> *judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.*

[Emphasis added.]

The VIPI Defendants should be jointly and severally liable for 100% of Plaintiffs' fees and costs in having had to set out this *Opposition*.

The Supreme Court has re-adopted "well-known basic elements," which in addition to hourly time schedules kept by an attorney, are to be considered in determining the reasonable value of an attorney's services, and qualities, commonly referred to as the Brunzell factors:[64]

> 1. The Qualities of the Advocate: his ability, his training, education, experience, professional standing and skill.
> 2. The Character of the Work to Be Done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
> 3. The Work Actually Performed by the Lawyer: the skill, time and attention given to the work.
> 4. The Result: whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.[65] Additional guidance is provided by reviewing the "attorney's fees" cases most often cited in Family Law.[66]

The Brunzell factors require counsel to rather immodestly make a representation as to the "qualities of the advocate," the character and difficulty of the work performed, and the work actually performed by the attorney.

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

[65] *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

[66] Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973), *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).

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First, respectfully, we suggest that the undersigned is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law[67] who has been in practice nearly 40 years. Mr. Willick, the attorney primarily responsible for drafting this *Opposition*, is the principal of the WILLICK LAW GROUP.

As to the "character and quality of the work performed," we ask the Court to find our work in this matter to have been adequate, both factually and legally; we have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The fees charged by paralegal staff are reasonable, and compensable, as well. The tasks performed by staff in this case were precisely those that were "some of the work that the attorney would have to do anyway [performed] at substantially less cost per hour."[68] As the Nevada Supreme Court reasoned, "the use of paralegals and other nonattorney staff reduces litigation costs, so long as they are billed at a lower rate," so "'reasonable attorney's fees' . . . includes charges for persons such as paralegals and law clerks."

The work actually performed will be detailed in a *Memorandum of Fees and Costs*, at the Court's request (redacted as to confidential information), consistent with the requirements under *Love*.[69]

---

[67] Per direct enactment of the Board of Governors of the Nevada State Bar, and independently by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to write the examination that other would-be Nevada Family Law Specialists must pass to attain that status.

[68] *LVMPD v. Yeghiazarian*, 129 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, Nov. 7, 2013) citing to *Missouri v. Jenkins*, 491 U.S. 274 (1989).

[69] *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

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III. CONCLUSION

Based on the above, Plaintiffs respectfully requests the Court issue the following orders:

1. Deny VIPI Defendants' *Motion to Dismiss* in its entirety.
2. Grant Plaintiffs attorney's fees in the minimum amount of $5,000.

DATED this 6th day of March, 2017.

Respectfully Submitted By:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100 Fax (702) 438-5311
Attorney for *Plaintiffs*

DECLARATION OF JENNIFER V. ABRAMS, ESQ.

1. I, Jennifer V. Abrams, Esq., declare that I am competent to testify to the facts contained in the preceding filing.

2. I have read the preceding filing, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

3. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 6th day of March, 2017.

JENNIFER V. ABRAMS, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 6th day of March, 2017, I caused the above and foregoing document, to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and by email.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

To the attorney and/or litigant listed below at the address, email address, and/or facsimile number indicated below:

Maggie McLetchie, Esq.
MCLETCHIE SHELL LLC
701 E Bridger Avenue, #520,
Las Vegas, Nevada 89101
Attorney for *Steve W. Sanson* and
VETERANS IN POLITICS INTERNATIONAL, INC.

Alex Ghibaudo, Esq.
GLAW
320 E Charleston Blvd., Suite 105
Las Vegas, Nevada 89104
Attorney for Louis C. Schneider,
LAW OFFICES OF LOUIS C. SCHNEIDER, LLC and
Christina Ortiz

Heidi J. Hanusa
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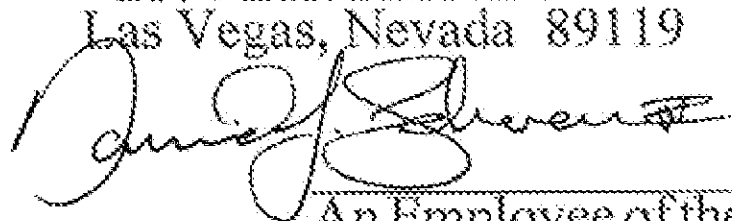
Sanson Corporation
Reg. Agent:c/o Clark McCourt
7371 Prairie Falcon Road, Ste. 120
Las Vegas, Nevada 89128

Karen Steelmon
2174 East Russell Road
Las Vegas, Nevada 89119



// for Justin Johnson
An Employee of the WILLICK LAW GROUP

\\wlgserver\company\wp16\ABRAMS,JENNIFER\PLEADINGS\00167883.WPD/jj

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EXHIBIT "1"

EXHIBIT "1"

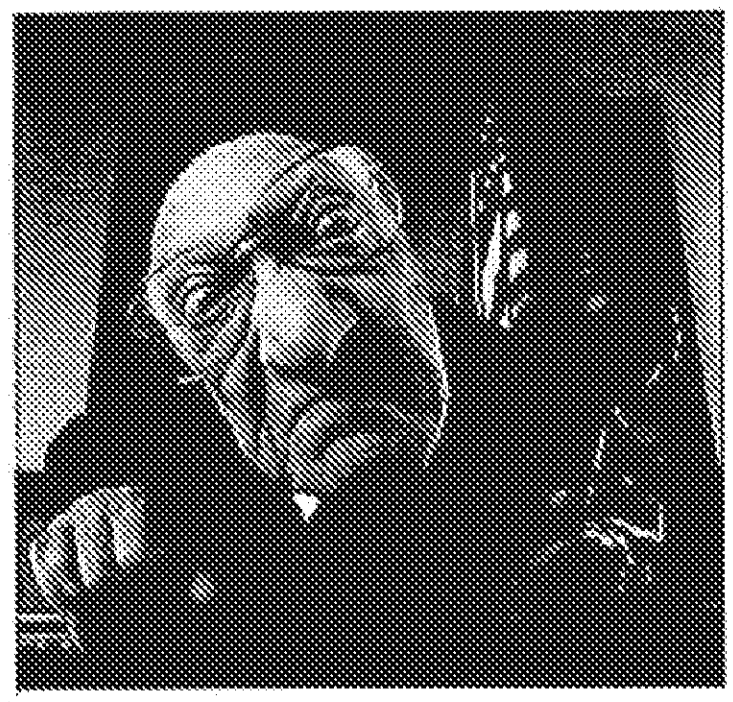
EXHIBIT "1"

VETERANS IN POLITICS

Nevada Attorney attacks a Clark County Family Court Judge in Open Court

A behind the scenes look inside our courtroom

FIND OUT MORE



No boundaries in our courtrooms!

In Clark County Nevada, we have noticed Justice of the Peace handcuffing Public Defenders unjustly as well as Municipal Court Judges incarcerating citizens that are not even before their court.

The above are examples of the court room over stepping boundaries. But what happens when a Divorce Attorney

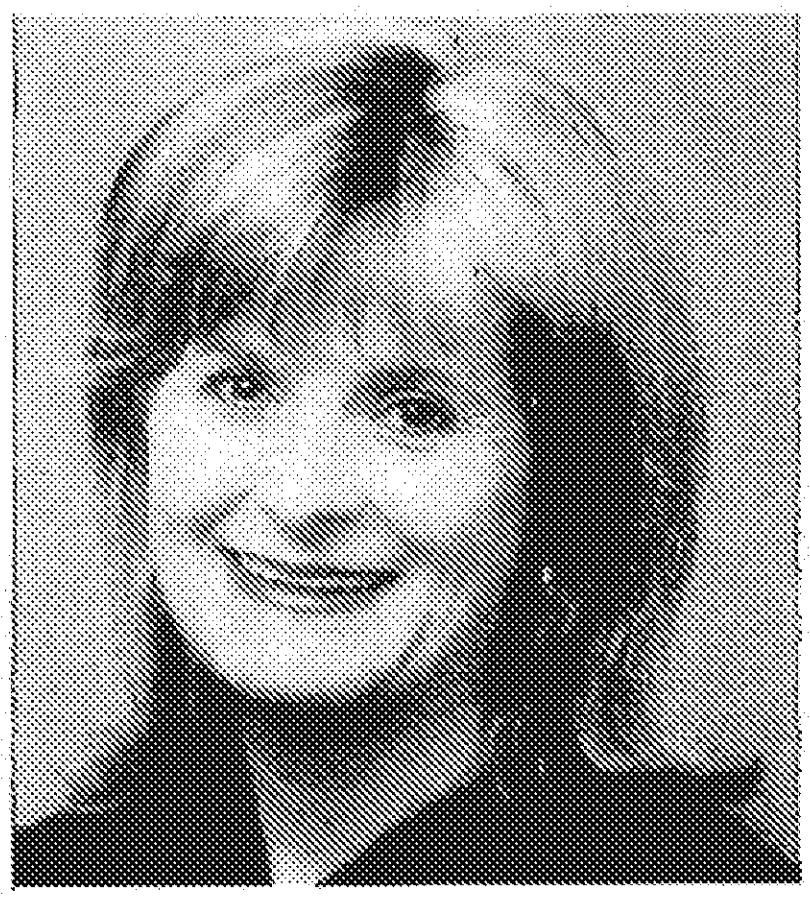
crosses the line with a Clark County District Court Judge Family Division?

In a September 29, 2016 hearing in Clark County Family Court Department L Jennifer Abrams representing the plaintiff with co-council Brandon Leavitt and Louis Schneider representing the defendant. This case is about a 15 year marriage, plaintiff earns over 160,000 annually and defendant receives no alimony and no part of the business.

There was a war of words between Jennifer Abrams and Judge Jennifer Elliot.

Start 12:13:00 in the video the following conversation took place in open court.

Judge Jennifer Elliot:



I find that there is undue influence in the case.

There are enough ethical problems don't add to the problem.

If that's not an ethical problem I don't know what is.

Court is charged to making sure that justice is done.

Your client lied about his finances.

I am the judge and in a moment I am going to ask you to leave.

Your firm does this a lot and attack other lawyers.

I find it to be a pattern with your firm.

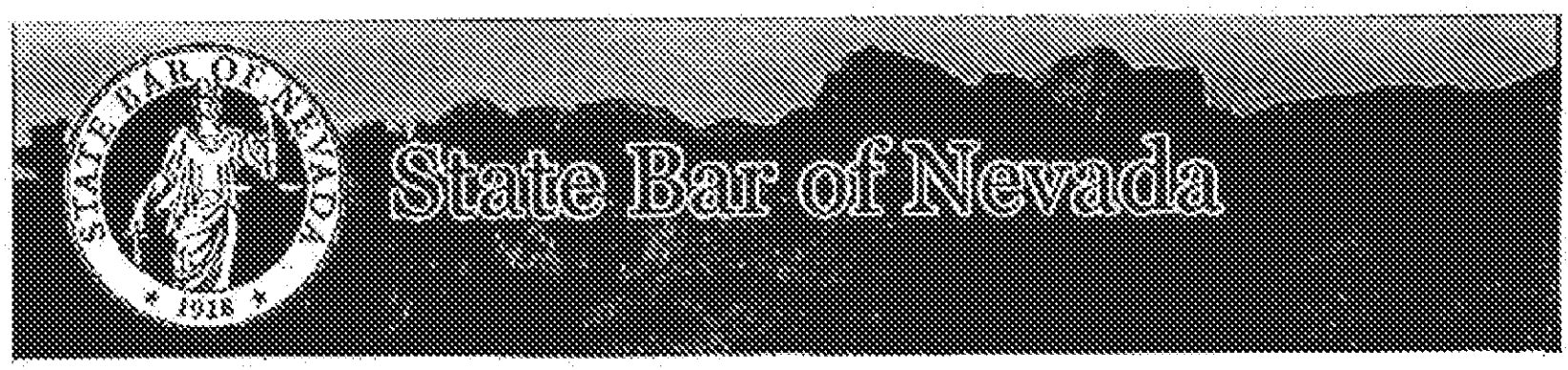
You are going to be taking out of here if you don't sit down.

I am the Judge not you.

Jennifer Abrams:

Excuse me I was in the middle of a sentence.

Is there any relationship between you and Louis Schneider?



At what point should a judge sanction an attorney?

Is a judge too comfortable or intimidated by an attorney that they give them leeway to basically run their own courtroom?

If there is an ethical problem or the law has been broken by an attorney the Judge is mandated by law to report it to the

Nevada State Bar or a governing agency that could deal with the problem appropriately.

Learn More about Nevada State Bar Ethics & Discipline

UPCOMING EVENTS

WEBSITE NEWS GOALS AND VALUES OFFICERS CONTACT US

Veterans in Politics International Inc.
702-283-8888
devildog1255@cs.com
www.veteransinpolitics.org

SIGN UP FOR EMAILS

Confirm that you like this.

Click the "Like" button.

EXHIBIT "2"

EXHIBIT "2"

EXHIBIT "2"

Search Facebook [redacted] Home 18

Steve Sanson
3 hrs ·

A quote from Mr. T from the A-Team; "When I was hungry nobody invited me over for dinner. Now, that I can afford to buy my own restaurant everybody wants to invite me over for dinner".

So the same goes here when people needed somone to get dirty so they can stay nameless, we do it without hesitation. Where are those people now when we need some assistance?

Like Comment Share

11

Michael Davis Let me know how can I support you Brother?
Like · Reply · 1 · 34 mins · Edited

Michael Davis Done
Like · Reply · 1 · 27 mins

Write a reply...

[redacted] Write a comment...

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS AND MAYO LAW FIRM, Plaintiff/Petitioner	
-v.-	Case No. A-17-749318-C
	Department 12
LOUIS SCHNEIDER et. al., Defendant/Respondent	**MOTION/OPPOSITION FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ $25 The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-Or-

X $0 The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

X The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

X $0 The Motion/Opposition being filed with this form is **not** subject to the $129 or the $57 fee because:

X The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-Or-

☐ $129 The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-Or-

☐ $57 The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
X $0 ☐ $25 ☐ $57 ☐ $82 ☐ $129 ☐ $154

Party filing Motion/Opposition: Jennifer Abrams Date: 03/06/2017

Signature of Party or Preparer: // for Justin Johnson

%wfgcorp%company%wp10ABRAMS,JENNIFER\DRAFTS\00138066.WPD#3

16

16

OPPS
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MARSHAL S. WILLICK, ESQ.
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Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for *Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS AND MAYO LAW FIRM, Plaintiff, vs. LOUIS SCHNEIDER; LAW OFFICES OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X, Defendant.	CASE NO: A-17-749318-C DEPT. NO: I DATE OF HEARING: 3/22/17 TIME OF HEARING: 9:30 a.m.

OPPOSITION TO "MOTION TO STRIKE" AND COUNTERMOTION FOR ATTORNEY'S FEES

I. INTRODUCTION

The *Motion to Strike* filed by Defendants Steve Sanson and Veterans in Politics, International ("VIPI Defendants") is both unnecessary and disingenuous,[1]

[1] VIPI Defendants' apparent strategy in this matter is to have this Court dismiss the *First Amended Complaint* for "failure to state a claim" *after* requesting that this Court strike relevant portions of the *FAC* to eliminate elements of those very claims. In common parlance, they are "speaking out of both sides of their mouth."

increasing the cost of litigation without justification. VIPI Defendants' *Motion* should be denied and they should be ordered to pay Plaintiffs' attorney's fees.

II. OPPOSITION TO MOTION TO STRIKE

A. Legal Standard for Motion to Strike

NRCP 12(f) states:

> Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

None of those bases are properly made out by any portion of their pending *Motion*, as detailed in the following sections.

B. This Court has Authority to Hear Plaintiffs' Harassment Claim for Relief

VIPI Defendants' request to strike the Harassment claim for relief in the First Amended Complaint should be denied. As detailed in Plaintiffs' *Opposition to "Defendants Steve W. Sanson and Veterans in Politics, International Inc's., Motion to Dismiss [Etc.]"* ("Opposition"), Nevada is a common law state.[2]

Under that statutory authority – so basic that it is in section *one* of the NRS – this Court has explicit authority to entertain a common-law claim for relief not specifically enumerated in the Nevada Revised Statutes, so long as the claim is

[2] NRS 1.030.

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described sufficiently to allow a defendant to figure out what is being alleged – as it has been here.[3]

Plaintiffs' Harassment claim for relief is actionable and therefore VIPI Defendants' request to strike Plaintiffs' sixth claim for relief should be denied.

C. The Factual Allegations are all Relevant to the Plaintiffs' Claims for Relief

VIPI Defendants simply waste time by complaining that "legal terms" are used in sentences in the "Factual Allegations" section. They state that "[t]his question begging recitation of the names of different torts is impertinent, as legal conclusions are not facts."[4] In the ***very next*** sentence, VIPI Defendants provide a definition for *impertinent* from "Federal Practice and Procedure"[5] that defeats their entire argument: "Impertinent matter consists of statements that ***do not pertain***, and are not necessary to the issues in question" (emphasis added).

It is not necessary for a plaintiff alleging that he was assaulted and beaten up by a defendant to avoid using the word "assaulted" because that term has a legal definition; there is simply no legitimate complaint about the use of words that have clearly-identified meaning.

But – with no cogent authority – VIPI Defendants maintain that words like "defaming" and "emotional distress" and "false light" have no place in a Complaint

---

[3] *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998) ("The fact that this court has not previously recognized a cause of action will not warrant reversal where that claim is well grounded in the common law"), disfavored on other grounds in *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

[4] See *Motion* at 5, lines 12-13.

[5] See *Motion* at 5, lines 14-16.

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for Damages where the behavior being described is defamatory, has caused emotional distress, and where the Defendants have placed Plaintiffs in a false light. The Court should take note of the unsupportable complaint of the use of plain English[6] and deny the VIPI Defendants' *Motion* accordingly.

The factual allegation that Defendants inflicted "emotional distress upon Judge Elliott" is relevant to highlight Defendants' *extreme and outrageous behavior*[7]; it is relevant to describe the workings of the extortion/defamation scheme, since causing apprehension by judges that "they could be next" is part and parcel of the ongoing scheme.

VIPI Defendants want to strike the factual allegations that "defamatory statements by Defendants were intended to harm Plaintiffs' reputation and livelihood, to harass and embarrass Plaintiffs, and to impact the outcome of a pending action" on the basis that it is "essentially a recitation of intent element of a defamation cause of action, making it redundant."[8]

There is simply no need to strike this paragraph. VIPI Defendants have not, and cannot assert that this statement is a "spurious issue" that would cost time or money to litigate. The ***very first claim*** in the *FAC* is for Defamation. VIPI Defendants merely do not like the description of their activities.

Even *if* some portion of the paragraph could be deemed "redundant" of some other assertion made elsewhere in the Complaint – and we dispute that it is – that would not be a basis for striking the paragraph. They are on notice of the claim, and

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[6] *See, e.g.*, Peter Tiersma, The Plain English Movement, http://www.languageandlaw.org/PLAINENGLISH.HTM], last referenced March 6, 2016.

[7] Presumably, VIPI Defendants will take offense to the use of "extreme and outrageous" as Section C is not a "Claim for Relief" section.

[8] See *Motion* at 5, lines 24-26.

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so long as the claim is intelligible, Defendants have no more right to dictate the language we use in making those claims than we would have in quibbling over the syntax of the sentences they will use to try to excuse their actions.

This request, like the entirety of the pending *Motion*, is facially absurd and should be denied.[9]

D. Interactions Between Plaintiffs and Defendants are "Relevant" to the Claims for Relief

VIPI Defendants' next bizarre request to strike involves an email exchange between Plaintiff Abrams and Defendant Sanson.[10] VIPI Defendants want this Court to believe that Defendant Sanson's email language "[b]ut what I find intriguing is that you think because you are not elected you are somehow untouchable to the media" is not ***relevant***[11] to a Defamation claim.

While the context of a motion to strike is not the appropriate place to require Plaintiffs to set out the details of the case to be presented at trial, the statement is relevant, among other reasons, because it shows that Defendant Sanson purports to believe he is a member of "the media" – *which he is not* – who can say and do whatever he wants with impunity. In fact, by listing off names of other individuals who were purportedly "untouchable," Defendant Sanson appears to admit to just that.

---

[9] The Nevada Supreme Court has itself rejected claims "on the ground of inherent absurdity." *See Mosley v. Figliuzzi*, 113 Nev. 51, 930 P.2d 1110 (1997) (inherently outrageous proposition rejected on its face).

[10] As is the case in their *Motion to Dismiss*, VIPI Defendants are attempting to have this Court decide the merits of Plaintiffs claims *prior* to a trial.

[11] As in "Logically connected and tending to prove or disprove a matter in issue; having appreciable probative value -- that is, rationally tending to persuade people of the probability or possibility of some alleged fact." Black's Law Dictionary (7th ed., 1999) at 1293.

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In discovery, Defendant Sanson's rejection of the concept of equal rights, and of limits to privilege, will be fleshed out; he is apparently in disagreement with the concept that "your right to swing your arms ends just where the other man's nose begins."

E. The *FAC*'s Factual Allegations are Relevant to the Claims for Relief

Similarly, VIPI Defendants assert that the running of a background check by a Defendant accused of acting in concert with others and violating RICO has "no relevance." VIPI Defendants also assert that a *factual allegation* that "[u]pon information and belief, a payment of money was made by Schneider to Defendants Steve W. Sanson [...]" is "scandalous" because "this spurious claim has absolutely no evidentiary support, nor is it specifically identified as an allegation that is likely to have evidentiary support later."[12]

But Defendant Sanson has already publicly ***admitted*** receiving money from Louis Schneider[13] – all that remains in discovery is to show the amount, the timing, and the connection to the unlawful extortion/defamation plot run by Schneider and the VIPI Defendants. If the connection is disputed and alleged as a mere ***coincidence*** to the mounting of the defamation campaigns that immediately began and have continued since then – as we presume they will be – the question of fact belongs to the trier of fact.

VIPI Defendants are grasping at straws and attempting to cherry-pick the *FAC* simply because it provides a detailed and thorough time line of Defendants' misbehavior, which they very much do not want this Court to see and understand.

---

[12] See *Motion* at 6-7, lines 28-1.

[13] In a recent internet radio "interview" on News Max/Battlefield Nevada, Steve Sanson admitted that he received a payment from Louis Schneider, but then quickly claimed that it was purportedly for "a billboard advertisement."

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The factual allegations in the *FAC* can be established through discovery and will be proven at trial.

F. Comments Directed Toward Plaintiffs are Relevant in this Matter

Finally, VIPI Defendants assert that a comment directed at Vincent Mayo, Esq. is not material to this dispute. Vincent ***Mayo***, Esq. is a partner of The Abrams & ***Mayo*** Law Firm, one of the two named Plaintiffs in this matter.[14] VIPI Defendants' absurd assertion that "a comment used as an example of the negative comments directed towards ***Plaintiffs*** must be stricken" simply makes no sense.

III. COUNTERMOTION FOR ATTORNEY'S FEES

Should the Court conclude, as we have, that there was never any legitimate function for the motion except to multiply efforts, cost extra money, and waste time and effort, there is justification for an award of attorney's fees under EDCR 7.60, which sanctions obviously frivolous, unnecessary, or vexatious litigation:

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
> (1) Presents to the court a motion or opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> (3) So multiplies the proceedings in a case as to increase the costs unreasonably and vexatiously.

---

[14] Again we note inconsistency in Defendants' assertions – they claim that Vincent Mayo is not part of The Abrams & Mayo Law Firm for purposes of negative comments made about him but (in their simultaneous Motion to Dismiss) that David Schoen (one of the firm's paralegals) *is* part of The Abrams & Mayo Law Firm for purposes of Sanson telling David that Ms. Abrams is a "criminal." Their conflicting positions cannot be reconciled.

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Additionally, NRS 18.010, dealing with awards of attorney's fees, states that fees may be awarded:

> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. ***It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous and vexatious claims and defense because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.***

[Emphasis added.]

There was absolutely no need to file this *Motion to Strike*. A *Motion to Dismiss* has been filed which expresses unhappiness with the factual allegations contained in the *FAC*. The Defendants should be held jointly and severally liable for 100% of Plaintiffs' fees and costs in defending their *Opposition* before the Court.

The Supreme Court has re-adopted "well-known basic elements," which in addition to hourly time schedules kept by an attorney, are to be considered in determining the reasonable value of an attorney's services, and qualities, commonly referred to as the Brunzell factors:[15]

1. The Qualities of the Advocate: his ability, his training, education, experience, professional standing and skill.
2. The Character of the Work to Be Done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
3. The Work Actually Performed by the Lawyer: the skill, time and attention given to the work.

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

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4. The Result: whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.[16] Additional guidance is provided by reviewing the "attorney's fees" cases most often cited in Family Law.[17]

The Brunzell factors require counsel to rather immodestly make a representation as to the "qualities of the advocate," the character and difficulty of the work performed, and the work actually performed by the attorney.

First, respectfully, we suggest that the undersigned is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law[18] who has been in practice nearly 40 years. Mr. Willick is the principal of the WILLICK LAW GROUP.

As to the "character and quality of the work performed," we ask the Court to find our work in this matter to have been adequate, both factually and legally; we have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The fees charged by paralegal staff are reasonable, and compensable, as well. The tasks performed by staff in this case were precisely those that were "some of the work that the attorney would have to do anyway [performed] at substantially less cost

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[16] *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

[17] Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973), *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).

[18] Per direct enactment of the Board of Governors of the Nevada State Bar, and independently by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to write the examination that other would-be Nevada Family Law Specialists must pass to attain that status.

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per hour."[19] As the Nevada Supreme Court reasoned, "the use of paralegals and other nonattorney staff reduces litigation costs, so long as they are billed at a lower rate," so 'reasonable attorney's fees' . . . includes charges for persons such as paralegals and law clerks."

The work actually performed will be detailed in a *Memorandum of Fees and Costs*, at the Court's request (redacted as to confidential information), consistent with the requirements under *Love*.[20]

IV. CONCLUSION

Based on the above, Plaintiffs respectfully request that the Court issue the following orders:

1. Deny Defendants' *Motion to Strike* in its entirety.
2. Grant Plaintiffs attorney's fees in the minimum amount of $5,000.

DATED this 6th day of March, 2017.

Respectfully Submitted By:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100 Fax (702) 438-5311
Attorney for *Plaintiffs*

---

[19] *LVMPD v. Yeghiazarian*, 129 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, Nov. 7, 2013) citing to *Missouri v. Jenkins*, 491 U.S. 274 (1989).

[20] *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

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DECLARATION OF JENNIFER V. ABRAMS, ESQ.

1. I, Jennifer V. Abrams, Esq., declare that I am competent to testify to the facts contained in the preceding filing.

2. I have read the preceding filing, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

3. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 6th day of March, 2017.

JENNIFER V. ABRAMS, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 6th day of March, 2017, I caused the above and foregoing document, to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and by email.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

To the attorney and/or litigant listed below at the address, email address, and/or facsimile number indicated below:

Maggie McLetchie, Esq.
MCLETCHIE SHELL LLC
701 E Bridger Avenue, #520,
Las Vegas, Nevada 89101
Attorney for *Steve W. Sanson* and
VETERANS IN POLITICS INTERNATIONAL, INC.

Alex Ghibaudo, Esq.
GLAW
320 E Charleston Blvd., Suite 105
Las Vegas, Nevada 89104
Attorney for Louis C. Schneider,
LAW OFFICES OF LOUIS C. SCHNEIDER, LLC and
Christina Ortiz

Heidi J. Hanusa
2620 Regatta Drive, Suite 102
Las Vegas, Nevada 89128

Heidi J. Hanusa
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Sanson Corporation
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7371 Prairie Falcon Road, Ste. 120
Las Vegas, Nevada 89128

Karen Steelmon
2174 East Russell Road
Las Vegas, Nevada 89119

// for Justin Johnson

An Employee of the WILLICK LAW GROUP

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS AND MAYO LAW FIRM, Plaintiff/Petitioner	Case No. A-17-749318-C
-v.-	Department 12
LOUIS SCHNEIDER et. al., Defendant/Respondent	**MOTION/OPPOSITION FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-Or-

X **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

X The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

X **$0** The Motion/Opposition being filed with this form is **not** subject to the $129 or the $57 fee because:

X The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-Or-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-Or-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

X $0 ☐ $25 ☐ $57 ☐ $82 ☐ $129 ☐ $154

Party filing Motion/Opposition: Jennifer Abrams Date: 03/06/2017

Signature of Party or Preparer: // for Justin Johnson

\\vfgserver\company\wp16\ABRAMS,JENNIFER\DRAFTS\00139966.WPD/jj

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OPPS
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Phone (702) 438-4100; Fax (702) 438-5311
email@willicklawgroup.com
Attorney for *Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS AND MAYO LAW FIRM,
Plaintiff,

vs.

LOUIS SCHNEIDER; LAW OFFICES OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X,

Defendant.

CASE NO: A-17-749318-C
DEPT. NO: XII

DATE OF HEARING: 4/24/17
TIME OF HEARING: 8:30 a.m.

ERRATA TO OPPOSITION TO "DEFENDANTS STEVE W. SANSON AND VETERANS IN POLITICS INTERNATIONAL, INC'S MOTION TO DISMISS" AND COUNTERMOTION FOR ATTORNEY'S FEES

I. ERRATA

Due to an oversight, a citation was omitted from the *Opposition* filed on March 6, 2017. Specifically, Plaintiffs argued at 7 that "the public has no right to know anything about" Mr. and Mrs. Saiter's private divorce action, because there is no "public interest" in their case, and VIPI Defendants' claims that "the public" is "interested" in family court is a false basis of justification for their actions.

The citation omitted was to a California case, *Talega Maintenance*,[1] and California's Code of Civil Procedure section 425.16 (anti-SLAPP) which is virtually identical to the Nevada version so far as the definition of protected activity is concerned.

In *Talega Maintenance*, the California Court of Appeals addressed what is "an issue of public interest" or "a manner reasonably of concern to the respective governmental entity." Rejecting an overbroad construction of "public interest," the Court stated:

> Courts have generally rejected attempts to abstractly generalize an issue in order to bring it within the scope of the anti-SLAPP statute. For example, in the context of subdivision (e)(3), where the statement must concern an issue of public interest, the court in *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1570, 92 Cal.Rptr.3d 227, stated, "While employee mobility and competition are undoubtedly issues of public interest when considered in the abstract, one could arguably identify a strong public interest in the vindication of any right for which there is a legal remedy. 'The fact that "a broad and amorphous public interest" can be connected to a specific dispute is not sufficient to meet the statutory requirements of the anti-SLAPP statute. [Citation.] By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' [Citation.] In evaluating the first prong of the anti-SLAPP statute, we must focus on 'the specific nature of the speech rather than the generalities that might be abstracted from it.'" Similarly, here, our focus is not on some general abstraction that may be of concern to a governmental body, but instead on the specific issue implicated by the challenged statement and whether a

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[1] *Talega Maintenance Corporation v. Standard Pac. Corporation*, 225 Cal. App. 4th 722, 170 Cal. Rptr. 3rd 453 (2014).

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governmental entity is reviewing that particular issue. On the record before us, this requirement is not satisfied.[2]

Similarly, "family law" and "family court" are "broad and amorphous public interests" that in no way justify VIPI Defendants' invasion of the privacy of the Saiters, and certainly do not justify a months-long defamation campaign against their private divorce counsel. For conduct to constitute a matter of public interest it must "impact a broad segment of society and/or that affect the community in a manner similar to that a government entity." Nothing in the defamation campaign against Plaintiffs involves any such conduct, and VIPI Defendants' actions are inexcusable.

DATED this 9th day of March, 2017.

Respectfully Submitted By:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100 Fax (702) 438-5311
Attorney for *Plaintiffs*

[2] 170 Cal Rptr. 3rd at 462.

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DECLARATION OF JENNIFER V. ABRAMS, ESQ.

1. I, Jennifer V. Abrams, Esq., declare that I am competent to testify to the facts contained in the preceding filing.

2. I have read the preceding filing, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

3. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 9th day of March, 2017.

JENNIFER V. ABRAMS, ESQ.

VILLICK LAW GROUP
91 East Bonanza Road
Suite 200
Las Vegas, NV
89110-2101
(702) 438-4100

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 6th day of March, 2017, I caused the above and foregoing document, to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system.

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and by email.

[ ] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

[ ] by hand delivery with signed Receipt of Copy.

To the attorney and/or litigant listed below at the address, email address, and/or facsimile number indicated below:

Maggie McLetchie, Esq.
MCLETCHIE SHELL LLC
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Attorney for *Steve W. Sanson* and
VETERANS IN POLITICS INTERNATIONAL, INC.

