

EXHIBIT "15"

EXHIBIT "15"

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

RECEIVED

AUG 31 2018

**Douglas County
District Court Clerk**

FILED

2018 AUG 31 PM 4:01

**ROBERT P. WILLIAMS
CLERK**

BY ANAME DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13 _____
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIEDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

NOTICE OF ENTRY OF ORDER

25 PLEASE TAKE NOTICE that on the 29th day of August, 2018 the above-entitled
26 court entered its Order granting summary judgment on behalf of Elfriede Klementi. A
27 copy of said Order is attached.

28 ///

///

///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 30 day of August, 2018.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendant,
Elfriede Klementi

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the ____ day
4 of September, 2016, I served the foregoing document(s) described as follows:

5 NOTICE OF ENTRY OF ORDER

6 On the party(s) set forth below by:

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

10 _____ Personal delivery.

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

13 addressed as follows:

14
15 Tanika Capers, Esq.
16 6750 Via Austi Parkway, Suite 310
17 Las Vegas, NV 89119
18 **Attorneys for Rowena Shaw and Peter**
19 **Shaw**

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

18 Jeffrey Spencer
19 PO Box 2326
20 Stateline, Nevada 89449
21 **In Pro Per**

22 Dated this 30 day of August, 2018.

23 
24 _____
25 Employee of Glogovac & Pintar
26
27
28

EXHIBIT "14"

EXHIBIT "14"

RECEIVED

AUG 29 2018

Douglas County
District Court Clerk

FILED

2018 AUG 29 PM 1:48

BOBBIE R. WILLIAMS
A. NEWTON
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIEDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

ORDER

On April 24, 2018, Third-Party Defendants, Egon and Elfriede Klementi ("Klementi"), by and through their counsel, Glogovac & Pintar, filed a Motion for Summary Judgment.¹ On June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Klementi replied on June 13, 2018. On July 12, 2018, a hearing and oral argument was held, where the Court granted summary judgment in

¹ Egon Klementi passed away while this lawsuit was pending.

1 favor of Klementi on all remaining claims. This order setting forth the Court's findings
2 of fact and conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well as third-party claims against Egon and Elfriede
11 Klementi, Mary Ellen Kinion and Rowena and Peter Shaw.

12 By way of the motion before the court, Klementi seeks summary judgment as to
13 Spencer's third-party claims against her, i.e. defamation, malicious prosecution, civil
14 conspiracy (defamation), civil conspiracy (malicious prosecution), punitive damages,
15 and infliction of emotional distress.

16 **II. Summary Judgment Standard**

17 Summary judgment is appropriate when the record demonstrates that no
18 genuine issue of material fact exists and the moving party is entitled to judgment as a
19 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
20 The pleadings and the record are construed in the light most favorable to the
21 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
22 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
23 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
24 burden on the moving party is to set forth facts demonstrating the existence of a
25 genuine issue in order to withstand a disfavorable summary judgment.")

26 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
27 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to
28 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*

1 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
2 (2007). The party moving for summary judgment bears the initial burden of production
3 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
4 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
5 assumes a burden of production to show the existence of a genuine issue of material
6 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
7 satisfy its burden of production depends on which party is moving for summary
8 judgment. A party may satisfy the burden of production by either (1) submitting
9 evidence that negates an essential element of the nonmoving party's claim, or (2)
10 "pointing out ... that there is an absence of evidence to support the nonmoving party's
11 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

12 Klementi filed a properly supported motion for summary judgment that showed
13 why, both factually and legally, she should prevail. Although Spencer opposed the
14 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
15 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
16 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
17 doubt" standard no longer applies. While Spencer challenged Klementi's position,
18 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
19 facts Klementi identified as being undisputed. On this record, summary judgment in
20 favor of Klementi is appropriate.

21 **III. Discussion**

22 **A. Defamation**

23 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
24 false and defamatory statement concerning another; (b) an unprivileged publication to
25 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
26 (d) either actionability of the statement irrespective of special harm, or the existence of
27 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
28 422, 425 (2001).

1 Whether a statement is defamatory is generally a question of law, unless it is
2 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
3 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
4 defamatory construction is a question of law for the court."). A court reviewing an
5 allegedly defamatory statement reviews "the words in their entirety and in context in
6 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
7 Nev. At 111, 17 P.3d at 426.

8 In this case, Spencer asserts that Klementi made defaming statements to the
9 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
10 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
11 Peace. Both the qualified privilege and the absolute privilege are defenses to
12 Spencer's defamation claim and Klementi has asserted these privileges in her
13 affirmative defenses to Spencer's Second Amended Counterclaim and Third-Party
14 Complaint.

15 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
16 the Nevada Supreme Court explained that a qualified or conditional privilege exists
17 where an allegedly defamatory statement is made in good faith "on any subject matter
18 in which the person communicating has an interest, or in reference to which he has a
19 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
20 a statement is conditionally privileged is a question of law for this Court. *Id.* The
21 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
22 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
23 jury unless there is sufficient evidence for the jury to reasonably infer that the
24 defendant made the statement with actual malice. *Id.*

25 Spencer asserts that statements made by Klementi during his criminal
26 proceedings are defamatory statements. Notably, however, Spencer fails to identify
27 any particular statement that Klementi made which is defamatory or untrue. Nevada
28 recognizes and follows the "long-standing common law rule that communications

1 uttered or published in the course of judicial proceedings are absolutely privileged."
2 *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51
3 Nev. 306, 274 P. 809, 810 (1929).

4 In addition, Spencer cites to letters read by Klementi at the December 18, 2012
5 and January 15, 2014 KGID Board Meetings. The Court concludes that the statements
6 read by Klementi are true. Moreover, the absolute privilege also applies to "quasi-
7 judicial proceedings before executive officers, boards, and commissions..." *Id.* The
8 absolute privilege precludes liability, as a matter of law, even where the defamatory
9 statements are "published with knowledge of their falsity and personal ill will toward
10 the plaintiff." *Id.* The policy behind this privilege is that, "in certain situations, the public
11 interest in having people speak freely outweighs the risk that individuals will
12 occasionally abuse the privilege" by making defamatory statements. *Id.*; *Knox v. Dick*,
13 99 Nev. 514, 518, 665 P.2d 267, 270 (1983).

14 The Court finds that the KGID and the Douglas County Planning Commission
15 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus hotels*,
16 99 Nev. at 60-61. This Court concludes the absolute privilege extends to any
17 statements Klementi made to KGID and/or the Douglas County Planning Commission.

18 In this case there is simply no question that any statement Klementi made is
19 protected by privilege for which liability cannot attach. For these reasons, summary
20 judgment on the claim for defamation is GRANTED.

21 **B. Malicious Prosecution**

22 To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
23 must prove the following: "(1) want of probable cause to initiate the prior criminal
24 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4)
25 damage." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan*
26 *v. Bailey*, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires
27 the plaintiff prove the defendant "initiated, procured the institution of, or actively
28 participated in the continuation of a criminal proceeding against the plaintiff." *Id.*

1 "When a private person gives to a prosecuting officer information *that she*
2 *believes to be true*, and the officer in the exercise of his uncontrolled discretion
3 initiates criminal proceedings based upon that information, the informer is not liable
4 under the rule stated in this section even though the information proves to be false and
5 his belief was one that a reasonable man would not entertain." *Lester v. Buchanan*,
6 112 Nev. 1426, 929 P.2d 910 (1996) citing Restatement (Second) of Torts § 653
7 (1977).

8 The Court concludes that Spencer has failed to come forward with any
9 evidence that Klementi initiated, procured the institution of, or actively participated in
10 the continuation of criminal proceedings against Spencer. Spencer has failed to
11 produce any evidence that Klementi requested or pressured law enforcement to
12 commence criminal proceedings against Spencer. Rather, this Court heard testimony
13 from Deputy District Attorney, Maria Pence, at the January 30, 2017 hearing that she
14 was the only person involved in charging Mr. Spencer. It is also undisputed that
15 Deputy McKone's decision to arrest Spencer was solely the decision of the Deputy,
16 who based on his decision on "the inconsistencies with what [he] had seen on the
17 scene and Spencer's rendition." The Court also concludes that probable cause existed
18 for Spencer's criminal case when the justice court bound Spencer over for trial on the
19 charges filed by Deputy District Attorney Pence after the April 24, 2013 preliminary
20 hearing.

21 The Court further concludes Klementi's statements are protected by absolute
22 immunity in the context of this malicious prosecution claim. As the Nevada Supreme
23 Court stated in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138 (2015), the
24 absolute immunity privilege is not limited to claims of defamation. In applying the
25 three-pronged functional approach set forth in *Harrison*, *supra*, the Court concludes
26 the following: (1) that, as a witness involved and testifying in a judicial proceeding,
27 Klementi enjoys absolute immunity from liability resulting from her testimony; (2) the
28 likelihood of harassment or intimidation was sufficient to interfere with Klementi's

1 ability to testify as a witness; and (3) procedural safeguards by way of cross-
2 examination of Klementi that were exercised by Spencer in his criminal trial.

3 The Court concludes summary judgment on the counterclaim for malicious
4 prosecution against Klementi should be granted in Klementi's favor and against
5 Spencer.

6 **B. Conspiracy**

7 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
8 based on defamation and malicious prosecution. An actionable claim for civil
9 conspiracy "consists of a combination of two or more person who, by some concerted
10 action, intend to accomplish an unlawful objective for the purpose of harming another,
11 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
12 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
13 judgment was appropriate on civil conspiracy claim where there was no evidence
14 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
15 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
16 conspiracy failed where he did not plead plausible underlying agreement).

17 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
18 commission of the underlying tort and an agreement between defendants to commit
19 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d
20 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
21 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

22 Because Spencer's claims for defamation and malicious prosecution fail, as a
23 matter of law, his claims for civil conspiracy likewise must fail because he is unable to
24 prove the commission of the underlying tort. Moreover, the Court concludes that
25 Spencer failed to produce any evidence of a conspiracy between the co-defendants.

26 For these reasons, the Court concludes summary judgment should be entered
27 in favor of Klementi and against Spencer on Spencer's third and fourth claims of relief.

28 ///

1 C. IIED

2 Spencer's Sixth Claim for Relief asserts that Ms. Klementi acted intentionally or
3 with reckless disregard for the likelihood of causing emotional distress when she
4 testified at Spencer's criminal proceedings. In a claim for intentional infliction of
5 emotional distress, a plaintiff must prove the following: "(1) extreme and outrageous
6 conduct with either the intention of, or reckless disregard for, causing emotional
7 distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and
8 (3) actual or proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447,
9 956 P.2d 1382, 1386 (1998) (concluding summary judgment was proper where plaintiff
10 failed to establish either the first or second elements of this claim)

11 A prima facie claim of intentional infliction of emotional distress requires a
12 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduiké*
13 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
14 outrageous conduct "is that which is outside all possible bounds of decency and is
15 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
16 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduiké*, the Nevada
17 Supreme Court upheld the trial court's decision that the first element of the tort was not
18 met when a car rental agency's employees were rude and refused to provide a family
19 with a new rental car after the brakes on the car they rented failed and caused a
20 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its
21 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
22 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
23 decency." *Id.*, at 5.

24 Speaking to the police, the district attorney, or testifying in a criminal proceeding
25 is not extreme and outrageous conduct. Subjecting a person to damages when they
26 exercise their civil obligation to report a crime and testify in judicial proceedings is
27 simply against public policy and would set dangerous precedent. Victims and
28 witnesses report crimes and testify multiple times a day and the Court concludes this

1 conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., *Churchill*
2 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
3 extreme and outrageous as a matter of law when he wrote letter to airline complaining
4 about employee because this type of conduct occurs "thousands of times each day").

5 Moreover, Spencer cannot demonstrate that Klementi intended to cause
6 Spencer emotional distress or acted with reckless disregard in causing Spencer
7 severe emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
8 emotional distress fails as a matter of law on the first element and summary judgment
9 must be granted in Klementi's favor.

10 **IV. Conclusion**

11 The Court has considered the pleadings, the exhibits attached thereto, and the
12 record in its entirety and concludes no genuine issue of material fact remains for trial.

13 Accordingly, and good cause appearing,

14 IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Elfriede
15 Klementi is granted in its entirety.

16 DATED this 20 day of August, 2018.

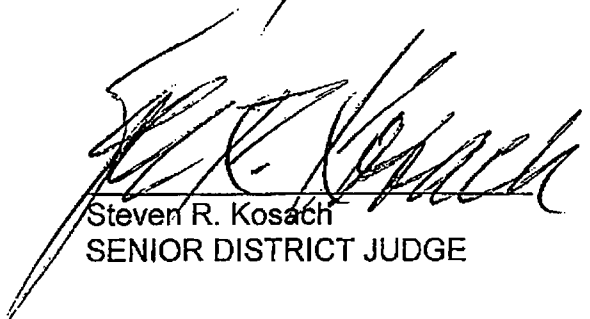
17
18
19
20
21 
22 Steven R. Kosach
23 SENIOR DISTRICT JUDGE
24
25
26
27
28

EXHIBIT "13"

EXHIBIT "13"

1 CASE NO.: 14-CV-0260
2 DEPT. NO.: II

RECEIVED
AUG 23 2018
Douglas County
District Court Clerk

FILED
2018 AUG 23 AM 10:07
DORRIS R. WILLIAMS
CLERK
BY [Signature] DEPUTY

3
4
5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,
9 Plaintiff,
10 vs.
11 JEFFREY D. SPENCER & DOES 1-5,
12 Defendants.

ORDER

13
14 JEFFREY D. SPENCER,
15 Counterclaimant,
16 vs.
17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIEDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,
23 Counterdefendants & Third Party
24 Defendants.

25 On June 22, 2018, Third-Party Defendants, Egon and Elfriede Klementi
26 ("Klementi"), filed a Motion to Dismiss all third-party claims asserted against Egon
27 Klementi (deceased). No opposition has been filed.

28 ///

1 Accordingly, and good cause appearing, IT IS HEREBY ORDERED that the
2 Motion to Dismiss all claims against Egon Klement in its entirety is GRANTED.

3 DATED this 21 day of August, 2018.

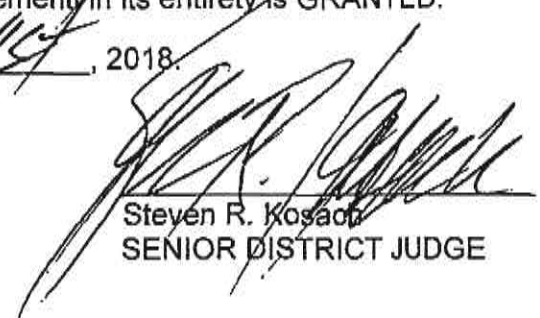
4
5
6 
7 Steven R. Kosach
8 SENIOR DISTRICT JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "12"

EXHIBIT "12"

1 CASE NO.: 14-CV-0260

RECEIVED

2 DEPT. NO.: II

AUG 31 2018

Douglas County
District Court Clerk

FILED

2018 AUG 31 PM 4:01

DOBBIE R. WILLIAMS
CLERK

BY ANC DEPUTY

3
4
5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS
8

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.
14 _____ /

15 JEFFREY D. SPENCER,

16 Counterclaimant,

17 vs.

18 HELMUT KLEMENTI, an individual,
19 EGON KLEMENTI, an individual,
20 ELFRIDE KLEMENTI, an individual,
21 MARY ELLEN KINION, an individual,
22 ROWENA SHAW, an individual, PETER
23 SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

NOTICE OF ENTRY OF ORDER

23 PLEASE TAKE NOTICE that on the 29th day of August, 2018, the above-
24 entitled court entered its Order granting summary judgment on behalf of Mary Ellen
25 Kinion. A copy of said Order is attached.

26 ///

27 ///

28 ///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 7th day of August, 2018.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Counterdefendant,
Mary Ellen Kinion

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the
4 foregoing document(s) described as follows:

5 **NOTICE OF ENTRY OF ORDER**

6 On the party(s) set forth below by:

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

10 Personal delivery.

11 Facsimile (FAX).

12 Federal Express or other overnight delivery.

13 addressed as follows:
14

15 Douglas R. Brown, Esq.
16 Sarah M. Molleck, Esq.
17 Lemons, Grundy & Eisenberg
18 6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

Jeffrey Spencer
PO Box 2326
Stateline, Nevada 89449
In Pro Per

19 Tanika Capers, Esq.
20 6750 Via Austi Parkway, Suite 310
21 Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

22
23 Dated this 30 day of August, 2018.

24 
25 _____
Employee of Glogovac & Pintar
26
27
28

EXHIBIT "11"

EXHIBIT "11"

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

RECEIVED

AUG 23 2018

Douglas County
District Court Clerk

FILED

2018 AUG 23 AM 10:07

DOBBIE R. WILLIAMS
CLERK

BY [Signature] DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

ORDER

25 On April 24, 2018, Third-Party Defendant, Mary Kinion ("Kinion"), by and
26 through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On
27 June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an
28 Opposition. Kinion replied on June 13, 2018. On July 12, 2018, a hearing and oral
argument was held, where the Court granted summary judgment in favor of Kinion on

1 all remaining claims. This order setting forth the Court's findings of fact and
2 conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well third-party claims against Kinion, Egon and
11 Elfriede Klementi, and Rowena and Peter Shaw.

12 On January 30, 2017, Kinion was granted summary judgment on Spencer's
13 third-party claim against her for malicious prosecution. By way of the motion before the
14 court, Kinion seeks summary judgment as to Spencer's remaining third-party claims
15 against her, i.e. defamation, civil conspiracy (defamation), civil conspiracy (malicious
16 prosecution), punitive damages, and infliction of emotional distress.

17 **II. Summary Judgment Standard**

18 Summary judgment is appropriate when the record demonstrates that no
19 genuine issue of material fact exists and the moving party is entitled to judgment as a
20 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
21 The pleadings and the record are construed in the light most favorable to the
22 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
23 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
24 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
25 burden on the moving party is to set forth facts demonstrating the existence of a
26 genuine issue in order to withstand a disfavorable summary judgment.")

