

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JASON T. SMITH, AN INDIVIDUAL,
Appellant,
vs.
KATY ZILVERBERG, AN INDIVIDUAL;
AND VITORIA EAGAN, AN INDIVIDUAL,
Respondents

No. 80154

Electronically Filed
Dec 13 2019 09:08 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXIV
County Clark Judge HONORABLE JIM CROCKETT
District Ct. Case No. A-19-798171-C

2. Attorney filing this docketing statement:

Attorney KIMBERLY P. STEIN, ESQ. Telephone (702) 791-0308
Firm HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON
Address 400 S. Fourth Street, Third Floor
Las Vegas, Nevada 89101

Client(s) JASON T. SMITH

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney MARGARET A. MCLEATCHIE Telephone (702) 728-5300
Firm MCLEATCHIE LAW
Address 701 E. Bridger Avenue, Suite 520
Las Vegas, Nevada 89101

Client(s) KATY ZILVERBERG AND VITORIA EAGAN

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>NRS 41.660 (Anti-Slapp)</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

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. Specifically, the Court found that that Defendants met their initial 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, that such communications were made in a public forum and were truthful or made without knowledge of falsehood. The Court further found that the Plaintiff failed to meet this burden to show a probability of prevailing on his claims. Plaintiff contends that Defendants did not meet their initial burden as Defendants' statements were not made in good faith, were NOT as issue of public interest, and were false and made with knowledge of such falsehood.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether Plaintiff's standing in the "thrifting" community, makes him a public figure rising to the level of the need to alert the public on issues of public interest rather than being a personal vendetta by the Defendants.
- (2) Whether a party establishes his burden of proof under the first prong of the Anti-Slapp statute by providing non-substantiated evidence and false evidence, to demonstrate the truthfulness of its statements.
- (3) Whether the Court can ignore some of the Shapiro factors adopted by the Nevada Supreme Court in analyzing what distinguishes a private interest from a "public interest," versus considering all factors as intended.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The language of the Anti-Slapp statute provides that an appeal lies to the Supreme Court. NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court." While this language does not address an appeal if the court grants the special motion to dismiss, it is implicit that the Supreme Court would retain jurisdiction under either circumstance, as NRS 41.670(4) is only allowed an interlocutory appeal, while an appeal of a grant of a motion to dismiss is a direct appeal.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from October 31, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served October 31, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed November 26, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff, JASON T. SMITH

Defendants, KATY ZILVERBERG and VICTORIA EAGAN

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff: defamation, conspiracy, and injunctive relief. There has been no formal disposition of the claims.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

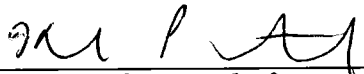
VERIFICATION

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

JASON T. SMITH
Name of appellant

KIMBERLY P. STEIN, ESQ.
Name of counsel of record

December 13, 2019
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

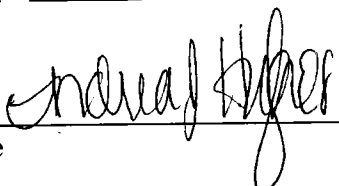
CERTIFICATE OF SERVICE

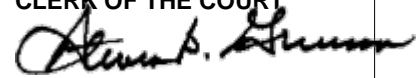
I certify that on the 13th day of December, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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

Dated this 13th day of December, 2019


Signature



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

COMP
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Attorneys for Plaintiff

DISTRICT COURT

COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual,

Plaintiff,

Case No:
Dept. No.:

COMPLAINT

v.

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

Defendants.

**(Arbitration Exemption; Amount in
Controversy Exceeds \$50,000.00; Injunctive
Relief)**

Plaintiff Jason T. Smith ("Plaintiff" or "Smith"), an individual, by and through counsel of record, the law firm of Holley Driggs Walch Fine PuzeY Stein & Thompson, hereby alleges and complains against Defendant Katy Zilverberg ("Zilverberg") and Victoria Eagan ("Eagan", collectively with Zilverberg referred to herein as "Defendants") as follows:

THE PARTIES

1. Plaintiff Jason T. Smith is, and was at all relevant times to this action, an adult resident of Clark County, Nevada.

2. Upon information and belief, Defendant Katy Zilverberg is, and was at all relevant times to this action, an adult resident of Clark County, Nevada.

///

3. Upon information and belief, Defendant Victoria Eagan is, and was at all relevant times to this action, an adult resident of Clark County, Nevada.

4. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants herein designated as Does I through X and Roe Corporations I through X, inclusive, are not known to Plaintiff at this time and are therefore named as fictitious defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of Does I through X and Roe Corporations I through X when and as ascertained.

