompetent asshole," is not related to the public interest concerning the treatment of bears,  
22 but rather is a personal attack on Lackey's character. Statement R contains some assertions that  
23 relate to the public interest (as it alleges bears are being relocated to hunt zones and areas without  
24 any food or water); however its main focus appears to be an attack on Lackey's character, by  
25 calling him a murderer and demanding he go to jail.

26 Further, in order to shift the burden to Lackey, Stark must prove, by the preponderance of  
27 the evidence, that the statements are true or were made without knowledge of their falsehood. See  
28

1 NRS 41.637; NRS 41.660. In this respect, Stark has provided an affidavit that states: "I have only  
2 personally posted true facts on the Facebook page, except these matters of opinion, of which I have  
3 stated as such." [Aff. Stark, at ¶ 4]. Additionally, Stark attests, "I believe that the statements made  
4 by others on the Facebook page 'NDOW WATCH Keeping them Transparent' are statements of  
5 opinion or contain substantial truth. [Aff. Stark, at ¶ 15]. Statement R was made by JoAnn Hill.  
6 The Court finds that Stark has failed to meet her burden to prove statement R's truthfulness or that  
7 it was not made without knowledge of its falsity. Stark does not specifically address the factual  
8 allegations in R nor make any specific indication as to why the statement made by JoAnn Hill is  
9 true, or made without knowledge of its falsity. Similarly, Stark's affidavit does not specifically  
10 address statement S. While Exhibit A to the reply (an article entitled "Tensions High Over Bear  
11 Management in Nevada Side of Tahoe Basin) discusses Nevada bear hunts, there is no indication  
12 that "it was time" for the Nevada bear hunt to find by the preponderance of evidence the statement  
13 is true. Therefore, the Court finds Stark has failed to meet her burden to show the claim is based  
14 upon a good faith communication in furtherance of the right to petition or the right to free speech  
15 in direct connection with an issue of public concern. As such, the Court will deny Stark's motion  
16 to dismiss under Nevada's Anti-SLAPP statute.

#### 17 NRCP 12

18 Next the Court considers Stark's 12(B) motion to dismiss. Although evidence was provided  
19 for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to dismiss into  
20 a motion for summary judgment by considering matters outside the pleadings at this stage of the  
21 case.

22 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim  
23 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the  
24 pleader seeks." "A complaint must set forth sufficient facts to establish all necessary elements of  
25 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief  
26 sought." Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

27 ///

Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a claim upon which relief should be granted. A motion to dismiss should be granted only if “it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a motion to dismiss, the court must take all allegations in the complaint as true and draw all inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” Hotel Employees & Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

### ***Communications Decency Act***

First, the Court address arguments concerning the CDA. The CDA immunizes interactive computer services or users from any cause of action that would make them liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”).<sup>1</sup> The CDA defines “interactive computer service” to mean, “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” Courts have consistently found Facebook operates as an interactive computer service.<sup>2</sup>

The CDA, however, does not immunize an interactive computer service if it also functions

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<sup>1</sup> See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc., 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer service provider).

<sup>2</sup> See e.g. Fraley v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d 1354, 1359 (D.C. Cir. 2014).



1 as an information content provider for the portion of the statement or publication at issue.<sup>3</sup>  
2 “Information content provider” means “any person or entity that is responsible, in whole or in part,  
3 for the creation or development of information provided through the Internet or any other  
4 interactive computer service.” 47 USC 230(3). A website may lose immunity under the CDA by  
5 making a material contribution to the creation or development of content.<sup>4</sup>

6 Thus, passive websites or websites that permit comments (without encouraging or  
7 developing the content at issue) have not been deemed information content providers for the  
8 purposes of CDA.<sup>5</sup> Therefore, absent some solicitation/encouragement for the defamatory  
9 remarks, an interactive website/user will not be liable for the content that originated from a third  
10 party.

11 Here, the FAC alleges both specific comments of third parties as well as generally states  
12 that NDOW WATCH has made and continues to make false statement regarding Lackey and  
13 initiates public comment threads on Facebook slandering Lackey. [FAC, at 3:18-28]. It further  
14 alleges that Stark and NDOW WATCH published and encourage statements. [FAC, at 8].  
15 Facebook permits a comment by both the webpage (in this case NDOW WATCH) as well as third  
16 party users. An original post may contain a reply, as well as a reply to the reply, and can continue,

17 <sup>3</sup> Carafano, 339 F.3d at 1123-25 (finding 47 USC 230(c)(1) would bar plaintiff’s claims unless defendant “created or  
18 developed the particular information at issue”); see also Anthony v. Yahoo! Inc., 421 F.Supp. 2d 1257, 1262-1263  
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service’s alleged creation of false profiles  
which induced plaintiff to maintain his membership there).

19 <sup>4</sup> Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 (9th Cir. 2016)(noting Roommates.Com, 521 F.3d at 1171, clarified “the  
20 language used in Carafano [Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could  
be a developer of content where it encouraged users to provide illegal content”). See e.g. Fraley v. Facebook, Inc.,  
830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d 1354, 1359 (D.C. Cir. 2014).In Fair  
21 Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1172 (9th Cir. 2008), the court  
discussed when a website may also act as an information content provider: “The salient fact in Carafano was that the  
22 website’s classifications of user characteristics did absolutely nothing to enhance the defamatory sting of the message,  
to encourage defamation or to make defamation easier: The site provided neutral tools specifically designed to match  
23 romantic partners depending on their voluntary inputs. By sharp contrast, Roommate’s website is designed to force  
subscribers to divulge protected characteristics and discriminatory preferences, and to match those who have rooms  
24 with those who are looking for rooms based on criteria that appear to be prohibited by the FHA.”

25 <sup>5</sup> See e.g. Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F.Supp.2d 1112, 1125–26 (D. Nev. 2013)(“‘passive’ message  
boards with only occasional curation by message board moderators warrant immunity under section 230”);  
26 Spreadbury v. Bitterroot Pub. Library, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012)(defendant that had offered a  
simple generic prompt for readers to comment on, where it did not develop or select the comments, or encourage  
27 readers to make defamatory statements was entitled to summary judgment on claims that are premised on third party  
comments); Piping Rock, 946 F.Supp.2d at 957 (held to the extent that the party bases its claims on statements made  
28 by the blog users other than defendant (creator and contributor to the blog), defendant was immune from liability for  
posts he did not author under the CDA).