27 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to

1 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*
2 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
3 (2007). The party moving for summary judgment bears the initial burden of production
4 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
5 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
6 assumes a burden of production to show the existence of a genuine issue of material
7 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
8 satisfy its burden of production depends on which party is moving for summary
9 judgment. A party may satisfy the burden of production by either (1) submitting
10 evidence that negates an essential element of the nonmoving party's claim, or (2)
11 "pointing out ... that there is an absence of evidence to support the nonmoving party's
12 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

13 Kinion filed a properly supported motion for summary judgment that showed
14 why, both factually and legally, she should prevail. Although Spencer opposed the
15 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
16 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
17 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
18 doubt" standard no longer applies. While Spencer challenged Kinion's position,
19 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
20 facts Kinion identified as being undisputed. On this record, summary judgment in favor
21 of Kinion is appropriate.

22 III. Discussion

23 A. Defamation

24 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
25 false and defamatory statement concerning another; (b) an unprivileged publication to
26 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
27 (d) either actionability of the statement irrespective of special harm, or the existence of
28

1 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
2 422, 425 (2001).

3 Whether a statement is defamatory is generally a question of law, unless it is
4 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
5 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
6 defamatory construction is a question of law for the court."). A court reviewing an
7 allegedly defamatory statement reviews "the words in their entirety and in context in
8 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
9 Nev. At 111, 17 P.3d at 426.

10 In this case, Spencer asserts that Kinion made defaming statements to the
11 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
12 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
13 Peace. Both the qualified privilege and the absolute privilege are defenses to
14 Spencer's defamation claim and Kinion has asserted these privileges in her affirmative
15 defenses to Spencer's Second Amended Counterclaim and Third-Party Complaint.

16 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
17 the Nevada Supreme Court explained that a qualified or conditional privilege exists
18 where an allegedly defamatory statement is made in good faith "on any subject matter
19 in which the person communicating has an interest, or in reference to which he has a
20 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
21 a statement is conditionally privileged is a question of law for this Court. *Id.* The
22 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
23 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
24 jury unless there is sufficient evidence for the jury to reasonably infer that the
25 defendant made the statement with actual malice. *Id.*

26 Spencer asserts that statements made by Kinion during his criminal
27 proceedings are defamatory statements. Notably, however, Spencer fails to identify
28 any particular statement that Kinion made which is defamatory or untrue, other than a

1 statement she made to police concerning witnessing Spencer driving a snowplow and
2 propelling snow and other road debris onto Egon Klementi.

3 The Nevada Supreme Court has held that, where a person makes
4 communications to police before initiation of criminal proceedings, that person enjoys
5 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
6 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
7 *Washington*, by finding that a qualified privilege satisfied the balance between
8 safeguarding reputations and encouraging full disclosure by citizens "in order to
9 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
10 exists so that citizens, like Kinion, can report what they perceive in good faith as th
11 commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

12 Importantly, the *Pope* court held that after an individual has reported a crime, a
13 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
14 the privilege by publishing the defamatory communication [to law enforcement] with
15 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
16 demonstrating that a statement is published with knowledge that it was false or with
17 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
18 Nev. 706, 722, 57 P.3d 92, 92 (2002).

19 Spencer also cites to a letter that Kinion wrote on February 22, 2013, to Maria
20 Pence, the Deputy District attorney who prosecuted Spencer. Spencer claims that this
21 letter from Kinion became the basis for the amended criminal charges. However, that
22 assertion was specifically rejected by Ms. Pence at the hearing on January 30, 2017.
23 In addition, any statements made by Kinion to the district attorney or in any criminal
24 proceeding are absolutely privileged. Nevada recognizes and follows the "long-
25 standing common law rule that communications uttered or published in the course of
26 judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at
27 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929).

1 The absolute privilege also applies to "quasi-judicial proceedings before
2 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
3 liability as a matter of law even where the defamatory statements are "published with
4 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
5 this privilege is that, "in certain situations, the public interest in having people speak
6 freely outweighs the risk that individuals will occasionally abuse the privilege" by
7 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
8 (1983).

9 The Court finds that the KGID and the Douglas County Planning Commission
10 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus Hotels*,
11 99 Nev. at 60-61. The Court concludes the absolute privilege extends to any
12 statements Kinion made to the KGID and/or Douglas County Planning Commission.

13 For these reasons, summary judgment on the claim for defamation is
14 GRANTED.

15 **B. Conspiracy**

16 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
17 based on defamation and malicious prosecution. An actionable claim for civil
18 conspiracy "consists of a combination of two or more person who, by some concerted
19 action, intend to accomplish an unlawful objective for the purpose of harming another,
20 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
21 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
22 judgment was appropriate on civil conspiracy claim where there was no evidence
23 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
24 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
25 conspiracy failed where he did not plead plausible underlying agreement).

26 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
27 commission of the underlying tort and an agreement between defendants to commit
28 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d

1 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
2 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

3 Because Spencer's claims for defamation and malicious prosecution fail as a matter of
4 law, his claims for civil conspiracy likewise must fail because he is unable to prove the
5 commission of the underlying tort. Moreover, the Court concludes that Spencer failed
6 to produce any evidence of a conspiracy between the co-defendants.

7 For these reasons, the Court concludes summary judgment should be entered
8 in favor of Kinion and against Spencer on Spencer's third and fourth claims for relief.

9 C. IIED

10 Spencer's Sixth Claim for Relief asserts that Kinion acted intentionally or with
11 reckless disregard for the likelihood of causing emotional distress when she testified at
12 Spencer's criminal proceedings. In a claim for intentional infliction of emotional
13 distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with
14 either the intention of, or reckless disregard for, causing emotional distress, (2) the
15 plaintiff's having suffered severe or extreme emotional distress, and (3) actual or
16 proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382,
17 1386 (1998) (concluding summary judgment was proper where plaintiff failed to
18 establish either the first or second elements of this claim)

19 A prima facie claim of intentional infliction of emotional distress requires a
20 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
21 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
22 outrageous conduct "is that which is outside all possible bounds of decency and is
23 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
24 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduike*, the Nevada
25 Supreme Court upheld the trial court's decision that the first element of the tort was not
26 met when a car rental agency's employees were rude and refused to provide a family
27 with a new rental car after the brakes on the car they rented failed and caused a
28 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its

1 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
2 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
3 decency." *Id.*, at 5.

4 Speaking to the police, the district attorney, or testifying in a criminal proceeding
5 is not extreme and outrageous conduct. Subjecting a person to damages when they
6 exercise their civil obligation to report a crime and testify in judicial proceedings is
7 simply against public policy and would set dangerous precedent. Victims and
8 witnesses report crimes and testify multiple times a day and the Court concludes this
9 conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., *Churchill*
10 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
11 extreme and outrageous as a matter of law when he wrote letter to airline complaining
12 about employee because this type of conduct occurs "thousands of times each day").

13 Moreover, Spencer cannot demonstrate that Kinion intended to cause Spencer
14 emotional distress or acted with reckless disregard in causing Spencer severe
15 emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
16 emotional distress fails as a matter of law on the first element and summary judgment
17 must be granted in Kinion's favor.

18 **IV. Conclusion**

19 The Court has considered the pleadings, the exhibits attached thereto, and the
20 record in its entirety and concludes no genuine issue of material fact remains for trial.
21 Accordingly, and good cause appearing,

22 ///

23 ///

24 ///

25 ///

26 ///

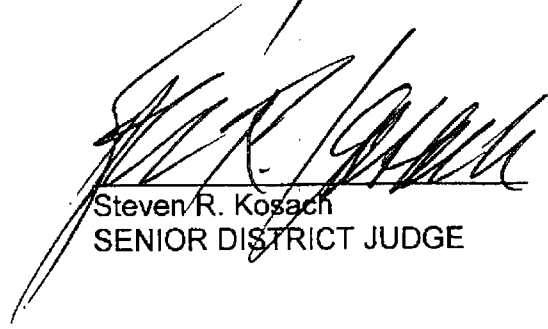
27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Mary
Ellen Kinion is granted in its entirety.

DATED this 21 day of August, 2018.



Steven R. Kosach
SENIOR DISTRICT JUDGE

EXHIBIT "10"

EXHIBIT "10"

RECEIVED

AUG 31 2018

Douglas County
District Court Clerk

FILED

2018 AUG 31 PM 4:00

DOBBIE R. WILLIAMS
CLERK

BY Anoma DEPUTY

Case No. 14-CV-0260

Dept. No. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, and DOES 1-5

Counterdefendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Counter-Defendant Helmut Klementi's
Motion for Summary Judgment on All Claims was entered on August 23, 2018.

///

///

///

///

///

///

///

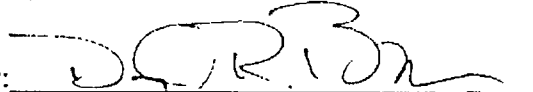
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A copy of said Order is attached hereto as Exhibit 1.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: August 30, 2018.

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

By: 
Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Sarah M. Molleck, Esq.
*Attorneys for Counter-Defendant
Helmut Klementi*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on August 30, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the following:

Jeffrey D. Spencer
P. O. Box 2326
Stateline, NV 89449
In Pro Per

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
*Attorney for Mary Ellen Kinion,
Egon Klementi and Elfriede Klementi*

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw



Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment on All Claims	16 pages

EXHIBIT "9"

EXHIBIT "9"

RECEIVED

FILED

Case No. 14-CV-0260

AUG 23 2018

Dept. No. 1

Douglas County
District Court Clerk

2018 AUG 23 AM 10:07

ROBERT R. WILLIAMS
CLERK

BY D. S. S. DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER, & DOES 1-5,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW, an
individual, PETER SHAW, an individual, and
DOES 1-5,

Counter-defendants & Third-
Party Defendants.

**ORDER GRANTING COUNTER-DEFENDANT
HELMUT KLEMENTI'S MOTION FOR
SUMMARY JUDGMENT ON ALL CLAIMS**

Before this Court is Counterdefendant Helmut Klementi ("Helmut")'s *Motion for Summary Judgment on All Counterclaims*, filed April 12, 2018. After this Court extended the time to respond, Counterclaimant Jeffrey Spencer filed his *Response to Motion for Summary Judgment* on June 1, 2018. Helmut filed his *Reply in Support of Motion for Summary Judgment on all Counterclaims* on June 13, 2016. This Court held oral argument on July 12, 2018 on all outstanding motions, including Helmut's Motion for Summary Judgment, and

1 found that summary judgment was warranted. This Order, setting forth the Court's findings
2 of undisputed material fact and conclusions of law, follows.

3 **STANDARD OF REVIEW**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56;
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Id.* A factual dispute is
9 genuine when the evidence is such that a rational trier of fact could return a verdict for the
10 nonmoving party. *Id.* The substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant. *Id.* at 731.

12 Although the pleadings and proof must be construed in a light most favorable to the
13 nonmoving party, that party bears the burden to do more than simply show that there is
14 some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at
15 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy,
16 speculation and conjecture. *Id.*

17 Mr. Spencer asserts, both in his Response and during oral argument on Helmut's
18 Motion, that this Court may not enter summary judgment if there remains a "slightest doubt"
19 as to the facts. *Response*, p. 7. The Nevada Supreme Court, however, abrogated the slightest
20 doubt standard in *Wood v. Safeway*, *supra*. This Court rejects Mr. Spencer's invitation to
21 apply the slightest doubt standard and instead applies the correct standard for summary
22 judgment as set forth herein.

23 The manner in which each party satisfies its burden of production for summary
24 judgment "depends on which party will bear the burden of persuasion on the challenged claim
25 at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134
26 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party
27 "may satisfy the burden of production by either (1) submitting evidence that negates an
28 essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an

1 absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las Vegas, LLC*,
2 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted).

3 Finally, to withstand summary judgment, Mr. Spencer as the nonmoving party cannot
4 rely solely on the general allegations and conclusions set forth in the pleadings, but must
5 instead present specific facts demonstrating the existence of a genuine factual issue
6 supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).
7 With the summary judgment standard set forth, the Court enters its findings of undisputed
8 material fact and conclusions of law.

9 **FINDINGS OF UNDISPUTED MATERIAL FACT**

10 The Court finds the following material facts are undisputed:

11 1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive,
12 Stateline, Nevada, in the Kingsbury General Improvement District ("KGID").¹

13 2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife
14 Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow
15 Lane and Charles Avenue.²

16 3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada,
17 with his wife Marilyn Spencer ("Ms. Spencer").³

18 4. In May 2012, there was a dispute between Mr. Spencer and the other
19 neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr.
20 Spencer had built on his property that May in violation of Douglas County Code.⁴

21 5. Later that year, in December 2012, Mr. Spencer operated a snow plow in the
22 neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive.⁵

23
24
25
26 ¹ Motion, Exhibit 1 ¶3; Exhibit 2, pp. 8:2-9, 12:15.

27 ² Motion, Exhibit 1, ¶4; Exhibit 2, p. 94:3—5. Egon Klementi passed away in fall 2017.

28 ³ Motion, Exhibit 3, p. 8:8-15.

⁴ Motion, Exhibit 1, ¶¶5-6; Exhibit 4.

⁵ Motion, Exhibit 3, p. 16:22-25, 17:1-4; 68:12-15.

1 6. During December 2012, residents of the neighborhood, including Egon and
2 Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris
3 in the course of his duties as a snow plow operator.⁶

4 7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees
5 for the KGID with Egon and Elfie.⁷

6 8. Although he attended, Helmut did not make a statement or otherwise speak at
7 the December 18, 2012 meeting before the Board of Trustees for the KGID.⁸

8 9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson
9 Norman gave instructions for the neighbors concerned about the snow berms to take
10 pictures.⁹

11 10. When the December 18, 2012 KGID Board of Trustees meeting concluded,
12 Helmut went to Egon's and Elfie's home for dinner.¹⁰

13 11. After dinner, Helmut left Egon's house to take pictures of the snow berms in
14 front of Egon's property and to then return home.¹¹

15 12. As Helmut was taking pictures of the snow berm, he was knocked to the
16 ground by Mr. Spencer.¹²

17 13. Mr. Spencer admits he knocked Helmut to the ground, that it was not an
18 accident, that he knew it was a Klementi brother, and that he stood screaming over Helmut
19 after Mr. Spencer knocked Helmut to the ground.¹³

20 14. Mr. Spencer admits he pushed Helmut in order to stop Helmut from getting
21 away.¹⁴

23 ⁶ Motion, Exhibit 3, p. 68:12-15; Exhibit 5, pp. 46-50.

24 ⁷ Motion, Exhibit 1, ¶7; Exhibit 2, p. 86:8-11.

25 ⁸ Motion, Exhibit 1, ¶¶8-9; Exhibit 2, p. 92:21-22, p. 93:10-12; Exhibit 6.

26 ⁹ Motion, Exhibit 1, ¶10; Exhibit 2, 107:12-15, Exhibit 6.

27 ¹⁰ Motion, Exhibit 1, ¶11; Exhibit 2, p. 93:16-24.

28 ¹¹ Motion, Exhibit 1, ¶12; Exhibit 2, p. 97:18-25, p. 107:12-15.

¹² Motion, Exhibit 1, ¶13; Exhibit 2, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, pp. 98:1-25—99:1-23, 100:15-19.

¹³ Motion, Exhibit 3, pp. 98:23-25—99:1-23.

¹⁴ Motion, Exhibit 1, ¶17; Exhibit 7.

1 15. It was Helmut's opinion and belief that Mr. Spencer punched him in his side
2 and knocked him to the ground.¹⁵

3 16. Because Helmut sustained injuries as a result of this incident, emergency
4 services were called and Douglas County Sheriff's Deputy Jesse McKone responded and
5 commenced an investigation.¹⁶

6 17. Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer
7 had assaulted him and knocked him to the ground.¹⁷

8 18. After interviewing witnesses and investigating the scene, Deputy McKone
9 concluded that Mr. Spencer's testimony regarding the incident was not credible and he
10 opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to
11 confront and commit a battery upon Helmut when he saw Helmut taking photographs of the
12 snow berms.¹⁸

13 19. Accordingly, based on his investigation and opinion, Deputy McKone arrested
14 Mr. Spencer for battery/abuse of an elderly person.¹⁹

15 20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based
16 on "the inconsistencies with what [he] had seen on scene and Mr. Spencer's rendition."²⁰

17 21. On or about December 26, 2012, Helmut obtained a Temporary
18 Restraining/Protective Order against Mr. Spencer.²¹

19 22. On January 8, 2013, Helmut attended a meeting before the Douglas County
20 Planning Commission and its members.²²

21 23. At that meeting, Helmut read a statement during public comment that stated
22 Mr. Spencer confronted and punched him while he was taking pictures of a snow berm
23

24
25 ¹⁵ Motion, Exhibit 1, ¶14; Exhibit 2, pp. 117:1-3, 119:19-24, 130:23-25—131:1-10.

26 ¹⁶ Motion, Exhibit 1, ¶15; Exhibit 8, pp. 13:1-25—23:1-10.

27 ¹⁷ Motion, Exhibit 1, ¶16.

28 ¹⁸ Motion, Exhibit 7; Exhibit 8, p. 36:14-22; p. 62:2-9.

¹⁹ Motion, Exhibit 7; Exhibit 8, p. 62:2-9.

²⁰ Motion, Exhibit 8, p. 62:8-9.

²¹ Motion, Exhibit 1, ¶¶18-19; Exhibit 9.

²² Motion Exhibit 1, ¶¶20-21; Exhibit 10.