JURISDICTION AND VENUE

5. Court has subject matter jurisdiction over this case and venue is proper in Clark County, because Defendants are Clark County, Nevada residents and because the claims at issue involve defamatory statements that were published in, among many other places, Clark County, Nevada.

GENERAL ALLEGATIONS

6. Plaintiff repeats, realleges, and incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

7. Plaintiff has been coined “America's #1 thrifter” and currently tours the country teaching others how to thrift and buy and sell online.

8. Plaintiff was the star of Spike TV's Thrift Hunters and now hosts two (2) YouTube shows Thrifty Business & Selling Past Your Expiration Date, Being Thrifty Over 50.

9. Plaintiff has well-known and trusted connections with Ebay and WorthPoint, the leading online resource for finding, valuing and pricing your antiques and collectibles with.

10. Plaintiff has also recently made guest appearances on the hit television series, Pawn Stars.

11. Plaintiff is a well-known public figure in the thrifting community and with the general public.

12. Plaintiff has sustained a profitable business as an entrepreneur and expert in the thrifting community, providing advice and expertise to individuals relating to thrifting and buying

1 and selling online. Plaintiff's business relies on his reputation in the thrifting community and with
2 the public.

3 13. Defendants are members of the thrifting community are both full-time eBay sellers.

4 14. Upon information and belief, Defendants are engaged and currently living together
5 in Las Vegas, Nevada.

6 15. Defendants are also avid YouTubers and have a consistent presence on various
7 social media platforms, including Instagram, Twitter, and Facebook.

8 16. Plaintiff has a prior relationship with Defendants as members of the thrifting
9 community and was formerly friends with Defendants.

10 17. Zilverberg also previously worked for Smith in his business.

11 18. After the fallout of their friendship with Plaintiff, Defendants have engaged in a
12 vengeance to slander and defame Plaintiff.

13 19. On or about June 14, 2018, Defendant Zilverberg posted a video on YouTube
14 entitled "Jason T Smith is an abusive bully" (the "YouTube Video"), wherein Defendant
15 Zilverberg goes on an approximately 33-minute rant about Plaintiff and makes countless
16 misstatements and false allegations regarding Plaintiff and his character, all in a clear intentional
17 attempt to damage Plaintiff's business.

18 20. Defendant Zilverberg makes false statements that Plaintiff has and will try to "take
19 people down." Defendant Zilverberg makes false statements that even go as far as to state that
20 Plaintiff has, and will, find out where people live in order to "take them down," inferring that
21 Plaintiff is predatory.

22 21. Defendant Zilverberg also falsely states that Plaintiff has, and will, intentionally get
23 persons thrown out of various business events, again to allegedly "take people down" and
24 Defendant Zilverberg even makes statements that Plaintiff has caused individuals to want to
25 commit suicide.

26 ///

27 ///

22. These statements made by Defendant Zilverberg falsely infer, among other things, that Plaintiff is predatory and has stalked individuals, which has a severe effect on his reputation and has damaged his business.

23. Defendant Zilverberg has continued to promote and publicize the YouTube video across her social media platforms and Defendant Eagan has continued to endorse Defendant Zilverberg's statements in the YouTube video across her social media platforms.

24. Since the time of the YouTube Video, Defendants and their agents, i.e. close friends and family, have continued to post false and defamatory statements about Plaintiff in an attempt to destroy his reputation and damage his business.

25. Recently, on or about April 25, 2019, Defendant Eagan posted statements on her Facebook that Plaintiff has multiple restraining orders against him. This post was endorsed by Defendant Zilverberg.

26. Defendants have falsely alleged to the public that Plaintiff has a criminal record, which Plaintiff does not. These statements have a severe impact on Plaintiff's reputation and business in the community.

27. Defendants have and will continue to post false and defamatory statements about Plaintiff.

28. The false statements published by Defendants available to countless millions of people with access to Defendants' websites and other media, the exact number of whom actually read and/or heard the defamatory statements being unknown at this time to Plaintiff.

29. The false and defamatory information was published by the Defendants with the intent to harm the Plaintiff's reputation due to the personal history between the Defendants and the Plaintiff. The Defendants made the decision to publish the false information through their websites and social media platforms, and therefore all of the Defendants are the publishers of the information as a matter of law.

30. Defendants knew or should have known that the false and defamatory statements were not true prior to publishing them.

31. Defendants' publication of the false and defamatory statements constitutes defamation per se because the statements were published to harm Plaintiff's personal and business reputation.