Alex Ghibaudo, Esq.
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Attorney for Louis C. Schneider,
LAW OFFICES OF LOUIS C. SCHNEIDER, LLC and
Christina Ortiz

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Karen Steelmon
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CLERK OF THE COURT

CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C.J. POTTER, IV, ESQ.
Nevada Bar No. 13225
POTTER LAW OFFICES
1125 Shadow Lane
Las Vegas, Nevada 89102
Ph: (702) 385-1954
Fax: (702) 385-9081
Attorneys for Schneider Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS and, THE ABRAMS and MAYO LAW FIRM,

Plaintiff,

v.

LOUIS SCHNEIDER; LAW OFFICES OF LOUIS SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; AND DOES I THROUGH X;

Defendants
_____/

Case No.: A-17-749318-C

Dept. No.: XII

SCHNEIDER DEFENDANTS' SPECIAL MOTION TO DISMISS PLAINTIFFS' SLAPP SUIT PURSUANT TO NRS 41.660 AND REQUEST FOR ATTORNEY'S FEES, COSTS, AND DAMAGES PURSUANT TO NRS 41.670

COMES NOW, the Defendant, LOUIS SCHNEIDER, the Law Offices of Louis C. Schneider by and through their attorneys, CAL J. POTTER, III, ESQ. and C. J. POTTER, IV, ESQ. of POTTER LAW OFFICES, and move this court for an order dismissing Plaintiffs' Complaint and granting Attorney's Fees and Costs.

. . .

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. . .

This special motion is made pursuant to NRS 41.660 on the grounds that the complaint arises from defendant's alleged acts in furtherance of his constitutional rights of petition and speech and the plaintiffs cannot establish probability that they will prevail on their claim and is further based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities and such oral argument of counsel as may be heard.

DATED this 28th day of March, 2017.

POTTER LAW OFFICES

By /s/ Cal J. Potter, III, Esq.
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C. J. POTTER, IV, ESQ.
Nevada Bar No. 13225
1125 Shadow Lane
Las Vegas, Nevada 89102
Attorneys for Plaintiff

NOTICE OF MOTION

TO: Jennifer V. Abrams; and The Abrams and Mayo Law Firm; and,

TO: Marshall Willick, Esq., their attorney;

YOU AND EACH OF YOU, will please take notice that the undersigned will bring the foregoing Motion for hearing before the above-entitled Court on the 24 day of April, 2017, at the hour of 8:30AM, or as soon thereafter as counsel can be heard, in Department XII of the Eighth Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this 28th day of March, 2017

POTTER LAW OFFICES

By /s/ Cal J. Potter, III, Esq.
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C. J. POTTER, IV, ESQ.
Nevada Bar No. 13225
1125 Shadow Lane
Las Vegas, NV 89102
Attorneys for Schneider Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This is a special motion to dismiss as a "SLAPP" suit an action for 1. Defamation; 2. IIED; 3. NIED; 4. False Light; 5. Business Disparagement; 6. Harassment; 7. Concert of Action; 8. Civil Conspiracy; 9. Rico Violations; 10. Injunction brought by Plaintiff Jennifer Abrams against Louis Schneider.

All of the claims alleged against the Schneider Defendants concern communications made in the course of, or related to, litigation of a divorce in Nevada's Eighth Judicial District Courts, Family Court Division.

I.

FACTS

A. ALLEGATIONS IN PLAINTIFFS COMPLAINT

The entirety of the facts alleged in Plaintiff's Amended Complaint concerning the Schneider Defendants are set forth below:

Plaintiffs' Complaint concerns claims arising out of a divorce action pending in the Eighth Judicial District Court, County of Clark Nevada, Family Division, Case Number D-15-521372-D (*Plaintiffs' Amended Complaint* ¶ 21). Louis C. Schneider and Law Offices of Louis C. Schneider, LLC (hereinafter collectively referred to as "Schneider") represented Tina Saiter (hereinafter "Wife") in the "D" Case. (*Id.* ¶ 22).

In the course of that litigation, Plaintiffs filed a Motion for Sanctions against Mr. Schneider. (*Id.* ¶ 23). In response to the Motion, Mr. Schneider allegedly responded by email, stating: "I've had about all I can take. Withdraw your Motion and I'll withdraw from the case. Be advised — Tina has asked me not to leave the case. I was getting ready to withdraw my motion to withdraw. If your firm does not withdraw that motion, I will oppose it and take additional action beyond the opposition."[1] (*Id.* ¶ 24).

---

[1] Despite Plaintiff's innuendo to the contrary, the email does not contain any inappropriate statement. Furthermore, the statement is an inadmissible offer to compromise pursuant to NRS 48.105

Plaintiffs further allege that; "[u]pon information and belief, Schneider engaged in one or more ex parte communications with Judge Elliott, either directly or through her staff between September 25, 2016 and the September 29, 2016 hearing."(*Id.* ¶ 26) "The day after the September 29, 2016 hearing, on September 30, 201 at 8:02 am, Schneider sent an email to Kim Gurule at Video Transcription Service stating, in relevant part: Can you please upload the video from yesterday's hearing? Thank you." (*Id.* ¶ 30) "Upon information and belief, Schneider provided a copy of the September 29, 2016 "closed hearing" to Defendants Steve W. Sanson and Veterans In Politics International, Inc." (*Id.* ¶ 31).

Finally the Plaintiffs allege: " [o]n October 7, 2016, Defendants published, republished, or attribute to one another, or disseminated to third parties across state lines, an advertisement for Law Offices of Louis C. Schneider, stating 'Law Offices of Louis Schneider' and 'Friends of Veterans in Politics.' " (*Id.* ¶ 43). "Upon information and belief, a payment of money was made by Schneider to Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnn Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanso Corporation, Karen Steelmon, and Does I through X inclusive. (*Id.* ¶ 44).

The remainder of the allegations in the Complaint are either mere legal conclusions or actions not attributable to the Schneider Defendants.

B. THE FAMILY COURT CONCEDES THAT THE SUBJECT HEARING IS NOT CLOSED

Significantly, the Family Court presiding over the Saiter Divorce issued an Order, which is attached hereto as Exhibit 1, that states:

"**Accordingly, the Court FINDS that the Order Prohibiting Dissemination of Case Material to be unconstitutionally overbroad and as such, the Court HEREBY ORDERS the Order Prohibiting Dissemination of Case Material shall be struck and vacated.**" (March 21, 2017 Family Court Order p. 18:19-23)(emphasis in original).

The Family Court further ruled: "[a]ccordingly the Court CANNOT FIND that either Schneider or Sanson violated the Order to Seal Records." (Id. at p. 21:1-3); and "Schneider's alleged role in the matter was not made clear to the Court." (Id. at p. 21:19-21).

. . .

II.

ARGUMENT

A. PLAINTIFFS' COMPLAINT VIOLATES NEVADA'S ANTI-SLAPP STATUTES AND MUST BE DISMISSED

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." *NRS 41.660(3)(a)* (italics added). 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." *NRS 41.660(3)(b)*. Shapiro v. Welt, 389 P.3d 262, 133 Nev. Adv. Rep. 6 (Nev. Feb. 2, 2017)

Here, the claim is undoubtedly based upon a good faith communication in furtherance of the right to petition because all of the communications made by Mr. Schneider, of which the Plaintiff complains, were made in the course of, or related to, litigation of the Saiter divorce action. Indeed, there is not a more traditional form of "petitioning" in this Country and under than common law than by availing one's self of the judicial system. Therefore, Schneider's communications were made in the furtherance of the right to petition.

Additionally, the subject communications, more-likely-than-not, concern an issue of public concern because historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents. Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)(internal citations omitted). Accordingly, there exists a strong presumption of public access to judicial records. Id.

Here, the attached Family Court Order demonstrates that any purported prohibition against disseminating video of a court proceeding is unconstitutional and has been vacated and struck. (Ex. 1 at p. 18:19-23). Accordingly, the Plaintiffs cannot satisfy their burden of demonstrating a *probability* of prevailing upon any claim agaisnt the moving Defendant. Accordingly, this action must be dismissed.

. . .

B. MR. SCHNEIDER IS ENTITLED, BY STATUTE, TO AN AWARD OF ATTORNEYS FEES, COSTS, AND $10,000.00 IN STATUTORY DAMAGES

In enacting anti-SLAPP Legislation, the Legislature has provided for an award of attorney's fees and costs to those who have had their rights violated.

In this regard, NRS 41.670 (a) provides that if the court grants a special motion to dismiss filed pursuant to NRS 41.660, "The court shall award reasonable costs and attorney's fees to the person against whom the action was brought...". Additionally, pursuant to NRS 41.670(b), if the court grants a special motion to dismiss, "The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount up to $10,000 to the person against whom the action was brought." After the court grants this special motion to dismiss, this court should both grant reasonable attorney fees and costs, as well as award the maximum of $10,000 pursuant to NRS 41.670(b).

C. MR. SCHNEIDER'S COMMUNICATIONS ENJOY AN ABSOLUTE LITIGATION PRIVILEGE

Nevada has long recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings." Jacobs v. Adelson, 130 Nev., Adv. Op. 44, 325 P.3d 1282, 1285 (2014). This privilege, which acts as a complete bar to defamation claims based on privileged statements, recognizes that certain communications, although defamatory, should not serve as a basis for liability in a defamation action and are entitled to an absolute privilege because the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements. Id. (internal quotation marks omitted). In order for the privilege to apply to defamatory statements made in the context of a judicial proceeding, "(1) a judicial proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation." Id. (internal quotation marks omitted). Additionally, a party's statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege if the recipient of the communication is significantly interested in the proceeding. Fink v. Oshins, 118 Nev. 428, 436, 49 P.3d 640, 645-46 (2002).

Plaintiff's concede that Mr. Schneider's was adverse counsel in divorce litigation. Therefore, good-faith judicial proceedings were underway. Next, Mr. Schneider's communications are alleged to be emails concerning the Saiter divorce proceedings and alleged republication of actual court proceedings. Consequently, the communications are related to the judicial proceedings. Therefore, Mr. Schneider's communications enjoy an absolute privilege and Plaintiffs claims must be dismissed because those claims constitute a Strategic Lawsuit Against Public Participation.

III.

CONCLUSION

The Schneider Defendants respectfully request that this Court dismiss Plaintiffs claims pursuant to an anti-SLAPP suit pursuant to NRS 41.660 and award Defendants statutory damages and attorney's fees.

DATED this 28th day of March, 2017

POTTER LAW OFFICES

By /s/ Cal J. Potter, III, Esq.
CAL J. POTTER, III, ESQ.
Nevada Bar No. 1988
C. J. POTTER, IV, ESQ.
Nevada Bar No. 13225
1125 Shadow Lane
Las Vegas, NV 89102
Attorneys for Schneider Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that pursuant to NRCP 5(b), EDRC 8.05, Administrative Order 14-2, and NEFCR 9 that on the 28th day of March, 2017, the foregoing was electronically filed with the Clerk of the Court using the Electronic Case Filing System which sent notification of such filing to all counsel of record.

By: /s/ Tanya Bain
Employee of Potter Law Offices

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CLERK OF THE COURT

NEO

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Brandon Saiter,
Plaintiff,

vs.

Tina Saiter,
Defendant.

CASE NO: D-15-521372-D

DEPT. L

NOTICE OF ENTRY OF ORDER

Please take notice that an **ORDER WITHOUT HEARING PURSUANT TO EDCR 2.23** was entered by this Court on March 21, 2017. A file stamped copy is attached hereto.

Tristana Cox
Judicial Executive Assistant
Family Division, Department L

CERTIFICATE OF SERVICE

☐ I hereby certify that on the above file stamped date, I placed a copy of the foregoing Order Without Hearing Pursuant to EDCR 2.23 in the appropriate attorney folder located in the Clerk of the Court's Office:

☒ I hereby certify that on the above file stamped date, I mailed, via first-class mail, postage fully prepaid the foregoing Order Without Hearing Pursuant to EDCR 2.23 to:

Jennifer Abrams, Esq.
6252 South Rainbow Blvd., Suite 100
Las Vegas, NV 89118

Margaret McLetchie, Esq.
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101

Louis Schneider, Esq.
430 South 7th Street
Las Vegas, NV 89101

Tristana Cox
Judicial Executive Assistant
Family Division, Department L

JENNIFER L. ELLIOTT
DISTRICT JUDGE
FAMILY DIVISION, DEPT. L
LAS VEGAS, NV 89101

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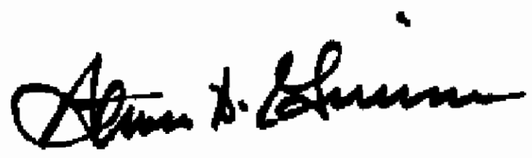

CLERK OF THE COURT

ORDR

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

* * * * *

Brandon Saiter, Plaintiff, vs. Tina Saiter, Defendant.	)	CASE NO.: D-15-521372-D DEPT. NO.: L Date of Hearing: 3-21-16 Time of Hearing: 10:00 a.m.

ORDER WITHOUT HEARING
PURSUANT TO EDCR 2.23

The Court in review of Plaintiff's NRCP 60(A) Motion to Correct the Order After Hearing of September 29, 2016 filed February 2, 2017; Defendant's Opposition and Countermotion for Attorney's Fees and Costs filed February 14, 2017; Plaintiff's Reply and Opposition to Countermotion filed February 27, 2017; Plaintiff's Motion for an Order to Show Cause filed February 13, 2017; Steve Sanson's Opposition filed March 6, 2017; and Defendant's Opposition To Motion For Order To Show Cause Re: Contempt and Countermotion For Attorney's Fees filed March 7, 2017, hereby FINDS and ORDERS, pursuant to EDCR 2.23, that these matters are hereby decided without a hearing and vacates the hearings set for March 21, 2017 at 10:00 a.m. and March 30, 2017 at 9:00 a.m.

Non-Trial Dispositions:
☐ Settled/Withdrawn:
☒ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statute)/ Dismissal
☐ Default Judgment
☐ Transferred

Trial Dispositions:
☐ Judgment Reached by Trial
☐ Disposed After Trial Start

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A. Relevant Factual Background

1. The parties were divorced pursuant to the Decree of Divorce (hereinafter "Decree") filed December 28, 2016.

2. Prior to the filing of the Decree, pursuant to emails between the parties' counsel on October 5, 2016, and copied on the Court on October 6, 2016, the parties, through their counsel, stipulated to seal the case.

3. Additionally, Plaintiff filed a Petition to Seal Records Pursuant to NRS 125.110(2), which was granted and an Order to Seal Records Pursuant to NRS 125.110(2) was filed on October 6, 2016. An Order Prohibiting Dissemination of Case Material was also filed on October 6, 2016.

4. Subsequently, on January 11, 2017, Plaintiff filed his Motion to Enter the Order After Hearing of September 29, 2016.

5. On January 20, 2017, the Order from the September 29, 2016 hearing was prepared and filed by the Court because the parties' counsel could not agree on the precise language of the order.

6. On February 2, 2017, Plaintiff filed his NRCP 60(a) Motion to Correct the Court's Order After Hearing of September 29, 2016.

7. Defendant filed her Opposition and Countermotion for Attorney's Fees and Costs on February 14, 2017.

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8. Plaintiff filed his Reply to Defendant's Opposition to Plaintiff's NRCP 60(a) Motion and Opposition to Defendant's Countermotion for Attorney's Fees and Costs on February 27, 2017.

9. On February 13, 2017, Plaintiff filed his Motion for an Order to Show Cause Against Defendant's Counsel of Record, Louis Schneider, Esq. (hereinafter "Schneider"), and a third party, Steve Sanson (hereinafter "Sanson").

10. The Court takes judicial notice that Plaintiff's counsel of record, Jennifer Abrams, Esq. (hereinafter "Abrams") and her firm, the Abrams and Mayo Law Firm, has filed a civil suit against Schneider and Sanson, among others, in case A-17-749318-C alleging defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, business disparagement, harassment, concert of action, civil conspiracy, RICO violation, copyright infringement and injunction for acts that arose, in part, from the current case. This case is pending before Department 21.

B. Plaintiff's NRCP 60(a) Motion

Plaintiff's NRPC 60(a) Motion seeks to amend the Order from the September 29, 2016 hearing, specifically requesting the following three (3) changes:

(1) "Upon Plaintiff's request, the hearing is closed to the public."

(2) "In an email dated September 16, 2016, Tina [Defendant] made it clear that she no longer wanted to be represented by Mr. Schneider."

(3) Delete the "clerk's note" on page 3, lines 7 through 10 of the order.

The Court, after review of all available records, **ORDERS that Plaintiff's NRCP 60(a) Motion be granted in part and denied in part.**

As to the first request to close the hearing, Abrams, pursuant to EDCR 5.02 (which was then in effect) sought to close the hearing (*see* video record at 12:08:02).

> **Rule 5.02. Hearings may be private.**
> (a) In any contested action for divorce, annulment, separate maintenance, breach of contract or partition based upon a meretricious relationship, custody of children or spousal support, the court must, upon demand of either party, direct that the trial or hearing(s) on any issue(s) of fact joined therein be private and upon such direction, all persons shall be excluded from the court or chambers wherein the action is heard, except officers of the court, the parties, their witnesses while testifying, and counsel. . .

At 12:08:04, the Court stated, "Sure." At 12:08:05, the Court Ordered "All those not a party, not representing a party would please exit the courtroom." Later in the hearing, Abrams states that her request to close the hearing is still pending (*see* video record at 12:13:06). However, the Court had already ruled on Abrams' request at the outset of this hearing, and the

Court, for good cause, had allowed Defendant's parents to remain as support for the Defendant who was struggling with whether she should continue to have legal representation. **Therefore, the Court GRANTS Plaintiff's request to add this language to the minutes and the Order: "Upon Plaintiff's request, the hearing is closed to the public."**

With regard to Plaintiff's second request as to Defendant's September 16, 2016 email to Schneider, and Plaintiff's position regarding whether Defendant stated that she did not want to be represented by Schneider therein. The Court did comment that the September 16, 2016 email was the first time where it appeared that there was any settled purpose or clear intent by Defendant not to be represented by Schneider.

However, this did not also mean that the Court made a finding or believed that it was in the best interest of Defendant to be without assistance of counsel. The Court was concerned with issues such as, the difference in the economic knowledge/power balance between the parties, Defendant's mental and emotional competency to make the decisions on behalf of herself, issues pending such as the results of the forensic income report, and later in the hearing, the allegation that Plaintiff must pay for the community business from his post-tax personal income rather than through the business itself, leaving Plaintiff apparently unable to pay alimony to Defendant while

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grossing over $20,000 a month, and the significant equity in the business that had not been accurately disclosed to Defendant, etc. Therefore, the Court was especially concerned that both parties continue to have the benefit of counsel pending the Court's ability to canvas and ensure the fairness of all of the settlement terms.

The Court further FINDS that Schneider had his Motion to Withdraw pending before the Court at this same hearing, which he withdrew after the Court asked him to remain on the case to look into the financial aspects of the parties' agreement, including the need to pay $5,000 monthly business debt payment from personal post-tax income and expenses that Plaintiff listed on his Financial Disclosure Form (hereinafter "FDF") filed April 4, 2016.

With those concerns having been mentioned, **the Court GRANTS Plaintiff's request to add to the order: "In an email dated September 16, 2016, Tina [defendant] made it clear that she no longer wanted to be represented by Mr. Schneider."**

As to the "Clerk's Note", those notes were specifically included at the Court's request following the hearing and constitutes a finding of the Court. Plaintiff's FDF, filed April 4, 2016, did not include the royalty payments which were paid through mid-2016; the royalty payment was also not

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included in his December 14, 2015 FDF. **Plaintiff's objection to the inclusion of the "Clerk's Note" is DENIED. Defendant's Countermotion for Attorney's Fees and Costs is DENIED.**

C. Plaintiff's Motion for an Order to Show Cause

1. Parties' Arguments

a. Plaintiff's Allegations

Plaintiff alleged that Sanson, even after being served with the Order Prohibiting Dissemination of Case Material, continued to post the video from the September 29, 2016 hearing on various websites and posted commentary that specifically referred to the parties' names and case number. As a result, he alleged the safety of the parties' children has been compromised and the parties' privacy had been invaded because neither party wanted their divorce case to be public. Plaintiff managed to take the video down from YouTube and Vimeo after making privacy complaints, but Sanson allegedly continued to post the video on a Russian website and despite further multiple requests, refused to take down the videos.

Plaintiff argued that Sanson need not be inter-pled as a party because he interjected himself into the case by obtaining a copy of the

hearing video and posting it online in an attempt to influence the case, bringing him within the jurisdiction of the Court.

Plaintiff further argued that Sanson's actions do not constitute free speech because the hearing was closed to the public and there is no legitimate purpose in invading the parties' privacy and risk of harm to the parties' children. Furthermore, Schneider was complicit in Sanson's actions because he acted in concert with Sanson to escalate the case and released the case material to him. Plaintiff argued that since the violation of the Order Prohibiting Dissemination of Case Material cannot be completely purged, Sanson and Schneider's conduct constitutes criminal contempt.

b. Sanson's Allegations

It is noted that Sanson made a special appearance to oppose Plaintiff's Motion for an Order to Show Cause.

Sanson stated he is accused of violating an Order in a case to which he is not a party and had not been given notice or opportunity to be heard. He also notes the civil cases Abrams and her counsel, Marshal Willick (hereinafter "Willick") brought against Sanson and his organization, Veterans in Politics International (hereinafter "VIPI"): case numbers A-17-749318-C and A-17-750171-C. Sanson argued that his

criticisms of Abrams and Willick's Court practices led to them filing suits against Sanson and VIPI. Sanson additionally noted Plaintiff's Motion for an Order to Show Cause failed to attach a supporting affidavit from Plaintiff and concluded the motion was filed to strengthen Abrams and her civil lawsuit against Sanson and VIPI and has nothing to do with Plaintiff.

Sanson noted that neither he nor VIPI were previously named as a party or served with process; furthermore, the Order Prohibiting Dissemination of Case Material was issued without a hearing or any due process protection for Sanson or VIPI.

The gravamen of Sanson's opposition is as follows: (1) this Court does not have jurisdiction over Sanson and (2) even if this Court has jurisdiction, the Court's Order Prohibiting Dissemination of Case Material is void as unconstitutionally overbroad, violating both federal and state law. Sanson argued that this Court lacks subject matter jurisdiction under *Del Papa v. Steffen,* 920 P.2d 489, 112 Nev. 369 (1996). However, even if this Court has subject matter jurisdiction, he argues that there is a strong presumption for open courtroom proceedings. Furthermore, Sanson argued that he has the right to free speech to criticize Abrams' courtroom behavior and his posting of videos

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and making commentary regarding Abrams is a valid exercise of his right to free speech. Furthermore, even if the case was sealed, under *Johanson v. District Court*, 182 P.3d 94, 124 Nev. 245 (2008), sealing the entire case file without notice or opportunity to be heard constitutes abuse of discretion, especially if it fails to make findings of any clear and present danger or threat of serious and imminent harm to a protected interest and without examining alternative means to accomplish that purpose; furthermore, the Order Prohibiting Dissemination of Case Material was not narrowly drawn and failed to discuss whether any less restrictive alternatives were available. Since the Order Prohibiting Dissemination of Case Material cannot meet the *Johanson* test, Sanson argued that the Court's Order Prohibiting Dissemination of Case Material is impermissibly broad and thus, it should be vacated.

In addition, Sanson argued that if Plaintiff's Motion for an Order to Show Cause is granted, that this Court should be disqualified per Nevada Code of Judicial Conduct, Rule 2.11 because he alleged that this Court's impartiality may be questioned.

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c. Defendant's Opposition

Defendant's Opposition to Plaintiff's Motion for an Order to Show Cause alleged simply that said motion is aimed solely at bolstering Abrams' civil case against Schneider and Sanson.

2. Relevant Law

Pursuant to NRS 125.110(2), once a party requests that a domestic case be sealed, the Court must seal the case. Other than pleadings, findings of the Court, Orders, and Judgments, all other records shall be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding (see below).

> **NRS 125.110 What pleadings and papers open to public inspection; written request of party for sealing.**
> 1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office:
> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
> (b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.
> 2. **All other papers, records, proceedings and evidence, including exhibits and transcript of the**

> **testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding. (Emphasis added.)**

Under *Landreth v. Malik*, 251 P.3d 163, 127 Nev. 175 (2011), even if the matter at hand is outside the scope of a traditional Family Court matter, Family Court Judges do have subject matter jurisdiction over such matters and thus, *Landreth* overruled *Del Papa v. Steffan.*

The Court is mindful of the Nevada Supreme Court Rule VII, Rule (3)(4), which states that sealing is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the Court record. However, under *Johanson*, the Nevada Supreme Court clarified the use of NRS 125.110 in sealing cases. In that case, the District Court entered an Order sealing the entire case file and sua sponte issued a gag order preventing all parties and attorneys from disclosing any documents or discussing any portion of the case.

The *Johanson* Court adopted the following standard regarding gag Orders, or an Order that prevents participants from making extrajudicial statements about their own case: (1) a party must demonstrate a clear and present danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly drawn, and (3) less restrictive

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alternatives are not available. In *Johanson*, respondent argued that the Court has inherent power to completely seal divorce cases beyond NRS 125.110. However, the Nevada Supreme Court declined to adopt such broad standard and even assuming, in arguendo, that the Court indeed has such broad power, one must show the Court that sealing the entire case file is necessary to protect his, or another person's rights, or to otherwise administer justice. *Johanson,* 182 P.3d at 97-98, 124 Nev. at 250.

Under NRS 22.010, disobedience or resistance to any lawful order issued by the court constitutes contempt. Furthermore, under *Cunningham v. District Court,* 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986), the order must be "clear and unambiguous."

Lastly, under new EDCR 5.301, (as with EDCR 5.03, in effect in 2016), the parties and their counsel are prohibited from knowingly permitting others to (a) discuss the case with the minor children, (b) allow minor children to review the proceedings, pleadings or any records, or (c) leaving such materials in a place where it is likely or foreseeable that any minor child will access those materials.

3. Discussion

The Order to Seal Records filed October 6, 2016 states the following: "all documents filed... in the above-entitled action exception

for pleadings, findings of the Court, Orders made on motion… and any judgments, shall be and are hereby sealed." There is no dispute as to the validity of this Order. However, as Sanson alleged, there is a dispute over the validity of the Court's Order Prohibiting Dissemination of Case Material.

a. Does this Court have Subject Matter Jurisdiction over Sanson?

Sanson, citing *Del Papa,* argued that this Court lacks subject matter jurisdiction over him. However, there is no discussion of how *Landreth*, which grants family courts subject matter jurisdiction over other matters, is distinguished. Accordingly, Sanson's argument facially fails in this regard. The Court FINDS that it has subject matter jurisdiction.

b. Even if this Court has Subject Matter Jurisdiction, is the Order Prohibiting Dissemination of Case Material Impermissibly Broad?

The Order Prohibiting Dissemination of Case Material states, pursuant to the stipulation of the parties, in the best interest of the children, and the fact that the parties have settled their case, all hearing videos shall be immediately removed from the internet and "all persons or entities shall be prohibited from publishing, displaying, showing, or making public any portion of these case proceedings." This Order clearly constitutes a gag order as to the parties as well as non-parties as

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contemplated in the *Johanson* case and hence, must be subject to the *Johanson* 3-part test.

1. Is there a Serious and Imminent Threat to a Protected Competing Interest?

The first amendment right to free speech and the freedom of the press are obviously protected competing interests when weighed against divorcing parties' privacy interests and the best interest of their children in not being exposed to the case (*see* EDCR 5.301 and prior EDCR 5.03).

Plaintiff framed the issue as the parties and their children being dragged through the mud by unwanted exposure through the actions of Sanson and VIPI, allegedly acting in concert with Schneider. On the other hand, Sanson framed the issue as the exercise of his right to free speech in criticizing Abrams' courtroom behavior.

At the time the Court drafted the Order Prohibiting Dissemination of Case Material, it was very cognizant that there were four (4) minor children, ages 14, 12, 10 and 8 involved in the case and that their parents had settled this matter after over a year of great acrimony between the parties, as well as between their counsel. The Court believed it was certainly not in the best interest of the parties or the children to access YouTube, or hear from others who have accessed YouTube, or to see

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their parents in Court during their divorce proceedings. This Court would not want the children, their friends or relatives to see their mother struggling with the divorce issues, struggling with whether or not to be represented, to see their maternal grandparents in the background, clearly worried about their daughter, who was very emotional and distraught during the hearing, to listen to financial and other matters being discussed in escalated tones, to hear accusations flying across the room, seeing their parents in conflict in the courtroom setting where children are not typically allowed to be present in divorce actions *for very good reasons*, to know their friends and relatives can access this same video material online at any time, etc. This material would clearly be disturbing emotionally and mentally to most any child who witnessed it.

It was paramount in the Court's mind that the case simmers down and that the parties get down to co-parenting and focusing on bringing some peace to the restructuring they had done in two separate homes. There had been little peace to date; in the Court's view, continuing the case controversy based on any debate would not be in the best interest of the parties or their children. Thus, the Court FINDS that the best interest of the children would trump Sanson's and VIPI's free speech rights in this case.

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2. Was the Order Narrowly Drawn?

The Court must find that the Order is facially overbroad as it is not narrowly drawn where it forbids ALL persons or entities to disseminate information obtained prior to the sealing without giving notice or opportunity to be heard on the issues. However, the Court finds that the Order to Seal Records filed October 6, 2016 forbids dissemination of videos of the hearing, which is covered as the official transcript under NRS 125.110(2):

> "All other papers, records, proceedings and evidence, including exhibits *and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed* and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding." (Emphasis added.)

3. Less Restrictive Alternatives Not Available?

The Court Ordered removal of the video from the September 29, 2016 hearing from the entire "internet" and there was no discussion by the Court of whether there were less restrictive means available (e.g. removing the parties' names or case number from the case--which would be little help here where dealing with identification by video…). Plaintiff's motion mentioned that the parties' minor children have access to FaceBook and could have accessed the videos, and this

Court is in agreement with that view. In this era, children are frequently online, especially watching videos on YouTube at age two (2) and older.

At this time, the Court FINDS that the only sure way it can conceive of that would have worked to assure the restriction of the video being shown only to interested adults, and not to children, would have been through advertised scheduled showings in a place where children are not allowed.

Again, the Court FINDS as the Order Prohibiting Dissemination of Case Material failed to give notices to any of the "All persons or entities," including Sanson, no one was given any means to challenge the validity of the order. Thus, any non-party, without prior notice, could have been dragged into court unconstitutionally, despite lack of any reasonable connection with the case.

Accordingly, the Court FINDS that the Order Prohibiting Dissemination of Case Material to be unconstitutionally overbroad and as such, the Court HEREBY ORDERS the Order Prohibiting Dissemination of Case Material shall be struck and vacated.

Although the Court must find that the Order fails and cannot be enforced as written, nonetheless, this Court must always have the best interests of children in mind in all decision-making, and as such is

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compelled to find that, after the Court made it clear what the concerns were, the Court does not find it was appropriate to continue to post the hearing video on the internet where the parties' minor children would have easy access to emotionally and mentally disturbing material, without attempting to reach an intended audience in a more responsible way. Notwithstanding, there is nothing this Court can do in this case to enforce this viewpoint.

4. Disqualification of the Court

Since the Court finds that the Order Prohibiting Dissemination of Case Material is overbroad and Orders that it be struck and vacated, it need not rule on Sanson's request that should this court grant Plaintiff's Motion for an Order to Show Cause, that the Court disqualify itself under Nevada Code of Judicial Conduct, Rule 2.11 because Sanson argued that he can reasonably infer that this Court is seeking to stifle criticism and thus, the Court's impartially may be questioned.

The Court would note that there is a great deal of case law under which his argument fails and Sanson fails to cite any rule of law in his support. Following his reasoning, if Sanson criticizes any or every Judge, each and every Judge who he criticized must recuse from hearing any case where Sanson involves himself. What then becomes of the

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independence of the judiciary? Independent, except for Sanson? Independent, except for this or that reporter, or newspaper, or news station?

D. ORDER TO SHOW CAUSE

The Court FINDS and Orders that without a valid Order Prohibiting Dissemination of Case Material, that Plaintiff's Order to Show Cause cannot stand.