1 pushed against his brother Egon's fence and that Helmut had a restraining order against Mr.
2 Spencer.²³

3 24. Ultimately, Mr. Spencer was charged with committing a battery upon Helmut
4 and criminal complaints were filed against him by the Douglas County District Attorney's
5 office.²⁴

6 25. District Attorney Maria Pence testified before this Court on January 30, 2017
7 extensively regarding the charging decisions of the district attorney's office and she testified
8 that "no one is involved in the charging decision except for myself and ... the charging decision
9 is made solely by whichever Deputy District Attorney was assigned that case."²⁵

10 26. D.A. Pence also testified the decision to enhance the gross misdemeanor
11 battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical
12 records showing that Helmut had sustained substantial bodily harm.²⁶

13 27. The criminal proceedings against Mr. Spencer proceeded to a preliminary
14 hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State
15 of Nevada as a victim of a crime.²⁷

16 28. The Court finds the only statements Helmut made about Mr. Spencer were (1)
17 his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas
18 County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's
19 preliminary hearing and trial.²⁸

20 29. The Court finds that Jeffrey Spencer has failed to identify any other statements
21 that Helmut Klementi made in this case. The Court rejects Mr. Spencer's insinuation that
22 Helmut Klementi is liable for defamation for statements he made to his medical providers
23

24
25 ²³ Motion, Exhibit 1, ¶¶22-23; Exhibit 11.

26 ²⁴ Counterclaimant Jeffrey Spencer's *Amended Counterclaim* on file herein, ¶¶53-57; and
27 *Counterclaimant's Opposition to Motion for Summary Judgment [Mary Ellen Kinion]*, Exhibits 1-2.

28 ²⁵ Motion, Exhibit 12.

²⁶ *Id.*, p. 14:8-24, p. 64:6-9.

²⁷ Motion, Exhibit 1, ¶23.

²⁸ Motion, Exhibit 1, ¶25, Exhibit 2, Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 13

1 when seeking treatment after the December 18, 2012 incident and finds his assertion
2 completely unsupported by any authority. *Response*, p. 6, ¶28.

3 30. The Court finds that the statements of Helmut Klementi, that Jeffrey Spencer
4 punched him and knocked him to the ground, and that Helmut Klementi had a restraining
5 order against Mr. Spencer are true statements that Helmut Klementi made to law
6 enforcement, the Douglas County Planning Commission, and to the Ninth Judicial District
7 Court.

8 31. The Court finds that Helmut Klementi had a good faith belief he was punched
9 by Jeffrey Spencer on the evening of December 18, 2012 and that Helmut Klementi did not act
10 with malice when he reported the same to law enforcement, the Ninth Judicial District Court,
11 and the Douglas County Planning Commission.

12 32. The Court finds that Jeffrey Spencer has failed to produce any evidence in this
13 case that Helmut Klementi was "dishonest in [his] reporting, and/or repeated dishonest
14 reports of others... and/or tampered with evidence." *Response*, p. 12:16-18. Rather, the Court
15 finds that these are mere unsupported allegations.

16 33. The Court finds Jeffrey Spencer has failed to meet his burden on summary
17 judgment to come forward with any admissible evidence, other than allegations and
18 speculation, to raise a genuine issue of material fact for trial on all of his counterclaims against
19 Helmut Klementi.

20 34. The Court finds that the video tape produced and incorporated into Jeffrey
21 Spencer's *Response to Motion for Summary Judgment* does not create a genuine issue of
22 material fact; rather, it supports Helmut's belief that he was assaulted by Mr. Spencer on the
23 evening of December 18, 2012.

24 35. To the extent any of the following conclusions of law constitute findings of fact,
25 they are incorporated herein.

26 **CONCLUSIONS OF LAW**

27 1. To the extent any of the foregoing findings of fact constitute conclusions of
28 law, they are incorporated herein.

1 **Counterclaimant's Claim against Helmut Klementi for Defamation:**

2 2. Liability for defamation may only arise if the plaintiff proves the following: "(a)
3 a false and defamatory statement concerning another; (b) an unprivileged publication to a
4 third party; (c) fault amounting at least to negligence on the part of the publisher; and (d)
5 either actionability of the statement irrespective of special harm, or the existence of special
6 harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001)
7 (emphasis added).

8 3. Whether a statement is defamatory is generally a question of law, unless it is
9 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191,
10 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction
11 is a question of law for the court.").

12 4. A court reviewing an allegedly defamatory statement reviews "the words in
13 their entirety and in context in order to determine whether they are susceptible of
14 defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426. This Court examines the
15 statements identified in paragraph 28 of its *Finding of Undisputed Material Fact* to determine
16 whether Helmut's statements were defamatory.

17 5. A statement is not defamatory "if it is absolutely true, or substantially true."
18 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is
19 also not defamatory if it is "an exaggeration or generalization" that a reasonable person could
20 interpret as mere rhetorical hyperbole. *Id.* Finally, statements of opinion are protected
21 speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112.

22 6. In this case, the Court concludes the statements of Helmut Klementi in this case
23 regarding Jeffrey Spencer and the incident of December 18, 2012 are true. Mr. Spencer
24 admitted in his deposition that he intended to collide with and stop the person in the street
25 who was Helmut Klementi. By Mr. Spencer's own admissions, the Court concludes Helmut's
26 statements were not defamatory, as they are true or substantially true. Notably, Mr. Spencer
27 fails to identify any other particular statement that Helmut made which is defamatory or
28 untrue.

1 7. The Court also concludes that Helmut's statements are protected by qualified
2 privilege. Where a person makes communications to law enforcement officers in good faith
3 before the initiation of criminal proceedings, the Nevada Supreme Court has recognized that
4 person enjoys a qualified privilege. *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005).

5 8. After an individual has reported a crime, a plaintiff must prove, by a
6 preponderance of the evidence, "that the defendant abused the privilege by publishing the
7 defamatory communication [to law enforcement] with actual malice." *Id.* at 317. "Actual
8 malice is a stringent standard that is proven by demonstrating that a statement is published
9 with knowledge that it was false or with reckless disregard for its veracity." *Id.* citing *Pegasus*,
10 118 Nev. at 722, 57 P.3d at 92.

11 9. Whether a statement is conditionally privileged is a question of law for the
12 Court to decide; in fact, it is reversible error for this Court to submit to the jury the issue of
13 conditional, or qualified, privilege. The issue of qualified privilege does not even go to the jury
14 unless there is "sufficient evidence" for the jury to reasonably infer that the defendant made
15 the statement with actual malice. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657
16 P.2d 101 (1983).

17 10. In applying the foregoing authority, the Court concludes the qualified privilege
18 applies to Helmut's reporting of the December 18, 2012 incident to law enforcement. The
19 Court also concludes Jeffrey Spencer failed to demonstrate (1) that Helmut did not have a
20 good faith belief regarding the incident, and (2) that Helmut acted with actual malice when he
21 reported the incident to law enforcement.

22 11. This Court also concludes the absolute privilege applies. Where a person
23 makes a statement in the course of a judicial proceeding, Nevada follows the "'long-standing
24 common law rule that communications uttered or published in the course of judicial
25 proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at
26 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the
27 course of judicial proceedings is not liable for the answers he makes to questions posed by the
28 court or counsel and all his answers are privileged).

1 12. The absolute privilege also extends to "quasi-judicial proceedings before
2 executive officers, boards, and commissions...." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61.

3 13. Even where defamatory statements are published with knowledge of their
4 falsity and ill will toward a plaintiff, the absolute privilege precludes liability as a matter of law.
5 *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute
6 privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their
7 views freely upon the subject under consideration is protected.").

8 14. The scope of absolute privilege in Nevada is "quite broad." *Fink v. Oshins*, 118
9 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly
10 relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only
11 to be "in some way pertinent to the subject of controversy." *Id.* citing *Circus Circus Hotels,*
12 *Inc.*, 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to
13 the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely
14 privileged). Issues of absolute privilege and relevance are questions of law for this Court to
15 decide. *Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

16 15. The Court concludes it is undisputed the absolute privilege applies to any and
17 all statements Helmut made in court during Jeffrey Spencer's criminal proceedings and liability
18 does not attach as a matter of law.

19 16. The Court concludes Helmut's statements to the Douglas County Planning
20 Commission are also protected by absolute privilege as a matter of law, because the Douglas
21 County Planning Commission is a quasi-judicial body and Helmut's statements to the
22 Commission are relevant to the subject controversy, which is Jeffrey Spencer's construction of
23 a fence that violated county code that resulted in a neighborhood dispute and ultimately
24 culminated in the December 18, 2012 incident.

25 17. The Court concludes summary judgment on the counterclaim for defamation
26 against Helmut is proper in Helmut's favor and against Jeffrey Spencer.

27 ///

28 ///

1 **Counterclaimant's Claim against Helmut Klementi for Malicious Prosecution:**

2 18. To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
3 must prove the following: "(1) want of probable cause to initiate the prior criminal
4 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage."
5 *LaMantia v. Redis*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan v. Bailey*, 113 Nev.
6 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires the plaintiff prove the
7 defendant "initiated, procured the institution of, or actively participated in the continuation of
8 a criminal proceeding against the plaintiff." *Id.*

9 19. "When a private person gives to a prosecuting officer information *that he*
10 *believes to be true*, and the officer in the exercise of his uncontrolled discretion initiates
11 criminal proceedings based upon that information, the informer is not liable under the rule
12 stated in this Section even though the information proves to be false and his belief was one
13 that a reasonable man would not entertain." *Lester v. Buchanan*, 112 Nev. 1426, 929 P.2d 910
14 (1996) citing Restatement (Second) of Torts § 653 (1977).

15 20. The Court concludes that Jeffrey Spencer has failed to come forward with any
16 evidence that Helmut Klementi initiated, procured the institution of, or actively participated in
17 the continuation of criminal proceedings against Mr. Spencer. Mr. Spencer has failed to
18 produce any evidence that Helmut requested or pressured law enforcement or D.A. Pence to
19 commence criminal proceedings against Mr. Spencer.

20 21. Rather, this Court heard testimony from Deputy District Attorney Maria Pence
21 at the January 30, 2017 hearing in this case that she was the only person involved in charging
22 Mr. Spencer in his criminal case. It is also undisputed that Deputy McKone's decision to arrest
23 Mr. Spencer was solely the decision of the Deputy, who based his decision on "the
24 inconsistencies with what [he] had seen on the scene and Mr. Spencer's rendition." *Findings*
25 *of Undisputed Material Fact*, ¶¶18-20. The Court also concludes that probable cause existed
26 for Mr. Spencer's criminal case when the justice court bound Mr. Spencer over for trial on the
27 charges filed by D.A. Pence after the April 24, 2013 hearing preliminary hearing.
28

1 22. The Court concludes that Jeffrey Spencer's "dispute" with the conclusions that
2 Deputy McKone and Deputy District Attorney Maria Pence reached in Mr. Spencer's criminal
3 investigation and trial are insufficient, as a matter of law, to create a genuine issue of material
4 fact for the purpose of defeating summary judgment. *Response*, p. 5, ¶18-21, p. 6, ¶25-26.
5 *Disagreeing with Deputy McKone and D.A. Pence's decisions to arrest and charge Mr. Spencer*
6 does not satisfy Mr. Spencer's burden to come forward with specific evidence in order to
7 preclude entry of summary judgment against him.

8 23. Finally, as set forth above, the Court concludes Helmut's statements are
9 protected by absolute immunity in the context of this malicious prosecution claim. As the
10 Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362
11 P.3d 1138 (2015), the absolute immunity privilege is not limited to claims of defamation. In
12 applying the three-pronged functional approach set forth in *Harrison*, supra, the Court
13 concludes the following: (1) that, as a witness involved and testifying in a judicial proceeding,
14 Helmut enjoys absolute immunity from liability resulting from his testimony; (2) the likelihood
15 of harassment or intimidation was sufficient to interfere with Helmut's ability to testify as the
16 victim of a crime; and (3) procedural safeguards by way of cross-examination of Helmut were
17 exercised by Mr. Spencer in his criminal trial. Thus, the Court concludes Helmut enjoys
18 absolute immunity from Mr. Spencer's claim for malicious prosecution against him because he
19 was a testifying witness in Spencer's criminal trial.

20 24. The Court concludes summary judgment on the counterclaim for malicious
21 prosecution against Helmut should be granted in Helmut's favor and against Jeffrey Spencer.

22 **Counterclaimant's Claims against Helmut for Civil Conspiracy:**

23 25. An actionable claim for civil conspiracy "consists of a combination of two or
24 more persons who, by some concerted action, intend to accomplish an unlawful objective for
25 the purpose of harming another, and damage results from the act or acts." *Consol. Generator-*
26 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

27 26. In order to prevail on a claim for civil conspiracy, a plaintiff must show the
28 commission of the underlying tort and an agreement between defendants to commit that

1 tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51
2 (2005).²⁹

3 27. This Court has already concluded that Jeffrey Spencer failed to demonstrate
4 genuine issues of material fact remain on his claims against Helmut Klementi for defamation
5 and malicious prosecution. In the absence of any specific evidence, Mr. Spencer cannot
6 demonstrate the commission of the underlying tort, which is a necessary predicate to a civil
7 conspiracy. It is well-established that the arguments of counsel are not evidence and
8 do not establish the facts of the case. See Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct., 130
9 Nev. Adv. Op. 94, 338 P.3d 1250, 1255 (2014). The Court concludes Mr. Spencer has
10 demonstrated no evidence of a conspiracy existing between the counter-defendants.

11 28. Accordingly, the Court concludes summary judgment on the counterclaims for
12 civil conspiracy (defamation) and civil conspiracy (malicious prosecution) against Helmut
13 should be granted in Helmut's favor and against Jeffrey Spencer.

14 **Counterclaimant's Claim against Helmut for Punitive Damages:**

15 29. Punitive damages are not a standalone claim, which Mr. Spencer concedes.
16 *Response*, p. 17:1-3. Rather, the district court has discretion to determine if a party's conduct
17 merits punitive damages as a matter of law. *Winchell v. Schiff*, 124 Nev. 938, 948, 193 P.3d
18 946, 953 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

19 Punitive damages are governed by statute and may only be awarded when the plaintiff
20 proves, by clear and convincing evidence, that the "defendant has been guilty of oppression,
21 fraud, or malice, express or implied" NRS 42.005(1); *In re Discipline of Drakulich*, 111 Nev.
22 1556, 1566, 908 P.2d 709, 715 (1995) (defining "clear and convincing evidence").

23 30. In this case, Mr. Spencer has failed to come forward with any evidence, let
24 alone clear and convincing evidence, that Helmut's conduct in the underlying criminal case
25 merits an award of punitive damages. Mr. Spencer's complete response in opposition to
26 Helmut's argument on punitive damages is contained in a single line: "Mr. Spencer does not
27

28 ²⁹ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

1 dispute that this is just a measure of damages, which would be addressed at the time of trial."
2 *Response*, p. 17:2-3. This one line completely fails to satisfy Mr. Spencer's burden on
3 summary judgment to present specific facts and evidence in response to Helmut's Motion.
4 *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). The Court concludes
5 Mr. Spencer has failed to meet his burden. The Court further concludes, as a matter of law,
6 that Helmut's conduct in reporting the December 18, 2012 incident does not constitute
7 conduct for which punitive damages are appropriate.

8 31. The Court concludes that summary judgment on the punitive damages claim is
9 appropriate in favor of Helmut and against Jeffrey Spencer.

10 **Counterclaimant's Claim against Helmut for Intentional Infliction of Emotional Distress:**

11 32. In a claim for intentional infliction of emotional distress ("IIED"), a plaintiff must
12 prove the following: "(1) extreme and outrageous conduct with either the intention of, or
13 reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
14 extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno Air,*
15 *Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was
16 proper where plaintiff failed to establish either the first or second elements of this claim)
17 citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981) (citation omitted).

18 33. A prima facie claim of intentional infliction of emotional distress requires a
19 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike v.*
20 *Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct
21 "is that which is outside all possible bounds of decency and is regarded as utterly intolerable
22 in a civilized community." *Id.* citing California Book of Approved Jury Instruction 12.74
23 (internal citations omitted).

24 34. The Court concludes that Helmut's actions of reporting the December 18, 2012
25 incident, testifying in a criminal proceeding, and, making a statement about that incident do
26 not rise to the level of extreme and outrageous conduct as a matter of law. Mr. Spencer's
27 own authority cited in his *Response* supports the Court's conclusion that Helmut's conduct in
28 this case is not extreme and outrageous. *Branda v. Sanford*, 97 Nev. 643, 645, 637 P.2d 1223,

1 1224 (1981) (jury to consider whether extreme outrage existed where defendant called 15
2 year old plaintiff f—k—g b—ch," "f—k—g c—t" and "no lady."). The Court concludes Mr.
3 Spencer's IIED claim fails as a matter of law on the first element.

4 35. The Court also concludes Mr. Spencer's IIED claim fails on the second element.
5 When a plaintiff claims emotional distress that precipitates physical symptoms, then, in the
6 absence of a physical impact, the plaintiff must prove "serious emotional distress causing
7 physical injury." *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

8 36. The stress "must be so severe and of such intensity that no reasonable person
9 could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
10 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the
11 physical impact requirement." *Id.* The physical impact requirement is not met even where a
12 party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and
13 is generally uncomfortable." *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994); *Alam*,
14 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not
15 amount to severe emotional distress).

16 37. The Court concludes that Mr. Spencer's claimed "emotional distress" does not,
17 as a matter of law, rise to the level of "severe or extreme emotional distress" required to
18 satisfy the second element of his IIED claim. Mr. Spencer claims the following symptoms:
19 heartburn, stomach aches, depression, lack of concentration, difficulty sleeping. These
20 symptoms, as a matter of law, are insufficient to satisfy the physical impact requirement for
21 purposes of an IIED claim. The Court notes that many of Mr. Spencer's physical issues with
22 depression and heartburn pre-existed this case by ten to fifteen years. *Motion*, Exhibit 15.

23 38. The Court also declines to consider "Exhibit 3" to Mr. Spencer's *Response*,
24 which appears to be a medical record from a Dr. Allison Steinmetz, M.D. Mr. Spencer failed to
25 rebut Helmut's assertion that "Exhibit 3" was never produced in this case. On its face, Exhibit
26 3 is unauthenticated because it fails to include the requisite certification of the custodian of
27 records. Rule 56(e) of the Nevada Rules of Civil Procedure requires this Court to consider
28 only "sworn or certified copies" and the fact Mr. Spencer attached this document to his

1 affidavit does not satisfy the authentication requirement. *Orr v. Bank of Am., NT & SA*, 285
2 F.3d 764, 773 (9th Cir. 2002) (excluding the majority of plaintiff's exhibits that were attached
3 to her counsel's declaration for failure to properly authenticate).

