

Electronically Filed
Apr 16 2018 02:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROLYN STARK, an individual,
D/B/A NDOW WATCH KEEPING
THEM TRANSPARENT,

Appellant,

vs.

CARL LACKEY,

Respondent.

Supreme Court Case No.: 74449

District Court Case No.: CV17-00434

APPELLANT'S OPENING BRIEF

Appeal from the Second Judicial District Court's denial of Appellant's Anti-SLAPP Special Motion to Dismiss pursuant to NRS 41.660.



Stephanie Rice, Esq. (SBN 11627)
Richard Salvatore, Esq. (SBN 6809)
96 & 98 Winter Street
Reno, Nevada 89503
(775) 786-5800

Attorneys for Appellant:
CAROLYN STARK, an individual,
D/B/A NDOW WATCH KEEPING
THEM TRANSPARENT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

Supreme Court Case No.:74449
District Court Case No.: CV17-00434

Appellant,
vs.
L LACKEY,
Respondent.

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

Winter Street Law Group*

(*formerly Hardy Law Group)

1 Molsby & Bordner, LLP

2 Sean P. Rose, Esq.

3 Durney & Brennan, Ltd.

4 Hall Jaffee & Clayton, LLP

5 3. If litigant is using a pseudonym, the litigant's true name: None.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**II.
TABLE OF CONTENTS**

	<u>Page</u>
NRAP 26.1 DISCLOSURE	ii
II. TABLE OF CONTENTS	iv
III. TABLE OF AUTHORITIES	vi
IV. JURISDICTIONAL STATEMENT	ix
V. ROUTING STATEMENT	x
VI. STATEMENT OF THE ISSUES	xi
VII. STATEMENT OF THE CASE	1
VIII. STATEMENT OF THE FACTS	3
IX. SUMMARY OF ARGUMENT	6
X. ARGUMENT	7
A. Standard of Review.....	7
B. Understanding Nevada’s Anti-SLAPP Statutes.....	7
C. STARK did not author or create any of the specific statements alleged	
in the FAC to be attributable to the NDOW WATCH public Facebook	
page and thus, involvement by STARK as administrator of the page is	
protected by the CDA.....	8

D. The District Court abused its discretion in essentially holding STARK responsible for statements authored and posted by unrelated third-parties.....	13
E. The District Court erred in finding three of the four statements the District Court Found to be actionable against STARK were not made in direct connection with an issue of public concern.....	15
<i>i. Truthfulness of the alleged third-party statements posted to the NDOW WATCH public Facebook page.....</i>	21
F. The District Court abused its discretion in failing to dismiss the other causes of action asserted against STARK arising out of the protected activities.....	23
<i>i. Intentional Infliction of Emotional Distress.....</i>	23
<i>ii. Civil Conspiracy.....</i>	25
XI. CONCLUSION	27
XII. ATTORNEY’S CERTIFICATE	29
XIII. PROOF OF SERVICE	31

III.
TABLE OF AUTHORITIES

Cases

<i>Ascentive, LLC v. Opinion Corp.</i> , 842 F. Supp. 2d 450 (E.D.N.Y. 2011).....	12
<i>Bently Reserve L.P. v. Papaliolios</i> , 218 Cal. App. 4th 418, 160 Cal. Rptr. 3d 423 (2013)	20
<i>Carafano v. Metrosplash.com, Inc.</i> , 339 F.3d 1119 (9th Cir.2003).....	9, 10, 12
<i>Chaker v. Mateo</i> , 209 Cal.App.4th 1138, 147 Cal.Rptr.3d 496 (2012).....	20
<i>ComputerXpress, Inc. v. Jackson</i> , 93 Cal.App.4th 993, 113 Cal.Rptr.2d 625 (2001)	20
<i>Cruz v. Van Sickle</i> , 452 S.W.3d 503 (Tex. App.—Dallas 2014).....	14
<i>Doe v. City of New York</i> , 583 F.Supp.2d 444 (S.D.N.Y.2008).....	12
<i>Doe v. MySpace, Inc.</i> , 528 F.3d 413 (5th Cir. 2008)	9
<i>Fraley v. Facebook, Inc.</i> , 830 F.Supp.2d 785 (N.D. Cal. 2011).....	10
<i>Hy Cite Corp. v. badbusinessbureau.com, L.L.C.</i> , 418 F. Supp. 2d 1142 (D. Ariz. 2005).....	11
<i>John v. Douglas Cty. Sch. Dist.</i> , 125 Nev. 746, 219 P.3d 1276 (2009).....	8
<i>Klayman v. Zuckerberg</i> , 753 F.3d 1354 (D.C. Cir. 2014)	9, 10
<i>Miami Herald Publ'g Co. v. Tornillo</i> , 418 U.S. 241 (1974).....	14
<i>Panicaro v. Crowley</i> , No. 67840, 2017 WL 253581 (Nev. App. Jan. 5, 2017).....	7
<i>Publius v. Boyer-Vine</i> , 237 F. Supp. 3d 997 (E.D. Cal. 2017)	14

1	<i>Rembrandt Soc. Media, LP v. Facebook, Inc.</i> , 22 F. Supp. 3d 585 (E.D. Va. 2013)	9
2	<i>Shapiro v. Welt</i> , 133 Nev. Adv. Op. 6, 389 P.3d 262 (2017)	7
3	<i>Snyder v. Phelps</i> , 532 U.S. 443, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011)	15
4	<i>Summit Bank v. Rogers</i> , 206 Cal. App. 4th 669, 142 Cal. Rptr. 3d 40 (2012) .	18, 19
5	<i>Vess v. Ciba-Geigy Corp.</i> , 317 F.3d 1097 (9th Cir., 2003)	7
6	<i>Whitney Info. Network. Inc. v. Xcentric Venture. LLC</i> , 199 Fed. Appx. 738 (11th	
7	Cir. 2006).....	11
8	<i>Zeran v. America Online, Inc.</i> , 129 F.3d 327 (4th Cir.1997).....	9
9	<i>Zhang v. Baidu.com Inc.</i> , 10 F. Supp. 3d 433 (S.D.N.Y. 2014)	14
10	<i>ZL Techs., Inc. v. Does 1-7</i> , 13 Cal. App. 5th 603, 220 Cal. Rptr. 3d 569 (Ct. App.	
11	2017).....	18, 20
12		
13	<u>Statutes</u>	
14	NRS 41.637.....	21
15	NRS 41.637(4)	3, 8, 15
16	NRS 41.650.....	ix, 2, 7
17	NRS 41.660.....	i, ix, x, 7, 21
18	NRS 41.660(3)(b)	7
19	NRS 41.670.....	x
20	NRS 41.670(4)	ix, x
21		
22		
23		