Although the Order to Seal Records (1) excludes any pleadings, findings, orders and judgments per NRS 125.110 requirements and under subsection (2) this includes the video as the "official transcript" in family court; this however, is not a fact that is widely known. The Court does not believe anyone working outside of the area of family court (or some inside for that matter) would be aware that the video is the official transcript of the hearing. Thus, the statute reads as if it is limited to documents only and does not give proper notice to anyone as to the prohibitory use of a hearing video as a hearing transcript.

Additionally, at this juncture, the Plaintiff's Motion for an Order to Show Cause is unquestionably vague as to *how the parties were or even Plaintiff* (real party/parties in interest in this case) was harmed by the posting

of the information on-line. Accordingly, the Court CANNOT FIND that either Schneider or Sanson violated the Order to Seal Records.

The Court further FINDS that Plaintiff's Motions appear to be more about bolstering Abrams' civil action against Schneider and Sanson, especially since neither party has alleged specific harm. Proper venue to hear this matter appears to be Abrams' civil action against Schneider and Sanson, or the State Bar of Nevada, if appropriate.

Furthermore, it seems illogical that Plaintiff is seeking an order to compel Defendant to personally appear in this matter when his Motion for an Order to Show Cause is predominantly regarding allegations against Sanson. Plaintiff stated that both he and Defendant were mortified that case materials were being posted on-line. Plaintiff stated that he attempted to resolve the matter, but Sanson refused to remove the case materials. Schneider's alleged role in the matter was not made clear to the Court. In his Motion for an Order to Show Cause, Plaintiff made no claims against Defendant. **The Court declines to Order Defendant to personally appear.**

E. ATTORNEY'S FEES

Furthermore, **the Court ORDERS that all parties to bear their own fees and costs in this matter.**

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The Court Orders that the Clerk shall remove the hearings from the Court's calendar set for March 21, 2017 at 10:00 a.m. and March 30, 2017 at 9:00 a.m. and the case shall be CLOSED with the Notice of Entry of this Order, which shall be prepared by Department L. The Order and Notice of Entry of Order may be emailed and faxed to both counsel for the parties and counsel for Mr. Sanson, who shall be advised there shall be no appearances.

Department L shall additionally mail the Order and Notice of Entry of Order to all counsel.

Dated this 21st day of March, 2017.

JENNIFER L. ELLIOTT
DISTRICT COURT JUDGE
FAMILY DIVISION, DEPT. L

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS and THE ABRAMS & MAYO LAW FIRM, Plaintiff, vs. LOUIS C. SCHNEIDER; LAW OFFICES OF LOUIS C. SCHENEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X, Defendants.	Case No.: A-17-749318-C Dept. No.: XII **SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP)**

Defendants Steve W. Sanson ("Sanson") and Veterans in Politics International ("VIPI") (collectively, the "VIPI Defendants"), by and through their counsel Margaret A. McLetchie of the law firm McLetchie Shell LLC, hereby move to dismiss Plaintiff's complaint pursuant to Nev. Rev. Stat. § 41.660. This motion is based on the following Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

Dated this the 28th day of March, 2017.

/s/ Margaret A. McLetchie
Margaret A. McLetchie, Nevada State Bar No. 10931
MCLETCHIE SHELL, LLC
Attorney for Defendants Steve W. Sanson and Veterans in Politics International

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TABLE OF AUTHORITIES

Cases

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Statutes

Rules

Other Authorities

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NOTICE OF HEARING

TO: ALL INTERESTED PARTIES.

YOU WILL TAKE NOTICE that the undersigned will bring on for hearing the above-noted SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) and to be heard the 24 day of April 2017, at the hour of 8:30 a.m./~~p.m.~~, in the above-entitled Court or as soon thereafter as counsel may be heard.

DATED this 28th day of March, 2017.

/s/ Margaret A. McLetchie

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

While Nevada's anti-SLAPP statute initially only protected only the "right to petition," in 2013, the Nevada Legislature amended it to expressly protect First Amendment speakers from lawsuits designed to punish them from exercising "the right to free speech in direct connection with an issue of public concern." Nev. Rev. Stat. § 41.637 (as amended by SB 286). This lawsuit is exactly the type of litigation Nevada's amended "anti-SLAPP statute," codified at Nev. Rev. Stat. § 41.635 et seq., is designed to protect against.

Mr. Sanson, the President of Veterans In Politics International ("VIPI"), is a court observer and "watchdog" of Nevada's judicial system. He recently spoke out about practices in Family Court by a prominent family law attorney, Jennifer Abrams. A key aspect of Mr. Sanson's criticisms of Ms. Abrams was his view that she is overly aggressive in sealing her cases from public scrutiny—that she is "seal happy." He also criticized what he perceived as her "over-zealousness." Ms. Abrams and her law firm have sued Mr. Sanson and VIPI (collectively, the "VIPI Defendants"), alleging, *inter alia,* that such statements of opinion regarding court practices constitute legally actionable defamation. Further, not only has Ms. Abrams sued the VIPI Defendants for exercising their free speech rights, she is also suing them to *force speech*—a retraction and public apology—in violation of the First Amendment.

In arguing that she should be entitled to tell Mr. Sanson and VIPI what to say and to sue them for damages for voicing unflattering opinions of her, what Ms. Abrams fails to grasp is that the judiciary is a branch of government, funded in large part by tax dollars. Indeed, reflecting these truths, court proceedings are presumptively open to the public to which courts belong.[1] It necessarily follows that Mr. Sanson and VIPI have the right to criticize attorneys who seal case proceedings. Moreover, lawyers are officers of the court and their professional conduct in and outside the courtroom is a matter of public concern—

[1] An attorney's imaginary rights to privacy in court and to seal her courtroom conduct from public view of course does not meet the heavy burden of overcoming this presumption of openness—which, as detailed below, is rooted in both the First Amendment and common law.

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indeed, lawyers are regulated by a quasi-governmental entity called the State Bar of Nevada as well as by the Nevada Supreme Court. In contravention of the rules governing attorney conduct promulgated and enforced by the State Bar and the Nevada Supreme Court, Ms. Abrams (and her colleague/counsel/fiancé/co-conspirator Marshal Willick) are pursuing this litigation for an improper purpose. As detailed below, they have engaged in a scorched-earth campaign that includes, among other things: (1) trying to put Mr. Sanson behind bars; (2) engaging in what may actually be defamation in their own smear campaign; (3) interfering with the VIPI Defendants' ability to communicate with VIPI's members and other members of the public; and (4) pursuing a "sister" lawsuit filed on behalf of Mr. Willick.

Ms. Abrams and Mr. Willick's transparent abuse of the legal system to chill criticism of Ms. Abrams' professional conduct should not be countenanced by this Court. Because the VIPI Defendants are engaging in "the right to free speech in direct connection with an issue of public concern" (Nev. Rev. Stat. § 41.637), on an anti-SLAPP motion the burden shifts to the Plaintiffs to establish a prima facie case. The heart of the Complaint on file is a defamation claim. Statements such as those that Ms. Abrams is "over-zealous" and "seal happy" not only pertain to matters of public concern but are also expressions of opinion, fully protected by the First Amendment, Plaintiffs' defamation claim necessarily fails, as detailed at length in the Motion to Dismiss Pursuant to Nev. R. Civ. P. 12(b)(5) filed in this action by Mr. Sanson and VIPI (the "Rule 12 Motion").

Indeed, the fact that this action is a frivolous, abusive attempt by attorneys who think they are above criticism and can use the legal system to silence their detractors is underscored by Plaintiffs' attempts to punish Defendants for stating objectively truthful facts. For instance, Plaintiffs complain that the defendants have said Ms. Abrams "is in bed with Mr. Willick"—which is in fact both figuratively and, likely, literally true. Again, Mr. Willick is Ms. Abrams' close colleague and fiancé. He is also her attorney/co-counsel/client/co-conspirator in their coordinated campaign against the VIPI Defendants. Thus, while Ms. Abrams appears to be embarrassed, there is nothing defamatory about such statements. Like the defamation and the similar "false light" claim predicated on such nonsense, the other

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claims contained in the kitchen-sink complaint also necessarily fail. Despite their efforts to mischaracterize Defendants' exercise of their right to free speech as a conspiracy to inflict emotional distress upon Plaintiffs and disparage their business, Plaintiffs cannot hope to prevail on any of their claims.

Thus, the First Amended Complaint must be dismissed. While this Court could also dismiss the action pursuant to Nev. R. Civ. P. 12(b)(5), the Court should specifically act to dismiss it on anti-SLAPP grounds. This is because the anti-SLAPP statute provides immunity from civil actions for claims based upon these communications (Nev. Rev. Stat. § 41.650) and provides for attorney's fees and costs (Nev. Rev. Stat. § 41.670(1)(a)) as well as an award of $10,000.00 (Nev. Rev. Stat. § 41.670(1)(b)). The VIPI Defendants are entitled to those protections, and this Motion should be granted in its entirety.

II. PROCEDURAL HISTORY

On January 9, 2017, Plaintiffs filed suit against several parties, including Defendant Sanson and VIPI (the "Sanson Defendants"). The original complaint ("Complaint") included causes of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, business disparagement, harassment, concert of action, civil conspiracy, and RICO violations. (Complaint at ¶¶ 83-142). In addition to asking for damages, Plaintiffs requested broad injunctive relief: scrubbing allegedly defamatory material from the internet, prospectively gagging Defendants from voicing negative opinions of Plaintiffs, and forcing Defendants Sanson and Schneider to author and disseminate retractions and apologies. (*Id.* at ¶¶ 141-142.)

Besides the VIPI Defendants, Ms. Abrams sued a long list of other defendants.[2] Originally Ms. Abrams represented herself and her firm pro se; Mr. Willick then filed a notice of appearance. *See* Willick Law Group Notice of Appearance Filed January 24, 2017. On January 27, Plaintiffs filed their first amended complaint ("FAC"), adding a frivolous Copyright Infringement claim. (FAC at ¶¶ 141-147.) On February 16, 2016, the Sanson

[2] As part of their campaign to harass Mr. Sanson, Plaintiffs appear to have sued a litany of additional defendants without conducting Rule 11 research.

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Defendants filed a Motion to Dismiss pursuant to Nev. R. Civ. P. 12(b)(5) ("Rule 12 Motion"). Now, the Sanson Defendants file the instant Special Anti-SLAPP Motion to Dismiss pursuant to Nev. Rev. Stat. § 41.660.

III. FACTS

A. Background on Sanson and VIPI

Defendant Sanson is the President of Defendant Veterans in Politics International, Inc. ("VIPI"), a non-profit corporation that advocates on behalf of veterans and works to expose public corruption and wrongdoing. (Sanson Decl. at ¶ 2.) VIPI routinely publishes and distributes articles, and hosts an online weekly talk show which features public officials and others who discuss veterans' political, judicial, and other issues of public concerns. *Id.*

B. Family Court Issues

On October 5, 2016, acting in his capacity as President of VIPI, Mr. Sanson posted an article on the publicly-accessible website <veteransinpolitics.org> containing the court video transcript of a September 29, 2016 hearing in the case *Saiter v. Saiter* ("*Saiter* Hearing"). (Sanson Decl., at ¶ 3.) The *Saiter* Hearing involved a heated exchange between Abrams and Judge Elliot (*see* Transcript of *Saiter* Hearing, attached to McLetchie Decl. as Exhibit 13 at, *e.g.*, pp. 13-15). The article that accompanied the video posting contained both written excerpts of said exchange and Mr. Sanson's negative opinions of Plaintiff Abrams' and Judge Elliot's behavior during the *Saiter* Hearing. (Sanson Decl., at ¶¶ 3-4). Ms. Abrams' behavior and ethics were a significant issue. *See, e.g.,* Exh. 13 at p. 15:15-16 (Ms. Abrams interrupting the Judge); p. 16:8 (Judge Elliot pointing out to Ms. Abrams that she is the Judge); at p. 15:20-21 (Judge pointing out the ethical issues are on Ms. Abrams' side of the case); p. 16-17 (Judge suggesting that Ms. Abrams sit down and then Ms. Abrams suggesting Judge Elliot had a relationship with Ms. Abrams' opposing counsel); p.17:15-21 (Judge pointing out that Ms. Abrams and her firm frequently attack other lawyers); *see also id.* p. 18:17-19:8.

On or about October 5, 2016, Plaintiff Jennifer Abrams sent Judge Elliot an email about the article in which she complained that the article placed her in a bad light, and

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requesting that Judge Elliot force VIPI to take the article down. (Exh. 2 to Sanson Decl.) Because Mr. Sanson believed that VIPI was within its rights to publish a video of a court proceeding, Mr. Sanson did not remove either the article or video. (Sanson Decl., at ¶ 7.) On October 8, 2016, Mr. Sanson was personally served with an October 6, 2016 Court Order Prohibiting Dissemination of Case Material issued by Judge Elliot. (*Id*. at ¶ 8). This order purported to seal all of the documents and proceedings in the *Saiter* case on a retroactive basis; despite disagreeing with Judge Elliot's order, Mr. Sanson temporarily took the video down until he could get further legal advice. *(Id*. at ¶ 9). After obtaining legal advice confirming his belief that the court did not have jurisdiction over him or VIPI with regard to posting video of the September 29, 2016 *Saiter* hearing, Mr. Sanson reposted the video to <veteransinpolitics.org> on October 9, 2016, along with an article containing a report on what had taken place and criticism of the practice of sealing court documents. (*Id*. at ¶ 10.)

On November 6, 2016, Mr. Sanson posted another article on <veteransinpolitics.org> critical of Abrams' practice of sealing the records in many of her cases, which Mr. Sanson believes hinders public access to the courts. (*Id*. at ¶¶ 11-12.). On November 14, Mr. Sanson posted a video of the September 16, 2016 *Saiter* hearing to the video-hosting site YouTube. (*Id*. at ¶ 13.). In the description of said video, Mr. Sanson stated his opinion that Ms. Abrams' conduct in open court constituted "bullying." (*Id*. at ¶ 14.) On November 16, 2016, Mr. Sanson posted another article on <veteransinpolitics.org> criticizing Judge Rena Hughes for making a misleading statement to an unrepresented child in Family Court. (*Id*. at ¶ 15.). Like the others, this article reflects a core VIPI mission—exposing to the public and criticizing the behavior of officials. (*Id*. at ¶ 16.).

C. Campaign of Harassment by Ms. Abrams and Mr. Willick

Ms. Abrams and Mr. Willick have subsequently engaged in a campaign designed to silence not only the VIPI Defendants but also to harass anyone involved with Mr. Sanson. First, in this case, as noted above, on January 9, 2017, Ms. Abrams served Mr. Sanson with the Complaint. (*Id*. at ¶ 17.). Besides the VIPI Defendants, Ms. Abrams sued a long list of other defendants for unclear reasons. Then, as co-counsel and with Mr. Willick and his firm

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as plaintiffs, they filed another suit on January 27, 2017, likewise pursuing, *inter alia*, claims for defamation. *Willick v. Sanson et al*., Eight Judicial District Case No. A-17-750171.

Mr. Willick and Ms. Abrams have also interfered with the VIPI Defendants' ability to communicate with VIPI's members and other members of the public. (*See* Sanson Decl. ¶ 19.) Finally, Ms. Abrams has even gone so far as to try to put Mr. Sanson behind bars for alleged disobedience of a stipulated order he was not even party to. On February 13, 2017, Ms. Abrams filed a Motion for an Order to Show Cause in *Saiter v. Saiter*, No. D-15-521372-D, ("OSC Motion") (attached as Exh. 9 (without exhibits) to McLetchie Decl.). In that Motion, Ms. Abrams took the extreme step of suggesting that the Family Court hold Mr. Sanson in contempt and incarcerate him for over seven years. (Exh. 9, at p.17 n. 27.) Mr. Sanson opposed that Motion, arguing that he had not been served and that the order was unconstitutionally broad. (Opposition attached as Exh. 10 (without exhibits) to McLetchie Decl., at pp. 5-13). The Honorable Judge Elliot rejected Ms. Abrams' outlandish efforts to deprive Mr. Sanson of his freedom, and recognized that the Order Prohibiting Dissemination was facially overbroad and not narrowly drawn. *See* Order Without Hearing Pursuant to EDCR 2.23 filed March 21, 2017, at p. 18 ("the Court FINDS the Order Prohibiting Dissemination of Case Material to be unconstitutionally overbroad.."); *see also id.* at p. 20 ("The Court FINDS and Orders that without a valid Order Prohibiting Dissemination of Case Material, that Plaintiff's Order to Show Cause cannot stand").

IV. LEGAL STANDARD

Nevada's Anti-SLAPP statute, Nev. Rev. Stat. § 41.635 et seq., provides: if "an action is brought against a person based upon a good faith communication in furtherance of … the right to free speech in direct connection with an issue of public concern, [t]he person against whom the action is brought may file a special motion to dismiss." Nev. Rev. Stat. § 41.660(1)-(1)(a). The Court evaluates a special anti-SLAPP motion to dismiss using a two-step process. First, the defendant bears the burdens of persuasion and production: he must show by a preponderance of the evidence, that the plaintiff's claim "is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct

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connection with an issue of public concern." Nev. Rev. Stat. § 41.660(3)(a), see also *John v. Douglas County Sch. Dist.*, 125 Nev. 746, 754, 219 P.3d 1276, 1282 (Nev. 2009). Second, assuming the defendant satisfies the aforementioned threshold showing, the Court must "determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." Nev. Rev. Stat. § 41.660(3)(b).

If this Court grants a special anti-SLAPP motion to dismiss, the defendants are entitled to an award of reasonable costs and attorneys' fees, as well as an award of up to $10,000.00. Nev. Rev. Stat. § 41.670(1)(a)-(b). Additionally, upon the granting of a special anti-SLAPP motion to dismiss, defendants can bring a separate cause of action against SLAPP plaintiffs for compensatory damages, punitive damages, and attorney's fees and costs of bringing the separate action. Nev. Rev. Stat. § 41.670(c).

Because a suit pursuant to Nev. Rev. Stat. § 41.670(c) cannot commence unless the Court grants a special motion to dismiss, a special motion to dismiss "functions as a motion for summary judgment and allows the district court to evaluate the merits of the alleged SLAPP claim." *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (Nev. 2013). *See also* Nev. Rev. Stat. § 41.660(5) ("[i]f the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits."). Both the Nevada Legislature and Nevada Courts have recognized that it is instructive to look to case law regarding California's anti-SLAPP statute. *See John*, 125 Nev. 746 at 756 ("we consider California caselaw because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute"); *see also* Nev. Rev. Stat. § 41.665(2) ("the Legislature intends that in determining whether the plaintiff 'has demonstrated with prima facie evidence a probability of prevailing on the claim' the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015").

V. LEGAL ARGUMENT

Under the applicable legal standard, this Motion should be granted. The VIPI Defendants were engaging in good faith communication in furtherance of their right to free

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speech in direct connection with an issue of public concern. Criticism of attorneys and judges in taxpayer-funded Family Court is an issue of great public concern, as almost any person in Clark County could find him- or herself in need of good legal representation after being hauled in front of a Clark County Family Court judge. Defendants meet their burden of showing that this suit arises from Defendants' good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern, and Plaintiffs cannot meet their burden of establishing a prima facie case for any of their claims.

A. Plaintiffs' Suit Arises from Defendants' Good Faith Communication in Furtherance of the Right to Free Speech in Direct Connection with an Issue of Public Concern.

To prevail on a special motion to dismiss, the Defendant must "establish[], 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." Nev. Rev. Stat. § 41.660(3)(a). Nevada Anti-SLAPP law defines a "good faith communication in furtherance of the right to free speech in direct connection with an issue of public concern" as, *inter alia*, a communication: (1) "made in direct connection with an issue of public interest"; (2) "made in a place open to the public or in a public forum;" and (3) "which is truthful or is made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637. In the instant case, the Sanson Defendants easily meet these three requirements by a preponderance of the evidence. First, Defendants' communications, criticism of prominent attorneys and judges' courtroom behavior, were directly connected to an issue of public concern. Second, the overwhelming majority of Defendants' complained-of communications were made on the Internet, a public forum.[3] Third, Defendants' communications are all either truthful or opinion incapable of being true or false, and are thus made without knowledge of falsehood.

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[3] As detailed below and in the VIPI Rule 12 Motion at pp. 23:5-24:15 and Motion to Strike filed by the Sanson Defendants on February 26, 2017 (at pp. 6-7), the other statements at issue are irrelevancies (such as that "Abrams is in bed with Willick" or purported statements concerning persons who are not plaintiff).

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1. Defendants' Communications Are Directly Connected to the Behavior of Attorneys and Courtroom Proceedings Which Are Matters of Public Interest.

The Nevada Supreme Court has recently provided guidance in determining what constitutes "an issue of public interest" in the anti-SLAPP context, adopting California's five-factor *Weinberg* test[4] for distinguishing public interests from private interests. *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (Nev. 2017). 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;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Id. (citing *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)). Under this five-factor test, the statements at issue in this case necessarily pertain to matters of "public concern."[5]

Courts have held that criticism of a professional's on-the-job performance is a matter of public interest, whether or not said professional is an attorney. *See Piping Rock*, 946 F. Supp. 2d at 969 (holding that a warning to consumers not to do business with investment firm due to allegedly faulty business practices meets public interest standard); *see also Chaker v. Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496, 502 (Cal. App. 2012) (criticism of plaintiff's character and business practices plainly fall within in the

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[4] See *Weinberg v. Feisel*, 2 Cal. Rptr. 3d 385, 392-93 (Ct. App. 2003).

[5] While California's anti-SLAPP statute uses the language "public interest" and Nevada's anti-SLAPP statute uses the language "public concern" (*compare* Cal. Code § 425.16 and Nev. Rev. Stat. 41.637), as reflected by the Nevada Supreme Court's reliance on the *Weinberg* test, the terms are interchangeable. *See also* Nev. Rev. Stat. § 41.637(4) (explicitly noting that 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 may mean … communication made in direct connection with an issue of public interest…").

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rubric of consumer information and are thus public interests); *see also Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 899, 17 Cal. Rptr. 3d. 497, 506 (Cal. App. 2004) ("Consumer information, however, at least when it affects a large number of persons, also generally is viewed as information concerning a matter of public interest."); *see also Healthsmart Pacific, Inc. v. Kabateck*, 7 Cal. App. 5th 416, 430, 212 Cal.Rptr.3d 589, 599 (Cal. App. 2016) ("members of the public, as consumers of medical services, have an interest in being informed of issues concerning particular doctors and healthcare facilities").

Just as the California court in *Healthsmart Pacific* held that consumer's concerns about particular doctors and healthcare facilities were matters of public interest, this Court should find that consumers' concerns about particular lawyers and law firms are also a matter of public concern. Any member of any of the hundreds of thousands of families in Clark County could find themselves in Family Court. Potential litigants in divorces, custody disputes or other legal actions subject to the jurisdiction of the Family Court need attorneys. These people, the public at large, are entitled to have information about how their potential lawyer executes litigation strategies and comports her- or himself.

Additionally, the United States Supreme Court has provided guidance regarding whether speech involves a matter of public concern. In *Snyder v. Phelps*, 562 U.S. 443, 131 S.Ct. 1207 (2011), the Court explained that "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,' … or when it 'is a subject of legitimate news." *Id*. at 453 (internal citations omitted). In that case, the Court found that the content of the defendants' picketing signs displayed at the funeral of a Marine killed in action, such as "God Hates Fags," "God Hates the USA," "Thank God for 9/11," "Priests Rape Boys," and "America is Doomed," "plainly relates to broad issues of interest to society at large, rather than matters of 'purely private concern.'" *Id*. at 454. The court continued, noting that while the content of said signs was unrefined, "the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import." *Id*.

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The Ninth Circuit Court of Appeals has extended the principles set forth by the Supreme Court in *Snyder*, broadening the category of speech that touches on a matter of public concern. *See Obsidian Finance Group, LLC v. Cox*, 740 F.3d 1284, 1292 (9th Cir. 2014) (blog posts accusing plaintiff of financial crimes in relation to bankruptcy involve a matter of public concern); *see also Gardner v. Martino*, 563 F.3d 981, 989 (9th Cir. 2009) (business owner's refusal to give a refund to a customer who bought an allegedly defective product is a matter of public concern); *see also Manufactured Home Cmtys., Inc. v. Cnty. Of San Diego*, 544 F.3d 959, 965 (9th Cir. 2008) (claim that mobile home park operator charged excessive rent is a matter of public concern). The speech at issue in the aforementioned cases was held to involve matters of public concern despite arising from conflicts between businesses and consumers, or businesses and bloggers. Criticism levied by the VIPI Defendants in the instant case relates even more closely to a matter of political and social concern to the community, as millions of people could find themselves subject to the jurisdiction of the Family Court. Thus, the performance and behavior of attorneys in and outside of court is not a "mere curiosity" and criticism of an attorney is a matter of public interest for the purposes of an anti-SLAPP special motion to dismiss. This is consistent with basic tenets of American jurisprudence and the structure of the legal profession itself.

a) The Operation of Courtrooms Is a Matter of Public Interest.

The common law has long recognized that the public has a vital and ongoing interest in observing judicial proceedings. The United States Supreme Court has explained that "[t]he early history of open trials in part reflects the widespread acknowledgment, long before there were behavioral scientists, that public trials had significant community therapeutic value." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570–71, 100 S.Ct. 2814, 2824 (1980). The Nevada Supreme Court has recognized that the operation of Nevada's courtrooms is a matter of great public concern *See Lubin v. Kunin*, 117 Nev. 107, 114, 17 P.3d 422, 427 (Nev. 2001) ("'fair, accurate and impartial' reporting of judicial proceedings is privileged and nonactionable, thus affirming the policy that Nevada citizens have a right to know what transpires in public and official legal proceedings").

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b) Because Court Proceedings Are a Matter of Public Interest, Courts Recognize the Right to Attend Court Proceedings and to Access Court Records.

"[C]ourts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Communications*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This right, which includes access to records and documents in judicial proceedings, is anchored in the value of keeping "a watchful eye on the workings of public agencies," and in publishing "information concerning the operation of government." *Id.* at 597-98. The common law right of access is based on the need for courts to "have a measure of accountability and for the public to have confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *see also Stephens Media LLC v. Eighth Judicial District Court*, 125 Nev. 849, 860, 221 P.3d 1240, 1248 (Nev. 2009) ("Public access inherently promotes public scrutiny of the judicial process, which enhances both the fairness of criminal proceedings and the public confidence in the criminal justice system.") The public's interest in observing the administration of justice is also rooted in the First Amendment. *See Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437 (1966) ("Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs."); *accord Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (Nev. 1996) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838, 98 S.Ct. 1535, 1541 (1978)).

c) Attorney Conduct Is Also a Matter of Public Interest.

More generally, attorney conduct is also a matter of public interest. Indeed, protecting the public is the very reason why the State Bar of Nevada exists and has the authority to regulate attorneys. For example, as the State Bar's website ("About Us") explains,

> **Our mission is to govern the legal profession, to serve our members, and to protect the public interest.**

(*See* Exh. 12 to McLetchie Decl.) The Bar's "About Us" page also emphasizes the Bar's "client protection divisions" and its commitment to serving the public. *Id.* The Nevada

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Supreme Court has similarly explained the primacy of protecting the public interest in attorney disciplinary matters:

> [T]he paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole.

State Bar of Nevada v. Claiborne, 104 Nev. 115, 210, 756 P.2d 464, 526 (Nev. 1988).

d) Criticizing Attorneys Carries Anti-SLAPP Protection.

Reflecting the above, courts addressing various states' anti-SLAPP statutes have found that criticizing attorneys is protected activity for anti-SLAPP purposes. *See, e.g., Davis v. Avvo, Inc.*, No. C11-1571RSM, 2012 WL 1067640, at *3 (W.D. Wash. Mar. 28, 2012) ("The Court has no difficulty finding that the Avvo.com website is 'an action involving public participation,' in that it provides information to the general public which may be helpful to them in choosing a doctor, dentist, or lawyer"). A California Court, applying the *Weinberg* test recently adopted in Nevada, found "statements that an attorney has embezzled from clients, and is being prosecuted for doing so, relate to an issue of public interest." *Choyce v. SF Bay Area Indep. Media Ctr.*, No. 13-CV-01842-JST, 2013 WL 6234628, at *8 (N.D. Cal. Dec. 2, 2013). The Court noted, as a general matter, that "courts have broadly construed public interest to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." *Id.* at * 7 (quoting from and citing to *Cross v. Cooper,* 197 Cal.App. 4th 357, 372 (Cal. App. 2011), *as modified on denial of reh'g* (Aug. 4, 2011), *review denied* (Oct. 12, 2011)). With regard to the criticism of the attorney at issue in that case, the court explained:

> Applying the factors identified in *Weinberg,* the Court finds that substantial number of people, especially potential clients, would be concerned, for reasons beyond mere curiosity, with whether an attorney was embezzling from clients, and the statements alleged in the complaint are closely connected to that interest.

Choyce, 2013 WL 6234628 at *8. The court also emphasized the particularly high level of public interest in attorney conduct:

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> In fact, the level of public interest in the conduct of an attorney is both actually and appropriately higher than the level of interest in the conduct of viatical settlement brokers or online universities…. Lawyering is "a profession imbued with the public interest and trust," *Standing Comm. on Discipline of U.S. Dist. Court for S. Dist. of California v. Ross,* 735 F.2d 1168, 1170 (9th Cir.1984), and California law specifically recognizes the public's heightened interest in acts of moral turpitude committed by members of the California bar.

Id (internal citations partially omitted);*cf.* Nev. Rules of Professional Conduct Rule 8.4 ("It is professional misconduct for a lawyer to: ... (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.")The California court recognized that, unlike other cases finding that statements were directed at potential consumers of services, the accusations levied in *Choyce* were "less obviously targeted at potential consumers of legal service." *Choyce* at * 8. However, the court explained that: "any doubt about whether the challenged statements relate to a matter of public interest must be resolved in favor of favoring freedom of speech, because 'the question whether something is an issue of public interest must be 'construed broadly.'" *Id.* (citing *Hecimovich v. Encinal Sch. Parent Teacher Org.,* 203 Cal.App. 4th 4501, 464 (Cal. App. 2012), *review denied* (Apr. 25, 2012) (*quoting Gilbert v. Sykes,* 147 Cal.App.4th 13, 23 (Cal. App. 2007) (internal quotation marks omitted)).

Notably, here, the statements at issue about Ms. Abrams are in fact statements that pertain to her conduct in the courtroom. Accordingly, for the reasons above concerning the additional public interest in courtroom proceedings, the statements at issue—for example, a link to a courtroom video and statements that Ms. Abrams is "over-zealous" (FAC at ¶ 56) or "seal happy" (FAC at ¶ 56) are even more closely tied to the public interest than statements at issue in *Choyce*: they pertain not only to attorney conduct but access to court proceedings. The articles exhibit the requisite "degree of closeness between the challenged statements"—Mr. Sanson's negative opinions of Plaintiff Abrams' behavior in court—"and the asserted public interest"— the public availability of information regarding judicial proceedings and

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attorney conduct. Indeed, as detailed below in § V(A)(3), *infra*, the statements at issue focus almost exclusively on Plaintiff Abrams actions in litigation as an officer of the court.

2. Defendant Sanson's Communications Were Made on a Public Forum.

Nevada's Anti-SLAPP statute requires that the communications giving rise to the suit must be made "in a place open to the public or in a public forum." Nev. Rev. Stat. § 41.637. With one exception,[6] the overwhelming majority of communications which give rise to Plaintiffs' suit were made on the public forum of the Internet. The website <veteransinpolitics.org> is accessible to anyone who cares to type its URL into a web browser. See *Wilbanks*, 121 Cal. App. 4th at 897 ("[the Web] is public because it posts statements that can be read by anyone who is interested, and because others who choose to do so, can post a message through the same medium…"). Here, the complained-of articles authored by Defendant Sanson are analogous to postings on a public bulletin board. Although one cannot respond to the content by posting comments directly to <veteransinpolitics.org>, one can respond by utilizing any number of free web publishing services to circulate articles rebutting the <veteransinpolitics.org> content. Thus, Defendant Sanson's communications were made on a public forum.

3. Defendants' Communications Are All Either Truthful, Made Without Knowledge of Falsehood, or Opinions Incapable of Being Either True or False.

