

IN THE SUPREME COURT OF NEVADA

JASON T. SMITH, an individual,
Appellant,
vs.
KATY ZILVERBERG, an individual; and
VICTORIA EAGAN, an individual,
Respondents.

Supreme Ct. No. 80154
Dist. Ct. Case No.: A-19-798171-C
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JASON T. SMITH, an individual,
Appellant,
vs.
KATY ZILVERBERG, an individual; and
VICTORIA EAGAN, an individual,
Respondents.

Supreme Ct. No. 80348
Dist. Ct. Case No.: A-19-798171-C

On Appeal from the Eighth Judicial Court for the County of Clark in Nevada
Case No. A-19-798171-C
Hon. Jim Crockett

JOINT APPENDIX TO OPENING BRIEF - VOLUME 3

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Dated this 11th day of May, 2020.

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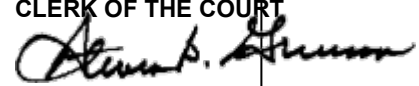
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12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

17 **MOTION FOR ATTORNEY'S**
FEES, COSTS, AND STATUTORY
AWARDS PURSUANT TO NEV.
REV. STAT. § 41.670

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.

Hearing Date: November 21, 2019

Hearing Time: 9:00 a.m.

23 Defendants Katy Zilverberg and Victoria Eagan hereby move this Court to award
24 Defendants attorney's fees, costs, and statutory awards as the prevailing parties on their
25 Special Motion to Dismiss Plaintiff's Complaint pursuant to Nev. Rev. Stat. § 41.660. This
26 Motion is based on the following Memorandum of Points and Authorities and Exhibits
27 attached hereto, the papers and pleadings already on file herein, and any oral argument the
28 Court may permit at the hearing of this Motion.

Dated this the 17th 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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Because Defendants Katy Zilverberg and Victoria Eagan prevailed on their Special
4 Motion to Dismiss pursuant to Nevada’s Anti-SLAPP statute, Nev. Rev. Stat. § 41.635 *et*
5 *seq.*, they are entitled to recover all their attorney’s fees and costs incurred in defending this
6 action. Nevada’s anti-SLAPP statute provides for complete immunity from suits improperly
7 targeting free speech on matters of public concern. Nev. Rev. Stat. § 41.650. It also
8 mandates that a court must award the prevailing defendant all his or her reasonable fees and
9 costs pursuant to Nev. Rev. Stat. § 41.670(1)(a). Total fees and costs requested are reasonable
10 and would only be subject to an upward adjustment under an application of the *Brunzell*
11 factors, which Defendants are not seeking.

12 Ms. Zilverberg and Ms. Eagan also respectfully request this Court award them each
13 an additional \$10,000.00 against Plaintiff Jason T. Smith for bringing a suit that was designed
14 to chill their protected speech. Plaintiff’s frivolous lawsuit was a transparent effort to
15 leverage his superior financial resources in order to bully his critics. Whether Defendants
16 were entitled to the benefit of the anti-SLAPP statute was not even a close call and Mr.
17 Smith’s Complaint fails to even properly allege a cognizable claim.¹ This vexatious litigation
18 is exactly what the anti-SLAPP statute was designed to protect against.

19 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

20 On July 9, 2019, Mr. Smith filed his Complaint against Ms. Zilverberg and Ms.
21 Eagan alleging causes of action for defamation, conspiracy, and injunctive relief. It was
22 served on both Defendants on July 10, 2019. The gravamen of Mr. Smith’s complaint was
23 that Defendants harshly criticized Mr. Smith—a public figure—and his behavior in the
24 thrifting community (*i.e.*, the business and social community in which all parties to this

25 _____
26 ¹ This Court should also hold Mr. Smith’s counsel personally liable for fees and costs under
27 Nev. Rev. Stat. § 7.085(a), which mandates fee shifting if the Court finds that counsel “[f]iled
28 ... a civil action or proceeding in any court in this State and such action or defense is not
well-grounded in fact or is not warranted by existing law or by an argument for changing the
existing law that is made in good faith.”

matter are heavily involved) in a 2018 Youtube video and a 2019 Facebook post. On July 19, 2019, on the advice of prior counsel, Defendants entered into a Stipulated Preliminary Injunction with Mr. Smith enjoining all parties from publicly discussing the instant matter (or each other).

On August 19, 2019, Defendants filed notice with this Court that the undersigned would be substituting as counsel in the instant matter. On September 6, 2019, Defendants moved to dismiss Mr. Smith's suit pursuant to Nev. Rev. Stat. § 41.660. Mr. Smith (untimely) opposed the motion on September 20, 2019, and Defendants submitted a reply on September 27, 2019.

On October 3, 2019, the Court held a hearing on this matter, granting Defendants' special anti-SLAPP Motion to Dismiss. A written order memorializing the Court's decision is currently pending.

III. LEGAL ARGUMENT

A. This Court Must Award Defendants Attorney's fees and Costs.

1. Legal Standard: Fees Are Mandatory.

Recovery of attorney's fees as a cost of litigation is permissible by agreement, statute, or rule. *See Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001). In this case, recovery of attorney's fees is authorized by statute. Nevada's anti-SLAPP statute was intended to make those who engage in good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern "immune from any civil action for claims based upon the communication." Nev. Rev. Stat. § 41.650. To make such speakers immune in practice—*i.e.* so that they are spared not merely a judgment against them, but spared the financial and practical burdens of litigation themselves—Nevada's anti-SLAPP statute mandates that if the court grants a special motion to dismiss pursuant to Nev. Rev. Stat. § 41.660, the court "shall award reasonable costs and attorney's fees to the person against whom the action was brought." Nev. Rev. Stat. § 41.670(1)(a).

///

Under California law, which Nevada courts look to in interpreting its anti-SLAPP statute, all fees incurred in defending oneself from a SLAPP suit are recoverable when all claims are dismissed under the anti-SLAPP statute. *See Graham-Suit v. Clainos*, 738 F.3d 1131, 1159 (9th Cir. 2013) (affirmed in *Graham-Suit v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014)) (finding that awarding all attorney’s fees incurred in connection with a case, even if not directly related to the anti-SLAPP motion, are recoverable if all claims are dismissed). Fees incurred after a fee motion is filed are also recoverable under the statute. *See Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 21 (2006) (finding that fees recoverable under anti-SLAPP statute include all post-motion fees, such as fees on fees, fees in connection with defending an award of fees, and fees on appeal of an order granting an anti-SLAPP motion). Here, Defendants prevailed on their anti-SLAPP motion, and all of Mr. Smith’s claims were dismissed as a result of the motion. Accordingly, Defendants are entitled to a mandatory award of all reasonable attorney’s fees and costs incurred in defending against Mr. Smith’s meritless suit.

Any fee-setting inquiry begins with the calculation of the “lodestar:” the number of hours reasonably expended multiplied by a reasonable hourly rate. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 896-97 (1984); *accord Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). Relevant factors include the preclusion of other employment by the attorney due to acceptance of the case; time limitations imposed by the client or the circumstances; the amount involved and results obtained; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir.1975). In most cases, the lodestar figure is a presumptively reasonable fee award. *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). The lodestar method of calculation is “the guiding light of [Nevada’s] fee-shifting jurisprudence,” and there is a strong presumption that a lodestar figure is a reasonable fee. *Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 606 (2007) (quoting *City of Burlington v. Dague*, 505 U.S. 557, 559, 562 (1992)).

///

1 In addition to calculating the lodestar, a court must also consider the requested
2 amount in light of the factors enumerated by the Nevada Supreme Court in *Brunzell v. Golden*
3 *Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Pursuant to *Brunzell*, a court must consider
4 four elements in determining the reasonable value of attorneys' services:

5 (1) the qualities of the advocate: his ability, his training, education,
6 experience, professional standing and skill; (2) the character of the work to
7 be done: its difficulty, its intricacy, its importance, time and skill required,
8 the responsibility imposed and the prominence and character of the parties
9 where they affect the importance of the litigation; (3) the work actually
performed by the lawyer: the skill, time and attention given to the work; (4)
the result: whether the attorney was successful and what benefits were
derived.

10 *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); *accord Shuette v. Beazer Homes*
11 *Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

12 2. Defendants' Requested Fees and Costs Are Reasonable.

13 Pursuant to Nev. R. Civ. P. 54(d)(2)(B), statements "swearing that the fees were
14 actually and necessarily incurred and were reasonable" are set forth in the attached
15 declaration of Margaret A. McLetchie ("McLetchie Decl.") and supported by the attached
16 exhibits and declarations and Memorandum of Costs. The total "lodestar" amount of fees
17 and costs requested by Defendants in this matter is **\$54,559.34**, broken down as follows:

- 18 • McLetchie Law: \$46,872.34;
- 19 • Dayvid Figler, Esq.: \$4,400.00; and
- 20 • Paul Ray, Esq.: \$3,287.00.

21 The litigation in this matter was complex and time-consuming for several reasons.
22 In addition to the time and costs associated with the filing of an anti-SLAPP Motion to
23 Dismiss, much of the complexity in the case—and ultimately, the fees and costs incurred in
24 this matter—are attributable to Mr. Smith's efforts to silence the Defendants through the
25 instant lawsuit.

26 In the instant case, Defendants were required to spend significant time researching
27 and presenting the anti-SLAPP Motion to Dismiss. As this Court is aware, to prevail on a
28 special motion to dismiss, a defendant must "establish[], by a preponderance of the evidence,

1 that the claim is based upon a good faith communication in furtherance of the right to petition
2 or the right to free speech in direct connection with an issue of public concern.” Nev. Rev.
3 Stat. § 41.660(3)(a). Nevada Anti-SLAPP law defines a “good faith communication in
4 furtherance of the right to free speech in direct connection with an issue of public concern”
5 as, *inter alia*, a communication: (1) “made in direct connection with an issue of public
6 interest”; (2) “made in a place open to the public or in a public forum;” and (3) “which is
7 truthful or is made without knowledge of its falsehood.” Nev. Rev. Stat. § 41.637.

8 To meet this burden, Defendants’ counsel had to conduct extensive research to
9 determine whether each of the statements alleged in Mr. Smith’s complaint were good faith
10 communications regarding issues of public concern. Counsel were required to watch the
11 complained-of Facebook video and pore over hundreds of pages of documents provided by
12 Defendants to establish that Defendants had a good faith belief in the veracity of their
13 communications. Counsel were also required to conduct extensive research regarding
14 Nevada and California’s constantly evolving anti-SLAPP laws as well as federal case law
15 interpreting both states’ anti-SLAPP statutes, and draft complex and extensive motions and
16 replies. (Declaration of Margaret A. McLetchie (“McLetchie Decl.”), ¶¶ 6-7.)

17 Defendants’ counsel appropriate billing judgment and structured work on this case
18 to maximize efficiencies, and the hours listed in the fee request are neither duplicative,
19 unnecessary nor excessive. (McLetchie Decl., ¶ 8.) See also *Hensley v. Eckerhart*, 461 U.S.
20 424, 434 (1983) (“Counsel for the prevailing party should make a good faith effort to exclude
21 from a fee request hours that are excessive redundant, or otherwise unnecessary, just as a
22 lawyer in private practice ethically is obligated to exclude such hours from his fee
23 submission.”).

24 To keep billing as low as possible, counsel utilized a research and writing attorney
25 and a paraprofessional to perform tasks such as research and organization to assure that
26 attorneys with higher billing rates were not billing for tasks that lower billers could perform.
27 (McLetchie Decl. at ¶ 9.) Potentially duplicative or unnecessary time has not been included.
28 (*Id.* at ¶ 10.) Counsel also exercised appropriate billing judgment by not including in this

1 application certain time, even time which would likely be compensable. (*Id.* at ¶ 12.) The
2 description of costs and fees in this case also excludes all time spent working on this Motion,
3 or as will be necessary to Reply to any Opposition to this Motion. (*Id.* at ¶ 13.) In all these
4 ways, counsel for Defendants has charged a reasonable rate for the attorneys' time. (*Id.* at ¶¶
5 8-12.)

6 **3. An Analysis of the *Brunzell* Factors Supports the Award of the**
7 **Fees Defendants Seek.**

8 As discussed above, the Nevada Supreme Court's opinion in *Brunzell* sets forth
9 several factors that should be used to determine whether a requested amount of attorney's
10 fees is reasonable. *See Brunzell*, 85 Nev. 345, 349, 455 P.2d 31, 33. Each of these factors
11 weighs in Defendants' favor, which would entitle Defendants to an upward adjustment of the
12 lodestar amount. However, Defendants do not request an upward adjustment, and request
13 this Court award Defendants reasonable attorney's fees and costs in the sum of \$54,559.34.

14 **a. The Advocates' Skills Support a High Award.**

15 To be considered in determining the reasonable value of an attorney's services are
16 the qualities of the advocate, including ability, training, education, experience, professional
17 standing, and skill. *Id.* Defendants' attorneys include attorneys, law clerks, and
18 paraprofessionals from McLetchie Law, as well as Dayvid Figler, Esq. and Paul C. Ray, Esq.
19 Paraprofessionals were utilized whenever possible and appropriate to keep fees low.

20 Margaret A. McLetchie, working a total of 45.5 hours on this case, is the lead
21 attorney at, and owner of, McLetchie Law with almost 17 years of experience, and admitted
22 to the bar in both California and Nevada. After working at a large corporate law firm in
23 California, Ms. McLetchie became a Staff Attorney, then Legal Director of the American
24 Civil Liberties Union of Nevada. While with the ACLU of Nevada, Ms. McLetchie litigated
25 several complex civil rights cases, including cases focused on freedom of speech. Ms.
26 McLetchie has extensive experience handling First Amendment cases, defamation litigation,
27 and similar matters. Indeed, she frequently represents other clients who are defendants in
28 defamation cases, and has prevailed in having other lawsuits dismissed pursuant to Nevada's

1 anti-SLAPP statute. Recently, Ms. McLetchie was named the Nevada Press Association's
2 2018 First Amendment Champion for her First Amendment legal work. Ms. McLetchie's
3 time on this matter was billed at a rate of \$500.00 per hour, for a total of \$22,750.00.

4 Alina M. Shell, working a total of 6.0 hours on this case, is a senior attorney at
5 McLetchie Law with ten years of legal experience. Prior to transitioning into private practice,
6 Ms. Shell was an attorney with the Federal Public Defender (FPD) for the District of Nevada.
7 While employed by the FPD, Ms. Shell represented numerous defendants in a variety of
8 criminal cases, including complex mortgage fraud cases. She also wrote and argued several
9 complex criminal appeals in before the United States Court of Appeals for the Ninth Circuit.
10 Since moving into private practice in June 2015, Ms. Shell has represented plaintiffs in state
11 and federal court in civil matters, including First Amendment and defamation cases. Ms.
12 Shell's time on this case was billed at the rate of \$375.00 per hour, for a total of \$2,250.00.

13 Leo S. Wolpert, working a total of 79.5 hours, is a research and writing attorney at
14 McLetchie Law. Mr. Wolpert is 2011 graduate of the University of Virginia School of Law
15 with seven years of legal experience, including experience with First Amendment and
16 defamation matters. Mr. Wolpert's time on this case was billed at a rate of \$225.00 per hour,
17 for a total billed of \$17,887.50.

18 Pharan Burchfield, working a total of 7.0 credited hours on this case, is a
19 paraprofessional at McLetchie Law. Ms. Burchfield has an associate's degree in paralegal
20 studies, and has been a paralegal for five years. Ms. Burchfield's time on this case was billed
21 at the rate of \$175.00 per hour, for a total billed of \$1,225.00.

22 Lacey Ambro, working a total of 4.9 credited hours on this case, is a
23 paraprofessional at McLetchie Law with over seven years of experience in the legal field.
24 From 2007 to 2012, Ms. Ambro worked as a legal assistant at a firm specializing in medical
25 malpractice defense. Ms. Ambro has been employed at McLetchie Law as a legal assistant
26 August, 2017. Ms. Ambro's time on this case was billed at the rate of \$175.00 per hour, for
27 a total billed of \$857.50.

28 ///

1 Ashley Barker, working a total of 2.3 credited hours on this case, is a
2 paraprofessional at McLetchie Law who performed administrative tasks in this matter. Ms.
3 Barker's time on this case was billed at the rate of \$50.00 per hour, for a total billed of
4 \$115.00.

5 In sum, the attorneys and employees at McLetchie Law billed 145.2 hours on this
6 case, for a total of \$45,085.00, at what would be a blended average of approximately \$310.50
7 per hour—well under market for the experience brought to bear on this action. Reasonable
8 costs for documents, filing fees, and the like were calculated for a total billed of \$1,787.34.
9 (See Memorandum of Costs and Disbursements, on file with this Court.) With costs, the total
10 billed for McLetchie Law is \$46,872.34. Further qualification and qualities, along with an
11 itemization of these bills are included in the attached declaration of Ms. McLetchie and
12 **Exhibits 1 and 2.**

13 Additionally, Defendants consulted with Dayvid Figler, Esq., who referred them to
14 McLetchie Law. Mr. Figler is an attorney licensed in Nevada since 1991 with a diverse
15 practice that has included a substantial number of First Amendment cases related to freedom
16 of expression as well as a vibrant trial practice. As reflected by **Exhibit 3**, Mr. Figler's fees
17 in this matter are \$4,400.00.

18 Additionally, prior to retaining McLetchie Law to represent them in this matter,
19 Defendants were represented by Paul C. Ray, Esq. As reflected by **Exhibit 4**, Mr. Ray
20 charged them \$3,287.00 in total.

21 **b. The Work Performed Involved Skill, Time, and Attention.**

22 The work actually performed by the lawyer is relevant to the reasonableness of
23 attorneys' fees, including the skill, time, and attention given to the work. *Brunzell*, 85 Nev.
24 at 349, 455 P.2d at 33. As discussed above, counsel for Defendants fully briefed this matter
25 by filing the Special Motion to Dismiss, replying to Mr. Smith's Opposition, arguing at the
26 hearing on the Special Motion to Dismiss, and drafting post-dismissal motions such as the
27 instant one. As demonstrated by the billing statements attached in **Exhibits 1 and 2** and the
28 attached declaration of Ms. McLetchie, a substantial portion of the work in this case was

done by attorneys and staff with lower billing rates. Even though some of the work was done by lower billing attorneys and staff, Ms. McLetchie was still required to analyze the research and apply it strategically to the various arguments and assertions posed by Mr. Smith. The fact-intensive nature of this matter—exacerbated by the vagueness of Mr. Smith’s Complaint—necessitated a time-intensive approach to litigating it.

c. The Result.

Lastly, “the result: whether the attorney was successful and what benefits were derived” is relevant to this inquiry. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As noted above, Defendants are the prevailing parties in this matter, as this Court granted their Special Motion to Dismiss. It was necessary to expend significant resources “up front” to ensure the result, to avoid the more expensive course of traditional litigation (discovery, trial), and to protect the important First Amendment rights at stake.

B. The Court Should Award Defendants \$10,000.00 Each to Deter Future SLAPP Suits.

In addition to awarding reasonable attorney’s fees and costs, Nevada’s anti-SLAPP statute provides that this Court may award an amount of up to \$10,000 to the person against whom the action was brought. Nev. Rev. Stat. § 41.670(1)(b). In this case, this Court should award Defendants \$10,000.00 each for having been named in Mr. Smith’s frivolous suit, and to deter future plaintiffs—including Mr. Smith—from filing future SLAPP suits against those who dare speak up on issues of great import to their communities.

As the evidence submitted in this matter illustrates, Mr. Smith has attempted to use the legal system to silence Defendants regarding his anti-social conduct in the thrifting community which made him famous. The allegedly defamatory statements Mr. Smith cited in his complaint were precisely the sort of speech Nevada’s anti-SLAPP statute is intended to protect—truthful statements of fact, statements of fact made without knowledge of their false hood, and statements of opinion regarding a matter of public interest. Indeed, the wholesale lack of evidence Mr. Smith presented to oppose the Special Motion to Dismiss reflects the utter baselessness of his lawsuit, revealing that it was nothing more than an

attempt to punish Defendants for revealing unfortunate and embarrassing truths about Mr. Smith's conduct to the thrifting community. To send the clearest possible message to Mr. Smith and future plaintiffs that abusing the legal system to silence critics cannot and will not be tolerated, an award of \$10,000.00 each to Ms. Zilverberg and Ms. Eagan is appropriate.

IV. CONCLUSION

Based on the foregoing, Defendants Katy Zilverberg and Victoria Eagan request that this Court award them all attorney's fees and costs incurred in this matter, pursuant to Nev. Rev. Stat. § 41.670(1)(a) in the total amount of \$54,559.34. Defendants hereby reserve the right to supplement their request for fees with any additional fees and costs incurred by counsel in preparing and defending the instant motion for fees and costs, preparing and defending any other motions filed in this litigation, and in any post-judgment litigation including, but not limited to, appeals. See *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 21 (2006).

Defendants further request that, pursuant to Nev. Rev. Stat. § 41.670(1)(b), the Court award them \$10,000.00 each to deter Mr. Smith (and future SLAPP plaintiffs) from engaging in frivolous and abusive litigation.

Respectfully submitted this 17th day of October, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

MCLEATCHIE LAW

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*Counsel for Defendants Katy Zilverberg
and Victoria Eagan*

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DECL

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

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Counsel for Defendants Katy Silverberg

and Victoria Eagan

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JASON T. SMITH, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-798171-C

Dept. No.: XXIV

**DECLARATION OF MARGARET
A. MCLEATCHIE IN SUPPORT OF
MOTION FOR ATTORNEY FEES
AND COSTS PURSUANT TO NEV.
REV. STAT. § 41.670**

I, MARGARET A. MCLEATCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330,
as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a
witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada.

3. My firm represents Defendants Katy Silverberg and Victoria Eagan in this
matter. I make this declaration in support of their Motion for Attorney Fees and Costs
Pursuant to Nev. Rev. Stat. § 41.670.

4. I became involved with this case on August 9, 2019. After consulting with
Defendants and reviewing the Complaint, I determined that filing a Special Motion to

1 Dismiss under Nevada's anti-SLAPP statute was the most appropriate course of action to
2 defend Defendants' rights.

3 5. Because Defendants were served on July 10, 2019—and therefore a Special
4 Motion to Dismiss pursuant to Nevada's anti-SLAPP statute was due to Court by September
5 8, 2019—but I was not retained by Defendants until August 13, 2019, I was required to work
6 on an expedited basis to ensure that the Special Motion to Dismiss was timely filed.

7 6. To meet Defendants' burden under Nevada's anti-SLAPP statute, My firm
8 had to conduct extensive research to determine whether each of the statements cited by Mr.
9 Smith in his Complaint were good faith communications regarding issues of public concern.
10 My firm was required to watch the complained-of YouTube video and read the complained-
11 of Facebook post. Furthermore, my firm was required to examine hundreds of pages of
12 documentation submitted by Defendants to demonstrate their belief in the veracity of
13 statements Mr. Smith alleged to be defamatory.

14 7. My firm was also required to conduct extensive research regarding Nevada
15 and California's anti-SLAPP laws as well as federal case law interpreting both states' anti-
16 SLAPP statutes, and draft complex and extensive pleadings.

17 8. I exercised appropriate billing judgment and structured work on this case to
18 maximize efficiencies, and the hours listed in the fee request are neither duplicative,
19 unnecessary nor excessive.

20 9. To keep billing as low as possible, I utilized less experienced attorneys and
21 paraprofessionals to perform tasks such as research and drafting to assure that attorneys with
22 higher billing rates were not billing for tasks that lower billers could perform.

23 10. Potentially duplicative or unnecessary time has not been included.

24 11. In all these ways, I charged a reasonable rate for the attorneys' time.

25 12. I also exercised appropriate billing judgment by *not* including in this
26 application certain time, even time which would likely be compensable.

27 13. The description of costs and fees in this case also excludes all time spent
28 working on this Motion, or as will be necessary to Reply to any Opposition to this Motion.

1 14. Exhibit 1 is a true and correct copy of the billing in this matter organized by
2 biller.

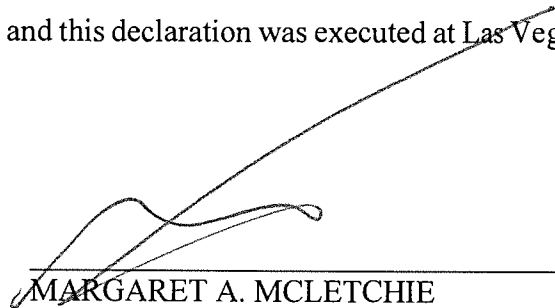
3 15. Exhibit 2 is a true and correct copy of the billing in this matter organized by
4 date.

5 16. Exhibit 3 is a Declaration of Dayvid J. Figler regarding the work performed
6 in this matter, along with a true and correct copy of his billing in this matter.

7 17. Exhibit 4 is a true and correct copy of an invoice from prior counsel Paul C.
8 Ray for work performed in this matter.

9 I certify and declare under the penalty of perjury under the law of the State of
10 Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas,
11 Nevada, the 17th day of October, 2019.