Rules

NRAP 17(a)(11).....	x
NRAP 4(a)(1).....	ix
NRCP 12	5

Codes

47 U.S.C. 230(f)(2)	9
47 USC 230(3)	10
47 USC 230(c)(I)	10
CCP §425.16(b)(1).....	8
CCP §425.16(e).....	8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**IV.
JURISDICTIONAL STATEMENT**

A. Basis for Supreme Court's Appellate Jurisdiction

This Court has appellate jurisdiction over this matter pursuant to Nevada's Anti-SLAPP statutes, specifically, NRS 41.670(4) which provides, "If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

B. Filing Dates Establishing Timeliness of Appeal

On October 20, 2017, the District Court denied STARK's Anti-SLAPP Special Motion to Dismiss/ Motion to Dismiss pursuant to NRS 41.660 et. seq. and NRCP 12. On November 8, 2017, the Notice of Entry of Order was served on all parties. On November 9, 2017, STARK filed a Notice of Appeal. Such notice was timely under NRAP Rule 4(a)(1) because it was filed within thirty (30) days of service of the Notice of Entry of Order.

C. Order Appealing From

The October 20, 2017 Order on appeal is the Order denying STARK's Anti-SLAPP Special Motion to Dismiss/Motion to Dismiss pursuant to NRS 41.660 et. seq. and NRCP 12(b)(5).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**V.
ROUTING STATEMENT**

The statute authorizing this appeal, NRS 41.670, specifically provides that “[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660,” as occurred here, “an interlocutory appeal lies to the Supreme Court.” NRS 41.670(4). As such, this appeal should be presumptively retained by the Supreme Court.

In addition, Appellant herein respectfully believes this matter should be presumptively retained by the Nevada Supreme Court in accordance with NRAP 17(a)(11), concerning, “Matters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.” Because this case deals with a newer era of technology, specifically social media, in connection with First Amendment rights, this matter rises to the level of a question of statewide public importance and also involves significant public policy issues, as it deals with the extent to which online speech, petitioning and association rights are protected under Nevada’s anti-SLAPP statutes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

VI.

STATEMENT OF ISSUES ON APPEAL

1. Did the District Court abuse its discretion in denying Appellant's Anti-SLAPP Special Motion to Dismiss/Motion to Dismiss, when the causes of action set forth in the First Amended Complaint all arise out of Appellant's wildlife advocacy and seek to silence Appellant's speech, petitioning and association rights by attempting to hold Appellant liable for an alleged defamatory statement made by an unrelated third-party with similar wildlife advocacy efforts?

**VII.
STATEMENT OF THE CASE**

Respondent, CARL LACKEY ("LACKEY"), a biologist with the Nevada Department of Wildlife ("NDOW") is attempting to use this lawsuit to silence critics by suing the administrator of a public forum, specifically the public Facebook page, NDOW WATCH KEEPING THEM TRANSPARENT ("NDOW WATCH"), where the critical speech appeared. Despite LACKEY's attempted obfuscation, he cannot escape the reality that this is precisely the kind of lawsuit that Nevada's anti-SLAPP statute was designed to address.

More importantly, the five (5) total statements (one of which has already been found to be non-actionable) identified by LACKEY in his FAC¹ that are allegedly attributable to STARK and NDOW WATCH are not the basis for his claims. Rather, his claims against STARK and NDOW WATCH, for Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress (dismissed by the District Court) and Civil Conspiracy, are all based on the speech of third-parties who posted statements voicing their criticisms of LACKEY's practices related to the handling and treatment of bears through his public employment with NDOW.

¹ STARK was not a party to the original Complaint filed by LACKEY in this action but was only later added as a party by way of the First Amended Complaint ("FAC"). Vol. I, JA 0001-JA 0010.

1 Neither STARK nor NDOW WATCH made or created any of the five (5)
2 specific statements alleged in the FAC to be attributable to NDOW WATCH. As
3 such, LACKEY's claims appear to instead target STARK/NDOW WATCH's
4 failure to remove third-party content that LACKEY apparently finds objectionable.
5 Deciding whether to remove content is quintessential publisher activity that
6 expressly qualifies for immunity under Section 230 of the Communications
7 Decency Act ("CDA").

8
9 None of the individuals who posted the alleged defamatory statements are
10 parties to this action and, to date, the undersigned is unaware of any pending
11 lawsuits against those individuals by LACKEY. In sum, LACKEY's FAC is
12 nothing more than a futile attempt to evade the appropriate application of the anti-
13 SLAPP statute and CDA immunity.

14
15 On March 31, 2017 LACKEY filed his FAC against STARK and others,
16 asserting claims for Defamation, Intentional Infliction of Emotional Distress,
17 Negligent Infliction of Emotional Distress and Civil Conspiracy. Vol. I, JA 0011-
18 JA 0021. On April 19, 2017, STARK filed an Anti-SLAPP Special Motion to
19 Dismiss/Motion to Dismiss pursuant to NRS 41.660 et. seq. and NRCP 12.

20
21 On October 20, 2017, the District Court denied STARK's Anti-
22 SLAPP Special Motion to Dismiss/ Motion to Dismiss (in part). Vol. IV, JA 0247-
23 JA 0261. However, the District Court erred in finding that STARK/NDOW

1 WATCH failed to meet its burden of showing that LACKEY's claims arose from a
2 "Communication made in direct connection with an issue of public interest in a ...
3 . public forum, which is truthful or is made without knowledge of its falsehood."
4 NRS 41.637(4).
5

6 The portion of the District Court's order denying STARK's Anti-SLAPP
7 Special Motion to Dismiss/Motion to Dismiss ("Motion") regarding statements Q,
8 R, S and Y, all of which are statements authored by third-parties, should be
9 reversed and STARK's Motion should be granted in its entirety.

10 **VIII.** 11 **STATEMENT OF FACTS**

12 LACKEY is a biologist employed by the Nevada Department of Wildlife.
13 Vol. I, JA 0013, ¶9. LACKEY is basically in charge of the bear population in the
14 State of Nevada for NDOW. LACKEY has previously been named a "local
15 celebrity" and was "featured in a National Geographic Channel program titled
16 "The Animal Extractors." Vol. I, JA 0042. In a 2007 interview with the Tahoe
17 Daily Tribune, LACKEY discussed his television fame stating, "Several different
18 film crews kind of took turns, they were from England and they went on every call
19 with us and filmed all kinds of stuff." Vol. I, JA 0044.
20

21 Facebook operates a free social networking service that enables more than
22 1.7 billion users worldwide to connect and share information that is important to
23 them with family, coworkers, and friends, as well as the public.