Nevada's Anti-SLAPP statute requires that a good faith communication is "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637. Statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as

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[6] Plaintiffs allege that Defendant Sanson defamed them in a conversation with David J. Schoen, an employee of Plaintiff Law Firm who is not a party to this litigation. *See* FAC at ¶¶ 70-81. These claims are entirely without merit, as Plaintiffs cannot establish either that Defendant made false statements of fact in the conversation, or that Plaintiffs suffered damages as a result of these statements. *See* VIPI Rule 12 Motion (on file herein) at pp. 23:5 – 24:6 Plaintiffs fail to allege that this incident gave rise to a separate cause of action for defamation; one private communication in a sea of public communications cannot magically make all the public communications private. In any case, the communication is not even actionable as discussed in the VIPI Rule 12 Motion at pp. 23:22 – 24:6.

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a false idea. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (Nev. 2002) (internal quotation omitted). However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id*. The court must therefore ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id*. at 715. Although Plaintiff does her best to mischaracterize Defendant's articles as defamatory in her complaint, the articles contain Mr. Sanson's non-actionable truthful statements and Mr. Sanson's non-actionable opinions. Thus, as demonstrated below, Mr. Sanson's communications meet the threshold of good faith communication protected by Nev. Rev. Stat. § 41.637.

a) The "Attack" Article and courtroom video are a Good Faith Communication.

Plaintiffs contend that Defendants made five different "false and defamatory" statements in his October 5 "Attack" Article and contemporaneous YouTube video. (*See* FAC, ¶ 36.) The video cannot possibly be considered defamatory because it is a real video of an actual proceeding. *Kegel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009) ("the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim"). Further, the five statements Plaintiffs complain of either do not appear in the article or are statements of opinions (even as characterized by Plaintiffs) which cannot be true or false.

Plaintiff, Jennifer Abrams "attacked" a Clark County Family Court Judge in Open Court" (FAC at ¶ 36(a)).

The article's headline reads "Nevada Attorney attacks a Clark County Family Court Judge in Open Court." Whether Abrams' heated exchanges with Judge Elliot in the September 29, 2016 hearing constituted an attack is a matter of opinion and thus incapable of being proven true or false. Some observers, such as Defendants, may interpret Abrams' interrupting Judge Elliot ("excuse me I was in the middle of a sentence") and questioning

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Judge Elliot's impartiality ("is there any relationship between you and [opposing counsel] Louis Schneider?") as an "attack." Even if Abrams' interprets her actions as zealous advocacy and approves of her own behavior, this is an instance where Plaintiffs have merely alleged that Defendants have voiced an opinion, and thus it is a good faith communication.

Abrams has "no boundaries in our courtrooms" (FAC at ¶ 36(b)).

The article contains the underlined phrase "No boundaries in our courtrooms!" It does not say specifically that Abrams or her firm have no boundaries; rather it is rhetorical hyperbole that Defendants use to call attention to misbehavior in the courtroom generally. Indeed, the article's opening paragraph mentions a "Justice of the Peace handcuffing Public Defenders unjustly." (FAC, Exh. 1.) Even if the article did state that Abrams has "no boundaries in our courtrooms," such a statement would be an opinion incapable of being proven true or false, and thus a good faith communication.

Abrams is unethical (FAC at ¶ 36(c)).

Nowhere in the "Attack" article does Mr. Sanson call Abrams "unethical." (*See* FAC, Exh. 1.) In fact, the word "unethical" does not even appear in the article. The word "ethical" appears three times: twice in written excerpts of Judge Elliot's statements in the September 29 hearing, and once in reference to a judicial duty to report attorney ethical problems. Reprinting Judge Elliot's verbatim statements cannot be defamatory, nor can a statement that judges must report on lawyers who act unethically in their courtrooms. Furthermore, even if Mr. Sanson did call Abrams' behavior "unethical," it would be a constitutionally protected statement of opinion. *See Wait v. Beck's North Am., Inc.*, 241 F. Supp.2d 172 (N.D.N.Y. 2003) ("Statements that someone has acted unprofessionally or unethically generally are constitutionally protected statements of opinion."). Thus, these are good faith communications.

There is a "problem" requiring Abrams to be reported to the Nevada State Bar (FAC at ¶ 36(d)).

Nowhere in the "Attack" article does Mr. Sanson purport that there is a problem requiring Abrams to be reported to the Nevada State Bar. The article merely says "[i]f there

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is an ethical problem or the law has been broken by an attorney the Judge is mandated by law to report it to the Nevada State Bar or a governing agency that could deal with the problem appropriately." (FAC at Exh. 1.) This is not a statement of fact about Abrams, and thus a good faith communication incapable of being proven true or false. Even it were a statement about Abrams, a person is entitled to his or her own interpretation of the ethical rules and while an attorney may simply view herself as zealous, others observing her behavior can reasonably find it both rude to the judge and unethical.

Abrams "crossed the line with a Clark County District Court Judge" (FAC at, ¶ 36(e)).

In the "Attack" article, Mr. Sanson asks "what happens when a Divorce Attorney crosses the line with a Clark County District Court Judge Family Division?" (FAC, Exh. 1.) Again, whether Abrams "crossed the line" in her interactions with Judge Elliot in the September 29 hearing is a matter of opinion. Whereas some may view Abrams' interactions with Judge Elliot as perfectly acceptable advocacy, others, such as Mr. Sanson, view them as crossing an imagined line of decorum. Nobody can say, as a matter of objective fact, where this "line" is, much less whether someone has crossed it. Stating that Abrams "crossed a line" is merely an opinion, and thus a good faith communication.

b) The "Bully" Article Is a Good Faith Communication.

Plaintiffs contend that Mr. Sanson made five different "false and defamatory" statements in the "Bully" Article. However, the listed statements are non-actionable statements of opinions, and thus good faith communications.

Abrams bullied Judge Elliot into issuing the Order Prohibiting Dissemination of Case Material (FAC at ¶ 49(a)).

The subtitle to the "Bully" Article states "District Court Judge Bullied by Family Attorney Jennifer Abrams." (FAC, Exh. 2.) Under the law set forth above, this statement is a good faith communication of opinion. Although the "bullied" characterization is an opinion, it is a truthful statement of fact that Abrams convinced Judge Elliot to issue the order that is discussed in the Bully Article. Moreover, as detailed above, Ms. Abram's behavior

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was certainly an issue at the *Saiter* Hearing.

Abrams' behavior is "disrespectful and obstructionist" (FAC at ¶ 49(b)).

Whether Abrams' behavior in the September 29, 2016 hearing was "disrespectful" or "obstructionist" (or both) is a matter of opinion. There are no objective standards for what constitutes "disrespectful" or "obstructionist" behavior in the courtroom. Because this statement is opinion and not a statement of fact, it is a good faith communication.

Abrams "misbehaved" in court (FAC at ¶ 49(c)).

Whether Abrams "misbehaved" during the September 29, 2016 hearing is a matter of opinion. There are no objective standards for what constitutes "misbehavior" in the courtroom. Because this statement is opinion and not a statement of fact, it is a good faith communication.

Abrams' behavior before the judge is "embarrassing" (FAC at ¶ 49(d)).

Whether Abrams' behavior during the September 29, 2016 hearing was "embarrassing" is a matter of opinion. There are no objective standards for what constitutes "embarrassing" behavior in the courtroom. Because this statement is Mr. Sanson's opinion and not a statement of fact, it is a good faith communication.

Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC at ¶ 49(e)).

Whether the order discussed in the Bully Article is part of an attempt by Abrams to "hide her behavior" from the legal community and the public is not a statement of fact. Rather, it is an expression of Defendants' opinion regarding Abrams' legal tactics. Thus, it is not defamatory, but rather a good faith communication of opinion. *See, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995) ("[T]he book's general tenor makes clear that Bugliosi's observations about Partington's trial strategies, and the implications that Partington contends arise from them, represent statements of personal viewpoint, not assertions of an objective fact").

c) The "Seal Happy" Article Is a Good Faith Communication.

Plaintiffs contend that Mr. Sanson made nine different "false and defamatory"

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statements in the "Seal Happy" Article. However, the listed statements are non-actionable statements of opinions or true statements of fact, and thus good faith communications.

Abrams "appears to be 'seal happy'" (FAC at ¶ 56(a)).

Whether Abrams is "seal-happy" is a matter of opinion. There are no objective standards for what constitutes being "seal-happy," nor should this Court entertain a line-drawing problem of determining how many times a lawyer must request her cases be sealed before she becomes "seal-happy." Rather, because "seal-happiness" is purely a matter of opinion, this statement is not a statement of fact, and thus is a good faith communication.

Abrams seals cases, contravening "openness and transparency" (FAC at ¶ 56(b)).

Whether sealing cases is an affront to "openness and transparency" is a matter of opinion. Some advocates for transparency and public access to the courts may view sealing cases as contravening the court's "openness and transparency," while others may view sealing cases as zealous advocacy that values a client's privacy interests. Thus, this statement is not a statement of fact and thus is a good faith communication.

Abrams' sealing of cases is intended "to protect her own reputation, rather than to serve a compelling client privacy or safety interest" (FAC at ¶ 56(c)).

As with the statement in the Bully Article regarding Abrams allegedly attempting "to hide her behavior from the rest of the legal community and the public," this is a statement of opinion, not fact, and therefore is a good faith communication. *See Partington*, 56 F.3d at 1153; a*ccord Gardner*, 563 F.3d at 987.

Abrams engaged in "judicial browbeating" (FAC at¶ 56(d)).

A statement about whether Abrams engaged in "judicial browbeating" is also not defamatory. This statement, interpreted in context, is one that a reasonable person would interpret as Mr. Sanson's negative opinion of Abrams convincing Judge Elliot to promulgate an overly-broad order prohibiting public distribution of video transcripts of the *Saiter* hearing. Thus is it a good faith communication.

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Abrams obtained an order that "is specifically disallowed by law" (FAC at ¶ 56(e)).

As the Court is aware, disagreement about what the law does or does not allow is the bread and butter of the legal profession. If attorneys and members of the public were not permitted to disagree about the interpretation of law, then the entire practice of law would be obviated. Thus, this statement is a good faith communication.

Abrams obtained the order against the "general public" with "no opportunity to be heard" (FAC at ¶ 56(f)).

As noted above, a statement of fact that is "absolutely true, or substantially true" is not defamatory. *Pegasus* 118 Nev. at 715. In this instance, it is true that Abrams obtained the order described in the Seal Happy Article. And it is also true that Abrams obtained the order without allowing for any member of the public to weigh in on the order. Thus, this is a good faith communication of a true statements of fact.

After issuing his initial story, Mr. Sanson and VIPI were "contacted by judges, attorneys and litigants eager to share similar battle-worn experiences with Jennifer Abrams" (FAC at ¶ 56(g)).

This statement is a true statement of fact, and thus not actionable. (Sanson Decl. at ¶ 5.) Moreover, it is unclear how Abrams would be able to know whether this is a false statement, as she was not a party to any of the conversations that took place between defendants and certain members of the legal community. Thus, this is a good faith communication.

Abrams obtained an "overbroad, unsubstantiated order to seal and hide the lawyer's actions" (FAC at ¶ 56(h)).

As discussed *supra* in § V(B)(3)(b), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics and Judge Elliot's order, and thus is good faith.

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Abrams is an "over-zealous, disrespectful lawyer[] who obstruct[s] the judicial process and seek[s] to stop the public from having access to otherwise public documents (FAC at ¶ 56(i)).

Whether Abrams is "overzealous" or "disrespectful" are matters of opinion. There are no objective standards for what constitutes being "overzealous" or "disrespectful." Furthermore, whether sealing multiple cases—a tactic which does, in fact, stop the public from having access to otherwise public records of legal proceedings—obstructs the judicial process is a matter of opinion that cannot be proven true or false. Thus, this statement cannot be defamatory and is instead a good faith communication. *See, e.g.*, *Lieberman v. Fieger*, 338 F.3d 1076, 1081 (9th Cir. 2003) (comments made by attorney during televised interview about psychiatrist who had served as expert witness in highly publicized murder trial that the psychiatrist was "Looney Tunes," "crazy," "nuts," and "mentally imbalanced," were protected under First Amendment as statements of opinion).

d) The "Acting Badly" Article Is a Good Faith Communication.

Plaintiffs contend that Mr. Sanson made four different "false and defamatory" statements in the "Acting Badly" Article. However, the listed statements are non-actionable statements of opinions, and thus good faith communications.

Plaintiffs were "acting badly" in Clark County Family Court (FAC at ¶ 60(a)).

As discussed *supra* in § V(B)(3)(b), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is a good faith communication.

Abrams' behavior is "disrespectful and obstructionist" (FAC at ¶ 60(b)).

As explained *supra* in § V(B)(3)(b), whether an attorney is "disrespectful" or "obstructionist" is purely a matter of opinion, and therefore stating it is a good faith communication.

Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC at ¶ 60(c)).

As discussed *supra* in § V(B)(3)(b), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is a good faith communication.

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Abrams engaged in conduct for which she should be held "accountable" (FAC at ¶ 60(d)).

As discussed *supra* in § V(B)(3)(b), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is a good faith communication.

e) The "Deceives" Article Is a Good Faith Communication.

Plaintiffs contend that Mr. Sanson made two different "false and defamatory" statements in his November 16 "Deceives" article. (*See* FAC at ¶ 64.) However, both of the listed statements either do not appear in the article or are non-actionable statements of opinions, and therefore are a good faith communication.

Abrams "appears to be 'seal happy' when it comes to trying to seal her cases (FAC at ¶ 64(a)).

As explained in § V(B)(3)(b), *supra*, whether an attorney is "seal-happy" is purely a matter of opinion, and therefore stating it is a good faith communication.

Abrams "bad behaviors" were "exposed" (FAC at ¶ 64(b)).

As discussed *supra* in § V(B)(3)(b), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is a good faith communication.

f) The December 21 "Inspection Videos" Are a Good Faith Communication.

As discussed above in § V(B)(3)(a), a video cannot possibly be considered defamatory because it is a real video of the Abrams Law firm. Thus, this is a good faith communication.

g) The Schoen Conversation Is a Good Faith Communication.

Plaintiffs contend that Mr. Sanson made several "defamatory statements" during a December 22, 2016 conversation with David J. Schoen, IV, a non-party employee of The Abrams & Mayo Law Firm who is not a plaintiff in this case. (FAC at ¶¶ 70-81) The statements Plaintiffs complain of include:

- An allegation that Plaintiffs "bullied" and "forced" a different litigant, named Yulia, in "unlawfully" entering her home, or words to that effect (FAC at ¶ 71);
- An allegation that Jennifer Abrams is "unethical and a criminal," or words to that effect (FAC at ¶ 72);
- An allegation that Jennifer Abrams "doesn't follow the law," or words to that effect

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(FAC at ¶ 73);

- An allegation that Jennifer Abrams was "breaking the law by sealing her cases" or words to that effect (FAC at ¶ 75);
- An allegation that Mr. Sanson is in possession of "dozens of hours" of hearing videos from multiple cases where Jennifer Abrams is counsel of record, or words to that effect (FAC at ¶ 79); and
- An allegation that Jennifer Abrams is "in bed with Marshal Willick, that explains a lot about the kind of person she is" (FAC at ¶ 80).

These statements are primarily non-defamatory, non-actionable statements of opinion regarding Abrams' legal tactics. The alleged statement about Abrams being in bed with Marshal Willick is a mixed statement of fact and opinion. While false statements of fact are actionable as defamation, true statements are not. *See Pegasus*, 57 P.3d at 88 ("[n]or is a statement defamatory if it is absolutely true, or substantially true"). Here, Mr. Sanson made the factual assertion that Abrams is, or was, in a sexual relationship with Marshal Willick. However, this cannot be defamatory, as Plaintiffs admit the existence of such a relationship in their complaint. (FAC at ¶ 80 fn. 7) ("The relationship between Jennifer V. Abrams and Marshal S. Willick is not being denied"). Mr. Sanson's assertion that Abrams' relationship with Willick "explains a lot about the kind of person she is" is not a statement of fact, but rather a disapproving opinion of Abrams' and Willick's relationship. Because it consists of a truthful statement of fact coupled with a non-actionable opinion, this statement, taken as a whole, cannot be defamatory and is thus a good faith communication. Moreover, there was no publication. (S*ee* Rule 12 Motion at p. 24.)

h) The "Negative Comments" Are Not Actionable.

Finally, Plaintiffs allege that "[t]he defamatory statements by Defendants have caused numerous negative comments to be directed against Plaintiffs" (FAC at ¶ 82), and that one commenter on an article stated that the person hoped Ms. Abrams' law partner would have a heart attack. (*Id.* at ¶ 82, fn. 8.) While unclear, it appears that Plaintiffs are attempting to articulate some sort of secondary liability for the comments of persons unrelated to Defendants. However, Defendants are not liable for the statements of other individuals whose identities are unknown. Moreover, as noted above, the statement cited by Plaintiffs was directed at Ms. Abrams' law partner, who is not a party to this matter.

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B. Plaintiffs Cannot Demonstrate a Probability of Success on Any Alleged Causes of Action.

The second step in evaluating an Anti-SLAPP Motion to Dismiss requires that the Court "determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim." Nev. Rev. Stat. § 41.660(3)(b). As set forth below and (at length) in the Rule 12 Motion on file herein, Plaintiffs fail to meet this burden for each and every cause of action they allege, as they cannot demonstrate any probability of succeeding on their claims. Therefore, this Court should grant Defendants' Anti-SLAPP Motion to Dismiss.

1. Defamation

In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus*, 118 Nev. 706 at 718. As thoroughly discussed in § V(B)(3), *supra*, Defendants' alleged speech consists of opinions, rhetorical hyperbole, or true facts, none of which satisfy the first element of a defamation claim. *See also* Rule 12 Motion at pp. 12:10 – 24:15. Additionally, Plaintiffs are public figures, and thus bear the burden of demonstrating actual malice by Defendants; Plaintiffs fail to do so. *See* Rule 12 Motion at pp. 14:20 – 16:6. Plaintiffs cannot make a prima facie case of defamation.

2. Intentional Infliction of Emotional Distress ("IIED")

The elements of a cause of action for intentional infliction of emotional distress ("IIED") are: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress to plaintiff, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 886 (Nev. 1999) (quoting *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 92 (Nev. 1981)). In the instant case, Plaintiffs fail to allege facts sufficient to show that Defendants' conduct was "extreme and outrageous" or that Plaintiffs suffered *any* emotional distress, much less the "severe or extreme" emotional distress required to prevail on a claim of IIED. *See* Rule 12 Motion at pp. 25:12 – 27:11.

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Thus, Plaintiffs[7] have no probability of prevailing on their cause of action for Intentional Infliction of Emotional Distress.

3. Negligent Infliction of Emotional Distress ("NIED")

Nevada courts recognize that "the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff." *Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). Thus, a cause of action for NIED has essentially the same elements as a cause of action for negligence: (1) duty owed by defendant to plaintiff, (2) breach of said duty by Defendant, (3) that said breach is the direct and proximate cause of Plaintiff's emotional distress, and (4) damages (i.e. emotional distress). Plaintiffs[8] fail to allege that Defendants owed her or her firm any duty of care, and thus Defendants could not have breached it. Plaintiffs also fail to allege that they suffered *any* emotional distress. *See* Rule 12 Motion at pp 27:14 – 28:12. Thus, Plaintiffs cannot hope to prevail on their cause of action for Negligent Infliction of Emotional Distress.

4. False Light

According to the Nevada Supreme Court, the false light tort requires that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 141 (Nev. 2014) (quoting Restatement (Second) of Torts § 652E (1977)). Nevada courts require that Plaintiffs suffer mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson v. Sprint Nextel Corp.*, 2014 WL 553314 at *5 (D. Nev. Feb. 10, 2017.)

In the instant case, Plaintiffs fail to allege any facts that would demonstrate

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[7] Although both Plaintiff Abrams and Plaintiff Law Firm claim IIED, it strains credulity that corporate entities can suffer emotional distress.

[8] Again, both Plaintiff Abrams and Plaintiff Law Firm claim NIED; one wonders how a corporate entity can be emotionally distressed.

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Defendants placed them in a false light that would be "highly offensive to a reasonable person." Indeed, Plaintiffs' cause of action for false light consists exclusively of perfunctory pleading of legal conclusions. *See* Rule 12 Motion at pp. 30:18 – 31:8. Furthermore, Plaintiffs fail to allege that they have suffered emotional distress[9] from any of the Sanson Defendants' actions, much less as result of being placed in a "false light." *See* Rule 12 Motion, at pp. 31:12 – 31:21. For these reasons, Plaintiffs cannot make a prima facie claim of False Light.

5. Business Disparagement

The elements of a business disparagement cause of action are: "(1) a false and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386, 213 P.3d 496, 504 (Nev. 2009) (citing *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987)). Plaintiffs cannot prevail on the first three elements of business disparagement for the same reason their defamation claim fails. *See* Defamation argument, *supra*; *see also* Rule 12 Motion at pp. 12:10 – 24:15. Additionally, Plaintiffs fail to specifically allege special damages as required by Rule 9(g) of the Nevada Rules of Civil Procedure. *See* Rule 12 Motion at pp. 31:24 – 32:17. This is particularly fatal to Plaintiffs' business disparagement claim, as "[p]roof of special damages is an essential element of business disparagement." *CCSD v. Virtual Ed. Software*, 125 Nev. at 87. Plaintiffs indeed fail to allege any facts which demonstrate that Defendants' communications have caused them any economic harm. They have no Business Disparagement claim.

6. Harassment

"Harassment" is not a cause of action in Nevada. *See* Rule 12 Motion at pp. 32:19 – 33:6. Plaintiffs cannot prevail on a non-existent cause of action.

7. Concert of Action

The elements of a cause of action for Concert of Action are that Defendant acted with another, or Defendants acted together, to commit a tort while acting in concert or

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[9] Yet again, both Plaintiff Abrams and Plaintiff Law Firm claim False Light. However, only human beings can suffer emotional distress, and thus only human beings can bring causes of action for False Light. Corporations cannot.

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pursuant to a common design. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (Nev. 1998). The plaintiff must also show the defendants "agreed to engage in conduct that is inherently dangerous or poses a substantial risk of harm to others." *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1092 (D. Nev. 2012) (quoting *GES, Inc. v. Corbitt,* 117 Nev. 265, 270-71, 21 P.3d 11, 14-15 (Nev. 2001)). The conduct alleged is not inherently dangerous. Further, because the other tort claims fail, so does this one.

8. Civil Conspiracy

The elements of a cause of action for civil conspiracy are: (1) Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming plaintiff; and (2) Plaintiff sustained damage resulting from defendants' act or acts. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (Nev. 1999). Plaintiffs' FAC is hard to make sense of, but it appears that their conspiracy claim is predicated on disparaging Plaintiffs, placing them in a false light, inflicting emotional distress upon them, and "harassing them."[10] As set forth above, each of those causes of action fails. There was nothing illegal about Mr. Sanson or VIPI posting videos or engaging in free speech critical of the Ms. Abrams and her law firm. Plaintiffs cannot rely on the conclusory claim that "this behavior is unlawful" to satisfy their pleading burden. Additionally, Plaintiffs fail to allege any damages resulting from any of Defendants' allegedly tortious acts.

9. RICO

The elements of a civil RICO claim are: (1) defendant violated a predicate racketeering act; (2) plaintiff suffered injury in her business or property by reason of defendant's violation of the predicate racketeering act; (3) defendant's violation proximately caused plaintiff's injury; (4) plaintiff did not participate in the racketeering violation. Nev. Rev. Stat. § 207.470, Nev. Rev. Stat. § 207.400; *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 283, 849 P.2d 297, 299 (Nev. 1993). The Nevada Supreme Court has held that civil racketeering claims must be pled not merely with specificity, but with the specificity required of a criminal indictment or information. *Hale v. Burkhardt*, 104 Nev. 632, 637-38, 764 P.2d

[10] Plaintiffs' Schneider Opposition at pp. 5:21-6:17.

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866, 869-70 (Nev. 1988). The complaint must provide adequate information as to "when, where [and] how" the alleged criminal acts occurred. *Id*. at 637. In the instant case, Plaintiffs' allege that Defendants "either committed, conspired to commit, or have attempted to commit" twelve separate offenses. *See* FAC at ¶ 118. However, the bulk of the named offenses are not among the predicate racketeering acts enumerated in Nev. Rev. Stat. § 207.360. *See* Rule 12 Motion at pp. 34:27 – 35:26. Of the remaining five named offenses, Plaintiffs fail to allege with sufficient specificity or provide adequate information as to "when, where and how" these alleged criminal acts occurred. *See* Rule 12 Motion at pp. 35:29 – 38:6. Plaintiffs fail to allege a prima facie civil RICO claim.

10. Copyright Infringement

Plaintiffs make a claim for copyright violation pursuant to 17 USC § 501 et seq. for Defendants' use of photos allegedly belonging to Plaintiffs. *See* FAC at ¶¶ 141-147. However, claims for copyright violations arising under federal law are subject to the exclusive original jurisdiction of the federal courts:

> The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

28 U.S.C. § 1338(a). This Court lacks jurisdiction over federal copyright claims, thus the Plaintiffs cannot raise a federal copyright claim, much less prevail on one. *See* Rule 12 Motion at p. 38:12 – 38:19. Even if this Court did have jurisdiction to hear Plaintiffs' copyright claims, such claims would fail because Plaintiffs have not proven (or even alleged) ownership or registration of the copyrights of the pictures appearing on <veteransinpolitics.org>. Additionally, Defendants' use of publicly available pictures of Plaintiffs falls under the "fair use" exception to the Copyright Act. *See* Rule 12 Motion at pp. 38:21 – 39:5. Plaintiffs cannot demonstrate any probability of succeeding on this claim.

11. Injunctive Relief

Plaintiff incorrectly alleges that "injunctive relief" is a cause of action. FAC at ¶¶

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148-49. However, "an injunction is a remedy, not a separate claim or cause of action … a separately pled claim or cause of action for injunctive relief is inappropriate." *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010). Because injunctive relief is not a cause of action, Plaintiffs do not have any chance of succeeding on it.[11]

C. The Sanson Defendants Are Entitled to an Award of Attorney's Fees and Costs, as well as an Additional Award of $10,000.00.

Nevada law provides that, after granting a special motion to dismiss pursuant to Nev. Rev. Stat. § 41.660, the Court shall award "reasonable costs and attorney's fees to the person against whom the action was brought" and may additionally award "an amount of damages up to $10,000.00 to the person against whom the action was brought." Nev. Rev. Stat. § 41.670(1)(a)-(b). The Sanson Defendants are entitled to fees and costs and request that the Court award $10,000.00 in damages to both Defendant Sanson and Defendant VIPI.[12]

VI. CONCLUSION

This Court must halt Plaintiffs' strategic attempt to litigate their critics into silence. Pursuant to Nev. Rev. Stat. § 41.660, Plaintiffs' Complaint must be dismissed in its entirety, with prejudice. Defendants VIPI and Sanson should also be awarded attorney's fees and costs for defending against this action, and should also each be awarded $10,000.00.

Respectfully submitted this 28th day of March, 2017.

/s/ Margaret A. McLetchie

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[11] Even if Plaintiffs correctly petitioned the court for injunctive relief, they would not be entitled to it. *See* VIPI Rule 12 Motion at pp. 39:24 – 42:7.

[12] A separate motion for fees and costs, and for $10,000.00, shall be submitted if this Court grants this Motion.

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 28th day of March, 2017, I did cause a true copy of the foregoing SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) in *Abrams v. Schneider et al.,* Clark County District Court Case No. A-17-749318-C, to be served electronically using the Wiznet Electronic Service system, to all parties with an email address on record.

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49.	Reply to Oppositions to Motion to Disqualify Eighth Judicial District Court Elected Judiciary, and for Permanent Assignment to the Senior Judge Program or, Alternatively, to a District Court Judge Outside of Clark County	2/23/2018	JVA001471 - JVA001539
41.	Reply to Plaintiff's Opposition to an Award of Attorney's fees, Costs, and Statutory Sanctions	1/24/2018	JVA001260 - JVA001265
46.	Reply to Plaintiffs' Opposition to Motion for Attorney Fees and Costs Pursuant to Nev. Rev. Stat. 41.670	2/5/2018	JVA001398 - JVA001451
66.	Reply to Plaintiffs' Opposition to Motion to Reassign Case to Judge Michelle Leavitt and Request for Written Decision and Order and Opposition to Countermotion for Attorney's Fees	5/18/2018	JVA001718 - JVA001731
55.	Reply to Plaintiffs' Opposition to "Motion to Reconsider March 2, 2018 Minute Order granting Plaintiffs' Motion to Disqualify" and Countermotion and Attorney's Fees	4/10/2018	JVA001633 - JVA001663
25.	Reply to Plaintiffs' Opposition to Motion to Strike and Opposition to Plaintiffs' Countermotion for Attorney's Fees	5/30/2017	JVA000809 - JVA000817
35.	Schneider Defendants' Motion for Statutory Damages ad Attorney's Fees, Costs, and Damages Pursuant to NRS 41.670; and Motion for Sanction	9/12/2017	JVA001005 - JVA001013
18.	Schneider Defendants' Special Motion to Dismiss Plaintiffs' Slapp Suit Pursuant to NRS 41.660 and Request for Attorney's Fees, Costs, and Damages Pursuant to NRS 41.670	3/28/2017	JVA000337 - JVA000367
19.	Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-Slapp)	3/28/2017	JVA000368 - JVA000405
81.	Stipulation and Order to Dismiss with Prejudice All Claims Against Hanusa Parties	10/13/2017	JVA001754 - JVA001756

30.	Transcript Re: All Pending Motions	7/5/2017	JVA000884 - JVA000950
26.	VIPI Defendants' Omnibus Reply to: (1) Plaintiffs' Opposition to Special motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-Slapp); and (2) Plaintiffs' Opposition to Motion to Dismiss and Countermotion for Attorneys' Fees	5/30/2017	JVA000818 - JVA000859
29.	VIPI Defendants' Supplement to VIPI Defendants' Omnibus Reply to: (1) Plaintiffs' Opposition to Special motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-Slapp); and (2) Plaintiffs' Opposition to Motion to Dismiss and Countermotion for Attorneys' Fees	6/9/2017	JVA000867 - JVA000883

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS and THE ABRAMS & MAYO LAW FIRM,

Plaintiff,

vs.

LOUIS C. SCHNEIDER; LAW OFFICES OF LOUIS C. SCHENEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X,

Defendants.

Case No.: A-17-749318-C

Dept. No.: I

NOTICE OF MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Defendants Steve W. Sanson ("Sanson") and Veterans in Politics International, Inc. ("VIPI") (collectively, the "VIPI Defendants"), by and through their counsel Margaret A. McLetchie and Alina M. Shell of the law firm McLetchie Shell LLC, hereby moves to dismiss Plaintiffs' complaint pursuant to NRCP 12(b)(5). This motion is based on the following Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

/ / /

/ / /

DATED this 16th day of February, 2017.

/s/ Margaret A. McLetchie

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NOTICE OF HEARING

TO: ALL INTERESTED PARTIES.

YOU WILL TAKE NOTICE that the undersigned will bring on for hearing the above-noted MOTION TO DISMISS and to be heard the 22 day of March 2017, at the hour of 9:30 a.m./~~p.m.~~, in the above-entitled Court or as soon thereafter as counsel may be heard.

DATED this 16th day of February, 2017.

/s/ Margaret A. McLetchie

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL HISTORY

Plaintiff Abrams is a family law lawyer; her co-plaintiff is her firm. On January 9, 2017, on her own behalf and on behalf of her law firm,[1] Plaintiffs filed an everything-but-the-kitchen-sink complaint against multiple parties, including Mr. Sanson and VIPI. VIPI explains its mission in part as follows:

> **We continue to fight for the freedom [of] our country, to uphold our vow to protect and defend our Country and our United States Constitution, beyond our military service.**

(*See* attached Exhibit ("Exh.") A.).[2] Steve Sanson is VIPI's President. (Exh. B.)[3]

On January 27, Plaintiffs filed an amended complaint (the "First Amended Complaint" or "FAC"), adding copyright infringement as cause of action. (FAC, ¶¶ 141-147). Each "fact" and allegation contained in the FAC was verified by Ms. Abrams. (FAC, p. 40 (verifying the contents "except as to those matters … stated on information and belief").)

