

NTC  
**HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON**  
BRIAN W. BOSCHKEE, ESQ.  
Nevada Bar No. 7612  
KIMBERLY P. STEIN, ESQ.  
Nevada Bar No. 8675  
E-mail: kstein@nevadafirm.com  
400 S. Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 791-0308  
*Attorneys for Plaintiff*

Electronically Filed  
Dec 05 2019 11:32 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DISTRICT COURT**  
**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual  
Plaintiff,  
vs.

Case No.: A-19-798171-C  
Dept. No.: XXIV

**NOTICE OF APPEAL**

KATY ZILVERBERG, an individual;  
VICTORIA EAGAN, an individual; and DOES I  
through X, inclusive, and ROE  
CORPORATIONS I through X, inclusive,  
Defendant(s).

NOTICE IS HEREBY GIVEN that the above-named Plaintiff, Jason T. Smith, by and through his counsel of record, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, hereby appeals to the Supreme Court of Nevada from the ORDER GRANTING DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) entered on October 31, 2019 by the Eighth Judicial District Court in the above-captioned action.

Dated this 26<sup>th</sup> day of November 2019.

**HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON**

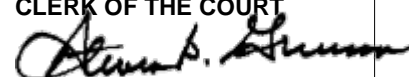
/s/Kimberly P. Stein  
BRIAN W. BOSCHKEE, ESQ. (NBN 7612)  
KIMBERLY P. STEIN, ESQ. (NBN 8495)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **NOTICE OF APPEAL** was served in accordance with Administrative Order 14-2, this 26th day of November, 2019, addressed to the following:  
Margaret A. McLetchie, Esq.  
Alina M. Shell, Esq.  
Leo S. Wolpert, Esq.  
McLetchie Law  
701 E. Bridger, Avenue, Suite 520  
Las Vegas, NV 89101  
E-mail: [maggie@lvlitigation.com](mailto:maggie@lvlitigation.com)

*Attorneys for Defendants  
Katy Zilverberg and Victoria Eagan*

/s/Andi Hughes  
An employee of Holley Driggs Walch  
Fine Puzey Stein & Thompson



ASTA  
HOLLEY DRIGGS WALCH  
FINE PUZEY STEIN & THOMPSON  
BRIAN W. BOSCHÉE, ESQ.  
Nevada Bar No. 7612  
KIMBERLY P. STEIN, ESQ.  
Nevada Bar No. 8675  
E-mail: kstein@nevadafirm.com  
400 S. Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 791-0308  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Case No.: A-19-798171-C  
Dept. No.: XXIV

Plaintiff,

vs.

**CASE APPEAL STATEMENT**

KATY ZILVERBERG, an individual;  
VICTORIA EAGAN, an individual; and DOES I  
through X, inclusive, and ROE  
CORPORATIONS I though X, inclusive,

Defendant(s).

1. Name of appellant filing this case appeal statement:

JASON T. SMITH

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

HONORABLE JUDGE JIM CROCKETT

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

JASON T. SMITH

Counsel for Appellant:

BRIAN W. BOSCHÉE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8675

E-mail: kstein@nevadafirm.com

400 S. Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: (702) 791-0308

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

KATY ZILVERBERG, and VICTORIA EAGAN

Counsel for Respondents:

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
LEO S. WOLPERT, Nevada Bar No. 12658  
MCLEITCHIE LAW  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Telephone: (702) 728-5300; Fax (702) 425-8220  
Email: maggie@nvlitigation.com

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Based upon information and belief, all attorneys listed in questions 3 and 4 are licensed to practice law in Nevada.

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

Appellant was represented by retained counsel in District Court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on appeal.

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

Not Applicable

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

COMPLAINT FILED ON July 9, 2019.

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

A Complaint was filed by the Plaintiff alleging causes of action for defamation, conspiracy, and injunctive relief. After service of the Complaint, the parties entered into a Stipulated Preliminary Injunction. Thereafter, Defendants changed counsel and filed a Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP), to which the District Court Granted the Motion to Dismiss, to which Plaintiff has filed this appeal.

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

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

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

This case does not involve child custody or visitation.

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

This case involves the possibility of settlement.

Dated this 26<sup>th</sup> day of November 2019.

**HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON**

/s/Kimberly P. Stein

BRIAN W. BOSCHKE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

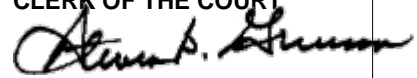
**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **CASE APPEAL STATEMENT** was served in accordance with Administrative Order 14-2, this 26th day of November, 2019, addressed to the following:

Margaret A. McLetchie, Esq.  
Alina M. Shell, Esq.  
Leo S. Wolpert, Esq.  
McLetchie Law  
701 E. Bridger, Avenue, Suite 520  
Las Vegas, NV 89101  
E-mail: [maggie@lvlitigation.com](mailto:maggie@lvlitigation.com)

*Attorneys for Defendants  
Katy Zilverberg and Victoria Eagan*

/s/Andi Hughes  
An employee of Holley Driggs Walch  
Fine PuzeY Stein & Thompson



**NPP**  
KIMBERLY P. STEIN, ESQ.  
Nevada Bar No. 8675  
kstein@nevadafirm.com  
MIKKAELA N. VELLIS, ESQ.  
Nevada Bar No. 14294  
mvellis@nevadafirm.com  
**HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON**  
400 S. Fourth Street, 3<sup>rd</sup> Street  
Las Vegas, Nevada 89101  
Telephone: (702) 791-0308  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual,  
  
Plaintiff,

Case No: A-19-798171-C  
Dept. No.: 20

v.

**NOTICE OF POSTING COST BOND ON  
APPEAL**

KATY ZILVERBERG, an individual;  
VICTORIA EAGAN, an individual; and DOES I  
through X, inclusive, and ROE  
CORPORATIONS I through X, inclusive,  
  
Defendants.

YOU, and each of you, will please take notice that Plaintiff JASON T. SMITH, by and through his counsel, the law firm of Holley Driggs Walch Fine PuzeY Stein & Thompson, hereby submit proof of payment of the Cost Bond on Appeal in the amount of \$500.00 pursuant to NRAP 7(b). A copy of the Official Receipt is issued by the Court is attached hereto.

Dated this 26th day of November, 2019. **HOLLEY, DRIGGS, WALCH,  
FINE, PUZEY, STEIN & THOMPSON**

/s/Kimberly P. Stein

KIMBERLY P. STEIN, ESQ. (NBN 8495)  
MIKKAELA VELLIS, ESQ. (NBN 14294)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **NOTICE OF POSTING COST BOND ON APPEAL** was served in accordance with Administrative Order 14-2, this 26th day of November, 2019, addressed to the following:

Margaret A. McLetchie, Esq.  
Alina M. Shell, Esq.  
Leo S. Wolpert, Esq.  
McLetchie Law  
701 E. Bridger, Avenue, Suite 520  
Las Vegas, NV 89101  
E-mail: [maggie@lvlitigation.com](mailto:maggie@lvlitigation.com)

*Attorneys for Defendants  
Katy Zilverberg and Victoria Eagan*

/s/Andi Hughes  
An employee of Holley Driggs Walch  
Fine Puzey Stein & Thompson



# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
Holley Driggs Walch Fine

Receipt No.  
**2019-71490-CCCLK**

Transaction Date  
11/26/2019

Description	Amount Paid
On Behalf Of Smith, Jason T A-19-798171-C Jason Smith, Plaintiff(s) vs. Katy Zilverberg, Defendant(s) Appeal Bond	
Appeal Bond	500.00
<b>SUBTOTAL</b>	<b>500.00</b>
<b>PAYMENT TOTAL</b>	<b>500.00</b>
Check (Ref #8642) Tendered	500.00
Total Tendered	<b>500.00</b>
Change	0.00

Notice of Appeal - filed on 11/26/19

11/26/2019  
01:08 PM

Cashier  
Station RJCC1

Audit  
37258931

## OFFICIAL RECEIPT

**CASE SUMMARY****CASE NO. A-19-798171-C**

**Jason Smith, Plaintiff(s)**  
**vs.**  
**Katy Zilverberg, Defendant(s)**

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Location: **Department 24**  
 Judicial Officer: **Crockett, Jim**  
 Filed on: **07/09/2019**  
 Case Number History:  
 Cross-Reference Case Number: **A798171**