1 Appellant, STARK, maintains a public Facebook page known as “NDOW
2 WATCH: KEEPING THEM TRANSPARENT” (“NDOW WATCH”). Vol. I, JA
3 0078, ¶3. LACKEY sued STARK (as well as others), seeking damages due to
4 comments made about LACKEY and his actions with respect to the Northern
5 Nevada bear population, that were allegedly posted to NDOW WATCH’s public
6 Facebook page by third-parties who are not parties to this action. Specifically,
7 LACKEY seeks to hold STARK liable for the following four (4)² statements made
8 and posted by third-parties on the NDOW WATCH public Facebook page:
9

10 **Comment made and posted by Colleen Hemingway:** “He and
11 his family directly benefit by him moving bears to a hunting area
12 if they are issued a license and the killing of them in the name of
13 public safety must simply be something that excites him-all of it
14 in conflict with NDOW's mission. Additionally, if we can
15 establish that he or his family benefits financially from selling
16 bear parts or selling the location where he recently released a
17 bear - he should go to jail.” Vol. I, JA 0016, ¶q;

18 **Comment made and posted by JoAnn Hill:** “Yes he should go
19 to jail! The treatment of our bears is paramount cruelty. Moving
20 mothers without their cubs, moving them to hunt zones, moving
21 them great distances knowing full well there are no food sources
22 or water and 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.” Vol. I, JA 0016, ¶r;

23 **Comment made and posted by Mary LoBuono Bryden:** “It's
time for the Nevada Engineered bear hunt.” Vol. I, JA 0016, ¶s;
and,

² The FAC originally asserted five (5) comments attributable to the NDOW WATCH Facebook page but the District Court found one of the five (5) was not actionable and there has been no appeal of that ruling. See, Vol. IV, JA 0275:4-6.

1 **Comment made and posted by Karen Lietzell-Vick:** "Lackey
2 is such an incompetent asshole! Fire his ass!!" Vol. I, JA0017,
3 ¶y.

4 Again, LACKEY has not sued STARK for defamation due to allegedly
5 defamatory comments made by STARK herself, but rather, LACKEY has sued
6 STARK for the statements set forth above that were made and posted by other
7 people to NDOW WATCH, the public Facebook page maintained by STARK.
8 Vol. I, JA 0078, ¶2.

9 In the FAC, LACKEY does not allege that STARK authored any of the
10 alleged defamatory statements posted on the NDOW WATCH public Facebook
11 page, or that STARK was in any way responsible for generating the apparently
12 offensive comments giving rise to this case. Vol. I, JA 0011-JA 0021.

13 Based on those allegations, the FAC asserted four causes of action against
14 STARK: Defamation, Negligent Infliction of Emotional Distress, Intentional
15 Infliction of Emotional Distress and Civil Conspiracy. Vol. I, JA 0011-JA 0021.
16 Upon being served with the FAC, STARK filed her Anti-SLAPP Motion and
17 Motion to Dismiss. Vol. I, JA 0026. The District Court denied STARK's Anti-
18 SLAPP Motion in its entirety, but granted STARK's Motion to Dismiss as to the
19 claim of Negligent Infliction of Emotional Distress and such dismissal has not
20 been appealed herein. Vol. I, JA 0277:16-22. As such, STARK respectfully
21
22
23

1 appeals the District Court's denial of her Anti-SLAPP Motion and Motion to
2 Dismiss.

3
4 **IX.**
SUMMARY OF ARGUMENT

5 Both Nevada's Anti-SLAPP statute and the Federal Communications
6 Decency Act ("CDA") require that LACKEY's FAC be dismissed against STARK.
7 Simply put, STARK cannot be held liable for statements made by unrelated third-
8 parties on a public Facebook page she only acted as the administrator for. Because
9 all causes of action set forth in the FAC arise out of statements authored by others,
10 LACKEY has essentially used this lawsuit as a way to silence STARK's speech,
11 petitioning and association rights by attempting to hold Appellant liable for alleged
12 defamatory statements made by other non-parties to this action with similar
13 wildlife advocacy interests. All of which is the exact conduct protected by
14 Nevada's Anti-SLAPP statutes.
15

16
17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

**X.
ARGUMENT**

A. Standard of Review.

On a special motion to dismiss pursuant to the anti-SLAPP statute, the plaintiff's burden is clear and convincing evidence, and the Supreme Court reviews for an abuse of discretion. NRS §41.660(3)(b). *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 266 (2017).

B. Understanding Nevada's Anti-SLAPP Statutes.

"NRS 41.660 was enacted to protect defendants against 'strategic lawsuits against public participation,' or 'SLAPPs.' NRS 41.660—colloquially the 'anti-SLAPP' statute—provides for a special motion to dismiss as a procedural mechanism for defendants to quickly and cheaply dispose of meritless suits against them filed in retaliation for certain forms of speech." *Panicaro v. Crowley*, No. 67840, 2017 WL 253581, at *1 (Nev. App. Jan. 5, 2017).

Nevada's anti-SLAPP statutes provide for early dismissal of meritless First Amendment cases aimed at chilling expression through costly, time-consuming litigation. *Id.*; *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1109 (9th Cir., 2003). NRS 41.650 provides as follows:

Limitation of liability. A person who engages in 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 is immune from any civil action for claims based upon the communication.

1 This is such a case.

2 Because this court has recognized that California's and Nevada's anti-
3 SLAPP “statutes are similar in purpose and language,” *John v. Douglas Cty. Sch.*
4 *Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1281 (2009); NRS 41.637(4); CCP
5 §425.16(e), we look to California law for guidance on this issue.
6

7 The California Anti-SLAPP statute provides that a cause of action “arising
8 from any act of [the defendant] in furtherance of the person’s right of petition or
9 free speech... in connection with a public issue shall be subject to a special motion
10 to strike, unless the court determines that the plaintiff has established that there is a
11 probability that the plaintiff will prevail on the claim.” CCP §425.16(b)(1).
12 Similarly, Nevada's anti-SLAPP statute is premised on the requirement that a
13 defendant carries the initial burden to show that statements in question involve a
14 “communication made in direct connection with an issue of public interest in a
15 place open to the public or in a public forum...which is truthful or is made without
16 knowledge of its falsehood.” NRS 41.637(4).
17

18 **C. STARK did not author or create any of the specific statements**
19 **alleged in the FAC to be attributable to the NDOW WATCH**
20 **public Facebook page and thus, involvement by STARK as**
21 **administrator of the page is protected by the CDA.**

22 Facebook is an Internet-based social networking website that allows its users
23 worldwide to share information, opinions, and other content of the users' own
choosing for free. See, *Klayman v. Zuckerberg*, 753 F.3d 1354, 1356 (D.C. Cir.