In addition to copyright infringement, Plaintiffs are pursuing causes of action for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, business disparagement, harassment, concert of action, civil conspiracy, RICO violations, and a "claim for relief" for an injunction. (FAC, ¶¶ 83-140, 148-149.) Boiled down, the ten causes of action complain about a series of public statements and internet postings made by Mr. Sanson and VIPI regarding Plaintiffs' conduct in Family

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[1] Ms. Abrams' apparent significant other and fellow family law lawyer, Marshal Willick, subsequently filed a notice of appearance and is serving as her co-counsel in this case. And Ms. Abrams has filed a separate but very similar lawsuit on behalf of Mr. Willick (Eighth Judicial District Court Case No. A-17-750171-C). Both Mr. Willick and Ms. Abrams are at least possible witnesses in both matters, which may be the subject of a subsequent motion.

[2] Also available at: http://veteransinpolitics.org/goals-and-values/ (last checked 2/16/2017).

[3] Also available at: http://veteransinpolitics.org/officers/ (last checked 2/16/2017).

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Court. For example, Plaintiffs complain that Mr. Sanson has called Ms. Abrams "seal happy" for, in his view, improperly closing too many Family Court records and proceedings from the public. Of course, while attorneys may think they should be immune from criticism, such statements are not legally actionable. Each and every one of Plaintiffs' causes of action is predicated on the false belief that lawyers can use the legal system to silence their critics. Each and every claim fails.[4]

As will be detailed in a subsequent Special Anti-SLAPP Motion to Dismiss, the FAC is a transparent attempt to silence Mr. Sanson and VIPI. In addition to monetary damages, which are flimsily alleged, Plaintiffs request broad injunctive relief: scrubbing allegedly defamatory material from the internet, prospectively gagging Defendants from voicing negative opinions of Plaintiffs, and forcing Defendants Sanson and Schneider to author and disseminate retractions and apologies. (FAC, ¶ 149.) The First Amendment and the free speech protections contained in the Nevada Constitution of course bar such relief. Whether or not Plaintiffs like it, courtrooms belong to the people and, unless a hearing is properly closed, the VIPI Defendants are free to attend, disseminate videos of courtrooms—and even to criticize the lawyers who appear in our courts.

II. SUMMARY OF PLAINTIFFS' ALLEGATIONS

Plaintiff Jennifer V. Abrams ("Abrams") and Defendant Louis C. Schneider ("Schneider") represented their respective clients in a divorce action before the Honorable Jennifer L. Elliot. (FAC, ¶¶ 21-22.) In that case Abrams and Schneider had various disputes, which are the genesis of the events detailed in the FAC. (FAC, ¶¶ 23-26.) On September 29, 2016, Abrams, Schneider and Judge Elliot were involved in a contentious hearing in which Judge Elliot initially accused Abrams and her client of unethical behavior—specifically, misrepresenting financial information on her client's Financial Disclosure Form. (FAC, ¶¶ 27-29.)

/ / /

[4] Indeed, some might consider Plaintiffs over-zealous for pursuing this action. And, if that were not a matter of opinion, such persons would be absolutely correct.

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Plaintiffs allege that Schneider obtained a copy of the video of the September 29, 2016 hearing and provided it to the VIPI Defendants. (FAC, ¶¶ 30-31). Without detail, the FAC asserts the legal conclusion that "Defendants conspired to affect the outcome of the pending "D" Case by defaming, inflicting emotional distress upon, placing in a false light, disparaging the business of, and harassing Plaintiffs and inflicting emotional distress upon Judge Elliot, and threatening to continue doing so." (FAC, ¶ 32.) Judge Elliot is not a plaintiff.[5]

The FAC then, *inter alia*,[6] alleges that the sets of statements below were made by "Defendants."[7]

"Attack Article"

On October 5, 2016, Defendants published an article on veteransinpolitics.org entitled "Nevada Attorney attacks a Clark County Family Court Judge in Open Court." (*See* FAC, ¶¶ 33-36 and FAC Exh. 1.) The FAC alleges, in conclusory fashion, that this "Attack Article" defamed Plaintiffs "with a number of false and misleading statements." (FAC, ¶ 36.) The FAC specifies the statements it considers defamatory, which include such things as the view that Ms. Abrams is unethical. (FAC, ¶ 36.)[8]

The FAC also complains that the "Attack Article" contained an embedded video recording of the September 29, 2016 hearing, posted in its entirety, but alleges that Defendants only discuss and highlight portions of the video that portray Plaintiffs in a negative light. (FAC, ¶ 37.)

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[5] Of course, Plaintiffs do not have standing to assert any claims on behalf of the Honorable Judge Elliot.

[6] The FAC is rife with inappropriate statements, such as the allegation concerning Judge Elliot. These statements are the subject of a separate Motion to Strike.

[7] As indicated below, Plaintiffs lump all ten defendants in together.(*See* § V(A) ("The FAC Fails to Specify Its Allegations, and Is Conclusory").)

[8] The details of the specific statements at issue are all set forth below (*see* § V (B) ("Plaintiffs' Defamation Claim Must Be Dismissed").)

The FAC alleges that Judge Elliot requested that the video be taken down (FAC, ¶ 39) and that Judge Elliot also told Defendants her views of the "D" Case. (FAC, ¶ 41.) Defendant Sanson did not take down the Attack Article or the video (FAC, ¶ 40, ¶ 42-43.) Without support, the FAC also salaciously states "**Upon information and belief,** a payment of money was made" to Defendants—including Does I through X." (FAC, ¶ 44 (emphasis added).) FAC alleges that "Defendants were served with an Order Prohibiting Dissemination of Case Material entered by Judge Elliot" (FAC, ¶ 45); however the FAC fails to (and cannot, as a matter of law) assert that Judge Elliot had jurisdiction over Defendants, who were not parties in the "D" Case.

"Bully Article"

The FAC next alleges that, on October 9, 2016, Defendants published an article on veteransinpolitics.org entitled "District Court Judge Bullied by Family Attorney Jennifer Abrams." (FAC, ¶¶ 46-49; FAC Exh. 2.) Plaintiffs assert that several opinions asserted in the Bully Article—e.g., that Ms. Abrams' behavior is embarrassing—are "false and defamatory statements." (FAC, ¶ 49.)[9]

"Seal Happy Article"

The FAC alleges that on November 6, 2016, Sanson published an article on veteransinpolitics.org entitled "Law Frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices." (FAC, ¶¶ 54-56; FAC, Exh. 3.) In this article, Sanson states his belief in the importance of public access to court proceedings. (FAC, Exh. 3.) Then, Sanson levies criticism at Abrams for attempting to seal the records in many of her cases, a practice that Sanson contends hinders public access to the courts. *(Id.)* Additionally, it contains an image of publicly-accessible "Family Case Records Search Results" for Abrams' cases, as well as Sanson's opinion about the legality of Judge Elliot's order. The FAC alleges, in conclusory

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[9] Plaintiffs then go on to allege the content of an email Ms. Abrams sent to Defendants and Sanson's email response. (FAC, ¶¶ 50-52.) While these are not relevant to any claims (defamation, for example, requires publication), as discussed below, the email sent by Ms. Abrams makes clear that she does not believe the public has a right to know about her behavior in court.

fashion, that the opinions contained in the Seal Happy article—such as that Ms. Abrams "seals cases in contravention of 'openness and transparency'"—are "false and defamatory" (FAC, ¶ 56.)

"Acting Badly Article"

On November 6, 2016, Sanson published an article on veteransinpolitics.org entitled "Lawyers acting badly in a Clark County Family Court." (FAC, ¶¶ 57-60; FAC, Exh. 4.) This article consists entirely of an embedded YouTube video of a courtroom proceeding dated July 14, 2016.[10] The Plaintiffs allege that Defendants made "false and defamatory statements against Abrams," but only list statements of opinion such as that "Abrams' behavior is 'disrespectful and obstructionist.'" (FAC, ¶ 60.)

"Deceives Article"

Plaintiffs include irrelevant criticism made of the Honorable Judge Hughes (FAC, ¶¶ 61-62; FAC, Ex. 5), and note that the article also linked to Defendants' other articles and made "false and defamatory statements directed at Abrams." (FAC, ¶ 64.). However, the FAC only points to two opinions—that Abrams "appears to be 'seal happy' when it comes to trying to seal her cases" and that her "'bad behaviors' were 'exposed'." (*Id.*)

December 21, 2016 YouTube Videos

The FAC alleges that, on December 21, 2016, Defendants posted three videos to YouTube purporting to be an "investigation" of Plaintiffs' business. (FAC, ¶¶ 65-66; FAC, Exh. 6.) Plaintiffs allege that Defendants obtained these videos from Yuliya Fohel FKA Delaney, who defied a court order prohibiting publication of said videos either personally or through a third party. (FAC, ¶¶ 67-68.) Plaintiffs also allege "upon information and belief" that Yuliya Fohel FKA Delaney had been ordered not to distribute the videos. (FAC, ¶ 68.) Plaintiffs do not allege that the videos defame them. Instead, they allege that the videos "depict *David J. Schoen*, a Certified Paralegal employed at The Abrams & Mayo Law Firm

[10] Plaintiffs did not provide a copy of the video.

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and include personal and private information." (FAC, ¶ 69 (emphasis added).)[11] Plaintiffs fail to allege what actual "personal and private information" was included.

Schoen Conversation

On December 22, 2016, Mr. Sanson allegedly had a conversation with David J. Schoen. In this conversation, Mr. Sanson allegedly made several unflattering comments about Plaintiff Abrams, including that she is "in bed with Marshal Willick." (FAC, ¶¶ 70-80.) Plaintiffs do not allege that anyone else was present for the conversation. Amusingly, while Plaintiffs include the statement "Ms. Abrams is in bed with Marshal Willick" among what they consider a "defamatory statements," they concede that the relationship exists. (FAC, ¶ 80, fn. 7.) Further, Mr. Willick is now Plaintiff Abrams' attorney (and her client in the Willick Case). Thus, both literally and figuratively speaking, this statement appears to be true. More globally, Plaintiffs do not allege any harm that arose from this conversation between Mr. Schoen and Mr. Sanson.[12]

"Negative Comments"

It is hard to discern from the First Amended Complaint what, if any, harm Plaintiffs have suffered by such non-actionable things as having Ms. Abrams' sealing practices criticized or Mr. Sanson stating that Ms. Abrams is "in bed with" the person with whom she devised the litigation at hand and with whom she is in a relationship. Plaintiffs allege that "[t]he defamatory statements by Defendants have caused numerous negative comments to be directed against Plaintiffs." (FAC, ¶ 82.) The FAC goes on to note that a commenter on the "Acting Badly" article stated that he or she hoped Ms. Abrams' law partner would have a heart attack. (*Id.*, ¶ 82, fn. 8.) While that comment is indeed distasteful, it was not directed to Ms. Abrams or even her firm; it was directed to her law partner, who is not a plaintiff. Moreover, there is no cause of action that protects Ms. Abrams or her firm from people who say things about them or the people that they are close to, even if those things are not nice.

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[11] Mr. Schoen is not a plaintiff and it should be apparent that Plaintiffs cannot pursue a false light claim on his behalf, if that is their intent.

[12] Thus, assuming Mr. Schoen is part of the firm, it is hard to understand what the publication was.

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III. THE NATURE OF COURTROOM PROCEEDINGS

In order for Plaintiffs' allegations to have any merit, one must accept the assumption that underlies the entire First Amended Complaint: that Plaintiffs have some expectation that they are free from criticism for their behavior in court. Indeed, Plaintiffs allege that Ms. Abrams wrote to Mr. Sanson stating:

> The umbrella of "a journalist" does not apply [to Mr. Sanson reporting on her] as I am not running for public office and there are no 'voters' that have the right to know anything about about my private practice or my private clients.

(FAC, ¶ 50.) This assumption— hat the public has no right to know anything about Ms. Abrams' cases that are conducted in our public courts (or her conduct in court)—is, of course, wrong. The courts are part of our government and are taxpayer funded. And in Nevada judges are elected by the people.

For these reasons and others, there is a legal presumption—one going all the way back to common law—that courtroom proceedings are open to the public. *See, also., Stephens Media v. Eighth Judicial District Court*, 125 Nev. 849 (2009). *See, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564–69, 580, n. 17 (1980); *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 386, n. 15 (1979); and *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597–98 (1978). This presumption and its underlying principles also limit the circumstances under which documents can be sealed.

The United States Supreme Court recognized the importance of public access to both criminal and civil courts in *Gannett Co., v. DePasquale*, 443 U.S. at 386, n. 15. As the Court explained, "[f]or many centuries, both civil and criminal trials have traditionally been open to the public. As early as 1685, Sir John Hawles commented that open proceedings were necessary so 'that truth may be discovered in civil *as well as* criminal matters.'" *Id.* (citation omitted; emphasis in original). In fact, the Court recognized that the salutary effect of public access is often as important in civil cases as it is in criminal trials:

> Indeed, many of the advantages of public criminal trials are equally applicable in the civil trial context. While the operation of the judicial process in civil cases is often of interest only to the parties in the litigation,

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> this is not always the case. *E.g., Dred Scott v. Sandford*, 19 How. 393, 15 L.Ed. 691; *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256; *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873; *University of California Regents v. Bakke*, 438 U.S. 265, 98 S.Ct. 2733, 57 L.Ed.2d 750. Thus, in some civil cases the public interest in access… may be as strong as, or stronger than, in most criminal cases.

Id.; *see also Richmond Newspapers*, 448 U.S. at 580 n.17 (holding that "historically both civil and criminal trials have been presumptively open"); *see also id.* at 596 (noting that "mistakes of fact in civil litigation may inflict costs upon others than the plaintiff and defendant. Facilitation of the trial fact-finding process, therefore, is of concern to the public as well as to the parties.")

While of course some matters in family court merit sealing, these principles also apply in family court. [13] Nevada law explicitly recognizes that even family court matters are, at least in part, public. For example, the Nevada Revised Statute Chapter pertaining to divorce provides that papers and pleadings on file must be open to the public. Nev. Rev. Stat. § 125.110(2) allows that some matters may be sealed upon the request of a party; it provides that the following "shall be open to public inspection in the clerk's office:"

> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
>
> (b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.

Nev. Rev. Stat. § 125.110(1). Thus, the VIPI Defendants also have a right—as a nonprofit that monitors government and as an activist—to critique attorneys' behavior in court and to complain when, in their opinion, an attorney excessively seals documents, effectively hiding

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[13] *See also Ehrlich v. Lucci*, 2006 WL 3431218, at *1 (S.D.N.Y. Nov. 28, 2006) (denying motion to seal family court records in fees collection case where nothing in family court record was "so sensitive, embarrassing or inflammatory as to overcome the public's interest in the openness of judicial proceedings").

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them from the public.

IV. APPLICABLE LEGAL STANDARD

This Court has authority to dismiss Plaintiffs' claims against Sanson and VIPI pursuant to NRCP 12(b)(5), which provides that a complaint may be dismissed if the pleading fails to state a claim on which relief may be granted. A motion based on NRCP 12(b)(5) must be granted when the plaintiff would be entitled to no relief under the facts set forth in the pleading. *See Morris v. Bank of Am. Nev.*, 110 Nev. 1274, 1276, 886 P.2d 454, 456 (1994) (citing *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)). In reviewing the pleadings, the court "is to determine whether… the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Edgar*, 699 P.2d at 111. "The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested." *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citing *Ravera v. City of Reno,* 100 Nev. 68, 70, 675 P.2d 407,408 (1984)).

In analyzing a motion to dismiss pursuant to NRCP 12(b)(5), the court "must construe the pleading liberally and draw every fair intendment in favor of the [nonmoving party]." *Vacation Village*, 874 P.2d at 746 (quoting *Squires v. Sierra Nev. Educ. Found., Inc.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (Nev. 1991)) (internal quotations omitted). Although "[the nonmoving parties] are entitled to all reasonable factual inferences that logically flow from the particularized facts alleged, … conclusory allegations are not considered as expressly pleaded facts or factual inferences." *In re Amerco Derivative Litigation*, 127 Nev. 196, 232, 252 P.3d 681, 706 (2011). Plaintiffs are required to comply with their duty to "set forth sufficient ***facts*** to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." *Western States Const. v. Michoff*, 108 Nev. 931, 936, 840 P. 2d 1220, 1223 (1992).

Plaintiffs have relied on *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to support the

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sufficiency of their complaint. (*See* Plaintiff's Opposition to Defendant Louis Schneider's Motion to Dismiss Complaint and Countermotion for Attorney's Fees ("Plaintiffs' Schneider Opposition") (filed February 14, 2017) at p. 4:26-p.5:18, and fn 7)[14]. There, the Unites States Supreme Court explained that the complaint must contain more than just conclusory accusations: "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face … [a] claim only has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Pleadings that consist of "labels and conclusions," a "formulaic recitation of the elements of a cause of action," "naked assertions devoid of further factual enhancements," or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" will not suffice. *Id*. (internal citations and quotations omitted). The United States Supreme Court has also explained that allegations consisting merely of conclusory verbiage, such as naming the legal elements of a claim, is insufficient to survive a motion to dismiss. *Accord Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 561-562 (2007). Despite their reliance on *Iqbal*, Plaintiffs' causes of action consistently fail meet the standards of pleading articulated in the *Twombly* and *Iqbal* line of cases.

Furthermore, it is of note that a heightened pleading standard applies to Plaintiffs' RICO claim, as detailed below, Plaintiffs have not met that standard. (*See* (§ V(J) ("Plaintiffs' RICO Claim Must Be Dismissed").) Similarly, as also discussed below (*see* § V(F) ("Plaintiffs' Business Disparagement Claim Fails")), Plaintiffs have failed to meet the heightened requirement of pleading special damages.

It is true that Plaintiffs' First Amended Complaint is voluminous. It contains 150 paragraphs and spans approximately 40 pages, exclusive of exhibits. However, the length of a complaint is not pertinent—again, the complaint must set forth the nature and bases of each claim and the relief requested. *Vacation Village*, 110 Nev. at 484, 874 P.2d at 746. Rather

[14] Plaintiffs' Schneider Opposition is missing page numbers.

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than setting forth valid claims, Plaintiffs' FAC is filled with conclusions and allegations that do not fit within any cause of action, as well as matters not pertinent to the Court.[15]

V. LEGAL ARGUMENT

A. The FAC Fails to Specify Its Allegations, and Is Conclusory.

As a preliminary matter, the FAC is pled in a clumsy and obtuse fashion. For example, each and every claim is brought by both plaintiffs, which improperly assumes that each plaintiff would have the same right to relief. The Plaintiffs each must show how they are independently entitled to relief, and must each specify the damages they are seeking. For example, as discussed below, while the claim is also inappropriate for Ms. Abrams, it is absolutely nonsensical to bring causes of action for intentional or negligent infliction of emotional distress on behalf of her *law firm*. (*See* FAC, ¶¶ 95, 97.) Similarly, the FAC largely ascribes the statements it contends is defamatory to all the defendants. (*See, e.g.,* FAC, ¶ 65.)

As set forth above, Plaintiffs are required to comply with their duty to "set forth sufficient ***facts*** to demonstrate the necessary elements of a claim for relief …." *Michoff*, 108 Nev. at 936, 840 P. 2d at 1223. Because it lumps both the plaintiffs and all the defendants together, it is unclear from the face of the FAC what facts Plaintiffs are specifically alleging and how each plaintiff contends it is entitled to the relief sought. Thus, Plaintiffs have failed to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949.

Further, significant portions of the FAC contain the following type of "allegations:"

- "The statements made by the Defendants place Jennifer Abrams and The Abrams & Mayo Law Firm in a false light and are highly offensive and inflammatory, and thus actionable." (FAC, ¶ 101.)
- "As a result of Defendants' extreme and outrageous conduct, Plaintiffs have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional harm." (FAC, ¶ 95.)

These are exactly the "labels and conclusions" and [t]hreadbare recitals of the elements of a

[15] These will be addressed in a separate Motion to Strike.

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cause of action, supported by mere conclusory statements" will not suffice. *Iqbal* 556 U.S. at 678. (internal citations and quotations omitted).

In short, Plaintiffs have failed to "set forth sufficient ***facts*** to demonstrate the necessary elements of a claim for relief," *Western States Const. v. Michoff*, 108 Nev. at 936, 840 P. 2d at 1223 (emphasis added). Even construed liberally, *Vacation Village*, 874 P.2d at 746, each and every claim fails. Further as set forth below (*see* § VI ("Plaintiffs Should Not Be Granted Leave to Amend")), the problems with the FAC are also fatal.

B. Plaintiffs' Defamation Claim (First Cause of Action) Fails, and Is Improper.

In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus v. Reno Newspapers, Inc*. 118 Nev. 706, 718, 57 P.3d 82, 90 (2003). Plaintiffs have not pled facts sufficient to meet all elements of this claim, and thus it must be dismissed. Defendants' alleged speech consists of opinions, rhetorical hyperbole, or true facts, none of which are actionable as defamation.

Statements of opinion cannot be defamatory because there is no such thing as a false idea. *Pegasus*, 57 P.3d at 87. To constitute any sort of actionable statement the material publicized must actually be facts, as distinguished from opinions or conclusions. *See Miller v. Jones*, 114 Nev. 1291, 1296, 970 P.2d 571, 575 (1998) (recognizing the distinction between fact and opinion in defamation claims); *Wellman v. Fox*, 108 Nev. 83, 86, 825 P.2d 208, 210 (1992) (recognizing the distinction between fact and opinion in libel claims); *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995) (distinguishing between statements of facts and personal conclusions or interpretations of those facts). Similarly, only publication of private **facts**, as distinguished from opinions, personal conclusions, and interpretations of those facts, are legally actionable under the invasion of privacy torts. *See Partington*, 56 F.3d at 1156. "Whether the objectionable statements constitute fact or opinion is a matter of law." *Wellman*, 108 Nev. at 87, 825 P.2d at 210. "[W]hen an author outlines

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the facts available to him, thus making it clear that the challenged statements represent his own interpretation of those facts and leaving the reader free to draw his own conclusions, those statements are generally protected by the First Amendment." *Partington*, 56 F.3d at 1156-57 "A question can conceivably be defamatory, though it must reasonably be read as an *assertion* of a false fact; inquiry itself, however embarrassing or unpleasant to its subject, is not an accusation." *Id.* at 1157.

Nor can exaggerations or generalizations that could be interpreted by a reasonable person as "mere rhetorical hyperbole" be defamatory statements. *Pegasus* at 88. However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id*. The court must therefore ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id*. The Federal District Court of Nevada has looked to three relevant factors to determine whether, under Nevada law, alleged defamatory statements include a factual assertion: "(1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that negates that impression; and (3) whether the statement in question is susceptible of being proved true or false." *Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000) (citing *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995)).

Substantial truth is sufficient to defeat an action for defamation. *Fendler v. Phoenix Newspapers, Inc.*, 130 Ariz. 475, 479, 636 P.2d 1257, 1261 (Az. App.1981). "It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified, and if the gist of the charge be established by the evidence, the defendant has made his case." *Id.* at 479, 636 P.2d at 1261 (further citation omitted).

Although Plaintiffs do their best to mischaracterize Defendants' words in their FAC, the complained-of statements are overwhelmingly statements of opinion which are incapable of being proven true or false, or rhetorical hyperbole that negates the impression

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that they are statements of fact, neither of which is actionable as defamatory. In the exceedingly rare instances that a complained-of statement is a statement of fact, the underlying fact is true, and thus not actionable as defamatory.

In addition, several of Defendants' allegedly defamatory statement are protected by the fair report privilege. As the Nevada Supreme Court explained in *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, "[t]he law has long recognized a special privilege of absolute immunity from defamation given to the news media and the general public to report newsworthy events in judicial proceedings." *Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 215, 984 P.2d 164, 166 (1999). Although the fair report privilege "is usually directed toward the news media and others engaged in reporting news to the public," it also extends to "any person who makes a republication of a judicial proceeding from material that is available to the general public." *Id.* (citation omitted). In order for the fair report privilege to apply, "[i]t is not necessary that [a report] be exact in every immaterial detail or that it conform to that precision demanded in technical or scientific reporting. It is enough that it conveys to the persons who read it a substantially correct account of the proceedings." *Adelson v. Harris*, 973 F. Supp. 2d 467, 486 (S.D.N.Y. 2013) (quoting Restatement (Second) of Torts § 611 cmt. f). In this case, as discussed in greater detail below, several of the statements Plaintiffs complain of are subject to the fair report privilege, and this are not actionable.

Moreover, because Plaintiffs are public figures, they bear the additional burden of demonstrating actual malice by Defendants Sanson and VIPI. The United States Supreme Court defines "public figures" as "[t]hose who, by reason of the notoriety of their achievements…seek the public's attention," and therefore, "have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *see also Wynn v. Smith*, 117 Nev. 6, 16 P.3d 424 (2001) (Wynn held to be a public figure.)) The *Gertz* Court created two categories of public figures: general public figures and limited public figures. General public figures are those individuals who "achieve such pervasive fame or notoriety that [they] become[ ] a

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public figure for all purposes and in all contexts." *Id.* at 351. Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue. *Id.* at 351-52. One may become a limited public figure if one "voluntarily injects himself or is drawn into a particular public controversy," thereby becoming a public figure for a limited range of issues. *Id.* at 351.

In this case, Plaintiff Abrams is, at a minimum, a limited public figure because she holds herself out as a highly-qualified attorney specializing in family law—an area of public concern. As Ms. Abrams states in the biography on her firm's website:

> Attorney Jennifer V. Abrams is Certified by the State Bar of Nevada as a Family Law Specialist and has been admitted to the American Academy of Matrimonial Lawyers (AAML). She is one of only seventeen attorneys in the State of Nevada that has been accepted into this prestigious organization. Previously the Nevada Family Court Judges and Family Law Attorneys have elected attorney Abrams to the Executive Council of the State Bar of Nevada, Family Law Section.

See http://www.theabramslawfirm.com/divorce_lawyers_las_vegas.html (last accessed February 16, 2017). The Abrams & Mayo Law Firm markets itself as a firm that has advanced specialization in family law matters, and advertises throughout the Las Vegas area. Thus, the Plaintiffs are public figures. Because the Plaintiffs hold themselves out as expert practitioners in an area of the law that is of public interest, they are public figures. *See, e.g.*, *Young v. The Morning Journal*, 129 Ohio App. 3d 99, 717 N.E.2d 356 (1998) (Local attorney's well-publicized involvement in running a narcotics investigative unit for 15 years made him a "public figure" for purposes of his defamation suit concerning a newspaper article confusing him with a nonlocal attorney with a similar name who was facing a contempt citation); *Schwartz v. Worrall Publications, Inc.*, 258 N.J. Super. 493, 610 A.2d 425 (App. Div. 1992) (Attorney for school boards association was a "public figure").

Because they are public figures, Plaintiffs must allege and prove actual malice with clear and convincing evidence. *Pegasus*, 118 Nev. at 719 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) Actual malice is "knowledge that [the statement] was false or with reckless disregard of whether it was false or not." *Sullivan*, 376 U.S. at 280. Reckless

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disregard means that the publisher of the statement acted with a "high degree of awareness of the probable falsity of the statement or had serious doubts as to the publication's truth." *Pegasus*, 118 Nev. at 719 (quotation and internal punctuation omitted). In this case, Plaintiffs have not alleged—and cannot prove—actual malice. (*See generally* FAC, ¶¶ 83-91.) Instead the Plaintiffs have merely alleged that the complained-of statements were "false or misleading" without any demonstration how the statements are false or misleading.

1. The Attack Article and courtroom video are not actionable.

Plaintiffs contend that Defendants made five different "false and defamatory" statements in his October 5 "Attack Article" and contemporaneous YouTube video. (*See* FAC, ¶ 36.) The video cannot possibly be considered defamatory because it is a real video of an actual proceeding. *Kegel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009) ("the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim"). Further, the five statements Plaintiffs complain of either do not appear in the article or are non-actionable statements of opinions (even as characterized by Plaintiffs).

a) Plaintiff, Jennifer Abrams "attacked" a Clark County Family Court Judge in Open Court" (FAC, ¶ 36(a)).

The article's headline reads "Nevada Attorney attacks a Clark County Family Court Judge in Open Court." Whether Abrams' heated exchanges with Judge Elliot in the September 29, 2016 hearing constituted an attack is a matter of opinion and thus non-actionable. Some observers, such as Defendants, may interpret Abrams' interrupting Judge Elliot ("excuse me I was in the middle of a sentence") and questioning Judge Elliot's impartiality ("is there any relationship between you and [opposing counsel] Louis Schneider?") as an "attack". Even if Abrams' interprets her actions as zealous advocacy and approves of her own behavior, this is an instance where Plaintiffs have merely alleged that Defendants have voiced an opinion, and thus it cannot be defamatory.

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b) Abrams has "no boundaries in our courtrooms" (FAC, ¶ 36(b)).

The article contains the underlined phrase "No boundaries in our courtrooms!" It does not say specifically that Abrams or her firm have no boundaries; rather it is rhetorical hyperbole that Sanson uses to call attention to misbehavior in the courtroom generally. Indeed, the article's opening paragraph mentions a "Justice of the Peace handcuffing Public Defenders unjustly." (FAC, Exh. 1.) Even if the article did state that Abrams has "no boundaries in our courtrooms," such a statement would be an opinion incapable of being proven true or false, and thus not actionable for defamation.

c) Abrams is unethical (FAC, ¶ 36(c)).

Nowhere in the "Attack" article does Sanson call Abrams "unethical." (*See* FAC, Exh. 1.) In fact, the word "unethical" does not even appear in the article. The word "ethical" appears three times: twice in written excerpts of Judge Elliot's statements in the September 29 hearing, and once in reference to a judicial duty to report attorney ethical problems. Reprinting Judge Elliot's verbatim statements cannot be defamatory, nor can a statement that judges must report on lawyers who act unethically in their courtrooms.

d) There is a "problem" requiring Abrams to be reported to the Nevada State Bar (FAC, ¶ 36(c)).

Nowhere in the "Attack" article does Sanson purport that there is a problem requiring Abrams to be reported to the Nevada State Bar. The article merely says "[i]f there is an ethical problem or the law has been broken by an attorney the Judge is mandated by law to report it to the Nevada State Bar or a governing agency that could deal with the problem appropriately." (FAC, Exh. 1.) This is not a statement of fact about Abrams, and thus not actionable as defamatory. Even it were, a person is entitled to his or her own interpretation of the ethical rules and while an attorney may simply view herself as zealous, others observing her behavior can reasonably find it both rude to the judge and unethical.

e) Abrams "crossed the line with a Clark County District Court Judge" (FAC, ¶ 36(c)).

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In the "Attack" article, Sanson asks "what happens when a Divorce Attorney crosses the line with a Clark County District Court Judge Family Division?" (FAC, Exh. 1.) Again, whether Abrams "crossed the line" in her interactions with Judge Elliot in the September 29 hearing is a matter of opinion. Whereas some may view Abrams' interactions with Judge Elliot as perfectly acceptable advocacy, others, such as Sanson, view them as crossing an imagined line of decorum. Nobody can say, as a matter of objective fact, where this "line" is, much less whether someone has crossed it. Thus, stating that Abrams "crossed a line" is merely an opinion, and thus not actionable as defamatory.

2. The Bully Article Is Not Actionable.

Plaintiffs contend that Sanson made five different "false and defamatory" statements in the Bully Article. However, the listed statements are non-actionable statements of opinions.

a) Abrams bullied Judge Elliot into issuing the Order Prohibiting Dissemination of Case Material (FAC, ¶ 49(a)).

The subtitle to the Bully Article states "District Court Judge Bullied by Family Attorney Jennifer Abrams." (FAC, Exh. 2.) Under the law set forth above, this statement does not qualify as defamation. Although the "bullied" characterization is an opinion, it is a truthful statement of fact that Abrams convinced Judge Elliot to issue the order that is discussed in the Bully Article.

b) Abrams' behavior is "disrespectful and obstructionist" (FAC, ¶ 49(b)).

Whether Abrams' behavior in the September 29, 2016 hearing was "disrespectful" or "obstructionist" (or both) is a matter of opinion. There are no objective standards for what constitutes "disrespectful" or "obstructionist" behavior in the courtroom. Because this statement is opinion and not a statement of fact, it cannot be defamatory.

c) Abrams "misbehaved" in court (FAC, ¶ 49(c)).

Whether Abrams "misbehaved" during the September 29, 2016 hearing is a matter of opinion. There are no objective standards for what constitutes "misbehavior" in the

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courtroom. Because this statement is opinion and not a statement of fact, it cannot be defamatory.

d) Abrams' behavior before the judge is "embarrassing" (FAC, ¶ 49(d)).