**CASE INFORMATION****Statistical Closures**

10/31/2019 Motion to Dismiss by the Defendant(s)

Case Type: **Other Tort**

Case Status: **10/31/2019 Dismissed**



**DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number A-19-798171-C  
 Court Department 24  
 Date Assigned 09/09/2019  
 Judicial Officer Crockett, Jim

**PARTY INFORMATION**

<b>Plaintiff</b>	<b>Smith, Jason T</b>	<i>Lead Attorneys</i> <b>Stein, Kimberly P.</b> <i>Retained</i> 702-667-4800(W)
<b>Defendant</b>	<b>Eagan, Victoria</b> Removed: 10/31/2019 Dismissed	<b>McLetchie, Margaret A.</b> <i>Retained</i> 702-728-5300(W)
	<b>Zilverberg, Katy</b>	<b>McLetchie, Margaret A.</b> <i>Retained</i> 702-728-5300(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/09/2019	 <b>Complaint</b> Filed By: Plaintiff Smith, Jason T <i>Complaint</i>
07/09/2019	 <b>Initial Appearance Fee Disclosure</b> Filed By: Plaintiff Smith, Jason T <i>Initial Appearance Fee Disclosure</i>
07/09/2019	 <b>Summons Electronically Issued - Service Pending</b> Party: Plaintiff Smith, Jason T <i>Summons-Zilverberg</i>
07/09/2019	 <b>Summons Electronically Issued - Service Pending</b> Party: Plaintiff Smith, Jason T <i>Summons-Eagan</i>
07/12/2019	 <b>Proof of Service</b>

**CASE SUMMARY**

**CASE NO. A-19-798171-C**

Filed by: Plaintiff Smith, Jason T  
*Proof of Service-Katy Zilverberg, an individual*

07/12/2019



Proof of Service

Filed by: Plaintiff Smith, Jason T  
*Proof of Service-Victoria Eagan, an individual*

07/16/2019



Notice of Appearance

Party: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Notice of Appearance*

07/19/2019



Stipulation and Order

Filed by: Plaintiff Smith, Jason T  
*Joint Stipulation and Order for Preliminary Injunction*

07/19/2019



Notice of Entry

Filed By: Plaintiff Smith, Jason T  
*Notice of Entry of Joint Stipulation and Order for Preliminary Injunction*

07/19/2019



Notice of Posting Bond

Filed By: Plaintiff Smith, Jason T  
*Notice of Posting Bond*

07/22/2019



Notice of Posting Bond

Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Notice of Posting of Bond*

08/19/2019



Substitution of Attorney

Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Substitution of Attorney*

08/19/2019



Substitution of Attorney

Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Substitution of Attorney*

09/06/2019



Peremptory Challenge

Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Peremptory Challenge of Judge*

09/06/2019



Notice of Department Reassignment

*Notice of Department Reassignment*

09/06/2019



Peremptory Challenge

Filed by: Plaintiff Smith, Jason T  
*Peremptory Challenge of Judge*

09/06/2019



Motion to Dismiss

Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)*

09/06/2019



Exhibits

Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria  
*Appendix of Exhibits in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)*






**CASE SUMMARY**

**CASE NO. A-19-798171-C**

09/09/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
09/11/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/19/2019	 Notice of Non Opposition Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)</i>
09/19/2019	 Opposition Filed By: Plaintiff Smith, Jason T <i>Opposition to Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. section 41.660 (ANTI-SLAPP); and Counter-Motion to Strike Notice of Special Motion to Dismiss Pursuant to Nev. Rev. Statute section 41.660 (ANTI-SLAPP)</i>
09/20/2019	 Opposition to Motion Filed By: Plaintiff Smith, Jason T <i>Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)</i>
09/23/2019	 Errata Filed By: Plaintiff Smith, Jason T <i>Errata to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)</i>
09/26/2019	 Reply in Support Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Reply in Support of Notice of Non-Opposition and Opposition to Countermotion to Strike Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP)</i>
09/27/2019	 Reply in Support Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (Anti-SLAPP)</i>
10/17/2019	 Motion Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Motion to Dissolve Preliminary Injunction</i>
10/17/2019	 Memorandum of Costs and Disbursements Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Memorandum of Costs and Disbursements</i>
10/17/2019	 Motion for Attorney Fees and Costs Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670</i>
10/22/2019	 Motion to Retax Filed By: Plaintiff Smith, Jason T <i>Plaintiff's Motion to Retax Costs</i>

# CASE SUMMARY

CASE NO. A-19-798171-C

10/23/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/31/2019	 Opposition to Motion Filed By: Plaintiff Smith, Jason T <i>Plaintiff's Limited Opposition to Defendants' Motion to Dissolve Preliminary Injunction</i>
10/31/2019	 Opposition to Motion Filed By: Plaintiff Smith, Jason T <i>Plaintiff's Opposition to Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670</i>
10/31/2019	 Initial Appearance Fee Disclosure Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
10/31/2019	 Order Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (Anti-SLAPP)</i>
10/31/2019	 Notice of Entry Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Notice of Entry of Order</i>
11/01/2019	 Opposition to Motion Filed By: Defendant Zilverberg, Katy <i>Opposition to Motion to Retax Costs</i>
11/01/2019	 Supplement Filed by: Defendant Zilverberg, Katy <i>Supplement to Memorandum of Costs and Disbursements</i>
11/04/2019	 Errata Filed By: Defendant Zilverberg, Katy <i>Errata to Opposition to Motion to Retax Costs</i>
11/04/2019	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
11/04/2019	 Errata Filed By: Defendant Zilverberg, Katy <i>Second Errata to Opposition to Motion to Retax Costs</i>
11/06/2019	 Notice <i>Clerk's Notice of Curative Action</i>
11/07/2019	 Reply in Support Filed By: Defendant Zilverberg, Katy <i>Reply in Support of Motion to Dissolve Preliminary Injunction</i>
11/07/2019	 Reply in Support Filed By: Defendant Zilverberg, Katy <i>Reply in Support of Motion for Fees and Costs and Motion for Statutory Award; and</i>

# CASE SUMMARY

CASE NO. A-19-798171-C

*Supplement to Motion for Fees and Costs*

11/26/2019



Notice of Appeal

Filed By: Plaintiff Smith, Jason T

*Notice of Appeal*

11/26/2019



Case Appeal Statement

Filed By: Plaintiff Smith, Jason T

*Case Appeal Statement*

11/26/2019



Motion to Stay

Filed By: Plaintiff Smith, Jason T

*Plaintiff's Motion to Stay Pending Appeal*

11/26/2019



Notice of Posting Bond

Filed By: Plaintiff Smith, Jason T

*Notice of Posting Cost Bond on Appeal*

11/26/2019



Clerk's Notice of Hearing

*Notice of Hearing*

## **DISPOSITIONS**

10/31/2019

**Order of Dismissal** (Judicial Officer: Crockett, Jim)

Debtors: Jason T Smith (Plaintiff)

Creditors: Katy Zilverberg (Defendant), Victoria Eagan (Defendant)

Judgment: 10/31/2019, Docketed: 11/01/2019

## **HEARINGS**

10/03/2019



**Motion to Dismiss** (9:00 AM) (Judicial Officer: Crockett, Jim)

*Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)*

Motion Granted;

Journal Entry Details:

*Court reviewed the case and the disputed facts. Court advised Mr. Smith s affidavit was comprised with almost entirely what would be inadmissible, conclusionary statements about what he presumed to be Defendant s intentions, motivations and state of mind. He offers no admissible evidence to support his conclusion. Following arguments by counsel in support of their respective positions, COURT FINDS THE Anti-slap motion was appropriate and well supported in law and based upon the admissible evidence, COURT ORDERED, Motion GRANTED. There remains the issue of the award of damages and attorney s fees. Ms. MeLetchie stated she would file a motion for attorney s fees. COURT ORDERED, Motion to be filed by 10/17/19: Opposition DUE 10/31/19; Reply DUE 11/7/19 and hearing SET thereafter. Counsel estimate hearing to last one (1) hour. Counsel can file a separate motion to dissolve injunction on the same time table. 10/31/19 9:00 AM STATUS CHECK: FILING OF ORDER (10.3.19) 11/21/19 9:00 AM HEARING: MOTION FOR ATTY'S FEES / DISSOLUTION OF PRELIMINARY INJUNCTION ;*