4 39. The Court concludes that summary judgment on the claim for intentional
5 infliction of emotional distress is appropriate in favor of Helmut and against Jeffrey Spencer.

6 **CONCLUSION**

7 It is well-established that "there is no issue for trial unless there is sufficient evidence
8 favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty*
9 *Lobby*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations omitted). The Court
10 concludes that Mr. Spencer has failed to satisfy his burden to provide sufficient evidence to
11 defeat Helmut Klementi's Motion for Summary Judgment.

12 Accordingly, and good cause appearing therefor,

13 **IT IS HEREBY ORDERED** Counter-defendant Helmut Klementi's *Motion for Summary*
14 *Judgment on All Claims* is granted in its entirety;

15 **IT IS FURTHER ORDERED** summary judgment on all counterclaims alleged in the
16 *Amended Counterclaim* is entered in favor of Counter-defendant Helmut Klementi and against
17 Counterclaimant Jeffrey Spencer.

18 Dated this 21 day of August, 2018.

19
20
21 
22 DISTRICT JUDGE

23 Submitted by:
24 DOUGLAS R. BROWN, ESQ.
25 SARAH M. MOLLECK, ESQ.
26 Lemons, Grundy & Eisenberg
27 6005 Plumas Street, Third Floor
28 Reno, Nevada 89519
T: (775) 786-6868

EXHIBIT "8"

EXHIBIT "8"

1 CASE NO. 14-CV-0260

2 DEPT. NO. II

3
4 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF DOUGLAS**

6 HELMUT KLEMENTI;

7 Plaintiff,

8 vs.

9 JEFFREY D. SPENCER & DOES 1-5;

10 Defendant.

11 JEFFREY D. SPENCER,

12 Counterclaimant,

13 vs.

14
15
16 HELMUT KLEMENTI, an individual,
17 EGON KLEMENTI, an individual, ELFRIDE
18 KLEMENTI, an individual, MARY ELLEN
19 KINION, an individual, ROWENA SHAW,
20 and individual, PETER SHAW, an individual,
21 & DOES 1-5,

22
23 Counterdefendants &
24 Third Party Defendants.

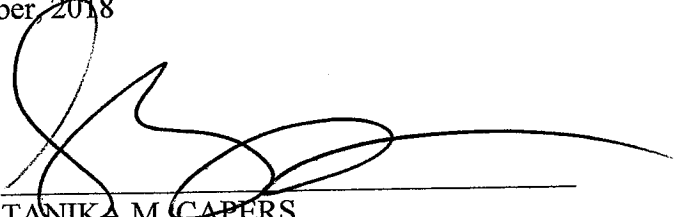
Case No. 14-CV-0260
Dept. II

NOTICE OF ENTRY OF ORDER

25
26 PLEASE TAKE NOTICE that on the 17th day of August, 2018, the above-entitled court
27 entered its Order granting summary judgment on behalf of Defendants Rowena Shaw and Peter
28 Shaw. A copy of said Order is attached hereto.

///

1 Dated this ____ day of September, 2018

2
3
4 
TANIKA M. CAPERS

5 Nevada Bar No. 10867

6 6750 Via Austi Parkway, Suite 310

7 Las Vegas, NV 89119

Attorney for Defendants Rowena Shaw and Peter Shaw

8 **CERTIFICATE OF SERVICE**

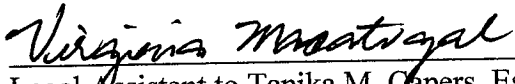
9 I hereby certify that on the ____ day of September, 2018, the foregoing **NOTICE OF**
10 **ENTRY OF ORDER** was served pursuant to NRCP 5(b) via the following method
11 indicated below:
12

- 13 [X] ELECTRONIC Filing & Service System (Odyssey) to all the parties on the current
14 service list;
15 [] U.S. MAIL by placing an original or true copy thereof in a postage prepaid sealed
16 envelope placed for collection and mailing in Las Vegas, Nevada, and addressed to the
17 following:

18 Douglas R. Brown, Esq.
19 Lemons, Grundy & Eisenberg
20 6005 Plumas St Ste 300
Reno, NV 89509
Attorneys for Helmut Klementi

Jeffrey Spencer
PO Box 2326
Stateline, NV 89449

21 Michael A. Pinter, Esq.
22 Glogovac & Pinter
23 427 West Plumb Lane
Reno, NV 89509

24
25
26 
27 Legal Assistant to Tanika M. Capers, Esq.
28

**COPY
RECEIVED**

AUG 09 2018

**Douglas County
District Court Clerk**

FILED

2018 AUG 17 AM 9:50

**BOBBIE R. WILLIAMS
CLERK**

K. WILFERT DEPUTY

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Phone: (702) 733-4989, Ext. 51652
Fax: (877) 888-1396
tcapers@amfam.com
Attorney for Defendants Rowena Shaw and Peter Shaw

**IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS**

HELMUT KLEMENTI;

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5;

Defendant.

Case No. 14-CV-0260
Dept. II

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW,
and individual, PETER SHAW, an individual,
& DOES 1-5,

Counterdefendants &
Third Party Defendants.

1
2
3
4
5
6
7
8
ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant's Motion for Summary Judgment came before this Court for hearing and oral argument on July 12, 2018, the Court having considered the pleadings and arguments submitted by counsel for the parties and being fully advised, enters the following findings and orders:

9
10
11
12
13
14
15
16
17
18
19
20
21
22
FINDINGS OF UNDISPUTED FACTS

1. This is an action stemming from disputes in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe.

2. Peter and Rowena Shaw ("Shaws") have lived in the KGID neighborhood for over thirty-seven (37) years. During the summer of 2012, Helmut and Egon Klementi also lived in the neighborhood. Since then, Mr. Egon Klementi has passed. His brother Helmut still lives in the neighborhood with his wife Elfie Klementi. Helmut and Elfie Klementi live across the street from Defendant/Third-Party Plaintiff Jeffrey Spencer ("Spencer").

3. Spencer is employed as a snowplow operator during winter months.

4. In the summer of 2012, a dispute arose between the aforementioned neighbors including Mary Ellen Kinion ("Kinion") and Spencer. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on Helmut Klementi. In response, Spencer asserted a counterclaim against Helmut Klementi, Kinion, Egon and Elfie Klementi and the Shaws.

5. During the spring of 2012, Spencer built a six foot tall fence around his property.

6. The height of the fence created a blind intersection in front of the Shaws residence and created a public safety risk. Due to her belief of the risk factor the fence presented, Rowena Shaw contacted KGID because she believed they were responsible for code enforcement and was eventually referred to the DA's Office and the Planning

1 Commission.

2 7. The Shaws wrote a letter to the Planning Commission regarding the risk the
3 fence presented and was informed the Spencers requested a variance.

4 8. Eventually, the fence was required to be removed.

5 9. The Shaws have approximately 6 security cameras on their property. The hard
6 drive stores what the video records. Mrs. Shaw is not sure if the storage is 15 or 30 days.

7 10. Around December of 2012, the Shaws installed the cameras because of
8 difficulties between the Spencers and neighbors.

9 11. In mid-December 2012, the Shaws' driveway was bermed and their flower bed
10 was destroyed by the plow.

11 12. On December 18, 2012, the Shaws went to a KGID meeting for the first time
12 due to concerns regarding their driveway being bermed and flowerbed being destroyed.
13 They spoke at the meeting during the public comment portion and also commented on the
14 Spencer's fence.

15 13. The Board President at the KGID meeting, Dr. Norman suggested the Shaws
16 "keep documenting and to take pictures."

17 14. After the KGID meeting, the Shaws went out of town and have no first-hand
18 knowledge of the incident involving Spencer and Helmut Klementi.

19 15. When the Shaws returned home two days after the KGID meeting, a voicemail
20 from Elfie Klementi informed them that Helmut had been assaulted.

21 16. Around two weeks after the incident, a police agency contacted the Shaws and
22 asked to look at any videos from their cameras from the night of the incident.

23 17. The DA's office eventually contacted the Shaws and asked for a copy of their
24 video.

25 18. Mrs. Shaw made a copy of the video and Officer Schultz picked it up at her
26 home.

27 19. There is no evidence that the Shaws had any involvement in Deputy McKone's
28

1 decision to arrest Spencer on December 18, 2012.

2 20. The Shaws were not involved in the criminal prosecution against Spencer until
3 the Deputy District Attorney contacted them and requested they provide any information that
4 they may have regarding the incident and events relevant to the neighborhood.

5 21. As part of Spencer's trial, only Mrs. Shaw was subpoenaed and required to
6 provide testimony. Her only testimony was regarding her security cameras.

7 22. During a January 30, 2017 hearing before this Court, Deputy District Attorney
8 Maria Pence testified that the Shaws had no involvement in her charging decisions regarding
9 Spencer.

10 23. The Court finds no evidence to support Spencer's claim for malicious
11 prosecution.

12 24. The Court could not identify any defamatory statements or untrue statements
13 made by Peter or Rowena Shaw.

14 24. The Court finds that any statements made by Peter or Rowena Shaw to the
15 Douglas County Sheriff's Department, Douglas County District Attorney, KGID and the
16 Douglas County Planning Commission are protected by a qualified and absolute privilege.

17 25. The Court finds that because Spencer's claims for defamation and malicious
18 prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because
19 he is unable to prove the commission of the underlying tort.

20 26. The Court finds that there is no evidence to demonstrate that Rowena or Peter
21 Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was
22 intended to cause Spencer emotional distress.

23 ///

24 ///

25 ///

26 ///

27 ///

1 27. The Court finds because punitive damages are not a standalone claim and there has
2 been no evidence of "oppression, fraud, or malice, express or implied" committed by Rowena
3 or Peter Shaw, Mr. Spencer's claim fails as a matter of law.

4
5 **CONCLUSIONS OF LAW**

6
7 1. The Court concludes any statements made by Rowena or Peter Shaw were not
8 defamatory.

9 2. The Court also concludes any statements made by Peter or Rowena Shaw to
10 law enforcement, KGID, Douglas County District Attorney or Douglas County planning
11 commission are protected by a qualified and absolute privilege.

12
13 3. The Court concludes there has been no evidence that Rowena or Peter Shaw
14 requested or pressured law enforcement or Maria Pence to commence criminal proceedings
15 against Mr. Spencer.

16
17 4. The Court concludes that because Mr. Spencer's claims for defamation and
18 malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail
19 because he is unable to prove the commission of the underlying tort.

20 5. The Court finds that there is no evidence to demonstrate that Rowena or Peter Shaw
21 engaged in any conduct that was "extreme and outrageous" nor any conduct that was intended
22 to cause Spencer emotional distress.

23 6. The Court concludes there has been no evidence to support a punitive damages
24 claim against Rowena or Peter Shaw.

25 ///

26 ///

27 ///

1 **CONCLUSION**

2 This Court having considered the pleadings, exhibits, and the record in its entirety, and
3 good cause appearing, grants Rowena and Peter Shaw's Motion for Summary Judgment.
4

5 **IT IS SO ORDERED**

6
7 Dated this 15 day of August, 2018

8 
9
10 ~~DISTRICT COURT JUDGE~~
11

12 Submitted by:

13 TANIKA M. CAPERS
14 Nevada Bar No. 10867
15 6750 Via Austi Parkway, Suite 310
16 Las Vegas, NV 89119
17 Phone: (702) 733-4989, Ext. 51652
18 *Attorney for Defendant Rowena and Peter Shaw*
19
20
21
22
23
24
25
26
27
28

EXHIBIT "7"

EXHIBIT "7"

RECEIVED

AUG 09 2018

Douglas County
District Court Clerk

FILED

2018 AUG 17 AM 9:50

BOBBIE R. WILLIAMS
CLERK

[Signature]
DEPUTY

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Phone: (702) 733-4989, Ext. 51652
Fax: (877) 888-1396
tcapers@amfam.com
Attorney for Defendants Rowena Shaw and Peter Shaw

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI;

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5;

Defendant.

Case No. 14-CV-0260
Dept. II

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW,
and individual, PETER SHAW, an individual,
& DOES 1-5,

Counterdefendants &
Third Party Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant's Motion for Summary Judgment came before this Court for hearing and oral argument on July 12, 2018, the Court having considered the pleadings and arguments submitted by counsel for the parties and being fully advised, enters the following findings and orders:

FINDINGS OF UNDISPUTED FACTS

1. This is an action stemming from disputes in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe.
2. Peter and Rowena Shaw ("Shaws") have lived in the KGID neighborhood for over thirty-seven (37) years. During the summer of 2012, Helmut and Egon Klementi also lived in the neighborhood. Since then, Mr. Egon Klementi has passed. His brother Helmut still lives in the neighborhood with his wife Elfie Klementi. Helmut and Elfie Klementi live across the street from Defendant/Third-Party Plaintiff Jeffrey Spencer ("Spencer").
3. Spencer is employed as a snowplow operator during winter months.
4. In the summer of 2012, a dispute arose between the aforementioned neighbors including Mary Ellen Kinion ("Kinion") and Spencer. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on Helmut Klementi. In response, Spencer asserted a counterclaim against Helmut Klementi, Kinion, Egon and Elfie Klementi and the Shaws.
5. During the spring of 2012, Spencer built a six foot tall fence around his property.
6. The height of the fence created a blind intersection in front of the Shaws residence and created a public safety risk. Due to her belief of the risk factor the fence presented, Rowena Shaw contacted KGID because she believed they were responsible for code enforcement and was eventually referred to the DA's Office and the Planning

1 Commission.

2 7. The Shaws wrote a letter to the Planning Commission regarding the risk the
3 fence presented and was informed the Spencers requested a variance.

4 8. Eventually, the fence was required to be removed.

5 9. The Shaws have approximately 6 security cameras on their property. The hard
6 drive stores what the video records. Mrs. Shaw is not sure if the storage is 15 or 30 days.

7 10. Around December of 2012, the Shaws installed the cameras because of
8 difficulties between the Spencers and neighbors.

9 11. In mid-December 2012, the Shaws' driveway was bermed and their flower bed
10 was destroyed by the plow.

11 12. On December 18, 2012, the Shaws went to a KGID meeting for the first time
12 due to concerns regarding their driveway being bermed and flowerbed being destroyed.
13 They spoke at the meeting during the public comment portion and also commented on the
14 Spencer's fence.

15 13. The Board President at the KGID meeting, Dr. Norman suggested the Shaws
16 "keep documenting and to take pictures."

17 14. After the KGID meeting, the Shaws went out of town and have no first-hand
18 knowledge of the incident involving Spencer and Helmut Klementi.

19 15. When the Shaws returned home two days after the KGID meeting, a voicemail
20 from Elfie Klementi informed them that Helmut had been assaulted.

21 16. Around two weeks after the incident, a police agency contacted the Shaws and
22 asked to look at any videos from their cameras from the night of the incident.

23 17. The DA's office eventually contacted the Shaws and asked for a copy of their
24 video.

25 18. Mrs. Shaw made a copy of the video and Officer Schultz picked it up at her
26 home.

27 19. There is no evidence that the Shaws had any involvement in Deputy McKone's
28

1 decision to arrest Spencer on December 18, 2012.

2 20. The Shaws were not involved in the criminal prosecution against Spencer until
3 the Deputy District Attorney contacted them and requested they provide any information that
4 they may have regarding the incident and events relevant to the neighborhood.

5 21. As part of Spencer's trial, only Mrs. Shaw was subpoenaed and required to
6 provide testimony. Her only testimony was regarding her security cameras.

7 22. During a January 30, 2017 hearing before this Court, Deputy District Attorney
8 Maria Pence testified that the Shaws had no involvement in her charging decisions regarding
9 Spencer.

10 23. The Court finds no evidence to support Spencer's claim for malicious
11 prosecution.

12 24. The Court could not identify any defamatory statements or untrue statements
13 made by Peter or Rowena Shaw.

14 24. The Court finds that any statements made by Peter or Rowena Shaw to the
15 Douglas County Sheriff's Department, Douglas County District Attorney, KGID and the
16 Douglas County Planning Commission are protected by a qualified and absolute privilege.

17 25. The Court finds that because Spencer's claims for defamation and malicious
18 prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because
19 he is unable to prove the commission of the underlying tort.

20 26. The Court finds that there is no evidence to demonstrate that Rowena or Peter
21 Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was
22 intended to cause Spencer emotional distress.

23 ///

24 ///

25 ///

26 ///

27 ///

27. The Court finds because punitive damages are not a standalone claim and there has been no evidence of "oppression, fraud, or malice, express or implied" committed by Rowena or Peter Shaw, Mr. Spencer's claim fails as a matter of law.

CONCLUSIONS OF LAW

1. The Court concludes any statements made by Rowena or Peter Shaw were not defamatory.

2. The Court also concludes any statements made by Peter or Rowena Shaw to law enforcement, KGID, Douglas County District Attorney or Douglas County planning commission are protected by a qualified and absolute privilege.

3. The Court concludes there has been no evidence that Rowena or Peter Shaw requested or pressured law enforcement or Maria Pence to commence criminal proceedings against Mr. Spencer.

4. The Court concludes that because Mr. Spencer's claims for defamation and malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because he is unable to prove the commission of the underlying tort.

5. The Court finds that there is no evidence to demonstrate that Rowena or Peter Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was intended to cause Spencer emotional distress.

6. The Court concludes there has been no evidence to support a punitive damages claim against Rowena or Peter Shaw.

11

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

This Court having considered the pleadings, exhibits, and the record in its entirety, and good cause appearing, grants Rowena and Peter Shaw's Motion for Summary Judgment.