1 the Court supposes, indefinitely. Given the nature of Facebook, the Court cannot conclude for the  
2 purposes of a motion to dismiss that Stark did not encourage the third party users' statements.  
3 Therefore, at this time, the Court cannot find Stark is immunized from liability for the third party  
4 comments under the CDA.<sup>6</sup>

### 5 ***Defamation***

6 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate  
7 the necessary elements of the claim so the defending party has adequate notice of the nature of the  
8 claim. Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.  
9 8(a), decisions interpreting N.R.C.P. 8(a)'s federal counterpart are highly instructive here,  
10 especially as these federal opinions were decided prior the US Supreme Court's adoption of the  
11 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic  
12 Corporation v. Twombly, 550 U.S. 544 (2007).

13 Although, Some federal courts, applying FRCP 8, have required defamation to be pled with  
14 more specificity, such as dictating the claim must set forth an adequate identification of the  
15 communication, who made the statements, to whom they were made, and when the statements  
16 were made. See Bushnell Corporation v. ITT Corporation, 973 F.Supp. 1276 (D.Kan.1997);  
17 Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569, 573–74 (D. Vt. 1998);(Blanck v.  
18 Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220 Fed. Appx. 697 (9th Cir. 2007).

19 Other federal courts have expressed disfavor about requiring a higher pleading requirement  
20 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,  
21 1027 (D. Nev. 2013).

22 As the Nevada Supreme Court has not adopted the higher pleading standards many courts  
23 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a  
24 claim for damages is not premised on defamation per se, special damages must be pled with

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25 <sup>6</sup> See e.g. Hy Cite Corp. v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148–49 (D. Ariz.  
26 2005)(declining to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that  
27 defendants added editorial comments, titles, and original content to third-party complaints posted on defendants'  
28 website); Whitney Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding  
whether Defendants were entitled to CDA immunity remained in question because the complaint plead Defendants'  
involvement in creating or developing the alleged defamatory content posted on their website).

1 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225  
2 (1981).

3 The general elements of a defamation claim require a plaintiff to prove: “(1) a false and  
4 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to  
5 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.  
6 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are  
7 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation  
8 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,  
9 occupation or profession.’” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), affd.  
10 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

11 When a public figure or a limited public figure is involved, a plaintiff must plead and prove  
12 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public  
13 figures are those individuals who achieve such pervasive fame or notoriety that they become a  
14 public figure for all purposes and in all contexts,” as well as those who hold government office.  
15 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure  
16 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and  
17 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.  
18 556, 573–74, 138 P.3d 433, 446 (2006).

19 The FAC generally alleges Stark is doing business as NDOW WATCH. The FAC states  
20 that NDOW WATCH has and continues to initiate public comment threads on its Facebook page  
21 slandering Lackey in his official capacity as a state employee and urging and encouraging the  
22 public at large to shame and harass Lackey so that he will lose his job and/or feel threatened enough  
23 to leave the community. The FAC alleges NDOW WATCH acted intentionally and with malice  
24 with the primary purpose being to harm, threaten, intimidate, cause fear, anxiety, embarrassment  
25 and damage to his reputation by publishing false and vicious comments accusing Lackey of  
26 criminal conduct (including accepting bribes and conspiracy) designed to incite public outrage.  
27 The FAC lists some, but allegedly not all of the comments made by NDOW WATCH and the other  
28



1 defendants (see above for statements alleged attributable to Stark/NDOW WATCH). The FAC  
2 asserts Lackey is either a limited purpose public figure or a private individual. The FAC sets forth  
3 that the defendants published and encouraged statements despite having actual knowledge that  
4 such statements were false, or with reckless disregard for their veracity. The FAC states defendants  
5 know the inflammatory false information they were posting was malicious, false, and accusatory  
6 of criminal conduct and had the purposes of harming, threatening, intimidating and or harassing  
7 plaintiff and his livelihood. It further alleges Lackey has suffered damages and has incurred  
8 attorneys' fees.

9 The specific statements attributed to Stark are Statements Q, R, S, U, Y. Generally,  
10 whether a statement is capable of defamatory construction is a question of law. K-Mart Corp. v.  
11 Washington, 109 Nev. 1180, 886P.2d 274 (1993). "Statements of opinion as opposed to statements  
12 of fact are not actionable," however, "expressions of opinion may suggest that the speaker knows  
13 certain facts to be true or may imply that facts exist which will be sufficient to render the message  
14 defamatory if false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous  
15 or a 'mixed type,' which is an opinion, which gives rise to the inference that the source has based  
16 the opinion on underlying, undisclosed defamatory facts;" and when a statement is ambiguous,  
17 "the question of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117  
18 Nev. 107, 113, 17 P.3d 422, 426 (2001).

19 Statement Q, R, and S, contain both what appears to be the commentators' opinions.  
20 However these statements also either contain factual allegations or opinions that imply the  
21 comments are based on facts (such as Lackey is selling bear parts, and moving bears to hunt zones).  
22 The Court finds, drawing all inferences in favor of Lackey, the statements are actionable and  
23 defamatory per se, as they attack his livelihood and allege criminal conduct. Likewise, Statement  
24 Y ("Lackey is such an incompetent asshole!! Fire his ass!!") may either be construed as an opinion  
25 or defamatory statement, as the Court is not privy of the nature in which it was made (such as  
26 whether it was responding to "facts" on another post). See Branda v. Sanford, 97 Nev. 643, 645,  
27 637 P.2d 1223, 1224 (1981).



1 Statement U appears to be in support of Lackey, although neither Lackey nor NDOW is  
2 mentioned. The statement critiques “Tahoe” and criticizes the way the “page” is trying to educate  
3 people. Therefore, the Court does not find this is a statement is actionable.

4 The Court finds Lackey has stated a claim for defamation. Further, as to the specific  
5 statements in front of the Court at this time (Q, R, S, U, Y), the Court only finds that Statement U,  
6 as a matter of law, is not actionable, as it is not even about Lackey.