10/31/2019



**Status Check** (9:00 AM) (Judicial Officer: Crockett, Jim)

*Status Check: Filing Order for Motion to Dismiss*

Set Status Check;

Journal Entry Details:

*Court stated it signed the order presented by Defendant and it was logged out. Ms. Shell stated she spoke with Court's office, the order was not Court's outbox, and she may have to submit another order. COURT ORDERED, status check SET for filing of order. 11/26/2019 9:00 AM STATUS CHECK: ORDER (10/31/2019);*

11/21/2019



**Hearing** (9:00 AM) (Judicial Officer: Crockett, Jim)

*Hearing: Defendant's Motion for Attorney's Fees, Costs & Damages / Dissolution of*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-798171-C**

	<i>Preliminary Injunction</i> Vacated Per 10.31.19 Order Matter Heard; Journal Entry Details: <i>COURT ORDERED, December 5, 2019 Plaintiff's Motion to Retax Cost ADVANCED to today (November 21, 2019) and DENIED. COURT FURTHER ORDERED, Motion to Dissolve Preliminary Injunction GRANTED. Court noted the damage award was discretionary not mandatory; there was a cap of \$10,000.00. COURT ADDITIONALLY ORDERED, \$10,000.00 damage award GRANTED as to each Defendant. Counsel for Defendant to submit the order; opposing counsel to review as to form and content. Counsel directed to submit the order to chambers within 10 days from today, pursuant to EDCR 7.21. COURT ORDERED, Status Check SET regarding filing or the order. 01/23/20 9:00 AM STATUS CHECK: FILING OF ORDER;</i>
11/26/2019	<b>CANCELED Status Check (9:00 AM)</b> (Judicial Officer: Crockett, Jim) <i>Vacated</i> <i>Status Check: Order (10/31/2019)</i>
12/05/2019	<b>CANCELED Motion to Retax (9:00 AM)</b> (Judicial Officer: Crockett, Jim) <i>Vacated - per Judge</i> <i>Plaintiff's Motion to Retax Costs</i>
01/14/2020	<b>Motion to Stay (9:00 AM)</b> (Judicial Officer: Crockett, Jim) <i>Plaintiff's Motion to Stay Pending Appeal</i>
01/23/2020	<b>Status Check (9:00 AM)</b> (Judicial Officer: Crockett, Jim) <b>STATUS CHECK: FILING OF ORDER</b>

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Zilverberg, Katy Total Charges 703.00 Total Payments and Credits 703.00 <b>Balance Due as of 12/2/2019 0.00</b>
	<b>Plaintiff</b> Smith, Jason T Total Charges 744.00 Total Payments and Credits 744.00 <b>Balance Due as of 12/2/2019 0.00</b>
	<b>Defendant</b> Zilverberg, Katy Injunction Balance as of 12/2/2019 <b>100.00</b>
	<b>Plaintiff</b> Smith, Jason T Injunction Balance as of 12/2/2019 <b>100.00</b>
	<b>Plaintiff</b> Smith, Jason T Appeal Bond Balance as of 12/2/2019 <b>500.00</b>

# DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):

JASON T. SMITH, an individual

Defendant(s) (name/address/phone):

KATY ZILVERBERG, an individual  
VICTORIA EAGAN, an individual, and DOES  
I through X, inclusive, and ROE CORPORATION

CASE NO. A-19-798171-C  
Department 20

I through X, inclusive

Attorney (name/address/phone):

Kimberly P. Stein, Esq. (NBN 8675) 702-791-0308

Attorney (name/address/phone):

Mikkaela N. Vellis, Esq. (NBN 14294)

Holley Driggs Walch Fine Puzey Stein & Thompson

400 S. Fourth St., 3rd Floor, Las Vegas, NV 89101

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

Real Property	Negligence	Torts
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
<b>Probate</b> <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

July 9, 2019

Date

/s/Kimberly P. Stein

Signature of initiating party or representative

*See other side for family-related case filings.*



*Steven D. Grierson*

**ORDR**

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*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JASON T. SMITH, an individual,

Case No.: A-19-798171-C

Plaintiff,

Dept. No.: XXIV

vs.

**ORDER GRANTING  
DEFENDANTS' SPECIAL  
MOTION TO DISMISS  
PURSUANT TO NEV. REV. STAT.  
§ 41.660 (ANTI-SLAPP)**

KATY ZILVERBERG, an individual;  
VICTORIA EAGAN, an individual; and  
DOES I through X, inclusive, and ROA  
CORPORATIONS I through X, inclusive,

Defendants.

Defendants Katy Zilverberg and Victoria Eagan's Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) (the "Special Motion to Dismiss") having come on for hearing on October 3, 2019, the Honorable Jim Crockett presiding, Plaintiff Jason T. Smith, appearing by and through counsel of record, Brian W. Boschee and Mikkaela N. Vellis of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, and Defendants Katy Zilverberg and Victoria Eagan, appearing by and through their counsel of record, Margaret A. McLetchie of McLetchie Law, and the Court, having read and considered all of the papers and pleadings on file, and heard argument of counsel, and being fully advised, and good cause appearing therefor, hereby makes the following Findings of Fact, Conclusions of Law, and Order granting Defendants' Special Motion to Dismiss:

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<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Disputed Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

*MS*

1 **I. PROCEDURAL HISTORY AND FINDINGS OF FACT**

2 **A. Parties and Background**

3 1. All parties to this litigation are heavily involved in professional “thrifting,”  
4 *i.e.* the business and pastime of buying items from thrift and antique stores, then reselling  
5 those items, particularly on online marketplaces such as eBay.

6 2. Plaintiff Jason Smith is, based on his Complaint, a public figure with a  
7 successful history and marketable reputation in the thrifting community and with the general  
8 public. (Complaint, ¶¶ 7- 12.)

9 3. Based on their personal experiences with Plaintiff’s bullying behavior and  
10 what they learned and believed about the experiences of others in the thrifting community,  
11 Defendants Katy Zilverberg and Victoria Eagan decided to speak up on social media  
12 regarding Plaintiff’s behavior as a warning to the thrifting community.

13 **B. Defendant Zilverberg’s YouTube Video**

14 4. In June of 2018, Defendant Zilverberg posted a video (the “YouTube  
15 Video”) to youtube.com entitled “Jason T Smith is an abusive bully.”

16 5. Defendants provided admissible evidence reflecting that Defendant  
17 Zilverberg’s communication regarding Plaintiff being a bully was made in good faith.

18 6. The YouTube Video contained Defendant Zilverberg’s criticism of  
19 Plaintiff’s behavior in the thrifting community.

20 7. In the YouTube Video, Defendant Zilverberg said that Plaintiff has tried to  
21 “take down” members of the thrifting community who cross him—*i.e.* retaliate against them  
22 both personally and professionally.

23 8. Defendants provided admissible evidence reflecting that this  
24 communication was made in good faith; specifically, Defendant Zilverberg’s good faith  
25 belief that Plaintiff engaged in, or was credibly accused of, retaliatory behavior in the  
26 thrifting community.

27 9. In the YouTube Video, Defendant Zilverberg alleged that Plaintiff has  
28 obtained and released his targets’ personal information online to bully or embarrass them

personally.

10. Defendants provided admissible evidence that that this communication was made in good faith, including evidence concerning Defendant Zilverberg's good faith belief that Plaintiff obtained the personal information of a pseudonymous member of the thrifting community and intentionally revealed it to viewers of his online videos.

11. In the YouTube Video, Defendant Zilverberg alleged that Plaintiff has attempted to—and succeeded at—convincing the organizers of various business events to bar his targets from attending or cancel his targets' speaking engagements at said business events.

12. Defendants provided admissible evidence that this communication was made in good faith, including that Defendant Zilverberg had a good faith belief that Plaintiff attempted to—and at least temporarily succeeded at—convincing an event organizer to cancel the speaking engagement of another member of the thrifting community.