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MARGARET A. MCLEITCHIE

EXHIBIT 1

Date	User	Description	Hours	Rate	Total
8/9/19	Margaret McLetchie	Emails with clients; assessment of case.	0.5	\$500.00	\$250.00
8/12/19	Leo Wolpert	Emails with Ms. McLetchie re anti-SLAPP deadline.	0.1	\$225.00	\$22.50
8/12/19	Leo Wolpert	In-person meeting with clients and conference with Ms. McLetchie and Mr. Figler analyzing facts of case.	2.0	\$225.00	\$450.00
8/12/19	Margaret McLetchie	Emails with Mr. Wolpert re anti-SLAPP deadline.	0.1	\$500.00	\$50.00
8/12/19	Margaret McLetchie	Confer with Mr. Wolpert and analyze facts of case; emails with Mr. Figler re same.	1.3	\$500.00	\$650.00
8/12/19	Margaret McLetchie	In-person meeting.	1.0	\$500.00	\$500.00
8/14/19	Margaret McLetchie	Review of docket.	0.2	\$500.00	\$100.00
8/14/19	Margaret McLetchie	Emails with clients and attention to opening matter.	0.2	\$500.00	\$100.00
8/14/19	Pharan Burchfield	Download, save, and review case docket (<i>Smith v. Zilverberg</i>); update attorneys and calendar accordingly.	0.2	\$175.00	\$35.00
8/15/19	Lacey Ambro	Create two separate charts re Ms. Zilverberg's and Ms. Eagan's statements from Mr. Wolpert's chart. Send emails accordingly to each client enclosing chart for each to complete.	0.5	\$175.00	\$87.50
8/15/19	Leo Wolpert	Watch allegedly defamatory YouTube video and review allegedly defamatory Facebook post, compile chart of allegedly defamatory statements for circulation to clients to provide evidence of truthfulness / lack of knowledge of falsehood.	2.1	\$225.00	\$472.50
8/15/19	Margaret McLetchie	Direct work on compiling evidence.	0.3	\$500.00	\$150.00
8/15/19	Margaret McLetchie	Email to team re immediate work plan.	0.2	\$500.00	\$100.00
8/16/19	Lacey Ambro	Finalize Substitution of Attorney for Zilverberg and Eagan. Draft letter to prior counsel re same and obtaining case file. Finalize letter. Email letter and Substitution of Attorney documents to Mr. Ray.	0.9	\$175.00	\$157.50

Date	User	Description	Hours	Rate	Total
8/16/19	Lacey Ambro	Download, save and organize documents from Prior Counsel (Paul Ray) received via ShareFile. Alert Ms. McLetchie re deadline.	0.6	\$175.00	\$105.00
8/16/19	Margaret McLetchie	Attention to review of file / obtaining file from prior counsel and emails with clients and planning for case. Substitution.	1.2	\$500.00	\$600.00
8/19/19	Ashley Barker	Travel to/from office to office of Paul C. Ray to pick up Substitution of Attorneys.	1.0	\$50.00	\$50.00
8/19/19	Lacey Ambro	Obtain Ms. McLetchie's signature on Substitution of Attorney re Ms. Zilverberg and Ms. Eagan. Efile/eserve same.	0.4	\$175.00	\$70.00
8/19/19	Margaret McLetchie	Continued review of case file. Attention to deadline to respond to complaint; emails with opposing counsel (request for further extension denied by Ms. Stein). Approve substitution,	2.2	\$500.00	\$1,100.00
8/19/19	Pharan Burchfield	Download, save, and review Substitution of Attorney (for both Ms. Zilverberg and Ms. Eagan); update attorneys re same.	0.1	\$175.00	\$17.50
8/22/19	Lacey Ambro	Save documentation from clients in support of the Chart re Defamatory Statements.	0.2	\$175.00	\$35.00
8/22/19	Margaret McLetchie	Review Complaint allegations alongside chart of evidence prepared by clients.	1.2	\$500.00	\$600.00
8/22/19	Margaret McLetchie	Review Ms. Eagan's chart of evidence/ summary to attys.	0.5	\$500.00	\$250.00
8/29/19	Lacey Ambro	Save additional documentation from Ms. Zilverberg in support of Chart re Defamatory Statements.	0.1	\$175.00	\$17.50
8/29/19	Margaret McLetchie	Review email/ additional information from client.	0.2	\$500.00	\$100.00
9/3/19	Leo Wolpert	Outline, begin drafting anti-SLAPP Motion to Dismiss, specific attention to overall structure and broad strokes of arguments.	3.0	\$225.00	\$675.00

Date	User	Description	Hours	Rate	Total
9/4/19	Leo Wolpert	Continue researching, drafting, compiling evidence for anti-SLAPP Motion to Dismiss. Specific attention to reviewing documents provided by Ms. Zilverberg and Ms. Eagan regarding bases for their statements, then incorporating such into sections demonstrating good faith communications and demonstrating defamation claim fails.	10.6	\$225.00	\$2,385.00
9/4/19	Margaret McLetchie	Review information received from Ms. Zilverberg; emails re same.	0.4	\$500.00	\$200.00
9/5/19	Leo Wolpert	Continue drafting anti-SLAPP Motion to Dismiss, more attention to reviewing documents for proof of good faith communication, truthfulness or lack of knowledge of untruthfulness. Also, research cases regarding public interest, drafting and editing public interest section of prong 1 of anti-SLAPP analysis.	9.6	\$225.00	\$2,160.00
9/5/19	Margaret McLetchie	Review and revise draft of anti-SLAPP Motion to Dismiss; add / expand section regarding injunction / related research. Confer with team re next steps in project. Update to clients.	2.5	\$500.00	\$1,250.00
9/6/19	Lacey Ambro	Incorporate Table of Authorities and Table of contents to ANTI-SLAPP Motion to Dismiss. Finalize same. Efile/eserve same and Appendix of Exhibits in Support of ANTI-SLAPP Motion to Dismiss.	1.2	\$175.00	\$210.00
9/6/19	Leo Wolpert	finish drafting, editing, proofreading anti-SLAPP Motion to Dismiss, particular attention to incorporating edits of Ms. McLetchie, drafting declarations of clients, organizing exhibits.	9.3	\$225.00	\$2,092.50
9/6/19	Margaret McLetchie	Revise latest version of anti-SLAPP Motion to Dismiss and provide comments to Mr. Wolpert. Email to clients and Mr. Figler re same. Status call with Mr. Figler.	2.3	\$500.00	\$1,150.00

Date	User	Description	Hours	Rate	Total
9/6/19	Margaret McLetchie	Emails with opposing counsel re anti-SLAPP Motion to Dismiss, deadline to respond to complaint, protective order.	0.3	\$500.00	\$150.00
9/6/19	Margaret McLetchie	Call with opposing counsel. Update clients re same.	0.7	\$500.00	\$350.00
9/6/19	Margaret McLetchie	Attention to peremptory challenge; check rules and approve filing. Review re-assignment. Related research.	0.4	\$500.00	\$200.00
9/6/19	Margaret McLetchie	Begin researching and drafting motion to set aside protective order.	1.6	\$500.00	\$800.00
9/6/19	Margaret McLetchie	Supervise work on finalization of anti-SLAPP Motion to Dismiss. Review evidence. Revise declarations. Coordinate with clients. Meet with clients.	1.4	\$500.00	\$700.00
9/6/19	Margaret McLetchie	Review peremptory challenge filed by Plaintiff.	0.1	\$500.00	\$50.00
9/6/19	Pharan Burchfield	Draft, file, and serve Peremptory Challenge of Judge re Judge Johnson; update attorneys and clients re same.	0.3	\$175.00	\$52.50
9/6/19	Pharan Burchfield	Prepare (gather, Bates, redact exhibits) Appendix of Exhibits in Support of Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).	1.0	\$175.00	\$175.00
9/6/19	Pharan Burchfield	Download, save, and review Notice of Department Reassignment; update attorneys and clients re same.	0.1	\$175.00	\$17.50
9/9/19	Margaret McLetchie	Review judicial assignment and update clients re same.	0.2	\$500.00	\$100.00
9/9/19	Margaret McLetchie	Emails with client re status	0.1	\$500.00	\$50.00
9/9/19	Pharan Burchfield	Download, save, and review Notice of Department Reassignment re Judge Crockett; and update attorneys re same.	0.1	\$175.00	\$17.50
9/10/19	Leo Wolpert	Participate in client phone call, discuss settlement negotiation strategy with Ms. McLetchie.	0.2	\$225.00	\$45.00

Date	User	Description	Hours	Rate	Total
9/10/19	Margaret McLetchie	Email to Ms. Stein; call with Ms. Stein re case; consider next steps in light of same. Review and respond to emails from Ms. Stein following call and endeavor to obtain clarity from her re terms for settlement. Consider same. Update clients/ call/ convey latest offer.	0.8	\$500.00	\$400.00
9/10/19	Margaret McLetchie	Call and emails with clients re demand from plaintiff and possible counteroffer.	0.3	\$500.00	\$150.00
9/10/19	Margaret McLetchie	Further emails with Ms. Stein	0.2	\$500.00	\$100.00
9/11/19	Margaret McLetchie	Emails with team re late Opposition; emails with clients re hearing schedule/ confer with clients re same.	0.3	\$500.00	\$150.00
9/11/19	Margaret McLetchie	Email to Ms. Stein re settlement negotiations.	0.1	\$500.00	\$50.00
9/11/19	Pharan Burchfield	Download, save, and review Clerk's Notice of Hearing re anti-SLAPP Motion to Dismiss; update attorneys and calendar accordingly.	0.2	\$175.00	\$35.00
9/13/19	Margaret McLetchie	Emails with client. Call with Ms. Stein re counteroffer.	0.3	\$500.00	\$150.00
9/13/19	Margaret McLetchie	Email to opposing counsel re offer.	0.1	\$500.00	\$50.00
9/13/19	Margaret McLetchie	Further emails with Ms. Stein re settlement offer, her request for change of hearing date.	0.2	\$500.00	\$100.00
9/13/19	Margaret McLetchie	Emails with opposing counsel re whether plaintiff has rejected offer to settle upon payment of 20k to partially compensate defendant for estimated attorney's fees.	0.2	\$500.00	\$100.00
9/13/19	Margaret McLetchie	Emails to client re Mr. Smith's rejection of counter to settle for payment of reduced fees to defendant, dismissal of case and re next steps.	0.2	\$500.00	\$100.00
9/17/19	Leo Wolpert	Research timeliness for Oppositions, draft section of reply dealing with their untimeliness	0.7	\$225.00	\$157.50
9/17/19	Margaret McLetchie	Emails re timing issues.	0.2	\$500.00	\$100.00

Date	User	Description	Hours	Rate	Total
9/19/19	Leo Wolpert	Draft Notice of Non-Opposition, research deadlines, draft emails regarding Non-Opposition, incorporate Ms. McLetchie's edits re same.	1.3	\$225.00	\$292.50
9/19/19	Margaret McLetchie	Review Opposition to Non-Opposition. Emails with client re same.	0.2	\$500.00	\$100.00
9/19/19	Margaret McLetchie	Attention to Notice of Non-Opposition.	0.7	\$500.00	\$350.00
9/19/19	Pharan Burchfield	Finalize, file, and serve Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP). Email Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.2	\$175.00	\$35.00
9/19/19	Pharan Burchfield	Download, save, and review Opposition to Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. section 41.660 (anti-SLAPP); and Countermotion to Strike Notice of Special Motion to Dismiss Pursuant to Nev. Rev. Statute section 41.660 (anti-SLAPP); and update attorneys re same.	0.1	\$175.00	\$17.50
9/20/19	Leo Wolpert	Research for Reply in support of anti-SLAPP Motion to Dismiss, specifically more cases to demonstrate public interest.	1.1	\$225.00	\$247.50
9/20/19	Margaret McLetchie	Preliminary review of opposition to anti-SLAPP motion. Confer with Mr. Wolpert re same. Emails with clients re same and re timing issue.	0.8	\$500.00	\$400.00
9/20/19	Pharan Burchfield	Download, save, and review Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler, and calendar accordingly.	0.1	\$175.00	\$17.50
9/21/19	Margaret McLetchie	Emails with clients.	0.2	\$500.00	\$100.00

Date	User	Description	Hours	Rate	Total
9/23/19	Leo Wolpert	Research, draft Reply iso anti-SLAPP Motion to Dismiss, particular attention to sections demonstrating public interest, evidence reflecting continued public discussion, replies to Plaintiff's arguments regarding actual malice / good faith communications.	6.5	\$225.00	\$1,462.50
9/23/19	Margaret McLetchie	Review Opposition. Review Errata. Review information provided from client to use in reply. Confer with client re reply.	1.9	\$500.00	\$950.00
9/23/19	Pharan Burchfield	Download, save, and review Errata to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); and update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50
9/24/19	Leo Wolpert	Continue drafting, researching reply to opposition to anti-SLAPP Motion to Dismiss, particular attention to demonstrating via similar case law that the communications were directly connected to matter of public interest and to arguments regarding truthfulness / no "actual malice."	7.4	\$225.00	\$1,665.00
9/24/19	Margaret McLetchie	Emails with chambers re courtesy copies; direct team re same.	0.1	\$500.00	\$50.00
9/25/19	Alina Shell	Review opposition to motion to strike notice of non-opposition to anti-SLAPP motion to dismiss.	0.3	\$375.00	\$112.50
9/25/19	Leo Wolpert	Draft Opposition to Countermotion to Strike notice of non-opposition, then edit Ms. McLetchie's additions.	1.5	\$225.00	\$337.50
9/25/19	Leo Wolpert	Continue drafting and researching Reply to Opposition to anti-SLAPP Motion to Dismiss, particular attention to fleshing out facts and good faith communication arguments.	4.8	\$225.00	\$1,080.00

Date	User	Description	Hours	Rate	Total
9/25/19	Margaret McLetchie	Review brief. Begin drafting introduction and factual section/ evidentiary section. Begin initial draft of declarations. Draft Opposition to Motion to Strike / Reply in support of Notice.	3.9	\$500.00	\$1,950.00
9/26/19	Alina Shell	Per Ms. McLetchie's request, edit Ms. Zilverberg's declaration in support of the reply to the anti-SLAPP Motion to Dismiss.	1.8	\$375.00	\$675.00
9/26/19	Alina Shell	Edit declarations for Ms. Eagan and Ms. Zilverberg.	0.4	\$375.00	\$150.00
9/26/19	Alina Shell	Edit reply in support of special anti-SLAPP motion to dismiss.	2.2	\$375.00	\$825.00
9/26/19	Alina Shell	Edit final draft of reply in support of anti-SLAPP motion to dismiss.	1.3	\$375.00	\$487.50
9/26/19	Lacey Ambro	Begin preparing courtesy copy binders for judge re Motion to Dismiss (anti-SLAPP).	1.0	\$175.00	\$175.00
9/26/19	Leo Wolpert	Finish researching, drafting, editing, proofreading reply in support of anti-SLAPP Motion to Dismiss, including incorporating Ms. McLetchie's edits and communicating with team, drafting and editing declarations for clients, preparing exhibits.	9.3	\$225.00	\$2,092.50
9/26/19	Margaret McLetchie	Edit brief. Confer with team re further work on fact section, declarations/ exhibits and incorporating same into brief; research re evidentiary issues; coordinate declaration review with clients. Meet with clients re same and re next steps.	3.5	\$500.00	\$1,750.00

Date	User	Description	Hours	Rate	Total
9/26/19	Pharan Burchfield	Finalize 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). File and serve re same. Prepare exhibits (Bates, index) re Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).	1.2	\$175.00	\$210.00
9/27/19	Ashley Barker	Travel to/from office to Phoenix Building - Dept. 24 to drop of Motion to Dismiss (anti-SLAPP) and Notice of Non-Opposition courtesy copy to judge.	0.8	\$50.00	\$40.00
9/27/19	Margaret McLetchie	Attention to finalization of brief, confirm courtesy copies with staff. Emails to clients re same, next steps.	0.3	\$500.00	\$150.00
9/27/19	Pharan Burchfield	Finalize exhibits, create Table of Contents, Table of Authorities, and Certificate of Service, finalize, file, and serve Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); email Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	1.2	\$175.00	\$210.00
10/1/19	Margaret McLetchie	Work with staff re compiling hearing binder. Read briefs and exhibits in preparation for hearing.	1.2	\$500.00	\$600.00
10/2/19	Leo Wolpert	Assist Ms. McLetchie in preparation for oral argument by preparing cases, creating outline.	2.1	\$225.00	\$472.50
10/3/19	Margaret McLetchie	Continue review of materials; prepare chart of statements at issue and corresponding evidence. Revise outline/checklist for hearing. Read key cases. Attend / argue at hearing. Call to clients re victory, next steps. Confer with team re direction from court and items to calendar/complete.	4.9	\$500.00	\$2,450.00
10/4/19	Leo Wolpert	Begin drafting order granting anti-SLAPP Motion to Dismiss.	0.7	\$225.00	\$157.50

Date	User	Description	Hours	Rate	Total
10/4/19	Margaret McLetchie	Direct team to order transcript, begin work on order.	0.2	\$500.00	\$100.00
10/5/19	Leo Wolpert	Continue drafting proposed written order.	3.5	\$225.00	\$787.50
10/7/19	Leo Wolpert	Email communications with clients.	0.3	\$225.00	\$67.50
10/7/19	Margaret McLetchie	Email conferences with client and team re status, next steps in case.	0.3	\$500.00	\$150.00
10/7/19	Pharan Burchfield	Email communications to Mr. Nelson (court reporter) to request transcript of 10/03/19 hearing.	0.1	\$175.00	\$17.50
10/8/19	Margaret McLetchie	Confer with Ms. Burchfield re status of transcript request, impact on timing of order.	0.1	\$500.00	\$50.00
10/8/19	Pharan Burchfield	Phone call attempt to Mr. Nelson (court reporter) re status of transcript request.	0.1	\$175.00	\$17.50
10/9/19	Margaret McLetchie	Email to Ms. Stein re timing of order.	0.1	\$500.00	\$50.00
10/9/19	Pharan Burchfield	Email communications with Mr. Nelson (court reporter) re status of transcript request.	0.1	\$175.00	\$17.50
10/10/19	Leo Wolpert	Draft email to Judge Crockett's clerk asking for extension of time to submit written order granting anti-SLAPP Motion to Dismiss.	0.2	\$225.00	\$45.00
10/10/19	Margaret McLetchie	Direct team re follow-up re transcript, timing for submission of order; review emails re same.	0.2	\$500.00	\$100.00
10/10/19	Margaret McLetchie	Review email from Ms. Stein re timing of order.	0.1	\$500.00	\$50.00
10/10/19	Pharan Burchfield	Continue attempts to contact court reporter re status of transcript request.	0.1	\$175.00	\$17.50
10/11/19	Ashley Barker	Travel to/from Phoenix Building - Dept. 24 to drop off check for transcript.	0.5	\$50.00	\$25.00
10/13/19	Margaret McLetchie	Attention to plans for upcoming motions due to court.	0.1	\$500.00	\$50.00
10/14/19	Leo Wolpert	Draft motion to dissolve stipulated preliminary injunction.	0.3	\$225.00	\$67.50
10/14/19	Leo Wolpert	Draft majority of motion for fees and costs, leaving only dollar amounts and stuff dependent on order blank.	1.7	\$225.00	\$382.50

Date	User	Description	Hours	Rate	Total
10/14/19	Pharan Burchfield	Continued communications with court reporter re status update on transcript request.	0.1	\$175.00	\$17.50
10/16/19	Leo Wolpert	Incorporate Ms. McLetchie's edits, make further edits to Motion for Attorney's Fees, research award of statutory bonus in Nevada.	1.2	\$225.00	\$270.00
10/16/19	Margaret McLetchie	Revise draft motion for fees and costs. Attention to coordination with client and Mr. Figler re strategy re same and compiling all pertinent documentation.	2.0	\$500.00	\$1,000.00
10/16/19	Margaret McLetchie	Follow up re transcript, update clerk re timing of order.	0.2	\$500.00	\$100.00
10/17/19	Margaret McLetchie	Edit / revise and expand motion to set aside protective order (related research). Attention to preparation of fees and costs motion, memorandum of costs and associated documents.	2.5	\$500.00	\$1,250.00
10/17/19	Pharan Burchfield	Draft and prepare Memorandum of Costs and Disbursements for attorneys' review and approval.	1.4	\$175.00	\$245.00
10/17/19	Pharan Burchfield	Finalize, file, and serve Motion to Dissolve Preliminary Injunction.	0.2	\$175.00	\$35.00
TOTAL FEES					\$45,085.00

Date	User	Description	Hours	Rate	Total
8/19/19	Ashley Barker	Travel to/from office to office of Paul C. Ray to pick up Substitution of Attorneys.	1.0	\$50.00	\$50.00
9/27/19	Ashley Barker	Travel to/from office to Phoenix Building - Dept. 24 to drop of Motion to Dismiss (anti-SLAPP) and Notice of Non-Opposition courtesy copy to judge.	0.8	\$50.00	\$40.00
10/11/19	Ashley Barker	Travel to/from Phoenix Building - Dept. 24 to drop off check for transcript.	0.5	\$50.00	\$25.00
TOTALS FOR ASHLEY BARKER			2.3		\$115.00
9/25/19	Alina Shell	Review opposition to motion to strike notice of non-opposition to anti-SLAPP motion to dismiss.	0.3	\$375.00	\$112.50
9/26/19	Alina Shell	Per Ms. McLetchie's request, edit Ms. Zilverberg's declaration in support of the reply to the anti-SLAPP Motion to Dismiss.	1.8	\$375.00	\$675.00
9/26/19	Alina Shell	Edit declarations for Ms. Eagan and Ms. Zilverberg.	0.4	\$375.00	\$150.00
9/26/19	Alina Shell	Edit reply in support of special anti-SLAPP motion to dismiss.	2.2	\$375.00	\$825.00
9/26/19	Alina Shell	Edit final draft of reply in support of anti-SLAPP motion to dismiss.	1.3	\$375.00	\$487.50
TOTALS FOR ALINA M. SHELL			6.0		\$2,250.00
8/15/19	Lacey Ambro	Create two separate charts re Ms. Zilverberg's and Ms. Eagan's statements from Mr. Wolpert's chart. Send emails accordingly to each client enclosing chart for each to complete.	0.5	\$175.00	\$87.50

EXHIBIT 2

Date	User	Description	Hours	Rate	Total
8/16/19	Lacey Ambro	Finalize Substitution of Attorney for Zilverberg and Eagan. Draft letter to prior counsel re same and obtaining case file. Finalize letter. Email letter and Substitution of Attorney documents to Mr. Ray.	0.9	\$175.00	\$157.50
8/16/19	Lacey Ambro	Download, save and organize documents from Prior Counsel (Paul Ray) received via ShareFile. Alert Ms. McLetchie re deadline.	0.6	\$175.00	\$105.00
8/19/19	Lacey Ambro	Obtain Ms. McLetchie's signature on Substitution of Attorney re Ms. Zilverberg and Ms. Eagan. Efile/eserve same.	0.4	\$175.00	\$70.00
8/22/19	Lacey Ambro	Save documentation from clients in support of the Chart re Defamatory Statements.	0.2	\$175.00	\$35.00
8/29/19	Lacey Ambro	Save additional documentation from Ms. Zilverberg in support of Chart re Defamatory Statements.	0.1	\$175.00	\$17.50
9/6/19	Lacey Ambro	Incorporate Table of Authorities and Table of contents to ANTI-SLAPP Motion to Dismiss. Finalize same. Efile/eserve same and Appendix of Exhibits in Support of ANTI-SLAPP Motion to Dismiss.	1.2	\$175.00	\$210.00
9/26/19	Lacey Ambro	Begin preparing courtesy copy binders for judge re Motion to Dismiss (anti-SLAPP).	1.0	\$175.00	\$175.00
TOTALS FOR LACEY AMBRO			4.9		\$857.50

Date	User	Description	Hours	Rate	Total
8/12/19	Leo Wolpert	Emails with Ms. McLetchie re anti-SLAPP deadline.	0.1	\$225.00	\$22.50
8/12/19	Leo Wolpert	In-person meeting with clients and conference with Ms. McLetchie and Mr. Figler analyzing facts of case.	2.0	\$225.00	\$450.00
8/15/19	Leo Wolpert	Watch allegedly defamatory YouTube video and review allegedly defamatory Facebook post, compile chart of allegedly defamatory statements for circulation to clients to provide evidence of truthfulness / lack of knowledge of falsehood.	2.1	\$225.00	\$472.50
9/3/19	Leo Wolpert	Outline, begin drafting anti-SLAPP Motion to Dismiss, specific attention to overall structure and broad strokes of arguments.	3.0	\$225.00	\$675.00
9/4/19	Leo Wolpert	Continue researching, drafting, compiling evidence for anti-SLAPP Motion to Dismiss. Specific attention to reviewing documents provided by Ms. Zilverberg and Ms. Eagan regarding bases for their statements, then incorporating such into sections demonstrating good faith communications and demonstrating defamation claim fails.	10.6	\$225.00	\$2,385.00

Date	User	Description	Hours	Rate	Total
9/5/19	Leo Wolpert	Continue drafting anti-SLAPP Motion to Dismiss, more attention to reviewing documents for proof of good faith communication, truthfulness or lack of knowledge of untruthfulness. Also, research cases regarding public interest, drafting and editing public interest section of prong 1 of anti-SLAPP analysis.	9.6	\$225.00	\$2,160.00
9/6/19	Leo Wolpert	finish drafting, editing, proofreading anti-SLAPP Motion to Dismiss, particular attention to incorporating edits of Ms. McLetchie, drafting declarations of clients, organizing exhibits.	9.3	\$225.00	\$2,092.50
9/10/19	Leo Wolpert	Participate in client phone call, discuss settlement negotiation strategy with Ms. McLetchie.	0.2	\$225.00	\$45.00
9/17/19	Leo Wolpert	Research timeliness for Oppositions, draft section of reply dealing with their untimeliness	0.7	\$225.00	\$157.50
9/19/19	Leo Wolpert	Draft Notice of Non-Opposition, research deadlines, draft emails regarding Non-Opposition, incorporate Ms. McLetchie's edits re same.	1.3	\$225.00	\$292.50
9/20/19	Leo Wolpert	Research for Reply in support of anti-SLAPP Motion to Dismiss, specifically more cases to demonstrate public interest.	1.1	\$225.00	\$247.50