7 ***Civil Conspiracy***

8 Civil conspiracy “consists of a combination of two or more persons who, by some  
9 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
10 and damage results from the act or acts.” Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,  
11 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants  
12 continuously over the past several years have acted in concert with one another to accomplish the  
13 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their  
14 supporters post a threat to his safety and as a result he has suffered damages. The Court finds  
15 Lackey has properly alleged a claim for civil conspiracy against Stark. Lackey has pled the  
16 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,  
17 Lackey incorporates by reference the other allegations in his complaint. In addition to the conduct  
18 attributed to Stark, the FAC likewise sets forth specific Facebook threats/comments attributed to  
19 the other defendants.

20 Further, the Court does not find the “intra-corporate conspiracy doctrine” bars this claim.  
21 See Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)(finding  
22 agents and employees of a corporation cannot conspire with their corporate principal or employer  
23 where they act in their official capacities on behalf of the corporation and not as individuals for  
24 their individual advantage). Here, the FAC alleges that Stark conspired with the other defendants,  
25 not NDOW WATCH.

26 ///

27 ///

1                   ***Intentional Infliction of Emotional Distress:***

2           The elements of a claim for intentional infliction of emotional distress are: 1) that the  
3 defendant's conduct was extreme and outrageous; (2) that the defendant either intended or  
4 recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered  
5 severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately  
6 caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).  
7 “[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is  
8 regarded as utterly intolerable in a civilized community.” Maduik v. Agency Rent-A-Car, 114  
9 Nev. 1, 4, 953 P.2d 24, 26 (1998).

10           Based on the allegations set forth above, the FAC alleges, defendants have engaged in  
11 willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing  
12 emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as  
13 a result of defendants’ conduct and remains fearful of physical harm or violence directed at him.  
14 Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly  
15 stated a claim for intentional infliction of emotional distress against Stark as the FAC alleges,  
16 among other allegations, that NDOW WATCH has initiated public comment to encourage the  
17 public to shame and harass Lackey so he will lose his job and/or feel threatened enough to leave  
18 the community. Thus, a jury could find this is extreme and outrageous conduct. The Court  
19 incorporates by reference is analysis of the CDA and defamation as set forth above.

20                   ***Negligent Infliction of Emotional Distress<sup>7</sup>***

21           A claim for negligent infliction of emotional distress requires a showing that defendant  
22 owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause  
23 of the plaintiff’s injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116  
24 Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.  
25 213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court cited favorably in Turner  
26

27 <sup>7</sup> Although this third claim for relief is titled as “Intentional Infliction of Emotional Distress,” because the FAC  
28 alleges that Defendants acted negligently under this heading, the Court assumes it should be titled Negligent  
Infliction of Emotional Distress.

1 supra, the explanation of the duty required when a person complains they are the direct victim of  
2 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220–21  
3 (2002):

4 The distinction between the “bystander” and the “direct victim” cases is found in  
5 the source of the duty owed by the defendant to the plaintiff.’ ‘Bystander’ claims  
6 are typically based on breach of a duty owed to the public in general, whereas a  
7 right to recover for emotional distress as a ‘direct victim’ arises from the breach of  
8 a duty that is assumed by the defendant or imposed on the defendant as a matter of  
9 law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 “In cases where emotional distress damages are not secondary to physical injuries, but  
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the  
12 absence of physical impact, proof of ‘serious emotional distress’ causing physical injury or illness  
13 must be presented.” Barnettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional  
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants’ negligence.  
16 However, the Court finds the FAC has failed to plead that Stark owed Lackey a duty. As such, the  
17 Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

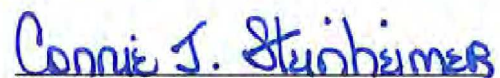
18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Carolyn Stark’s *Special Motion to Dismiss/Anti-SLAPP*  
20 *brought under NRS 41.635 et seq. is DENIED.*

21 IT IS HEREBY FURTHER ORDERED that Carolyn Stark’s *Special Motion to Dismiss*  
22 *brought under NRCP 12 is DENIED* as to claims of defamation, civil conspiracy and intentional  
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim  
24 shall be DISMISSED.

25 IT IS HEREBY FURTHER ORDERED that Carolyn Stark shall file an Answer to the First  
26 Amended Complaint within twenty (20) days of the date of this Order.

27 DATED this 30 day of October, 2017.

28  
  
DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 20<sup>th</sup> day of October, 2017, I filed the attached document with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

       **Personal delivery to the following: [NONE]**

  X   **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:**

Thomas Brennan, Esq.  
Attorney at Law

Sean Rose, Esq.  
Attorney at Law

Del Hardy, Esq.  
Attorney at Law

Stephanie Rice, Esq.  
Attorney at Law

Cameron Bordner, Esq.  
Attorney at Law

Robin D. Shofner, Esq.  
Attorney at Law

       **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and certified mailing with the United States Postal Service in Reno, Nevada: [NONE]**

       **Placed a true copy in a sealed envelope for service via:**

       Reno/Carson Messenger Service – **[NONE]**

       Federal Express or other overnight delivery service – **[NONE]**

       Inter-Office Mail – **[NONE]**

DATED this 20<sup>th</sup> day of October, 2017.



1 **CODE: 2540**

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3 STEPHANIE RICE, ESQ. (SBN 11627)  
4 WINTER STREET LAW GROUP  
5 96 & 98 Winter Street  
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9 *Attorneys for Defendant Carolyn Stark*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**

12 CARL LACKEY,  
13 Plaintiff,  
14 vs.

CASE NO.: CV17-00434  
DEPT. NO.: 4


15 BEAR LEAGUE, a California Corporation,  
16 ANNE BRYANT, an individual, MARK E.  
17 SMITH, an individual dba LAKE TAHOE WALL  
18 OF SHAME, CAROLYN STARK, an individual  
19 dba NDOW WATCH KEEPING THEM  
20 TRANSPARENT, and DOES 1-20, INCLUSIVE.

21 Defendants.

22 **NOTICE OF ENTRY OF ORDER (AS TO CAROLY STARK)**

23 NOTICE IS HEREBY GIVEN that an ORDER was entered in the above-entitled matter on  
24 October 20, 2017, a copy of which is attached hereto.