13. In the YouTube Video, Defendant Zilverberg implied that Plaintiff's behavior was so severe that it caused his targets to contemplate self-harm, such as suicide.

14. Defendants provided admissible evidence that that this communication was made in good faith, including evidence reflecting Defendant Zilverberg's good faith belief that at least one person contemplated suicide or self-harm as a result of Plaintiff's behavior toward them.

15. Within a week of posting it, Defendant Zilverberg "took down" the video—*i.e.* made it inaccessible to the public.

16. During the approximately five days the video was publicly accessible, it generated substantial online discussion and debate, as it received hundreds of comments across multiple social media sites.

17. Many of these comments reflected that other members of the thrifting community had experienced negative personal interactions with Plaintiff.

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1                   **C. Defendant Eagan's Facebook Post**

2           18.     On or about April 25, 2019, Defendant Eagan posted criticism of Plaintiff  
3 to her personal Facebook page.

4           19.     In this Facebook post, Defendant Eagan criticized what she considered  
5 Plaintiff's misogynistic, bullying behavior.

6           20.     In this Facebook post, Defendant Eagan noted that others had sent  
7 restraining orders and cease and desist letters in an attempt to stop Plaintiff's harassing  
8 behavior.

9           21.     Defendants provided admissible evidence reflecting that this  
10 communication was made in good faith, including evidence supporting Defendant Eagan's  
11 good faith belief that other members of the thrifting community had sent cease and desist  
12 letters, sought restraining orders, or sought police intervention regarding Plaintiff's behavior.

13                   **D. Other Allegedly Defamatory Statements**

14           22.     In his Complaint, Plaintiff alleges that Defendants communicated that he  
15 had a criminal record.

16           23.     Plaintiff has not provided sufficient evidence to support this allegation, as  
17 he did not point to any specific communications in which Defendants alleged he had a  
18 criminal record.

19           24.     Even if, *arguendo*, Defendants communicated that Plaintiff had a criminal  
20 record, Defendants provided admissible evidence reflecting that they had a good faith belief  
21 that Plaintiff had a criminal past, including information that Plaintiff had conveyed to  
22 Defendant Eagan.

23           25.     Additionally, Plaintiff did not dispute that he had communicated to  
24 Defendant Eagan that he had a criminal past.

25                   **E. Procedural History**

26           26.     On July 7, 2019, Plaintiff filed a Complaint alleging causes of action for  
27 defamation, conspiracy, and injunctive relief based upon the above-mentioned  
28 communications.



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1           27.     On July 19, 2019, the parties entered into a joint stipulation and order for a  
2 preliminary injunction.

3           28.     On September 6, 2019, Defendants timely filed a Special Motion to Dismiss  
4 Pursuant to Nevada's anti-SLAPP statute, Nev. Rev. Stat. § 41.660.

5           29.     On September 20, 2019, Plaintiff filed a response in opposition to the  
6 Special Motion to Dismiss.<sup>1</sup>

7           30.     On September 26, 2019, Defendants filed a reply in support of their Special  
8 Motion to Dismiss.

9           31.     On October 3, 2019, the Court heard oral argument on Defendants' Special  
10 Motion to Dismiss.

11          32.     On October 3, the Court orally granted Defendants' Special Motion to  
12 Dismiss.

13 **II.     CONCLUSIONS OF LAW**

14 **A.     Legal Standard**

15          33.     Nevada's anti-SLAPP statute, Nev. Rev. Stat. § 41.635 *et seq.*, provides that  
16 if "an action is brought against a person based upon a good faith communication in  
17 furtherance of ... the right to free speech in direct connection with an issue of public concern,  
18 [t]he person against whom the action is brought may file a special motion to dismiss." Nev.  
19 Rev. Stat. § 41.660(1)(a).

20          34.     Courts must evaluate a special anti-SLAPP motion to dismiss using a two-  
21 step process. First, the moving party must establish by a preponderance of the evidence "that  
22 the claim is based upon a good faith communication in furtherance of the right to petition or  
23 the right to free speech in direct connection with an issue of public concern." Nev. Rev. Stat.  
24 § 41.660(3)(a).

25          35.     Second, if the defendant satisfies that threshold showing, a court must then  
26 "determine whether the plaintiff has demonstrated with prima facie evidence a probability of  
27

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28 <sup>1</sup> The Court declines to construe the Opposition as untimely.

prevailing on the claim[s].” Nev. Rev. Stat. § 41.660(3)(b).

36. Nev. Rev. Stat. § 41.637 defines 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,” as, *inter alia*, a “communication 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.” Nev. Rev. Stat. § 41.637(4).

**B. Defendants Met Their Initial Burden.**

37. Having reviewed the pleadings, motions, and evidence in the case, the Court finds that Defendants have met their burden of establishing by a preponderance of the evidence that Plaintiff’s claim is based on Defendants’ good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern.

***Defendants’ Communications Were Directly Connected with an Issue of Public Concern.***

38. Nevada courts define an issue of public interest broadly. *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 10, 432 P.3d 746, 751 (2019).

39. In *Shapiro v. Welt*, 133 Nev. 35, 389 P.3d 262, 268 (2017), the Nevada Supreme Court identified the following guiding principles for determining what constitutes “public interest” for purposes of Nev. Rev. Stat. § 41.637(4):

- (1) “public interest” does not equate with mere curiosity;
- (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
- (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
- (4) the focus of the speaker’s conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
- (5) a person cannot turn otherwise private information into a matter of

1 public interest simply by communicating it to a large number of people.

2 40. “In general, [a] public issue is implicated if the subject of the statement or  
3 activity underlying the claim (1) was a person or entity in the public eye; (2) could affect  
4 large numbers of people beyond the direct participants; or (3) involved a topic of widespread,  
5 public interest.” *D.C. v. R.R.*, 106 Cal. Rptr. 3d 399, 417 (Cal. Ct. App. 2010) (internal  
6 quotation marks and citation omitted) (emphasis added).

7 41. An issue does not need to relate to the entire public to be an “issue of public  
8 interest.”

9 42. The statements by Defendants in this case pertained to allegedly abusive  
10 behavior that Plaintiff—a public figure and therefore a person or entity in the public eye—  
11 engaged in within the thrifting community.

12 43. The thrifting community is a discrete but identifiable portion of the  
13 population, and therefore communications about the behavior of one of its most famous  
14 members is of concern to a substantial number of people.

15 44. The evidence indicates that Defendants’ concern was the integrity of the  
16 thrifting industry and the bullying tactics of Plaintiff, which could affect substantial numbers  
17 of people beyond the direct participants—*i.e.* the thrifting community at large.

18 45. Defendants’ communications did not equate with mere curiosity—rather,  
19 they were warnings about the conduct of one of the thrifting community’s most famous and  
20 prominent members, with whom many members of the thrifting community interact with  
21 daily.

22 46. Defendants have also demonstrated by a preponderance of the evidence that  
23 the communications at issue added to a preexisting discussion of Plaintiff’s behavior. That  
24 subsequent discussion of Defendants’ communications contained many allegations of similar  
25 behavior on the part of Plaintiff further demonstrates that there was a degree of closeness  
26 between Defendants’ communication and the public interest in eliminating abusive and  
27 bullying conduct in the thrifting community.

28 ///

47. That Defendants' communications spurred public discussion of Plaintiff's behavior toward other members of the thrifting community further demonstrates that Defendants' communications were not a "mere effort to gather ammunition for another round of private controversy" but rather that their focus was on the public interest in preventing bullying and anti-social behavior in the thrifting community.

48. Defendants' communications did not "turn otherwise private information into a matter of public interest" as Plaintiff's conduct in the thrifting community is not "otherwise private information."

49. Therefore, Defendants have demonstrated by a preponderance of the evidence that the communications at issue were made in direct connection with an issue of public concern.

***Defendants' Communications Were Made in a Public Forum.***

50. Nevada's anti-SLAPP statute requires that the communications giving rise to the suit must be made "in a place open to the public or in a public forum." Nev. Rev. Stat. § 41.637.