32. Defendants' false publications/statements are libelous and slanderous on their face. The statements have a clear tendency to injure Plaintiff personally and in his occupation. Defendants' statements about Plaintiff naturally harm Plaintiff's reputations by impugning and placing into doubt his honesty and integrity, and the false statements have had the natural effect of decreasing the number of people willing to engage in business with Plaintiff, thereby negatively impacting Plaintiff's business.

33. As a proximate result of Defendants' false publications/statements, Plaintiff has suffered loss of his reputation and business relations, all to his general damages in an amount in excess of \$15,000, the exact amount to be proven at trial.

34. As a proximate result of Defendants' false publications/statements, Plaintiff has suffered loss of his reputation and business relations, all to his special damages in an amount in excess of \$15,000, the exact amount to be proven at trial.

35. As a proximate result of Defendants' false publications/statements, Plaintiff has been required to retain the undersigned counsel to prosecute the instant action and is entitled to an award of his reasonable attorneys' fees and costs associated with the instant action.

FIRST CLAIM FOR RELIEF
(Defamation Per Se)

36. Plaintiff repeats, realleges, and incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

37. Plaintiff has enjoyed a good reputation, both generally and in his occupation, for a number of years.

38. Plaintiff is a public figure and a leader in the thrifting community. Plaintiff is well-known and trusted in the thrifting community, as well as in the general public.

39. Plaintiff's business consumes of touring the country to provide advice and expertise to individuals in the area of thrifting, eBay, and buying and selling online.

40. Plaintiff's business depends on his reputation for trustworthiness, honesty, and reliability.

41. Defendants have made and/or endorse false statements that Plaintiff has multiple restraining orders against him, and Defendant have continued to make statements inferring that Plaintiff is predatory and malicious.

42. These statements are all false and defamatory and constitute defamation per se because the statements are harmful to the Plaintiff's personal and business reputation. Defendants' false publications were disseminated to anyone with access to the internet and Defendants' websites and other media.

43. The statements published by Defendants are available to countless millions of people with access to Defendants' websites and social media platforms, the exact number of whom actually read and/or heard the defamatory statements being unknown at this time to Plaintiff.

44. The statements/publications are false as they pertain to Plaintiff, as Plaintiff does not have any restraining orders against him, Plaintiff predatory in any manner, nor has Plaintiff tried to "take anyone down."

45. Defendants' false publications/statements are libelous and slanderous on their face. The statements have a clear tendency to injure Plaintiff personally and in his occupation. Defendants' statements about Plaintiff naturally harm Plaintiff's reputation by impugning and placing into doubt his honesty and integrity, and the false statements have had the natural effect of decreasing the number of people willing to engage in business with Plaintiff, thereby negatively impacting Plaintiff's business.

46. As a proximate result of Defendants' false publications/statements, Plaintiff has suffered loss of his reputation all to his general damages in an amount in excess of \$15,000, the exact amount to be proven at trial.

47. As a further proximate result of Defendants' false publications/statements, Plaintiff has suffered the following special damages: the false publications/statements have had the natural effect of decreasing the number or individuals willing to engage in business with Plaintiff, thereby

decreasing Plaintiff's business. Plaintiff has been specially damaged in an amount in excess of \$15,000, the exact amount to be proven at trial.

48. Further, Plaintiff is entitled to special damages because the publications/statements are defamation per se as they have the natural effect of damaging Plaintiff's professional reputation.

49. Defendants' false publications/statements were published with malice as Defendants knew that these publications/statements were false when made and/or had reason to doubt the truthfulness of these publications/statements when made. Further, Defendants' personal history and animosity toward Plaintiff was the reason for Defendants' publication of these defamatory publications/statements on their websites and social media platforms, again demonstrating Defendants' malice. Thus, Plaintiff is entitled to an award of punitive damages against Defendants.

50. As a result of the aforementioned conduct on the part of Defendants, it has been necessary for Plaintiff to hire an attorney to prosecute this matter, such that an award of reasonable attorney's fees is appropriate in this matter.

SECOND CLAIM FOR RELIEF
(Conspiracy)

51. Plaintiff repeats, realleges, and incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

52. Upon information and belief, Defendant Zilverberg and Defendant Eagan have both explicitly tactically conspired to harm Plaintiff and his reputation and have each made and/or endorsed one another's defamatory statements with the intention of harming Plaintiff.

53. Upon information and belief, Defendants acted in concert, and intended to accomplish the unlawful objectives described herein for the purpose of harming Plaintiff.

54. As a proximate result of the conduct of Defendants as herein alleged, Plaintiff has been damaged in excess of \$15,000.00.