1 2014). Facebook allows users to create pages for groups relating to common
2 associations or interests. See, *Rembrandt Soc. Media, LP v. Facebook, Inc.*, 22 F.
3 Supp. 3d 585, 590 (E.D. Va. 2013). Users can then post content using their
4 individual Facebook profile within the group or association Facebook page. Here,
5 STARK is an administrator of the NDOW WATCH public Facebook page. Vol. I,
6 JA 0078, ¶2. However, it is undisputed that STARK did not author or create any of
7 the specific statements posted to the NDOW WATCH page which LACKEY
8 alleges in the FAC are attributable to STARK. Vol. I, JA 0027:14-16; Vol. IV, JA
9 0233:18-24.
10

11 The Communications Decency Act (“CDA”) defines “interactive computer
12 service” to mean “any information service, system, or access software provider that
13 provides or enables computer access by multiple users to a computer server.” 47
14 USC §230(f)(2). See also, *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119,
15 1122 (9th Cir.2003); *Zeran v. America Online, Inc.*, 129 F.3d 327, 330-31 (4th
16 Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its
17 exercise of a publisher's traditional editorial functions-such as deciding whether to
18 publish, withdraw, postpone or alter content-are barred”). [Emphasis Added];
19 *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no
20 liability under the CDA for “decisions relating to the monitoring, screening, and
21 deletion of content” by an interactive computer service provider). Many courts,
22
23

1 including the District Court in this action, have held that Facebook meets the
2 definition of an interactive computer service provided. Vol. IV, JA 0291; See,
3 *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357, 1359 (D.C. Cir. 2014); *Fraley v.*
4 *Facebook, Inc.*, 830 F.Supp.2d 785, 801-802 (N.D. Cal. 2011).

5 The CDA, however, does not immunize an interactive computer service if it
6 also functions as an information content provider **for the portion of the statement**
7 **or publication at issue**. [Emphasis Added]. See, *Carafano*, 339 F.3d at 1123-25
8 (finding 47 USC 230(c)(I) would bar plaintiff's claims unless defendant "created or
9 developed **the particular information at issue**"). [Emphasis Added].
10 "Information content provider" means "any person or entity that is responsible, in
11 whole or in part, for the creation or development of information provided through
12 the Internet or any other interactive computer service." 47 USC 230(3).
13

14 Here, the District Court found, "[LACKEY] alleges that STARK and
15 NDOW WATCH published and encourage statements. Facebook permits a
16 comment by both the webpage (in this case NDOW WATCH) as well as third
17 party users." (Citations Omitted). Vol. IV, JA 0292. The District Court then went
18 on to hold, "Given the nature of Facebook, **the Court cannot conclude for the**
19 **purposes of a motion to dismiss that STARK did not encourage the third**
20 **party users' statements**. Therefore, at this time, *the Court cannot find STARK is*
21 *immunized from liability for the third party comments under the CDA.*"
22
23

1 [Emphasis Added]. *Id.* at JA 0293. In so holding, the District Court relied on the
2 following legal authority: “*Hy Cite Corp. v. badbusinessbureau.com, L.L.C.*, 418
3 F. Supp. 2d 1142, 1148-49 (D. Ariz. 2005) (declining to grant defendants’ motion
4 to dismiss based on CDA immunity because plaintiffs alleged that defendants
5 added editorial comments, titles, and original content to third-party
6 complaints posted on defendants’ website). [Emphasis Added]; *Whitney Info.*
7 *Network. Inc. v. Xcentric Venture. LLC*, 199 Fed. Appx. 738, 744 (11th Cir. 2006)
8 (finding whether Defendants were entitled to CDA immunity remained in question
9 because the complaint plead Defendants’ involvement in creating or developing
10 the alleged defamatory content posted on their website).” [Emphasis Added].
11
12 Vol. IV, JA 0293 at FN 6.

13
14 However, those cases are not completely analogous to the case at issue here
15 in that, both *Hy Cite* and *Whitney Info* specifically address the question of whether
16 the Defendants therein were involved in the creation, development or editing of
17 third-party comments. *Id.* Here, it is undisputed that STARK neither individually,
18 nor by way of NDOW WATCH, authored or created any of the alleged defamatory
19 statements specified by LACKEY in his FAC. Vol. I, JA 0027:14-16; Vol. IV, JA
20 0233:18-22. Further, the record is also completely devoid of any allegations that
21 STARK or NDOW WATCH in any way “edited” the content of the alleged
22 defamatory statements in question. See generally, Vol. I, JA 0011-JA 0021.
23

1 In order for an Interactive Computer Service provider such as the NDOW
2 WATCH page to enjoy immunity under §230 of the CDA, a *different* Internet
3 Content Provider [i.e. Other than the Internet Content Provider who authored the
4 allegedly defamatory content] must have provided the complained-of
5 information—the statute does “not immunize [defendants] with respect to any
6 information [they] developed or created entirely by [themselves].” [Emphasis
7 Added]. See, *Doe v. City of New York*, 583 F.Supp.2d 444, 449
8 (S.D.N.Y.2008); accord, *Carafano v. Metrosplash.com., Inc.*, 339 F.3d 1119, 1123
9 (9th Cir.2003); *Ascentive, LLC v. Opinion Corp.*, 842 F. Supp. 2d 450, 474–75
10 (E.D.N.Y. 2011) (holding defendants’ invitation to content providers to submit
11 negative reviews and their alteration of the way such postings were displayed, did
12 not constitute development of information for CDA purposes).