51. Defendants' two identified communications were made on youtube.com and facebook.com. Both of these websites, which are freely accessible to anybody with internet access, constitute public forums.

52. Therefore, Defendants' communications were made in a public forum.

***Defendants' Communications Were Truthful or Made Without Knowledge of Falsehood.***

53. Nevada's Anti-SLAPP statute requires that a good faith communication is "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637.

54. The Court finds that the statements at issue are not false statements of fact.

55. Statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as a false idea. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (Nev. 2002) (internal quotation omitted). However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id.* The court must therefore ask "whether a reasonable person would



1 be likely to understand the remark as an expression of the source’s opinion or as a statement  
2 of existing fact.” *Id.* at 715.

3 56. Defendants presented comprehensive information in the form of admissible  
4 evidence as required by EDCR 2.21, with supporting affidavits and exhibits, demonstrating  
5 that their communications were made in good faith, including regarding the bases for  
6 Defendants’ beliefs in the veracity of their allegedly defamatory statements and further  
7 demonstrating that even if, *arguendo*, the statements at issue were false statements of fact,  
8 Defendants made said statements without knowledge of their falsehood.

9 57. However, Defendants’ Exhibit 10—a letter from Theresa Cox—is not  
10 admissible to support Defendants’ contentions that their communications were true or were  
11 made without knowledge of falsehood because it was received by Defendants on August 19,  
12 2019, which is past the dates on which the allegedly defamatory statements were made.

13 58. In contrast to Defendants’ evidence, Plaintiff’s affidavit is comprised  
14 almost entirely of inadmissible, conclusory statements about what he presumes to be  
15 Defendants’ intentions, motivations, states of mind, and innermost thoughts. The remainder  
16 of the affidavit makes more valid attempts to correct the record regarding his criminal record,  
17 or lack thereof, but the Defendants provide sufficient evidence to justify why they believe  
18 certain claims regarding restraining orders and criminal history to be true.

19 59. Defendants have established by a preponderance of the evidence that all the  
20 statements identified by Plaintiff in his Complaint as being false and defamatory were either  
21 true statements of fact, made without knowledge of their falsehood, or were statements of  
22 opinion which were incapable of being false.

23 **C. Plaintiff Failed to Demonstrate a Probability of Success on his Claims.**

24 60. Because Defendants met their burden, the burden shifted to Plaintiff to  
25 demonstrate “with prima facie evidence a probability of prevailing on the claims.” Nev. Rev.  
26 Stat. § 41.660(3)(b).

27 61. Plaintiff failed to meet this burden, as he cannot show a probability of  
28 prevailing on his claims.

***Defamation***

62. In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus*, 118 Nev. 706 at 718.

63. Although Plaintiff has contested the veracity of some of Defendants' statements, Plaintiff has not provided prima facie evidence that Defendants knowingly made any false statements of fact about him, or otherwise acted with malice.

64. The sole evidence submitted by Plaintiff—his September 20, 2019 declaration—was grossly insufficient to meet his burden of making a prima facie showing that he has a probability of prevailing on the merits of his defamation claim.

65. As a matter of law, Defendants' expressions of opinion such as that Plaintiff is a bully are not actionable because they are statements of opinion. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

66. Because Plaintiff is a public figure, he must establish a higher level of fault than negligence: actual, or constitutional, malice. *Wynn v. Smith*, 117 Nev. 6, 16, 16 P.3d 424, 430 (2001) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 – 80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)).

67. “Actual malice” requires the defamation plaintiff to demonstrate that the defendant entertained doubts as to the veracity of a statement but published it anyway. *Time, Inc. v. Pape*, 401 U.S. 279, 291 – 92 (1971).

68. Moreover, Plaintiff has not provided any admissible evidence to suggest that Defendants ever entertained doubts as to the veracity of the complained-of statements, and therefore has not established the “fault” element of a defamation claim.

69. By contrast, Defendants have provided admissible evidence that supports the bases for their good faith and belief in the veracity of their claims.

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70. Plaintiff has not provided any prima facie evidence that any of the allegedly defamatory statements were defamatory per se, and therefore he is not entitled to presumed damages.

71. Plaintiff has not provided any prima facie evidence that statements which were allegedly defamatory per quod—such as Defendant Eagan’s allegation that others have sought restraining orders against him—have caused him any actual damages.

72. Because Plaintiff has not provided any prima facie evidence of to support a defamation claim and because his claim fails as matter of law, Plaintiff cannot demonstrate a probability of success on his defamation claim.

***Conspiracy***

73. The elements of a cause of action for conspiracy are: (1) defendants, “by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another; and (2) damage resulting from the act or acts.” *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (Nev. 1999) (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)).

74. Plaintiff’s conspiracy claim is predicated on his allegations that the Defendants defamed them.

75. Because Plaintiff’s defamation claim fails, his conspiracy claim must likewise fail.

76. Further, Plaintiff has not provided any prima facie evidence that Defendants intended to accomplish an unlawful objective for the purpose of harming Plaintiff.

77. Additionally, Plaintiff has not provided any prima facie evidence that he has suffered damages from Defendants’ communications.

78. Thus, Plaintiff has not established a probability of success on his conspiracy claim.

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***Injunctive Relief***

79. Injunctive relief is not a cause of action but rather a form of relief. *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010). Due to the First Amendment implications of injunctive relief enjoining speech, such relief is presumptively unconstitutional.

80. Because Plaintiff cannot succeed on his claims for defamation or conspiracy, he is likewise not entitled to injunctive relief.

81. Plaintiff cannot demonstrate any probability of success on his injunctive relief “claim” as a matter of law. Moreover, he has not provided any prima facie evidence to support this claim. Thus, he has not established a probability of success on his request for injunctive relief.

**III. CONCLUSION**

82. Accordingly, for the reasons stated above, Defendants’ Special Motion to Dismiss is GRANTED.

83. If a Court grants a special anti-SLAPP motion to dismiss, the defendants are entitled to an award of reasonable costs and attorneys’ fees. Nev. Rev. Stat. § 41.670(1)(a). The Court may also award an amount of up to \$10,000.00 to each Defendant. Nev. Rev. Stat. § 41.670(1)(a)-(b). Defendants must file a separate motion seeking fees, costs, and any statutory award (the “Fees Motion”).

84. Additionally, upon the granting of a special anti-SLAPP motion to dismiss, Defendants may bring a separate action against Plaintiff for compensatory damages, punitive damages, and attorney’s fees and costs of bringing the separate action. Nev. Rev. Stat. § 41.670(c).

85. Further, the Court hereby sets the following briefing schedule for the Fees Motion to be filed by Defendants by October 17, 2019, with two weeks thereafter for Plaintiff to file an opposition by October 31, 2019, and seven days for Defendants to file a Reply thereafter, by November 7, 2019.

///

86. A hearing is hereby set for November 21, 2019 at 9:00 a.m. on the Fees Motion.

87. In addition, Defendants may file a Motion to Dissolve the Preliminary Injunction on the same date as the Fees Motion, and both Motions will be heard at the same time on November 21, 2019 at 9:00 a.m.

IT IS SO ORDERED this 31 day of October, 2019.

HONORABLE JUDGE JIM CROCKETT

Respectfully submitted by,

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
 ALINA M. SHELL, Nevada Bar No. 11711  
 LEO S. WOLPERT, Nevada Bar No. 12658  
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*Counsel for Defendants Katy Zilverberg  
 and Victoria Eagan*



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10 *Counsel for Defendants Katy Zilverberg*

11 *and Victoria Eagan*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

17 **NOTICE OF ENTRY OF ORDER**

18 KATY ZILVERBERG, an individual;  
19 VICTORIA EAGAN, an individual; and  
20 DOES I through X, inclusive, and ROA  
21 CORPORATIONS I through X, inclusive,

22 Defendants.

23 **TO: THE PARTIES HERETO AND THEIR RESPECTIVE COUNSEL OF RECORD:**

24 PLEASE TAKE NOTICE that on the 31<sup>st</sup> day of October, 2019, an Order Granting  
25 Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP)  
26 was entered in the above-captioned action.