Date	User	Description	Hours	Rate	Total
9/23/19	Leo Wolpert	Research, draft Reply iso anti-SLAPP Motion to Dismiss, particular attention to sections demonstrating public interest, evidence reflecting continued public discussion, replies to Plaintiff's arguments regarding actual malice / good faith communications.	6.5	\$225.00	\$1,462.50
9/24/19	Leo Wolpert	Continue drafting, researching reply to opposition to anti-SLAPP Motion to Dismiss, particular attention to demonstrating via similar case law that the communications were directly connected to matter of public interest and to arguments regarding truthfulness / no "actual malice."	7.4	\$225.00	\$1,665.00
9/25/19	Leo Wolpert	Draft Opposition to Countermotion to Strike notice of non-opposition, then edit Ms. McLetchie's additions.	1.5	\$225.00	\$337.50
9/25/19	Leo Wolpert	Continue drafting and researching Reply to Opposition to anti-SLAPP Motion to Dismiss, particular attention to fleshing out facts and good faith communication arguments.	4.8	\$225.00	\$1,080.00

Date	User	Description	Hours	Rate	Total
9/26/19	Leo Wolpert	Finish researching, drafting, editing, proofreading reply in support of anti-SLAPP Motion to Dismiss, including incorporating Ms. McLetchie's edits and communicating with team, drafting and editing declarations for clients, preparing exhibits.	9.3	\$225.00	\$2,092.50
10/2/19	Leo Wolpert	Assist Ms. McLetchie in preparation for oral argument by preparing cases, creating outline.	2.1	\$225.00	\$472.50
10/4/19	Leo Wolpert	Begin drafting order granting anti-SLAPP Motion to Dismiss.	0.7	\$225.00	\$157.50
10/5/19	Leo Wolpert	Continue drafting proposed written order.	3.5	\$225.00	\$787.50
10/7/19	Leo Wolpert	Email communications with clients.	0.3	\$225.00	\$67.50
10/10/19	Leo Wolpert	Draft email to Judge Crockett's clerk asking for extension of time to submit written order granting anti-SLAPP Motion to Dismiss.	0.2	\$225.00	\$45.00
10/14/19	Leo Wolpert	Draft motion to dissolve stipulated preliminary injunction.	0.3	\$225.00	\$67.50
10/14/19	Leo Wolpert	Draft majority of motion for fees and costs, leaving only dollar amounts and stuff dependent on order blank.	1.7	\$225.00	\$382.50
10/16/19	Leo Wolpert	Incorporate Ms. McLetchie's edits, make further edits to Motion for Attorney's Fees, research award of statutory bonus in Nevada.	1.2	\$225.00	\$270.00
TOTALS FOR LEO S. WOLPERT			79.5		\$17,887.50
8/9/19	Margaret McLetchie	Emails with clients; assessment of case.	0.5	\$500.00	\$250.00

Date	User	Description	Hours	Rate	Total
8/12/19	Margaret McLetchie	Emails with Mr. Wolpert re anti-SLAPP deadline.	0.1	\$500.00	\$50.00
8/12/19	Margaret McLetchie	Confer with Mr. Wolpert and analyze facts of case; emails with Mr. Figler re same.	1.3	\$500.00	\$650.00
8/12/19	Margaret McLetchie	In-person meeting.	1.0	\$500.00	\$500.00
8/14/19	Margaret McLetchie	Review of docket.	0.2	\$500.00	\$100.00
8/14/19	Margaret McLetchie	Emails with clients and attention to opening matter.	0.2	\$500.00	\$100.00
8/15/19	Margaret McLetchie	Direct work on compiling evidence.	0.3	\$500.00	\$150.00
8/15/19	Margaret McLetchie	Email to team re immediate work plan.	0.2	\$500.00	\$100.00
8/16/19	Margaret McLetchie	Attention to review of file / obtaining file from prior counsel and emails with clients and planning for case. Substitution.	1.2	\$500.00	\$600.00
8/19/19	Margaret McLetchie	Continued review of case file. Attention to deadline to respond to complaint; emails with opposing counsel (request for further extension denied by Ms. Stein). Approve substitution,	2.2	\$500.00	\$1,100.00
8/22/19	Margaret McLetchie	Review Complaint allegations alongside chart of evidence prepared by clients.	1.2	\$500.00	\$600.00
8/22/19	Margaret McLetchie	Review Ms. Eagan's chart of evidence/ summary to attys.	0.5	\$500.00	\$250.00
8/29/19	Margaret McLetchie	Review email/ additional information from client.	0.2	\$500.00	\$100.00
9/4/19	Margaret McLetchie	Review information received from Ms. Zilverberg; emails re same.	0.4	\$500.00	\$200.00

Date	User	Description	Hours	Rate	Total
9/5/19	Margaret McLetchie	Review and revise draft of anti-SLAPP Motion to Dismiss; add / expand section regarding injunction / related research. Confer with team re next steps in project. Update to clients.	2.5	\$500.00	\$1,250.00
9/6/19	Margaret McLetchie	Revise latest version of anti-SLAPP Motion to Dismiss and provide comments to Mr. Wolpert. Email to clients and Mr. Figler re same. Status call with Mr. Figler.	2.3	\$500.00	\$1,150.00
9/6/19	Margaret McLetchie	Emails with opposing counsel re anti-SLAPP Motion to Dismiss, deadline to respond to complaint, protective order.	0.3	\$500.00	\$150.00
9/6/19	Margaret McLetchie	Call with opposing counsel. Update clients re same.	0.7	\$500.00	\$350.00
9/6/19	Margaret McLetchie	Attention to peremptory challenge; check rules and approve filing. Review re-assignment. Related research.	0.4	\$500.00	\$200.00
9/6/19	Margaret McLetchie	Begin researching and drafting motion to set aside protective order.	1.6	\$500.00	\$800.00
9/6/19	Margaret McLetchie	Supervise work on finalization of anti-SLAPP Motion to Dismiss. Review evidence. Revise declarations. Coordinate with clients. Meet with clients.	1.4	\$500.00	\$700.00
9/6/19	Margaret McLetchie	Review peremptory challenge filed by Plaintiff.	0.1	\$500.00	\$50.00
9/9/19	Margaret McLetchie	Review judicial assignment and update clients re same.	0.2	\$500.00	\$100.00

Date	User	Description	Hours	Rate	Total
9/9/19	Margaret McLetchie	Emails with client re status	0.1	\$500.00	\$50.00
9/10/19	Margaret McLetchie	Email to Ms. Stein; call with Ms. Stein re case; consider next steps in light of same. Review and respond to emails from Ms. Stein following call and endeavor to obtain clarity from her re terms for settlement. Consider same. Update clients/ call/ convey latest offer.	0.8	\$500.00	\$400.00
9/10/19	Margaret McLetchie	Call and emails with clients re demand from plaintiff and possible counteroffer.	0.3	\$500.00	\$150.00
9/10/19	Margaret McLetchie	Further emails with Ms. Stein	0.2	\$500.00	\$100.00
9/11/19	Margaret McLetchie	Emails with team re late Opposition; emails with clients re hearing schedule/ confer with clients re same.	0.3	\$500.00	\$150.00
9/11/19	Margaret McLetchie	Email to Ms. Stein re settlement negotiations.	0.1	\$500.00	\$50.00
9/13/19	Margaret McLetchie	Emails with client. Call with Ms. Stein re counteroffer.	0.3	\$500.00	\$150.00
9/13/19	Margaret McLetchie	Email to opposing counsel re offer.	0.1	\$500.00	\$50.00
9/13/19	Margaret McLetchie	Further emails with Ms. Stein re settlement offer, her request for change of hearing date.	0.2	\$500.00	\$100.00
9/13/19	Margaret McLetchie	Emails with opposing counsel re whether plaintiff has rejected offer to settle upon payment of 20k to partially compensate defendant for estimated attorney's fees.	0.2	\$500.00	\$100.00

Date	User	Description	Hours	Rate	Total
9/13/19	Margaret McLetchie	Emails to client re Mr. Smith's rejection of counter to settle for payment of reduced fees to defendant, dismissal of case and re next steps.	0.2	\$500.00	\$100.00
9/17/19	Margaret McLetchie	Emails re timing issues.	0.2	\$500.00	\$100.00
9/19/19	Margaret McLetchie	Review Opposition to Non-Opposition. Emails with client re same.	0.2	\$500.00	\$100.00
9/19/19	Margaret McLetchie	Attention to Notice of Non-Opposition.	0.7	\$500.00	\$350.00
9/20/19	Margaret McLetchie	Preliminary review of opposition to anti-SLAPP motion. Confer with Mr. Wolpert re same. Emails with clients re same and re timing issue.	0.8	\$500.00	\$400.00
9/21/19	Margaret McLetchie	Emails with clients.	0.2	\$500.00	\$100.00
9/23/19	Margaret McLetchie	Review Opposition. Review Errata. Review information provided from client to use in reply. Confer with client re reply.	1.9	\$500.00	\$950.00
9/24/19	Margaret McLetchie	Emails with chambers re courtesy copies; direct team re same.	0.1	\$500.00	\$50.00
9/25/19	Margaret McLetchie	Review brief. Begin drafting introduction and factual section/ evidentiary section. Begin initial draft of declarations. Draft Opposition to Motion to Strike / Reply in support of Notice.	3.9	\$500.00	\$1,950.00

Date	User	Description	Hours	Rate	Total
9/26/19	Margaret McLetchie	Edit brief. Confer with team re further work on fact section, declarations/ exhibits and incorporating same into brief; research re evidentiary issues; coordinate declaration review with clients. Meet with clients re same and re next steps.	3.5	\$500.00	\$1,750.00
9/27/19	Margaret McLetchie	Attention to finalization of brief, confirm courtesy copies with staff. Emails to clients re same, next steps.	0.3	\$500.00	\$150.00
10/1/19	Margaret McLetchie	Work with staff re compiling hearing binder. Read briefs and exhibits in preparation for hearing.	1.2	\$500.00	\$600.00
10/3/19	Margaret McLetchie	Continue review of materials; prepare chart of statements at issue and corresponding evidence. Revise outline/checklist for hearing. Read key cases. Attend / argue at hearing. Call to clients re victory, next steps. Confer with team re direction from court and items to calendar/complete.	4.9	\$500.00	\$2,450.00
10/4/19	Margaret McLetchie	Direct team to order transcript, begin work on order.	0.2	\$500.00	\$100.00
10/7/19	Margaret McLetchie	Email conferences with client and team re status, next steps in case.	0.3	\$500.00	\$150.00
10/8/19	Margaret McLetchie	Confer with Ms. Burchfield re status of transcript request, impact on timing of order.	0.1	\$500.00	\$50.00
10/9/19	Margaret McLetchie	Email to Ms. Stein re timing of order.	0.1	\$500.00	\$50.00

Date	User	Description	Hours	Rate	Total
10/10/19	Margaret McLetchie	Direct team re follow-up re transcript, timing for submission of order; review emails re same.	0.2	\$500.00	\$100.00
10/10/19	Margaret McLetchie	Review email from Ms. Stein re timing of order.	0.1	\$500.00	\$50.00
10/13/19	Margaret McLetchie	Attention to plans for upcoming motions due to court.	0.1	\$500.00	\$50.00
10/16/19	Margaret McLetchie	Revise draft motion for fees and costs. Attention to coordination with client and Mr. Figler re strategy re same and compiling all pertinent documentation.	2.0	\$500.00	\$1,000.00
10/16/19	Margaret McLetchie	Follow up re transcript, update clerk re timing of order.	0.2	\$500.00	\$100.00
10/17/19	Margaret McLetchie	Edit / revise and expand motion to set aside protective order (related research). Attention to preparation of fees and costs motion, memorandum of costs and associated documents.	2.5	\$500.00	\$1,250.00
TOTALS FOR MARGARET A. MCLECHIE			45.5		\$22,750.00
8/14/19	Pharan Burchfield	Download, save, and review case docket (Smith v. Zilverberg); update attorneys and calendar accordingly.	0.2	\$175.00	\$35.00
8/19/19	Pharan Burchfield	Download, save, and review Substitution of Attorney (for both Ms. Zilverberg and Ms. Eagan); update attorneys re same.	0.1	\$175.00	\$17.50
9/6/19	Pharan Burchfield	Draft, file, and serve Peremptory Challenge of Judge re Judge Johnson; update attorneys and clients re same.	0.3	\$175.00	\$52.50

Date	User	Description	Hours	Rate	Total
9/6/19	Pharan Burchfield	Prepare (gather, Bates, redact exhibits) Appendix of Exhibits in Support of Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).	1.0	\$175.00	\$175.00
9/6/19	Pharan Burchfield	Download, save, and review Notice of Department Reassignment; update attorneys and clients re same.	0.1	\$175.00	\$17.50
9/9/19	Pharan Burchfield	Download, save, and review Notice of Department Reassignment re Judge Crockett; and update attorneys re same.	0.1	\$175.00	\$17.50
9/11/19	Pharan Burchfield	Download, save, and review Clerk's Notice of Hearing re anti-SLAPP Motion to Dismiss; update attorneys and calendar accordingly.	0.2	\$175.00	\$35.00
9/19/19	Pharan Burchfield	Finalize, file, and serve Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP). Email Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.2	\$175.00	\$35.00
9/19/19	Pharan Burchfield	Download, save, and review Opposition to Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. section 41.660 (anti-SLAPP); and Countermotion to Strike Notice of Special Motion to Dismiss Pursuant to Nev. Rev. Statute section 41.660 (anti-SLAPP); and update attorneys re same.	0.1	\$175.00	\$17.50

Date	User	Description	Hours	Rate	Total
9/20/19	Pharan Burchfield	Download, save, and review Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler, and calendar accordingly.	0.1	\$175.00	\$17.50
9/23/19	Pharan Burchfield	Download, save, and review Errata to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); and update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50
9/26/19	Pharan Burchfield	Finalize 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). File and serve re same. Prepare exhibits (Bates, index) re Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).	1.2	\$175.00	\$210.00
9/27/19	Pharan Burchfield	Finalize exhibits, create Table of Contents, Table of Authorities, and Certificate of Service, finalize, file, and serve Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP); email Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	1.2	\$175.00	\$210.00

Date	User	Description	Hours	Rate	Total
10/7/19	Pharan Burchfield	Email communications to Mr. Nelson (court reporter) to request transcript of 10/03/19 hearing.	0.1	\$175.00	\$17.50
10/8/19	Pharan Burchfield	Phone call attempt to Mr. Nelson (court reporter) re status of transcript request.	0.1	\$175.00	\$17.50
10/9/19	Pharan Burchfield	Email communications with Mr. Nelson (court reporter) re status of transcript request.	0.1	\$175.00	\$17.50
10/10/19	Pharan Burchfield	Continue attempts to contact court reporter re status of transcript request.	0.1	\$175.00	\$17.50
10/14/19	Pharan Burchfield	Continued communications with court reporter re status update on transcript request.	0.1	\$175.00	\$17.50
10/17/19	Pharan Burchfield	Draft and prepare Memorandum of Costs and Disbursements for attorneys' review and approval.	1.4	\$175.00	\$245.00
10/17/19	Pharan Burchfield	Finalize, file, and serve Motion to Dissolve Preliminary Injunction.	0.2	\$175.00	\$35.00
TOTALS FOR PHARAN BURCHFIELD			7.0		\$1,225.00
GRAND TOTAL:					\$45,085.00

EXHIBIT 3

DECL

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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MCLEATCHIE LAW

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*Counsel for Defendants Katy Zilverberg
and Victoria Eagan*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JASON T. SMITH, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-798171-C

Dept. No.: XXIV

**DECLARATION OF DAYVID
FIGLER IN SUPPORT OF
MOTION FOR ATTORNEY FEES
AND COSTS PURSUANT TO NEV.
REV. STAT. § 41.670**

I, DAYVID FIGLER, declare, pursuant to Nev. Rev. Stat. § 53.330, as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada and have been since 1991.

3. I was engaged by Defendants Katy Zilverberg and Victoria Eagan in my capacity as a lawyer to offer a second opinion, course of action and possible representation in this matter. I make this declaration in support of their Motion for Attorney Fees and Costs Pursuant to Nev. Rev. Stat. § 41.670.

4. Katy Zilverberg and Victoria Eagan first met me in my law office about the above-referenced defamation matter on or about August 5, 2019. At the time, they were

1 represented by other counsel and were concerned about being sued and what was the best
2 course of action. They did not have full faith in their current counsel. In addition to having
3 mutual friends with both Zilverberg and Eagan, they understood that I'm an attorney licensed
4 in Nevada since 1991 with a diverse practice, including a substantial number of first
5 amendment cases related to freedom of expression as well as vibrant trial work. Perhaps
6 more than that they trusted my ability to honestly assess their position, give a second opinion
7 on their current course, and stand by them and perhaps take over the litigation if it were to
8 advance in an actual trial.

9 5. I exercised appropriate billing judgment and structured work on this case to
10 maximize efficiencies, and the hours listed in the fee request are neither duplicative,
11 unnecessary nor excessive but only in my required capacity to assess, advice and be prepared
12 for the potentiality of a trial where I would be co-counsel.

13 6. Potentially duplicative or unnecessary time has not been included.

14 7. In all these ways, I charged a reasonable rate for the attorneys' time at my
15 standard fee of \$500.00 hour for civil matters as an experienced member of the bar for nearly
16 30 years.

17 8. I also exercised appropriate billing judgment by *not* including in this
18 application certain time, even time which would likely be compensable, including observing
19 and taking notes at the Motion to Dismiss hearing. Indeed, and despite being in steady
20 communication with my clients and the McLetchie legal team, I have advanced less than 9
21 total hours over the course of three months of engagement.

22 9. A correct copy of my billing is attached.

23 I certify and declare under the penalty of perjury under the law of the State of
24 Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas,
25 Nevada, the 17th day of October, 2019.

26
27
28 
DAYVID EGLER

Dayvid Figler Fee Detail

Rate: \$500 per hour

<u>Date</u>	<u>Service</u>	<u>Time</u>	<u>Fee</u>
08-05	Initial non-refundable consultation fee	0.5	\$250.00
08-05	Extended consultation with clients	1.0	\$500.00
08-06	Review of documents to determine the viability of an Anti-SLAPP action, research and review	3.0	\$1500.00
08-06	Telephone conference with client	0.4	\$200.00
08-08	Correspondence with McLetchie/clients	0.2	\$100.00
08-09	Review email / McLetchie analysis of video	0.2	\$100.00
08-12	Client meeting w/ McLetchie firm	1.0	\$500.00
09-04	Review of new docs, charts, info from clients to assess position regarding Motion to Dismiss / likelihood of success and potential trial issues	0.5	\$250.00
09-06	Review of draft pleadings/ disc. w/ McLetchie	0.2	\$100.00
09-26	Review of Opposition to Anti-Slapp/Draft reply to assess for clients next steps in the event of a denial of the motion to dismiss and potential issues for a post-hearing answer mindful of trial issues	0.5	\$250.00
10-03	Discussion w/ McLatchie		
	Observe Court hearing on Motion	1.0	(N/C) - courtesy
	Total hours and fees due:	8.5	\$4250.00

EXHIBIT 4

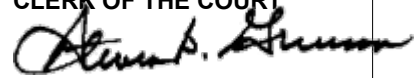
PAUL C. RAY, CHTD.

8670 W. Cheyenne Ave., Suite 130
Las Vegas, NV 89129
(702)823-2292

Zilverburg

Monthly Statement
July 1 to 31, 2019

Date	Description	Time	Amount
7/10/2019	Initial consultation-no charge but retained for future work	1.50	\$0.00
7/11/2019	Phone calls with Kim Stein, Katy and Victoria; emails re: possible settlement ideas, mutual preliminary injunction by stipulation	1.75	\$656.25
7/15/2019	Emails with Stein, Katy re: stipulated preliminary injunction; redline injunction draft	1.25	\$468.75
7/16/2019	Emails with Katy, phone calls with Stein re: injunction revision and email, revise and more emails and calls	2.75	\$1,031.25
7/22/2019	Posting and notice re: bond	1.00	\$375.00
7/24/2019	Emails re: preliminary injunction	0.25	\$93.75
7/25/2019	Phone calls with Katy, Smith's attorney, and emails re: Smith's actions at eBay conference	1.50	\$562.50
Total Hours & Fees, July 1 through 31, 2019		10.00	\$3,187.50
Costs	Bond posted 7/22/2019	\$100.00	\$100.00
Total Fees and Costs, July 1 through 31, 2019			\$3,287.00



MRTX
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
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Telephone: (702) 791-0308
Attorneys for Plaintiff Jason T. Smith

DISTRICT COURT
COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

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

**PLAINTIFF'S MOTION TO RETAX
COSTS**

[HEARING REQUESTED]

Pursuant to NRS §18.110(4), Plaintiff Jason T. Smith ("Plaintiff" or "Smith"), by and through counsel of record, the law firm of Holley Driggs Walch Fine PuzeY Stein & Thompson, hereby files his Motion to Retax Costs (the "Motion"). As is evident in the Motion, Smith respectfully requests that this Court enter an order retaxing and settling Defendant Katy Zilverberg and Victoria Eagan's ("Defendants") costs and disbursements that are allowable by statute and properly supported with appropriate document.

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This Motion is further supported by the Memorandum of Points and Authorities below, the papers and pleadings on file herein, and such oral argument as may be heard on this matter.

Dated this 22nd day of October 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. 8675

MIKKAELA VELLIS, ESQ.

Nevada Bar No. 14294

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiff Jason T. Smith

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nevada Revised Statute 18.110(4) states:

Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs.

Defendants seek total costs in the amount of \$1, 787.34 for one motion filed in this matter.

Retaxing and settling of the costs sought by the Defendants is appropriate because many of the costs are not reasonable.¹

II. LEGAL ARGUMENT

A. Authority to Retax & Scope of Recoverable Costs.

Where a party seeks recovery of costs, NRS 18.110(4) allows the opposing party to move to retax and settle costs upon notice. The costs that a prevailing party is allowed to recover are

¹ NRS 18.110 provides that “[t]he party in whose favor judgment is rendered, and who claims costs, must file with the clerk, and serve a copy upon the adverse party, **within 5 days after the entry of judgment,** or such further time as the court or judge may grant. . . .” Thereby, Smith asserts that Defendants’ Memorandum of Costs and Disbursements is premature at this point, as no judgment has been entered in this matter yet.

1 limited and set forth by NRS 18.0005, a statute that provides an exhaustive list of costs that a party
2 is entitled to recover.

3 When considering recoverable costs, this Court must exercise its sound discretion to make
4 sure each claimed cost is supported by adequate proof and within one of the categories enumerated
5 by statute. *See Bergman v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 565-66 (1993) (“[t]he
6 determination of which expenses are allowable as costs is within the sound discretion of the trial
7 court.”) In *Bergmann*, the Nevada Supreme Court emphasized that “this discretion should be
8 sparingly exercised when considering whether or not to allow expenses not specifically allowed
9 by statute and precedent.” *Id.*, 856 P.2d at 566 (citations omitted). The *Bergman* court further
10 explained that “the trial court should exercise restraint because statutes permitting recovery of
11 costs, being in derogation of the common law, **must be strictly construed**....” *Id.*, 856 P.2d at
12 566 (emphasis added) (citing omitted); *see also Flangas v. State*, 97 Nev. 626, 627, 637 P.2d 1212,
13 1213 (1981) (“[i]t is well settled in this jurisdiction that a court may only tax costs against a party
14 in situations which have been specifically authorized by the legislature.”).

15 All categories of NRS §18.005, including NRS §18.005(17) governing “[a]ny other
16 reasonable and necessary expenses incurred in the connection with the action....”, must be
17 construed “narrowly.” *Bergmann*, 109 Nev. at 679, 856 P.2d at 566; *see also Bobby Berosini,*
18 *Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385
19 (1998) (“statutes permitting the recovery of costs are to be strictly construed because they are in
20 derogation of the common law”). Reasonable cost means “actual costs that are also reasonable,
21 rather than a reasonable estimate or calculation of such costs based upon administrative
22 convenience.” *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994); *see also*
23 *Berosini*, 114 Nev. at 1352, 971 P.2d at 385-86.

24 In addition, a party, at the time of its memorandum of costs, must provide sufficient support
25 for the court to conclude that each taxed cost was reasonable, necessary, and actually incurred.
26 *See Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082,
27 1093 (2005) (“[D]ocumentation is precisely what is required under Nevada law to ensure that the
28 costs awarded are only those costs actually incurred.”); *see also Cadle Co. v. Woods & Erickson*,

LLP, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) (rejecting memorandum for costs for photocopies, runner service, and deposition transcripts for lack of “sufficient justifying documentation,” where party “did not present the district court with evidence enabling the court to determine that those costs were reasonable and necessary”); *see also Berosini*, 114 Nev. at 1352-53, 971 P.2d at 386 (requiring the prevailing party to show that the requested costs are both reasonable and necessary).

As the Nevada Supreme Court has held, “[i]t is clear, then, that ‘justifying documentation’ must mean something more than a memorandum of costs. In order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, **a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred** . . . [w]ithout evidence to determine whether a cost was reasonable and necessary, a district court may not award costs” *Cadle Co.*, 131 Nev. at 120, 345 P.3d at 1054 (2015) (emphasis added) (citations omitted).

B. Defendants’ Claimed Costs are Not Supported by Adequate Proof and Must be Denied.

In this case, while the Defendants arguably submitted adequate documentation supporting the actual expenses it argues it is entitled to, Defendants’ Memorandum of Costs and Appendix is short on proof as to *why* many of the expenses were reasonable and necessary.

1. Filing Fees

Defendants seek filing fees for a prior peremptory challenge made in this matter. The parties had already begun to litigate this matter in Department 20 without issue. It was not until Defendants’ switched counsel and retained their current counsel that Defendants filed a peremptory challenge. Such peremptory challenge was not a required filing in this matter. Thereby, the \$467.00 filing fees for the peremptory challenge are not reasonable or necessary and this amount should be retaxed, leaving the amount for reasonable filing fees at \$21.00.