13
14
15 In *Ascentive, LLC v. Opinion Corp.*, 842 F. Supp. 2d 450, 474–75 (E.D.N.Y.
16 2011), the Court held that the website “PissedConsumer is not an ‘information
17 content provider’ under Section 230 with respect to the negative postings
18 concerning plaintiffs at issue in this case.” On point herein, in *Ascentive*, plaintiff,
19 Classic Brands, LLC did not claim that the defendant created or authored the
20 negative postings on its website; “rather it claims that
21 “PissedConsumer encourages consumers to create negative postings on the
22 PissedConsumer website.” [Emphasis Added]. *Id.*
23

1 The Court held, "While it is true that 'Section 230(c) immunity is not so
2 broad as to extend to an interactive computer service that ... takes an active role in
3 creating or developing the content at issue,' plaintiffs have provided no such
4 evidence, nor even sufficiently alleged that PissedConsumer played such a role.
5 Asserting or implying the mere possibility that PissedConsumer did so is
6 insufficient to overcome the immunity granted by the CDA." *Id.*

8 Here, the District Court explicitly held, "the Court cannot conclude for the
9 purposes of a motion to dismiss that STARK did not encourage the third
10 party users' statements. Therefore, at this time, *the Court cannot find Stark is*
11 *immunized from liability for the third party comments under the CDA;*" however,
12 applicable case law makes it clear that merely soliciting/encouraging public
13 comment or even negative reviews, is clearly protected under the CDA. [Emphasis
14 Added]. Vol. IV, JA 0293. As such, STARK and NDOW WATCH are immune
15 from liability under the CDA and the District Court erred in its findings to the
16 contrary.

18 **D. The District Court abused its discretion in essentially holding**
19 **STARK responsible for statements authored and posted by**
20 **unrelated third-parties.**

21 Again, STARK did not author any of the specific comments raised by
22 LACKEY in his FAC. Vol. I, JA 0027:14-16; Vol. IV, JA 0233:18-22. It follows
23 that, because all of LACKEY's claims set forth in the FAC arise out of statements

1 authored by others, LACKEY has essentially used this lawsuit as a way to silence
2 STARK by attempting to hold her liable for alleged defamatory statements made
3 by other non-parties to this action with similar wildlife advocacy interests.

4 All of LACKEY's asserted claims against STARK appear to be nothing
5 more than an attempt to punish her for not removing or policing statements of
6 third-parties, which directly arise from the exercise of STARK's free speech rights
7 to publish others' speech on NDOW WATCH's public Facebook page. [Emphasis
8 Added]. See, *Cruz v. Van Sickle*, 452 S.W.3d 503, 517-18 (Tex. App.—Dallas
9 2014), (Texas Anti-SLAPP statute required dismissal of libel claim against
10 political blog operator based on operator's refusal to remove statement posted by
11 third-party); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974)
12 (explaining that the "exercise of [a publisher's] editorial control and judgment" is
13 protected by the First Amendment); *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997,
14 1008 (E.D. Cal. 2017) (owner of a website has a "First Amendment right to
15 distribute and facilitate protected speech"); *Zhang v. Baidu.com Inc.*, 10 F. Supp.
16 3d 433, 437 (S.D.N.Y. 2014) (online publishers have a First Amendment right to
17 distribute others' speech and exercise editorial control on their webpages because
18 "the First Amendment's protections apply whether or not a speaker articulates, or
19 even has, a coherent or precise message, and whether or not the speaker generated
20 the underlying content in the first place"); and, *Snyder v. Phelps*, 532 U.S. 443,
21
22
23

1 444, 131 S.Ct. 1207, 1211, 1215, 179 L.Ed.2d 172 (2011) (“[S]peech on public
2 issues occupies the highest rung of the hierarchy of First Amendment values, and
3 is entitled to special protection” and “A statement’s arguably inappropriate or
4 controversial character ... is irrelevant to the question whether it deals with a matter
5 of public concern”).
6

7 The analysis under Nevada’s Anti-SLAPP statute is somewhat imperfect
8 because again, STARK did not author any of the statements in question. However,
9 ordinarily to fall under Nevada’s anti-SLAPP protection, typically STARK would
10 have had the burden of showing the subject statements involve a “communication
11 made in direct connection with an issue of public interest in a place open to the
12 public or in a public forum” and “which [are] truthful or [are] made without
13 knowledge of [their] falsehood.” NRS 41.637(4). As such, in the abundance of
14 caution, STARK will address those factors and the errors committed by the District
15 Court thereon.³
16

17 **E. The District Court erred in finding three of the four statements the**
18 **District Court found to be actionable against STARK were not**
19 **made in direct connection with an issue of public concern**

20 In its Order denying STARK’s Motion, the District Court held in pertinent
21 part,

22 ³ It is undisputed that Facebook is a public forum, as such, the analysis herein will
23 be limited to whether the communications at issue were “made in direct connection
with an issue of public interest” and “which [are] truthful or [are] made without
knowledge of [their] falsehood.” NRS 41.637(4).

1 [T]he Court considers the Shapiro factors to determine whether the
2 statements were made in the public interest. Stark's articulated public
3 interest is the treatment of wildlife in Lake Tahoe, specifically the
4 concern of the trapping and euthanizing bears by NDOW. The Court
5 finds this interest does not equate with mere curiosity. Further, Stark
6 has provided local newspaper articles to support showing the
7 treatment of Nevada wildlife is of public concern.

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

19 (Citations Omitted). Vol. IV, JA 0289. Analyzing each individual third-party
20 statement posted to the NDOW WATCH public Facebook page, the District Court
21 erred in finding that some of the statements were not directly in regards to matters
22 of public concern.
23

The third-party statement referred to as Statement "Q" reads as follows:

1 **Statement “Q” made and posted by Colleen Hemingway:** “He
2 and his family directly benefit by him moving bears to a hunting
3 area if they are issued a license and the killing of them in the
4 name of public safety must simply be something that excites
5 him-all of it in conflict with NDOW's mission. Additionally, if
6 we can establish that he or his family benefits financially from
7 selling bear parts or selling the location where he recently
8 released a bear - he should go to jail.” [Emphasis Added]. Vol. I,
9 JA 0016, ¶q.

7 **With respect to Statement “Q,” the District Court held:**

8 “Statement Q's main focus concerns potential benefits Lackey
9 may receive, and hypothesizes that Lackey should go to jail if
10 they can prove he sells bear parts. **Statement Q is not directly**
11 **related to the stated public interest.**” [Emphasis Added]. Vol.
12 IV, JA 0289.