IT IS SO ORDERED

Dated this 15 day of August, 2018


DISTRICT COURT JUDGE

Submitted by:

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Phone: (702) 733-4989, Ext. 51652
Attorney for Defendant Rowena and Peter Shaw

EXHIBIT "6"

EXHIBIT "6"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CASE NO.: 14-CV-0260
DEPT. NO.: II

RECEIVED

OCT 26 2017

Douglas County
District Court Clerk

FILED

2017 OCT 26 PM 2:36

SOBBIE R. WILLIAMS
CLERK
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual, MARY
ELLEN KINION, an individual, and
DOES 1-5,

Counterdefendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 19th day of October, 2017 the above-entitled court entered its Order awarding attorney's fees and costs to Counterdefendants/Third-party Defendants. A copy of said Order is attached.

///

///

///

///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25 day of October, 2017.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTAR, ESQ.

Nevada Bar No. 003789

Attorneys for Third-Party Defendants,
Egon Klementi and Elfriede Klementi

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and I served the foregoing
4 document(s) described as follows:

5 NOTICE OF ENTRY OF ORDER

6 On the party(s) set forth below by:

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

10 _____ Personal delivery.

11 _____ Facsimile (FAX).

12 _____ Federal Express or other overnight delivery.

13 addressed as follows:

14
15 William Routsis, Esq.
1070 Monroe Street
16 Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

17
18 Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
19 Reno, NV 89519
Attorneys for Helmut Klementi

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

20
21 Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
22 Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter
23 **Shaw**

24 Dated this 20th day of October, 2017.

25
26 
27 Employee of Glogovac & Pintar
28

EXHIBIT "5"

EXHIBIT "5"

RECEIVED

OCT 19 2017

Douglas County
District Court Clerk

FILED

2017 OCT 19 AM 10:11

BOBBIE R. WILLIAMS
CLERK

M. BIAGGINI

Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party
Defendants.

THIS MATTER comes before the Court upon Counter-defendant Mary Ellen Kinion's Motion for Attorney's Fees and Costs. The motion is opposed. Having examined all relevant pleadings and papers on file herein, the Court now enters the following Order, good cause

1 appearing:

2 THAT the motion is partially GRANTED as set forth below.

3 On January 30, 2017, the Court granted Mary Ellen Kinion's motion for summary
4 judgment regarding the claim of malicious prosecution alleged against her by Jeffrey
5 Spencer.¹ The resulting written Order was filed on April 3, 2017. Mary Ellen Kinion now
6 seeks an award of attorney's fees and costs pursuant to NRS Ch. 18, having prevailed with
7 regard to that claim.
8

9 Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance
10 of attorney's fees to a prevailing party:"

11 Without regard to the recovery sought, when the court finds that the claim,
12 counterclaim, cross-claim or third-party complaint or defense of the opposing party was
13 brought or maintained without reasonable ground or to harass the prevailing party. The court
14 shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in
15 all appropriate situations.

16 The Court finds that Jeffrey Spencer's claim for malicious prosecution was brought
17 and maintained without reasonable ground. Not only did the facts not support such a claim as
18 delineated within the written order granting summary judgment, probable cause to initiate the
19 prior criminal proceeding was *not* wanting, eliminating a necessary element to the malicious
20 prosecution claim.

21 "[T]he elements of a malicious prosecution claim are: '(1) want of probable cause to
22 initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal
23 proceedings; and (4) damage.'" *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P. 3d 877, 879
24 (2002). A "malicious prosecution claim requires that the defendant initiated, procured the
25 institution of, or actively participated in the continuation of a criminal proceeding against the
26 plaintiff." *Id.*, 118 Nev. at 30, 38 P.3d at 879-80. "[T]o recover for malicious prosecution,
27

28 Egon Klementi and Elfriede Klementi formally joined in the motion for summary judgment.

1 plaintiff had to demonstrate that police officers 'commenced the criminal prosecution because
2 of direction, request, or pressure' from defendants." *Lester v. Buchanan*, 112 Nev. 1426,
3 1429 (1996) (summary judgment sustained because record uncontroverted that defendant had
4 a good faith belief that crime committed).

5
6 "It is only when the facts relating to probable cause are not in dispute that it becomes a
7 question of law. *Bonamy v. Zenoff*, 77 Nev. 250, 362 P.2d 445. When such facts are in
8 dispute, the issue is one of fact to be resolved by the trier of fact." *Miller v. Schnitzer*, 78
9 Nev. 301, 313, 371 P.2d 824, 830 (1962) ("conflicting evidence in malicious prosecution
10 action raised jury question as to whether defendant had given 'housekeeping money' to
11 plaintiff to do with as plaintiff pleased or whether plaintiff had embezzled such money").

12
13 Focusing on the first two elements of the four required to sustain a civil claim for
14 malicious prosecution, malice can be inferred from a want of probable cause. *Id.*, 371 P.2d at
15 831. Regarding want of probable cause however, within his opposition to the motion for
16 summary judgment Jeffrey Spencer attached a copy of the criminal complaint initiating the
17 criminal court case against him. That complaint alleged a misdemeanor violation of NRS
18 200.481 and NRS 193.167, Battery on a Person Over 60 Years of Age, to wit: Jeffrey
19 Spencer "did willfully and unlawfully use force and violence against Helmut Klementi" when
20 he "struck Mr. Klementi in the back and knocked him to the ice covered road of Charles
21 Avenue, all of which occurred in the County of Douglas, State of Nevada" on or about
22 December 18, 2012. *See* Exhibit 1 to Opposition to Motion For Summary Judgment filed on
23 May 18, 2016.

24
25 Within the Second Amended Complaint and Third Party Complaint, Jeffrey Spencer
26 alleged the following:

27 / / /
28

1 67. Evidence presented at trial established that HELMUT KLEMENTI had been knocked
2 down by JEFFERY SPENCER who had run down his stairs and chased the figure he had seen
3 by his truck, but there was no evidence that JEFFERY SPENCER had punched HELMUT
KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.

4 Second Amended Counterclaim and Third Party Complaint filed on August 19, 2016, p. 9, lines
5 23-26.

6 Thus, by his own admission it is uncontroverted that Jeffrey Spencer knocked down
7 Helmut Klementi, who is known to be a man over sixty years of age. "It is firmly established .
8 . . that the finding of probable cause may be based on slight, even marginal, evidence. *Sheriff v.*
9 *Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev. 180, 547 P.2d 312 (1976).
10 The state need only present enough evidence to create a reasonable inference that the accused
11 committed the offense with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541 P.2d
12 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36 (1983).

14 The Court finds it is established that Jeffrey Spencer knocked Helmut Klementi down as
15 alleged within the relevant criminal complaint. The Court concludes that such act in and of itself
16 provides probable cause for the crime originally alleged, noting that a magistrate also previously
17 concluded probable cause was present, thereby allowing the criminal prosecution of Jeffrey
18 Spencer to have moved forward; with probable cause established, the first element of a claim for
19 malicious prosecution, specifically that there be want of probable cause, cannot be satisfied and
20 no reasonable jury could so find.

22 With no basis factually or legally to bring the claim, the Court finds and concludes that
23 Jeffrey Spencer's claim for malicious prosecution was alleged without reasonable basis.
24 Therefore, pursuant to NRS 18.010(2)(b), attorney's fees are hereby awarded to the prevailing
25 party, Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.

27 In determining whether an award of attorneys' fees is reasonable, four factors provided
28 within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), are to be

1 considered. Based upon those four factors, the Court hereby determines that attorney's fees of
2 \$14,870.00 are reasonable in accordance with the following findings:

3 1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice
4 regularly and successfully in the State of Nevada, serving clients well during formal litigation of
5 disputes. Based upon the quality of the pleadings contained within the record and the breadth of
6 knowledge required to properly conduct the motion practice and defense conducted thus far in
7 this matter, the Court finds the professional qualities of the primary billing attorney, Michael
8 Pintar, as well as the law firm of Glogovac & Pintar, to be more than satisfactory and reasonable,
9 particularly considering the maximum billing rate of only \$150.00 per hour reflected within the
10 supporting affidavit.
11

12 2. Character Of Work To Be Done: The motion for summary judgment, opposition,
13 reply, and supporting documentation reflect the substance of the underlying and current disputes
14 between the parties, with the nature of the matter being important to both sides. The legal work
15 necessary consisted of conducting and participating in contested litigation, which in turn required
16 legal analysis and research in preparation for, and specific to, this matter as it has progressed
17 through the specific motion practice. Motion practice itself is an acquired skill possessed by the
18 parties' counsel, including the presentation of oral arguments during multiple hearings in this
19 instance. Pursuit of discovery was also necessary.
20

21 3. The Work Actually Performed: Based upon the Court's observations during oral
22 argument and while analyzing the substance of the pleadings during the course of this motion
23 practice, the Court finds the work presented by Glogovac & Pintar to have been eminently
24 satisfactory and reasonable.
25

26 4. The Result Obtained: After pursuit of discovery, submission of written briefs, and
27 presentations in open court, including examination of a testifying witness, summary judgment
28

1 was entered in favor of the counter-defendant with regard to malicious prosecution. Entry of
2 summary judgment is not a result often achieved in litigation practice.

3 "[G]ood judgment would dictate that each of these factors be given consideration by the
4 trier of fact and that no one element should predominate or be given undue weight." *Brunzell*,
5 85 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion
6 practice at issue, the quality and character of the work, the work actually performed, and the
7 result achieved, the Court finds the amount of attorney fees originally requested to be in
8 accordance with the *Brunzell* factors and reasonable.

9
10 However, the requested fees of \$16,160.00 have been reduced by \$1,290.00 based upon
11 a review of the supporting billing sheets, which reveals several items not pertinent to the
12 summary judgment motion such as entries dated 4/8/16 (re: declaratory relief action), 4/20/16
13 (review of case file regarding procedural irregularities), 5/6/16 (meeting with insured re: legal
14 status), 5/22/16 (substitution of counsel and re: amending complaint), and 8/18/16 (opposition
15 to motion to amend).

16
17 Regarding an award of costs, to the extent discretion is afforded the Court within NRS
18 18.050, costs of \$1,083.75 are hereby awarded to Mary Ellen Kinion, consisting of court
19 reporters' fees of \$262.50 for the deposition of Rowena and Peter Shaw, \$330.00 (appearance
20 fee for hearing), and \$491.25 for transcripts of Marilyn & Jeffery Spencer Trial. All other
21 costs contained within the Memorandum of Costs and Disbursements filed into the Court's
22 record on March 21, 2017, may be pursued further upon the conclusion of this matter.

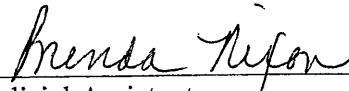
23
24 IT IS SO ORDERED.

25 Dated this 17 day of September, 2017.

26
27 
28 STEVEN R. KOSACH
Senior District Judge

Copies served by mail this 19 day of October, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pinter, Esq., Glogovac & Pinter, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 515 Court Street, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.


Judicial Assistant

FILED

RECEIVED

Case No. 14-CV-0260

OCT 17 2017

2017 OCT 17 PM 1:28

Dept. No. I

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY D. GOBLZ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party
Defendants.

THIS MATTER comes before the Court upon a Stipulation for Dismissal with
Prejudice in which the parties to the complaint, Plaintiff Helmut Klementi and Defendant
Jeffrey D. Spencer, stipulate to the dismissal of the causes of action alleged within Plaintiff

1 Helmut Klementi's Amended Complaint filed on August 12, 2016, with prejudice; each side
2 bearing their own fees, costs, and interest. The stipulation notes that the dismissal is not
3 applicable to Jeffrey Spencer's counterclaim, now contained within his Second Amended
4 Counterclaim & Third Party Complaint.

5 THEREFORE, good cause appearing, and pursuant to the stipulation, it is hereby
6 ORDERED, ADJUDGED, and DECREED, that Plaintiff's Amended Complaint is dismissed
7 with prejudice, with each of the parties thereto bearing their own fees and costs incurred as a
8 result. The Second Amended Counterclaim & Third Party Complaint remains pending.

9
10 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the jury fees posted
11 herein on behalf of Defendant Jeffery Spencer in defense of the complaint, as amended, be
12 returned to RANALLI & ZANIEL, LLC.

13 IT IS SO ORDERED.

14 Dated this 12 day of October, 2017.


STEVEN R. KOSACH
Senior District Judge

Copies served by mail this 17 day of ^{October}~~September~~, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pintar, Esq., Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 440 Ridge St., Ste. 2, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.

Brenda Nifon

EXHIBIT "3"

EXHIBIT "3"

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED

APR 03 2017

Douglas County
District Court Clerk

2017 APR -3 AM 10:10

CLERK

[Handwritten signature]

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual, MARY
ELLEN KINION, an individual, and DOES
1-5,

Counterdefendants.

ORDER

On April 22, 2016, Third-Party Defendant, Mary Kinion ("Kinion"), by and through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On May 13, 2016, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Kinion replied on May 23, 2016. On January 30, 2017, a hearing and oral argument was held.

This action arises out of a dispute between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. In 2013, Spencer was criminally prosecuted by the Douglas County District Attorney's office for the alleged

1 assault of an elderly neighbor, Helmut Klementi. Spencer was acquitted of the criminal
2 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
3 personal injuries arising from the alleged assault. In turn, Spencer asserted a counterclaim
4 against Kinion and others consisting of claims for malicious prosecution and civil conspiracy.

5 Kinion now moves this Court for an Order granting summary judgment. Kinion avers
6 that, as a matter of law, Spencer cannot prevail on his claim for malicious prosecution against
7 her.

8 **Summary Judgment Standard**

9 Summary judgment is appropriate when the record demonstrates that no genuine issue
10 of material fact exists and the moving party is entitled to judgment as a matter of law. Wood v.
11 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The pleadings and the record are
12 construed in the light most favorable to the nonmoving party. Id. However, the nonmoving
13 party must do more than simply show that there is some metaphysical doubt as to the material
14 facts. Id. at 732 See also Torrealba v. Kesmetis, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008)
15 (explaining the burden on the moving party is to set forth facts demonstrating the existence of a
16 genuine issue in order to withstand a disfavorable summary judgment.”)

17 The Supreme Court of Nevada follows the federal approach outlined in Celotex Corp. v.
18 Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to burdens of proof
19 and persuasion in the summary judgment context. See Cuzze v. Univ. & Comty. College Sys.
20 Of Nevada, 123 Nev. 598, 601, 172 P.3d 131, 134 (2007). The party moving for summary
21 judgment bears the initial burden of production to show the absence of a genuine issue of
22 material fact. Celotex, 477 U.S. at 323, 106 S.Ct. 2548. If such a showing is made, then the
23 party opposing summary judgment assumes a burden of production to show the existence of a
24 genuine issue of material fact. Wood, 121 Nev. At 732, 121 P.3d at 1031. The manner in which
25 a party may satisfy its burden of production depends on which party moving for summary
26 judgment may satisfy the burden of production by either (1) submitting evidence that negates
27 an essential element of the nonmoving party’s claim. Or (2) “pointing out ... that there is an
28 absence of evidence to support the nonmoving party’s case.” Cuzze, 123 Nev. At 302-03, 172

1 P.3d at 134. In such cases, in order to defeat summary judgment, the nonmoving party must
2 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts
3 that show a genuine issue of material fact. Wood, 121 Nev. At 732, 121 P.3d at 1031.

4 **Discussion**

5 On February 3, 2015, Spencer filed a document entitled Answer and Counterclaims. In
6 the Counterclaim, Spencer alleges the following:

7 14. On December 18, 2012, Kinion attended a KGID board meeting and stated that she
8 witnessed Spencer use his snow plow to intentionally batter E. Klementi with snow, ice
9 and debris.

10 21. That the statements of Counterdefendants E. Klementi, El. Klementi and Kinion
11 concerning Spencer's use of the snow plow to (i) berm in the Klementi's driveway and
12 (ii) intentionally cause E. Klementi to be battered with snow, ice and/or debris from the
13 road were false.

14 24. The above-mentioned false statements were made by the Counterdefendants for the
15 purpose of persuading and inducing the State to prosecute Spencer for Exploitation of
16 an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.

17 26. The false statements outlined above actually caused the State to institute criminal
18 proceedings and charge Spencer with three counts of Exploitation of an Elderly Person
19 pursuant to NRS 200.0592 and NRS 200.0599 predicted entirely upon the false and
20 malicious statements of the Counterdefendants.

21 The Counterclaim alleges claims for Malicious Prosecution (First Claim for Relief) and
22 Civil Conspiracy (Second Claim for Relief). The elements for a claim of malicious prosecution
23 are: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3)
24 termination of the prior criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev.
25 27, 38 P.3d 877, 879-80 (2002). The Nevada Supreme Court has explained that "[a] malicious
26 prosecution claim requires that the defendant initiated, procured the institution of, or actively
27 participated in the continuation of a criminal proceeding against the plaintiff." Id.

28 In this case, the undisputed facts show that on December 18, 2012, the incident between
Helmut Klementi and Spencer occurred. It is alleged that Spencer assaulted Helmut Klementi
while he was in the street taking pictures of the snow berm in front of his brother's house. The
Douglas County Sheriff's Office responded and conducted an investigation of the incident. As

1 part of that investigation, Douglas County Deputies interviewed Helmut Klementi, Egon
2 Klementi, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the
3 Douglas County Sheriff's Report Spencer informed the sheriff deputies that he attacked Helmut
4 because he believed Helmut was breaking into his truck. Spencer also claimed that he thought
5 Helmut was a teenager in a hoodie. Ultimately, the sheriff deputies did not find Spencer's
6 account to be credible and, as a result, Spencer was arrested for battery and abuse of an elder.

7 Following Spencer's arrest, the Douglas County Deputy District Attorney's office
8 pursued criminal charges. At the hearing on January 30, 2017, Maria Pence, the Douglas
9 County Deputy District Attorney who prosecuted the criminal matter against Spencer testified.
10 Ms. Pence testified that no one was involved in the charging decision other than herself. She
11 further testified that the original charges filed against Spencer were for Battery, a misdemeanor,
12 Intimidation of a Witness to Influence Testimony, a Category D Felony, and Exploitation of an
13 Elderly Person, a gross misdemeanor. Later, the gross misdemeanor charge was enhanced to a
14 felony by Ms. Pence based on the medical records that showed that Helmut Klementi had
15 received substantial body injuries.