25 Dated this 5th day of November, 2017.

26   
27 DEL HARDY, ESQ. (SBN 1172)  
28 STEPHANIE RICE, ESQ. (SBN 11627)  
WINTER STREET LAW GROUP  
*Attorneys for Defendant*

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
3 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
4 document(s) described as **NOTICE OF ENTRY OF ORDER (AS TO CAROLYN STARK)** on all  
5 parties to this action by:

6 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection  
7 and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
8 ordinary business practices.

9 \_\_\_\_\_ Personal Delivery

10 \_\_\_\_\_ Facsimile (FAX)

11 \_\_\_\_\_ Federal Express or other overnight delivery

12 \_\_\_\_\_ Messenger Service

13 \_\_\_\_\_ Certified Mail with Return Receipt Requested

14 X \_\_\_\_\_ Electronically filed

15 addressed as follows:

16 **Sean P. Rose, Esq.**  
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**1830 15<sup>th</sup> Street, Ste. 100**  
**Sacramento, CA 95811**

22 AFFIRMATION

23 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
24 document and attached exhibits, if any, do not contain the Social Security Number of any  
25 person.

26 DATED this 8<sup>th</sup> day of November, 2017.

27   
28 \_\_\_\_\_  
EMPLOYEE OF WINTER STREET LAW GROUP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

CARL LACKEY,

Plaintiff,

v.

BEAR LEAGUE, a California Corporation,  
ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE  
WALL OF SHAME, CAROLYN STARK,  
individual dba NDOW WATCH KEEPING  
THEM TRANSPARENT, and DOES 1-20  
Inclusive.

Defendants.

Case No. CV17-00434

Department No.: 4

**ORDER**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant"), an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On April 19, 2017, Stark, by and through her counsel Del Hardy, Esq. and Stephanie Rice, Esq.,

1 of Winter Street Law Group, filed *Special Motion to Dismiss/Anti-SLAPP*, moving to dismiss all  
2 claims as to her, pursuant to NRS 41.635 et. seq. and NRCP 12. On May 8, 2017, Lackey filed  
3 *Opposition to Stark's Special Motion to Dismiss/Anti-SLAPP*. On May 9, Lackey filed *Errata* to  
4 his *Opposition*. Stark filed a *Reply* on May 15, 2017. The Court heard oral arguments on July 26,  
5 2017, and took the matter under advisement.

6 Stark asserts the Court should dismiss all claims against her under NRS 41.637 (Nevada's  
7 Anti-SLAPP Legislation). Stark contends the public policy concern is in the trapping and  
8 euthanizing bears by the Nevada Department of Wildlife (hereinafter "NDOW"). Stark argues  
9 she did not make any of the alleged defamatory statements, and therefore she is immune from  
10 liability under the Communications Decency Act, 47 USC 230 (hereinafter "CDA"). Even  
11 assuming the statements were attributable to her, Stark addresses each statement, asserting they  
12 are clearly opinions and some are not even directly against Lackey. Stark contends Lackey's  
13 claims fail as a matter of law as there is no conduct alleged attributable to her. Stark asserts the  
14 conspiracy claim is subject to dismissal under Nevada's intra-cooperate conspiracy doctrine.

15 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First  
16 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP  
17 statute does not apply because the statements do not involve a public interest. The statements are  
18 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under  
19 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking  
20 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with  
21 both violence and murder. Lackey contends Stark's reliance on the CDA is misplaced, as Stark is  
22 also an information content provider. As an individual who operates NDOW WATCH's Facebook  
23 page, any posting made by NDOW WATCH is essentially Stark's posting. Further, Stark has  
24 personally made postings. Even though Lackey contends the burden has not shifted pursuant to  
25 Nevada's Anti-SLAPP legislation, Lackey nonetheless argues, he will be successful on his claims.

26 ///

27 ///



## ANTI-SLAPP

“A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights.” Stubbs v. Strickland, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013). “Under Nevada's anti-SLAPP statutes, a defendant may file a special motion to dismiss if the defendant can show ‘by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.’” Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017)(quoting NRS 41.660(3)(a)). The term “good faith communication” includes “[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.” NRS 41.637(4). If a defendant makes this initial showing, the burden shifts to the plaintiff to show “with prima facie evidence a probability of prevailing on the claim.” Id.; NRS 41.660(3)(b).

When determining whether the conduct is protected under the anti-SLAPP statute, the court should not look to First Amendment law, but to Nevada’s anti-SLAPP legislation. See Delucchi v. Songer, 133 Nev. Adv. Op. 42, 396 P.3d 826, 833 (Nev. 2017). Thus, when analyzing whether the defendant's conduct constitutes “good faith communication” the court must determine whether “if it falls within one of the four categories enumerated in NRS 41.637, and whether it is truthful or is made without knowledge of its falsehood.” Delucchi, 133 Nev. Adv. Op. at 15, 396 P.3d at 833. However, if the alleged conduct is illegal as a matter of law, then the conduct is not protected activity within the anti-SLAPP context.

To determine whether an issue is one of public interest as used in NRS 41.637(4), the Nevada Supreme Court adopted the guiding principles California utilizes. Shapiro, 133 Nev. Adv. Op. 6, 389 P.3d at 268 (citing Piping Rock Partners, Inc. v. David Lerner Assocs, Inc., 946 F.Supp.2d 957, 968 (N.D. Cal 2013). Specifically,

- (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;

1 (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;

2 (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

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

4 Id.

5 The FAC attributes the following statements to Stark/NDOW WATCH:

6 • (q): He and his family directly benefit by him moving bears to a hunting  
7 area if they are issued a license and the killing of them in the name of public  
8 safety must simply be something that excites him—all of it in conflict with  
9 NDOW's mission. Additionally, if we can establish that he or his family benefits  
financially from selling bear parts or selling the location where he recently  
released a bear – he should go to jail. Commenter: Colleen Hemingway on  
NDOW WATCH's Facebook post.