27 A copy of the Order Granting Defendants' Special Motion to Dismiss Pursuant to  
28 Nev. Rev. Stat. § 41.660 (Anti-SLAPP) is attached hereto as **Exhibit 1**.

DATED this 31<sup>st</sup> day of October, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

**MCLEATCHIE LAW**

*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

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**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 31<sup>st</sup> day of October, 2019, I did cause a true copy of the foregoing NOTICE OF ENTRY OF ORDER in *Smith v. Zilverberg et al.*, Clark County District Court Case No. A-19-798171-C, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.

/s/ Lacey Ambro

Employee of McLetchie Law

INDEX OF EXHIBITS TO NOTICE OF ENTRY OF ORDER	
Exhibit	Description
1	Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP)

# EXHIBIT 1



*Steven D. Grierson*

**ORDR**

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*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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Plaintiff,

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KATY ZILVERBERG, an individual;  
VICTORIA EAGAN, an individual; and  
DOES I through X, inclusive, and ROA  
CORPORATIONS I through X, inclusive,

Defendants.

Defendants Katy Zilverberg and Victoria Eagan's Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) (the "Special Motion to Dismiss") having come on for hearing on October 3, 2019, the Honorable Jim Crockett presiding, Plaintiff Jason T. Smith, appearing by and through counsel of record, Brian W. Boschee and Mikkaela N. Vellis of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, and Defendants Katy Zilverberg and Victoria Eagan, appearing by and through their counsel of record, Margaret A. McLatchie of McLatchie Law, and the Court, having read and considered all of the papers and pleadings on file, and heard argument of counsel, and being fully advised, and good cause appearing therefor, hereby makes the following Findings of Fact, Conclusions of Law, and Order granting Defendants' Special Motion to Dismiss:

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<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Disputed Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

*MS*

**I. PROCEDURAL HISTORY AND FINDINGS OF FACT**

**A. Parties and Background**

1. All parties to this litigation are heavily involved in professional “thrifting,” *i.e.* the business and pastime of buying items from thrift and antique stores, then reselling those items, particularly on online marketplaces such as eBay.

2. Plaintiff Jason Smith is, based on his Complaint, a public figure with a successful history and marketable reputation in the thrifting community and with the general public. (Complaint, ¶¶ 7- 12.)

3. Based on their personal experiences with Plaintiff’s bullying behavior and what they learned and believed about the experiences of others in the thrifting community, Defendants Katy Zilverberg and Victoria Eagan decided to speak up on social media regarding Plaintiff’s behavior as a warning to the thrifting community.

**B. Defendant Zilverberg’s YouTube Video**

4. In June of 2018, Defendant Zilverberg posted a video (the “YouTube Video”) to youtube.com entitled “Jason T Smith is an abusive bully.”

5. Defendants provided admissible evidence reflecting that Defendant Zilverberg’s communication regarding Plaintiff being a bully was made in good faith.

6. The YouTube Video contained Defendant Zilverberg’s criticism of Plaintiff’s behavior in the thrifting community.

7. In the YouTube Video, Defendant Zilverberg said that Plaintiff has tried to “take down” members of the thrifting community who cross him—*i.e.* retaliate against them both personally and professionally.

8. Defendants provided admissible evidence reflecting that this communication was made in good faith; specifically, Defendant Zilverberg’s good faith belief that Plaintiff engaged in, or was credibly accused of, retaliatory behavior in the thrifting community.

9. In the YouTube Video, Defendant Zilverberg alleged that Plaintiff has obtained and released his targets’ personal information online to bully or embarrass them

personally.

10. Defendants provided admissible evidence that that this communication was made in good faith, including evidence concerning Defendant Zilverberg’s good faith belief that Plaintiff obtained the personal information of a pseudonymous member of the thrifting community and intentionally revealed it to viewers of his online videos.

11. In the YouTube Video, Defendant Zilverberg alleged that Plaintiff has attempted to—and succeeded at—convincing the organizers of various business events to bar his targets from attending or cancel his targets’ speaking engagements at said business events.

12. Defendants provided admissible evidence that this communication was made in good faith, including that Defendant Zilverberg had a good faith belief that Plaintiff attempted to—and at least temporarily succeeded at—convincing an event organizer to cancel the speaking engagement of another member of the thrifting community.

13. In the YouTube Video, Defendant Zilverberg implied that Plaintiff’s behavior was so severe that it caused his targets to contemplate self-harm, such as suicide.

14. Defendants provided admissible evidence that that this communication was made in good faith, including evidence reflecting Defendant Zilverberg’s good faith belief that at least one person contemplated suicide or self-harm as a result of Plaintiff’s behavior toward them.

15. Within a week of posting it, Defendant Zilverberg “took down” the video—*i.e.* made it inaccessible to the public.

16. During the approximately five days the video was publicly accessible, it generated substantial online discussion and debate, as it received hundreds of comments across multiple social media sites.

17. Many of these comments reflected that other members of the thrifting community had experienced negative personal interactions with Plaintiff.

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1                   **C. Defendant Eagan's Facebook Post**

2           18.     On or about April 25, 2019, Defendant Eagan posted criticism of Plaintiff  
3 to her personal Facebook page.

4           19.     In this Facebook post, Defendant Eagan criticized what she considered  
5 Plaintiff's misogynistic, bullying behavior.

6           20.     In this Facebook post, Defendant Eagan noted that others had sent  
7 restraining orders and cease and desist letters in an attempt to stop Plaintiff's harassing  
8 behavior.

9           21.     Defendants provided admissible evidence reflecting that this  
10 communication was made in good faith, including evidence supporting Defendant Eagan's  
11 good faith belief that other members of the thrifting community had sent cease and desist  
12 letters, sought restraining orders, or sought police intervention regarding Plaintiff's behavior.

13                   **D. Other Allegedly Defamatory Statements**

14           22.     In his Complaint, Plaintiff alleges that Defendants communicated that he  
15 had a criminal record.

16           23.     Plaintiff has not provided sufficient evidence to support this allegation, as  
17 he did not point to any specific communications in which Defendants alleged he had a  
18 criminal record.

19           24.     Even if, *arguendo*, Defendants communicated that Plaintiff had a criminal  
20 record, Defendants provided admissible evidence reflecting that they had a good faith belief  
21 that Plaintiff had a criminal past, including information that Plaintiff had conveyed to  
22 Defendant Eagan.

23           25.     Additionally, Plaintiff did not dispute that he had communicated to  
24 Defendant Eagan that he had a criminal past.

25                   **E. Procedural History**

26           26.     On July 7, 2019, Plaintiff filed a Complaint alleging causes of action for  
27 defamation, conspiracy, and injunctive relief based upon the above-mentioned  
28 communications.



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1           27.     On July 19, 2019, the parties entered into a joint stipulation and order for a  
2 preliminary injunction.

3           28.     On September 6, 2019, Defendants timely filed a Special Motion to Dismiss  
4 Pursuant to Nevada’s anti-SLAPP statute, Nev. Rev. Stat. § 41.660.

5           29.     On September 20, 2019, Plaintiff filed a response in opposition to the  
6 Special Motion to Dismiss.<sup>1</sup>

7           30.     On September 26, 2019, Defendants filed a reply in support of their Special  
8 Motion to Dismiss.

9           31.     On October 3, 2019, the Court heard oral argument on Defendants’ Special  
10 Motion to Dismiss.

11          32.     On October 3, the Court orally granted Defendants’ Special Motion to  
12 Dismiss.

13       **II.     CONCLUSIONS OF LAW**

14           **A.   Legal Standard**

15          33.     Nevada’s anti-SLAPP statute, Nev. Rev. Stat. § 41.635 *et seq.*, provides that  
16 if “an action is brought against a person based upon a good faith communication in  
17 furtherance of ... the right to free speech in direct connection with an issue of public concern,  
18 [t]he person against whom the action is brought may file a special motion to dismiss.” Nev.  
19 Rev. Stat. § 41.660(1)(a).

20          34.     Courts must evaluate a special anti-SLAPP motion to dismiss using a two-  
21 step process. First, the moving party must establish by a preponderance of the evidence “that  
22 the claim is based upon a good faith communication in furtherance of the right to petition or  
23 the right to free speech in direct connection with an issue of public concern.” Nev. Rev. Stat.  
24 § 41.660(3)(a).