11 The District Court clearly erred in finding Statement “Q” “is not directly related to
12 the stated public interest.” *Id.* Most problematic is the fact that the District Court
13 conceded that, “STARK’s articulated public interest is *the treatment of wildlife in*
14 *Lake Tahoe, specifically the concern of the trapping and euthanizing bears by*
15 *NDOW.*” [Emphasis Added]. Vol. IV, JA 0289. As such, the statement that “if they
16 are moving bears to hunting areas in exchange for personal benefits, selling bear
17 parts or locations of where bears are released, then he should go to jail,” is directly
18 related to the stated public interest of “the treatment of wildlife in Lake Tahoe,
19 specifically the concern of the trapping and euthanizing bears by NDOW.”
20 [Emphasis Added]. *Id.*

22 The third-party statement referred to as Statement “R” read as follows:

1 **Statement “R” made and posted by JoAnn Hill:** “Yes he
2 should go to jail! The treatment of our bears is paramount
3 cruelty. Moving mothers without their cubs, moving them to
4 hunt zones, moving them great distances knowing full well there
5 are no food sources or water and that they will try to return
6 home! Animal cruelty is a felony in all 50 states. Him and his
7 NDOW murders need to go to jail and stay there.” Vol. I, JA
8 0016, ¶r;

9 **With respect to Statement “R,” the District Court held:**
10 **“Statement R contains some assertions that relate to the public**
11 **interest (as it alleges bears are being relocated to hunt zones and**
12 **areas without any food or water); however its main focus**
13 **appears to be an attack on Lackey's character, by calling him**
14 **a murderer and demanding he go to jail.”** [Emphasis Added].
15 Vol. IV, JA 0289.

16 When statements are posted on the Internet, the relevant context includes the
17 website on which the messages were posted. See, *ZL Techs., Inc. v. Does 1-7*, 13
18 Cal. App. 5th 603, 618, 220 Cal. Rptr. 3d 569, 584 (Ct. App. 2017) (website on
19 which the statements were posted “is intended to ‘help job seekers make informed
20 decisions’” therefore statements constituted protected activities). Here, the very
21 name of the subject public Facebook page at issue in this case is “NDOW
22 WATCH: KEEPING THEM TRANSPARENT,” clearly reflecting the purpose of
23 the page is similar to that of a community watch type of public webpage.

24 In *Summit Bank v. Rogers*, the plaintiff alleged defendant, a former bank
25 employee, made defamatory statements that taken together, the statement that the
26 CEO “thinks that the Bank is her [personal] Bank to do with it as she pleases,” and
27 the statement that it was a “problem bank,” suggesting the CEO was

1 misappropriating money and the bank was on the verge of insolvency, constituted
2 actionable defamatory statements. *Summit Bank v. Rogers*, 206 Cal. App. 4th 669,
3 142 Cal. Rptr. 3d 40 (2012). However, the Court found otherwise. In finding that
4 defendant's statements were nonactionable opinions, the *Summit* Court relied in
5 part on the fact they were posted on the Internet Craigslist page titled "Rants and
6 Raves" and lacked "the formality and polish typically found in documents in
7 which a reader would expect to find facts" and thus, could not give rise to
8 defamation liability. [Emphasis Added]. *Id.* Similarly, the statements posted to the
9 public Facebook page bearing the very title, "NDOW WATCH: KEEPING THEM
10 TRANSPARENT," clearly provides notice that critical opinions may be expressed
11 regarding the conduct of NDOW, again, much like that of a citizen's advocacy
12 type of page. As such, Statement "R" was absolutely in direct connection with an
13 issue of public concern.
14
15

16 The third-party statement referred to as Statement "Y" reads:

17 Statement "Y" made and posted by Karen Lietzell-Vick:
18 "Lackey is such an incompetent asshole! Fire his ass!!" Vol. I,
19 JA 0017, ¶y.

20 With respect to Statement "Y," the District Court held:
21 Statement Y, commenting that Lackey is an "incompetent
22 asshole," is not related to the public interest concerning the
23 treatment of bears, but rather is a personal attack on Lackey's
character." Vol. IV, JA 0289.

1 It has been held that use of “hyperbolic, informal,” ““crude, [or] ungrammatical’
2 language, satirical tone, [or] vituperative, ‘juvenile name-calling’ ” provide support
3 for the conclusion that offensive comments were nonactionable opinion.
4 *ComputerXpress, Inc. v. Jackson*, 93 Cal.App.4th 993, 1013, 113 Cal.Rptr.2d 625
5 (2001); *Bently Reserve L.P. v. Papaliolios*, 218 Cal. App. 4th 418, 429-430, 160
6 Cal. Rptr. 3d 423 (2013). Similarly, overly vague statements and ““generalized’
7 comments ... ‘lack[ing] any specificity as to the time or place of’ alleged conduct
8 may be a ‘further signal to the reader there is no factual basis for the accusations.’”
9 *ComputerXpress, supra*, at 1013, 113 Cal.Rptr.2d 625; *Bently Reserve, supra*, at
10 431, 160 Cal.Rptr.3d 423, citing *Chaker v. Mateo*, 209 Cal.App.4th 1138, 1149-
11 1150, 147 Cal.Rptr.3d 496 (2012) (claims the plaintiff “pick[ed] up streetwalkers
12 and homeless drug addicts and [was] a deadbeat dad” were nonactionable). See
13 also, *ZL Techs., Inc. v. Does 1-7*, 13 Cal. App. 5th 603, 624, 220 Cal. Rptr. 3d 569,
14 589 (Ct. App. 2017). Here, there can be little doubt that Statement “Y” was
15 nothing more than “juvenile name-calling” and calls to “fire” LACKEY, that are
16 directly related to the stated public interest of wildlife and the handling of bears by
17 NDOW. *Bently Reserve L.P. v. Papaliolios*, 218 Cal. App. 4th 418, 429-430, 160
18 Cal. Rptr. 3d 423 (2013). As such, the District Court erred in finding the three
19 statements above were not directly related to the express issues of public concern
20 being discussed in NDOW WATCH’s public Facebook forum.
21
22
23

1 *i. Truthfulness of the alleged third-party statements posted to the*
2 *NDOW WATCH public Facebook page.*⁴

3 In its Order denying STARK's Motion, the District Court addressed
4 STARK's burden to prove that the statements, which she did not author, were true
5 or made without knowledge of their falsity stating,

6 "Further, in order to shift the burden to Lackey, Stark must prove, by
7 the preponderance of the evidence, that the statements are true or were
8 made without knowledge of their falsehood. See NRS 41.63 7; NRS
9 41.660. In this respect, Stark has provided an affidavit that states: "I
10 have only personally posted true facts on the Facebook page, except
11 these matters of opinion, of which I have stated as such." [Aff. Stark,
12 at 4]. Additionally, Stark attests, "I believe that the statements made
13 by others on the Facebook page 'NDOW WATCH Keeping them
14 Transparent' are statements of opinion or contain substantial truth.
15 [Aff. Stark, at 15]. Statement R was made by JoAnn Hill. The Court
16 finds that Stark has failed to meet her burden to prove statement R's
17 truthfulness or that it was not made without knowledge of its falsity.
18 Stark does not specifically address the factual allegations in R nor
19 make any specific indication as to why the statement made by JoAnn
20 Hill is true, or made without knowledge of its falsity. Similarly,
21 Stark's affidavit does not specifically address statement S. While
22 Exhibit A to the reply (an article entitled "Tensions High Over Bear
23 Management in Nevada Side of Tahoe Basin) discusses Nevada bear
hunts, there is no indication that "it was time" for the Nevada bear
hunt to find by the preponderance of evidence the statement is true.
Therefore, the Court finds Stark has failed to meet her burden to show
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