10 • (r) "Yes he should go to jail! The treatment of our bears is paramount  
11 cruelty. Moving mothers without their cubs, moving them to hunt zones, moving  
them great distances knowing full well there are no food sources or water and  
12 that they will try to return home! Animal cruelty is a felony in all 50 states. Him  
and his NDOW murders need to go to jail and stay there. Commenter: JoAnn  
Hill on NDOW WATCH's Facebook post.

13 • (s) "It's time for the Nevada Engineered bear hunt." Commenter: Mary  
LoBuono Bryden on NDOW WATCH's Facebook post.

14 • (u) This page is what's wrong with Tahoe, you should try another tactic to  
15 educate our community. No one wants to be bullied and threatened to understand  
a valid argument. You are creating fear and tearing neighborhoods apart. Perhaps  
16 spending so much energy in a negative way should be forwarded to create a  
positive change. No one should live in fear! This whole thing is comparable to  
17 the Salem witch trial of 1692!! Commenter: Kevin Dangers Bouchard on  
NDOW WATCH's post (trolls who support Carl Lackey).

18 • (y) Lackey is such an incompetent asshole! Fire his ass!! Commenter: Karen  
Lietzell-Vick on NDOW WATCH's Facebook Post.

19 First the Court considers whether the alleged conduct is illegal as a matter of law, and  
20 therefore does not fall within the protection of Nevada's anti-SLAPP legislation. 18 USC § 2261A  
21 (the federal stalking statute) provides in relevant part, whoever,

22 (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with  
23 intent to kill, injure, harass, or intimidate another person, uses the mail, any  
interactive computer service or electronic communication service or electronic  
24 communication system of interstate commerce, or any other facility of interstate or  
foreign commerce to engage in a course of conduct that--

25 (A) places that person in reasonable fear of the death of or serious bodily  
injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or  
26 (B) causes, attempts to cause, or would be reasonably expected to cause  
substantial emotional distress to a person described in clause (i), (ii), or (iii)  
27 of paragraph (1)(A),

28 shall be punished as provided in section 2261(b) of this title.

1 Here, the Court cannot conclude as a matter of law that the statements were made with the requisite  
2 intent. The Court does not find that suggesting someone should be imprisoned necessarily places  
3 a person in reasonable harm or fear of death or would cause a person severe emotional distress.

4 Second, the Court considers the Shapiro factors to determine whether the statements were  
5 made in the public interest. Stark's articulated public interest is the treatment of wildlife in Lake  
6 Tahoe, specifically the concern of the trapping and euthanizing bears by NDOW. [See Special  
7 Mot. Dismiss/Anti-SLAPP, at 5:11-15]. The Court finds this interest does not equate with mere  
8 curiosity. Further, Stark has provided local newspaper articles to support showing the treatment of  
9 Nevada wildlife is of public concern. [See Mot. Dismiss, Ex. 1, 2; Opp. Mot. Dismiss, Ex. 2-5].

10 In order to evaluate the degree of closeness between the asserted public interest and  
11 speaker's statements/conduct, the Court must evaluate the specific statements (Q, R, S, U, Y)  
12 attributed to Stark. When determining whether these statements are related to the public interest,  
13 the court should focus on the specific nature of the speech rather than the generalities that might  
14 be abstracted from it. Statement Q's main focus concerns potential benefits Lackey may receive,  
15 and hypothesizes that Lackey should go to jail if they can prove he sells bear parts. Statement Q is  
16 not directly related to the stated public interest. Statement S merely states "[i]t's time for the  
17 Nevada Engineered Bear Hunt!" This appears to be a satirical comment, but arguably relates to  
18 the public interest of trapping and euthanizing bears. Statement U (which appears to be in favor of  
19 Lackey) does not relate to the stated interest of bear treatment, as it merely critiques how other  
20 commenters are attempting to set forth their messages. Statement Y, commenting that Lackey is  
21 an "incompetent asshole," is not related to the public interest concerning the treatment of bears,  
22 but rather is a personal attack on Lackey's character. Statement R contains some assertions that  
23 relate to the public interest (as it alleges bears are being relocated to hunt zones and areas without  
24 any food or water); however its main focus appears to be an attack on Lackey's character, by  
25 calling him a murderer and demanding he go to jail.

26 Further, in order to shift the burden to Lackey, Stark must prove, by the preponderance of  
27 the evidence, that the statements are true or were made without knowledge of their falsehood. See  
28

1 NRS 41.637; NRS 41.660. In this respect, Stark has provided an affidavit that states: "I have only  
2 personally posted true facts on the Facebook page, except these matters of opinion, of which I have  
3 stated as such." [Aff. Stark, at ¶ 4]. Additionally, Stark attests, "I believe that the statements made  
4 by others on the Facebook page 'NDOW WATCH Keeping them Transparent' are statements of  
5 opinion or contain substantial truth. [Aff. Stark, at ¶ 15]. Statement R was made by JoAnn Hill.  
6 The Court finds that Stark has failed to meet her burden to prove statement R's truthfulness or that  
7 it was not made without knowledge of its falsity. Stark does not specifically address the factual  
8 allegations in R nor make any specific indication as to why the statement made by JoAnn Hill is  
9 true, or made without knowledge of its falsity. Similarly, Stark's affidavit does not specifically  
10 address statement S. While Exhibit A to the reply (an article entitled "Tensions High Over Bear  
11 Management in Nevada Side of Tahoe Basin) discusses Nevada bear hunts, there is no indication  
12 that "it was time" for the Nevada bear hunt to find by the preponderance of evidence the statement  
13 is true. Therefore, the Court finds Stark has failed to meet her burden to show the claim is based  
14 upon a good faith communication in furtherance of the right to petition or the right to free speech  
15 in direct connection with an issue of public concern. As such, the Court will deny Stark's motion  
16 to dismiss under Nevada's Anti-SLAPP statute.

#### 17 NRCP 12

18 Next the Court considers Stark's 12(B) motion to dismiss. Although evidence was provided  
19 for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to dismiss into  
20 a motion for summary judgment by considering matters outside the pleadings at this stage of the  
21 case.