16 The undisputed facts show that Kinion had no involvement in the Douglas County
17 Deputy Sheriff's decision to arrest Spencer on December 18, 2012. The facts also show that
18 while Kinion met with Ms. Pence at the Tahoe Justice Court, nothing that Kinion did or said
19 resulted in the charges against Spencer being enhanced. Kinion was simply told by Ms. Pence
20 that, "if you have any information you think that would be relevant or helpful, please write it
21 down and send it to the District Attorney's Office." Transcript p. 22: 16-23. Kinion did that and
22 sent a letter to the District Attorney's Office that was received in that office on February 22,
23 2013. Exhibit 1.

24 Based on the foregoing, Spencer has failed to provide any evidence that would support
25 a claim for malicious prosecution against Kinion. For these reasons, summary judgment on the
26 claim for malicious prosecution is GRANTED.

27 ///
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

IT IS SO ORDERED

day of March, 2017.



DISTRICT JUDGE

EXHIBIT "2"

EXHIBIT "2"

RECEIVED

Case No. 14-CV-0260

MAR 03 2017

FILED

Dept. No. 1

Douglas County
District Court Clerk

2017 MAR -3 AM 10:11

BOBBIE R. WILLIAMS
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

**ANSWER TO AMENDED COMPLAINT
& AMENDED COUNTERCLAIM AND
THIRD PARTY COMPLAINT**

JEFFREY D. SPENCER,

Defendant.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW,
an individual, PETER SHAW, an individual,
& DOES 1-5,

Counterdefendant &
Third Party Defendants.

COMES NOW, Defendant JEFFREY D. SPENCER, by and through his attorney of record,
DAVID M. ZANIEL, ESQ. of the law offices of RANALLI, ZANIEL, FOWLER & MORAN, LLC
and Counterclaimant/Third-Party Plaintiff JEFFREY D. SPENCER, by and through his attorneys
WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., hereby answers Plaintiff's Amended
Complaint as follows:

Defendant denies each and every paragraph contained within the Plaintiff's Complaint on file
herein, save and except for those matters that are expressly addressed hereinafter.

JURISDICTION

1. Answering Paragraphs 1 and 2 of Plaintiff's Complaint, Defendant admits each and every allegation contained therein.

2. Answering Paragraphs 3 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and, therefore, must deny the same.

3. Answering Paragraphs 4 and 5 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF (Negligence)

4. Answering Paragraph 6 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

5. Answering Paragraph 7, 8, 9, and 10 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF (Assault & Battery)

6. Answering Paragraph 11 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

7. Answering Paragraph 12, 13, and 14 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

**THIRD CLAIM FOR RELIEF (Pursuant to NRS 41.1395
Damages for injury or loss suffered by older person)**

8. Answering Paragraph 15 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

9. Answering Paragraphs 16, 17, 18, and 19 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FOURTH CLAIM FOR RELIEF (Emotional Distress)

10. Answering Paragraph 20 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

11. Answering Paragraph 21 and 22 of Plaintiff's Complaint, Defendant denies each and every

1 allegation contained therein.

2 **FIFTH CLAIM FOR RELIEF(Punitive Damages Pursuant to NRS 42.005)**

3 12. Answering Paragraph 23 of Plaintiff's Complaint, Defendant repeats, realleges, and
4 incorporates by reference the answers to each of the allegations set forth above.

5 13. Answering Paragraph 24 and 25 of Plaintiff's Complaint, Defendant denies each and every
6 allegation contained therein.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief
10 can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff, were
13 proximately caused or contributed to by the Plaintiff's own negligence, and such negligence was
14 greater than the negligence, if any, of Defendant.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Defendant alleges that Plaintiff has failed to mitigate his damages, if any.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 The occurrences referred to in the Complaint, and all damages, if any, resulting therefrom,
19 were caused by the acts or omissions of third parties over whom this answering Defendant had no
20 control.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have been
23 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing
24 of Defendant's Answer and, therefore, Defendant reserves the right to amend his Answer to allege
25 additional affirmative defenses or withdraw certain affirmative defenses if subsequent investigation
26 warrants.

27 **SIXTH AFFIRMATIVE DEFENSE**

28 Attorney's fees are only recoverable through contract or by statute and are not recoverable

1 as damages in a lawsuit for personal injury damages. Plaintiff's claim for attorney's fees as alleged
2 in Plaintiff's Complaint, are not recoverable herein and have been improperly pled in Plaintiff's
3 Complaint. Defendant specifically reserves the right to have Plaintiff's improperly pled claim for
4 attorney's fees dismissed prior to trial.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 The occurrence referred to in Plaintiff's Complaint and all injuries and damages resulting
7 therefrom, if any, were caused by intervening and superseding causes over which this answering
8 Defendant had no control.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The alleged injuries and damages claimed in Plaintiff's Complaint was caused in whole or
11 in part by pre-existing medical conditions neither caused nor contributed to by this answering
12 Defendant.

13 **NINTH AFFIRMATIVE DEFENSE**

14 The alleged injuries and damages claimed in Plaintiff's Complaint were caused in whole or
15 in part by his pre-existing physical, mental and/or emotional conditions and are not the responsibility
16 of this answering Defendant.

17 **TENTH AFFIRMATIVE DEFENSE**

18 The alleged injuries and damages claimed in Plaintiff's Complaint, if any, were caused in
19 whole or in part by accident and/or causes occurring subsequent to the occurrence referred to in
20 Plaintiff's Complaint and are not the responsibility of this answering Defendant.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 All and/or part of the medical damages and/or diagnostic studies performed on Plaintiff were
23 unnecessary and/or unreasonable in costs and were not causally related to the alleged occurrence
24 referred to in Plaintiff's Complaint.

25 **TWELVTH AFFIRMATIVE DEFENSE**

26 Defendant is not liable to Plaintiff under the sudden emergency doctrine.

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 The occurrence referred to in Plaintiff's Complaint was unavoidable and not caused or

1 contributed to by this answering Defendant.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 To the extent the Plaintiff, or an agent, representative or subrogee of the Plaintiff, have
4 received compensation from, or on behalf of, the Answering Defendant, the Answering Defendant
5 is entitled to a set-off, or return of the value of such compensation, from Plaintiff, and Plaintiff is
6 estopped from seeking such compensation to the extent it has already been paid.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 Plaintiff is prohibited from more than one recovery for the same injury or harm.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's damages, if any, are insufficient for this Court to have jurisdiction over this matter.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 The Plaintiff has a duty to preserve evidence which he knew, or reasonably should have
13 known, would be relevant to this action, and any failure to do so bars the prosecution of this action
14 against the Answering Defendant and/or requires the application of appropriate sanctions and
15 safeguards to prevent unfair prejudice to the Answering Defendant.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 No act or omission of Answering Defendant was a substantial factor in bringing about the
18 damages alleged by Plaintiff, nor was any act or omission a contributing cause thereof. Any alleged
19 act or omission of Answering Defendant was superseded or preceded by the acts or omissions of
20 others, which were the independent, intervening, legal and proximate cause of the damage alleged
21 by Plaintiff.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 To the extent Plaintiff has waived, relinquished and/or released some or all of his claims
24 against Answering Defendant, he is estopped from pursuing them in this action.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Defendant prays for judgment as follows:

- 27 1. That Plaintiff takes nothing by way of this action;
28 2. For such other and further relief as this Court may deem just and proper; and

3. For attorneys fees and costs for having to defend this claim.

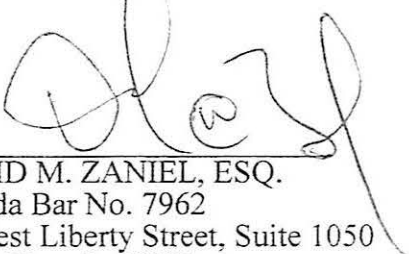
Affirmation

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 28 day of February 2017.

RANALLI, ZANIEL, FOWLER & MORAN, LLC


DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Defendant
Jeffrey D. Spencer

AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT

Defendant/Counterclaimant & Third Party Plaintiff JEFFREY D. SPENCER (hereinafter identified as "Counterclaimant"), by and through his attorneys WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., for his causes of action against the underlying Plaintiff and named Third Party Defendants (hereinafter identified as "Counter/3rd Party Defendants") hereby complains, alleges and avers as follows:

1. Counterclaimant JEFFREY D. SPENCER is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

2. Counterdefendant HELMUT KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

3. Third Party Defendant EGON KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

4. Third Party Defendant ELFRIDE KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

1 5. Third Party Defendant MARY ELLEN KINION is and was, at all times relevant to the causes
2 of action alleged herein, a resident of Douglas County, State of Nevada.

3 6. Third Party Defendant ROWENA SHAW is and was, at all times relevant to the causes of
4 action alleged herein, a resident of Douglas County, State of Nevada.

5 7. Third Party Defendant PETER SHAW is and was, at all times relevant to the causes of action
6 alleged herein, a resident of Douglas County, State of Nevada.

7 8. The true names and capacities whether individual, corporate, associate or otherwise of Third
8 Party Defendants DOES 1 through 5, inclusive, and each of them, are unknown to Counterclaimant
9 at this time. He therefore sues said Third Party Defendants by fictitious names and when their true
10 names and capacities are ascertained, he will amend his Counterclaim and Third Party Complaint
11 accordingly. Counterclaimant is informed, believes and therefore alleges that each of the Third Party
12 Defendants designated herein as a DOE is responsible in some manner for the events and happenings
13 referred to herein and each DOE Third Party Defendant caused the injuries and damages complained
14 of herein.

15 9. Counterclaimant is informed, believes and therefore alleges that at all times relevant to the
16 causes of action alleged herein, each Counter/3rd Party Defendant was acting as an agent,
17 representative, partner and/or co-conspirator of other Counter/3rd Party Defendants, and was acting
18 in the course and scope of such agency, representation, partnership and/or conspiracy in the events
19 referred to herein.

20 STATEMENT OF FACTS

21 10. In or about May 2012, JEFFERY SPENCER and his wife began erecting a fence on their
22 residential property in Stateline for greater privacy in their yard and to contain their dog.

23 11. On or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department
24 to complain about EGON KLEMENTI coming on their property without their consent and taking
25 photographs of two underage boys, nephews of the Spencer's close friend, who were shirtless while
26 working the front yard.

27 12. On or about May 27, 2012, Officer Flagg of the Douglas County Sheriff's Department
28 responded and spoke to EGON KLEMENTI to advise him of the Spencers' complaint and to advise

1 him that if he went on the Spencers' property again, he would be subject to arrest for trespassing.

2 13. On or about May 27, 2012, EGON KLEMENTI made no report nor complaint about
3 JEFFERY SPENCER to Officer Flag.

4 14. JEFFERY SPENCER is and was working for F & B Inc., a sub-contractor for Kingsbury
5 General Improvement District (hereinafter "KGID") for snow removal on roads within the Township
6 of Stateline, Douglas County, Nevada.

7 15. On multiple occasions in November and December 2012, EGON KLEMENTI called KGID
8 and complained that when plowing the road, JEFFREY SPENCER was intentionally leaving a snow
9 berm in EGON and ELFRIDE KLEMENTI's driveway. EGON KLEMENTI also presented KGID
10 a photograph depicting snow at the edge of their driveway in support of his complaints, but no
11 photographs were ever produced showing any berms.

12 16. On or about December 12, 2012, MARY ELLEN KINION called KGID and complained that
13 when plowing the road, JEFFREY SPENCER had intentionally left a snow berm in her driveway.

14 17. On or about December 12, 2012, EGON KLEMENTI called the Douglas County Sheriff's
15 Department and complained that JEFFREY SPENCER intentionally used his snow plow to strike
16 EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway, and
17 that the event had been witnessed by a neighbor MARY ELLEN KINION, who would corroborate
18 his complaint.

19 18. On or about December 12, 2012, MARY ELLEN KINION called the Douglas County
20 Sheriff's Department and reported that she had witnessed JEFFREY SPENCER intentionally use
21 his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing
22 EGON KLEMENTI to suffer injuries.

23 19. On or about December 12, 2012, Deputy Sanchez of the Douglas County Sheriff's
24 Department responded and spoke with both EGON KLEMENTI and MARY ELLEN KINION
25 regarding their allegations against JEFFREY SPENCER. Deputy Sanchez determined that there was
26 no evidence, no crime had been committed, and accordingly he wrote no police report.

27 20. On or about December 12, 2012, MARY ELLEN KINION called KGID and stated that she
28 witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with

1 snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

2 21. On or about December 12 and/or 13, 2012, EGON KLEMENTI and/or MARY ELLEN
3 KINION made similar statements to other neighbors that JEFFREY SPENCER intentionally use his
4 snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing
5 EGON KLEMENTI to suffer injuries, and that MARY ELLEN KINION witnessed this battery.

6 22. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent a letter to
7 KGID stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use
8 his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing
9 EGON KLEMENTI to suffer injuries.

10 23. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent similar letters
11 to various Douglas County agencies stating that MARY ELLEN KINION had witnessed JEFFREY
12 SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris
13 from the snow plow, causing EGON KLEMENTI to suffer injuries.

14 24. On or about December 13, 2012, EGON KLEMENTI called KGID's Director McKay and
15 told him that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI
16 with snow, ice and debris as he was shoveling snow in his own driveway.

17 25. On or about December 18, 2012, ELFRIDE KLEMENTI, EGON KLEMENTI, MARY
18 ELLEN KINION, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the
19 Directors and members of the public were present.

20 26. ELFRIDE KLEMENTI spoke at that KGID meeting, reading from a letter she wrote to the
21 Board, stating that there had been several police reports made, that her husband felt threatened by
22 JEFFREY SPENCER, that JEFFREY SPENCER had been intentionally using his snow plow to
23 create berms in their driveway, that JEFFREY SPENCER is aggressive and has a gun so she is
24 afraid, and that she wants JEFFREY SPENCER removed from his position as a snow plow operator.

25 27. EGON KLEMENTI spoke at that KGID meeting stating that JEFFREY SPENCER had been
26 intentionally using his snow plow to create berms in EGON and ELFRIDE KLEMENTI's driveway
27 to "seal him in" and that JEFFREY SPENCER had intentionally used his snow plow to strike EGON
28 KLEMENTI with snow, ice and debris from the road.

1 28. MARY ELLEN KINION spoke at that KGID meeting stating that she had personally
2 witnessed the events complained of by EGON KLEMENTI, that JEFFREY SPENCER had a big grin
3 while using his snow plow to strike EGON KLEMENTI with snow, ice and debris, and that
4 JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

5 29. ROWENA SHAW spoke at that KGID meeting reading from her emails to KGID and Mr.
6 McKay complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created
7 snow berms with his snow plow in driveways.

8 30. PETER SHAW spoke at that KGID meeting complaining about JEFFREY SPENCER, and
9 that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

10 31. On or about December 18, 2012, at approximately 8:35p.m., JEFFREY SPENCER heard
11 someone near his vehicle in their driveway. Since there had been several vehicle thefts in the
12 neighborhood, he told his wife to immediately call the Douglas County Sheriff's Department.

13 32. As Mrs. Spencer was calling the Douglas County Sheriff's Department, JEFFREY
14 SPENCER ran down the stairs at the front of his home, yelling to the person near his vehicle to
15 identify himself, asking why that person was breaking into his vehicle.

16 33. JEFFREY SPENCER ran out onto the icy street in the dark pursuing the intruder, who had
17 not responded to identify himself. The intruder suddenly turned back toward JEFFREY SPENCER
18 and they collided, causing the intruder to fall down in the street. JEFFREY SPENCER then saw the
19 intruder was either HELMUT KLEMENTI or his twin brother EGON KLEMENTI.

20 34. When the Douglas County Sheriff's Department officers arrived in response to Mrs.
21 Spencer's call, HELMUT KLEMENTI and EGON KLEMENTI both claimed HELMUT
22 KLEMENTI had not been on JEFFREY SPENCER's property, that HELMUT KLEMENTI had been
23 standing in the road taking pictures of the snow berm when JEFFREY SPENCER ran outside and
24 punched HELMUT KLEMENTI before throwing him to the ground.

25 35. The Douglas County Sheriff's Department officers also spoke with ELFRIDE KLEMENTI
26 and some neighbors that evening.

27 36. Based on the statements of HELMUT KLEMENTI, EGON KLEMENTI and others,
28 JEFFREY SPENCER was arrested that night for misdemeanor battery of HELMUT KLEMENTI,

1 and was released after paying a bail that same evening.

2 37. Based upon the statements of HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE
3 KLEMENTI, MARY ELLEN KINION and others, Douglas County Sheriff's Department instituted
4 an investigation as to whether JEFFERY SPENCER had willfully abused an older person in
5 violation of NRS §200.5092.

6 38. On or about December 19, 2012, MARY ELLEN KINION called Charles Manchester at
7 KGID to say that JEFFREY SPENCER was arrested the night before for beating up HELMUT
8 KLEMENTI.

9 39. On or about December 24, 2012, HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE
10 KLEMENTI filed for a restraining order against JEFFREY SPENCER.

11 40. On or about January 8, 2013, HELMUT KLEMENTI attended a Douglas County Planning
12 meeting at which the Planning Board and members of the public were present.

13 41. HELMUT KLEMENTI spoke at that Douglas County Planning meeting, using the agenda
14 item of the Spencer's fence, stating that JEFFREY SPENCER had assaulted him and he had a
15 restraining order against JEFFREY SPENCER.

16 42. On or about January 15, 2013, ELFRIDE KLEMENTI, ROWENA SHAW and PETER
17 SHAW attended a KGID meeting at which the Directors and members of the public were present.

18 43. ELFRIDE KLEMENTI spoke at that KGID meeting stating that she was afraid of JEFFREY
19 SPENCER because he had punched and beaten up HELMUT KLEMENTI and had been arrested.

20 44. ROWENA SHAW spoke at that KGID meeting, stating she was thankful a Sheriff's Deputy
21 was there at her request, and reading a prepared written speech making accusations against
22 JEFFREY SPENCER.

23 45. PETER SHAW spoke at that KGID meeting, reading a prepared written speech making
24 accusations against JEFFREY SPENCER.

25 46. Several weeks after the incident, ROWENA SHAW and PETER SHAW provided Douglas
26 County Sheriff's Department a surveillance video from their home filmed or about December 18,
27 2012, which had been altered to remove frames showing HELMUT KLEMENTI on JEFFERY
28 SPENCER's property next to his vehicle.

1 47. On or about January 17, 2013, JEFFERY SPENCER presented himself to the Douglas
2 County Sheriff's Department for re-arrest on felony charges from the December 18, 2012 incident.
3 Representations regarding that incident had been made by HELMUT KLEMENTI, EGON
4 KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others at their direction and/or
5 instigation. He was released that same day.

6 48. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas
7 County District Attorney which included an accusation that JEFFERY SPENCER had threatened
8 to punch EGON KLEMENTI on May 27, 2012, even though she was not a witness to the alleged
9 assault and even though EGON KLEMENTI himself had not reported any such alleged assault on
10 that date when a Deputy came to his home because of a complaint by the Spencers.

11 49. On or about February 24, 2013, HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE
12 KLEMENTI testified at a preliminary hearing, making accusations of criminal behavior against
13 JEFFREY SPENCER.

14 50. EGON KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER
15 deliberately created berms in their driveway, and that JEFFREY SPENCER had deliberately
16 showered him with road debris injuring him in his own driveway.

17 51. ELFRIDE KLEMENTI testified at that preliminary hearing that on May 27, 2012, JEFFREY
18 SPENCER had threatened and then punched EGON KLEMENTI, even though she was not present
19 and did not see the alleged assault or battery. ELFRIDE KLEMENTI testified at that preliminary
20 hearing that on December 12, 2012, JEFFREY SPENCER had deliberately used his snow plow to
21 cover EGON KLEMENTI with snow and ice, even though she was not present and did not see the
22 alleged battery. She also testified that JEFFREY SPENCER deliberately created berms in their
23 driveway, that EGON KLEMENTI is frail and feels very threatened by JEFFREY SPENCER.
24 ELFRIDE KLEMENTI testified at that preliminary hearing that on December 18, 2012, JEFFREY
25 SPENCER hurt HELMET KLEMENTI, even though she did not see that alleged battery either.

26 52. HELMET KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER hit him
27 in the chest and knocked him to the ground on December 18, 2012.

28 53. On or about March 8, 2013, an Amended Criminal Complaint was filed in Case No. 13-0069,

1 charging JEFFERY SPENCER with willfully and unjustifiably causing EGON KLEMENTI,
2 ELFRIDE KLEMENTI and HELMUT KLEMENTI to incur pain, injury or mental anguish in
3 violation of NRS §200.5092 and §200.5099.

4 54. On or about April 9, 2013, ELFRIDE KLEMENTI, MARY ELLEN KINION and ROWENA
5 SHAW attended a Douglas County Planning meeting at which members of the public were present.

6 55. ROWENA SHAW used the Douglas County Planning meeting agenda item of the Spencer's
7 fence to speak, stating that the Spencers were neighborhood bullies, and accusing JEFFREY
8 SPENCER of battering HELMUT KLEMENTI.

9 56. MARY ELLEN KINION used the Douglas County Planning meeting agenda item of the
10 Spencer's fence to speak, reading a letter from ELFRIDE KLEMENTI making accusations against
11 JEFFREY SPENCER.

12 57. On or about April 24, 2013, at the preliminary hearing in Case No. 13-0069, the State
13 claimed JEFFERY SPENCER had: (a) feloniously used a snow plow to create snow berms in the
14 driveway of EGON and ELFRIDE KLEMENTI's home, blocking them into their home; (b)
15 feloniously used a snow plow to intentionally batter EGON KLEMENTI with snow, ice and debris;
16 (c) feloniously battered HELMUT KLEMENTI causing him to incur substantial bodily injury on
17 December 18, 2012; and (d) feloniously verbally assaulted EGON KLEMENTI by threatening to
18 punch him in the nose on May 23, 2012.

19 58. In or about April 2013, MARY ELLEN KINION, who was not a party to the restraining order
20 proceeding initiated by HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI,
21 wrote an ex-parte letter to the Justice of the Peace hearing that matter trying to get more restrictive
22 restraining orders against JEFFREY SPENCER.

23 59. On or about September 16 through 27, 2013, JEFFERY SPENCER was tried on the criminal
24 charges brought against him based upon representations of Counterdefendants and each of them.

25 60. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN
26 KINION, ROWENA SHAW and PETER SHAW each testified at JEFFERY SPENCER's trial
27 against JEFFERY SPENCER.

28 61. There was no credible evidence presented at trial that JEFFERY SPENCER had ever used

1 a snow plow to intentionally create snow berms in EGON and ELFRIDE KLEMENTI's driveway,
2 to trap them in their home, at any time and specifically not in the winter of 2012-13.

3 62. There was no credible evidence presented at trial that JEFFERY SPENCER had used a snow
4 plow to batter EGON KLEMENTI with snow, ice and debris while he was shoveling his driveway,
5 intentionally or unintentionally.

6 63. There was no credible evidence presented at trial that JEFFERY SPENCER had verbally
7 assaulted EGON KLEMENTI by threatening to punch him in the nose on May 27, 2012.

8 64. Evidence presented at trial established that neither HELMUT KLEMENTI, EGON
9 KLEMENTI nor ELFRIDE KLEMENTI had informed anyone of the alleged assault of May 27,
10 2012, at any time prior to filing for a protective order on or about December 24, 2012, despite
11 numerous public statements made by them against JEFFREY SPENCER.

12 65. Further evidence presented at trial established that neither HELMUT KLEMENTI, EGON
13 KLEMENTI, ELFRIDE KLEMENTI nor MARY ELLEN KINION had made a report to the Douglas
14 County Sheriff's Department of the alleged assault of May 27, 2012, at any time prior to January
15 2013, despite numerous interviews of them by Deputy Sheriffs regarding their allegations against
16 JEFFERY SPENCER.

17 66. Evidence presented at trial established that ELFRIDE KLEMENTI and MARY ELLEN
18 KINION were not witnesses of the May 27, 2012, alleged verbal assault, and they had no basis to
19 make such accusations against JEFFERY SPENCER.

20 67. HELMUT KLEMENTI testified at trial that JEFFERY SPENCER had punched and battered
21 him causing substantial bodily injuries.

22 68. Evidence presented at trial established that HELMUT KLEMENTI had been knocked down
23 in a collision with JEFFERY SPENCER who had run down his stairs and chased the figure he had
24 seen by his truck out onto the icy street, but there was no evidence that JEFFERY SPENCER had
25 punched HELMUT KLEMENTI, and there was no credible evidence of intent to cause substantial
26 bodily injury.

27 69. At the conclusion of the trial, on or about September 27, 2013, the jury returned in short
28 order with the verdicts finding JEFFERY SPENCER not guilty on all charges.

1 70. EGON KLEMENTI continued to take pictures of the Spencers, their family members, friends
2 and children who would come to visit at the Spencer home, despite being told by the Deputy Sheriff
3 on or about May 27, 2012 to stop such behavior.

4 71. EGON KLEMENTI had claimed in seeking a Protective Order against JEFFERY SPENCER
5 the end of December 2012, that he was in fear for his life, yet EGON KLEMENTI continued to walk
6 down the Spencer's street past their home, almost daily and sometimes twice a day, even when
7 JEFFERY SPENCER was sitting on his porch or in his driveway.

8 72. ELFRIDE KLEMENTI had claimed in seeking a Protective Order against JEFFERY
9 SPENCER the end of December 2012, that she was in fear for her life, yet ELFRIDE KLEMENTI
10 continued to walk down the Spencer's street past their home on many occasions

11 73. In or about March 2014, the restraining orders were all dissolved as there was no credible
12 evidence that JEFFREY SPENCER was a threat of any kind to HELMUT KLEMENTI, EGON
13 KLEMENTI and/or ELFRIDE KLEMENTI.

14 **FIRST CLAIM FOR RELIEF - DEFAMATION**

15 74. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 73 as if fully set forth herein.

16 75. Counter/3rd Party Defendants, and each of them, made repeated false and defamatory
17 statements concerning JEFFREY SPENCER, publically asserting that he failed to properly do his
18 job as a contract snow plower, that he assaulted and battered elderly persons, and that he had
19 committed felonies against elderly persons.

20 76. The statements of Counter/3rd Party Defendants, and each of them, were unprivileged and
21 were published verbally and/or in writing to businesses, agencies, boards, and members of the public
22 generally.

23 77. Counter/3rd Party Defendants, and each of them, knew the statements were false when made,
24 and/or the statements were made with a disregard for the truth.

25 78. The statements of Counter/3rd Party Defendants, and each of them, were made to get
26 JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion
27 of JEFFREY SPENCER, and to cause him to be held up to contempt.

28 79. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants,

1 and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to
2 his reputation, good name and standing in the community, and other losses and costs. His damages
3 are both special and general in an amount in excess of \$10,000 according to proof.

4 **SECOND CLAIM FOR RELIEF - MALICIOUS PROSECUTION**

5 80. Counterclaimant realleges and incorporates ¶¶ 1 through 79 as if fully set forth herein.

6 81. Counter/3rd Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE
7 KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, made statements to and/or
8 communicated with and/or provided false evidence to the Douglas County Sheriff's Department
9 and/or the Douglas County District Attorney's Office specifically to procure the institution of
10 criminal charges and/or to add to the criminal charges brought, and/or to actively participate in the
11 continuation of a criminal proceeding against JEFFREY SPENCER.

12 83. Said Counter/3rd Party Defendants, and each of them, acted with malice since they knew the
13 evidence they were providing in support of the criminal proceeding was false and/or was made with
14 a reckless disregard for the truth.

15 84. JEFFREY SPENCER was acquitted of all charges brought against him.

16 85. As a direct and proximate result of the statements and acts of said Counter/3rd Party
17 Defendants, and each of them, JEFFREY SPENCER sustained harm in his business and/or
18 profession, loss to his reputation, good name and his standing in the community, and other losses
19 and costs. His damages are both special and general in an amount in excess of \$10,000 according
20 to proof.

21 **THIRD CLAIM FOR RELIEF - CIVIL CONSPIRACY (DEFAMATION)**

22 86. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 85 as if fully set forth herein.

23 87. Counter/3rd Party Defendants, and each of them, acted in concert in making repeated false
24 and defamatory statements concerning JEFFREY SPENCER, that he failed to properly do his job
25 as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed
26 felonies against elderly persons.

27 88. Counter/3rd Party Defendants, and each of them, acted in concert in making statements to and
28 communicating with businesses, agencies, boards, and members of the public generally.

1 89. Counter/3rd Party Defendants, and each of them, knew or should have known that the
2 objective and purpose of making such statements was to cause harm to JEFFREY SPENCER, and
3 explicitly and/or tacitly agreed to make such statements to cause harm to JEFFREY SPENCER.

4 90. The statements and acts of Counter/3rd Party Defendants, and each of them, were intended
5 to get JEFFREY SPENCER terminated from his contract employment, to lower the community's
6 opinion of JEFFREY SPENCER, to cause him to be held up to contempt.

7 91. The statements and acts of Counter/3rd Party Defendants, and each of them, were wrongful
8 and were made with a disregard for the truth, for the sole purpose of harming JEFFREY SPENCER.

9 92. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants,
10 and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER sustained
11 harm in his business and/or profession, loss to his reputation, good name and standing in the
12 community, and other losses and costs. His damages are both special and general in an amount in
13 excess of \$10,000 according to proof.

14 **FOURTH CLAIM FOR RELIEF - CIVIL CONSPIRACY (MALICIOUS PROSECUTION)**

15 93. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 92 as if fully set forth herein.

16 94. Counter/3rd Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE
17 KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, acted in concert in making
18 repeated false statements concerning JEFFREY SPENCER.

19 95. Said Counter/3rd Party Defendants, and each of them, acted in concert in making statements
20 to and communicating with the Douglas County Sheriff's Department and Douglas County District
21 Attorney's Office to procure the institution of criminal charges, and/or to add to the criminal charges
22 brought, and/or to actively participate in the continuation of a criminal proceeding against JEFFREY
23 SPENCER.

24 96. Said Counter/3rd Party Defendants, and each of them, knew or should have known that the
25 objective and purpose of making such statements and taking such acts was to cause harm to
26 JEFFREY SPENCER, and explicitly and/or tacitly agreed to make such statements and take such
27 acts to cause harm to JEFFREY SPENCER.

28 97. The statements and acts of said Counter/3rd Party Defendants, and each of them, were

1 intended to initiate criminal proceedings and/or to procure a criminal conviction against JEFFREY
2 SPENCER.

3 98. The statements and acts of said Counter/3rd Party Defendants, and each of them, were
4 wrongful and were made and taken with a disregard for the truth, for the sole purpose of harming
5 JEFFREY SPENCER.

6 99. As a direct and proximate result of the statements and acts of said Counter/3rd Party
7 Defendants, and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER
8 sustained harm in his business and/or profession, loss to his reputation, good name and standing in
9 the community, incurred substantial attorneys' fees and costs, and other losses and costs. His
10 damages are both special and general in an amount in excess of \$10,000 according to proof.

11 **FIFTH CLAIM FOR RELIEF - PUNITIVE DAMAGES**

12 100. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 99 as if fully set forth herein.

13 101. Counter/3rd Party Defendants, and each of them, acted with a conscious disregard of the
14 probable harmful consequences of their wrongful acts, with a willful and deliberate failure to avoid
15 those consequences, by intentional misrepresentations, deceptions and/or concealment of material
16 facts known to them with the intent to injure JEFFREY SPENCER.

17 102. Counter/3rd Party Defendants, and each of them, acted with express or implied malice, with
18 an intent to injure JEFFREY SPENCER, and through despicable conduct with a conscious disregard
19 of his rights, subjected JEFFREY SPENCER to cruel and unjust hardships.

20 103. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants,
21 and each of them, JEFFREY SPENCER sustained harm and damages, and should be awarded
22 punitive damages.

23 **SIXTH CLAIM FOR RELIEF - INFLICTION OF EMOTIONAL DISTRESS**

24 104. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 103 as if fully set forth herein.

25 105. Counter/3rd Party Defendants, and each of them, acted intentionally or with a reckless
26 disregard for the likelihood of causing emotional distress.

27 106. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants,
28 and each of them, JEFFREY SPENCER sustained severe emotional distress, and suffered and

continues to suffer from physical ailments directly attributable to the severe emotional distress.

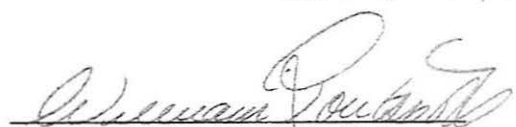
107. As a direct and proximate result of the emotional distress caused by the statements and acts of Counter/3rd Party Defendants, and each of them, JEFFREY SPENCER has suffered mental and physical pain, has incurred medical expenses, and other losses and costs. His damages are both special and general in an amount in excess of \$10,000 according to proof.

WHEREFORE, Counterclaimant JEFFREY SPENCER prays judgement against Counter/3rd Party Defendants, and each of them, for:

1. Special damages in excess of Ten Thousand Dollars (\$10,000);
2. General damages in excess of Ten Thousand Dollars (\$10,000);
3. Punitive damages;
4. Prejudgment interest;
5. Attorneys' fees and costs; and,
6. Such other and further relief as the Court may deem just and proper.

The undersigned affirm pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 28th day of February, 2017.


WILLIAM J. ROUTSIS, II, Esq.
Nevada State Bar No. 5474
1070 Monroe Street
Reno, Nevada 89509
Phone 775-337-2609/Fax 775-737-9321


LYNN G. PIERCE, Esq.
Nevada State Bar No. 3567
515 Court Street, Suite 2f
Reno, Nevada 89501
Phone 775-785-9100/Fax 775-785-9110

Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

CERTIFICATE OF SERVICE

Pursuant to NRCp Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorney for Rowena Shaw & Peter Shaw

DATED this 28th day of February, 2017.

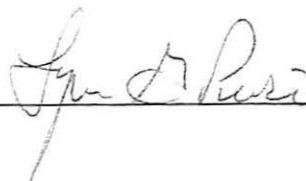


EXHIBIT "1"

EXHIBIT "1"

Douglas R. Brown, Esq., SBN 7620
Christian L. Moore, Esq., SBN 3777
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada 89519
(775) 786-6868
(775) 786-9716
drb@lge.net
clm@lge.net
Attorneys for Helmut Klementi

RECEIVED

AUG 12 2016

Douglas County
District Court Clerk

FILED

2016 AUG 12 AM 10:58

BODDIE R. WILLIAMS
CLERK

D. HECIMOVICH
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

Case No. 14-CV-0260

Dept. No. I

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, and DOES 1-5

Counterdefendants.

AMENDED COMPLAINT

Plaintiff HELMUT KLEMENTI by and through his attorneys, LEMONS, GRUNDY &
EISENBERG, complains and alleges as follows:

JURISDICTION

1. At all times referred to herein, Plaintiff Helmut Klementi was and is a
resident of Stateline, State of Nevada.

2. At times referred to herein, Defendant Jeffrey D. Spencer, was and is a
resident of Stateline, State of Nevada.

1 3. Defendant Does 1-5 are other possible Defendants unknown to the
2 Plaintiff at this time. The Plaintiff requests leave of this Court to amend the Complaint
3 to insert the true names and capacities of the Does 1-5 when the same have been
4 ascertained, to join such Defendants in this action, and to assert the appropriate
5 charging allegations.

6 4. On or about December 18, 2012, Plaintiff, Helmut Klementi was standing
7 in the street in front of his twin brother's house.

8 5. Defendant Jeffrey D. Spencer ran up to Plaintiff Helmut Klementi and
9 collided with Plaintiff in such a manner as to cause Plaintiff to violently strike the
10 ground and incur serious injury.

11 **FIRST CLAIM FOR RELIEF**

12 **(Negligence)**

13 6. Plaintiff realleges each and every allegation contained in paragraphs 1-5,
14 inclusive, as if fully set forth herein.