4 The District Court failed to meaningfully address whether the subject statements constituted "opinions" as opposed to purported statements of fact. "Opinions are constitutionally protected and cannot form the basis of a defamation-type claim." [Citations Omitted]. *Daniel v. Wayans*, 8 Cal. App. 5th 367, 397, 213 Cal. Rptr. 3d 865, 891 (Ct. App. 2017). As such, because all of the subject statements appear to be opinions of the third-party author(s), the District Court further erred in failing to meaningfully address this matter.

1 with an issue of public concern. As such, the Court will deny Stark's
2 motion to dismiss under Nevada's Anti-SLAPP statute.”

3 Vol. IV, JA 0289-JA 0290. STARK submitted admissible evidence, by way of an
4 Affidavit, sworn under penalty of perjury stating in part, “All statements I have
5 made in regards to the Nevada Department of Wildlife or its employees including
6 Carl Lackey, have all been truthful and that I have posted no lies about either and
7 all other comments have been opinion and nothing more.” (Vol. III, JA 0201 at
8 ¶6); “That I [STARK] have only personally posted true facts on the Facebook page
9 . . .” (Vol. I, JA 0079 at ¶4); “That I [STARK] have never acted in concert with
10 any other Defendant in the case to harass or threaten Carl Lackey” (Vol. I, JA 0079
11 at ¶9); and, “That I [STARK] have never harassed or threatened Carl Lackey, nor
12 have I attempted to cause him fear, anxiety, embarrassment or tried to damage the
13 reputation that he has” (Vol. I, JA 0079 at ¶10). STARK further declared, “That I
14 believe that the statements made by others on the Facebook page ‘NDOW Watch
15 Keeping Them Transparent’ are statements of opinion or contain substantial truth.”
16 Vol. I, JA 0079 at ¶15).

17
18
19 Again, inherently problematic is the fact that STARK did not author or
20 create the allegedly defamatory statements identified in LACKEY’s FAC. See
21 generally, Vol. I, JA 0011-JA 0021. Yet, in an effort to ensure compliance with all
22 of the requirements of the Anti-SLAPP statutes, STARK submitted an Affidavit in
23

1 support of her Motion declaring under penalty of perjury that she believed the
2 subject third-party statements were either opinions or substantially true. Vol. I, JA
3 0079 at ¶15. What more could STARK do when being sued for defamation and the
4 claims directly arising from the alleged defamatory statements, when she did not
5 author or create the statements?

6
7 **F. The District Court abused its discretion in failing to dismiss the**
8 **other causes of action asserted against STARK arising out of the**
9 **protected activities.**

10 A special motion to strike may be used to strike any “cause of action against
11 a person arising from any act of that person in furtherance of the person's right of
12 petition or free speech . . .” (Citations Omitted). [Emphasis Added]. See, *Baral v.*
13 *Schnitt*, 1 Cal. 5th 376, 376 P.3d 604 (2016). The District Court abused its
14 discretion in failing to dismiss the remaining two claims for Intentional Infliction
15 of Emotional Distress and Civil Conspiracy, as both claims arise directly out of
16 STARK’s protected activities as described more fully herein.

17 ***i. Intentional Infliction of Emotional Distress***

18 The elements of a claim for intentional infliction of emotional distress are:
19
20 1) that the defendant's conduct was extreme and outrageous; (2) that the defendant
21 either intended or recklessly disregarded the causing of emotional distress; (3) that
22 the plaintiff actually suffered severe or extreme emotional distress; and (4) that the
23 defendant's conduct actually or proximately caused the distress. *Nelson v. City of*

1 *Las Vegas*, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983). “[E]xtreme and
2 **outrageous** conduct is that which is outside all possible bounds of decency and is
3 regarded as utterly intolerable in a civilized community.” *Maduike v. Agency Rent-*
4 *A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998).

5 The District Court refused to dismiss LACKEY’s claim for Intentional
6 Infliction of Emotional Distress stating,
7

8 “Taking the factual allegations set forth in the FAC as true, the Court
9 finds Lackey has properly stated a claim for intentional infliction of
10 emotional distress against Stark as the FAC alleges, among other
11 allegations, that NDOW WATCH has **initiated public comment to
encourage the public** to shame and harass Lackey so he will lose his
job and/or feel threatened enough to leave the community.”

12 [Emphasis Added]. Vol IV, JA 0259:14-18. This finding is wholly unsupported by
13 the record. STARK submitted evidence that she has never harassed or threatened
14 LACKEY and that she has never attempted to cause him fear, anxiety,
15 embarrassment or tried to damage the reputation that he has” Vol. I, JA 0079, ¶10.
16 Further, LACKEY has failed to present any evidence whatsoever or even allege
17 how or what STARK has done to initiate or encourage public comment that would
18 constitute actionable conduct. See generally, Vol. I, JA 0011-JA 0021. As such, for
19 the Court to find that STARK can be liable for a bare and general assertion that
20 NDOW WATCH has engaged in certain conduct is wholly unsupported.
21 LACKEY has not alleged one single specific statement in his FAC that that
22 STARK either published or encouraged. Vol. I, JA 0011- JA 0021.
23

1 Further, any sort of “guilt by association” which LACKEY somehow
2 attempts to impute to STARK by way of her similar advocacy efforts as those of
3 the third-party comments at issue herein, directly arises out of STARK’s
4 Constitutional rights to speech, petition and associate. As such, even if such
5 conduct had been properly plead, it would be protected as it arises out of protected
6 activities under the Anti-SLAPP statute. Accordingly, the District Court erred in
7 failing to dismiss LACKEY’s claim for Intentional Infliction of Emotional Distress
8 as to STARK.
9

10 ***ii. Civil Conspiracy***

11 Actionable civil conspiracy ““consists of a combination of two or more
12 persons who, by some concerted action, intend to accomplish an unlawful
13 objective for the purpose of harming another, and damage results from the act or
14 acts.”” *Consol. Generator-Nevada v. Cummins Engine Co.*, 114 Nev. 1304, 1311,
15 971 P.2d 1251, 1256 (1998). (Citations Omitted).
16

17 As to conspiracy, the District Court erroneously held,

18 “The Court finds Lackey has properly alleged a claim for civil
19 conspiracy against Stark. Lackey has pled the unlawful objective is to
20 harass and threaten Lackey.”