22 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim  
23 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the  
24 pleader seeks." "A complaint must set forth sufficient facts to establish all necessary elements of  
25 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief  
26 sought." Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

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Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a claim upon which relief should be granted. A motion to dismiss should be granted only if “it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a motion to dismiss, the court must take all allegations in the complaint as true and draw all inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” Hotel Employees & Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

#### ***Communications Decency Act***

First, the Court address arguments concerning the CDA. The CDA immunizes interactive computer services or users from any cause of action that would make them liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”).<sup>1</sup> The CDA defines “interactive computer service” to mean, “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” Courts have consistently found Facebook operates as an interactive computer service.<sup>2</sup>

The CDA, however, does not immunize an interactive computer service if it also functions

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<sup>1</sup> See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc., 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer service provider).

<sup>2</sup> See e.g. Fraley v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d 1354, 1359 (D.C. Cir. 2014).

1 as an information content provider for the portion of the statement or publication at issue.<sup>3</sup>  
2 “Information content provider” means “any person or entity that is responsible, in whole or in part,  
3 for the creation or development of information provided through the Internet or any other  
4 interactive computer service.” 47 USC 230(3). A website may lose immunity under the CDA by  
5 making a material contribution to the creation or development of content.<sup>4</sup>

6 Thus, passive websites or websites that permit comments (without encouraging or  
7 developing the content at issue) have not been deemed information content providers for the  
8 purposes of CDA.<sup>5</sup> Therefore, absent some solicitation/encouragement for the defamatory  
9 remarks, an interactive website/user will not be liable for the content that originated from a third  
10 party.

11 Here, the FAC alleges both specific comments of third parties as well as generally states  
12 that NDOW WATCH has made and continues to make false statement regarding Lackey and  
13 initiates public comment threads on Facebook slandering Lackey. [FAC, at 3:18-28]. It further  
14 alleges that Stark and NDOW WATCH published and encourage statements. [FAC, at 8].  
15 Facebook permits a comment by both the webpage (in this case NDOW WATCH) as well as third  
16 party users. An original post may contain a reply, as well as a reply to the reply, and can continue,

17 <sup>3</sup> *Carafano*, 339 F.3d at 1123-25 (finding 47 USC 230(c)(1) would bar plaintiff’s claims unless defendant “created or  
18 developed the particular information at issue”); see also *Anthony v. Yahoo! Inc.*, 421 F.Supp. 2d 1257, 1262-1263  
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service’s alleged creation of false profiles  
which induced plaintiff to maintain his membership there).

19 <sup>4</sup> *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1269 (9th Cir. 2016)(noting *Roommates.Com*, 521 F.3d at 1171, clarified “the  
20 language used in *Carafano* [*Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could  
be a developer of content where it encouraged users to provide illegal content”). See e.g. *Fraley v. Facebook, Inc.*,  
21 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014).In *Fair*  
*Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1172 (9th Cir. 2008), the court  
22 discussed when a website may also act as an information content provider: “The salient fact in *Carafano* was that the  
website’s classifications of user characteristics did absolutely nothing to enhance the defamatory sting of the message,  
to encourage defamation or to make defamation easier: The site provided neutral tools specifically designed to match  
23 romantic partners depending on their voluntary inputs. By sharp contrast, Roommate’s website is designed to force  
subscribers to divulge protected characteristics and discriminatory preferences, and to match those who have rooms  
24 with those who are looking for rooms based on criteria that appear to be prohibited by the FHA.”

25 <sup>5</sup> See e.g. *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.Supp.2d 1112, 1125–26 (D. Nev. 2013)(“‘passive’ message  
boards with only occasional curation by message board moderators warrant immunity under section 230”);  
*Spreadbury v. Bitterroot Pub. Library*, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012)(defendant that had offered a  
26 simple generic prompt for readers to comment on, where it did not develop or select the comments, or encourage  
readers to make defamatory statements was entitled to summary judgment on claims that are premised on third party  
27 comments); *Piping Rock*, 946 F.Supp.2d at 957 (held to the extent that the party bases its claims on statements made  
by the blog users other than defendant (creator and contributor to the blog), defendant was immune from liability for  
28 posts he did not author under the CDA).

1 the Court supposes, indefinitely. Given the nature of Facebook, the Court cannot conclude for the  
2 purposes of a motion to dismiss that Stark did not encourage the third party users' statements.  
3 Therefore, at this time, the Court cannot find Stark is immunized from liability for the third party  
4 comments under the CDA.<sup>6</sup>

### 5 ***Defamation***

6 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate  
7 the necessary elements of the claim so the defending party has adequate notice of the nature of the  
8 claim. Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.  
9 8(a), decisions interpreting N.R.C.P. 8(a)'s federal counterpart are highly instructive here,  
10 especially as these federal opinions were decided prior the US Supreme Court's adoption of the  
11 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic  
12 Corporation v. Twombly, 550 U.S. 544 (2007).

13 Although, Some federal courts, applying FRCP 8, have required defamation to be pled with  
14 more specificity, such as dictating the claim must set forth an adequate identification of the  
15 communication, who made the statements, to whom they were made, and when the statements  
16 were made. See Bushnell Corporation v. ITT Corporation, 973 F.Supp. 1276 (D.Kan.1997);  
17 Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569, 573–74 (D. Vt. 1998);(Blanck v.  
18 Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220 Fed. Appx. 697 (9th Cir. 2007).

19 Other federal courts have expressed disfavor about requiring a higher pleading requirement  
20 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,  
21 1027 (D. Nev. 2013).

22 As the Nevada Supreme Court has not adopted the higher pleading standards many courts  
23 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a  
24 claim for damages is not premised on defamation per se, special damages must be pled with

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25 <sup>6</sup> See e.g. Hy Cite Corp. v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148–49 (D. Ariz.  
26 2005)(declining to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that  
27 defendants added editorial comments, titles, and original content to third-party complaints posted on defendants'  
28 website); Whitney Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding  
whether Defendants were entitled to CDA immunity remained in question because the complaint plead Defendants'  
involvement in creating or developing the alleged defamatory content posted on their website).



1 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225  
2 (1981).

3 The general elements of a defamation claim require a plaintiff to prove: “(1) a false and  
4 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to  
5 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.  
6 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are  
7 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation  
8 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,  
9 occupation or profession.’” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff’d,  
10 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

11 When a public figure or a limited public figure is involved, a plaintiff must plead and prove  
12 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public  
13 figures are those individuals who achieve such pervasive fame or notoriety that they become a  
14 public figure for all purposes and in all contexts,” as well as those who hold government office.  
15 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure  
16 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and  
17 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.  
18 556, 573–74, 138 P.3d 433, 446 (2006).