Whether Abrams behavior during the September 29, 2016 hearing was "embarrassing" is a matter of opinion. There are no objective standards for what constitutes "embarrassing" behavior in the courtroom. Because this statement is clearly Sanson's opinion and not a statement of fact, it cannot be defamatory.

e) Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC, ¶ 49(e)).

Whether the order discussed in the Bully Article is part of an attempt by Abrams to "hide her behavior" from the legal community and the public is not a statement of fact. Rather, it is an expression of Defendants' opinion regarding Abrams' legal tactics. Thus, it is not defamation. *See, e.g., Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995) ("[T]he book's general tenor makes clear that Bugliosi's observations about Partington's trial strategies, and the implications that Partington contends arise from them, represent statements of personal viewpoint, not assertions of an objective fact").

3. The Seal Happy Article Is Not Defamatory.

a) Abrams "appears to be 'seal happy' when it comes to trying to seal her cases" (FAC ¶ 56(a)).

Whether Abrams is "seal-happy" is a matter of opinion. There are no objective standards for what constitutes being "seal-happy," nor should this Court entertain a line-drawing problem of determining how many times a lawyer must request her cases be sealed before she becomes "seal-happy." Rather, because "seal-happiness" is purely a matter of opinion, this statement is not a statement of fact, and thus cannot be defamatory.

b) Abrams seals cases in contravention of "openness and transparency" (FAC, ¶ 56(b)).

Whether sealing cases is an affront to "openness and transparency" is a matter of

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opinion. Some advocates for transparency and public access to the courts may view sealing cases as contravening the court's "openness and transparency," others may view sealing cases as zealous advocacy that values a client's privacy interests. Thus, this statement is not a statement of fact and cannot be defamatory.

c) Abrams' sealing of cases is intended "to protect her own reputation, rather than to serve a compelling client privacy or safety interest" (FAC, ¶ 56(c))

As with the statement in the Bully Article regarding Abrams allegedly attempting "to hide her behavior from the rest of the legal community and the public," this is a statement of opinion, not fact, and therefore does not qualify as defamation. *See Partington*, 56 F.3d at 1153; a*ccord Gardner v. Martino*, 563 F.3d 981, 987 (9th Cir. 2009).

d) Abrams engaged in "judicial browbeating" (FAC, ¶ 56(d))

Whether Abrams engaged in "judicial brow beating" is also not defamatory. This statement, interpreted in context, is one that a reasonable person would interpret as "mere rhetorical hyperbole," and therefore it is not actionable in defamation. *Pegasus*, 57 P.3d at 88.

e) Abrams obtained an order that "is specifically disallowed by law" (FAC ¶ 56(e))

As the Court is aware, disagreement about what the law does or does not allow is the bread and butter of the legal profession. If attorneys and members of the public were not permitted to disagree about the interpretation of law, then the entire practice of law would be obviated. Thus, this statement simply cannot be defamatory.

f) Abrams obtained the order against the "general public" with "no opportunity to be heard" (FAC ¶ 56(f)).

As noted above, a statement of fact that is "absolutely true, or substantially true" is not defamatory. *Pegasus*, 118 Nev. at 715. In this instance, it is true that Abrams obtained the order described in the Seal Happy Article. And it is also true that Abrams obtained the order without allowing for any member of the public to weigh in on the order. Thus, this is not defamation.

g) After issuing his initial story, Sanson and VIPI were

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"contacted by judges, attorneys and litigants eager to share similar battle-worn experiences with Jennifer Abrams" (FAC, ¶ 56(g)).

This statement is a true statement of fact, and thus not actionable. Moreover, it is unclear how Abrams would be able to know whether this is a false statement, as she was not a party to any of the conversations that took place between defendants and certain members of the legal community.

h) Abrams obtained an "overbroad, unsubstantiated order to seal and hide the lawyer's actions" (FAC, ¶ 56(h)).

As discussed *supra* in § V(B)(2) this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

i) Abrams is an "over-zealous, disrespectful lawyer[] who obstruct[s] the judicial process and seek[s] to stop the public from having access to otherwise public documents (FAC, ¶ 56(i)).

Whether Abrams is "overzealous" or "disrespectful" are matters of opinion.[16] There are no objective standards for what constitutes being "overzealous" or "disrespectful." Furthermore, whether sealing multiple cases—a tactic which does, in fact, stop the public from having access to otherwise public records of legal proceedings—obstructs the judicial process is a matter of opinion that cannot be proven true or false. Thus, this statement cannot be defamatory. *See, e.g.*, *Lieberman v. Fieger*, 338 F.3d 1076 (9th Cir. 2003) (comments made by attorney during televised interview about psychiatrist who had served as expert witness in highly publicized murder trial that the psychiatrist was "Looney Tunes," "crazy," "nuts," and "mentally imbalanced," were protected under First Amendment as statements of opinion).

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[16] Otherwise, this litigation itself would be evidence of the truth of her over-zealousness and lack of respect for the judicial process or legal resources—and, of course, truth is an absolute defense to a claim for defamation. *See Thomas v. Pearl*, 998 F.2d 447, 452 (7th Cir.1993) ("[A] party's accurate quoting of another's statement cannot defame the speaker's reputation since the speaker is himself responsible for whatever harm the words might cause.... The fact that a statement is true, or in this case accurately quoted, is an absolute defense to a defamation action.")

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4. The Acting Badly Article Is Not Defamatory.

a) Plaintiffs were "acting badly" in Clark County Family Court (FAC, ¶ 60(a)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

b) Abrams' behavior is "disrespectful and obstructionist" (FAC, ¶ 60(b)).

As explained in § V(B)(2), whether an attorney is "disrespectful" or "obstructionist" is purely a matter of opinion, and therefore stating it cannot be defamatory.

c) Judge Elliot's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public" (FAC, ¶ 60(c)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

d) Abrams engaged in conduct for which she should be held "accountable" (FAC, ¶ 60(d)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

5. The Deceives Article Is Not Defamatory.

Plaintiffs contend that Sanson made two different "false and defamatory" statements in his November 16 "Deceives" article. (*See* FAC, ¶ 64.) However, all five of the listed statements either do not appear in the article or are non-actionable statements of opinions.

a) Abrams "appears to be 'seal happy' when it comes to trying to seal her cases (FAC, ¶ 64(a)).

As explained in § V(B)(2), *supra*, whether an attorney is "seal-happy" is purely a matter of opinion, and therefore stating it cannot be defamatory.

b) Abrams "bad behaviors" were "exposed" (FAC, ¶ 64(b)).

As discussed *supra* in § V(B)(2), this is merely an expression of Defendants' opinion regarding Abrams' legal tactics, and thus is not defamation.

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6. December 21 "Inspection Videos".

As discussed above in § V(B)(1), a video cannot possibly be considered defamatory because it is a real video of an actual proceeding.

7. The Schoen Conversation Is Not Defamatory.

Plaintiffs contend that Sanson made several "defamatory statements" during a December 22, 2016 conversation with David J. Schoen, IV, an employee of The Abrams & Mayo Law Firm who is not a plaintiff in this case. (FAC, ¶¶ 70-81.) The statements Plaintiffs complain of include:

- An allegation that Plaintiffs "bullied" and "forced" Yulia in "unlawfully" entering her home, or words to that effect (FAC, ¶ 71);
- An allegation that Jennifer Abrams is "unethical and a criminal," or words to that effect (FAC, ¶ 72);
- An allegation that Jennifer Abrams "doesn't follow the law," or words to that effect (FAC, ¶ 73);
- An allegation that Jennifer Abrams was "breaking the law by sealing her cases" or words to that effect (FAC, ¶ 75);
- An allegation that Sanson is in possession of "dozens of hours" of hearing videos from multiple cases where Jennifer Abrams is counsel of record, or words to that effect (FAC, ¶ 79); and
- An allegation that Jennifer Abrams is "in bed with Marshal Willick, that explains a lot about the kind of person she is" (FAC, ¶ 80).

These statements are primarily non-defamatory, non-actionable statements of opinion regarding Abrams' legal tactics. The alleged statement about Abrams being in bed with Marshal Willick is a mixed statement of fact and opinion. While false statements of fact are actionable as defamation, true statements are not. *See Pegasus*, 57 P.3d at 88 ("[n]or is a statement defamatory if it is absolutely true, or substantially true"). Here, Sanson made the factual assertion that Abrams is, or was, in a sexual relationship with Marshal Willick. However, this cannot be defamatory, as Plaintiffs admit the existence of such a relationship

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in their complaint. (FAC, ¶ 80 n. 7) ("The relationship between Jennifer V. Abrams and Marshal S. Willick is not being denied"). Sanson's assertion that Abrams' relationship with Willick "explains a lot about the kind of person she is" is not a statement of fact, but rather a disapproving opinion of Abrams' and Willick's relationship. Because it consists of a truthful statement of fact coupled with a non-actionable opinion, this statement as a whole cannot be defamatory.

8. The "Negative Comments" Are Not Actionable.

Finally, Plaintiffs allege that "[t]he defamatory statements by Defendants have caused numerous negative comments to be directed against Plaintiffs" (FAC ¶ 82), and that one commenter on an article stated that the person hoped Ms. Abrams' law partner would have a heart attack. (*Id.* at ¶ 82, fn. 8.) While unclear, it appears that Plaintiffs are attempting to articulate some sort of secondary liability for the comments of persons unrelated to the defendants. However, Defendants are not liable for the statements of other individuals. Moreover, as noted above, the statement cited by Plaintiffs was directed at Ms. Abrams' law partner, who is not a party to this matter.

C. Plaintiffs' Intentional Infliction of Emotional Distress Claim (Second Claim) Must Be Dismissed.

As a preliminary matter, while corporations may also be "people" these days, of course only a human being can pursue a claim for emotional distress. This should be obvious: the Abrams & Mayo Law Firm does not have emotions and thus cannot experience emotional distress. While the undersigned was unable to locate any Nevada law on the topic (perhaps exactly because it is so ludicrous to pursue such a claim on behalf of a business entity), at least one court has spelled out the inanity of such a claim:

> While it is true that all corporations possess a 'corporate personhood' in which a corporation can sue and be sued, enjoy due process rights under the Fifth and Fourteenth Amendments of the United States Constitution as well as Fourth Amendment rights against search and seizure, and can own property, be a citizen of a state, and even sue for defamation, **it affronts common sense to believe a corporation can suffer emotional distress.**

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Patel v. AT&T, No. 94-B-49, 1997 WL 39907, at *2 (Ohio Ct. App. Jan. 30, 1997) (emphasis added).

Ms. Abrams' personal claim also fails. The elements of a cause of action for intentional infliction of emotional distress ("IIED") are: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress to plaintiff, (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate causation." *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 378, 989 P.2d 882, 886 (1999). In the instant case, Abrams fails to set forth facts sufficient to meet either of the first two elements, and thus her claim for IIED must be dismissed.

1. Abrams Fails to Set Forth Facts Demonstrating Defendants' Behavior Is "Extreme or Outrageous."

Extreme and outrageous behavior must be more than just "occasional acts that are definitely inconsiderate and unkind," but rather conduct which is "outside all possible bounds of decency" and is regarded as "utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal citations omitted). Indeed, liability for IIED "will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Candelore v. Clark Cty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992).

Nevada courts have established that this is a difficult bar to clear. Recently, a court held that, in the context of the workplace, "regularly belittling Plaintiff, calling her a 'piece of shit,' moving her desk to keep an eye on her, falsely telling her other supervisors disapproved of her work, and berating her for taking approved and legally-protected medical leave" did not constitute "extreme or outrageous" enough conduct to survive a motion to dismiss. See *Tuggle v. Las Vegas Sands Corp.*, No. 215CV01827GMNNJK, 2016 WL 3456912, at *2 (D. Nev. June 16, 2016).

In the instant case, none of the behavior Abrams allege Defendants engaged in is "extreme" or "outrageous." Authoring and publishing five Internet articles criticizing Abrams' courtroom behavior and litigation tactics (*see* FAC, ¶¶33-37, ¶¶46-49, ¶¶54-64) is

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not "extreme;" indeed, it is the very type of criticism that is protected by the First Amendment. None of the other behaviors[17] Defendants' allegedly engaged in could be characterized as extreme or outrageous. Rather, these are the types of mere insults and trivialities that are tame compared to the repeated abuse the federal court found not "outrageous or extreme" in *Tuggle*, *supra*. Defendants' alleged behavior was neither extreme nor outrageous enough for Plaintiffs' IIED claim to proceed.

2. Abrams Fails to Set Forth Facts Demonstrating Severe or Extreme Emotional Distress.

To recover on a claim for IIED, a plaintiff must also set forth "objectively verifiable indicia" to establish that the plaintiff "actually suffered extreme or severe emotional distress." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 147 (2014), vacated and remanded on other grounds sub nom. *Franchise Tax Bd. of California v. Hyatt*, 136 S. Ct. 1277, 194 L. Ed. 2d 431 (2016) (quoting *Miller v. Jones*, 114 Nev. 1291, 1300, 970 P.2d 571, 577 (1998)). Additionally, the Nevada courts apply a "sliding-scale" approach to how much evidence of physical injury or illness from emotional distress is required to prevail on an IIED claim: the less outrageous the defendant's alleged behavior is, the more objective evidence of a plaintiff's extreme emotional distress is necessary. *Hyatt*, 335 P.3d at 148 (quoting *Nelson v. City of Las Vegas*, 99 Nev. 548, 665 P.2d 1141 (1983)).

In *Miller v. Jones*, the Nevada Supreme Court held that the plaintiff's deposition testimony that he was "depressed for some time" but "did not seek any medical or psychiatric assistance" was "insufficient to raise a genuine issue of material fact as to whether [Plaintiff] suffered severe emotional distress." *Miller*, 970 P.2d at 577. In the instant case, Plaintiff does not set forth any facts demonstrating that she suffered *any* emotional distress from Sanson's alleged conduct, let alone the severe or extreme emotional distress required to prevail on a

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[17] *See* FAC, ¶ 72 (calling Abrams "unethical and a criminal"), ¶ 73 (saying Abrams "doesn't follow the law"), ¶¶ 75-76 (misstating law regarding sealing cases and the Freedom of Information Act); ¶ 78 (blaming Abrams for "starting this war"); ¶ 79 (alleging possession of "dozens of hours" of videos of Abrams' courtroom hearings); ¶ 80 (truthfully accusing Abrams of "being in bed" with Marshal Willick).

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claim of IIED. Plaintiff merely offers a barely-modified recitation of the damages element of an IIED claim[18], precisely the type of "unadorned, the-defendant-unlawfully-harmed-me accusation" the United States Supreme Court railed against in *Iqbal*. *See Iqbal*, 556 U.S. at 678. Plaintiff's complaint never mentions any specific symptoms of anxiety, depression, or physical ailments resulting from Sanson's alleged behavior. Nor does Plaintiff allege that she sought or received medical or psychiatric assistance for her alleged "mental pain and anguish" or "unjustifiable emotional trauma." Given that Sanson's alleged behavior is not even extreme enough to meet the first element of IIED, Plaintiff must allege many objective indicia of emotional distress to prevail under Nevada's "sliding-scale" approach. Because she has made zero such allegations in her Amended Complaint, Plaintiff's cause of action for IIED must be dismissed.

D. Plaintiffs' Negligent Infliction of Emotional Distress Claim (Third Claim) Must Be Dismissed.

As noted above, The Abrams & Mayo Law Firm cannot pursue any emotional distress claim as a matter of law and, thus, should not have pursued a negligent infliction emotional distress ("NIED") claim. Ms. Abrams also fails to allege a valid claim. Nevada courts recognize that "the negligent infliction of emotional distress can be an element of the damage sustained by the negligent acts committed directly against the victim-plaintiff." *Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995). Thus, a cause of action for NIED has essentially the same elements as a cause of action for negligence: (1) duty owed by defendant to plaintiff, (2) breach of said duty by Defendant, (3) that said breach is the direct and proximate cause of Plaintiff's emotional distress, and (4) damages (i.e. emotional distress).[19]

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[18] *See* FAC ¶ 94 ("Plaintiff was, is, and with a high degree of likelihood, will continue to be emotionally distressed due to the defamation"); FAC ¶95 ("Plaintiffs have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional trauma").

[19] Some argue that more recent decisions of the Nevada Supreme Court require more stringent elements be met; namely that "[t]o recover, the witness-plaintiff must prove that he or she (1) was located near the scene; (2) was emotionally injured by the

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Plaintiff Abrams' claim is insufficient in numerous ways. Aside from incorporating the rest of the complaint by reference and asking the court for damages in excess of $15,000.00, the only other paragraph in this claim is "To whatever extent the infliction of emotional distress asserted in the preceding cause of action was not deliberate, it was a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others." (FAC, ¶97.) On its face, this claim cannot proceed: it fails to even set forth the elements of NIED or even mention the word "negligence." Even if Plaintiff Abrams had bothered to name the elements of NIED, this claim could not move forward. *Michoff*, 108 Nev. at 936. She has not pled (and cannot plead) any particularized facts which demonstrate that Defendants owed her a duty of care or breached said duty. Moreover, just like the IIED claim, the NIED fails to plead any *facts* which tend to demonstrate Plaintiffs suffered any emotional distress whatsoever. Thus, the Court should dismiss this spurious claim.

E. Plaintiffs' False Light Claim (Fourth Claim) Must Be Dismissed.

1. The Abrams & Mayo Law Firm Is Not A Human Being and Cannot Pursue a False Light Claim.

As was the case with the emotional distress claims, a business entity cannot pursue a claim for false light because it is not an actual human being. Because it is not a human being, it has no right to privacy. *See United States v. Morton,* 338 U.S. 632 (1950); Restatement of the Law 2d, Torts, Section 6521, Comment c (1977*); Franklin Prescriptions Inc. v. N.Y. Times Co.*, No. CIV. A. 01-145, 2001 WL 936690, at *2 (E.D. Pa. Aug. 16, 2001) (federal court exercising supplemental jurisdiction over state law false light claim by company dismissed it because "[h]aving adopted the tentative restatement, the Pennsylvania Supreme Court likely would adopt the Restatement and would approve of the notion that false light invasion of privacy is limited to individuals."). Moreover, because it is not a human being, a law firm cannot suffer "mental anguish." *People for the Ethical*

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contemporaneous sensory observance of the accident; and (3) was closely related to the victim. *Grotts v. Zahner*, 115 Nev. 339, 340, 989 P.2d 415, 416 (1999) (citation omitted). In any case, even under the more permissive and generalized *Shoen* standard, Plaintiff Abrams' claim fails as set forth above.

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Treatment of Animals v. Bobby Berosini, Ltd., 111 Nev. 615, 622 n.4 (1995) ("The false light action differs from a defamation action in that the injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is damage to reputation.")

2. Claims for False Light Are Disfavored.

With regard to the substance of the archaic false light tort, it must be noted that the archaic false light tort is largely duplicative of the tort of defamation, but omits imperative built-in First Amendment protections and safeguards contemplated by the more stringent standard required for defamation claims. *See Denver Pub. Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). Unlike defamation, the amorphous nature of false light carries serious risks of chilling fundamental First Amendment speech rights. *See id.* Furthermore, the subjective standards in false light give no clarity in specifying what conduct should be considered wrongful, which makes the false light tort a poor deterrent of wrongful conduct. *See id.* at 903 (recognizing that "[b]ecause tort law is intended to both recompense wrongful conduct and to prevent it, it is important to be clear in its identification of that wrongful conduct. The tort of false light fails that test.").

Because of this overlap with defamation, risks of chilling First Amendment freedoms, and vague subjective parameters, courts disagree about whether false light should even be recognized as a separate privacy tort from defamation. *See id.* at 897-98. Some states either have not expressly adopted the tort or have expressly rejected it. *See, e.g., id.* at 897, 904 (holding that "false light is too amorphous a tort for Colorado, and it risks inflicting an unacceptable chill on those in the media seeking to avoid liability.")

In any case, The VIPI Defendants recognize that the Nevada Supreme Court has "impliedly recognized the false light invasion of privacy tort." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 140 (2014) (citing *Berosini, Ltd.*, 895 P.2d 1269, 111 Nev. 615, n. 4). However, the authority from Colorado serves to remind the Court that the tort should be evaluated carefully and not be allowed to stifle speech.

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3. Plaintiff Abrams' Claim For False Light Fails.

According to the Nevada Supreme Court, the false light tort requires that "(a) the **false light** in which the other was placed **would be highly offensive to a reasonable person, and** (b) the actor had **knowledge of** or acted in reckless disregard as to the **falsity of the publicized matter** and the false light in which the other would be placed." *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. Adv. Op. 71, 335 P.3d 125, 141 (2014) (emphasis added). Nevada courts require that Plaintiffs suffer mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson v. Sprint Nextel Corp.*, 2014 WL 553314 at *5 (D. Nev. Feb. 10, 2017). Plaintiffs do not make allegations that satisfy these elements; they simply make threadbare accusations and rote recitations of legal conclusions. (*See* FAC, ¶¶ 99-100. Plaintiffs fail to enumerate the elements of false light, and also fail to allege that they suffered emotional distress as a result of being portrayed in a false light. Thus, their claim for false light should be dismissed.

a) Plaintiffs Fail to Claim that Sanson's Alleged "False Portrayal" of Plaintiffs Is Highly Offensive to a Reasonable Person.

While Plaintiffs' FAC is full of vitriol and emotion, it nowhere alleges that there is any "false light," let alone that the "false light" that Ms. Abrams was placed in was highly offensive to a reasonable person. All Plaintiffs do is, in conclusory fashion, allege that Defendants recklessly or knowingly made/published "false and misleading facts" (FAC, ¶ 100) that "are highly offensive and inflammatory" (FAC, ¶ 101.) Not only does she not get the elements quite right, this kind of conclusory pleading is not sufficient.

When analyzing whether a complaint should be dismissed, this Court must accept factual allegations in the complaint as true, but it need not accept legal conclusions as true. *Vacation Village*, 110 Nev. at 484, 874 P.2d at 746 (citation omitted); *In re Amerco Derivative Litigation*, 252 P.3d at 706. Here, the FAC contains insufficient facts to establish a claim for false light because falsity is a threshold requirement. As stated above (§ V(B)

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("Plaintiff's Defamation Claim Fails")), the type of statements at issue in this case cannot be true or false. **Only facts** may be **false**, and "as long as the author presents the factual basis for his statement, it can only be read as his personal conclusion about the information presented, *not as a statement of fact*." *Partington v. Bugliosi*, 56 F.3d 1147, 1156 (9th Cir. 1995) (emphasis in original, internal quotations omitted).This Court may not infer from Plaintiff Abrams' conclusory characterization of the material as "false and misleading" (FAC, ¶ 10)) or "highly offensive and inflammatory" (FAC, ¶ 101) that the material was in fact false.

b) Plaintiff Abrams Fails to Allege Any Emotional Distress Resulting from Defendants' Alleged "False Portrayal" of Plaintiffs.

Nevada courts require that the Plaintiff prove mental distress resulting from publicizing private matters: "the injury in [false light] privacy actions is mental distress from having been exposed to public views." *Dobson*, 2014 WL 553314, at *5. A plaintiff (such as the Plaintiffs here) who merely alleges that they "have endured stress, anxiety, disparagement of character, fear, emotional distress, and pain and suffering" do not meet this threshold. *See id*. at *6. In the instant case, Plaintiffs have failed to allege that they suffered *any* emotional distress as a result of this "false light." Plaintiffs have not even alleged facts which tend to demonstrate they suffered any emotional distress whatsoever. (*See* § V(C)(2) ("Abrams Fails to Set Forth Facts Demonstrating Severe or Extreme Emotional Distress.)). Therefore, Plaintiffs' claim for false light must be dismissed.

F. Plaintiffs' Business Disparagement Claim (Fifth Claim) Must Be Dismissed.

The elements of a business disparagement cause of action are: "(1) a false and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages." *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 386, 213 P.3d 496, 504 (Nev. 2009) (citing *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987)). Plaintiffs cannot prevail on the first three elements of business

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disparagement for the same reason their defamation claim fails. Plaintiffs also fail to allege special damages, and thus the Court should dismiss this cause of action.

The Nevada Rules of Civil Procedure require that "[w]hen items of special damage are claimed, they shall be specifically stated." NRCP 9(g). "[P]roof of special damages is an essential element of business disparagement … in a business disparagement claim, the plaintiff must prove that the defendant's disparaging comments are the proximate cause of the economic loss." *CCSD v. Virtual Ed. Software*, 125 Nev. 374, 387, 213 P.3d 496, 505 (2009). Therefore, "a cause of action for business disparagement requires that the plaintiff set forth evidence proving economic loss that is attributable to the defendant's disparaging remarks" or, failing that, "show evidence of a general decline of business." *Id.*

Plaintiffs' Amended Complaint does not specifically state any special damages with regard to its business disparagement claim. It instead issues a blanket demand for damages in excess of $15,000.00. (*See* FAC, ¶ 105.) Plaintiffs never once allege that Sanson's comments have caused them economic loss, nor do Plaintiffs even proffer any evidence of a general decline of business since October 2016.[20] Because Plaintiffs fail to allege special damages in flagrant disregard for NRCP 9(g), their claim of business disparagement should be dismissed.

G. Plaintiffs' Harassment Claim (Sixth Claim) Must Be Dismissed.

Harassment is a criminal act defined by Nev. Rev. Stat. § 200.571. There is no civil cause of action for harassment, unless the perpetrator was motivated by certain characteristics of the victim. *See* Nev. Rev. Stat. § 41.690. Nowhere do Plaintiffs allege that Defendants violated Nev. Rev. Stat. § 200.571, nor do Plaintiffs allege that any alleged violation of criminal statute was motivated by Plaintiffs' characteristics. Instead, Plaintiffs attempt to

[20] As part of their RICO claim, Plaintiffs make naked allegations that Defendants stole "good will" which has "diminished the value of the business." (FAC, ¶ 137.) However, this is not a specific pleading that provides facts tending to prove economic loss, nor is it related to Plaintiffs' Business Disparagement claim, and thus cannot help Plaintiffs prevail on their claim of Business Disparagement.

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create a new cause of action from bits and pieces of existing causes of action. This novel claim of "harassment" apparently consists of one part defamation[21], one part business disparagement[22], and a smidge of IIED.[23] Because Harassment simply does not exist as a civil cause of action in Nevada statute or case law, this Court should not allow Plaintiffs to proceed with a superfluous claim that is little more than an imaginative amalgamation of other claims. This claim must be dismissed with prejudice.

H. Plaintiffs' "Concert of Action" Claim (Seventh Claim) Must Be Dismissed

The elements of a cause of action for Concert of Action are that Defendant acted with another, or Defendants acted together, to commit a tort while acting in concert or pursuant to a common design. *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98 (1998). The plaintiff must also show the defendants "agreed to engage in conduct that is inherently dangerous or poses a substantial risk of harm to others." *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1092 (D. Nev. 2012) (quoting *GES, Inc. v. Corbitt,* 117 Nev. 265, 21 P.3d 11 (2001)). The conduct alleged is not inherently dangerous. Further, because the other tort claims fail, so does this one.

I. Plaintiffs' Civil Conspiracy Claim (Eighth Claim) Must Be Dismissed.

The elements of a cause of action for civil conspiracy are: (1) Defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming plaintiff; and (2) Plaintiff sustained damage resulting from defendants' act or acts. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, P.2d 1251 (Nev. 1999).

Plaintiffs' FAC is hard to make sense of, but it appears that their conspiracy claim is predicated on disparaging Plaintiffs, placing them in a false light, inflicting emotional distress upon them, and "harassing them."[24] As set forth above, each of those causes of action

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[21] *See* Amended Complaint ¶ 107.

[22] *See* Amended Complaint ¶ 108.

[23] *See* Amended Complaint ¶ 109.

[24] Plaintiffs' Schneider Opposition at p. 5:21-6:17.

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fails. There was nothing illegal about Mr. Sanson or VIPI posting videos or engaging in free speech critical of the Ms. Abrams and her law firm. This claim thus also necessarily also fails. Plaintiffs cannot rely on the conclusory claim that "this behavior is unlawful" to satisfy their pleading burden.

J. Plaintiffs' RICO Claim (Ninth Claim) Must Be Dismissed.

The elements of a civil RICO claim are: (1) defendant violated a predicate racketeering act; (2) plaintiff suffered injury in her business or property by reason of defendant's violation of the predicate racketeering act; (3) defendant's violation proximately caused plaintiff's injury; (4) plaintiff did not participate in the racketeering violation. Nev. Rev. Stat. § 207.470, Nev. Rev. Stat. § 207.400; *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 849 P.2d 297 (Nev. 1993). The Nevada Supreme Court has held that civil racketeering claims must be pled not merely with specificity, but with the specificity required of a criminal indictment or information. *Hale v. Burkhardt*, 104 Nev. 632, 637-38, 764 P.2d 866, 869-70 (Nev. 1988). The complaint must provide adequate information as to "when, where [and] how" the alleged criminal acts occurred. *Id.* at 637.

In the instant case, Plaintiffs allege that Defendants "either committed, conspired to commit, or have attempted to commit" twelve separate offenses. *See* FAC ¶ 118. However, several of these alleged offenses are not predicate racketeering acts under Nevada law, and thus cannot form the basis of a civil RICO claim. For the alleged offenses that are predicate racketeering acts, Plaintiffs have not pled facts sufficient to demonstrate that Defendants violated, conspired to violate, or attempted to violate any of the predicate racketeering acts. Furthermore, Plaintiffs have not pled facts sufficient to demonstrate that they suffered any injury in their business or property by reason of these alleged violations, nor have they sufficiently demonstrated that Defendants' alleged conduct is the proximate cause of Plaintiffs' alleged injury. Thus, this claim should be dismissed.

1. Several Alleged Violations are not Violations of Predicate Racketeering Acts, and Cannot Form the Basis of a RICO Violation

"Crimes related to racketeering" are enumerated in Nev. Rev. Stat. § 207.360. *Hale*, 104 Nev. at 634. Thus, crimes that are not enumerated in Nev. Rev. Stat. § 207.360

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cannot be predicate racketeering acts. Plaintiffs waste this Court's time by alleging that Defendants committed seven crimes that are nowhere to be found in Nev. Rev. Stat. § 207.360:

(1) Intimidating public officer in violation of Nev. Rev. Stat. § 199.300(d). FAC ¶ 118(c);

(2) Criminal Contempt (Willful Disobedience of Court) in violation of Nev. Rev. Stat. § 199.340(4). FAC ¶ 118(d);

(3) Criminal Contempt (Publication of Grossly Inaccurate Report of Court Proceedings) in violation of Nev. Rev. Stat. § 199.340(7). FAC ¶ 118(e);

(4) Challenges to fight in violation of Nev. Rev. Stat. § 200.450. FAC ¶ 118(f);

(5) Furnishing libelous information in violation of Nev. Rev. Stat. § 200.550. FAC ¶ 118(g);

(6) Threatening to publish libel in violation of Nev. Rev. Stat. § 200.560. FAC ¶ 118(h);

(7) Harassment in violation of Nev. Rev. Stat. § 200.571. FAC ¶ 118(i).

Because none of these alleged crimes are predicate offenses listed in Nev. Rev. Stat. § 207.360, they cannot form the basis of a RICO claim and need not be discussed further.

2. Plaintiffs Have not Sufficiently Demonstrated that Defendants Bribed or Attempted to Bribe or Intimidate Witnesses to Influence Testimony in Violation of Nev. Rev. Stat. § 199.240(2)(b).

Nev. Rev. Stat. § 199.240(2)(b)[25] prohibits the use of force, threat, intimidation or deception with the intent to cause or induce him or her to give false testimony or to withhold true testimony. Plaintiffs allege that Defendant Schneider made "threats." However, Plaintiffs fail to allege in their FAC that Sanson made any threats whatsoever. Furthermore, Plaintiffs have not demonstrated any Defendants' intent to cause or induce

[25] Plaintiffs cite to Nev. Rev. Stat. § 199.240(b), which does not exist. Assuming, *arguendo*, that Plaintiffs also meant to accuse Defendants of bribery under Nev. Rev. Stat. § 199.240(1), such a claim cannot underlie a RICO violation because Plaintiffs have not pled with specificity any monetary transaction between Defendants and potential witnesses. A naked allegation, upon "information and belief," that Defendant Schneider paid money to the other Defendants (*see* FAC ¶ 44), none of whom are potential witnesses in an official proceeding, does not lay out the "when, where or how" in a matter sufficient to make a prima facie claim of bribery under Nev. Rev. Stat. § 199.240(1).