25          35.     Second, if the defendant satisfies that threshold showing, a court must then  
26 “determine whether the plaintiff has demonstrated with prima facie evidence a probability of  
27

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28       <sup>1</sup> The Court declines to construe the Opposition as untimely.

prevailing on the claim[s].” Nev. Rev. Stat. § 41.660(3)(b).

36. Nev. Rev. Stat. § 41.637 defines 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,” as, *inter alia*, a “communication 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.” Nev. Rev. Stat. § 41.637(4).

**B. Defendants Met Their Initial Burden.**

37. Having reviewed the pleadings, motions, and evidence in the case, the Court finds that Defendants have met their burden of establishing by a preponderance of the evidence that Plaintiff’s claim is based on Defendants’ good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern.

***Defendants’ Communications Were Directly Connected with an Issue of Public Concern.***

38. Nevada courts define an issue of public interest broadly. *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 10, 432 P.3d 746, 751 (2019).

39. In *Shapiro v. Welt*, 133 Nev. 35, 389 P.3d 262, 268 (2017), the Nevada Supreme Court identified the following guiding principles for determining what constitutes “public interest” for purposes of Nev. Rev. Stat. § 41.637(4):

- (1) “public interest” does not equate with mere curiosity;
- (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
- (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
- (4) the focus of the speaker’s conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
- (5) a person cannot turn otherwise private information into a matter of

1 public interest simply by communicating it to a large number of people.

2 40. "In general, [a] public issue is implicated if the subject of the statement or

3 activity underlying the claim (1) was a person or entity in the public eye; (2) could affect

4 large numbers of people beyond the direct participants; or (3) involved a topic of widespread,

5 public interest." *D.C. v. R.R.*, 106 Cal. Rptr. 3d 399, 417 (Cal. Ct. App. 2010) (internal

6 quotation marks and citation omitted) (emphasis added).

7 41. An issue does not need to relate to the entire public to be an "issue of public

8 interest."

9 42. The statements by Defendants in this case pertained to allegedly abusive

10 behavior that Plaintiff—a public figure and therefore a person or entity in the public eye—

11 engaged in within the thrifting community.

12 43. The thrifting community is a discrete but identifiable portion of the

13 population, and therefore communications about the behavior of one of its most famous

14 members is of concern to a substantial number of people.

15 44. The evidence indicates that Defendants' concern was the integrity of the

16 thrifting industry and the bullying tactics of Plaintiff, which could affect substantial numbers

17 of people beyond the direct participants—*i.e.* the thrifting community at large.

18 45. Defendants' communications did not equate with mere curiosity—rather,

19 they were warnings about the conduct of one of the thrifting community's most famous and

20 prominent members, with whom many members of the thrifting community interact with

21 daily.

22 46. Defendants have also demonstrated by a preponderance of the evidence that

23 the communications at issue added to a preexisting discussion of Plaintiff's behavior. That

24 subsequent discussion of Defendants' communications contained many allegations of similar

25 behavior on the part of Plaintiff further demonstrates that there was a degree of closeness

26 between Defendants' communication and the public interest in eliminating abusive and

27 bullying conduct in the thrifting community.

28 ///

47. That Defendants' communications spurred public discussion of Plaintiff's behavior toward other members of the thrifting community further demonstrates that Defendants' communications were not a "mere effort to gather ammunition for another round of private controversy" but rather that their focus was on the public interest in preventing bullying and anti-social behavior in the thrifting community.

48. Defendants' communications did not "turn otherwise private information into a matter of public interest" as Plaintiff's conduct in the thrifting community is not "otherwise private information."

49. Therefore, Defendants have demonstrated by a preponderance of the evidence that the communications at issue were made in direct connection with an issue of public concern.

***Defendants' Communications Were Made in a Public Forum.***

50. Nevada's anti-SLAPP statute requires that the communications giving rise to the suit must be made "in a place open to the public or in a public forum." Nev. Rev. Stat. § 41.637.

51. Defendants' two identified communications were made on youtube.com and facebook.com. Both of these websites, which are freely accessible to anybody with internet access, constitute public forums.

52. Therefore, Defendants' communications were made in a public forum.

***Defendants' Communications Were Truthful or Made Without Knowledge of Falsehood.***

53. Nevada's Anti-SLAPP statute requires that a good faith communication is "truthful or made without knowledge of its falsehood." Nev. Rev. Stat. § 41.637.

54. The Court finds that the statements at issue are not false statements of fact.

55. Statements of opinion cannot be made with knowledge of their falsehood because there is no such thing as a false idea. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (Nev. 2002) (internal quotation omitted). However pernicious opinions may seem, courts depend on the competition of other ideas, rather than judges and juries, to correct them. *Id.* The court must therefore ask "whether a reasonable person would



1 be likely to understand the remark as an expression of the source’s opinion or as a statement  
2 of existing fact.” *Id.* at 715.

3 56. Defendants presented comprehensive information in the form of admissible  
4 evidence as required by EDCR 2.21, with supporting affidavits and exhibits, demonstrating  
5 that their communications were made in good faith, including regarding the bases for  
6 Defendants’ beliefs in the veracity of their allegedly defamatory statements and further  
7 demonstrating that even if, *arguendo*, the statements at issue were false statements of fact,  
8 Defendants made said statements without knowledge of their falsehood.

9 57. However, Defendants’ Exhibit 10—a letter from Theresa Cox—is not  
10 admissible to support Defendants’ contentions that their communications were true or were  
11 made without knowledge of falsehood because it was received by Defendants on August 19,  
12 2019, which is past the dates on which the allegedly defamatory statements were made.

13 58. In contrast to Defendants’ evidence, Plaintiff’s affidavit is comprised  
14 almost entirely of inadmissible, conclusory statements about what he presumes to be  
15 Defendants’ intentions, motivations, states of mind, and innermost thoughts. The remainder  
16 of the affidavit makes more valid attempts to correct the record regarding his criminal record,  
17 or lack thereof, but the Defendants provide sufficient evidence to justify why they believe  
18 certain claims regarding restraining orders and criminal history to be true.

19 59. Defendants have established by a preponderance of the evidence that all the  
20 statements identified by Plaintiff in his Complaint as being false and defamatory were either  
21 true statements of fact, made without knowledge of their falsehood, or were statements of  
22 opinion which were incapable of being false.

23 **C. Plaintiff Failed to Demonstrate a Probability of Success on his Claims.**

24 60. Because Defendants met their burden, the burden shifted to Plaintiff to  
25 demonstrate “with prima facie evidence a probability of prevailing on the claims.” Nev. Rev.  
26 Stat. § 41.660(3)(b).

27 61. Plaintiff failed to meet this burden, as he cannot show a probability of  
28 prevailing on his claims.

***Defamation***

62. In Nevada, the elements of a defamation claim are: (1) a false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication of this statement to a third person; (3) fault of the Defendant, amounting to at least negligence; and (4) actual or presumed damages. *Pegasus*, 118 Nev. 706 at 718.

63. Although Plaintiff has contested the veracity of some of Defendants' statements, Plaintiff has not provided prima facie evidence that Defendants knowingly made any false statements of fact about him, or otherwise acted with malice.

64. The sole evidence submitted by Plaintiff—his September 20, 2019 declaration—was grossly insufficient to meet his burden of making a prima facie showing that he has a probability of prevailing on the merits of his defamation claim.

65. As a matter of law, Defendants' expressions of opinion such as that Plaintiff is a bully are not actionable because they are statements of opinion. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

66. Because Plaintiff is a public figure, he must establish a higher level of fault than negligence: actual, or constitutional, malice. *Wynn v. Smith*, 117 Nev. 6, 16, 16 P.3d 424, 430 (2001) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 – 80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)).

67. “Actual malice” requires the defamation plaintiff to demonstrate that the defendant entertained doubts as to the veracity of a statement but published it anyway. *Time, Inc. v. Pape*, 401 U.S. 279, 291 – 92 (1971).

68. Moreover, Plaintiff has not provided any admissible evidence to suggest that Defendants ever entertained doubts as to the veracity of the complained-of statements, and therefore has not established the “fault” element of a defamation claim.