2. Mileage Costs

Defendants seek mileage costs for traveling to and from prior counsel’s office and traveling to the Courthouse. NRS 18.005(15) permits the Court to award “Reasonable costs for travel and lodging incurred in taking depositions and conducting discovery”. Mileage for traveling to and

from prior counsel's office and traveling to the Courthouse cannot be considered costs incurred taking depositions and conducting discovery. The mileage requested by Defendants are not covered under NRS 18.005, are unreasonable.

Because the mileage costs are not allowed under NRS 18.005 and are not necessary or reasonable, this amount should be retaxed as zero.

3. *Legal Research*

Nevada Revised Statute 18.005 does permit recovery for "reasonable and necessary expenses for computerized services for legal research. However, the Defendants' Memorandum of Costs seeks \$949.74 for legal research. This amount is neither necessary nor reasonable.

Defendants have filed one Motion in this matter – their Anti-SLAPP Motion. Defendants' counsel has ample experience in defending the First Amendment rights and has filed numerous anti-SLAPP motions, and as such this matter or the issues presented in Defendants' Anti-SLAPP were not novel to Defendants' counsel. A party seeking recovery of costs has an obligation to provide sufficient documentation so as to demonstrate that the costs sought were reasonable and necessary. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 971 P.2d 383 (1998). The Defendants' Memorandum of Costs does not even identify what issues were being researched.

Because there is no evidence that any charges were necessary or reasonable, this amount should be retaxed as zero.

4. *Copying Costs*

Defendants seek \$60.56 in copying costs. Smith has no objection to this amount.

5. *Court Reporting Expense*

Defendants are seeking \$275.00 for court reporting expense. NRS 18.005(2) allows for "reporters' fees **for depositions**, including a reporter's fee for one copy of each deposition". No depositions have been conducted in this matter, but rather it appears Defendants are seeking fees for the October 3, 2019 hearing transcript. The only evidence provided in support of the fees for the hearing transcript is a check written to "Bill Nelson & Associates LLC". Additionally, Smith has already paid half of the fees owed for the hearing transcript. NRS 18.005 does not allow for fees for a hearing transcript and such costs are unreasonable and unnecessary in this matter.

Because these fees are not allowed under NRS 18.005 and there is no evidence that any charges were necessary or reasonable, this amount should be retaxed as zero.

III. CONCLUSION

For all of the reasons set forth above, Smith requests that the Court Retax and Settle the Defendants Costs in the amount of \$81.56.

Dated this 22nd day of October 2019.

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

/s/Kimberly P. Stein

BRIAN W. BOSCHKE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

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Nevada Bar No. 14294

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Attorneys for Plaintiff Jason T. Smith

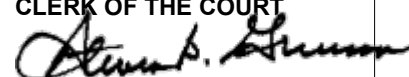
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **PLAINTIFF'S MOTION TO RETAX COSTS** was served in accordance with Administrative Order 14-2, this 22nd day of October, 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

*Attorneys for Defendants
Katy Zilverberg and Victoria Eagan*

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



OPPS
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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

Plaintiff,

vs.

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

Defendant(s).

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

**PLAINTIFF'S LIMITED OPPOSITION
TO DEFENDANTS' MOTION TO
DISSOLVE PRELIMINARY
INJUNCTION**

Hearing Date: November 21, 2019
Hearing Time: 9:00 a.m.

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 files his Limited Opposition to Motion to Dissolve Preliminary Injunction (the "Opposition").

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This Opposition is made based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any such oral argument as may be adduced at a hearing on this matter.

Dated this 31st day of October 2019.

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

/s/Brian W. Boschee

BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

MIKKAELA VELLIS, ESQ.

Nevada Bar No. 14294

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Smith submits this limited opposition to Defendant Katy Zilverberg and Victoria Eagan's (collectively, "Defendants") Motion to Dissolve Preliminary Injunction (the "Motion") on the basis that Defendant's Motion entirely mischaracterizes the Joint Stipulation and Order for Preliminary Injunction (the "Stipulated Preliminary Injunction") entered in this matter on or about July 19, 2019. Moreover, the request sought by Defendants in their Motion is moot given the language of the Stipulated Preliminary Injunction and the Court's ruling at the October 3, 2019 hearing, wherein the Court granted Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti- SLAPP) (the "Anti-SLAPP Motion") and ultimately dismissed this matter in its entirety.¹

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¹ The parties have submitted competing orders to the Court and are awaiting final ruling from the Court regarding the Court's ruling on the Anti-SLAPP Motion. As such, no final order has been entered with regard to Defendants' Anti-SLAPP Motion at this time. Additionally, the parties are still briefing arguments relating to attorneys' fees and special damages, which is set to be heard at the same time as the hearing on this matter.

II. LEGAL ARGUMENT

A. The Stipulated Preliminary Injunction is Not a “Speech Injunction”.

First, Defendant’s Motion improperly defines the Stipulated Preliminary Injunction as the “Speech Injunction,” when in reality the Preliminary Injunction was never intended by any of the parties to be a speech injunction. Rather, the Preliminary Injunction was agreed to by the parties as a non-disparagement agreement. Notably, at the time the Stipulated Preliminary Injunction was agreed and entered to, both Plaintiff and Defendants were planning to attend an upcoming eBay conference. It was thus out of concern and to avoid any further damage to either party, the parties agreed to refrain from making any statements that could possibly either harm the other’s goodwill or business. The Stipulated Preliminary Injunction was explicitly agreed to and entered into by *all parties* and was done for the benefit of *all parties*.

Any allegations now in Defendants’ Motion to the contrary are false and misleading to this Court. Moreover, Defendants’ allegation in their Motion that “[w]hile here, the parties stipulated to the Speech Injunction, Defendants did so before they had counsel to address...”, *see* Defendants’ Motion, 4:8-9, is entirely false. Defendants were clearly represented by counsel at the time that they agreed to and entered into the Stipulated Preliminary Injunction. The parties were all explicitly represented by counsel at the time that the Stipulated Preliminary Injunction was entered in to and Defendants had constant communications with their counsel regarding the matter. Defendants had full knowledge and advice regarding the Stipulated Preliminary Injunction. Defendants clearly explicitly agreed to the Stipulated Preliminary Order and even posted a bond in support. Additionally, the Stipulated Preliminary Order was reviewed and signed by a well-respected Judge.

The fact that Defendants retained new counsel in this matter and are now attempting to mischaracterize the Stipulated Protective Order as a “speech injunction” does not detract from the fact that the Stipulated Protective Order was clearly a non-disparagement agreement lawfully agreed to and entered into by the parties.

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B. Defendants’ Motion is Moot Given the Court’s Dismissal in this Matter.

Defendants’ request to terminate the Stipulated Protective Order is ultimately moot given the language of the Stipulated Protective Order and Court’s decision to dismiss this case at the October 3, 2019 hearing. The language of the Stipulated Protective Order provides that “this preliminary injunction shall expire at the conclusion of the trial on the merits.” While a final order has yet to be entered in this matter, on or about October 3, 2019 the Court granted Defendants’ Anti-SLAPP Motion, and as a result this case was dismissed in its entirety by the Court.

Thereby, pursuant to the Stipulated Protective Order’s language, once a final order has been entered in this matter and the case is dismissed, the Stipulated Protective Order will be rendered in effective, and thereby Defendants’ Motion to Dissolve is entirely unnecessary at this point.

III. CONCLUSION

Accordingly, Smith has no opposition to the Court dissolving the Stipulated Protective Order at this point, but does oppose the factual and legal misrepresentations in Defendants’ Motion, most specifically the mischaracterization of the Stipulated Protective Order as a “speech injunction,” and asserts that Defendants’ Motion is entirely and unnecessary and the relief requested by Defendants is moot.

Dated this 31st day of October 2019.

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

/s/Brian W. Boschee

BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

MIKKAELA VELLIS, ESQ.

Nevada Bar No. 14294

400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorneys for Plaintiff

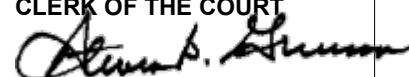
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **PLAINTIFF'S LIMITED OPPOSITION TO DEFENDANTS' MOTION TO DISSOLVE PRELIMINARY INJUNCTION** was served in accordance with Administrative Order 14-2, this 31st day of October, 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

*Attorneys for Defendants
Katy Zilverberg and Victoria Eagan*

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



OPPS
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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.: XIV

Plaintiff,

vs.

**PLAINTIFF'S OPPOSITION TO
MOTION FOR ATTORNEY'S FEES,
COSTS, AND STATUTORY AWARDS
PURSUANT TO NEV. REV. STAT. §
41.670**

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

Defendant(s).

Hearing Date: November 21, 2019

Hearing Time: 9:00 a.m.

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 files his Opposition to Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. § 41.670 (the "Opposition").

//

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///

This Opposition is made based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any such oral argument as may be adduced at a hearing on this matter.

Dated this 31st day of October 2019.

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

/s/Brian W. Boschee

BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

MIKKAELA VELLIS, ESQ.

Nevada Bar No. 14294

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION/RELEVANT FACTS

Defendant Katy Zilverberg and Victoria Eagan (“Defendants”) filed their Motion for Attorney’s Fees, Costs, and Statutory Damages Pursuant to NRS 41.670 (the “Motion”) seeking a total award of \$54,559.34. in fees and costs. Defendants’ Motion should be denied based on the fact that the attorneys’ fees and costs allegedly incurred in this matter were completely unnecessary and the amount sought by Defendants now is not reasonable or justified, is entirely excessive, and a portion is not directly related to the Defendant’s Anti-SLAPP Motion.

Smith filed his Complaint against Defendants collectively alleging causes of action for: 1) defamation per se, 2) conspiracy, and 3) permanent and preliminary injunction, in an attempt to stop Defendants from posting false and harmful statements about him. In or around July 16, 2019, Defendants agreed to a Joint Stipulation and Order for Preliminary Injunction, which was entered by the Court on or about July 19, 2019, and the parties, which was agreed to by the parties to prevent further defamatory conduct and to prevent further harm. The parties were also trying

1 to work out a settlement at such time, and Smith provided Defendants, through their former
2 counsel, a courtesy extension to file their Answer. Thereafter, McLetchie Law was retained by
3 Defendants and substituted as counsel of record. At this point, Smith agreed to provide an
4 additional extension of time to file their Answer in an effort to continue to resolve the matter
5 without Court intervention. Without any known reason or justification, Defendants refused and
6 went ahead and unnecessarily filed their Anti-SLAPP Motion. This caused Defendants' to incur
7 substantial attorney's fees, all of which were unnecessary in this matter. For this reason,
8 Defendants' instant Motion must be denied, as there is no justification for the fees and were
9 incurred unnecessarily in this matter.

10 Furthermore, approximately \$55,000 for a single Anti-SLAPP Motion is on its face
11 completely unjustified and excessive. First, Defendants seek fees and costs incurred from three
12 different law firms, including four different attorneys, two paraprofessionals, and a law firm that
13 was never retained as counsel of record by Defendants in this matter. Notably, a portion of the
14 fees and costs alleged by Defendants relate to fees incurred from McLetchie Law consulting with
15 Dayvid Figler, Esq. on the same matter, even though McLetchie Law prides itself as having
16 substantial experience and knowledge relating to Anti-SLAPP matters and Mr. Figler was never
17 retained as counsel of record by Defendant. Moreover, despite admitting in Defendants' Motion
18 that McLetchie Law frequently handles Anti-SLAPP matters and has successfully prevailed on
19 numerous anti-SLAPP motions, an attorney at McLetchie Law singlehandedly spent over 60
20 hours on drafting one motion – a standard anti-SLAPP motion – in this matter. Notably, the
21 exorbitant amount of 60 hours does not include the time spent by the two paraprofessionals and
22 an additional attorney, whose rate is \$500, on the same Anti-SLAPP Motion.

23 Moreover, as the only basis to award attorney's fees in this case is pursuant to NRS
24 41.670, the Court should only award those fees incurred directly relating to the preparation of the
25 Anti-SLAPP Motion. However, a significant portion of the fees and costs sought by Defendants
26 are not related to the Anti-SLAPP Motion. All fees allegedly incurred by Defendants' former
27 counsel Paul Ray, Esq. do not relate to the Anti-SLAPP Motion. Defendants' former counsel
28 was substituted by McLetchie Law prior to any consideration of the Anti-SLAPP Motion and

thereby Defendants should be awarded Mr. Ray's fees. Moreover, McLetchie Law seeks attorney's fees and costs not relating to the Anti-SLAPP Motion, all of which should not be awarded in this matter.

Here, Defendants' request for attorneys' fees and costs is unjustified and unreasonable, as the Anti-SLAPP was unnecessarily filed. Furthermore, attorney's fees and costs in the amount of \$54,559.34 is more than excessive and entirely unreasonable given Defendants' counsel's expertise on First Amendment matters, the exorbitant number of hours spent on one Anti-SLAPP motion, and the fact that fees and costs were not incurred in direct relation to the Anti-SLAPP Motion.

Additionally, Defendants seek statutory damages in the total amount of \$20,000; however, there is no basis for statutory damages against Smith and \$20,000 in statutory damages is entirely unreasonable and will cause Smith extreme hardship.

For these reasons and the reasons more fully detailed herein, Smith respectfully requests that Defendants' Motion be denied its entirety. Alternatively, if the Court is inclined to award attorney's fees, costs, and/or statutory damages to Defendants, Smith requests that Defendants should only be awarded a limited and reasonable amount that relates only those incurred directly relating to the Anti-SLAPP Motion.

II. LEGAL ARGUMENT

A. The Court Should Deny the Motion Because the Fees Sought Are Not Reasonable or Justified.

In determining an award of attorneys' fees, the Court must consider whether the fees sought are reasonable and justified. *Wynn v. Smith*, 117 Nev. 6, 13 (2001). Although NRS 41.670 provides that a prevailing party on an Anti-SLAPP motion is entitled to an award of attorney's fees, the prevailing party is still obligated to substantiate the basis for any award of attorney's fees. In order to determine an amount of fees to award:

In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.' Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount or a contingency fee. We emphasize that,

1 whichever method is chosen as a starting point, however, the court must continue
2 its analysis by considering the requested amount in light of the factors enumerated
3 by this court in *Brunzell v. Golden Gate National Bank*.

3 *Shuette v. Beazer Homes Holdings Corp.* (2005) 121 Nev. 837, 864-65.

4 Here, reason and fairness dictate that the Defendants should be awarded attorney's fees
5 based only upon competent evidence, and a showing the fees are not excessive. When making a
6 determination on an award for attorney's fees, the Court considers:

- 7 (1) the advocate's qualities, including ability, training, education, experience, professional
- 8 standing, and skill;
- 9 (2) the character of the work, including its difficulty, intricacy, importance, as well as the
- 10 time and skill required, the responsibility imposed, and the prominence and character of
- 11 the parties when affecting the importance of the litigation;
- 12 (3) the work performed, including the skill, time, and attention given to the work; and
- 13 (4) the result-whether the attorney was successful and what benefits were derived.

14 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

15 Here, the attorneys' fees and costs incurred by Defendants were entirely unreasonable
16 and unnecessary. Prior to Defendants' retention of McLetchie Law, the parties were imminently
17 close to resolving all issues and settling this matter without Court intervention. Even after
18 Defendants retained McLetchie Law, Smith agreed to provide an extension to Defendants for
19 filing their answer in order to continue resolving the issues without Court intervention. For
20 unknown reason, Defendants' vehemently refused, without any justification or good cause, and
21 proceeded to unnecessarily file the Anti-SLAPP Motion and incur unnecessary fees. Thereby,
22 Defendants' Motion must be denied in its entirety, as the attorneys' fees and costs were
23 unnecessary and unjustified in this matter.

24 Moreover, Defendants' request for attorneys' fees in the amount of \$54,559.34 is more
25 than excessive and entirely unreasonable given Defendants' counsel's expertise on First
26 Amendment matters, the exorbitant number of hours spent on one Anti-SLAPP motion, the
27 excessive number of attorneys involved and consulting Defendants in this matter, and the
28 unreasonably broad scope of legal services that Defendants are seeking an award for pursuant to

NRS 41.670.

1. Dayvid Figler, Esq.

First, Defendants are requesting attorney's fees from three different law firms – one of which who has never been retained as Defendants' counsel in this matter. Defendants are attempting to seek attorneys for McLetchie Law (Defendants' current retained counsel), Paul Ray, Esq. (Defendants' former retained counsel), and Dayvid Figler, Esq. Mr. Figler has never acted as Defendants' counsel of record in this matter nor has ever made an appearance in this matter, and yet Defendants are seeking attorney's fees and costs in the amount of \$4,400 for Mr. Figler at his rate of \$500 per hour. Mr. Figler's fees and costs primarily include consulting with Defendants' current retained counsel, McLetchie Law. Notably, McLetchie Law has at least two attorneys and two other staff members who worked on this matter. Moreover, Maggie McLetchie represents herself in the Motion as having extensive expertise and experience relating to First Amendment law issues, and thereby consulting with Mr. Figler proves entirely unnecessary and unreasonable in this matter, especially in the amount of \$4,400 for Mr. Figler's fees and costs. As such, Defendants should not be awarded any of Mr. Figler's fees and costs.

2. Paul Ray, Esq.

Defendant Paul Ray, Esq. is Defendants' prior retained counsel of record in this matter. Mr. Ray's fees are not in any way related to Defendants' Anti-SLAPP Motion. In reality, Mr. Ray was working to settle this matter on Defendants' behalf and Defendants' fees were not exorbitantly increased until Defendants' retained their current counsel and unnecessarily went ahead and filed the Anti-SLAPP Motion despite prior ongoing efforts to reasonably settle the matter. As the only basis to award attorney's fees in this case is pursuant to NRS 41.670, the Court should only award those fees incurred directly relating to the preparation of the Anti-SLAPP Motion, and as Mr. Ray had no involvement with the Anti-SLAPP Motion and was substituted as Defendants' counsel by McLetchie Law prior to any Anti-SLAPP Motion, Defendants should not be awarded Mr. Ray's attorney's fees.

3. McLetchie Law

Defendants are seeking attorney's fees in the amount of \$46,872.34 for McLetchie Law

for a single motion in this matter. McLetchie Law's fees and costs are on their face completely unreasonable, excessive, and exorbitantly disproportionate to the amount of work necessary for an Anti-SLAPP Motion.

For example, Leo Wolpert, Esq., an associate attorney with McLetchie Law, single handedly spent 32.5 hours on the Anti-SLAPP Motion and 28 hours on the Reply, **totaling over 60 hours on a single motion.** This equates to more billable hours than a full work week and does not include Ms. McLetchie's additional work on the Anti-SLAPP Motion at a rate of \$500/hr. The number of hours allegedly spent on a single motion by McLetchie Law is entirely excessive and unreasonable.

Smith's Complaint against Defendants related to defamatory statements made in one Facebook post and a single YouTube video. The issues presented in the Defendants' Anti-SLAPP Motion were not novel nor a complex. This is especially true given the fact that Maggie McLetchie specifically provides in Defendants' Motion that she "has extensive experience handling First Amendment cases, defamation litigation and similar matters" and "she frequently represents other clients who are defendants in defamation cases, and has prevailed in having other lawsuits dismissed pursuant to Nevada's anti-SLAPP statute." See Defendants' Motion, 7:25-28; 8:1. Ms. McLetchie explicitly admits in Defendants' Motion that she frequently files anti-SLAPP motions and has extensive experience in this area of law, but then attempts to justify to this Court that \$46,872.34 on a standard Anti-SLAPP Motion is justified or reasonable.

Additionally, a portion of McLetchie Law's fees and costs relate to services that were not provided directly in connection with the Anti-SLAPP Motion. McLetchie Law engaged in discussions with Smith's counsel with no intention of settling this matter, despite the fact that Defendants' prior counsel was imminently close to settling this matter with Smith's counsel, and despite efforts to continue settlement discussions in this matter and postpone any filings during settlement discussions, Defendants' counsel went forward and unnecessarily filed the Anti-SLAPP Motion, unnecessarily increasing fees to an alleged excessive amount. However, at this time, as Defendant's only basis for fees appears to be NRS 41.670, Defendants should be limited to those incurred in direct relation to the Anti-SLAPP Motion.

For these reasons, Defendants’ Motion for Attorney’s Fees should be denied. In the alternative, the Court should determine a limited and reasonable amount of attorney’s fees for work performed by McLetchie Law directly relating only to the Anti-SLAPP Motion, and any and all fees allegedly incurred by Mr. Figler and Mr. Ray should not be awarded for the reasons stated herein.

B. The Court Should Not Impose Statutory Damages Against Smith Pursuant to NRS 41.670.

Here, Defendants are seeking statutory damages against Smith in the amount of \$10,000 per each Defendant, for a total of \$20,000 in statutory damages. NRS 41.670(1)(a-b) provide in pertinent part: If the court grants a special motion to dismiss filed pursuant to NRS 41.600: (a) The court shall award reasonable costs and attorneys' fees to the person against whom the action was brought ... (b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), **an amount of up to \$10,000.00 to the person against whom the action was brought.”** (emphasis added). This matter was brought against Defendants collectively. All causes of action in Smith’s Complaint were brought against both Defendants collectively and at all times relevant hereto Defendants have retained counsel together. As such, Defendant at most should be awarded a total of \$10,000 in this matter.

However, Smith asserts that statutory damages are not reasonable nor necessary in this matter. Smith is not an affluent individual and such sum will cause extreme hardship to Smith. Moreover, Smith’s Complaint was not filed in bad faith, as alleged by Defendants, and there is no need to deter future SLAPP suits. Smith filed his Complaint against Defendants to prevent further false information to be posted about him by Defendants. It was proven through this matter that information posted by Defendants was admittedly false, namely the fact that Smith had restraining orders against him. Thereby, Smith had good cause and reason to file his Complaint against Defendant. Smith remains steadfast that the Anti-SLAPP Motion was improper and this case should not have been dismissed, as there is clear convincing evidence that false information was posted by Defendants.

For these reasons, Smith respectfully requests that this Court not impose any statutory

damages against him, let alone statutory damages in the extortionate amount of \$20,000, which is unnecessary and will cause him extreme hardship.

III. CONCLUSION

For these reasons, Defendants' Motion should be denied in its entirety. In the alternative, if the Court is inclined to award attorney's fees or costs, the Court should determine a limited and reasonable amount of attorney's fees for work performed by McLetchie Law directly relating only to the Anti-SLAPP Motion, and any and all fees allegedly incurred by Mr. Figler and Mr. Ray should not be awarded for the reasons stated herein. Additionally, the Court should not impose any statutory damages against Smith; however, if the Court is inclined to do so, the Court should not exceed the maximum of \$10,000 in total, not \$10,000 per each Defendant.

Dated this 31st day of October 2019.

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

/s/Brian W. Boschee

BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

MIKKAELA VELLIS, ESQ.

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400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Attorneys for Plaintiff

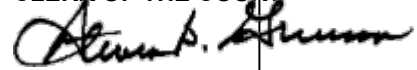
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **PLAINTIFF'S OPPOSITION TO MOTION FOR ATTORNEY'S FEES, COSTS, AND STATUTORY AWARDS PURSUANT TO NEV. REV. STAT. § 41.670** was served in accordance with Administrative Order 14-2, this 31st day of October, 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

*Attorneys for Defendants
Katy Zilverberg and Victoria Eagan*

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



1 **NEO**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

5 **MCLEATCHIE LAW**

6 701 E. Bridger Avenue, Suite 520

7 Las Vegas, NV 89101

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

9 Email: maggie@nvlitigation.com

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.

NOTICE OF ENTRY OF ORDER

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

21 Defendants.

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

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

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

28 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

Steven D. Grierson

ORDR

MARGARET A. MCLETCHE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHE LAW

701 E. Bridger Avenue, Suite 520

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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.

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

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

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.

27 ///

28 ///

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.

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

2 36. Nev. Rev. Stat. § 41.637 defines a “good faith communication in
3 furtherance of the right to petition or the right to free speech in direct connection with an
4 issue of public concern,” as, *inter alia*, a “communication made in direct connection with an
5 issue of public interest in a place open to the public or in a public forum, which is truthful or
6 is made without knowledge of its falsehood.” Nev. Rev. Stat. § 41.637(4).

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

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

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

13 38. Nevada courts define an issue of public interest broadly. *Coker v. Sassone*,
14 135 Nev. Adv. Op. 2, 10, 432 P.3d 746, 751 (2019).

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

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

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

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

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

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

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

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

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

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

///

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.

1 **Defamation**

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

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

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

12 65. As a matter of law, Defendants' expressions of opinion such as that Plaintiff
13 is a bully are not actionable because they are statements of opinion. *Pegasus*, 118 Nev. at
14 714, 57 P.3d at 87.

15 66. Because Plaintiff is a public figure, he must establish a higher level of fault
16 than negligence: actual, or constitutional, malice. *Wynn v. Smith*, 117 Nev. 6, 16, 16 P.3d
17 424, 430 (2001) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279 – 80, 84 S.Ct.
18 710, 11 L.Ed.2d 686 (1964)).

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

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

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

27 ///

28 ///

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.

27 ///

28 ///

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.

///

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

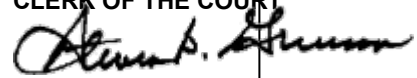
3 87. In addition, Defendants may file a Motion to Dissolve the Preliminary
4 Injunction on the same date as the Fees Motion, and both Motions will be heard at the same
5 time on November 21, 2019 at 9:00 a.m.

6
7 IT IS SO ORDERED this 31 day of October, 2019.