19 The FAC generally alleges Stark is doing business as NDOW WATCH. The FAC states  
20 that NDOW WATCH has and continues to initiate public comment threads on its Facebook page  
21 slandering Lackey in his official capacity as a state employee and urging and encouraging the  
22 public at large to shame and harass Lackey so that he will lose his job and/or feel threatened enough  
23 to leave the community. The FAC alleges NDOW WATCH acted intentionally and with malice  
24 with the primary purpose being to harm, threaten, intimidate, cause fear, anxiety, embarrassment  
25 and damage to his reputation by publishing false and vicious comments accusing Lackey of  
26 criminal conduct (including accepting bribes and conspiracy) designed to incite public outrage.  
27 The FAC lists some, but allegedly not all of the comments made by NDOW WATCH and the other  
28



1 defendants (see above for statements alleged attributable to Stark/NDOW WATCH). The FAC  
2 asserts Lackey is either a limited purpose public figure or a private individual. The FAC sets forth  
3 that the defendants published and encouraged statements despite having actual knowledge that  
4 such statements were false, or with reckless disregard for their veracity. The FAC states defendants  
5 know the inflammatory false information they were posting was malicious, false, and accusatory  
6 of criminal conduct and had the purposes of harming, threatening, intimidating and or harassing  
7 plaintiff and his livelihood. It further alleges Lackey has suffered damages and has incurred  
8 attorneys' fees.

9 The specific statements attributed to Stark are Statements Q, R, S, U, Y. Generally,  
10 whether a statement is capable of defamatory construction is a question of law. K-Mart Corp. v.  
11 Washington, 109 Nev. 1180, 886P.2d 274 (1993). "Statements of opinion as opposed to statements  
12 of fact are not actionable," however, "expressions of opinion may suggest that the speaker knows  
13 certain facts to be true or may imply that facts exist which will be sufficient to render the message  
14 defamatory if false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous  
15 or a 'mixed type,' which is an opinion, which gives rise to the inference that the source has based  
16 the opinion on underlying, undisclosed defamatory facts;" and when a statement is ambiguous,  
17 "the question of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117  
18 Nev. 107, 113, 17 P.3d 422, 426 (2001).

19 Statement Q, R, and S, contain both what appears to be the commentators' opinions.  
20 However these statements also either contain factual allegations or opinions that imply the  
21 comments are based on facts (such as Lackey is selling bear parts, and moving bears to hunt zones).  
22 The Court finds, drawing all inferences in favor of Lackey, the statements are actionable and  
23 defamatory per se, as they attack his livelihood and allege criminal conduct. Likewise, Statement  
24 Y ("Lackey is such an incompetent asshole!! Fire his ass!!") may either be construed as an opinion  
25 or defamatory statement, as the Court is not privy of the nature in which it was made (such as  
26 whether it was responding to "facts" on another post). See Branda v. Sanford, 97 Nev. 643, 645,  
27 637 P.2d 1223, 1224 (1981).

1 Statement U appears to be in support of Lackey, although neither Lackey nor NDOW is  
2 mentioned. The statement critiques "Tahoe" and criticizes the way the "page" is trying to educate  
3 people. Therefore, the Court does not find this is a statement is actionable.

4 The Court finds Lackey has stated a claim for defamation. Further, as to the specific  
5 statements in front of the Court at this time (Q, R, S, U, Y), the Court only finds that Statement U,  
6 as a matter of law, is not actionable, as it is not even about Lackey.

### 7 *Civil Conspiracy*

8 Civil conspiracy "consists of a combination of two or more persons who, by some  
9 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,  
10 and damage results from the act or acts." Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,  
11 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants  
12 continuously over the past several years have acted in concert with one another to accomplish the  
13 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their  
14 supporters post a threat to his safety and as a result he has suffered damages. The Court finds  
15 Lackey has properly alleged a claim for civil conspiracy against Stark. Lackey has pled the  
16 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,  
17 Lackey incorporates by reference the other allegations in his complaint. In addition to the conduct  
18 attributed to Stark, the FAC likewise sets forth specific Facebook threats/comments attributed to  
19 the other defendants.

20 Further, the Court does not find the "intra-corporate conspiracy doctrine" bars this claim.  
21 See Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)(finding  
22 agents and employees of a corporation cannot conspire with their corporate principal or employer  
23 where they act in their official capacities on behalf of the corporation and not as individuals for  
24 their individual advantage). Here, the FAC alleges that Stark conspired with the other defendants,  
25 not NDOW WATCH.

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1                   ***Intentional Infliction of Emotional Distress:***

2           The elements of a claim for intentional infliction of emotional distress are: 1) that the  
3   defendant's conduct was extreme and outrageous; (2) that the defendant either intended or  
4   recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered  
5   severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately  
6   caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).  
7   “[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is  
8   regarded as utterly intolerable in a civilized community.” Maduik v. Agency Rent-A-Car, 114  
9   Nev. 1, 4, 953 P.2d 24, 26 (1998).

10           Based on the allegations set forth above, the FAC alleges, defendants have engaged in  
11   willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing  
12   emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as  
13   a result of defendants' conduct and remains fearful of physical harm or violence directed at him.  
14   Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly  
15   stated a claim for intentional infliction of emotional distress against Stark as the FAC alleges,  
16   among other allegations, that NDOW WATCH has initiated public comment to encourage the  
17   public to shame and harass Lackey so he will lose his job and/or feel threatened enough to leave  
18   the community. Thus, a jury could find this is extreme and outrageous conduct. The Court  
19   incorporates by reference is analysis of the CDA and defamation as set forth above.

20                   ***Negligent Infliction of Emotional Distress<sup>7</sup>***

21           A claim for negligent infliction of emotional distress requires a showing that defendant  
22   owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause  
23   of the plaintiff's injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116  
24   Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.  
25   213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court cited favorably in Turner

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27                   <sup>7</sup> Although this third claim for relief is titled as “Intentional Infliction of Emotional Distress,” because the FAC  
28                   alleges that Defendants acted negligently under this heading, the Court assumes it should be titled Negligent  
                  Infliction of Emotional Distress.