21 Vol IV, JA 0258:14-16. LACKEY has failed to in any way specify how STARK
22 has allegedly acted in concert with the other defendants, or anyone for that matter,
23 to accomplish the goals of harassing and threatening LACKEY, or any unlawful

1 objective or damages, as required to sustain a civil conspiracy claim. *Id.*; Vol. I, JA
2 0011-JA 0021. Further, STARK declared under penalty of perjury that she has
3 “never acted in concert with any other Defendant in the case to harass or threaten
4 CARL LACKEY.” Vol. I, JA 0079, ¶9.

5
6 Specifically, in the anti-SLAPP context, in *Contreras v. Dowling*, the Court
7 found that “an anti-SLAPP motion is an evidentiary motion.” (Citations Omitted).
8 5 Cal. App. 5th 394, 416, 208 Cal. Rptr. 3d 707, 724 (Ct. App. 2016), *as modified*
9 *on denial of reh'g* (Nov. 18, 2016), *review denied* (Feb. 1, 2017). Just as is the case
10 here, the *Contreras* Court found plaintiff, Contreras, failed to provide any
11 evidentiary support for her allegations of conspiracy...” *Id.* The Court ultimately
12 held, “Because civil conspiracy is so easy to allege, plaintiffs have a weighty
13 burden to prove it;” the plaintiff failed to meet their burden by failing to produce
14 any evidence to support her allegations of conspiracy. *Id.*

15
16 Further, here, the District Court found general allegations that STARK acted
17 in concert with the other Defendants to accomplish the goals of harassing and
18 threatening LACKEY; however, despite failing to identify in any way any shred of
19 specific conduct STARK did to engage in such conduct, the general allegations on
20 their own fail as a matter of law because all of the conduct alleged in the FAC is
21 conduct which expressly arising out of protected activity and is thus, protected by
22
23

1 the anti-SLAPP statute. As such, the District Court's failure to dismiss LACKEY's
2 civil conspiracy claim in its entirety as to STARK was an abuse of discretion.

3 4 **XI. CONCLUSION**

5 SLAPP lawsuits are intended to censor, intimidate and silence critics by
6 burdening them with the cost of a legal defense until they abandon their criticism
7 or opposition. They also function to intimidate others to prevent them from
8 participating in the debate.

9
10 As explained by then Senator Dina Titus, Nevada's Anti-SLAPP legislation
11 was designed to protect well-meaning individuals who petition for some cause
12 from being hit by retaliatory "SLAPPS," and includes all forms of
13 communication. See, Minutes of the Senate Committee on Judiciary, Sixty-seventh
14 Session May 26, 1993, at p. 7-8. Here, LACKEY filed this SLAPP lawsuit with
15 the specific goal of silencing STARK and her wildlife conservation and advocacy
16 efforts.

17
18 This is exactly what the Nevada Anti-SLAPP statute explicitly aims to
19 prevent. In addition, the Federal Communications Decency Act also provides
20 complete immunity for STARK in this case. As such, it is respectfully requested
21 that this Court reverse the District Court, dismissing LACKEY's FAC as to
22 STARK and remand with instructions to award reasonable costs and attorney's
23

1 fees and additional damages in an amount up to \$10,000 each to STARK and
2 NDOW WATCH pursuant to NRS 41.670.
3

4 Dated this 16th day of April, 2018.
5

6 

STEPHANIE RICE, ESQ. (SBN 11627)

7 DEL HARDY, ESQ. (SBN 1172)

8 RICHARD SALVATORE, ESQ. (SBN 6809)

WINTER STREET LAW GROUP

Attorney for Appellant

9 CAROLYN STARK
10
11
12
13
14
15
16
17
18
19
20
21
22
23

XII.
ATTORNEY'S CERTIFICATE

1
2
3 1. I hereby certify that this brief complies with the formatting
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
5 the type style requirements of NRAP 32(a)(6) because:

6 [X] This brief has been prepared in a proportionally spaced typeface
7 using Microsoft Word in Times New Roman, size 14 font; or

8 [] This brief has been prepared in a monospaced typeface using *[state name*
9 *and version of word processing program]* with *[state number of characters per*
10 *inch and name of type style]*.

11
12 2. I further certify that this brief complies with the page-or type-volume
13 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
14 NRCP 32(a)(7)(C), it is either:

15 [X] Proportionately spaced, has a typeface of 14 points or more and contains
16 7,151 total words; or,

17
18 [] Monospaced, has 10.5 or fewer characters per inch, and contains ____
19 words or ____ lines of text; or

20 [] Does not exceed ____ pages.

21 3. Finally, I hereby certify that I have read this appellate brief, and to the
22 best of my knowledge, information, and belief, it is not frivolous or interposed for
23 any improper purpose. I further certify that this brief complies with all applicable

1 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
2 every assertion in the brief regarding matters in the record to be supported by a
3 reference to the page and volume number, if any, of the transcript or appendix
4 where the matter relied on is to be found.

5
6 I understand that I may be subject to sanctions in the event that the
7 accompanying brief is not in conformity with the requirements of the Nevada
8 Rules of Appellate Procedure.

9 Dated this 16th day of April, 2018.

10 

11 Stephanie Rice, Esq. (SBN 11627)
12 Richard Salvatore, Esq. (SBN 6809)
13 96 & 98 Winter Street
14 Reno, Nevada 89503
15 (775) 786-5800

16 Attorneys for Appellant:
17 CAROLYN STARK, an individual,
18 D/B/A NDOW WATCH KEEPING
19 THEM TRANSPARENT
20
21
22
23

XIII.
PROOF OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on the 16th day of April, 2018, I caused service of a true and correct copy of the above and foregoing **APPELLANT'S OPENING BRIEF** on all parties to this action by the method(s) indicated below:

X by using the Supreme Court Electronic Filing System:

Sean P. Rose, Esq.
Rose Law Office
150 W. Huffaker Lane, Suite 101
Reno, NV 89511
Attorneys for Respondents

X by Personal Delivery/Hand Delivery addressed to:

Thomas R. Brennan, Esq.
Durney & Brennan, Ltd.
6900 S. McCarran Blvd., Suite 2060
Reno, NV 89509
Attorneys for Respondents

DATED this 16th day of April, 2018.


AN EMPLOYEE OF WINTER STREET LAW GROUP