55. Defendants engaged in willful, malicious, intentional, oppressive and despicable conduct and acted with willful and conscious disregard of Plaintiff's rights and welfare, thereby

justifying an award of punitive and exemplary damages.

56. As a result of the aforementioned conduct on the part of Defendants, it has been necessary for Plaintiff to hire an attorney to prosecute this matter, such that an award of reasonable attorney's fees is appropriate in this matter.

THIRD CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

57. Plaintiff repeats, realleges, and incorporates by reference the preceding paragraphs of this Complaint as though fully set forth herein.

58. Immediate and irreparable injury will result to Plaintiff unless this Court enters an injunction, pursuant to NRCP 65, enjoining Defendants and their agents, servants, employees, attorneys, subsidiaries and any other individual or entity in active concert or participation with it who receives actual notice of the order, from publishing the aforementioned defamatory statements/publications.

59. Defendants' actions in publishing the aforementioned defamatory statements/publications are causing irreparable harm to Plaintiff because (1) injuries related to Plaintiff's potential loss of business cannot be readily quantified and relief may never be forthcoming; and (2) Defendants' continuing conduct in publishing the defamatory statements/publications inflicts injury to Plaintiff's goodwill, reputation, and his business.

60. Plaintiff has a likelihood of success on the merits given that there is no dispute that Defendants have published false statements of fact about Plaintiff that are defamatory on their face. Plaintiff has a likelihood of success as to defamation per se due to the fact that the aforementioned defamatory statements/publications involve misstatements about Plaintiff's criminal history, including misstatements that he has restraining orders against him, as well as misstatements intentionally directed to harm Plaintiff's business and his reputation.

61. In view of the fact that the damage Plaintiff has sustained, and continues to sustain, as a result of Defendants' unlawful activities, Plaintiff has no adequate remedy at law.

62. Accordingly, Plaintiff is entitled to a judgment enjoining Defendants from publishing the aforementioned defamatory statements regarding Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment as follows:

1. Awarding Plaintiff actual damages from Defendants in an amount in excess of \$15,000.
2. Awarding Plaintiff special damages from Defendants in an amount in excess of \$15,000.
3. Awarding Plaintiff punitive damages from Defendants in an amount in excess of \$15,000.
4. Issuing an order preliminarily and permanently enjoining Defendants' and their respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, from publishing the defamatory statements about the Plaintiff articulated in this Complaint;
5. Awarding Plaintiff his reasonable attorneys' fees and costs incurred in bringing and maintaining this action;
6. Awarding such other and further relief as this Court may deem just, proper and equitable.

Dated this 9th day of July, 2019.

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

/s/Kimberly P. Stein

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

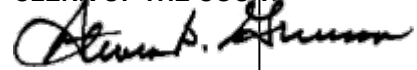
MIKKAELA VELLIS, ESQ.

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Attorneys for Plaintiff



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Telephone: (702) 728-5300; Fax (702) 425-8220

Email: maggie@nvlitigation.com

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.

NOTICE OF ENTRY OF ORDER

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

Defendants.

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

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

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

DATED this 31st 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 31st 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

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ORDR

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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"/> Stipulated 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

1 personally.

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

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

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

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

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

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

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

25 17. Many of these comments reflected that other members of the thrifting
26 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.

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.¹

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

28 ¹ 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.

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

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

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

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

13 50. Nevada's anti-SLAPP statute requires that the communications giving rise
14 to the suit must be made "in a place open to the public or in a public forum." Nev. Rev. Stat.
15 § 41.637.

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

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

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

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

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

24 55. Statements of opinion cannot be made with knowledge of their falsehood
25 because there is no such thing as a false idea. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
26 706, 714, 57 P.3d 82, 87 (Nev. 2002) (internal quotation omitted). However pernicious
27 opinions may seem, courts depend on the competition of other ideas, rather than judges and
28 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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1 70. Plaintiff has not provided any prima facie evidence that any of the allegedly
2 defamatory statements were defamatory per se, and therefore he is not entitled to presumed
3 damages.

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

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

10 ***Conspiracy***

11 73. The elements of a cause of action for conspiracy are: (1) defendants, “by
12 some concerted action, intend to accomplish an unlawful objective for the purpose of
13 harming another; and (2) damage resulting from the act or acts.” *Consol. Generator-Nevada,*
14 *Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (Nev. 1999)
15 (quoting *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207,
16 1210 (1993)).

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

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

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

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

25 78. Thus, Plaintiff has not established a probability of success on his conspiracy
26 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.

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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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