1 supra, the explanation of the duty required when a person complains they are the direct victim of  
2 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220–21  
3 (2002):

4 The distinction between the “bystander” and the “direct victim” cases is found in  
5 the source of the duty owed by the defendant to the plaintiff.’ ‘Bystander’ claims  
6 are typically based on breach of a duty owed to the public in general, whereas a  
7 right to recover for emotional distress as a ‘direct victim’ arises from the breach of  
8 a duty that is assumed by the defendant or imposed on the defendant as a matter of  
9 law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 “In cases where emotional distress damages are not secondary to physical injuries, but  
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the  
12 absence of physical impact, proof of ‘serious emotional distress’ causing physical injury or illness  
13 must be presented.” Barmettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional  
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants’ negligence.  
16 However, the Court finds the FAC has failed to plead that Stark owed Lackey a duty. As such, the  
17 Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Carolyn Stark’s *Special Motion to Dismiss/Anti-SLAPP*  
20 *brought under NRS 41.635 et seq. is DENIED.*

21 IT IS HEREBY FURTHER ORDERED that Carolyn Stark’s *Special Motion to Dismiss*  
22 *brought under NRCP 12 is DENIED* as to claims of defamation, civil conspiracy and intentional  
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim  
24 shall be DISMISSED.

25 IT IS HEREBY FURTHER ORDERED that Carolyn Stark shall file an Answer to the First  
26 Amended Complaint within twenty (20) days of the date of this Order.

27 DATED this 30 day of October, 2017.

28  
  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
STATE OF NEVADA, COUNTY OF WASHOE; that on the 20<sup>th</sup> day of  
October, 2017, I filed the attached document with  
the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document  
by the method(s) noted below:

☐ **Personal delivery to the following: [NONE]**

☒ **Electronically filed with the Clerk of the Court, using the eFlex system which  
constitutes effective service for all eFiled documents pursuant to the efile User  
Agreement:**

Thomas Brennan, Esq.  
Attorney at Law

Sean Rose, Esq.  
Attorney at Law

Del Hardy, Esq.  
Attorney at Law

Stephanie Rice, Esq.  
Attorney at Law

Cameron Bordner, Esq.  
Attorney at Law

Robin D. Shofner, Esq.  
Attorney at Law

☐ **Transmitted document to the Second Judicial District Court mailing  
system in a sealed envelope for postage and certified mailing with the United States  
Postal Service in Reno, Nevada: [NONE]**

☐ **Placed a true copy in a sealed envelope for service via:**

☐ **Reno/Carson Messenger Service – [NONE]**

☐ **Federal Express or other overnight delivery service – [NONE]**

☐ **Inter-Office Mail – [NONE]**

DATED this 20<sup>th</sup> day of October, 2017.



CASE NO. CV17-00434

**TITLE: CARL LACKEY VS. BEAR LEAGUE, ANNE  
BRYANT, CAROLYN STARK, individually and as d.b.a.  
NDOW WATCH KEEPING THEM TRANSPARENT, and  
MARK SMITH, individually and as d.b.a. LAKE TAHOE  
WALL OF SHAME**

**DATE, JUDGE  
OFFICERS OF**

**COURT PRESENT**

**APPEARANCES-HEARING**

**CONT'D TO**

7/26/17

**ORAL ARGUMENTS ON MOTIONS TO DISMISS**

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

Thomas Brennan, Esq., represented the Plaintiff. Cameron Bordner, Esq., and Robin Shofner, Esq., represented the Defendants Bear League, Anne Bryant, and Mark Smith, individually and as d.b.a Lake Tahoe Wall of Shame. Del Hardy, Esq., represented Defendant Carolyn Stark, individually and as d.b.a. NDOW Watch Keeping Them Transparent.

Counsel advised the Court that despite the delay in the start of this hearing, counsel were unable to settle this matter but settlement discussions are ongoing between the Plaintiff and Defendants Smith, Bryant and Bear League.

Defendant Stark's Motion to Dismiss by counsel Hardy; presented argument.

Defendants Bryant and Smith's Motion to Dismiss by counsel Shofner; presented argument.

Defendant Bear League's Motion to Dismiss by counsel Shofner; presented argument.

Counsel Brennan submitted all Motions on the pleadings.

**COURT** took all Motions to Dismiss under advisement. Should any settlement be reached between any of the parties, counsel must notify the Court immediately.

Court recessed.

---

1 **Code 1350**

2  
3  
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **CARL LACKEY,**

**Case No. CV17-00434**

7  
8 **Plaintiff,**

**Dept. No. 4**

9 **vs.**

10 **BEAR LEAGUE, a California Corporation, ANNE**  
11 **BRYANT, an individual, MARK E. SMITH, an**  
12 **individual dba LAKE TAHOE WALL OF SHAME,**  
13 **CAROLYN STARK, individual dba NDOW WATCH**  
14 **KEEPING THEM TRANSPARENT, and DOES 1-20**  
15 **Inclusive,**

16 **Defendants.**

17 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

18 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,  
19 County of Washoe; that on the 9th day of November, 2017, I electronically filed the Notice of  
20 Appeal in the above entitled matter to the Nevada Supreme Court.

21 I further certify that the transmitted record is a true and correct copy of the original  
22 pleadings on file with the Second Judicial District Court.

23 Dated this 9th day of November, 2017

24  
25 Jacqueline Bryant  
26 Clerk of the Court

27 By /s/ Yvonne Vilorio  
28 Yvonne Vilorio  
Deputy Clerk

**WINTER STREET LAW GROUP**  
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RENO, NV 89503

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11/09/17

PAY TO THE  
ORDER OF

Nevada Supreme Court

\$ \*\*250.00

Two Hundred Fifty and 00/100\*\*\*\*\*

DOLLARS

Nevada Supreme Court

MEMO

R: Stark:

CW17-00434



*Depler*  
AUTHORIZED SIGNATURE

MP

⑈0000005754⑈ ⑆321270742⑆ 5541117981⑈