8
9 
10 HONORABLE JUDGE JIM CROCKETT
(MS)

11 Respectfully submitted by,

12
13
14 
15 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
16 ALINA M. SHELL, Nevada Bar No. 11711
17 LEO S. WOLPERT, Nevada Bar No. 12658
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23 Counsel for Defendants Katy Zilverberg
24 and Victoria Eagan
25
26
27
28



1 **OPPM**

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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 **OPPOSITION TO MOTION TO**
18 **RETAX COSTS**

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

23 Defendants.

24 Defendants Katy Zilverberg and Victoria Eagan hereby oppose Plaintiff Jason T.
25 Smith's Motion to Retax Costs. This opposition is based on the following Memorandum of
26 Points and Authorities and exhibits attached thereto, the papers and pleadings already on file
27 herein, and any oral argument the Court may permit at the hearing of this Motion.

28 Dated this the 1st day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

*Counsel for Defendants Katy Zilverberg
and Victoria Eagan*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 3, 2019, this Court orally granted Defendants’ Special Motion to Dismiss under Nevada’s anti-SLAPP statute. At that hearing, the Court set the following schedule for briefing for Defendants’ Motion for Fees and Costs pursuant to Nev. Rev. Stat. 41.670(1)¹ (the “Fees Motion” or “MAFC”):

- October 17, 2019 – Defendants to file Fees Motion;
- October 31, 2019 – Plaintiff to file Opposition;
- November 19, 2019 – Hearing on Fees Motion.²

Consistent with this schedule, on October 17, 2019, Defendants timely submitted their Fees Motion. The Fees Motion was accompanied by a Memorandum of Costs and Disbursements, which sets forth the detail for the reasonable costs incurred by Defendants in this litigation and provides evidence that such costs were actually incurred. Those costs were properly incorporated into the Fees Motion (*see, e.g.*, MAFC, p.5:16-17), which also details the legal bases for Defendants’ entitlement to reimbursement for the costs.

Ignoring this context, Plaintiff Jason T. Smith moved this Court pursuant to Nev. Rev. Stat. § 18.110(4) to retax Defendants’ costs from \$1,787.34 to \$81.56. Mr. Smith’s Motion is not properly before the Court for two reasons. First, this Court authorized an award of fees and costs under Nev. Rev. Stat. § 41.670(1) (and Nev. Rev. Stat. § 7.085(a)), not Nev. Rev. Stat. § 18.020(3). Therefore, Defendants did not even need to include a Memorandum of Costs and Disbursements to obtain their costs in this matter. Out of an abundance of

¹ While Mr. Smith ignores it, Defendants also requested that the Court hold Mr. Smith’s counsel personally liable for fees and costs under Nev. Rev. Stat. § 7.085(a), which mandates fee shifting if the Court finds that counsel “[f]iled ... a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith.” (*See* MAFC, p.2, fn. 1.) Indeed, Plaintiff’s counsel should have advised him of the great risk in filing a frivolous lawsuit targeting speech in light of Nevada’s robust anti-SLAPP statute.

² Pursuant to EDCR 2.20(h), Defendants may file a reply in support of the Fees Motion not later than November 14, 2019.

1 caution, however, Defendants did include a Memorandum of Costs and Disbursements with
2 the Fees Motion. This alone, however, does not authorize Mr. Smith to move this Court to
3 retax costs under Nev. Rev. Stat. § 18.110(4). Whether or not he avails himself of it, Mr.
4 Smith has an opportunity to contest the reasonableness of costs requested by Defendants: his
5 Opposition to the Fees Motion. He should not be permitted to multiply the proceedings and
6 waste the Court’s time by ignoring the context of the costs request and contesting costs via
7 the Motion.

8 Mr. Smith’s Motion is also not properly before this Court because it is untimely. A
9 party may move to retax costs within 3 days after service of a copy of the memorandum.
10 Nev. Rev. Stat. § 18.110(4). Defendants filed and served the Fees Motion and accompanying
11 Memorandum of Costs and Disbursements on Thursday, October 17, 2019. Pursuant to Nev.
12 R. Civ. P. 6(a)(1)—which includes Saturdays, Sundays and legal holidays in computing
13 deadlines—Mr. Smith had until Monday, October 21, 2019 to file his Motion. Mr. Smith
14 filed and served his Motion on Tuesday, October 22, 2019. This Court should decline to
15 excuse Mr. Smith’s repeated failures to adhere to deadlines in this matter, and deny his
16 Motion on this ground alone.

17 Even if this Court chooses to entertain the “substance” of Mr. Smith’s Motion,
18 Defendants’ Memorandum of Costs and Disbursements is sufficient to justify an award of
19 costs under Nev. Rev. Stat. § 18.110(1). Mr. Smith begrudgingly admits that Defendants
20 “submitted adequate documentation supporting the actual expenses” incurred, but complains
21 that the Memorandum of Costs and Disbursements is “short on proof as to *why* many of the
22 expenses were reasonable and necessary.” (Mot., p. 4:15-17 (emphasis in original).) While
23 Mr. Smith may require an explanation as to why routine elements of litigation—such as
24 exercising the right to a peremptory challenge and spending money on legal research—are
25 “necessary and reasonable,” this Court should not. The Memorandum of Costs and
26 Disbursements amply demonstrates the reasonableness, necessity and payment of costs
27 actually incurred in this matter. Indeed, as demonstrated by the Supplemental Memorandum
28 of Costs and Disbursements, attached hereto as Exhibit 1, Defendants continue to incur costs

1 to fight Mr. Smith’s baseless, vexatious lawsuit. This Court should therefore deny Mr.
2 Smith’s Motion in its entirety.

3 **II. LEGAL ARGUMENT**

4 **A. Chapter 18 Does Not Apply to Defendants’ Request for Costs.**

5 As noted above, Defendants submitted a separate (and detailed) Memorandum of
6 Costs out of abundance of caution.³ However, the Memorandum of Costs was not submitted
7 pursuant to Chapter 18. Instead, the request for fees and costs in this case is tied to other
8 statutory bases—the anti-SLAPP statute and Nev. Rev. Stat. § 7.085(a). Those statutes
9 provide specific bases for Defendants to recover fees and costs that is separate from the
10 general provisions regarding recoupment of fees and costs in Chapter 18 of the Nevada
11 Revised Statutes. Thus, they control—not Chapter 18.⁴ As the Nevada Supreme Court has
12 explained, the costs provisions in Chapter 18 are “general costs provisions.” *In re Resorts at*
13 *Summerlin Litigation*, 122 Nev. 177, 185, 127 P.3d 1075, 1081 (2006). By contrast, the anti-
14 SLAPP statute is a specific provision that mandates that a prevailing defendant in an anti-
15 SLAPP case is entitled to his or her costs and reasonable attorney’s fees. *See* Nev. Rev. Stat.
16 § 41.670(1)(a). Thus, Chapter 18 is not applicable at this stage, and the Motion should be

17
18 ³ In a public records matter litigated by the undersigned in which the undersigned moved for
19 attorney’s fees and costs pursuant to Nev. Rev. Stat. § 239.011(2)—the provision of the
20 Nevada Public Records Act which, similar to the anti-SLAPP statute, provides a specific
21 basis for prevailing parties to recover fees and costs that is separate from the general
22 provisions regarding recoupment of fees and costs in Chapter 18 of the Nevada Revised
23 Statutes—the opposing governmental entity asserted the undersigned’s client was not
entitled to recoupment of costs because it did not submit a memorandum of costs pursuant to
Nev. Rev. Stat. § 18.110. (*See* May 7, 2018 Opposition to Motion for Attorney’s Fees and
Costs filed in *Las Vegas Review-Journal v. Las Vegas Metropolitan Police Department*, Case
No. A-17-764169-W, at pp. 19-20.)

24 ⁴ “[I]t is an accepted rule of statutory construction that a provision which specifically applies
25 to a given situation will take precedence over one that applies only generally.” *Nevada Power*
26 *Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (*quoting* *Sierra Life Ins. Co.*
27 *v. Rottman*, 95 Nev. 654, 656, 601 P.2d 56, 57–58 (1979)); *accord In re Resort at Summerlin*
28 *Litig.*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (holding that the costs provision in
the 2001 version of Nev. Rev. Stat. § 108.239(6) controlled over the general costs provisions
of Chapter 18 of the Nevada Revised Statutes).

denied.

B. Even if Chapter 18 Applies, the Memorandum of Costs Was Not Premature.

Mr. Smith claims that the Memorandum of Costs was premature (Mot., p. 2, n. 1). Again, this ignores that this is an anti-SLAPP case and that the Memorandum of Costs and Disbursements was submitted with the Fees Motion. The Fees Motion was due on October 17, 2019 per this Court's order; the Fees Motion and the accompanying Memorandum were timely submitted on that date.

Even if this were not the case, the Nevada Supreme Court has held that the five-day time limit established for filing a memorandum for costs is not jurisdictional because the statute specifically allows for "such further time as the court or judge may grant" to file the costs memorandum. *See, e.g., Eberle v. State ex rel. Nell J. Redfield Trust*, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992). Thus, the Court retains authority to grant Defendants' Fees Motion and award all fees, costs, and a discretionary award of up to \$10,000 to each Defendant.

C. Even If Chapter 18 Applies, Mr. Smith's Motion Is Untimely.

A party may move to retax costs within 3 days after service of a copy of the memorandum. Nev. Rev. Stat. § 18.110(4). Defendants filed and served the Fees Motion and accompanying Memorandum of Costs and Disbursements on Thursday, October 17, 2019, meaning that under Nev. R. Civ. P. 6(a)(1)—which includes Saturdays, Sundays and legal holidays in computing deadlines—Mr. Smith had until Monday, October 21, 2019 to file his Motion.⁵ Mr. Smith filed and served his Motion on Tuesday, October 22, 2019. It is therefore untimely, and should be denied on this ground alone.

Mr. Smith is no stranger to missing deadlines in this matter. Indeed, Mr. Smith's opposition to Defendants' Special Motion to Dismiss was filed after the 10-day deadline to

⁵ Although EDCR 1.14(a) excludes Saturdays, Sundays, and non-judicial days from the computation of time, that rule was suspended on March 12, 2019 pursuant to Administrative Order 19-03.

1 oppose a motion under Nev. R. Civ. P. 6(a)(1) and Administrative Order 19-03. (*See*
2 Defendants' September 19, 2019 Notice of Non-Opposition, on file with this Court, p. 2:14-
3 23.) To justify his dilatory behavior in that instance, Mr. Smith pointed to the Advisory
4 Committee's notes to the newly revised Nev. R. Civ. P. 6(a), which states that, "[i]n general,
5 former periods of 5 or fewer days are lengthened to 7 days." However, the change in the rules
6 does not automatically increase every statutory deadline to 7 days—it only affects "time
7 deadlines stated elsewhere in the NRC P." (*See* Advisory Committee Notes to Nev. R. Civ.
8 P. 6.) Because the time deadline for filing motions to retax costs is promulgated in Nev. Rev.
9 Stat. § 18.110(4), rather than in the Nevada Rules of Civil Procedure, the Advisory
10 Committee's Notes to the Nevada Rules of Civil Procedure do not authorize litigants to flout
11 the statute's unambiguous deadlines.

12 Although this Court declined to construe Mr. Smith's untimely opposition to
13 Defendants' Special Motion to Dismiss as a non-opposition, it should refuse to countenance
14 more dilatory behavior from Mr. Smith regarding the instant Motion. Unlike the harsh
15 sanction of construing Mr. Smith's untimely opposition to the Special Motion to Dismiss as
16 a non-opposition—which would essentially be a case terminating sanction—any prejudice
17 caused to Mr. Smith by denying the instant Motion would be *de minimis*. This is because Mr.
18 Smith already has an opportunity to contest Defendants' costs in his opposition to the Fees
19 Motion, and because denying Mr. Smith the approximately \$1,700 adjustment he seeks in
20 the Motion pales in comparison to denying him the opportunity to oppose a dispositive
21 motion. Thus, the Court should exercise its discretion by denying Mr. Smith's frivolous and
22 untimely Motion in its entirety.

23 **D. Defendants' Claimed Costs Are Reasonable and Supported by**
24 **Adequate Proof.**

25 Under Nev. Rev. Stat. §§ 18.020 and 18.050, this Court has "wide, but not
26 unlimited, discretion to award costs to prevailing parties." *Cadle Co. v. Woods & Erickson,*
27 *LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). More importantly, as detailed in the
28 Fees Motion, the anti-SLAPP statute and fees and costs provision are designed to provide for

1 immunity from suit in appropriate cases. Defendants are fully **entitled** to reimbursement for
2 all their fees and costs. As detailed below, the requested costs are all reasonable and must be
3 awarded pursuant to the anti-SLAPP statute (and should be awarded against both Mr. Smith
4 and his counsel).

5 Mr. Smith cautions that this Court’s discretion with regard to awarding costs
6 “should be sparingly exercised when considering whether or not to allow expenses **not**
7 **specifically allowed by statute** and precedent.” (Mot., p. 3:7-9 (citing *Bergman v. Boyce*, 109
8 Nev. 670, 679, 856 P.2d 560, 566 (1993)) (emphasis added).) As further noted by Mr. Smith,
9 “[i]t is well settled in this jurisdiction that a court may only tax costs against a party in
10 situations **which have been specifically authorized by the legislature.**” (Mot., p. 3:12-14
11 (citing *Flangas v. State*, 97 Nev. 626, 627, 637 P.2d 1212, 1213 (1981)) (emphasis added).)
12 Thus, Mr. Smith argues, this Court should “exercise restrained because statutes permitting
13 recovery of costs, being in derogation of the common law, **must be strictly construed.**”
14 (Mot., p. 3:10-12 (citing *Bergman*, 856 P.2d at 566) (emphasis in original).)

15 Here, the Court should not “sparingly exercise” its discretion to award costs
16 because the legislature has specifically authorized the taxing of costs against Mr. Smith in its
17 anti-SLAPP statute: “If the court grants a special motion to dismiss filed pursuant to NRS
18 41.660 ... [t]he court shall award reasonable costs and attorney’s fees to the person against
19 whom the action was brought.” Nev. Rev. Stat. § 41.670(1)(a). Indeed, that the legislature
20 made fee-shifting *mandatory* in the anti-SLAPP context reflects that the Court construe fees
21 and costs be construed liberally. This is in line with the spirit of Nevada’s anti-SLAPP statute,
22 which is squarely intended to deter frivolous suits like the instant one.

23 While Mr. Smith concedes (albeit reluctantly so) that adequate documentation was
24 submitted supporting the actual expenses, he argues that the Memorandum of Costs is “short
25 on proof” because the “why” is missing. (Mot., p. 4:15-17.) This argument ignores two
26 things. First, the costs are obvious and routine costs of litigation. For example, while Mr.
27 Smith may not have opted to perform sufficient legal research—at any point in this
28 litigation—it is reasonable that Defendants did. Further, just as Mr. Smith did, Defendants

1 filed a peremptory challenge—the associated cost is patently reasonable. Second, Defendants
2 need not reveal work product or privileged information to obtain just compensation for these
3 reasonable costs and fees.

4 The cases cited by Mr. Smith should not convince this Court to retax costs. First,
5 they all pertain to the award of costs under Chapter 18’s general costs provision, not the
6 specific fees and costs provision of Nevada’s anti-SLAPP statute authorizing an award of
7 costs in this matter. Furthermore, those cases do not require attorneys to provide a point-by-
8 point explanation of how they chose to advocate for their clients in a given matter. Rather,
9 the Court found the “justifying documentation” for costs lacking on other grounds. For
10 instance, in *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). the Nevada Supreme
11 Court reversed an award of costs for “photocopying, telephoning, and postage” because “the
12 prevailing party based its estimate of costs on the law firm's customary practice of charging
13 four percent of the client's total billable charges for such expenses” rather than submitting an
14 itemized list of costs actually incurred. *See Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121
15 Nev. 261, 277, 112 P.3d 1082, 1093 (2005) (explaining the Court’s holding in *Gibellini*).
16 Here, by contrast, Defendants have submitted itemized lists of costs and proof that they were
17 actually incurred in this matter. Thus, this Court must deny Mr. Smith’s Motion.

18 1. The Filing Fees Are Reasonably Incurred.

19 Mr. Smith argues that Defendants are not entitled to the \$467.00 filing fees incurred
20 in making a peremptory challenge in this matter, claiming that it was “not a required filing
21 in this matter” and therefore was “not reasonable or necessary.” (Mot., p. 4:19-24.) It is
22 strange that Mr. Smith characterizes a peremptory challenge as “not reasonable or necessary”
23 when he himself exercised his right to a peremptory challenge in this matter. (*See Plaintiff’s*
24 *September 6, 2019 Peremptory Challenge of Judge Escobar*, on file with this Court.)
25 Nevertheless, fees for peremptory challenges are clerks’ fees,⁶ and award of such is plainly
26

27 ⁶ See SCR 48.1(2) (“A notice of peremptory challenge of judge shall be filed in writing *with*
28 *the clerk of the court* in which the case is pending and a copy served on the opposing party.
The filing shall be accompanied by a fee of \$450, *which the clerk shall transmit to the clerk*”

1 authorized by Nev. Rev. Stat. 18.005(1). Such fees were actually paid, as reflected in pages
2 14 and 15 of the Memorandum of Costs and Disbursements. Finally, as reflected on page 2
3 of the Memorandum of Costs and Disbursements, Defendants' counsel believed it was
4 necessary to file a peremptory challenge of Judge Johnson. Therefore, Defendants are
5 entitled to the full \$467.00 expended filing their peremptory challenge.

6 Additionally, Defendants have submitted a Supplemental Memorandum of Costs
7 and Disbursement, attached as Exhibit 1 hereto, to include the following filing fees incurred:
8 (1) \$264.09 for a 1st Appearance Fee, which the undersigned was not aware that prior counsel
9 had failed to pay (*See* October 31, 2019 Initial Appearance Fee Disclosure, on file with this
10 Court); and (2) three \$3.50 e-filing fees for filing the Memorandum of Costs and
11 Disbursements on October 17, 2019, filing the Order Granting the Special Motion to Dismiss
12 on October 31, 2019, and filing Notice of Entry of said Order. Defendants should be awarded
13 these necessary costs—a total of \$762.59 in filing fees—in addition to all other fees, costs,
14 and discretionary awards sought in this matter.

15 **2. Mileage Costs**

16 Rather than incur expensive runner services, the undersigned represents that
17 McLetchie Law uses staff and charges reasonable mileage to perform such services, and that
18 the mileage costs incurred in this matter are reasonable. However, attorney fee time on either
19 side is not well-spent quibbling over the \$14.37 sought for mileage. Thus, should this Court
20 reach the merits of Mr. Smith's Motion—which it should not—Defendants do not object to
21 retaxing the \$14.37 sought for mileage to \$0.00.

22 **3. Legal Research**

23 Mr. Smith is correct that "Defendants' counsel has ample experience in defending
24 the [sic] First Amendment rights and has filed numerous anti-SLAPP motions[.]" (Mot., p.
25 5:10-12.) That experience has taught Defendants' counsel that extensive research is
26 fundamental to prevailing in anti-SLAPP matters, especially when Nevada and California

27 *of the supreme court.* The fee shall be collected *by the clerk of the supreme court* and
28 deposited in the state treasury..." (emphasis added).

1 courts are continually reshaping the contours of their anti-SLAPP laws.⁷ This research is
2 particularly important for mixed questions of fact and law—such as whether the
3 communications at issue were in direct connection with an issue of public concern—which
4 required examining dozens of Nevada and California cases to discover analogous cases and
5 craft a prevailing argument. While—based on his filings in this matter—Mr. Smith appears
6 to believe that legal research is never necessary, that position does not reflect reality. The
7 legal research performed in this matter was integral to Defendants’ prevailing on their Special
8 Motion to Dismiss. Additionally, as reflected in Exhibit 1, Defendants expended \$294.98 in
9 additional legal research costs in this matter since October 1, 2019. Thus, Defendants are
10 entitled to recoup all \$1,244.72 expended on legal research in this matter.

11 4. Copying Costs

12 Mr. Smith did not object to the \$60.56 in copying costs incurred by Defendants in
13 this matter. (Mot., p. 5:20.) However, as reflected in the Exhibit 1, Defendants have incurred
14 an additional \$29.92 in copying costs, making the total copying costs sought \$90.48. In light
15 of this, the Court should retax the amount of costs upwards by \$29.92.

16 5. Court Reporting Expenses

17 Mr. Smith argues that Defendants are not entitled to \$275.00 for the expense of
18 obtaining a transcript of the October 3, 2019 hearing on the Special Motion to Dismiss
19 because, *inter alia*, such expenses are not covered by Nev. Rev. Stat. § 18.005(2), which
20 allows for “reporters’ fees for depositions, including a report’s fee for one copy of each
21 deposition.” (Mot., p. 5:22-28.) While Mr. Smith is correct that no depositions have been
22 conducted in this matter, his argument ignores that “[c]ompensation for the official reporter
23 or reporter pro tempore” is included in the definition of “costs.” See Nev. Rev. Stat. §
24 18.005(8). Even if it were not explicitly defined as a cost, obtaining a transcript of the
25 October 3, 2019 hearing is a “reasonable and necessary expense incurred in connection with
26

27 ⁷ For instance, the Nevada Supreme Court’s mandate that matters of public interest be
28 construed broadly is less than a year old. See *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432
P.3d 746, 751 (2019).

the action” under Nev. Rev. Stat. § 18.005(17). This is because Defendants’ counsel was tasked with preparing the Order in this matter, and because Mr. Smith’s counsel has noted his intent to appeal this matter, making obtaining the transcript a necessity.

Bill Nelson & Associates, LLC is the Court Reporter for Department XXIV⁸ and, as Mr. Smith admits, the Memorandum of Costs and Disbursements reflects that Defendants’ firm compensated Bill Nelson & Associates, LLC with a check in the amount of \$275.00. (Mot., p. 5:25-26; *see also* Memorandum of Costs and Disbursements, p. 34.) Because Defendants are explicitly entitled to the cost of obtaining a transcript under Nev. Rev. Stat. § 18.005(8) and implicitly entitled to such under Nev. Rev. Stat. § 18.005(17), the Court should not retax this cost.

III. CONCLUSION

For the foregoing reasons, this Court should deny Mr. Smith’s Motion to Retax Costs in its entirety. Additionally, per the Supplemental Memorandum of Costs and Disbursements, this Court should award Defendants an additional \$585.12 in costs—the \$274.59 in additional fees, the \$294.98 in additional legal research expended since October 1, and the \$29.92 in additional copying costs, less the \$14.37 mileage costs Defendants consent to waive should the Court consider this Motion on its “merits.” The Court should also vacate the hearing for this Motion set for December 5, 2019.

Respectfully submitted this 1st day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHIE LAW

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Counsel for Defendants Katy Zilverberg and Victoria Eagan

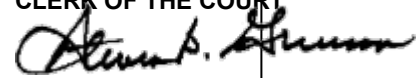
⁸ See <http://www.clarkcountycourts.us/departments/judicial/civil-criminal-division/departments-xxiv/> (last accessed November 1, 2019).

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 1st day of November, 2019, I did cause a true copy of the foregoing OPPOSITION TO MOTION TO RETAX COSTS 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/ Pharan Burchfield

EMPLOYEE of McLetchie Law



SUPPL
MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLEATCHIE LAW
701 E. Bridger Avenue, Suite 520
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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.

SUPPLEMENT TO
MEMORANDUM OF COSTS AND
DISBURSEMENTS

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

Defendants.

Filing Fees	\$762.59
Mileage.	\$14.74
Legal Research.	\$1,244.72
Copying Costs.	\$90.48
Court Reporting Expense.	\$275.00

TOTAL: \$2,387.53

///

///

///

///

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Margaret A. McLetchie, being duly sworn, states: that affiant is the attorney for Defendants Katy Zilverberg and Victoria Eagan and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this the 1st day of November, 2019.



MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLEATCHIE LAW
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Email: maggie@nvlitigation.com
*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 1st day of November, 2019, I did cause a true copy of the foregoing SUPPLEMENTAL MEMORANDUM OF COSTS AND DISBURSEMENTS 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.



EMPLOYEE of McLetchie Law

Date	Category	Vendor / Reference	Quantity	Rate	Total	Description
8/19/2019	Mileage		23.6	\$0.58	\$13.69	Mileage: Travel to/from office of Paul C. Ray located at 8670 W. Cheyenne Ave., 23.6 miles at \$0.58.
8/19/2019	E-filing Fee		1.0	\$3.50	\$3.50	(1) Substitution of Attorney (Zilverberg) and (2) Substitution of Attorney (Eagan).
8/31/2019	Copying Costs		35.0	\$0.08	\$2.80	August 1 - August 31, 2019.
9/6/2019	E-filing Fee	Odyssey File & Serve (4865297)	1.0	\$467.00	\$467.00	Peremptory Challenge of Judge (Filing Fee: \$450.00; Payment Service Fee: \$13.50; and E-File Fee: \$3.50).
9/6/2019	E-filing Fee		1.0	\$3.50	\$3.50	Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP) and Appendix of Exhibits in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).
9/19/2019	E-filing Fee	Odyssey File & Serve (4932932)	1.0	\$3.50	\$3.50	Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (anti-SLAPP).
9/26/2019	E-filing Fee	Odyssey File & Serve (4971601)	1.0	\$3.50	\$3.50	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).
9/27/2019	E-filing Fee	Odyssey File & Serve (4972187)	1.0	\$3.50	\$3.50	Reply in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (anti-SLAPP).
9/30/2019	Copying Costs		722.0	\$0.08	\$57.76	September 1 - September 30, 2019.
9/30/2019	WestLaw Legal Research	Client Code 0586	1.0	\$949.74	\$949.74	September 1 - September 30, 2019: 414 transactions.
10/10/2019	Invoice	Bill Nelson & Associates LLC (Check # 1163)	1.0	\$275.00	\$275.00	Check # 1163: Bill Nelson & Associates LLC (Court Reporter) for 10/03/2019 Hearing Transcript.

Date	Category	Vendor / Reference	Quantity	Rate	Total	Description
10/11/2019	Mileage		0.6	\$0.58	\$0.35	Travel to Phoenix Building located at 330 S. 3rd St., 0.6 miles at \$0.58.
10/17/2019	E-filing Fee	Odyssey File & Serve (5074030)	1.0	\$3.50	\$3.50	Motion to Dissolve Preliminary Injunction.
10/17/2019	E-filing Fee	Odyssey File & Serve (5077387)	1.0	\$3.50	\$3.50	Memorandum of Costs and Disbursements and Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. § 41.670
10/31/2019	Mileage		1.2	\$0.58	\$0.70	Mileage: Travel to/from Phoenix Building located at 330 S. 3rd Street, 1.2 miles at \$0.58.
10/31/2019	E-filing Fee	Odyssey File & Serve (5144536)	1.0	\$264.09	\$264.09	Initial Appearance Fee Disclosure (NRS Chapter 19)[Total Filing Fee: \$253.00; Payment Service Fee: \$7.59; E-File Fee: \$3.50].
10/31/2019	E-filing Fee	Odyssey File & Serve (5145316)	1.0	\$3.50	\$3.50	Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP)
10/31/2019	E-filing Fee	Odyssey File & Serve (5145564)	1.0	\$3.50	\$3.50	Notice of Entry of Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP)
10/31/2019	Copying costs		374.0	\$0.08	\$29.92	October 1 - October 31, 2019.
10/31/2019	WestLaw Legal Research		1.0	\$294.98	\$294.98	October 1 - October 31, 2019: 169 Transactions
					\$2,387.53	Total Costs and Expenses

Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,**Envelope Information****Envelope Id**
5077387**Submitted Date**
10/17/2019 5:19 PM PST**Submitted User Name**
efile@nvlitigation.com**Case Information****Location**
Department 24**Category**
Civil**Case Type**
Other Tort**Case Initiation Date**
7/9/2019**Case #**
A-19-798171-C**Assigned to Judge**
Crockett, Jim**Filings****Filing Type**
EFileAndServe**Filing Code**
Memorandum of Costs and
Disbursements - MEMC (CIV)**Filing Description**
Memorandum of Costs and
Disbursements**Courtesy Copies**
efile@nvlitigation.com**Filing on Behalf of**
Katy Zilverberg,Victoria Eagan**Filing Status**
Accepted**Accepted Date**
10/17/2019 5:22 PM PST**Accept Comments**
Auto Review Accepted**Lead Document****File Name**
ZILVERBERG - 2019.10.17 MEMC
Memorandum of Costs and
Disbursements.pdf**Description**
Memorandum of Costs and
Disbursements - MEMC
(CIV)**Security****Download**
Original File
Court Copy

eService Details

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Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened

Filing Type

EFileAndServe

Filing CodeMotion for Attorney Fees and Costs -
MAFC (CIV)**Filing Description**Motion for Attorney's Fees, Costs, and
Statutory Awards Pursuant to Nev. Rev.
Stat. § 41.670**Courtesy Copies**

efile@nvlitigation.com

Filing on Behalf of

Katy Zilverberg, Victoria Eagan

Filing Status

Accepted

Accepted Date

10/17/2019 5:22 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name	Description	Security	Download
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ZILVERBERG - 2019.10.17 MAFC
Motion for Attorneys Fees and
Costs.pdf

Motion for Attorney Fees
and Costs - MAFC (CIV)

Original File
Court Copy

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Sent	Paul C Ray		Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
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Fees

Memorandum of Costs and Disbursements - MEMC (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Motion for Attorney Fees and Costs - MAFC (CIV)

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
E-File Fee	\$3.50

Envelope Total: \$3.50

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Payment Account	MLAW (AMEX)	Transaction Id	6121462
Filing Attorney	Margaret McLetchie	Order Id	005077387-0
Transaction Response	Payment Complete		

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YOUR TRIP TO:

Clark County Justice Court



4 MIN | 0.6 MI

Est. fuel cost: \$0.08

Trip time based on traffic conditions as of 3:06 PM on November 1, 2019. Current Traffic: Heavy



Print a full health report of your car with HUM vehicle diagnostics (800) 906-2501

Start of next leg of route

1. Start out going **northwest** on Bridger Ave toward S 7TH St.

Then 0.03 miles

0.03 total miles

2. Take the 1st **right** onto S 7TH St.*If you reach S 6Th St you've gone a little too far.*

Then 0.09 miles

0.12 total miles

3. Turn **left** onto E Carson Ave.*If you reach Fremont St you've gone a little too far.*

Then 0.29 miles

0.41 total miles

4. Turn **left** onto S 3rd St.*S 3rd St is just past S 4Th St.**If you reach S Casino Center Blvd you've gone a little too far.*

Then 0.18 miles

0.59 total miles

5. Take the 2nd **right** onto Lewis Ave.*Lewis Ave is just past Bridger Ave.**If you reach E Clark Ave you've gone a little too far.*

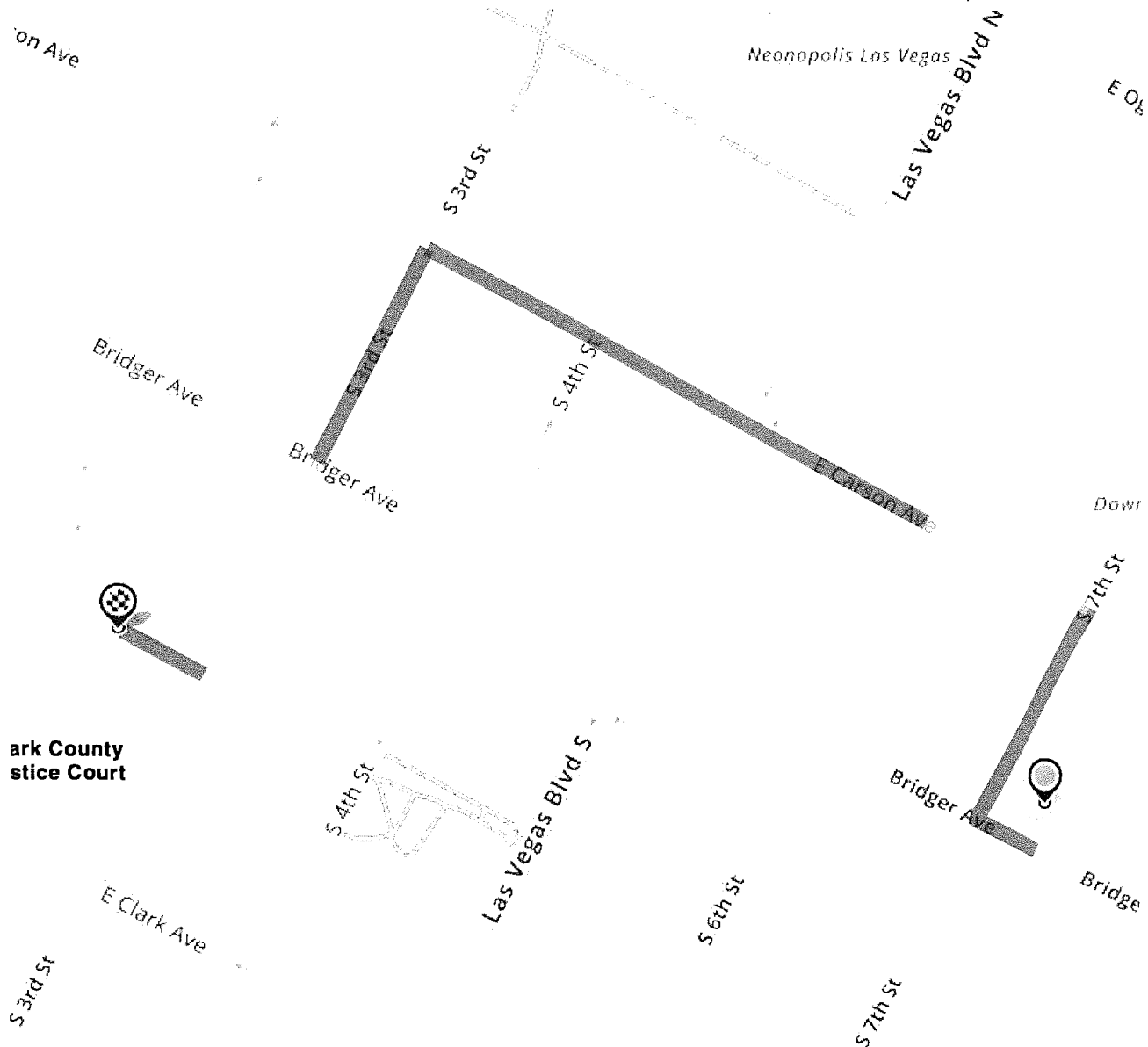
Then 0.04 miles

0.63 total miles

6. Clark County Justice Court, 200 LEWIS AVE is on the **left**.*If you reach S Casino Center Blvd you've gone a little too far.*

Save to My Maps

Use of directions and maps is subject to our [Terms of Use](#). We don't guarantee accuracy, route conditions or usability. You assume all risk of use.



Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,**Envelope Information****Envelope Id**
5144536**Submitted Date**
10/31/2019 3:04 PM PST**Submitted User Name**
efile@nvlitigation.com**Case Information****Location**
Department 24**Category**
Civil**Case Type**
Other Tort**Case Initiation Date**
7/9/2019**Case #**
A-19-798171-C**Assigned to Judge**
Crockett, Jim**Filings****Filing Type**
EFileAndServe**Filing Code**
Initial Appearance Fee Disclosure - IAFD
(CIV)**Filing Description**
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Chapter 19)**Courtesy Copies**
efile@nvlitigation.com**Filing on Behalf of**
Katy Zilverberg, Victoria Eagan**Filing Status**
Accepted**Accepted Date**
10/31/2019 3:05 PM PST**Accept Comments**
Auto Review Accepted**Lead Document****File Name**
ZILVERBERG - 2019.10.31 IAFD Initial
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Disclosure - IAFD (CIV)**Security****Download**
Original File
Court Copy**eService Details**

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Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened

Fees

Initial Appearance Fee Disclosure - IAFD (CIV)

Description	Amount
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05A Civil Answer/Appear	\$223.00
05G Answer Additional Party	\$30.00
Filing Total:	\$253.00

Total Filing Fee	\$253.00
Payment Service Fee	\$7.59
E-File Fee	\$3.50

Envelope Total: \$264.09

Party Responsible for Fees	Katy Zilverberg	Transaction Amount	\$264.09
Payment Account	MLAW (AMEX)	Transaction Id	6196711
Filing Attorney	Margaret McLetchie	Order Id	005144536-0
Transaction Response	Payment Complete		

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Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,**Envelope Information****Envelope Id**
5145316**Submitted Date**
10/31/2019 3:57 PM PST**Submitted User Name**
lacey@nvlitigation.com**Case Information****Location**
Department 24**Category**
Civil**Case Type**
Other Tort**Case Initiation Date**
7/9/2019**Case #**
A-19-798171-C**Assigned to Judge**
Crockett, Jim**Filings****Filing Type**
EFileAndServe**Filing Code**
Order - ORDR (CIV)**Filing Description**
Order Granting Defendants' Special
Motion to Dismiss Pursuant to Nev. Rev.
Stat. § 41.660 (Anti-SLAPP)**Courtesy Copies**
efile@nvlitigation.com**Filing on Behalf of**
Katy Zilverberg, Victoria Eagan**Filing Status**
Accepted**Accepted Date**
10/31/2019 4:03 PM PST**Lead Document****File Name**
ZILVERBERG - 2019.10.31 ORDR
Order Granting Defts' anti-SLAPP
MTD.pdf**Description**
Order - ORDR (CIV)**Security****Download**
Original File
Court Copy**eService Details**

Status	Name	Firm	Served	Date Opened
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Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	10/31/2019 4:05 PM
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
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Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
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Fees

Order - ORDR (CIV)

Description	Amount
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Filing Total:	\$0.00

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total:	\$3.50

Party Responsible for Fees	Katy Zilverberg	Transaction Amount	\$3.50
Payment Account	MLAW (AMEX)	Transaction Id	6197717
Filing Attorney	Margaret McLetchie	Order Id	005145316-0
Transaction Response	Payment Complete		

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Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,**Envelope Information****Envelope Id**
5145564**Submitted Date**
10/31/2019 4:15 PM PST**Submitted User Name**
lacey@nvlitigation.com**Case Information****Location**
Department 24**Category**
Civil**Case Type**
Other Tort**Case Initiation Date**
7/9/2019**Case #**
A-19-798171-C**Assigned to Judge**
Crockett, Jim**Filings****Filing Type**
EFileAndServe**Filing Code**
Notice of Entry - NEO (CIV)**Filing Description**
Notice of Entry of Order**Courtesy Copies**
efile@nvlitigation.com**Filing on Behalf of**
Katy Zilverberg, Victoria Eagan**Filing Status**
Accepted**Accepted Date**
10/31/2019 4:17 PM PST**Accept Comments**
Auto Review Accepted**Lead Document****File Name**
ZILVERBERG - 2019.10.31 NEO
(RE.ORDR Granting Anti-SLAPP
MTD).pdf**Description**
Notice of Entry - NEO (CIV)**Security****Download**
Original File
Court Copy**eService Details**

Status	Name	Firm	Served	Date Opened
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Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
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Fees

Notice of Entry - NEO (CIV)

Description	Amount
Filing Fee	\$0.00
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Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total:	\$3.50

Party Responsible for Fees	Katy Zilverberg	Transaction Amount	\$3.50
Payment Account	MLAW (AMEX)	Transaction Id	6197891
Filing Attorney	Margaret McLetchie	Order Id	005145564-0
Transaction Response	Payment Complete		

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Copying Costs - October 2019

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TASKalfa 5052ci	128			11/1/2019 7:57
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TASKalfa 5052ci	534			11/1/2019 7:57
TASKalfa 5052ci	549			11/1/2019 7:57
TASKalfa 5052ci	551			11/1/2019 7:57
TASKalfa 5052ci	552			11/1/2019 7:57
TASKalfa 5052ci	553			11/1/2019 7:57
TASKalfa 5052ci	554			11/1/2019 7:57
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TASKalfa 5052ci	562			11/1/2019 7:57
TASKalfa 5052ci	563			11/1/2019 7:57
TASKalfa 5052ci	565			11/1/2019 7:57
TASKalfa 5052ci	566			11/1/2019 7:57
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TASKalfa 5052ci	569			11/1/2019 7:57
TASKalfa 5052ci	570			11/1/2019 7:57
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TASKalfa 5052ci	579			11/1/2019 7:57
TASKalfa 5052ci	580			11/1/2019 7:57
TASKalfa 5052ci	581			11/1/2019 7:57
TASKalfa 5052ci	582			11/1/2019 7:57
TASKalfa 5052ci	583			11/1/2019 7:57
TASKalfa 5052ci	584			11/1/2019 7:57
TASKalfa 5052ci	585			11/1/2019 7:57
TASKalfa 5052ci	586	Zilverberg	374	11/1/2019 7:57
TASKalfa 5052ci	587			11/1/2019 7:57
TASKalfa 5052ci	588			11/1/2019 7:57
TASKalfa 5052ci	589			11/1/2019 7:57
TASKalfa 5052ci	590			11/1/2019 7:57
TASKalfa 5052ci	591			11/1/2019 7:57
TASKalfa 5052ci	592			11/1/2019 7:57
TASKalfa 5052ci	1010			11/1/2019 7:57
TASKalfa 5052ci	1379			11/1/2019 7:57
TASKalfa 5052ci	3690			11/1/2019 7:57
TASKalfa 5052ci	Other			11/1/2019 7:57

QuickView+ - Report

Account by Client by User by Day	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Special Pricing Charge	Total Charge
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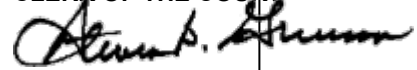
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1 **ERR**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

5 **MCLEATCHIE LAW**

6 701 E. Bridger Avenue, Suite 520

7 Las Vegas, NV 89101

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

9 Email: maggie@nvlitigation.com

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 **ERRATA TO OPPOSITION TO**
18 **MOTION TO RETAX COSTS**

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

23 Defendants.

24 Defendants Katy Zilverberg and Victoria Eagan hereby files this Errata to their
25 Opposition to Plaintiff Jason T. Smith's Motion to Retax Costs. Defendants discovered that
26 two dates in the Opposition were incorrectly transcribed. Contrary to the Opposition (at p.
27 1:9) the date for hearing Defendants Motion' for Fees and Costs is November 21, 2019, not
28 November 19, 2019. This makes the deadline for a reply to Plaintiff's Opposition to said
Motion for Fees and Costs November 15, 2019, not November 14, 2019 as reflected in
footnote 2 of the Opposition.

Dated this the 4th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

Counsel for Defendants Katy Zilverberg

and Victoria Eagan

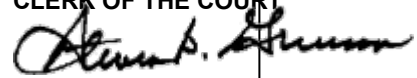
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 4th day of November, 2019, I did cause a true copy of the foregoing ERRATA TO OPPOSITION TO MOTION TO RETAX COSTS 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/ Pharan Burchfield

EMPLOYEE of McLetchie Law



1 **ERR**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

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9 Email: maggie@nvlitigation.com

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 **SECOND ERRATA TO**
OPPOSITION TO MOTION TO
RETAX COSTS

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 Defendants Katy Zilverberg and Victoria Eagan hereby file this Second Errata to
24 their Opposition to Plaintiff Jason T. Smith's Motion to Retax Costs. The deadline for the
25 Reply to the Motion for Fees and Costs is November 7, 2019 as reflected in the transcript of
26 the October 3, 2019 Hearing, not November 14 or 15 under EDCR 2.20. The undersigned
27 apologizes for the typographical errors.

28 Dated this the 4th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

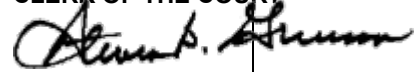
*Counsel for Defendants Katy Zilverberg
and Victoria Eagan*

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 4th day of November, 2019, I did cause a true copy of the foregoing SECOND ERRATA TO OPPOSITION TO MOTION TO RETAX COSTS 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/ Pharan Burchfield

EMPLOYEE of McLetchie Law



CNND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Jason Smith, Plaintiff(s)

A-19-798171-C

vs.

Department 24

Katy Zilverberg, Defendant(s)

CLERK'S NOTICE OF CURATIVE ACTION

In accordance with NEFCR 8(b)(2), notice is hereby provided that the Clerk's Office has replaced the following nonconforming document(s) with conforming document(s):

Title of Nonconforming Document:	<u>Initial Appearance Fee Disclosure</u>
Party Submitting Document for Filing:	<u>Katy Zilverberg</u>
Date and Time Submitted for Electronic Filing:	<u>10/31/19 at 3:04 PM</u>

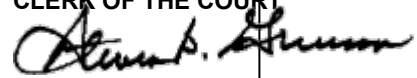
The conforming document(s) have been filed with a time and date stamp which match the time and date that the nonconforming document(s) were submitted for electronic filing.

Dated this: 6th day of November, 2019

By: /s/ Mary Anderson
Deputy District Court Clerk

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By: /s/ Mary Anderson
Deputy District Court Clerk



1 **RIS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

5 **MCLEATCHIE LAW**

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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 **REPLY IN SUPPORT OF**
18 **MOTION TO DISSOLVE**
19 **PRELIMINARY INJUNCTION**

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

Hearing Date: November 21, 2019
Hearing Time: 9:00 a.m.

24 Defendants.

25 Defendants Katy Zilverberg and Victoria Eagan hereby submit this reply in support
26 of their motion to dissolve the preliminary injunction entered into by stipulation on July 19,
27 2019 (on file with this Court). This Reply is based on the following Memorandum of Points
28 and Authorities and exhibits attached thereto, the papers and pleadings already on file herein,
and any oral argument the Court may permit at the hearing of this Motion.

Dated this the 7th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

Counsel for Defendants Katy Zilverberg and Victoria Eagan

MEMORANDUM OF POINTS AND AUTHORITIES

As stated in his Partial Opposition (the “Opp.”) to Defendants’ Motion to Dissolve the Preliminary Injunction in this matter, Mr. Smith does not contest that the Preliminary Injunction must be resolved pursuant to its plain terms, as this Court has adjudicated this matter on its merits. (Opp., p. 4:8-14.) It is apparent that the parties do not agree as to the whether the Preliminary Injunction impermissibly burdened Defendants’ rights to free speech. (*See, e.g.*, Opp., p. 3:3-26.) However, since both parties agree that the Preliminary Injunction must be dissolved, Defendants are content to leave the decision of whether to address the question of whether the Preliminary Injunction was invalid *ab initio* to the sound discretion of this Court.

Respectfully submitted this 7th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

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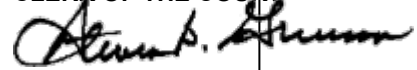
Counsel for Defendants Katy Zilverberg and Victoria Eagan

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 7th day of November, 2019, I did cause a true copy of the foregoing REPLY IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION 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/ Pharan Burchfield

EMPLOYEE of McLetchie Law



1 **RIS**

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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 **REPLY IN SUPPORT OF**
18 **MOTION FOR FEES AND COSTS**
19 **AND MOTION FOR**
20 **STATUTORY AWARD; AND**
21 **SUPPLEMENT TO MOTION FOR**
22 **FEES AND COSTS**

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

Hearing Date: November 21, 2019

27 Defendants.

Hearing Time: 9:00 a.m.

28 Defendants Katy Zilverberg and Victoria Eagan ("Defendants") hereby file this
Reply in Support of their Motion for Fees, Costs and a Statutory Award and Supplement to
their Motion for Fees and Costs. This Reply is based on the following Memorandum of Points
and Authorities and exhibits attached thereto, the papers and pleadings already on file herein,
and any oral argument the Court may permit at the hearing of this Motion.

DATED this the 7th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

Counsel for Defendants Katy Zilverberg and Victoria Eagan

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants’ Motion for Fees and Costs and Statutory Award (the “Motion”) should be granted in its entirety. The fees and costs requested should be awarded because Nevada’s anti-SLAPP Statute is designed to protect speakers from liability and because the fees and costs incurred by Defendant were reasonable. Mr. Smith’s Opposition (the “Opposition” or “Opp.”) to the Motion fails to present any evidence or legal authority for denying Defendants Katy Zilverberg and Victoria Eagan all their requested fees, costs, and a statutory award of \$20,000.00.

As a threshold matter, Mr. Smith does not oppose the costs requested by Defendants’ in his Opposition.¹ Thus, this Court should award all requested costs to Defendants. With regard to fees, just as he did with his Complaint and his Opposition to Defendants’ successful Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (the “Anti-SLAPP Motion”), Mr. Smith fails to provide sufficient legal and factual support for his position. His conclusory arguments as to why fees should be reduced all fail.

First, Mr. Smith’s unsupported story that the anti-SLAPP Motion was unnecessary is patently false. For one, parties are under no obligation to employ their opponents’ preferred litigation strategies; additionally, it has been Mr. Smith and his counsel, not Defendants, that have acted unreasonably and in bad faith—including by filing a frivolous complaint to start with. Second, Defendants’ counsel’s experience supports a high award,² not a reduction as Mr. Smith suggests. It was because of that experience that Defendants’ counsel undertook the specific research and factual work that led to case termination in Defendants’ favor. Third, Defendants and their counsel reasonably spent significant time in connection with the

¹ Although Mr. Smith did file a Motion to Retax Costs (on file with this Court), that Motion was both procedurally and substantively deficient. (*See generally* Defendants’ Opposition to Motion to Retax Costs, on file with this Court.)

² Mr. Smith does not contest the hourly rates billed for Defendants’ counsel in his Opposition, which this Court should construe as an admission that said rates are reasonable. *See* EDCR 2.20(e).

1 anti-SLAPP Motion. While Mr. Smith and his counsel may be comfortable with filing
2 frivolous lawsuits or briefs, anti-SLAPP motions are not cookie-cutter affairs that can be
3 resolved without effort. Winning the anti-SLAPP Motion was very important to
4 Defendants—both so they could protect their right to free speech and so they could be
5 immunized against potentially abusive discovery and further expenses in litigation. While
6 Mr. Smith’s Complaint was thin on specifics, this is a factually-intensive matter and it was
7 imperative that Defendants fully briefed the issues and met their evidentiary burden.
8 Moreover, Mr. Smith’s lack of clarity made addressing the issues even more difficult than
9 necessary, as have his actions in this litigation. In sum, this wasn’t just any old motion that
10 could be cut-and-pasted from previous matters, as Mr. Smith suggests. It took time, attention,
11 and effort.

12 Fourth, contrary to Mr. Smith’s (again) unsupported assertion, Defendants are
13 entitled to compensation for all the fees they incurred in defending this action. As case law
14 and the text Nevada’s anti-SLAPP statute itself reflect, anti-SLAPP law is intended to protect
15 speakers against *all* liability arising from good faith communications made in direct
16 connection with an issue of public concern, not just the fees incurred in drafting a Special
17 Motion to Dismiss (and subsequent fees motion). *See, e.g.*, Nev. Rev. Stat. § 41.650. This
18 Court should interpret the fee shifting provision of Nevada’s anti-SLAPP statute to further
19 its purpose of protecting speakers from being silenced and punished by vexatious litigants
20 for exercising their First Amendment rights. Indeed, this reasoning also supports awarding
21 Defendants a statutory award of \$20,000.00 under Nev. Rev. Stat. § 41.670(1)(b).

22 Moreover, while Defendants have only sought the lodestar amount for fees and
23 costs, not only is Mr. Smith incorrect that a downward adjustment is appropriate, an upward
24 adjustment is in fact warranted. That Defendants exercised appropriate billing judgment is
25 reflected, for example, by the fact that a lower-billing attorney performed the largest chunk
26 of hours on this matter. (*See* Motion, pp. 7:20 – 9:12.) Further, Mr. Smith’s counsel should
27 additionally be responsible for the fees and costs in this action due to the frivolous nature of
28 Mr. Smith’s complaint and other filings in this matter.

In short, all of Mr. Smith’s efforts to reduce the fees and costs award fail. This Court should award the fees and costs previously requested, as well as the additional fees and costs detailed in the supplemental exhibits attached hereto.³ The Court should also award the statutory award of \$10,000.00 to each Defendant as authorized under Nev. Rev. Stat. § 41.670(1)(b) to deter future attempts by SLAPP litigants to abuse the legal system.

II. SUMMARY OF FACTS; SUPPLEMENTAL FEES AND COSTS

Defendants incorporated a memorandum of costs and disbursements into the Motion which reflected a total of \$1,787.34 in costs expended through the date on which the Motion was filed, October 17, 2019. In the Motion, Defendants requested compensation for the \$3,287.00 billed by Paul C. Ray and \$4,400.00 billed by Dayvid Figler in this matter. (Motion, p. 9:13-20.) In the Motion, Defendants also requested compensation for the attorney’s fees and costs—\$45,085.00 and \$1787.34, respectively—incurred for work performed by McLetchie Law through the filing of the Fees Motion. (*Id.*, p. 9:5-12.)

Defendants hereby supplement the Motion and further request \$13,843.00 in additional attorney’s fees in light of further work performed in this matter since the Fees Motion was filed. Defendants also reserve their right to seek further fees and costs that are incurred in defending this action (as well as on appeal), and to file a separate action for damages.

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³ Defendants will also be entitled to supplement for the work performed after this submission.

The currently requested fees in this matter are reflected in the table below:

Item	Amount
Attorney Fees and Costs for Paul C. Ray ⁴	\$3,287.00
Attorney Fees and Costs for Dayvid Figler ⁵	\$4,400.00
McLetchie Law Fees – through Fees Motion ⁶	\$45,085.00
McLetchie Law Fees – additional through Reply ⁷	\$13,843.00
McLetchie Law Costs – through Opp. to Motion to Retax Costs ⁸	\$2,387.53
TOTAL	\$69,002.53

III. RESPONSE TO “FACTUAL” ASSERTIONS

Consistent with his approach throughout this case, Mr. Smith fails to support the factual assertions in his Opposition. Indeed, his counsel entirely misrepresents the factual and procedural background of this case. The reality is that Mr. Smith’s lawsuit was a vexatious attempt to punish and extort Defendants; his attorneys’ conduct contributed to making this matter so expensive to defend. Indeed, the type of assertions made in the Opposition reinforce both the frivolous nature of this suit and the appropriateness of additionally holding counsel accountable for fees and costs under Nev. Rev. Stat. § 7.085(a).

In his Opposition, Mr. Smith argues that the anti-SLAPP Motion was unnecessary and claims that Defendants should have settled rather than filing it. (*See, e.g.*, Opp., pp. 2:28 – 3:9.) This argument has two main problems. First, it is Mr. Smith’s Complaint—aimed at silencing and extorting his critics—that necessitated the anti-SLAPP Motion. The fact that the Special Motion to Dismiss was granted shows reflects that Mr. Smith’s lawsuit is precisely what anti-SLAPP law exists to discourage. Second, Defendants did negotiate a resolution in good faith; it is Mr. Smith that should have accepted a reasonable resolution of this case, and his representation of the facts and procedural history is devoid of truth.

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⁴ See Motion, p. 9:18-20.

⁵ See Motion, p. 9:13-17.

⁶ See Motion, p. 9:5-12.

⁷ See **Exh. 8**.

⁸ See November 1, 2019 Supplement to Memorandum of Costs and Disbursements, on file with this Court.

A. Alleged Initial Settlement Discussions with Prior Counsel.

Mr. Smith claims that “Defendants’ prior counsel was imminently close” to settling this matter. (*See Opp.*, p. 7:22-23.) While Plaintiff tried to extort money (\$10,000.00) and a permanent injunction from Defendants, there was never any imminent settlement in this case; Defendants were unwilling and unable to pay Mr. Smith money. (*See attached Declaration of Katy Zilverberg*, ¶¶ 4-6; and *see also attached Declaration of Victoria Eagan*, ¶¶ 4-6.)

B. Settlement Discussions through McLetchie Law.

Despite the frivolous nature of Mr. Smith’s lawsuit, after McLetchie Law was engaged, Defendants engaged in good faith settlement negotiations. The undersigned had numerous calls with Ms. Stein and listened to her opinions regarding this matter. Defendants engaged in good faith settlement discussions. (*See attached Declaration of Margaret A. McLetchie*, ¶¶ 4-5.) Mr. Smith suggested a walk-away. (*See Declaration of Margaret A. McLetchie*, ¶ 7; and *see also Exh. 7.*) Because they had incurred significant fees and costs, Defendants indicated that they would resolve the case in exchange for partial reimbursement of fees and costs incurred as of that date—\$20,000.00. (*See Declaration of Margaret A. McLetchie*, ¶¶ 10-11; and *see also Exh. 7.*) Mr. Smith refused this reasonable offer. ((*See Declaration of Margaret A. McLetchie*, ¶ 11; and *see also Exh. 7.*)

IV. LEGAL ARGUMENT

A. The Fees and Costs Sought Are Reasonable and Justified.

The fees and costs requested by Defendants were reasonably incurred in defending this action and are thus compensable under the anti-SLAPP statute, which is designed to protect people from liability for engaging in free speech. The factually intensive nature of the case and Mr. Smith’s vague, vexatious complaint necessitated time-consuming effort on the part of Defendants’ counsel to expeditiously dispose of this matter. Anti-SLAPP deadlines must be met on a relatively short time frame and the stakes are high. In this case, Defendants’ counsel worked hard to ensure Defendants were protected from liability and all the work performed in this case is compensable. As detailed in the Fees Motion, an application of the *Brunzell* factors supports a full award in this case.

Rather than addressing the *Brunzell* factors in a meaningful fashion or making specific arguments, Mr. Smith launches several conclusory and unsupported arguments as to why this Court should reduce the requested fees in this matter. First, without support, he argues that the Special Motion to Dismiss was “unnecessary” because, in his mind, the case was “close to settling” before Defendants retained McLetchie Law. As detailed above, the assertions are factually false and the Motion was necessary for the very purpose it achieved: speedy termination of this lawsuit in Defendants’ favor. Second, Mr. Smith argues that McLetchie Law should be docked pay for their diligence and expertise in anti-SLAPP and First Amendment law. In fact, Defendants’ counsel’s expertise only supports the rates they seek and the reasonableness of the hours. Third, Mr. Smith also argues that because this was a “standard” anti-SLAPP matter,⁹ McLetchie Law should not have worked so hard on it. In fact, the Motion was factually intensive and required significant work. Successful anti-SLAPP motions are not cookie-cutter;¹⁰ researching and supporting legal arguments takes time, as does compiling evidence. Fourth and finally, in contravention of unambiguous authority, Mr. Smith argues that Defendants are only entitled to fees directly related to the Special Motion to Dismiss. That proposition does not square with the letter or the spirit of Nevada’s anti-SLAPP statute.

In short, Mr. Smith’s arguments are unavailing, and this Court should reject each of them. Ironically, while he complains that Defendants’ counsel spends too much time, Mr. Smith does not bother to provide authority, evidence, or any specifics to support his arguments that the fees and costs requested are unreasonable. This Court should grant the Fees Motion in its entirety, and fully compensate Defendants for fees and costs.

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⁹ That Mr. Smith characterizes this matter as capable of being resolved by “standard” anti-SLAPP motion (*see, e.g.*, Opp., p. 3:20; *id.*, p. 7:19) underscores the fact that he—and his counsel—knew or should have known that his Complaint was baseless on its face.

¹⁰ “[M]ost anti-SLAPP motions ... tend to present complex issues.” *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, No. 12-CV-04634-SI, 2015 WL 4932248, at *5 (N.D. Cal. Aug. 18, 2015) (internal citation omitted).

1. Costs

As reflected in the Memorandum of Costs submitted with the Motion, all costs incurred by McLetchie Law in this matter were necessary and therefore compensable under Nev. Rev. Stat. § 41.670(1)(a). Defendants did not contest these costs in their Opposition, and therefore, this Court should construe this non-opposition as an admission that Defendants’ costs are reasonable. *See* EDCR 2.20(e).

While Mr. Smith did submit a Motion to Retax Costs in this matter (on file with this Court), this Court should deny that motion on multiple procedural and substantive grounds. First, it was brought pursuant to Nevada’s general costs statute (NRS Chapter 18) instead of Nevada’s anti-SLAPP statute (NRS Chapter 41), and therefore is inapplicable to the costs in this matter. (*See* Opposition to Motion to Retax Costs, on file with this Court, pp. 3:5 – 4:1.) Even if Chapter 18 applied to Mr. Smith’s Motion to Retax Costs, it was untimely filed. (*Id.*, pp. 4:17 – 5:22.) Finally, even if the Court were to consider the substance of the Motion to Retax Costs, it should still deny it, as Defendants provided ample evidence supporting the necessity and reasonableness of the costs incurred. (*Id.*, pp. 5:25 – 10:10.) Thus, Defendants are entitled to all requested costs in this matter.

2. Filing a Special Motion to Dismiss Was Necessary.

Mr. Smith repeatedly claims that Defendants Special Motion to Dismiss was “unnecessary.” (*See, e.g.* Opp., p. 4:4; *id.*, p. 5:21-23; *id.*, p. 6:20; *id.*, p. 7:25-26.) This argument essentially boils down to sour grapes over Mr. Smith’s inability to silence Defendants on his own terms. Defendants were under no obligation to waive their rights under Nevada’s anti-SLAPP statute so that Mr. Smith could obtain a more favorable result from his baseless suit. Likewise, Defendants were under no obligation to accept Mr. Smith’s offer to “walk away” from this suit. Truth be told, it is Mr. Smith who should have not filed suit in the first place—or cut his losses and accepted the very reasonable resolution Defendants proposed to avoid further expenditures.

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3. McLetchie Law Incurred Fees Because of—Not In Spite Of—Its Experience.¹¹

Mr. Smith argues that because McLetchie Law “prides itself as having substantial experience and knowledge relating to anti-SLAPP matters” (*See, e.g., Opp.*, p. 3:15-16), McLetchie Law and its attorneys were not justified in expending effort in this matter. While it is true that McLetchie law has experience relating to First Amendment law and anti-SLAPP litigation, that experience has underscored that every matter is factually and legally distinct, which in turn requires the dedicated attention of legal professionals. Simply put, a “standard anti-SLAPP motion,” whatever that may be, falls well short of a firm’s duty to zealously advocate for its clients.

While Mr. Smith may expect attorneys to work from memory in defending against a SLAPP,¹² experience has taught Defendants’ counsel that diligent research is essential to prevailing in a dynamic area of law like anti-SLAPP, which is continually being refined by the decisions of Nevada and California courts. Experience has also taught Defendants’ counsel the importance of reviewing the voluminous evidence presented by Defendants—far beyond the contents of the YouTube video and Facebook post forming the basis of Mr. Smith’s Complaint—and incorporating said evidence into briefing to satisfy the anti-SLAPP statute’s requirement that Defendants establish, by a preponderance of the evidence, that the lawsuit was based on Defendants’ good faith communication in direct connection with a matter of public concern.

Apparently, Mr. Smith and his counsel expect this work to be done in a more rapid manner, presumably at the expense of quality. While Mr. Smith and his counsel may believe that quickly cranking out boilerplate, outdated briefs unsupported by law or fact is an

¹¹ As discussed below, an application of the *Brunzell* factors in fact supports an upward adjustment, not a reduction.

¹² For instance, Mr. Smith argued that it was unreasonable for Defendants’ counsel to expend any money on legal research. (*See Plaintiff’s Motion to Retax Costs*, on file with this court, at p. 5:7-18.)

1 acceptable practice, the undersigned’s experienced counsel feels differently—and the results
2 in this case reflect the wisdom of taking an anti-SLAPP motion seriously to protect free
3 speech and avoid the unnecessary expenses of discovery and trial.

4 **4. The Number of Hours Worked Was Reasonable.**

5 Mr. Smith argues that McLetchie Law should have worked fewer hours in advocating
6 for its clients in this matter. (*See, e.g. Opp.*, p. 7:4-9.) Mr. Smith provides no cogent
7 argument—other than his attorney’s naked assertions—to demonstrate that the hours worked
8 in this case were unreasonable. While it may be the policy of Mr. Smith’s firm to expend
9 minimal amounts of time on its clients, it is the policy of McLetchie Law to expend as many
10 hours as necessary to produce work product that results in victory.¹³ This is especially true
11 for dispositive motions such as the Special Motion to Dismiss, which is similar in procedure
12 and purpose to a motion for summary judgment,¹⁴ only on an condensed time frame. This is
13 even more true when the Defendant has made clear his intention to appeal, necessitating extra
14 work to establish a record that is robust enough to survive said appeal.

15 **5. Defendants Are Entitled to All Fees Incurred in Defending this**
16 **Matter.**

17 Mr. Smith repeatedly argues—without any citation to relevant authority— that the
18 Court should only award fees directly connected with the Special Anti-SLAPP Motion to
19 Dismiss. (*See Opp.*, p. 3:23 – 4:3; *id.*, p. 4:8-9; p. 5:57 – 6:1; *id.*, p. 6:22-26; *id.*, pp. 6:28 –
20 7:3; *id.*, pp. 7:20 – 8:5.) This argument wholly ignores the case law—cited by Defendants in
21 the Fees Motion—which unambiguously permits a successful anti-SLAPP defendant to
22 pursue *all* fees and costs incurred in successfully defending against a SLAPP (including post-
23

24 ¹³ As noted by the United States Supreme Court in the context of fee shifting in civil rights
25 litigation, “the most critical factor in determining the reasonableness of a fee award is the
26 degree of success obtained.” *Farrar v. Hobby*, 506 U.S. 103, 114, 113 S. Ct. 566, 574, 121
L. Ed. 2d 494 (1992) (internal citations and punctuation omitted).

27 ¹⁴ “[T]he special motion to dismiss again functions like a summary judgment motion
28 procedurally[.]” *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d 746, 748 (2019).

1 motion fees and fees on appeal), not just those associated with the anti-SLAPP motion itself.
2 (*See Fees Motion*, p. 4:1-14.)

3 Furthermore, an award of all requested fees and costs is necessary to uphold the
4 purpose of Nevada’s anti-SLAPP statute, which is to make a “person who engages in a good
5 faith communication in furtherance of the right to ... free speech in direct connection with
6 an issue of public concern ... *immune from any civil action* for claims based upon the
7 communication.” Nev. Rev. Stat. § 41.650 (emphasis added); *accord Wanland*, 141 Cal.
8 App. 4th at 22 (anti-SLAPP fee shifting provision “is broadly construed so as to effectuate
9 the legislative purpose of reimbursing the prevailing defendant for expenses incurred in
10 extracting herself from a baseless lawsuit”). Limiting an award of fees to only those incurred
11 working on an anti-SLAPP motion itself would eviscerate Nevada’s immunity provision by
12 leaving anti-SLAPP defendants on the hook for myriad standard litigation expenses that are
13 necessary to defend against a SLAPP, but not directly related to researching, drafting and
14 submitting a Special Motion to Dismiss (and subsequent motion for fees). Thus, Defendants
15 are entitled to all requested fees and costs, including those incurred in connection with Mr.
16 Figler and Mr. Ray reflected in the Motion.

17 **B. Rather than a Downward Adjustment, the *Brunzell* Factors Support an**
18 **Upward Adjustment.**

19 As set forth in the Motion, in addition to calculating the lodestar, the Court must
20 also consider the requested amount in light of the factors set forth in *Brunzell v. Golden Gate*
21 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), including the (1) the qualities of the advocates;
22 (2) the character of the work to be done; (3) the work actually performed by counsel; and (4)
23 the result: whether counsel was successful and what benefits were derived. (*See Motion*, p.
24 5:1-11.)

25 In his Opposition, Mr. Smith essentially argues that because the undersigned has
26 extensive experience in First Amendment and anti-SLAPP litigation, Defendants’ fees
27 request should be reduced. (*Opp.*, p. 7:12-19.) The *Brunzell* factors, however, actually weigh
28 in favor of a full award of Defendants’ attorney’s fees and costs, if not an upward adjustment.

1 This is so because Defendants’ counsel are high quality advocates, the character of the work
2 was important, the work actually performed was exemplary, and Defendants received the
3 best possible result: complete dismissal of all of Mr. Smith’s claims.

4 **C. Mr. Smith’s Counsel Should Additionally Be Liable.**

5 As noted in the Motion (at p. 2, n. 1), but unaddressed by Mr. Smith, in addition to
6 awarding fees and costs pursuant to the anti-SLAPP his Court should also hold Mr. Smith’s
7 counsel personally liable for fees and costs under Nev. Rev. Stat. § 7.085(a), which mandates
8 fee shifting if the Court finds that counsel “[f]iled ... a civil action or proceeding in any court
9 in this State and such action or defense is not well-grounded in fact or is not warranted by
10 existing law or by an argument for changing the existing law that is made in good faith.”

11 **D. The Court Should Impose Statutory Damages Against Mr. Smith.**

12 In addition to providing for fee-shifting to prevailing SLAPP defendants, Nevada’s
13 anti-SLAPP statute gives the Court discretion to award a bonus to the prevailing defendants.
14 See Nev. Rev. Stat. § 41.670(1)(b). Such an award is meant to further disincentivize
15 vexatious litigants from filing baseless SLAPPs, such as the Complaint in this matter. Indeed,
16 Mr. Smith’s Complaint was a quintessential SLAPP—so insufficiently pleaded and
17 unsupported by any admissible evidence that it had no chance of prevailing on its “merits.”
18 Mr. Smith—and his counsel—decided to gamble on Defendants’ ability to defend
19 themselves against this baseless suit under Nevada’s anti-SLAPP statute, and lost.

20 Mr. Smith’s bad faith in this matter should not go unpunished by this Court. Mr.
21 Smith’s inapposite attempts to relitigate the underlying dismissal of his suit notwithstanding,
22 he had absolutely no chance of prevailing on his lawsuit based on his Complaint and the
23 scant evidence proffered in his Opposition to the Anti-SLAPP Motion. Nothing in Nevada’s
24 anti-SLAPP statute limits this Court’s discretion to award a bonus of \$10,000.00 to each
25 Defendant in this matter. Doing so in this instance—and holding Mr. Smith’s counsel liable
26 under Nev. Rev. Stat. § 7.085(a)—is necessary to deter future SLAPP litigation. Indeed, as
27 demonstrated below, this is not the first time Mr. Smith’s counsel has attempted to silence
28 critics on behalf of a wealthy client and lost under Nevada’s anti-SLAPP statute. While

attorney’s fees and costs were awarded in that previous case, it was clearly not enough to deter Mr. Smith’s counsel from trying to bully Defendants into silence in this matter. Thus, despite Mr. Smith’s unsupported claims of poverty and hardship,¹⁵ this Court should award \$10,000.00 to each Defendant in this matter.

1. This Court Should Not Reexamine the Underlying Special Motion to Dismiss.

Mr. Smith argues, without any citation to the record, that it “was proven through this matter that information posted by Defendants was admittedly false” and that therefore, he “had good cause and reason to file his Complaint against Defendant [sic].” (Opp., p. 8:22-25.) To that end, Mr. Smith avers that he “remains steadfast that the Anti-SLAPP Motion was improper and this case should not have been dismissed, as there is clear convincing evidence that false information was posted by Defendants.” (*Id*, p. 8:25-27.)

Mr. Smith’s attempt to relitigate the underlying dismissal of his lawsuit is not properly before this Court. Mr. Smith had ample opportunity to provide evidence to oppose the mountains of evidence proffered by Defendants in support of their Special Motion to Dismiss. He chose only to submit a self-serving declaration—arguably inadmissible for the purposes it was submitted—to support his Opposition.¹⁶ Even if, *arguendo*, Defendants posted “false information” about Mr. Smith, this does not make the communications at issue anything other than good faith communications in direct connection with an issue of public

¹⁵ This Court could assuage any alleged hardship on Mr. Smith by holding his counsel—who no doubt bears some responsibility for advising her client to engage in a SLAPP suit—liable under Nev. Rev. Stat. § 7.085(a).

¹⁶ As noted by the Court at the October 3, 2019 hearing in this matter, Mr. Smith was overwhelmingly silent in his declaration regarding the veracity of Defendants’ statements: “And as to those items that were truthfully communicated, Mr. Smith just avoids dealing with them head on, he chooses to, since apparently he can’t deny under oath they took place, he just doesn’t mention those.” (Transcript of October 3, 2019 Hearing, on file with this Court, p. 15:15-19.) That Mr. Smith could not deny the truthfulness of Defendants’ communications in light of the evidence submitted by Defendants further underscores the baselessness of this suit.

1 concern under Nevada’s anti-SLAPP statute, nor does it demonstrate that Mr. Smith has
2 established any probability of prevailing on his causes of action. Regardless, any arguments
3 pertaining to whether this Court should have granted Defendants’ Special Motion to Dismiss
4 based on the evidence before it should be saved for Nevada’s appellate courts, should Mr.
5 Smith exercise his right to an appeal.

6 **2. This Court May Award \$10,000.00 to Each Defendant.**

7 Mr. Smith argues that this Court cannot award more than \$10,000.00 total to
8 Defendants under Nev. Rev. Stat. § 41.670 because it contemplates an award of “up to
9 \$10,000.00 to the person against whom the action was brought” and “[a]ll causes of action in
10 Smith’s Complaint were brought against both Defendants collectively and at all times relevant
11 hereto Defendants have retained counsel together.” (Opp., p. 8:13-16.) As per usual, Mr. Smith
12 cannot cite to any case law to support this proposition.

13 The mere fact that Nev. Rev. Stat. § 41.670 contemplates that a single person may be the
14 target of a SLAPP (and therefore eligible for a statutory award) should not be read as a mandatory
15 cap on said award when multiple defendants are named. Doing so would incentivize a SLAPP
16 plaintiff to name as many defendants as possible in a baseless suit—not merely to censor as many
17 critics as possible, but to reduce the potential discretionary award available to defendants.
18 Because Nevada’s anti-SLAPP statute should be construed liberally to protect speakers’ First
19 Amendment rights, this Court should construe Nev. Rev. Stat. § 41.670 as permitting the Court
20 to award \$10,000.00 per defendant—*i.e.* per each person against whom the action was brought—
21 rather than \$10,000.00 total.

22 **3. This Case Is a Paradigmatic SLAPP Which Should Be Deterred.**

23 Mr. Smith argues that his “Complaint was not filed in bad faith ... and there is no
24 need to deter future SLAPP suits.” (Opp., p. 8:20-21.) To the contrary, there are ample indicia
25 of bad faith on the part of Mr. Smith and his counsel. Mr. Smith filed a lawsuit for defamation
26 based on Defendants’ constitutionally-protected criticism of his conduct despite having
27 absolutely no evidence to support his causes of action. Indeed, his claim was essentially
28 doomed *ab initio*: as a public figure, Mr. Smith was required to demonstrate actual malice to

1 prevail on his defamation claim, yet provided absolutely nothing beyond his own naked
2 assertion (and his counsel's misunderstanding of the "actual malice" standard) to support it.

3 While the imposition of fees and costs may be sufficient to dissuade Mr. Smith from
4 attempting to silence future online critics through baseless litigation, other future SLAPP
5 plaintiffs may not be. Indeed, Mr. Smith's attorneys have failed to learn that Nevada courts
6 will not countenance their wealthy clients' attempts to extort and silence critics. For instance,
7 in 2015, Ms. Stein and her firm represented multi-millionaire Dan Bilzerian as the plaintiff
8 in a lawsuit against TMZ that ultimately resulted in dismissal and imposition of attorney's
9 fees and costs under Nevada's anti-SLAPP statute. (See **Exh. 10** (Order in Case No. A-15-
10 722801-C Dismissing Bilzerian's Suit Under Nevada's Anti-SLAPP Statute); **Exh. 11**
11 (Order in Case No. A-15-722801-C granting in part defendant TMZ's motion for fees and
12 costs).) Notably, the Court declined to impose a discretionary award against Mr. Bilzerian.
13 (**Exh. 11**, ¶ 9.) It appears that Mr. Smith's counsel learned the wrong lesson from that
14 matter—rather than ceasing their practice of advising clients to file baseless suits that are
15 clearly subject to Nevada's anti-SLAPP statute, they simply advised their new client, Mr.
16 Smith, to attack critics who lack the financial means of an international media outlet like
17 TMZ. Clearly, the mere imposition of (reduced) attorney's fees in the *Bilzerian* matter was
18 not enough to deter Mr. Smith's counsel from launching this frivolous suit. Thus, this Court
19 should impose a discretionary award of \$20,000.00 to send the message to SLAPP
20 plaintiffs—and their attorneys¹⁷—that there are severe consequences for attempting to use
21 their deep pockets to squelch critics' First Amendment rights.

22 ///

23 ///

24 ///

25 ¹⁷ As argued in the Motion, and not refuted in the Opposition, this Court is authorized to hold
26 Mr. Smith's counsel liable for "additional costs, expenses and attorney's fees reasonably
27 incurred" due to, *inter alia*, filing a civil action that "is not well-grounded in fact or is not
28 warranted by existing law or by an argument for changing the existing law that is made in
good faith." Nev. Rev. Stat. § 7.085(1).