15 7. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably
16 prudent person and not collide or otherwise make physical contact with Plaintiff
17 Helmut Klementi.

18 8. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably
19 prudent person and not misidentify Plaintiff Helmut Klementi.

20 9. Defendant Jeffrey D. Spencer breached his above described duties.

21 10. As a direct and proximate result of Defendant Jeffrey D. Spencer's breach
22 of one or more of the above described duties, and negligence, Plaintiff Helmut
23 Klementi has incurred bodily injury as well as special and general damages in excess of
24 Ten Thousand Dollars (\$10,000.00).

25 **SECOND CLAIM FOR RELIEF**

26 **(Assault & Battery)**

27 11. Plaintiff realleges each and every allegation contained in paragraph 1-10
28 inclusive, as if fully set forth herein.

1 12. On or about December 19, 2012 Defendant Jeffrey D. Spencer physically
2 battered and assaulted Plaintiff Helmut Klementi in a harmful manner without his
3 consent causing him damages in an amount of more than \$10,000.00. Further, due to
4 the intentional act of battery Plaintiff Helmut Klementi seeks punitive damages in an
5 amount to be determined at trial.

6 13. Further, Plaintiff Helmut Klementi has suffered emotional distress due to
7 the battery by Defendant Jeffrey D. Spencer.

8 14. As a direct result and proximate result of the battery and assault by the
9 Defendant, Plaintiff has suffered, and will continue to suffer in the future, damages in
10 an amount in excess of Ten Thousand Dollars (\$10,000.00).

11 **THIRD CLAIM FOR RELIEF**

12 **(Pursuant to NRS 41.1395 Damages for Injury or loss suffered by older person)**

13 15. Plaintiff realleges each and every allegation contained in paragraphs 1-14
14 inclusive, as if fully set forth herein.

15 16. Defendant Jeffrey D. Spencer intentionally or negligently collided with
16 Plaintiff Helmut Klementi who was 78 years old at the time of this incident.

17 17. NRS 41.1395 applies to Plaintiff Helmut Klementi who is an older person
18 and has suffered a personal injury caused by Defendant Jeffrey D. Spencer's conduct.

19 18. NRS 41.1395 provides for the doubling of actual damages and award
20 attorney's fees and costs in favor of Plaintiff Helmut Klementi.

21 19. As a direct and proximate result of the injury inflicted upon him, Plaintiff
22 has suffered damages and incurred attorneys' fees and costs in an amount in excess of
23 Ten Thousand Dollars (\$10,000.00).

24 **FOURTH CLAIM FOR RELIEF**

25 **(Emotional Distress)**

26 20. Plaintiff realleges each and every allegation contained in paragraphs 1-19
27 inclusive, as if fully set forth herein.

28 ///

21. Defendant Jeffrey D. Spencer's conduct was extreme and outrageous with either the intention of, or reckless disregard for, causing emotional distress to Plaintiff Helmut Klementi who in turn suffered severe, extreme emotional distress as the actual, proximate result of Defendant's conduct.

22. As a result of Defendant's extreme and outrageous conduct, Plaintiff has suffered general damages in the amount in excess of Ten Thousand Dollars (\$10,000.00).

FIFTH CLAIM FOR RELIEF

(Punitive Damages Pursuant to NRS 42.005)

23. Plaintiff realleges each and every allegation contained in paragraph 1-22 inclusive, as if fully set forth herein.

24. Defendant has acted with extreme and outrageous conduct by colliding with Plaintiff Helmut Klementi.

25. As a result of Defendant Jeffrey D. Spencer's extreme and outrageous behavior Plaintiff Helmut Klementi has suffered damages in an amount greater than Ten Thousand Dollars (\$10,000.00).

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);

2. For leave of this Court to amend the complaint when the identities of the Doe Defendants are discovered;

3. For special damages, past and future, according to proof at the time of trial;

4. For punitive damages in an amount greater than Ten Thousand Dollars (\$10,000.00);

5. For the costs of suit, including reasonable attorney's fees; and

///

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on August 12, 2016, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **Amended Complaint**, addressed to the following:

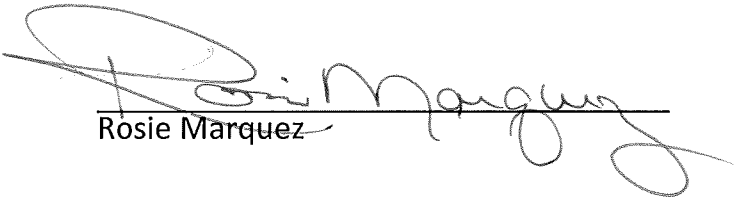
William J. Routsis II, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501-1744
Attorney for Jeffrey Spencer

Michael A. Pinter, Esq.
Glogovac & Pinter
427 W. Plumb Lane
Reno, Nevada 89509
Attorney for Mary Ellen Kinion

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw


Rosie Marquez

Kerry S. Doyle, Esq.
Nevada Bar No. 10866
DOYLE LAW OFFICE, PLLC
4600 Kietzke Lane, Ste. I-207
Reno, NV 89502
(775) 525-0889
kerry@rdoylelaw.com

Electronically Filed
Nov 27 2018 08:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorneys for Appellant

IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER,

Case No. 77086

Appellant,

v.

HELMUT KLEMENTI, EGON
KLEMENTI, ELFRIEDE KLEMENTI,
MARY ELLEN KINION, ROWENA
SHAW, and PETER SHAW,

Respondents.

DOCKETING STATEMENT

1. **Judicial District:** Ninth Judicial District
Department: n/a
County: Douglas
Judge: Steven Kosach (Judges Young and Gregory were disqualified)
District Court Case Number: 14-CV-00260-DC
2. **Attorney filing this docketing statement:**
Kerry S. Doyle
(775) 525-0889
Doyle Law Office, PLLC
4600 Kietzke Lane, Ste. I-207, Reno, NV 89502
on behalf of Jeffrey Spencer

3. **Attorneys representing respondents:**

Listed below are the respondents and their counsel in the trial court proceedings:

Helmut Klementi
Represented by:
Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Elfriede Klementi, Mary Ellen Kinion, and the Estate of Egon Klementi,
Represented by
Michael A Pintar
Glogovac & Pintar
427 W. Plumb Lane
Reno NV 89509

Rowena Shaw and Peter Shaw
Represented by:
Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

4. **Nature of Disposition below:** Summary judgment

5. **Does this Appeal raise issues concerning child custody, venue, or termination of parental rights?** No.

6. **Pending and prior proceedings in the appellate courts.** There are no prior appeals from this action.

7. **Pending and prior proceedings in other courts.** There are no pending or prior proceedings in other courts.

8. **Nature of the action.**

When Egon and Elfriede Klementi were upset by a fence the Spencer's built, they began a campaign of falsehoods against Spencer. They enlisted Egon's twin brother Helmut, and their neighbors Peter and Rowena Shaw and Mary Ellen Kinion. Although the dispute started over a fence, it became much more sinister when Helmut Klementi falsely accused Spencer of punching him, Egon falsely accused Spencer of assaulting him, and the others repeated these falsehoods, presenting them to public officials, medical care providers, Spencer's employer, and law enforcement, as though they personally witnessed the alleged crimes.

Respondents pushed for criminal prosecution based on the false claims and admitted that they had been trying to get him fired by his employer and his race team. Respondents succeeded in getting criminal charges filed, they succeeded in getting Spencer fired, and they succeeded in ruining Spencer's reputation. They did not succeed in obtaining a conviction; Spencer was acquitted of all charges against him after the witnesses' deceptions and lack of personal knowledge were revealed. Not only did Spencer suffer financial damage from defending these claims, these actions understandably caused Spencer severe emotional distress.

Helmut Klementi initially filed this action, suing Spencer civilly after Spencer was acquitted of all criminal charges. Spencer counterclaimed against Helmut Klementi and the other respondents, asserting defamation, intentional infliction of emotional distress, malicious prosecution, and civil conspiracy. Despite evidence

creating genuine issues of material fact as to the claims, the trial court granted summary judgment in favor of each respondent.

During the course of the proceedings, after granting early summary judgment to one third-party defendant, Mary Ellen Kinion, on one of the claims against her, the trial court also granted Kinion's motion for attorneys' fees and costs. Spencer appeals from that order, as an interlocutory order for which appeal may be taken after final judgment, to challenge the award, which was based on the assertion that his counterclaim was brought without reasonable grounds. *See Consolidated Generator v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

9. Issues on appeal.

1. Did the district court err as a matter of law when it granted summary judgment to Mary Ellen Kinion, and later the other respondents, based on its determination that it believed certain testimony instead of considering whether a reasonable trier of fact could have reached a different result, ignoring the standard for granting summary judgment?
2. Did the district court err as a matter of law by using information presented during a settlement conference to influence the decision on summary judgment?
3. Did the district court err when it granted summary judgment despite the presentation of evidence creating genuine issues of material fact?

4. Did the district court err as a matter of law when it applied privilege to defamatory statements made to medical professionals, Spencer's employer, the Douglas County Planning Commission, and the Kingsbury Grade Improvement District and not only the statements made to law enforcement or testimony in a criminal action?
5. As a matter of first impression, does an absolute testimonial privilege apply to statements made by witnesses or in public comment at a public meetings?
6. As a matter of first impression, does privilege apply to claims for malicious prosecution?
7. Did the district court err when applying absolute privilege to false and defamatory statements instead of qualified privilege?
8. Did the district court err as a matter of law by granting attorneys' fees finding a claim to have been frivolous when the claim was not dismissed but pursued to summary judgment and evidence was presented in support of the claim?
9. **Pending appellate proceedings raising the same or similar issues.**
Appellant is not aware of any such cases.
10. **Constitutional issues.** This appeal does not challenge the constitutionality of a statute.

11. **Other issues.**

There are two questions of first impression presented by this appeal: (1) whether an absolute testimonial privilege applies to statements made by witnesses in public meetings and (2) whether any privilege applies to claims of malicious prosecution.

12. **Assignment to the Court of Appeals or retention in the Supreme Court.**

As a tort case in which the judgment did exceed \$250,000, this case would presumptively be assigned to the Court of Appeals. NRAP 17(b)(5). However, as the appeal presents two questions of first impression, regarding the application of privilege in quasi-judicial proceedings and claims for malicious prosecution, this case is more appropriately retained by the Nevada Supreme Court.

13. **Trial.** This action did not proceed to trial.

14. **Judicial Disqualification.** Appellant suggests that if this case is assigned to the Court of Appeals, Judge Michael Gibbons consider recusal because of his involvement in the proceedings in the district court. Gibbons was the original district court judge to whom this case was assigned, however, it does not appear that he had any substantive involvement since the complaint was filed on the day he was appointed to the Court of Appeals. Gibbons was also the trial judge in the criminal case against Spencer, the allegations of which gave rise to the civil complaint and aspects of the counterclaim.

15. **Date of entry of written order appealed from:** August 29, 2018.

16. **Date written notice of entry of order served:** August 30, 2018.

17. **Post-judgment motions.** No tolling motions were filed.
18. **Date notice of appeal filed:** September 17, 2018.
19. **Statute or rule governing the time limit for filing the notice of appeal:**
Nevada Rule of Appellate Procedure 4(a).
20. **Statute granting jurisdiction over the substance of the appeal:**
Nevada Rule of Appellate Procedure 3A(b)(1) allows appeal from this final judgment in a civil action.
21. **Parties involved in the district court action.**
Helmut Klementi, plaintiff and counter defendant
Jeff Spencer, defendant, counterclaimant, and third-party plaintiff
Egon Klementi, third-party defendant
Elfriede Klementi, third-party defendant
Mary Ellen Kinion, third-party defendant
Peter Shaw, third-party defendant
Rowena Shaw, third-party defendant

Parties to the appeal:

The only party to the trial action who is not a party to the appeal is Egon Klementi who died prior to the entry of summary judgment and was dismissed after counsel for Spencer failed to move to substitute his estate as the party after a suggestion of death was filed. An order dismissing Egon Klementi was entered on August 23, 2018, and Spencer does not challenge that order on appeal.

22. Parties' claims and the date of formal disposition.

Helmut Klementi filed the initial complaint on December 17, 2014, alleging assault and battery, abuse under NRS 41.1395, intentional infliction of emotional distress, and punitive damages against Jeff Spencer. This complaint was superseded by an amended complaint filed August 12, 2016. The amended complaint added a claim for negligence and realleged the other claims against Spencer.

Spencer responded to the original complaint by filing an answer, counterclaim and third-party complaint on February 3, 2015. In that counterclaim, Spencer asserted claims for malicious prosecution and conspiracy to commit malicious prosecution against Helmut Klementi, Egon Klementi, and Mary Ellen Kinion. Kinion filed a motion for summary judgment on the claim against her, which was granted in a hearing in January 2017, although the written order was not entered until April 2017. Spencer responded to the amended complaint by filing an Answer, Amended Counterclaim, and Third Party Complaint, on March 3, 2017. In the Amended Counterclaim, Spencer made claims for defamation, conspiracy to defame, punitive damages, and intentional infliction of emotional distress against Helmut Klementi, Egon Klementi, Elfriede Klementi, Mary Ellen Kinion, Rowena Shaw, and Peter Shaw. He additionally made claims for malicious prosecution and conspiracy to commit malicious prosecution against Helmut Klementi, Egon Klementi, Elfriede Klementi, Rowena Shaw, and Peter Shaw. In a hearing in July 2018, the district court announced that it would grant summary judgment to the counterdefendants and third

party defendants, and the court entered its written orders on several days in the end of August 2018.

Because of the multiple parties and claims, appellant provides the following chart for the court's convenience:

Claimant	Defendant	Claim(s)	Date of Resolution	Notice of Entry
Helmut Klementi	Jeff Spencer	Assault and battery, abuse under NRS 41.1395, intentional infliction of emotional distress, punitive damages, and negligence	Dismissed by stipulation – October 12, 2017	
Jeff Spencer	Mary Ellen Kinion	Malicious Prosecution (Original Counterclaim)	Summary judgment – April 3, 2017 (Hearing January 30, 2017)	
Mary Ellen Kinion	Jeff Spencer	Attorneys' fees and costs	Order granting – October 19, 2017	Served Oct. 25, 2017 Filed Oct. 26, 2017,
Jeff Spencer	Mary Ellen Kinion	Defamation, conspiracy to defame, punitive damages, and intentional infliction of emotional distress	Summary judgment – Aug. 23, 2018	Served Aug. 30, 2018 Filed Aug. 31, 2018
Jeff Spencer	Helmut Klementi	Defamation, malicious prosecution, conspiracy to defame, conspiracy for malicious prosecution, punitive damages, and intentional infliction of emotional distress	Summary Judgment – Aug. 23, 2018	Served Aug. 30, 2018 Filed Aug. 31, 2018

Claimant	Defendant	Claim(s)	Date of Resolution	Notice of Entry
Jeff Spencer	Elfriede Klementi	Defamation, malicious prosecution, conspiracy to defame, conspiracy for malicious prosecution, punitive damages, and intentional infliction of emotional distress	Summary Judgment – Aug. 29, 2018	Served Aug. 30, 2018 Filed Aug. 31, 2018
Jeff Spencer	Egon Klementi	Defamation, malicious prosecution, conspiracy to defame, conspiracy for malicious prosecution, punitive damages, and intentional infliction of emotional distress	Dismissal - Aug. 23, 2018	
Jeff Spencer	Rowena and Peter Shaw	Defamation, malicious prosecution, conspiracy to defame, conspiracy for malicious prosecution, punitive damages, and intentional infliction of emotional distress	Summary Judgment – August 17, 2018	Served in September 2018 (the certificate of service is incorrect and incomplete and the document does not appear to have been filed)

23. **Adjudication of all claims between parties.** The summary judgment order entered on August 29, 2018, granting summary judgment to Egon & Elfriede Klementi resolved the final remaining claims against the remaining parties.

24. **Claims remaining below.** No claims remain below.

25. **Exhibits.**

Exhibit No.	Document Title	Document Date
1	Amended Complaint	Aug. 12, 2016
2	Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	Mar. 3, 2017
3	Order Granting Mary Ellen Kinion's Motion for Summary Judgment (no notice of entry appears to have been filed or served)	Apr. 3, 2017
4	Order on Stipulation to Dismiss Helmut Klementi's Claims Against Jeff Spencer (no notice of entry appears to have been filed or served)	Oct. 17, 2017
5	Order Granting Mary Ellen Kinion's Motion for Attorneys' Fees and Costs	Oct. 19, 2017
6	Notice of Entry of Order Granting Fees and Costs	Oct. 26, 2017
7	Order Granting Peter and Rowena Shaw's Motion for Summary Judgment	Aug. 17, 2018
8	Notice of Entry of Order Granting Shaw's Motion for Summary Judgment	September 2018
9	Order Granting Helmut Klementi's Motion for Summary Judgment	Aug. 23, 2018
10	Notice of Entry of Order Granting Helmut Klementi's Motion for Summary Judgment	Aug. 31, 2018
11	Order Granting Mary Ellen Kinion's Motion for Summary Judgment	Aug. 23, 2018
12	Notice of Entry of Order Granting Kinion's Motion for Summary Judgment	Aug. 31, 2018
13	Order Granting Motion to Dismiss Egon Klementi	Aug. 23, 2018
14	Order Granting Egon & Elfriede Klementi's Motion for Summary Judgment	Aug. 29, 2018
15	Notice of Entry of Order Granting Egon & Elfriede Klementi's Motion for Summary Judgment	Aug. 31, 2018

VERIFICATION

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

DATED this 26th day of November, 2018.

DOYLE LAW OFFICE, PLLC

By: /s/ Kerry S. Doyle
Kerry S. Doyle, Esq.
Nevada Bar No. 10866
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 26th day of November, 2018, a true and correct copy of the above DOCKETING STATEMENT was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Michael A Pintar
Glogovac & Pintar
427 W. Plumb Lane
Reno NV 89509

Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 26th day of November, 2018.

_____/s Kerry S. Doyle

Kerry S. Doyle