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Plaintiffs to give false testimony or to withhold true testimony. Indeed, Plaintiffs have not alleged that they are potential witnesses in any relevant litigation. Thus, Plaintiffs cannot make a prima facie claim of a violation of Nev. Rev. Stat. § 199.240(2)(b) with regard to Sanson.

3. Plaintiffs Have not Sufficiently Demonstrated that Defendants Bribed or Attempted to Bribe or Intimidate Witnesses to Influence Testimony in Violation of Nev. Rev. Stat. § 199.240(2)(c).

Nev. Rev. Stat. § 199.240(2)(c) prohibits the use of force, threat, intimidation or deception with the intent to cause or induce someone to withhold a record, document or other object from a proceeding. As mentioned above, Plaintiffs fail to allege in their FAC that Sanson made any threats whatsoever. Thus, Plaintiffs cannot make a prima facie claim of a violation of Nev. Rev. Stat. § 199.240(2)(c) with regard to Sanson.

4. Plaintiffs Have not Sufficiently Demonstrated that Defendants Engaged or Attempted to Engage in Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise in Violation of Nev. Rev. Stat. § 205.377.

To be guilty of multiple transactions involving fraud or deceit in the course of enterprise or occupation, a person must:

> "knowingly and with the intent to defraud, engage in an act, practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that:
>
> (a) The person knows to be false or omitted;
>
> (b) The person intends another to rely on; and
>
> (c) Results in a loss to any person who relied on the false representation or omission,
>
> in at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650." Nev. Rev. Stat. § 205.377.

Nowhere in the FAC do Plaintiffs allege that Defendants made any sort of false representation or omission of a material fact to Plaintiffs. Plaintiffs cannot possibly demonstrate that Defendants had knowledge of a nonexistent representation's falsity, nor

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that Defendants intended that Plaintiffs relied on a nonexistent representation. Plaintiffs do not allege that they engaged in even one transaction, let alone two or more, with Defendants. Finally, Plaintiffs also fail to plead that they have lost anything of value or suffered any pecuniary damages from Defendants' conduct. Because Plaintiffs have failed to adequately allege any element of the crime defined in Nev. Rev. Stat. § 205.377, this naked accusation cannot form the basis of a RICO claim.

5. Plaintiffs Have not Sufficiently Demonstrated that Defendants Took or Attempted to Take Property form Another Under Circumstances not Amount to Robbery.

To be guilty of taking property from another under circumstances not amounting to robbery, one "must knowingly and designedly by any false pretense obtain any chose in action, money, goods, wares, chattels, effects or any other valuable thing, including rent or the labor of another person not his or her employee, with the intent to cheat or defraud the other person." Nev. Rev. Stat. § 205.380(1). Thus, to prevail on a claim for false pretenses, a party must establish four elements: (1) intent to defraud; (2) a false representation; (3) reliance on that representation, and (4) that the victim be defrauded. defrauded. *G.K. Las Vegas Ltd. Partnership v. Simon Prop. Grp., Inc.*, 460 F. Supp. 2d 1246, 1257 (D. Nev. 2006) (citing *Bright v. Sheriff, Washoe County,* 90 Nev. 168, 169, 521 P.2d 371, 372 (1974)).

Nowhere in the FAC do Plaintiffs allege any of the aforementioned four elements of false pretenses. They do not allege any intent to defraud. They do not allege that Defendants made any false representations, so of course they cannot possibly allege that they relied on any false representations. Most importantly, Plaintiffs do not specify any money, goods, wares, chattels, effects, rent, labor, or any other thing of value that they lost to Defendant via fraud. Because Plaintiffs have not even attempted to make a prima facie showing of a violation of Nev. Rev. Stat. § 205.380(1), this alleged crime cannot form the basis of a RICO claim.

6. Plaintiffs Have not Sufficiently Demonstrated that Defendants Committed or Attempted to Commit Extortion.

Nevada's extortion statute states, in relevant part, that, one is guilty of extortion if he or she, with the intent to "affect any cause of action or defense … or to influence the

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action of any public officer, or to procure any illegal or wrongful act … threatens directly or indirectly: (1) To accuse any person of a crime; (2) To injure a person or property; (3) To publish or connive at publishing any libel; (4) To expose or impute to any person any deformity or disgrace; or (5) To expose any secret." Nev. Rev. Stat. § 205.320. In the instant case, Plaintiffs fail to sufficiently allege that VIPI Defendants have made any threats whatsoever.

For all these reasons, the RICO claim must be dismissed.

K. Plaintiffs' Copyright Infringement Claim (Tenth Claim) Must Be Dismissed.

1. This Court Does Not Have Subject Matter Jurisdiction Over Plaintiffs' Alleged Claims of Copyright Infringement

Claims for copyright violations are subject to the exclusive original jurisdiction of the federal courts:

> The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

28 U.S.C. 1338(a). Consequently, this Court cannot hear matters pertaining to this purported claim, and it must be dismissed.

2. Plaintiffs' Claims Could not Proceed Even if this Court did Have Jurisdiction.

Plaintiffs have not sufficiently pleaded that they actually own the copyrights in professional pictures taken of them. Plaintiffs cannot file a copyright infringement claim before registering their copyrights with the U.S. Copyright Office. *See* 17 U.S.C. § 411(a) ("no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title.") Plaintiffs admit that they have not yet obtained copyright registrations for their works: "Defendants have infringed upon Plaintiffs' photographic works owned by Plaintiff, for which copyright registration is being sought…". (FAC, ¶ 90.)

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In addition, Defendants' use of publicly available pictures of Plaintiffs in connection with its statements and articles falls under the "fair use" exception to the Copyright Act. Accordingly, Plaintiffs have failed to sufficiently allege a claim for copyright infringement and, even if this Court had jurisdiction over the claim, it would have to be dismissed.

L. Injunctive Relief Is Not a Cause of Action, and Plaintiffs Are Not Entitled to Injunctive Relief.

Injunctions are an equitable form of relief that a court may grant to prevent future harms to Plaintiffs. It is not a separate cause of action and, even if it were, it is an improper remedy. Courts rarely grant injunctive relief in defamation or business interference cases. While the Nevada Supreme Court has granted a preliminary injunction concerning allegedly defamatory conduct; that case did not explicitly address the First Amendment issues present in this case. *See Guion v. Terra Marketing of Nevada, Inc.,* 90 Nev. 237, 523 P.2d 847 (1974). The facts of this case—even as alleged by Plaintiffs—do not come close to meeting the standard for injunctive relief barring speech. Moreover, the broad relief requested also includes a demand for forced speech, which is of course also unconstitutional.

1. Injunctive Relief Is Not a Cause of Action.

This claim must be dismissed. Injunctive relief is a type of remedy—not a separate cause of action. *See e.g., Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010) ("An injunction is a remedy, not a separate claim or cause of action. A pleading can . . . request injunctive relief in connection with a substantive claim, but a separately pled claim or cause of action for injunctive relief is inappropriate.").

2. Injunctive Relief Is Not Permissible Relief.

Both the U.S. Constitution and the Nevada Constitution protect the right to speak freely, which includes the right to engage in speech critical of businesses—even law firms—and attorneys. The First Amendment, applied to the states through the Fourteenth Amendment, of course protects "free speech." Similarly, Article 1, section 9 of the Nevada Constitution unequivocally provides that "every citizen may freely speak, write and publish

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his sentiments on all subjects, being responsible for the abuse of that right." The Nevada Supreme Court has observed "the constitutional right to free speech . . . embraces every form and manner of dissemination of ideas held by our people" and that "[f]ree speech . . . must be given the greatest possible scope and have the least possible restrictions imposed upon it, for it is basic to representative democracy." *Culinary Workers Union v. Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990, 993, 994 (1949);[26] *see also People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 625 (Nev. 1995) (reversing injunctive relief in a defamation case and holding that the "the constitutional privilege provided by the Nevada Constitution protects the animal rights activists [speakers] from defamation liability."); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978) ("the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.").

Injunctive relief enjoins speech before it even occurs and, thus, constitutes a prior restraint. *See* Erwin Chemerinsky, *Injunctions in Defamation Cases*, 57 Syracuse L. Rev. 157, 163 (2007); *see also Alexander v. United States*, 509 U.S. 544, 550 (1993); *Balboa Island Village Inn, Inc. v. Lemen*, 57 Cal. Rptr. 3d 320, 355 (Cal. 2007) ("A prohibition targeting speech that has not yet occurred is a prior restraint."); *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697, 706 (1931) (holding that an injunction prohibiting the publication of expressive material was a prior restraint, and reversing a court order that indefinitely enjoined a court order that enjoined any future "malicious, scandalous or defamatory" publication). The Injunction Order is thus presumptively unconstitutional. *See, e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights and are thus

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[26] In *Culinary Workers*, on a writ of prohibition, the Nevada Supreme Court overturned a district court injunction against peaceful picketing that had been based in part on the fact that an "unfair" sign was untruthful. *Id.* at 995. The Supreme Court noted that statements of opinion "are not subject to judicial restraint." *Id.*

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presumptively unconstitutional).[27]

Indeed, any prior restraint, including the Injunction Order, carries a "heavy presumption" against its constitutional validity. *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Due to the inherent First Amendment problems, courts rarely, if ever, grant injunctions enjoining defamatory speech.[28] Under early English and American common law, injunctions were never permissible in defamation cases. *See* Chemerinsky, *supra*, at 167. The United States Supreme Court has never departed from this precedent.[29]

Business interests such as the ones asserted by Plaintiffs in this case cannot serve as the basis for an injunction against free expression. In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) the United States Supreme Court reversed an injunction against distributing pamphlets critical of a realtor's business practices. The Court noted:

> No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or

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[27] Even where a criminal defendant's Sixth Amendment rights are alleged to be at issue, a court is strictly limited in its ability to limit publication, "one of the most extraordinary remedies known to our jurisprudence." *Hunt v. National Broadcasting Co.*, 872 F.2d 289, 293 (9th Cir. Cal. 1989) (citation omitted).

[28] "The thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted. Only after judgment has become final, correct or otherwise, does the law's sanction become fully operative. A prior restraint, by contrast and by definition, has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time. The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 2803, 49 L. Ed. 2d 683 (1976).

[29] The Supreme Court was poised to consider the question of whether an injunction should ever be available to enjoin false and defamatory speech but decided not to after the plaintiff's death. *Tory v. Cochran*, 544 U.S. 734, 736 (2005) (while the Court did not find it moot, it held that the plaintiff's "death makes it unnecessary, indeed unwarranted, for us to explore … [whether] the First Amendment forbids the issuance of a permanent injunction in a defamation case.

> leaflets warrants use of the injunctive power of a court. …Among other important distinctions, respondent is not attempting to stop the flow of information into his own household, but to the public.

Id. at 419-420. Just like the plaintiff in *Better Austin*, Plaintiffs are trying to stop the flow of criticism about their business practices to the public. And, just as in *Better Austin*, an injunction in this case could not withstand constitutional scrutiny. For all these reasons, even if there is any defamation at issue in this case or other valid cause of action (which there is not, as detailed above), it should not be enjoined.

3. An Injunction Cannot Issue to Force Speech.

It is well-established that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752 (1977). Although this issue has not yet arisen in Nevada, other courts have been loath to force apologies from civil litigants, as forcing someone to speak violates his or her First Amendment rights. *See Griffith v. Smith,* 30 Va. Cir. 250 (Va. Cir. 1993), *rev'd on other grounds sub nom. Roberts v. Clarke*, 34 Va. Cir. 61 (Va. Cir. 1994) ("First Amendment concerns preclude the Court from ordering the apology originally suggested").[30] This court should not use its injunctive power to force any speech, much less a formal apology, out of a civil litigant.

VI. PLAINTIFFS SHOULD NOT BE GRANTED LEAVE TO AMEND

Typically, NRCP 15(a) provides that leave to amend a complaint should be "freely given when justice so requires. Such leave, however, "should not be granted if the proposed amendment would be futile ... [, and] plead[ing] an impermissible claim" is futile. *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. Adv. Op. No. 42, 302 P.3d 1148, 1152 (2013) (citation omitted). A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim—such as one which would not survive a motion to dismiss under NRCP 12(b)(5)—or a "last-second amendment[ ]

[30] Admittedly, the case law in this area is scant. Perhaps this is because forced speech may be common in places like China, North Korea, Australia, South Africa, and other places that don't have a First Amendment but is not tolerated here.

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alleging meritless claims in an attempt to save a case from summary judgment." *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).

As discussed above, Plaintiffs have failed to state any claims upon which this Court may grant relief. Plaintiffs' defamation claims are not actionable, Defendants' alleged statements are protected speech, and Plaintiffs have failed to allege any facts to support their various tort claims, even seeking emotional distress on behalf of a law firm. Plaintiffs have also failed to allege facts to support their civil conspiracy and racketeering claims. Finally, Plaintiffs' request for injunctive relief is a request for an impermissible prior restraint on Defendants' protected speech, and thus cannot stand. In short, Plaintiffs' claims are both baseless and impermissible, and any attempt to amend the FAC would be futile. Accordingly, this Court should not permit Plaintiffs to amend the FAC.

VII. CONCLUSION

For all these reasons, Plaintiffs' Second Amended Complaint must be dismissed in its entirety, with prejudice. Further, Defendants VIPI and Sanson should be awarded fees and costs for having to defend against this vexatious action.

Respectfully submitted this 16th day of February, 2017.

/s/ Margaret A. McLetchie

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2017, I served a true and correct copy of the foregoing NOTICE OF MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF via electronic service using Wiznet's electronic court filing system and, pursuant to NRCP 5(b)(2)(B), by First Class United States Mail, postage fully prepaid, to the following:

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/s/ Pharan Burchfield
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EXHIBIT A

VETERANS IN POLITICS

Goals and Values

We address the future of politics as warriors and juggernauts, poised as the political 'sword of Damocles' in the body politic, acting in a combative rather than reactive capacity.

Through a stringent evaluation process, Veterans In Politics, International, Inc. openly interviews, selects, then endorses political candidates.

Chosen candidates are publicly presented the VIPI endorsement, then promoted by VIPI membership.

These procedures are conducted to ensure that only people of the highest quality of character occupies our elected seats, and to obtain the VIP mission statement.

We continue to fight for the freedom our country, to uphold our vow to protect and defend our Country and our United States

Constitution, beyond our military service.

Veterans in Politics International Organizational Values:

E Plunbus Unum

In God we Trust

Liberty

Members and Officers Values: Discipline- Behave in accord with the rules of conduct you set out for yourself. Commitment-Follow through on the pledge you have set forth to keep. Loyalty-Bear true faith and allegiance. Duty- Fulfill obligations; professional, legal and moral. Carry out mission requirements and meet professional standards. Respect-Treat people as they should be treated. Honor-Don't lie, cheat, steal, or tolerate those actions by others. Integrity-Be honest in word and deed. Place being right in front of being popular. Courage- Physical and moral bravery. Accept responsibility for mistakes and shortcomings. Nick Starling 808.321.4606

Leave a Reply

You must be logged in to post a comment.

EXHIBIT B

PO Box 33211 Las Vegas NV NV 89136 (702) 228-5087 Info@veteransinpolitics.org

VETERANS IN POLITICS

Our VIPI Officers

Steve Sanson President Veterans In Politics International

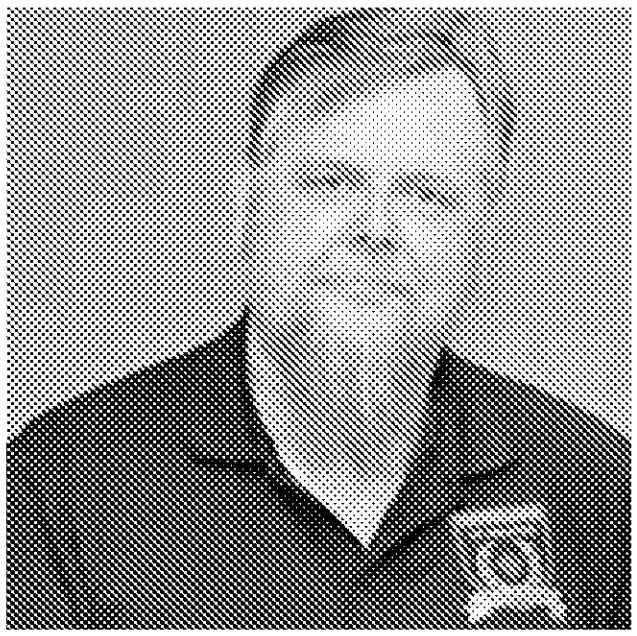
"A Judges decision impacts your life on a very personal level, for the rest of your life"

Vicky Maltman

Auxiliary Director VIPI Northern Nevada Chapter

Dennis Egge

President VIPI Hawaii Chapter



Reginald Angus Argue

President of VIPI Canada Chapter

PO Box 28211, Las Vegas NV, NV 89126. (702) 283-8088 Info@veteransinpolitics.org

VETERANS IN POLITICS

MEMBERS LOGIN

Carl P. Larson

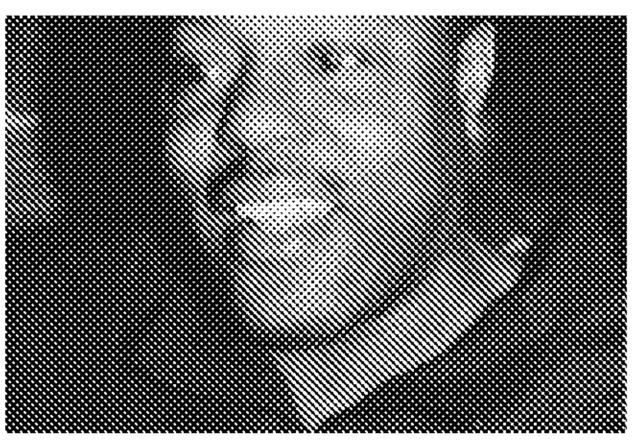
President VIP New York City Chapter

Daniel Dorado

President VIP San Antonio, TX Chapter

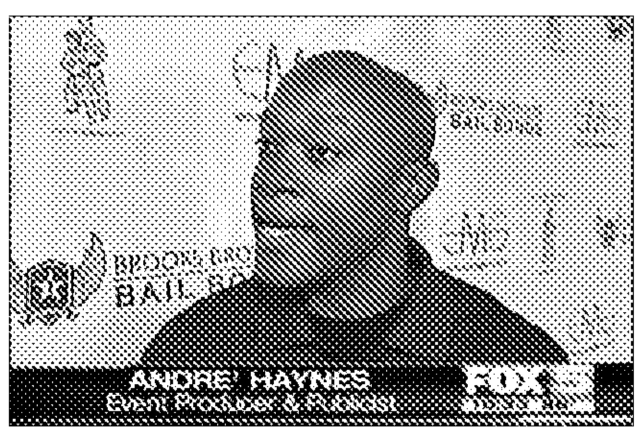
Christina Ortiz

Nevada Chapter Director



Johnny Spicer

VIPI Secretary



Andre Haynes

Auxiliary Director for Veterans In Politics Southern Nevada Chapter

Tim Petarra

Veterans In Politics Nevada Chapter President.

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MSTR
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Attorneys for Defendants Steve W. Sanson and Veterans in Politics International, Inc.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS and THE ABRAMS & MAYO LAW FIRM,
Plaintiff,
vs.

LOUIS C. SCHNEIDER; LAW OFFICES OF LOUIS C. SCHENEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X,
Defendants.

Case No.: A-17-749318-C

Dept. No.: I

MOTION TO STRIKE

Defendants Steve W. Sanson ("Sanson") and Veterans in Politics International ("VIPI") (collectively, the "VIPI Defendants" or "Defendants"), by and through their counsel, Margaret A. McLetchie and Alina M. Shell of the law firm McLetchie Shell LLC, hereby move to strike several paragraphs from Plaintiff's First Amended Complaint ("FAC"). This motion is based on the following Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any oral argument the Court may permit at the hearing of this Motion.

/ / /

/ / /

Dated this the 16th day of February, 2017.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada State Bar No. 10931
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NOTICE OF HEARING

TO: ALL INTERESTED PARTIES.

YOU WILL TAKE NOTICE that the undersigned will bring on for hearing the above-noted MOTION TO STRIKE and to be heard the 22 day of March 2017, at the hour of 9:30 am a.m./p.m., in the above-entitled Court or as soon thereafter as counsel may be heard.

DATED this 16th day of February, 2017.

/s/ Margaret A. McLetchie

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' FAC includes a cause of action that does not exist, several statements of law masquerading as facts, irrelevant and immaterial statements of fact, and scandalous material that simply do not belong in a complaint. For the reasons set forth below, several portions of the FAC must be stricken.

II. LEGAL ARGUMENT

A. Legal Standard for Motion to Strike

The Nevada Rules of Civil Procedure provide that "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." NRCP 12(f). As with the nearly identical Federal Rule[1], the purpose of a NRCP 12(f) motion to strike "is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517, 114 S. Ct. 1023, 127 L. Ed. 2d 455 (1994) (quoting *Sidney–Vinstein v. A.H. Robins Co.,* 697 F.2d 880, 885 (9th Cir.1983)).

B. Harassment is not a Civil Cause of Action.

Plaintiffs' sixth claim for relief, "Harassment," is based on a cause of action that does not exist in either Nevada statute or case law. Like Dr. Frankenstein's monster, "harassment" is a grotesquery stitched together from bits and pieces of actual torts. Its first element, engaging "in a defamatory campaign and threatening dissemination of additional defamatory campaigns"[2] is essentially a restatement of Plaintiffs' first claim for relief, Defamation. Its second element, that Defendants' alleged defamation was "specifically intended to interfere with Plaintiffs' business, and to cause the apprehension or actuality of

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[1] The interpretation of a federal counterpart to a Nevada Rule of Civil Procedure is not controlling, but may be persuasive. *Dougan v. Gustaveson*, 108 Nev. 517, 520-21, 835 P.2d 795, 797 (Nev. 1992).

[2] FAC at ¶ 107.

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economic harm,"[3] is a restatement of Plaintiffs' fifth claim for relief, Business Disparagement. Its third element, Plaintiffs allege that "Defendants' actions were intended to result in substantial harm to the Plaintiffs with respect to their mental health or safety, and to cause economic damage to Plaintiffs."[4] This is merely a restatement of Plaintiffs' second claim for relief, Intentional Infliction of Emotional Distress. Because they are a redundant recitation of previous claims dressed up as a spurious cause of action, paragraphs 106 through 109 of the FAC should be stricken.

C. Legal Conclusions Masquerading as Statements of Fact are Impertinent and Redundant.

Paragraph 32 of the FAC mistakes naked legal conclusions for factual statements, alleging that "Defendants conspired … by defaming, inflicting emotional distress upon, placing in a false light, disparaging the business of, and harassing Plaintiffs." This question-begging recitation of the names of different torts is impertinent, as legal conclusions are not facts. *See* 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706–07 (1990) ("Impertinent matter consists of statements that do not pertain, and are not necessary, to the issues in question.") (quotation marks and citation omitted). Furthermore, this recitation is redundant, as the FAC already has sections devoted to legal conclusions—the claims for relief. Additionally, this paragraph states that Defendants inflicted "emotional distress upon Judge Elliot." Although Defendants deny the allegation of inflicting emotional distress upon Judge Elliot, this allegation is immaterial, as Judge Elliot is not a party to this litigation. For these reasons, Paragraph 32 of the FAC must be stricken.

Similarly, in Paragraph 81 of the FAC, Plaintiffs allege that "defamatory statements by Defendants were intended to harm Plaintiffs' reputation and livelihood, to harass and embarrass Plaintiffs, and to impact the outcome of a pending action." This is essentially a recitation of intent element of a defamation cause of action, making it redundant. Thus, Paragraph 81 of the FAC should be stricken.

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[3] FAC at ¶ 108.
[4] FAC at ¶ 109.

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D. Plaintiff's Email Correspondence with Defendants is Immaterial.

Paragraph 50 of the FAC alleges that, on October 10, 2016, Plaintiff Abrams sent an email to Defendants in which she denies the applicability Freedom of Information Act to state divorce cases, denies being a public figure or running for public office, and reiterates her commitment to advocating for her clients. While this email may demonstrate that Plaintiff Abrams, an attorney, knows more about the practice of law than non-attorney Defendants, it is not material or pertinent to any of Plaintiffs' claims.

Paragraph 52 of the FAC alleges that Defendants responded to the aforementioned email three hours later, contending that Plaintiff is "somehow not untouchable to the media" and naming several Nevada attorneys who "were in some manner involved or related to criminal investigations." This email is not material or pertinent to any of Plaintiffs' claims. For this reason, Paragraphs 50 and 52 of the FAC, which pertain to email correspondence neither pertinent nor material to Plaintiffs' claims, should be stricken.

E. Plaintiff's Assertion that Defendant Ran a Background Check on Plaintiff is Immaterial.

Paragraph 51 of the FAC alleges that, "on or around October 11, 2016, Defendants ran a background search on Plaintiff, Jennifer V. Abrams, and did not find anything negative about her." Running a "background search" is neither a crime, nor a tort, nor in any way pertinent to any of Plaintiffs' claims. The allegation that Defendants found nothing negative about Plaintiff is similarly impertinent to any of Plaintiff's claims. Therefore, paragraph 51 of the FAC should be stricken.

F. Allegations that Schneider paid Other Defendants are Scandalous.

Paragraph 44 of the FAC alleges that "a payment of money was made by Schneider to Defendants Steve W. Sanson [and other named and Doe Defendants]." The Nevada Rules of Civil Procedure demand that "allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." NRCP 11(b)(3). Because this spurious claim has absolutely no evidentiary support, nor is it specifically identified as an

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allegation that is likely to have evidentiary support later, this allegation is scandalous. Thus, Paragraph 44 must be stricken.

G. Direction of Negative Comments at Plaintiffs is Not Material.

In the FAC, Plaintiffs note that a commenter on an article stated that the person hoped Ms. Abrams' law partner would have a heart attack. (FAC ¶ 82, fn. 8). While that comment is indeed distasteful, it was not directed to Ms. Abrams or even her firm, it was directed to her law partner (who is not a plaintiff). Thus, it is not material to the instant dispute, and must be stricken.

III. CONCLUSION

Based upon the above and foregoing, Defendants respectfully request this Court strike Plaintiffs' sixth claim for relief, as well as Paragraphs 32, 44, 50, 51, 52, 81, 82, and 106-109 of the FAC.

Respectfully submitted this 16th day of February, 2017.

/s/ Margaret A. McLetchie
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2017, I served a true and correct copy of the foregoing NOTICE OF MOTION TO STRIKE via electronic service using Wiznet's electronic court filing system and, pursuant to NRCP 5(b)(2)(B), by First Class United States Mail, postage fully prepaid, to the following:

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Attorney for *Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS AND THE ABRAMS AND MAYO LAW FIRM, Plaintiff, vs. LOUIS SCHNEIDER; LAW OFFICES OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X, Defendant.	CASE NO: A-17-749318-C DEPT. NO: I DATE OF HEARING: 3/8/17 TIME OF HEARING: 9:30 a.m.

OPPOSITION TO
"DEFENDANTS STEVE W. SANSON AND VETERANS IN POLITICS INTERNATIONAL, INC'S MOTION TO DISMISS"
AND
COUNTERMOTION FOR ATTORNEY'S FEES

TABLE OF CONTENTS

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I. INTRODUCTION

Defendants Steve Sanson and Veterans in Politics International ("VIPI Defendants") *Motion* is improper in length,[1] unnecessarily repetitive, contains known and apparently deliberate factual inaccuracies, misrepresents authority, and asserts incorrect legal conclusions. The entire motion is based on a false premise.

The First Amended Complaint (hereinafter "FAC") specifies in great detail what this case is about. VIPI Defendants' *Motion* ignores the clear parameters of this case and instead attempts to confuse and mislead this Court.[2] It should be denied in its entirety.

II. OPPOSITION TO MOTION TO DISMISS

A. The Motion is Based on a False Premise

The notion that the VIPI Defendants were exercising their "right to free speech" under the First Amendment by "criticizing" the behavior of an attorney practicing in a courtroom "belonging to the people" is false.

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[1] EDCR 2.20(a)

[2] Had VIPI Defendants focused their *Motion* to ***relevant*** analyses, a separate *Motion for Leave to Exceed Page Limit for their Motion to Dismiss* would have been unnecessary.

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1. The Statements Made by Defendants Are Not "Criticism" but Knowingly False, Misleading, and Defamatory Assertions

Plaintiffs are not complaining about "criticism." Plaintiff's are complaining about a defamation campaign made up of knowingly false assertions made for an illicit purpose.

For example, the "Attack" article's representation of what occurred at the hearing is substantially false. It says, in part, "Your client lied about his finances." But it did ***not*** report that Judge Elliott retracted that statement by the end of the hearing. Even though Louis Schneider repeatedly alleged (falsely) that Plaintiff lied about his finances, Plaintiff ***did*** accurately report his finances from the beginning, and once the judge was fully informed, she explicitly so found on the record (***and*** in a direct email communication to Sanson).

Sanson repeatedly republished the false assertions anyway, for months, for the specific purpose of attempting to harm Plaintiffs by publication of allegations he knew to be false.

In other words, the representation in the "Attack" article is not "criticism," it is actionably defamatory because saying that a lawyer represents a client who "lied about his finances" tends to lower the lawyer in the estimation of the community, excite derogatory opinions about the lawyer, and hold the lawyer up to contempt, and there is no "privilege," "right" or other cover for knowingly and repeatedly[3] defaming a private practice attorney by deliberately spreading lies about her.

The same is true of the other portions of the smear campaign that Sanson/VIPI were paid by Schneider to launch against Plaintiffs.[4] The presumed "defense" to be

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[3] Hundreds of times over the next approximately five months.

[4] In a recent internet radio "interview" on "News Max/Battlefield Nevada," Steve Sanson admitted that he received a payment from Louis Schneider, but then quickly claimed that it was

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made by Defendants – that it is just a ***coincidence*** that Schneider paid Sanson at just the time that the defamation campaigns began, rather than to extort case concessions from Plaintiffs – can be resolved by the trier of fact.

The other volleys in the defamation campaign were equally false, and equally maliciously[5] republished for months. The "Seal-Happy" article says, in part, that the "[l]aw frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices."

That statement is false. The law specifically allows the sealing most of family law cases.[6] The Rules of Professional Conduct impose a ***duty*** of loyalty and confidentiality upon counsel. When Plaintiffs became aware that their clients' were being targeted, the NRPC made it their duty to protect the interests of their current and past clients by sealing cases as permitted by statute. In other words, the law does not "frown" upon such action – the law ***requires*** it.

Defendants may not hide behind the fig leaf of "opinion," either. Statements of "opinion" are not protected speech when they "give rise to the inference that the source has based the opinion on underlying, undisclosed defamatory facts."[7] Defendants' assertions such as "the video exposed the disrespectful and obstructionist behavior of the husband's lawyer, Jennifer Abrams" fall into this category.

There was ***no*** behavior in the video that ***any*** reasonable person could conclude is "obstructionist," so the defamatory statement made by Defendants gave rise to the inference that the source based his opinion on underlying, undisclosed defamatory

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purportedly for "a billboard advertisement."

[5] The word is used in ***both*** senses – in common parlance, ill intentions and active desire to do harm, and in the legal sense, knowledge of falsity or reckless disregard for the truth.

[6] *See* NRS 125.110.

[7] *Lubin v. Kunin*, 117 Nev. 107, 113, 17 P.3d 422 (2001), *citing Nevada Ind. Broadcasting*, 99 Nev. at 411, 664 P.2d at 342.

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facts. The same is true of multiple false statements, such as that Abrams "engaged in behavior" for which she should be held "accountable," that "bad behaviors" were "exposed," and that Abrams obtained an order that "is specifically disallowed by law." All of these assertions were knowingly false when published repeatedly.

2. Defendants Cannot Pretend That They Were "Only Asking Questions"

The Motion admits its own fallacious reasoning: on page 13 it states, "A question can conceivably be defamatory, though it must reasonably be read as an assertion of a false fact; inquiry itself, however embarrassing or unpleasant to its subject, is not an accusation."[8]

We have no problem with the citation, or holding – it means that Defendants' publications are actionable. This applies to questions such as "[B]ut, what judge allows a lawyer to bully her in court and then gets her to issue an overbroad, unsubstantiated order to seal and hide the lawyer's actions?" This "question" falsely asserts that Plaintiffs "bullied" Judge Elliott into issuing "an overbroad, unsubstantiated order to seal and hide the lawyer's actions."

While Defendants repeat that there was "something wrong" with Plaintiff's actions in court, he could only point to three specific issues when asked in the News Max interview:

> Upon watching the video, we observed Jennifer Abrams being very rude to the judge. She told the judge that she's talking. You're interrupting my sentence. She made a comment to her co-counselor and told him to sit down. I thought that was rude. She asked the judge, on record, if she's having any type of relationship with defense counsel, Louis Schneider.

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[8] Citing *Partington v. Bugliosi*, 56 F.3d 1147, at 1157 (9th Cir. 1995).

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None of that – and nothing else in the video (or elsewhere) – amounts to "bullying," "misconduct," or "obstructionism." While people could differ on their subjective opinions of whether a comment or tone was "rude," ***no*** facts present could justify a reasonable person to make an accusation of "unethical" conduct as alleged on page 17 of the Motion.

On that point, the outcome speaks for itself – Judge Elliott admitted that she made mistakes about how much child support Mr. Saiter was paying, admitted that his finances had been accurately disclosed from the beginning, ***retracted*** all allegations against Plaintiffs and Mr. Saiter, and agreed that the terms of the agreement reached in the Saiter case were fair. *Res ipsa loquitur*.

3. The "Public" Has No Right to Invade the Privacy of Mr. and Ms. Saiter, Their Children, Their Finances, or Their Business Practices

As briefly noted above, the Nevada legislature has specifically provided a measure of privacy to litigants in divorce proceedings.[9] Upon the request of either party to the action, the hearings are to be made private and not open to the public.

In this case, Plaintiff's counsel requested a "closed hearing" and the request was granted by Judge Elliott. The discussions during the hearing range from Mr. and Mrs. Saiter's personal finances, monthly expenses, credit card balances, and child support payments, to the level of conflict between the parents, to the details of how Mr. Saiter reports his private business books and records, his personal income, and his taxes, to trade secrets used by Mr. Saiter in his business – ***none*** of which the public has any right to know.

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[9] *See* NRS 125.080; NRS 125.110; EDCR 5.02.

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B. The VIPI Defendants Confuse a 12(b)(5) Motion with a Motion for Summary Judgment

The purpose of a Motion to Dismiss pursuant to NRCP 12(b)(5) is to test the sufficiency of a Complaint. The analysis does ***not*** call for a ruling on the merits of a Complaint. VIPI Defendants' *Motion* goes on at length (at 16-24) regarding the various exhibits to the FAC, which in the VIPI Defendants' view, "prove" that there was no illegal conduct by the VIPI Defendants. The assertion is an empty exercise, intended to confuse rather than clarify.

The standard of review for a 12(b)(5) motion is briefed in detail below in section C. A summary response to VIPI Defendants' lengthy attempt to (improperly) try this case by way of preliminary motion was concisely framed by the Nevada Supreme Court: "***All factual allegations of the complaint must be accepted as true.***"[10] At this juncture at least, the VIPI Defendants cannot deny that they engaged in the illegal conduct pled in the FAC.

Since the Court ***must*** accept the factual allegations made in the FAC as true, the Defendants' lengthy recounting of evidence provided thus far – and their oft-repeated but false assertion that ***any*** statements made by the VIPI Defendants are merely "opinions, rhetorical hyperbole, or true facts"[11] – provides little assistance to this Court for the purposes of this *Motion*.[12]

VIPI Defendants are not entitled to have this Court construe their 12(b)(5) Motion to Dismiss as a Motion for Summary Judgment because they have not

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[10] *Vacation Vill. v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(emphasis added).

[11] See, e.g., *Motion* at 23, lines 15-16.

[12] When the truth of the factual assertions are properly before the trier of fact, Plaintiffs will introduce the evidence necessary to support all claims.

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presented any matters outside of the pleadings.[13] And that makes sense since discovery has not even opened yet. Should this Court wish to nevertheless construe the 12(b)(5) Motion as a Motion for Summary Judgment, Plaintiffs request leave to "present all material made pertinent to such a Motion" pursuant to NRCP 12(b).

C. The FAC Provides Adequate Notice of Claims in this Notice-Pleading State

VIPI Defendants allege (at 22) that "the FAC is pled in a clumsy and obtuse fashion." Their opinion is noted, but whether or not the FAC is a literary masterpiece, VIPI Defendants have provided no authority that could authorize dismissing this action.[14]

VIPI Defendants further allege that "[t]he Plaintiffs each must show how they are independently entitled to relief, and must each specify the damages they are seeking" and that "the FAC largely ascribes the statements it contends is defamatory to all the defendants."[15]

Whether VIPI Defendants like it or not, "Nevada is a notice-pleading jurisdiction [and] the courts are directed to construe liberally pleadings to place into issue matters that are fairly noticed to an adverse party."[16] To plead a claim for relief

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[13] NRCP 12(b): "If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, ***matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment*** and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." (Emphasis added).

[14] This is another attempt by VIPI Defendants to confuse and mislead the Court.

[15] See *Motion* at 11, lines 11-12.

[16] *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792, 801, 801 P.2d 1377, 1383 (1990).

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in Nevada, a party must include (1) a statement of the claim, and (2) a demand (or prayer) for relief.[17] With respect to the first requirement, the complaint must "set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." We have done so.

The FAC has over 50 paragraphs of factual allegations regarding the "why, how, what, and where" of the facts which give rise to the causes of action. Missing from the factual allegations – and explaining VIPI Defendants' assertion that "the FAC largely ascribes the statements it contends is defamatory to all the defendants" – is the ***who***. Because we do not (yet) know. NRCP 26(a) provides:

> At any time after the filing of a joint case conference report, or not sooner than 10 days after a party has filed a separate case conference report, or upon order by the court or discovery commissioner, any party who has complied with Rule 16.1(a)(1) may obtain discovery[.]

Until formal discovery can be conducted, Plaintiffs cannot accurately state who wrote what, who disseminated what, what discussions were held between the named Defendants, and who participated in what way in each phase of the conspiracy and extortion plot detailed in the Complaint. The FAC provides adequate notice to ***all named*** Defendants of the claims by providing sufficient facts, and contains an adequate prayer for relief.

If it is established through discovery that various Defendants did not participate in the unlawful and tortious actions set out in each cause of action, those causes of action will be restricted at trial to those Defendants who did participate.

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[17] NRCP 8(a).

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D. The FAC Survives 12(b)(5) Challenge

The Nevada Supreme Court has held that:

> The standard of review for a dismissal under NRCP 12(b)(5) is ***rigorous*** as this court "'must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party].'" *Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991) (quoting *Merluzzi v. Larson*, 96 Nev. 409, 411, 610 P.2d 739, 741 (1980)). ***All factual allegations of the complaint must be accepted as true.*** Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315, 705 P.2d 126 (1985). A complaint will not be dismissed for failure to state a claim "unless it appears beyond a doubt that the plaintiff could prove ***no*** set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief." Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)).[18]

VIPI Defendants would have this Court conclude that within the 150 paragraphs in the FAC detailing their extortion and protection racket and active campaign of defamation in service to those unlawful activities, there are ***no*** "sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought."[19] In support of that proposition, VIPI Defendants point to paragraphs 101 and 95 of the FAC.[20] VIPI Defendants ask this Court to ignore the ***entire*** "Factual Allegations" section and dismiss Plaintiffs' FAC based on the two (of 150) paragraphs discussed.

VIPI Defendants' *Motion* must be denied in its entirety and this case should progress to enable Plaintiffs to obtain discovery and then seek justice for the harmful acts of ***all named*** Defendants in this matter.

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[18] *Vacation Vill. v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)(emphasis added).

[19] *Western States Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). Nevada Civil Practice Manual, Section 5.02.

[20] Both paragraphs listed appear in the "Claim for Relief" section of the FAC.

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E. Plaintiffs' Defamation Claim is Properly Supported by Facts as Alleged in the FAC and Should Go to the Trier of Fact

VIPI Defendants rely primarily on *Pegasus v. Reno Newspapers, Inc.* in alleged support of their assertion that the complained-of defamatory speech was "opinions, rhetorical hyperbole, or true facts."[21] Each of those asserted possibilities is false.

Pegasus involved the Reno Gazette Journal and its review of a dining establishment. The Court held that:

> This court has held that a statement is not defamatory if it is an exaggeration or generalization that could be interpreted by a reasonable person as "mere rhetorical hyperbole." Nor is a statement defamatory if it is absolutely true, or substantially true. ***A statement is, however, defamatory if it "would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt."***
>
> In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact."[22]

The VIPI Defendants' assertion cannot pass the "straight face test" under that standard. Even if it could, the Nevada Supreme Court has specified that "[w]hether a statement is defamatory is generally a question of law; however, where a statement is susceptible of different constructions, one of which is defamatory, resolution of the ambiguity is a question of fact for the jury."[23]

Here, the statements made by the Defendants in this matter are defamatory because they were obviously intended to, and would naturally "tend to lower the subject in the estimation of the community." The article disseminated on October 5,

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[21] See *Motion* at 23, lines 15-16.

[22] *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

[23] *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425-26 (2001) (citing *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993).

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2016, entitled "Nevada Attorney attacks a Clark County Family Court Judge in Open Court," in which Defendants claim that "There was a war of words between Jennifer Abrams and Judge Jennifer Elliot" was calculated to lower Plaintiff Abrams in the estimation of the community. This "attack" article contains multiple derogatory assertions about Plaintiff Abrams.[24]

The *Motion* repeats the (false) narrative of what actually happened at the hearing. Sanson "quoted" that Plaintiffs' client (Mr. Saiter) was "not truthful" in his financial disclosure – an accusation made by the family court judge at the start of the hearing but explicitly retracted by the judge and apologized for an hour later at the end of the hearing when it was established that the client and counsel had been completely truthful at all times.

Finally, if the statement that Plaintiff Abrams "attacked" a judge is true, Plaintiff Abrams would be subjected to "contemptuous" opinions about her (not to mention actually being ***held*** in contempt of Court, which of course did not happen, among other reasons because the accusation was false). And as detailed below, even the expression of an "opinion" based on factual assertions known to be false or made with a reckless disregard for their falsity, are not protected in any way.

While this analysis can be applied to the entirety of the FAC, we defer to proving these matters at trial. If, as it is charged with doing, this Court accepts the allegations made in the FAC as true, there is at least one defamatory "construction" of the statements. The VIPI Defendants' oft-repeated assertions that their statements are not defamatory because they are "opinions, rhetorical hyperbole, or true facts"[25] are to be decided by the trier of fact.

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[24] See Exhibit 1. Further evidence will be introduced at trial.

[25] See *Motion* at 23, lines 15-16.

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F. The Plaintiffs Are Not "Public Figures"

VIPI Defendants allege that Plaintiffs "must prove malice" because they are "public figures." Specifically, they assert that Plaintiffs are at least "limited public figures" as defined by *Gertz*[26] because: Plaintiff Abrams [...] holds herself out as a highly-qualified attorney specializing in family law – ***an area of public concern*** [and] The Abrams & Mayo Law Firm markets itself as a firm that has advanced specialization in family law matters, and advertises throughout the Las Vegas area.

The assertion of law is bogus, and was knowingly false when asserted, because it ignores the key language from the *Gertz* holding and knowingly mis-states it. Defendants claim "One may become a limited public figure if one ***'voluntarily injects himself or is drawn into a particular public controversy,*** thereby becoming a public figure for a limited range of issues."[27]

In *Gertz*, the Court found that although Mr. Gertz was "active in community and professional affairs [, ...] served as an officer of local civic groups and of various professional organizations, [...] has published several books and articles on legal subjects [, and ...] petitioner was consequently well known in some circles, he had achieved no general fame or notoriety in the community."

On those facts:

> Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.

Applying this standard, the Court found:

> [Mr. Gertz] played a minimal role at the coroner's inquest, and his participation related solely to his representation of a private client. He

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[26] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

[27] See *Motion* at 26, lines 3-5.

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> took no part in the criminal prosecution of Officer Nuccio. Moreover, he never discussed either the criminal or civil litigation with the press and was never quoted as having done so. He plainly did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome.

In other words, a private practice attorney, representing a client in a private case, is not a "public figure" in ***any*** way. The VIPI Defendants' mis-stated proposition would lead to the opposite conclusion about all areas of law; "Plaintiff *X* holds herself out as a highly-qualified attorney specializing in *water law* – an area of public concern." A dismissal of a defamation case based on ***that*** reasoning would turn each and every attorney licensed to practice in Nevada into a "public figure," making it "open season" for defamation against attorneys.

Fortunately, that is not the law. Neither "Family law" *per se*, ***nor*** Mr. and Mrs. Saiter's private divorce, is an area of "public concern," and Ms. Abrams was simply representing her client. The legislature has pretty clearly said there is no public concern by giving Family Division judges and attorneys added ability to close hearings and seal cases[28] upon request of either party.[29] And the hearing in question was a closed hearing.

In further support of their false assertion that Plaintiffs are "public figures," VIPI Defendants rely on an irrelevant Ohio case.[30] Again, VIPI Defendants ignore the relevant facts ***in*** the cited case. There, upholding the lower court's ruling that Mr. Young ***was*** a public figure, the *Young* Court found that "[d]efendants submitted evidence that, between 1973 and 1993, approximately ***fifty newspaper articles***

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[28] NRS 125.110.

[29] NRS 125.080.

[30] *Young v. Morning Journal*, 129 Ohio App. 3d 99, 717 N.E.2d 356 (1998).

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mentioning plaintiff had appeared in the Morning Journal."[31] Moreover, Mr. Young was the head of the narcotics investigative unit for 15 years.[32] No analogous facts are present here, of course, but the case is irrelevant in any event.

Much closer to home is the Nevada Supreme Court holding in *Bongiovi*,[33] in which it held that professional accomplishments such as having an "accomplished career," having a "national reputation" for skill and caring, going to a great school, having a prestigious fellowship, publishing numerous articles and abstracts, contributing to chapters in books and textbooks, belonging to specialized medical groups, and even being "the subject of newspaper articles" does ***not*** make a private practitioner a "limited-purpose public figure" for purposes of defamation law. VIPI Defendants ignore the relevant controlling authority for that most basic of reasons: "It's bad for my case!"[34]

Plaintiffs concede that they hold themselves out as highly-qualified attorneys specializing in family law and that The Abrams & Mayo Law Firm markets itself as a firm that has advanced specialization in family law matters.[35] However, pursuant to *Gertz* and *Bongiovi*, this is nowhere close to enough to find them "public figures."

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[31] *Young v. Morning Journal*, 129 Ohio App. 3d 99, 103, 717 N.E.2d 356, 359 (1998) (emphasis added).

[32] VIPI Defendants would apparently place "Family Law" in the same public interest arena as the "War on Drugs."

[33] *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006).

[34] More precisely, there was no legitimate legal or factual reason for their disregard of controlling authority, and *sua sponte* imposition of NRCP 11 sanctions would be appropriate.

[35] In passing, it should be noted that Defendants' assertions are contradictory — they have claimed, simultaneously, that Vincent Mayo is not part of The Abrams & Mayo Law Firm for purposes of negative comments made about him but that David Schoen (one of the firm's paralegals) ***is*** part of The Abrams & Mayo Law Firm for purposes of Sanson telling David that Ms. Abrams is a "criminal," hoping that somehow they could disregard that false and defamatory claim by pretending that it had not been "published." Their conflicting positions cannot be reconciled.

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If any "public controversy" exists here, it is solely due to the Defendants' actions in attempting to ***create*** it.[36] VIPI Defendants use their organization – a supposed "non-profit" that from all appearances finances Defendant Sanson's personal expenses – to solicit "donations" from politicians, lawyers, and others to generate largely false accusatory online smear campaigns against good people actually doing their jobs honorably. Defendants cannot create a "controversy" and then try to hide behind it.

Plaintiffs' appearance in the *Saiter* matter,[37] and all ***other*** matters, are in the capacity of private attorneys representing private clients. Plaintiffs have never spoken to the press regarding their representation of any client and have never engaged the public's attention in an "attempt to influence any outcome."

As noted at the beginning of this *Opposition*, it is not that "actual malice" in ***both*** senses of the term[38] does not exist. It does, and will be a focus of the liability of Defendants for punitive damages when this case reaches that point. However, for purposes of the pending motion, any assertion that Plaintiffs are public figures, either general or limited, and that they must therefore allege and prove "actual malice" in this defamation case, fails pursuant to *Gertz*, *Young*, and *Bongiovi*.

G. Plaintiffs' Emotional Distress Claims Must Be Presented to the Trier of Fact

VIPI Defendants' claim that Plaintiff Jennifer Abrams is "not entitled" to proceed to trial for IIED or NIED is incorrect.

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[36] Plaintiffs deny that any such "public controversy" exists.

[37] See FAC at 5, line 1.

[38] In common parlance, ill intentions and active desire to do harm, and in the legal sense, knowledge of falsity or reckless disregard for the truth.

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Whether or not conduct is "extreme or outrageous" is a question of *fact* for a jury (or judge sitting as trier of fact) to determine.[39] VIPI Defendants rely on *Maduike v. Agency Rent-A-Car* in support of their assertion that "none of the behavior Abrams allege Defendants engaged in is 'extreme' or 'outrageous.'"[40] *Maduike* involved a family who was injured in a rental car crash subsequent to the rental car company refusing to change the allegedly defective vehicle.

The facts of *Maduike* are a world away from those present here. At trial, the Maduike presented evidence that:

> 1) Agency rented to the Maduike a three-year-old car with over 53,000 miles of service and only $349.00 in repairs expended; 2) Agency rented the car to them without inspecting its safety equipment after a rental of over a month to another customer; 3) Agency rented the car to them despite a "readily apparent" brake or tire problem; 4) after the Maduike had been directed to return to Las Vegas and after the brakes had failed, causing the rear-end accident, Agency refused to take any measures to repair or prevent further driving of the car. Peter Maduike testified that the Las Vegas Agency employee who refused to replace the rental car stated, "There is nothing I can do, man. There is nothing I can do, man." According to testimony, the employee then ignored Peter.

Here, the actions and conduct of the Defendants in this matter go far beyond rental of an inadequately inspected vehicle or an employee making an arguably rude statement. Plaintiffs have provided evidence of a very deliberate, malicious, ongoing campaign to defame the Plaintiffs to many thousands of people and intentionally injure their personal and business interests to the maximum extent possible using copyrighted material and conspiring with others to do so for the illicit purpose of corrupting ongoing court proceedings,[41] all of which is laid out in detail in the FAC.

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[39] *Posadas v. City of Reno*, 109 Nev. 448, 456, 851 P.2d 438, 444 (1993).

[40] See *Motion* at 25, lines 26-27.

[41] At this juncture in the proceedings, it is an aside, but Defendant Sanson goes to great lengths to claim that he "exposes corruption," missing entirely the irony that he *is* the corruption in "the system" about which he complains.

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VIPI Defendants allege that "Plaintiff's Complaint never mentions any specific symptoms of anxiety, depression, or physical ailments resulting from Sanson's alleged behavior." VIPI Defendants are improperly attempting to impute their own requirements of what constitutes emotional distress.

In *Branda v. Sanford* the Nevada Supreme Court opined that severe emotional distress could manifest as "hysterical and nervous . . . nightmares, great nervousness and bodily illness and injury."[42] Notably, the *Branda* Court held that:

> ***marginally adequate notice*** was given respondent of the basis of the claim for relief. A cause of action for intentional infliction of emotional distress was pled and prima facie proof ***given at trial. The jury was entitled to determine***, considering prevailing circumstances, contemporary attitudes and Cheryl's own susceptibility, whether the conduct in question constituted extreme outrage.[43]

Could a judge or jury ultimately find after trial that the Defendants here have not been "outrageous enough" or that the impact on Plaintiffs was not "bad enough"? Sure – but that evidence has not been developed in discovery or presented at trial, and the discussion of what some jury might find based on evidence that has not even yet been discovered or presented is, at best, speculative.

The complained-of behavior, posts, and language ***do*** rise to the level of "extreme or outrageous" and Plaintiff Abrams ***has*** suffered, and appropriately pled, emotional distress. The IIED and NIED cause of action have been pled with factual sufficiency, must be presented to the trier of fact for a determination, and therefore survive a 12(b)(5) challenge for dismissal.

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[42] *Branda v. Sanford*, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981).

[43] *Id.* at 649. (Emphasis added).

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H. Plaintiffs' False Light Claim Has Been Pled with Specificity

Ignoring the ***recent Nevada case law*** on point,[44] VIPI Defendants cite instead to a Colorado case[45] in an attempt to weaken the False Light tort and to persuade this Court to dismiss Plaintiffs' false light claim. Respectfully, the Colorado decision is irrelevant.

VIPI Defendants cite to *Franchise Tax Bd. of Cal. v. Hyatt*, claiming that under it, "the Nevada Supreme Court has 'impliedly recognized the false light of invasion of privacy tort."[46] However, what ***actually*** happened in *Franchise Tax* is that the Court recognized that "this court has only impliedly recognized the false light invasion of privacy tort"[47] and ***then*** the court "conclude[d] that a false light cause of action is necessary to fully protect privacy interests, and we now ***officially recognize*** false light invasion of privacy as a valid cause of action."[48]

There is no reason for this Court to rely on a Colorado court's opinion "to remind the Court that the tort should be evaluated carefully" when there is a Nevada Supreme Court decision "officially" recognizing false light as a "valid cause of action" in this state at this time.

The Nevada Supreme Court has held that "[t]he false light privacy action differs from a defamation action in that the injury in privacy actions is mental distress from having been exposed to public view, while the injury in defamation actions is

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[44] *Crabb v. Greenspun Media Grp., LLC*, No. 64086, 2014 Nev. Unpub. LEXIS 1447, at *2 (Sept. 16, 2014).

[45] *Denver Pub. Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002).

[46] *Motion* at 29, 23-24.

[47] *Franchise Tax Bd. v. Hyatt*, 335 P.3d 125, 140 (Nev. 2014).

[48] *Id.* at 141 (emphasis added).

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damage to reputation."[49] As is the case with defamation, IIED, and NIED, whether or not "mental distress" from the complained-of acts exists is a question of fact for the trier of fact.

VIPI Defendants should not be rewarded by insertion of irrelevant authority from elsewhere and a mis-interpretation of Nevada case law. NRCP 11, EDCR 7.60, and the relevant case law (discussed below in the Attorney's Fees section) urge that Defendants be sanctioned for such malfeasance.

I. Plaintiffs' Business Disparagement Claim Has Been Pled With Specificity and Must Be Presented to the Trier of Fact

VIPI Defendants, throughout their *Motion*, complain that Plaintiffs only offer "blanket demands" or make "conclusory statements." They then improperly attempt to argue the merits of Plaintiffs' Business Disparagement claim making exactly the type of "blanket" and "conclusory" language of which they complain.

VIPI Defendants' claim that "Plaintiffs cannot prevail on the first three elements of business disparagement for the same reason their defamation claim fails."[50] If this Court applies the proscribed "rigorous test" for a 12(b)(5) Motion, as it must, not only does the defamation claim stand, the business disparagement claim also stands.

Specifically, VIPI Defendants request that the business disparagement claim be dismissed because "special damages" have not been alleged to their satisfaction. VIPI Defendants then admit that the FAC contains a demand for $15,000.

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[49] *Crabb v. Greenspun Media Grp., LLC*, No. 64086, 2014 Nev. Unpub. LEXIS 1447, at *2 (Sep. 16, 2014).

[50] See *Motion* at 31-32.

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In support of their request for dismissal, VIPI Defendants cite to *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.* Once again, VIPI Defendants mischaracterize the case law they cite. *Clark* does ***not*** stand for the proposition that "a cause of action for business disparagement requires that the plaintiff set forth evidence proving economic loss that is attributable to the defendant's disparaging remarks [in the complaint]" – which is what VIPI Defendants claim it says. Actually, in *Clark*, the Court stated:

> We thus conclude that VESI failed as a matter of law to establish the elements of intent and damages for a claim of business disparagement. First, although there was ***substantial evidence for the jury to conclude*** that [....][51]

It is illogical and would be impossible to require a Plaintiff to "show the loss of sales attributable to the disparaging statement" or "a general decline of business" in a ***Complaint.*** VIPI Defendants request to dismiss Plaintiffs business disparagement claim pursuant to NRCP 9(g) must be denied.

J. Plaintiffs' Harassment Claim is Well Grounded in Common Law and Must be Presented to the Trier of Fact

Nevada is a common law state, not a "code" state. In *Dow Chem. Co. v. Mahlum*, the Nevada Supreme Court, relying on NRS 1.030[52] stated that "[t]he fact

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[51] *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 387, 213 P.3d 496, 505 (2009) (emphasis added).

[52] **NRS 1.030 Application of common law in courts.** The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State.

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that this court has not previously recognized a cause of action will not warrant reversal where that claim is well grounded in the common law."[53]

Here, VIPI Defendants acknowledge that the Harassment claim of action is well grounded in common law: "the claim of harassment apparently consists of one part defamation, one part business disparagement, and a smidge of IIED."

Regardless of their cute phrasing, VIPI Defendants' *Motion* cites the case law where the elements of defamation,[54] business disparagement,[55] and IIED[56] can be found. VIPI Defendants' request to dismiss Plaintiffs' Harassment cause of action must be denied.

K. Defendants Pose a Substantial Risk of Harm to Plaintiffs

VIPI Defendants correctly cite the elements of a Concert of Action Claim, but again their citations are misleading and irrelevant. In *Tai-Si Kim v. Kearney*, the court found that "[e]ngaging in a ***real estate transaction*** is not inherently dangerous and does not pose a substantial risk of harm to others."[57]

We agree. Here, however, the Defendants are not engaged in "a real estate transaction." As detailed in the FAC, Defendants are engaged in an on-going defamatory campaign against the Plaintiffs in service to their ongoing extortion and protection racket. This campaign is being spread across social media and radio airwaves to countless individuals.

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[53] *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1487 n.5, 970 P.2d 98, 111 (1998) *overruled in part by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

[54] See *Motion* at 12, lines 10-14.

[55] See *Motion* at 31, lines 24-28.

[56] See *Motion* at 25, lines 3-8.

[57] *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1092 (D. Nev. 2012) (emphasis added).

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Defendant Steve Sanson has admitted to getting "dirty" for other people for hire and then asked, "Where are those people now when we need some assistance?"[58] It is no excuse that Mr. Sanson has been diagnosed with Post Traumatic Stress Disorder, arrested and charged with possession of a firearm while intoxicated and aiming a firearm, and regularly challenges individuals to mixed martial arts fights.

The Defendants in this case have acted together to commit a litany of torts pursuant to their common design of diminishing and damaging Plaintiffs' reputation and personal and business interests to serve their unlawful ongoing enterprise. There is a substantial risk of harm in this case, as Defendant Sanson has advertised his history and intent to continue "getting dirty" by use of threats, force, and ongoing defamation campaigns as intimidation tactics.

L. Plaintiffs' Civil Conspiracy Claim is Actionable and Sufficiently Pled

In Nevada, "[a]n actionable civil conspiracy consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts."[59] That ***describes*** the Defendants' actions.

There are 11 named Defendants who have conspired with each other – by providing court videos, access to sealed documents, directions to disseminate posts, etc. – with the intent to defame, harass, and interfere with personal and business

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[58] See Exhibit 2. At least one person, one "Michael Davis," has volunteered to do whatever dirty deeds are required, although his "marching orders" have been made secret by Mr. Sanson.

[59] *Consol. Generator-Nev. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) *citing Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993) (internal quotes omitted).

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interest of the Plaintiffs. Further, Plaintiffs have sustained damage resulting from the Defendants' acts, which are set out in the FAC.

M. Plaintiff's RICO Claim is Sufficiently Pled

In Nevada, "for a plaintiff to recover under Nevada RICO, three conditions must be met: (1) the plaintiff's injury must flow from the defendant's violation of a predicate Nevada RICO act; (2) the injury must be proximately caused by the defendant's violation of the predicate act; and (3) the plaintiff must not have participated in the commission of the predicate act."[60]

Here, the Court must accept the factual allegations pled in the FAC as true: that the Defendants attempted to bribe or intimidate witnesses to influence testimony; that the Defendants engaged or attempted to engage in multiple transactions involving fraud or deceit in the course of an enterprise; that the Defendants took or attempted to take property from another under circumstances not amounting to robbery; and that the Defendants committed or attempted to commit extortion.

Defendants did all of those things, and all are sufficient "predicate acts" to support a RICO claim. The FAC contains specific dates of the Defendants' actions and the specific elements of the enumerated crimes committed. No more is, or reasonably could be, required.

N. Plaintiffs Have Not Made a Request for Leave to Amend the FAC

In support of their preemptive request to prevent Plaintiffs from amending their FAC, VIPI Defendants mis-characterize the holding and applicability of *Halcrow, Inc. v. Eighth Judicial Dist. Court*:

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[60] *Allum v. Valley Bank*, 109 Nev. 280, 283, 849 P.2d 297, 299 (1993).

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> NRCP 15(a) provides that leave to amend a complaint shall be "freely given when justice so requires." However, leave to amend should not be granted if the proposed amendment would be futile. A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim.[61]

The *Halcrow* decision revolved around the question of "whether the economic loss doctrine applies to bar a claim alleging negligent misrepresentation against a structural steel engineer on a commercial construction project."[62] The Court held that:

> [I]n commercial construction defect litigation, the economic loss doctrine applies to bar claims against design professionals for negligent misrepresentation where the damages alleged are purely economic. Thus, the district court was compelled to deny Century's and PCS's motions to amend their third- and fourth-party complaints to include claims for negligent misrepresentation against Halcrow.[63]

There is no such "impermissible claim" here. Defamation, etc., are fully actionable, compensable, and the proper subject of injunctive relief.

VIPI Defendants attempt to mischaracterize the *Halcrow* holding to stand for the proposition that "because each and every one of Plaintiffs' claims fail (*according to the VIPI Defendants*) – this Court ***cannot*** grant leave to amend the FAC." That conclusion is as absurd as the decision to make their preemptive request in the first place.

The definition of "sophistry" is "the use of fallacious arguments, especially with the intention of deceiving." It applies here. Plaintiffs stand by their FAC and the 150 paragraphs and have not requested that this Court grant leave to further amend the Complaint.

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[61] *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, 302 P.3d 1148, 1152 (Nev. 2013).

[62] *Id* at 1150.

[63] *Id* at 1154.

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As detailed above, the VIPI Defendants' *Motion* does not pass the "rigorous test" of a 12(b)(5) analysis. Even if this Court found that the FAC lacked sufficient facts to put Defendants on notice of the claims – and no such conclusion would be rational on these facts – nothing in *Halcrow* instructs this Court to deny any request for leave to file a Second Amended Complaint if and when that request is ever made, since all of the causes of action pled are within the scope of permissible relief.

O. Attorney's Fees

There is justification for an award of attorney's fees under EDCR 7.60, which sanctions obviously frivolous, unnecessary, or vexatious litigation – which the motion we are responding to here is, on multiple levels:

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
> (1) Presents to the court a motion or opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> . . .
>
> (3) So multiplies the proceedings in a case as to increase the costs unreasonably and vexatiously.

Additionally, NRS 18.010, dealing with awards of attorney's fees, states that fees may be awarded:

> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. ***It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous and vexatious claims and defense because such claims and defenses overburden limited***

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

JENNIFER V. ABRAMS and
THE ABRAMS & MAYO LAW FIRM,

Appellant,

vs.

LOUIS C. SCHNEIDER; LAW OFFICES OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC;

Respondent.

SC NO: 75838/75834
DC NO: A-17-749318-C

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VOLUME II

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28.	Plaintiffs' Supplement to Their Omnibus Opposition to: 1. Schneider Defedants' Special Motion to Dismiss Plaintiffs' SLAPP Suit Pursuant to NRS 41.660 and request for Attorney's Fees, Costs, and Damages Pursuant to NRS 41.670; 2. Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-Slapp); and 3. Defendants' Special Motion to Dismiss Under Nevada's Anti Slapp Statute, NRS 41.660	6/6/2017	JVA000863 - JVA000866
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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

JENNIFER V. ABRAMS AND
THE ABRAMS & MAYO LAW FIRM,

Appellant,

vs.

STEVE W. SANSON; VETERANS IN POLITICS INTERNATIONAL, INC; LOUIS C. SCHNEIDER; AND LAW OFFICES OF LOUIS C. SCHNEIDER, LLC;

Respondent.

SC NO: 73838/75834
DC NO: A-17-749318-C

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31.	[Proposed] Order Granting VIPI Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (Anti-Slapp)	7/24/2017	JVA000951 - JVA000970