69. By contrast, Defendants have provided admissible evidence that supports the bases for their good faith and belief in the veracity of their claims.

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70. Plaintiff has not provided any prima facie evidence that any of the allegedly defamatory statements were defamatory per se, and therefore he is not entitled to presumed damages.

71. Plaintiff has not provided any prima facie evidence that statements which were allegedly defamatory per quod—such as Defendant Eagan’s allegation that others have sought restraining orders against him—have caused him any actual damages.

72. Because Plaintiff has not provided any prima facie evidence of to support a defamation claim and because his claim fails as matter of law, Plaintiff cannot demonstrate a probability of success on his defamation claim.

***Conspiracy***

73. The elements of a cause of action for conspiracy are: (1) defendants, “by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another; and (2) damage resulting from the act or acts.” *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (Nev. 1999) (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)).

74. Plaintiff’s conspiracy claim is predicated on his allegations that the Defendants defamed them.

75. Because Plaintiff’s defamation claim fails, his conspiracy claim must likewise fail.

76. Further, Plaintiff has not provided any prima facie evidence that Defendants intended to accomplish an unlawful objective for the purpose of harming Plaintiff.

77. Additionally, Plaintiff has not provided any prima facie evidence that he has suffered damages from Defendants’ communications.

78. Thus, Plaintiff has not established a probability of success on his conspiracy claim.

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***Injunctive Relief***

79. Injunctive relief is not a cause of action but rather a form of relief. *Jensen v. Quality Loan Serv. Corp.*, 702 F. Supp. 2d 1183, 1201 (E.D. Cal. 2010). Due to the First Amendment implications of injunctive relief enjoining speech, such relief is presumptively unconstitutional.

80. Because Plaintiff cannot succeed on his claims for defamation or conspiracy, he is likewise not entitled to injunctive relief.

81. Plaintiff cannot demonstrate any probability of success on his injunctive relief “claim” as a matter of law. Moreover, he has not provided any prima facie evidence to support this claim. Thus, he has not established a probability of success on his request for injunctive relief.

**III. CONCLUSION**

82. Accordingly, for the reasons stated above, Defendants’ Special Motion to Dismiss is GRANTED.

83. If a Court grants a special anti-SLAPP motion to dismiss, the defendants are entitled to an award of reasonable costs and attorneys’ fees. Nev. Rev. Stat. § 41.670(1)(a). The Court may also award an amount of up to \$10,000.00 to each Defendant. Nev. Rev. Stat. § 41.670(1)(a)-(b). Defendants must file a separate motion seeking fees, costs, and any statutory award (the “Fees Motion”).

84. Additionally, upon the granting of a special anti-SLAPP motion to dismiss, Defendants may bring a separate action against Plaintiff for compensatory damages, punitive damages, and attorney’s fees and costs of bringing the separate action. Nev. Rev. Stat. § 41.670(c).

85. Further, the Court hereby sets the following briefing schedule for the Fees Motion to be filed by Defendants by October 17, 2019, with two weeks thereafter for Plaintiff to file an opposition by October 31, 2019, and seven days for Defendants to file a Reply thereafter, by November 7, 2019.

///

86. A hearing is hereby set for November 21, 2019 at 9:00 a.m. on the Fees Motion.

87. In addition, Defendants may file a Motion to Dissolve the Preliminary Injunction on the same date as the Fees Motion, and both Motions will be heard at the same time on November 21, 2019 at 9:00 a.m.

IT IS SO ORDERED this 31 day of October, 2019.

  
HONORABLE JUDGE JIM CROCKETT

Respectfully submitted by,

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ALINA M. SHELL, Nevada Bar No. 11711  
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*Counsel for Defendants Katy Zilverberg  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Tort**

**COURT MINUTES**

**October 03, 2019**

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A-19-798171-C      Jason Smith, Plaintiff(s)  
vs.  
Katy Zilverberg, Defendant(s)

---

**October 03, 2019      9:00 AM      Motion to Dismiss**

**HEARD BY:** Crockett, Jim      **COURTROOM:** Phoenix Building 11th Floor  
116

**COURT CLERK:** Louisa Garcia

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Boschee, Brian W.      Attorney  
McLetchie, Margaret A.      Attorney  
Vellis, Mikkaela N.      Attorney

**JOURNAL ENTRIES**

- Court reviewed the case and the disputed facts. Court advised Mr. Smith s affidavit was comprised with almost entirely what would be inadmissible, conclusionary statements about what he presumed to be Defendant s intentions, motivations and state of mind. He offers no admissible evidence to support his conclusion. Following arguments by counsel in support of their respective positions, COURT FINDS THE Anti-slap motion was appropriate and well supported in law and based upon the admissible evidence, COURT ORDERED, Motion GRANTED. There remains the issue of the award of damages and attorney s fees. Ms. McLetchie stated she would file a motion for attorney s fees. COURT ORDERED, Motion to be filed by 10/17/19: Opposition DUE 10/31/19; Reply DUE 11/7/19 and hearing SET thereafter. Counsel estimate hearing to last one (1) hour. Counsel can file a separate motion to dissolve injunction on the same time table.

10/31/19 9:00 AM STATUS CHECK: FILING OF ORDER (10.3.19)

11/21/19 9:00 AM HEARING: MOTION FOR ATTY'S FEES / DISSOLUTION OF PRELIMINARY INJUNCTION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Tort**

**COURT MINUTES**

**October 31, 2019**

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A-19-798171-C      Jason Smith, Plaintiff(s)  
vs.  
Katy Zilverberg, Defendant(s)

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**October 31, 2019      9:00 AM      Status Check**

**HEARD BY:** Crockett, Jim      **COURTROOM:** Phoenix Building 11th Floor  
116

**COURT CLERK:**  
Nicole McDevitt

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Boschee, Brian W.      Attorney  
Shell, Alina      Attorney

**JOURNAL ENTRIES**

- Court stated it signed the order presented by Defendant and it was logged out. Ms. Shell stated she spoke with Court's office, the order was not Court's outbox, and she may have to submit another order. COURT ORDERED, status check SET for filing of order.

11/26/2019 9:00 AM STATUS CHECK: ORDER (10/31/2019)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Tort**

**COURT MINUTES**

**November 21, 2019**

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A-19-798171-C      Jason Smith, Plaintiff(s)  
vs.  
Katy Zilverberg, Defendant(s)

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**November 21, 2019      9:00 AM      Hearing**

**HEARD BY:**    Crockett, Jim      **COURTROOM:**    Phoenix Building 11th Floor  
116

**COURT CLERK:**  
Natalie Ortega

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**      Boschee, Brian    W.      Attorney  
                         McLetchie, Margaret A.      Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, December 5, 2019 Plaintiff's Motion to Retax Cost ADVANCED to today (November 21, 2019) and DENIED. COURT FURTHER ORDERED, Motion to Dissolve Preliminary Injunction GRANTED. Court noted the damage award was discretionary not mandatory; there was a cap of \$10,000.00. COURT ADDITIONALLY ORDERED, \$10,000.00 damage award GRANTED as to each Defendant. Counsel for Defendant to submit the order; opposing counsel to review as to form and content. Counsel directed to submit the order to chambers within 10 days from today, pursuant to EDCR 7.21. COURT ORDERED, Status Check SET regarding filing of the order.

01/23/20 9:00 AM STATUS CHECK: FILING OF ORDER





**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**BRIAN W. BOSCHKEE, ESQ.**  
**400 S. FOURTH ST., THIRD FLOOR**  
**LAS VEGAS, NV 89101**

**DATE: December 2, 2019**  
**CASE: A-19-798171-C**

**RE CASE:** JASON T. SMITH vs. KATY ZILVERBERG; VICTORIA EAGAN

NOTICE OF APPEAL FILED: November 26, 2019

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING COST BOND ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV.REV.STAT. 41.660 (ANTI-SLAPP); NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

JASON T. SMITH,

Plaintiff(s),

vs.

KATY ZILVERBERG; VICTORIA EAGAN,

Defendant(s),

Case No: A-19-798171-C

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 2 day of December 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk