Case No. 78517

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES TAYLOR; NEVADA GAMING CONTROL BOARD; AND AMERICAN GAMING ASSOCIATION,

Appellants,

v.

DR. NICHOLAS G. COLON,

Respondents.

DISTRICT COURT CASE NO. A-18-782057-C

APPELLANTS JAMES TAYLOR AND NEVADA GAMING CONTROL BOARD'S OPENING BRIEF

AARON D. FORD
Attorney General
THERESA M. HAAR (Bar No. 12158)
Special Assistant Attorney General
State Of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3792 (phone)
(702) 486-3773 (fax)
thaar@ag.nv.gov
Attorneys for Appellants
James Taylor and Nevada Gaming Control Board

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I. JURISDICTIONAL STATEMENT

Pursuant to NRS 41.670(4), "If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court." The District Court issued its Order denying Defendants' Anti-SLAPP Special Motion to Dismiss. Notice of entry of that order was filed on February 26, 2019. Defendants timely filed appealed on April 1, 2019.

II. ROUTING STATEMENT

This Court should retain jurisdiction to hear Defendants' appeal.

III. ISSUE PRESENTED

In this case, the defendant James Taylor, Deputy Chief of the Enforcement Division for the Nevada Gaming Control Board made a presentation to members of the gaming industry at the Global Gaming Expo, which included the use of cheating devices in gaming. A 9-second video depicting the plaintiff Nicholas Colon sitting at a blackjack table with a counting device in his hand was used in Taylor's presentation. While showing the video, Taylor stated "Our only device this year was a counting device." Taylor used this video because Plaintiff was in fact

arrested for the conduct depicted in the video, and was criminally prosecuted for that conduct, ultimately pleading to the crime of theft.

This Court has previously upheld the constitutionality of the Anti-SLAPP statute and recognized its importance in foreclosing baseless lawsuits at their outset. This Court has previously recognized that presentations such as this constitute good faith statements made on matters of public concern, which warrant Anti-SLAPP protection. This Court has also previously recognized that a public figure, such as Colon, must demonstrate actual malice by the speaker in order to show a probability of prevailing on a defamation claim.

With that backdrop, the issues presented are:

1. Whether the District Court erred in finding Taylor's presentation did not constitute a good faith statement, when Taylor affirmatively stated that his statements were true?

2. Whether the District Court erred in finding Taylor's presentation was not a good faith statement, despite finding that it was made on a matter of public concern?

3. Whether the District Court erred in not evaluating the second prong of the Anti-SLAPP statute, failing to find that Colon did not have a probability of prevailing on his defamation claim?

IV. INTRODUCTION AND RELIEF SOUGHT

This Court should vacate the District Court's order denying Defendants' Special Motion to Dismiss. Defendants' Anti-SLAPP Special Motion to dismiss clearly demonstrates that Taylor's presentation was a good faith statement made on a matter of public concern. Defendants' Motion also demonstrates that Colon has no probability of prevailing on his defamation claim. Accordingly, this Court should grant Defendants' Special Motion to Dismiss under NRS 41.660 *et seq*.

V. STATEMENT OF THE CASE

Nicholas Colon is a professional gambler that really wants to avoid public discussion of his illicit behavior. In doing so, he filed suit against the Nevada Gaming Control Board and Deputy Chief James Taylor, for identifying the counting device Colon had in his hand at a blackjack table as the only counting device recovered by GCB that year.

In its Anti-SLAPP Special Motion to Dismiss, Defendants demonstrated that Taylor made a good faith statement on a matter of

public concern. Taylor and GCB also demonstrated that, in shifting the burden to Colon, he does not have a probability of prevailing on his defamation claim.

Colon admitted, both in his Opposition and during oral argument, that he is a public figure. He admitted that the surveillance video shown was accurate. He admitted that he was arrested for using the counting device depicted in the video. He admitted that he was criminally charged with felony burglary for the conduct depicted in the video. He admitted that he plead to a lesser crime of theft as a result of the conduct depicted in the video. During the hearing, Colon also stated that he would need to retain an expert to dispute whether counting device he used is not effective for card counting.

Colon did not carry his burden to establish that he would prevail on his defamation claim as a matter of Nevada law and the First Amendment for several reasons: first, Colon is a public figure, and is required to demonstrate actual malice in the statement. Second, the statement is demonstrably true, as that counting device was the only counting device recovered by GCB that year. Third, Colon was in fact arrested for the conduct depicted in the video and plead to a lesser charge

involving that incident. Fourth, a speaker's opinion of what is depicted in a video cannot give rise to a claim of defamation.

A. Colon's Complaint

Colon identifies himself as a gambler, and an "author, consultant, and executive addressing and operating in the gaming industry." APP001. Taylor is a Deputy Chief of the Enforcement Division of the GCB. APP024. Colon alleges that he was defamed by being identified as a cheater during Taylor's presentation at G2E in 2017. APP002.

B. Defendants' Anti-SLAPP Special Motion to Dismiss

On October 2, 2017, Taylor made a presentation at G2E, the title of which was *Scams, Cheats, and Blacklists*. APP024. The purpose of this presentation was to identify the types of scams, cheating, and use of cheating devices that the GCB, as a law enforcement agency, has investigated. APP024. All of the information, videos, and photos used in this presentation were acquired through GCB investigations and were accurate. APP024-25. As of 2017, Taylor has presented at G2E on various enforcement related topics at least seven times. APP025. At least 300 people attended Taylor's presentation. APP025. This presentation featured 121 slides. APP024. The three main topics covered

were NRS 465.075(1) (Unlawful to possess a device used to obtain an advantage at playing any game in a licensed gaming establishment), NRS 465.070 (Fraud Acts. Place, increase, or decrease a bet or to determine the course of play after acquiring knowledge of the outcome), and NRS 465.083 (Cheating. It is unlawful for any person, whether the person is an owner or employee of or a player in an establishment, to cheat at any gambling game). APP024.

Colon's Complaint stems from a 9-second video clip played during the portion of the presentation on NRS 465.075(1), use of a cheating device. APP025; APP026-32. This 9-second clip showed an individual sitting at a blackjack table with a counting device in his hand. Taylor did not identify the individual in the video by name, show his face, display his booking photo following his arrest, intimate that he had been convicted of any crime, or call him a cheater. APP025; APP026-32. Instead, Taylor simply identified the counting device, and noted that that was the only device that GCB recovered that year. APP025; APP026-32. Colon's Complaint admits that he did possess a device used for counting while sitting at a blackjack table and he does not challenge that he had previously been removed from casino properties for card counting.

APP003. In fact, Colon acknowledged in a later interview posted on YouTube that he did in fact have a counting device in his hand which led to his arrest.[1]

Colon was arrested for Use or Possession of a Cheating Device to Obtain an Advantage at a Gaming Establishment and Cheating at Gaming on May 16, 2017 for the very conduct depicted in the video clip shown during Taylor's G2E presentation. APP025. Colon, in his Opposition and at the hearing, acknowledged that he was criminally prosecuted for the conduct depicted in the video clip. APP043-45, 66-70.

Defendants moved for dismissal under NRS 41.660 meeting both prongs: first, Taylor's presentation was a good faith statement made on a matter of public concern. Second, Colon cannot demonstrate a probability of prevailing on his defamation claim. APP006-32.

C. The District Court's Order

The District Court correctly determined that Taylor's presentation was on a matter of public concern. APP163.

[1] "Professional Card Counter ARRESTED, Vindicated & Now Suing! Nicholas Colon #Interview #Blackjack" https://www.youtube.com/watch?v=CtSVkUluwqc.

However, the District Court erred in finding that Taylor's statement was not made in good faith. APP163. After determining that Taylor's statement was not made in good faith, the District Court concluded its analysis there, and did not evaluate the second prong of the Anti-SLAPP statute.

The District Court erred in not finding that Taylor's presentation constituted a good faith statement on a matter of public concern. The District Court further erred in not conducting analysis on the second prong of the Anti-SLAPP statute, determining that Colon did not have a probability of prevailing on his defamation claim. This Court should grant Defendants' Special Motion to Dismiss.

VI. LEGAL ARGUMENT

A. Anti-SLAPP Special Motion to Dismiss standard

"A SLAPP lawsuit is characterized as a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009). Under Nevada's Anti-SLAPP statute, NRS 41.635 et seq., if a lawsuit is brought against a defendant based upon the exercise of its First Amendment rights, the defendant may file a Special Motion to Dismiss.

Evaluation of the Anti-SLAPP motion is a two-step process. First, the defendant must show, by a preponderance of the evidence, that the plaintiff's claim "is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a).

One of the statutory categories of protected speech includes "[c]ommunications made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood." NRS 41.637(4). "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" includes "written or oral statement made in direct connection with an issue under consideration by a legislative, executive, or judicial body, or any other official proceeding authorized by law." NRS 41.637. This category is construed broadly. *See Mindy's Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 597 (9th Cir. 2010).

Second, once the defendant meets its burden on the first prong, the burden then shifts to the plaintiff, who must make a sufficient

evidentiary showing that he has a probability of prevailing on his claim. NRS 41.660(3)(b). Plaintiff is unable to meet this burden.

Under Nevada's Anti-SLAPP statute, the defendant "is immune from any civil action" if the lawsuit is based upon the defendant's "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.650; 41.660(1). This is not merely an immunity from liability, but is an immunity from suit.

As Nevada's Anti-SLAPP Statute is still relatively new, Nevada looks to California for guidance. *John*, 125 Nev. at 756, 219 P.3d at 1283 ("we consider California case law because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute").

Defendants met both prongs under NRS 41.660 warranting dismissal: first, Taylor's presentation was a good faith statement made on a matter of public concern. Second, Colon cannot demonstrate a probability of prevailing on his defamation claim. The District Court erred by not finding that Taylor's statement was a statement on a matter of public concern, made in good faith. The District Court further erred

by not conducting analysis on the second prong, finding that Colon does not have any probability of prevailing on his claim of defamation.

1. Taylor made a good faith statement on a matter of public concern

Taylor made a good faith statement on a matter of public concern when he identified the counting device that Colon had in his hand in the video as the only counting device recovered by GCB that year.

The District Court correctly agreed that Taylor's presentation constituted a statement on a matter of public concern. APP163. Taylor's presentation focused on cheating and cheating devices, which falls squarely under the purview of Taylor's responsibilities as Deputy Chief of Enforcement with the GCB. The Enforcement Division is the GCB's law enforcement division, with the primary responsibility to conduct criminal and regulatory investigations, gather intelligence on organized crime groups involved in gaming related activities, and make recommendations on candidates for the "List of Excluded Persons." "[S]tatements warning consumers of fraudulent or deceptive business practices constitute a topic of widespread public interest, so long as they are provided in the context of information helpful to consumers." *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 262 (9th Cir. 2013).

Here, Taylor was presenting on fraudulent behavior, cheating activities, and cheating devices in the gaming context at a gaming expo. This clearly constitutes a statement made concerning the public interest.

However, the District Court erred when it determined that Taylor's statement was not made in good faith, simply because Colon disputed whether he was actually cheating by sitting at a blackjack table with a counting device in his hand. In his declaration, Taylor stated that at the time he made his presentation, he was aware of the conduct in the video, he was aware that the counting device was the only counting device recovered by GCB that year, and that he was aware that Colon was arrested for the conduct depicted in the video. APP024-25.

As noted in Colon's opposition in the District Court, he plead to a lesser crime than the felony he was originally arrested for, and after paying restitution, his case was closed. This all occurred in a short period of time prior to Taylor's presentation at G2E. The counting device in Colon's hand was in fact the only counting device recovered by GCB in 2017. At the time of his presentation, Taylor was not aware that Colon's criminal case had been resolved. And simply because Colon pled to a

misdemeanor crime thereby resolving his criminal case does not mean that Taylor did not make his statement in good faith.

The Nevada Supreme Court recently affirmed that a moving party seeking protection under NRS 41.660 need only demonstrate that his or her conduct falls within one of four statutorily defined categories of speech, rather than address difficult questions of First Amendment law. *See Delucchi v. Songer*, 133 Nev. 290, 299, 396 P.3d 826, 833 (2017).

NRS 41.637(4) defines one such category as: "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum ... which is truthful or is made without knowledge of its falsehood." *Coker v. Sassone*, 135 Nev. ____, 432 P.3d 746, 749 (Adv. Op. 2, Jan. 3, 2019).

This case is notably different from the defendant's deficient motion in *Coker v. Sassone*, where the defendant there made no reference to whether his statements were a good faith statement which is truthful or without knowledge of falsity. 432 P.3d 746 (January 3, 2019). Other courts have noted that a declaration by the speaker noting that the statement was believed to be truthful at the time the statement was made is sufficient to demonstrate that the statement was made in good

faith. *See LHF Prods., Inc. v. Kabala*, No. 216CV02028JADNJK, 2018 WL 4053324, at *3 (D. Nev. Aug. 24, 2018), *reconsideration denied*, No. 216CV02028JADNJK, 2019 WL 4855139 (D. Nev. Sept. 30, 2019).

California (which Nevada looks to for Anti-SLAPP guidance) uses "good faith" as a modifier of the protected activity – namely did a defendant, in good faith, engage in a protected activity in making the statement. *Bel Air Internet, LLC v. Morales*, 20 Cal.App.5th 924, 941, 230 Cal.Rptr.3d 71, 84 (Ct. App. 2018) (the court determined that the defendant did, in good faith, make the statement in anticipation of litigation, which was protected conduct). Here, it is clear that Taylor was speaking on a matter of public concern, in good faith, as a representative of the Gaming Control Board.

The District Court should have then shifted the burden to Colon to attempt to demonstrate a probability of prevailing on the merits of his defamation claim, which he would be unable to do. This Court, in conducting a de novo review of the record, should find that Colon cannot meet his burden, and grant Defendants' motion.

2. Colon cannot demonstrate a probability of prevailing on his defamation claim

With Defendants having satisfied the first prong of the Anti-SLAPP requirements, the burden should shift to Plaintiff to demonstrate that he has a probability of prevailing on the merits of his claim, by making a showing of prima facie evidence. NRS 41.660(3)(b). Colon cannot satisfy this burden and the District Court should have dismissed his claim.

To establish a cause of action for defamation, a plaintiff must demonstrate: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *Wynn v. Smith*, 117 Nev. 6, 10, 16 P.3d 424, 427 (2001). A statement can be defamatory only if it contains a factual assertion that can be proven false. *See Pope v. Motel 6*, 121 Nev. 307, 314, 114 P.3d 277, 282 (2005). Colon cannot meet this burden, and dismissal is required.

Colon is a public figure, and must demonstrate Taylor made a provably false statement with actual malice. Colon is unable to do so.

3. Colon cannot demonstrate fault

The degree of fault required by a defendant in a defamation suit depends on both the target and the content of the defendant's speech. In

the context of defamation, there are three categories of plaintiffs: the general public figure, the limited purpose public figure, and the private individual. A limited purpose public figure "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Gertz v. Welch*, 418 U.S. 323, 351 (1974). "A limited-purpose public figure is a person who voluntarily injects himself or is thrust into a particular public controversy or public concern, and thereby becomes a public figure for a limited range of issues." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 720, 57 P.3d 82, 91 (2002). This is a question of law, and the court's determination is based "on whether the person's role in a matter of public concern is voluntary and prominent." *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 446 (2006). Colon here is, at a minimum, a limited purpose public figure within the gaming industry.

Colon has held himself out as an expert in the gaming industry. See APP001. Colon has conducted a number of interviews, and has authored a number of articles, whereby he holds himself out as a gaming expert. See APP015. He is at least a limited purpose public figure within the gaming industry. Colon does not dispute this, and instead acknowledges

that he is so well-known, that even though his name was not used during Taylor's presentation, nor was his face shown, that he was readily recognized by a number of individuals present for Taylor's presentation. APP038.

A public figure cannot recover in a defamation suit unless he can prove by clear and convincing evidence that the defendant published the defamatory statement with actual malice, i.e., with knowledge that it was false or with reckless disregard of whether it was false or not. Mere negligence does not suffice. The plaintiff must affirmatively prove that the author in fact entertained serious doubts as to the truth of his publication or had a "high degree of awareness of their probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). A defamation plaintiff must establish actual malice by clear and convincing evidence. *See Bose Corp. v. Consumers Union, Inc.*, 466 U.S. 485, 511 (1984). This same heightened standard applies to a limited purpose public figure when the statement concerns the public controversy or range of issues for which he is known. *See Makaeff v. Trump Univ., LCC*, 715 F.3d 254 (9th Cir. 2013).

Accordingly, Colon must demonstrate actual malice, namely that Taylor's statements regarding the recovered counting device possessed by Colon were knowingly false. Colon cannot do so, and dismissal is required.

4. Truth is an absolute defense to defamation

Truth is a defense to the claim of defamation. The doctrine of substantial truth provides that minor inaccuracies do not amount to falsity unless the inaccuracies "would have a different effect on the mind of the reader from that which the pleaded truth would have produced." Specifically, the court must determine whether the gist of the presentation, or the portion of the presentation that carries the "sting" of it, is true. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

Here, Taylor played a 9-second video clip of security footage depicting Colon getting up from an active blackjack table with a counting device in his hand, and identified that as the only counting device that was recovered that year by the GCB. The video itself cannot be defamatory, as the video itself is undisputable. Furthermore, Taylor's

description of the recovery of the counting device is based on the accurate contents of the video clip shown, and also cannot support a claim of defamation. "The accuracy and genuineness of the contents of the video is not in dispute. Thus, the truthful statements relating to the admittedly accurate contents of the video cannot form the basis of Plaintiff's defamation claim." K*egel v. Brown & Williamson Tobacco Corp.*, No. 306-CV-00093-LRH-VPC, 2009 WL 656372, at *17 (D. Nev. Mar. 10, 2009), *on reconsideration in part*, No. 3:06-CV-00093LRHVPC, 2009 WL 3125482 (D. Nev. Sept. 24, 2009); *citing Ornatek v. Nev. State Bank*, 93 Nev. 17, 558 P.2d 1145, 1147 (Nev. 1977) (noting that truth is a defense to defamation).

5. "Our only device this year was a counting device"

While Colon is attempting to portray Taylor's statement as accusing him of being a cheater, the presentation clearly demonstrates that at no time was Colon identified by name, or identified as a cheater. Instead, the statement was describing the only device that GCB recovered in the year prior to the presentation was the counting device that was clearly depicted in the casino security footage. APP025, 26-32. Colon cannot demonstrate that the statement was made with any doubt

as to the truth of the statement, especially as the video footage clearly shows an individual sitting at a blackjack table holding a counting device in his hand. Colon's own Complaint acknowledges that he was at the blackjack table with a counting device in his hand. APP002.

Others reviewed Deputy Chief Taylor's presentation at G2E 2017. No one made any note of the video depicting Colon sitting at a blackjack table with a counting device in his hand.[2]

6. Evaluative opinions based on incontrovertible video footage cannot support a claim for defamation

In *People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 895 P.2d 1269 (1995), this Court identified "evaluative opinions" involving a "value judgment based on true information disclosed to or known by the public. Evaluative opinions convey the publisher's judgment as to the quality of another's behavior and, as such, it is not a statement of fact." 111 Nev. at 624. This Court determined that such "evaluative opinions" including the opinion that the plaintiff had abused his animals, as shown by a factually accurate

[2] https://www.cdcgamingreports.com/spotting-scams-stopping-cheats-and-when-to-black-list/

videotape, were held nonactionable in defamation. *Id*.; *see also Churchill v. Barach*, 863 F.Supp. 1266, 1273-1274 (D. Nev. 1994) (comments of customer that airline ticket agent was "rigid, uninformed, incompetent and unhelpful at best" were evaluative opinions nonactionable in defamation).

"In the present case, everyone involved has seen the 'movie'; and all the facts upon which opinions were based were 'disclosed' in the videotape itself. Those who were of the opinion that Berosini was being abusive to the animals were making an evaluative judgment based on the facts portrayed in the video. All viewers of that video are free to express their opinion on the question of whether they think Berosini was being cruel to those animals, and no one can be successfully sued for expressing such an evaluative opinion—even if it is 'wrong.' There is no such thing as a false idea or a wrong opinion." *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd*., 111 Nev. 615, 625, 895 P.2d 1269, 1275–76 (1995), *holding modified by City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 632, 940 P.2d 127 (1997), and *holding modified by City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 940 P.2d 134 (1997); *citing Nevada Ind.*

Broadcasting Corp. v. Allen, 99 Nev. 404, 410, 664 P.2d 337, 341–42 (1983).

Here, Taylor was of the opinion that the video footage demonstrated an individual possessing a counting device. That evaluative opinion is supported by the video clip showing Colon with a counting device in his hand while sitting at a blackjack table. This cannot give rise to a claim of defamation, and therefore Colon's Complaint must be dismissed.

7. Colon was arrested for the acts depicted in the video

Here, Colon was never identified as a cheater in the presentation. His name was never used. His face is not even shown on the security footage. APP027-32. Yet, Colon still alleges that he was accused of having cheated. Taylor never called Colon a "cheater." However, Colon was actually arrested for the conduct depicted in the video clip shown, namely cheating. On or about May 16, 2017, he was arrested for the crimes of Cheating at Gaming 1st Offense and Use or Possession of a Cheating Device to Obtain an Advantage at a Gaming Establishment at Green Valley Ranch. APP025.

Lastly, in his Opposition, Colon acknowledged that he was arrested for the conduct in the video, and entered a plea agreement with

prosecutors. APP067-70. The fact that the criminal records have since been sealed do not overcome the fact that Plaintiff was arrested and prosecuted for the criminal activity he engaged in. Truth cannot be extinguished simply because the court records have been expunged. *G.D. v. Kenny*, 205 N.J. 275, 288, 15 A.3d 300, 307 (2011) (*citing Rzeznik v. Chief of Police of Southampton*, 374 Mass. 475, 373 N.E.2d 1128, 1130–31 (1978); *Bahr v. Statesman Journal Co.*, 51 Or.App. 177, 624 P.2d 664, 665–67, *review denied*, 291 Or. 118, 631 P.2d 341 (1981)).

Even if Taylor referred to Colon as engaging in cheating (which he did not), Taylor was justified in doing so because Colon was arrested and prosecuted for cheating-related charges arising out of his use of that counting device.

VII. CONCLUSION

The District Court erred in finding that Taylor's statement on a matter of public concern was not made in good faith. Everything in the record below demonstrates that Taylor believed that the statements he made during his presentation at G2E were truthful and based on actual investigations made by GCB. The District Court should have then shifted the burden to the plaintiff to determine whether he had a

probability of prevailing on his defamation claim. The record is clear that because Colon is a public figure, required to demonstrate actual malice, and that Taylor's statements were all true, Colon lacked any probability of prevailing on his defamation claim. Accordingly, Defendants' Anti-SLAPP Special Motion to Dismiss should be granted.

DATED this 4th day of November, 2019.

AARON D. FORD
Attorney General

By: /s/ *Theresa M. Haar*
Theresa M. Haar
Special Assistant Attorney General

CERTIFICATE OF COMPLIANCE

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

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font and Century Schoolbook; or

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or

interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of November, 2019.

AARON D. FORD
Attorney General

By: */s/ Theresa M. Haar*
Theresa M. Haar
Special Assistant Attorney General

CERTIFICATE OF SERVICE

Pursuant to NEV. R. APP. P. 25(5)(c), I hereby certify that I caused to be e-filed and e-served to all parties listed on the Court's Master Service List the foregoing document via the Clerk of the Court by using the electronic filing system on the 4th day of November, 2019.

Robert A. Nersesian
Thea Marie Sankiewicz
Nersesian & Sankiewicz
528 S. Eighth St.
Las Vegas, NV 89101
Attorneys for Respondent
Dr. Nicholas G. Colon

Jeff Silvestri
Jason Sifers
McDonald Carano LLP
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Attorneys for Appellants
American Gaming Association

/s/ *Traci Plotnick*
Traci Plotnick, an employee of
the office of the Nevada Attorney General