1 **4. There Is No Evidence that Imposition of \$20,000.00 In Damages**
2 **Would Cause Any Hardship to Mr. Smith.**

3 Mr. Smith repeatedly claims that imposition of \$20,000.00 in discretionary
4 damages would cause him extreme hardship. (*See, e.g.*, Opp., p. 4:12; *id.*, p. 8:19; *id.*, p. 9:2.)
5 However, as usual in this matter, Mr. Smith does not provide any evidence—not even a
6 declaration—to support this claim. Mr. Smith apparently has not only the means to retain a
7 reputable firm such as Holley Driggs Walch Fine Puzey Stein & Thompson to launch and
8 litigate a vexatious suit, but also the means to appeal this Court’s dismissal of his suit—
9 presumably not *pro se*. Thus, this Court should refuse to consider Mr. Smith’s unproven cries
10 of hardship in awarding Defendants \$10,000.00 each. Moreover, Mr. Smith should have
11 considered the financial issues and the risk of this suit before filing his complaint, not after
12 losing an anti-SLAPP motion.

13 **V. CONCLUSION**

14 Mr. Smith could have avoided liability for Defendants’ fees, costs and damages under
15 Nevada’s anti-SLAPP statute by not filing a baseless lawsuit intended to silence and extort
16 Defendants. He could have accepted Defendants’ offer to settle this case for fees incurred
17 before filing the Special Motion to Dismiss. He even could have moved this Court to
18 voluntarily dismiss the claim before Defendants filed their Special Motion to Dismiss. He
19 did not, and should now face the consequences of attempting to use this Court as his own
20 personal enforcer to keep his critics silent. For the foregoing reasons, this Court should grant
21 Defendants’ Motion for Fees, Costs and Discretionary Award in its entirety and should order
22 as follows:

- 23 • Defendants are entitled to \$66,615.00 for fees and \$2,387.53 for costs
24 pursuant to Nev. Rev. Stat. § 41.670(1)(a);
25 • Mr. Smith to pay a \$10,000.00 statutory award to each defendant pursuant to
26 Nev. Rev. Stat. § 41.670(1)(b); and

27 ///

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- Mr. Smith's counsel should also be held liable for fees, costs, and the statutory award under Nev. Rev. Stat. § 7.085(a).

Respectfully submitted this 7th day of November, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHIE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

Email: maggie@nvlitigation.com

Counsel for Defendants Katy Zilverberg and Victoria Eagan

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 7th day of November, 2019, I did cause a true copy of the foregoing REPLY IN SUPPORT OF MOTION FOR FEES AND COSTS AND MOTION FOR STATUTORY AWARD; AND SUPPLEMENT TO MOTION FOR FEES AND COSTS 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/ Pharan Burchfield

EMPLOYEE of McLetchie Law

INDEX OF EXHIBITS

Exh.	Description
n/a	Declaration of Katy Zilverberg
n/a	Declaration of Victoria Egan
n/a	Declaration of Margaret A. McLetchie
5	September 6, 2019 Email Communications
6	September 10, 2019 Email Communications
7	September 13, 2019 Email Communications
8	McLetchie Law Billing By Date
9	McLetchie Law Billing By User
10	Order Granting Special Motion to Dismiss in Case No. A-15-722801-C
11	Order Granting in Part Motion for Costs, Attorneys' Fees, and Damages in Case No. A-15-722801-C

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MARGARET A. MCLETTCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLETTCHIE LAW
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101
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,
Plaintiff,
vs.

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

DECLARATION

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

**DECLARATION OF KATY ZILVERBERG IN SUPPORT OF MOTION FOR
FEES, COSTS AND STATUTORY AWARD**

I, KATY ZILVERBERG, hereby declare as follows:

1. I make this supplemental declaration in support of my Motion for Fees, Costs and Statutory Award in the above-captioned matter, to respond to some of Mr. Smith's factual allegations in his Opposition to the Motion for Fees, Costs and Statutory Award. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.

2. In his Opposition to the Motion for Fees, Costs, and Statutory Award, Mr. Smith claims that this matter was "imminently close to resolving all issues and settling this matter without Court intervention" before Ms. Eagan and I retained McLetchie Law. This is not true.

1 3. On or about July 10, 2019, I was served with the Complaint in this matter.

2 4. On or about July 11, 2019, Mr. Smith offered to settle the matter in
3 exchange for me and Ms. Eagan paying him \$10,000 and stipulating to a retraction.

4 5. I rejected this offer, as I did not have the financial means to pay \$10,000 to
5 Mr. Smith to settle this matter, and did not believe I should have to do so.

6 6. Furthermore, I rejected the offer because I was unwilling to capitulate to
7 Mr. Smith's bullying by permanently waiving my First Amendment right to warn the
8 thrifting community about Mr. Smith's conduct.

9 7. On advice of prior counsel, on or about July 16, 2019, I entered into a Joint
10 Stipulated Order for a Preliminary Injunction enjoining me from speaking about Mr. Smith
11 to third parties.

12 8. No further settlement negotiations were performed or contemplated in this
13 matter until McLetchie Law was retained in this matter.

14 9. On September 10, 2019, Mr. Smith relayed a settlement offer through
15 counsel. That offer was for both parties to "walk away" from the matter—*i.e.* for the parties
16 to dissolve the Joint Stipulated Order for a Preliminary Injunction, for Mr. Smith to
17 voluntarily dismiss his lawsuit, and for Defendants to promise not to pursue any claims
18 against Mr. Smith related to this matter.

19 10. I rejected this offer because Ms. Eagan and I had already expended
20 significant resources in defending ourselves against Mr. Smith's lawsuit, which I believe to
21 be a bad faith attempt to bully me into silence.

22 11. In good faith, on or about September 11, 2019 I authorized a settlement
23 counteroffer in which Mr. Smith would pay both Ms. Eagan and me a combined total of
24 \$20,000 to partially compensate us for the time and financial resources expended by me, Ms.
25 Eagan, and our attorneys in this matter. Mr. Smith rejected this offer and no further demand
26 was made.

27 I declare under penalty of perjury under the laws of the State of Nevada that the
28 foregoing is true and correct to the best of my knowledge and belief.

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2 Dated this 7th day of November, 2019 in Las Vegas, NV.
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6 Katy Zilverberg
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MARGARET A. MCLETTCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLETTCHIE LAW
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101
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,

Plaintiff,

vs.

Case No.: A-19-798171-C

Dept. No.: XXIV

DECLARATION

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

Defendants.

**DECLARATION OF VICTORIA EAGAN IN SUPPORT OF MOTION FOR FEES,
COSTS AND STATUTORY AWARD**

I, VICTORIA EAGAN, hereby declare as follows:

1. I make this declaration in support of my Motion for Fees, Costs and Statutory Award in the above-captioned matter, to respond to some of Mr. Smith's factual allegations in his Opposition to the Motion for Fees, Costs and Statutory Award. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.

2. In his Opposition to the Motion for Fees, Costs, and Statutory Award, Mr. Smith claims that this matter was "imminently close to resolving all issues and settling this matter without Court intervention" before Ms. Zilverberg and I retained McLettchie Law. This is not true.

1 3. On or about July 10, 2019, I was served with the Complaint in this matter.

2 4. On or about July 11, 2019, Mr. Smith offered to settle the matter in
3 exchange for me and Ms. Zilverberg paying him \$10,000 and stipulating to a retraction.

4 5. I rejected this offer, as I did not have the financial means to pay \$10,000 to
5 Mr. Smith to settle this matter, and did not believe I should have to do so.

6 6. Furthermore, I rejected the offer because I was unwilling to capitulate to
7 Mr. Smith's bullying by permanently waiving my First Amendment right to warn the
8 thrifting community about Mr. Smith's conduct.

9 7. On advice of prior counsel, on or about July 16, 2019, I entered into a Joint
10 Stipulated Order for a Preliminary Injunction enjoining me from speaking about Mr. Smith
11 to third parties.

12 8. No further settlement negotiations were performed or contemplated in this
13 matter until McLetchie Law was retained in this matter.

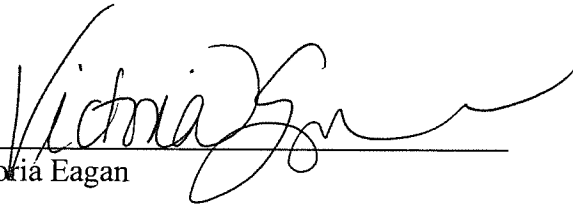
14 9. On September 10, 2019, Mr. Smith relayed a settlement offer through
15 counsel. That offer was for both parties to "walk away" from the matter—*i. e.* for the parties
16 to dissolve the Joint Stipulated Order for a Preliminary Injunction, for Mr. Smith to
17 voluntarily dismiss his lawsuit, and for Defendants to promise not to pursue any claims
18 against Mr. Smith related to this matter.

19 10. I rejected this offer because Ms. Zilverberg and I had already expended
20 significant resources in defending ourselves against Mr. Smith's lawsuit, which I believe to
21 be a bad faith attempt to bully me into silence.

22 11. In good faith, on or about September 11, 2019 I authorized a settlement
23 counteroffer in which Mr. Smith would pay both Ms. Zilverberg and me a combined total of
24 \$20,000 to partially compensate us for the time and financial resources expended by me, Ms.
25 Zilverberg, and our attorneys in this matter. Mr. Smith rejected this offer and no further
26 demand was made.

27 I declare under penalty of perjury under the laws of the State of Nevada that the
28 foregoing is true and correct to the best of my knowledge and belief.

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2 Dated this 7th day of November, 2019 in Las Vegas, NV.
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Victoria Eagan

MARGARET A. MCLETTCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLETTCHIE LAW
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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.

DECLARATION

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

Defendants.

**SUPPLEMENTAL DECLARATION OF MARGARET A. MCLETTCHIE IN
SUPPORT OF MOTION FOR FEES, COSTS AND STATUTORY AWARD**

I, MARGARET A. MCLETTCHIE, hereby declare as follows:

1. I make this supplemental declaration in support of the Motion for Fees, Costs and Statutory Award in the above-captioned matter, and to respond to some of Mr. Smith's factual allegations in his Opposition to the Motion for Fees, Costs and Statutory Award. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.

2. I am an attorney duly licensed to practice law in Nevada.

3. My firm represents Defendants Katy Zilverberg and Victoria Eagan in this matter.

///

4. While I had a pending statutory deadline, I made extensive time to communicate with Ms. Stein regarding this matter and her opinions about the case, both via email and phone. A true and correct copy of some of the pertinent email correspondence is attached as Exhibit 5.

5. Defendants attempted to resolve this matter in good faith.

6. On September 10, 2019, Ms. Stein emailed me to communicate a “one-time settlement offer.” This email, in which Ms. Stein accused me of not wanting “to listen” to her demands, also indicated Mr. Smith’s intention to “take this matter all the way, including an appeal, if needed.” A true and correct copy attached as Exhibit 6.

7. Ms. Stein’s proposed settlement offer was a “walk away”—*i.e.* for the parties to dissolve the Joint Stipulated Order for a Preliminary Injunction, for Mr. Smith to voluntarily dismiss his lawsuit, and for Defendants to promise not to pursue any claims against Mr. Smith related to this matter. A true and correct copy attached as Exhibit 7.

8. At this point, my firm and I had already expended significant resources in researching, preparing, and drafting the Special Motion to Dismiss.

9. Defendants rejected Mr. Smith’s settlement proposal, and proposed a counteroffer: the same “walk-away” deal proposed before, except that Mr. Smith would pay \$20,000.00 to Defendants to partially compensate them for having to defend against his lawsuit.

10. As Defendants had already incurred in excess of \$20,000.00 in fees and costs at the time this counteroffer was proposed, I believed this to be a reasonable offer which would reduce the potential costs and expenses of litigation for all parties involved.

11. I exercised appropriate billing judgment and structured work on this case to maximize efficiencies, and the additional hours I seek compensation for are neither duplicative, unnecessary nor excessive.

12. To keep billing as low as possible, I utilized less experienced attorneys and paraprofessionals to perform tasks such as research and drafting to assure that attorneys with higher billing rates were not billing for tasks that lower billers could perform.

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13. Some potentially duplicative or unnecessary time has not been included.

14. Additionally, in the spirit of compromise and good faith, I have made a number of reductions to my fees.

15. In all these ways, I charged a reasonable rate for the attorneys' time.

16. Exhibit 8 is a true and correct copy of the billing in this matter organized by biller.

17. Exhibit 9 is a true and correct copy of the billing in this matter organized by date.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED on this 7th day of November, 2019 in Las Vegas, Nevada.

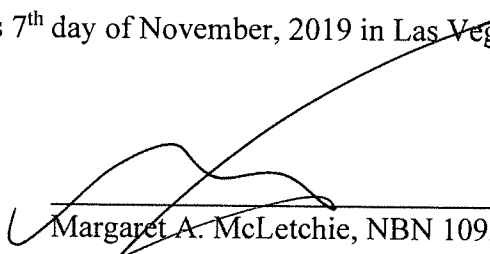

Margaret A. McLetchie, NBN 10931

EXHIBIT 5

Leo Wolpert

From: Maggie
Sent: Friday, September 6, 2019 11:59 AM
To: Kimberly P. Stein
Cc: Pharan; Lacey; Leo Wolpert; Andi Hughes; Mikkaela Vellis
Subject: RE: Smith v. Zilverberg et al

Kimberly:

Thank you for the call today. It was nice to meet you by phone and I appreciate the opportunity to discuss the matter with you. A few notes:

1. **Anti-SLAPP motion:** As I let you know, in light of your previous refusal to extend the response deadline past today (see the chain below), we have today as a fixed deadline to get out anti-SLAPP motion on file so I could not agree to refraining from filing the planned motion. I will let you know if my position changes after I speak with my clients.
2. **Stipulated preliminary injunction:** I will, however, hold off on any motion to amend or set aside the preliminary injunction order until we can speak Tuesday (tentatively set time for 2 pm). When we speak on Tuesday, you will let me know what your position is regarding the video. If we are unable to agree to a joint modification, Defendants will need to seek modification on an OST due to the inherent First Amendment problems.
3. **Possible case resolution:** We discussed whether the case could be resolved; my clients and I are always open to discuss resolution. You will let me know your thoughts after you speak to your client.

Maggie McLetchie



701 E. Bridger Ave., Suite 520, Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

IMPORTANT NOTICE: Privileged and/or confidential information, including attorney-client communication and/or attorney work product may be contained in this message. This message is intended only for the individual or individuals to whom it is directed. If you are not an intended recipient of this message (or responsible for delivery of this message to such person), any dissemination, distribution or copying of this communication is strictly prohibited and may be a crime. No confidentiality or privilege is waived or lost by any misdirection of this message. If you received this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender by return e-mail.

From: Maggie

Sent: Friday, September 6, 2019 9:46 AM

To: 'Kimberly P. Stein' <kstein@nevadafirm.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; 'Andi Hughes' <ahughes@nevadafirm.com>; 'Mikkaela Vellis' <mvellis@nevadafirm.com>

Subject: RE: Smith v. Zilverberg et al

Kimberly: To move this issue forward, we can tentatively plan to speak at 2:15 (after your 1 pm) with the caveat that, with trying to get this on file, may have to modify time? Let me know if that works for you.

Best,

Maggie

Maggie McLetchie



701 E. Bridger Ave., Suite 520, Las Vegas, NV 89101

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From: Maggie
Sent: Friday, September 6, 2019 8:49 AM
To: 'Kimberly P. Stein' <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Thanks for the quick response.

Your client is a self-professed public figure (a celebrity, even) and has sued others in his business community to squelch criticism. The complaint is exactly what the anti-SLAPP statute was designed to protect against: the more powerful using the courts to silence critics. We are proceeding with the anti-SLAPP motion, which you will of course have the opportunity to respond to.

Thanks for the agreement that we don't need to seek an extension of the deadline to file a standard motion dismiss, etc.

Please provide me with your evidence that my clients have breached the injunction and I will be sure to address it. I believe it is your client who has breached it, and who continues to harass my clients, which I will detail. An injunction restraining speech is presumptively unconstitutional. That seems like good cause to me. Would be happy to discuss possibility of narrowing it rather than just seeking that the injunction be set aside. Let's discuss early next week, after my motion is on file (which will give you a better sense of our positions in this case).

Maggie

Maggie McLetchie



701 E. Bridger Ave., Suite 520, Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

IMPORTANT NOTICE: Privileged and/or confidential information, including attorney-client communication and/or attorney work product may be contained in this message. This message is intended only for the individual or individuals to whom it is directed. If you are not an intended recipient of this message (or responsible for delivery of this message to such person), any dissemination, distribution or copying of this communication is strictly prohibited and may be a crime. No confidentiality or privilege is waived or lost by any misdirection of this message. If you received this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender by return e-mail.

From: Kimberly P. Stein <kstein@nevadafirm.com>
Sent: Friday, September 6, 2019 8:37 AM
To: Maggie <maggie@nvlitigation.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: Re: Smith v. Zilverberg et al

I am out of the office this morning, but we should discuss as I am unclear here how you think this is anti-slapp.

The three factor test provides that communications are protected speech that: "(1) Relate to an issue of public interest, (2) are made in a public forum, and (3) are either true or made without knowledge of their falsity."

A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. See Piping Rock Partners, Inc. v. David Lerner Assocs., Inc., 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013).

But if you insist on filing, it would count as a responsive pleading.

On the stipulation, as you know switching counsel does not allow for good reason here. Your clients are bound. There are many cases to this effect. Your clients in fact have breached the injunction several times and prior counsel and I spoke in this. I see no basis and need your reasoning as this was done to avoid litigation. So you would need to file a motion and with a good basis. But I would first speak to prior counsel. We will seek sanctions. I would also speak to your clients.

I am available after 12, but gave a meeting from 1-2.

Sent from my iPhone

On Sep 6, 2019, at 8:21 AM, Maggie <maggie@nvlitigation.com> wrote:

Good morning, Kimberly.

In reviewing the matter, we have determined that the appropriate course of action in this matter for our clients is to file an anti-SLAPP motion to dismiss, which we will do today. Please let us know if you will agree to extend the date for any other response to the complaint until after the anti-SLAPP motion is resolved (it's implicit in the anti-SLAPP statute) or if we need to address that issue with the Court.

Further, we intend to seek dissolution of the preliminary injunction entered into in the case. Since it was stipulated, please let me know if it is your position that I need to file a motion or if you will agree to its dissolution.

Thanks.

Maggie McLetchie

<image001.png>

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From: Kimberly P. Stein <kstein@nevadafirm.com>
Sent: Monday, August 19, 2019 3:43 PM
To: Maggie <maggie@nvlitigation.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Yes, 9/6 is fine

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(702) 791-1912 (fax)
(702) 271-1050 (cell)
kstein@nevadafirm.com

From: Maggie <maggie@nvlitigation.com>
Sent: Monday, August 19, 2019 3:14 PM
To: Kimberly P. Stein <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Thanks for the quick response to my email (I told the receptionist I'd email rather than leave a message).

I am out of town starting this Friday through 9/3. May I have until 9/6, which is just a few days after 9/4, for the response?

Maggie McLetchie
<[image001.png](#)>
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From: Kimberly P. Stein <kstein@nevadafirm.com>
Sent: Monday, August 19, 2019 3:07 PM
To: Maggie <maggie@nvlitigation.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>

Subject: RE: Smith v. Zilverberg et al

Thanks Maggie,
I did not get a message?

But lease note the 21st was a lengthy extension for Mr. ray. I am not authorized to give you a 5 week extension, which is your request, and unreasonable at this point. I can give you two weeks from the 21st, until September 4th.

I am free to discuss if you feel necessary, otherwise, will expect an answer on the 4th of September.

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(702) 791-1912 (fax)
(702) 271-1050 (cell)
kstein@nevadafirm.com

From: Maggie <maggie@nvlitigation.com>

Sent: Monday, August 19, 2019 2:48 PM

To: Kimberly P. Stein <kstein@nevadafirm.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>

Subject: Smith v. Zilverberg et al

Hi, Kimberly –

We are about to substitute in for Mr. Ray in the *Smith v. Zilverberg* case. I just tried to reach you by phone to introduce myself. Please give me a call when you get a chance. One item I would like to discuss is the current deadline to respond to the complaint (which I believe is 8/21). I would like until 9/23 to give me time to get up to speed in the case.

Thank you, and I look forward to speaking with you soon.

Maggie

Maggie McLetchie
<image001.png>

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EXHIBIT 6

Leo Wolpert

From: Kimberly P. Stein <kstein@nevadafirm.com>
Sent: Tuesday, September 10, 2019 2:42 PM
To: Maggie
Cc: Pharan; Lacey; Leo Wolpert; Andi Hughes; Mikkaela Vellis
Subject: RE: Smith v. Zilverberg et al

FOR SETTLEMENT PURPOSES ONLY

Ms. Smith-

As you apparently do not want to listen. Again, we are making a one-time settlement offer, good until tomorrow at 5 pm only. Otherwise, we will go forward and oppose your anti-slap motion and will not agree to modify the current Joint Stipulated Injunction order by Judge Johnson. As again, this was agreed to as a non-disparagement agreement, not a first amendment issue, which are enforceable agreements, and you have provided no good cause to undue a prior agreement of your clients. With that, again, the settlement offer includes releasing that order. But again, our offer in no way is an admission of guilt in any way or a belief in any weakness in our case, and is made solely due to costs of litigation. However, we are prepared to take this matter all the way, including an appeal, if needed.

I hope you will bring this offer to your client, and look forward to hearing from you. We would draft the settlement agreement, which again would be a walk away on both sides (as your client's previously threatened counterclaims) and would only be an agreement not to commit defamation per se, and the elements discussed (which would include keeping the facebook post down and not reposting).

Let me know if you require any further clarification.

Have a great day.

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(702) 271-1050 (cell)
kstein@nevadafirm.com

From: Kimberly P. Stein
Sent: Tuesday, September 10, 2019 2:02 PM
To: Maggie <maggie@nvlitigation.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

I was just calling you, as planned 2, I am here, so call me after your other call.

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kstein@nevadafirm.com

From: Maggie <maggie@nvlitigation.com>
Sent: Tuesday, September 10, 2019 2:01 PM
To: Kimberly P. Stein <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Kimberly: I haven't heard from you. I have to get on another call right now for a few minutes but will try you after that.

Maggie McLetchie



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From: Maggie
Sent: Friday, September 6, 2019 11:59 AM
To: 'Kimberly P. Stein' <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; 'Andi Hughes' <ahughes@nevadafirm.com>; 'Mikkaela Vellis' <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Kimberly:

Thank you for the call today. It was nice to meet you by phone and I appreciate the opportunity to discuss the matter with you. A few notes:

1. **Anti-SLAPP motion:** As I let you know, in light of your previous refusal to extend the response deadline past today (see the chain below), we have today as a fixed deadline to get out anti-SLAPP motion on file so I could not agree to refraining from filing the planned motion. I will let you know if my position changes after I speak with my clients.

EXHIBIT 7

Leo Wolpert

From: Kimberly P. Stein <kstein@nevadafirm.com>
Sent: Friday, September 13, 2019 12:29 PM
To: Maggie
Cc: Pharan; Lacey; Leo Wolpert; Andi Hughes; Mikkaela Vellis
Subject: RE: Smith v. Zilverberg et al
Attachments: Notice of Hearing re Special Motion to Dismiss.pdf

FOR SETTLEMENT PURPOSES ONLY

Maggie,

As I stated the other day, my client has no intention of paying your client, as he is the one who has been harmed.

I am also surprised, as I spoke with you prior to filing your Anti-SLAPP Motion and attempted to settle this matter, but you insisted on filing your motion. Moreover, a review of your motion shows it is one you have used many times, so we are unclear where you get \$20,000.

I am also open to settling at a different point in time. With that, I also realized the hearing is set for October 3rd. Unfortunately, I am out of the town on business on that day. While I may be able to get one of my partners to cover, my client and I would prefer I be at the hearing. As such, I had my assistant contact the department. Unfortunately the Clerk advised that the only dates available are: October 17 or October 29. I am also out of town on the 29th, but can do the 17th. However, this also requires a stipulation to say the parties agree to waive entitlement to have the matter heard within 20 days (yet I believe they calculated the 20 days incorrectly). In any event, I hope you can agree to the 17th. Let me know and I will send over a stipulation.

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kstein@nevadafirm.com

From: Maggie <maggie@nvlitigation.com>
Sent: Friday, September 13, 2019 11:22 AM
To: Kimberly P. Stein <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

Kimberly:

Our counter = the same terms you offered **except** your client pays our clients \$20,000 to compensate her for fees and costs expended in defending against this SLAPP. We don't think this matter should ever should have gone to court. My clients have had to have me do extensive work to defend them (and also paid fees to prior counsel).

Offer is open until Wednesday at 5 pm.

Have a good weekend. I am around Monday and Tuesday should you wish to discuss this case and possible resolution further. We can also of course revisit it after Judge Crockett rules on the ant-SLAPP motion to dismiss. And, should either side appeal that ruling, we will also have the Nevada Supreme Court's mediation process open to us.

Maggie

Maggie McLetchie

MCLECHIE LAW

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From: Kimberly P. Stein <kstein@nevadafirm.com>

Sent: Wednesday, September 11, 2019 5:43 PM

To: Maggie <maggie@nvlitigation.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>;

Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>

Subject: Re: Smith v. Silverberg et al

Hope all is okay.

On a counter, not sure what else there is, as long as not talking money.

With that, I am available tomorrow afternoon until 4 pm, then have to leave for a client meeting.

Sent from my iPhone

On Sep 11, 2019, at 5:35 PM, Work <maggie@nvlitigation.com> wrote:

Kimberly: I had to go to the doctor and have an all-day settlement conference in federal court tomorrow. My clients and I will be making a counter-offer, and I will be in touch tomorrow as soon as I can. How is your schedule in the afternoon?

Maggie

Sent from my iPhone

On Sep 10, 2019, at 4:57 PM, Kimberly P. Stein <kstein@nevadafirm.com> wrote:

Agreed on timeliness issue on motion. And again, we can be more specific in the settlement agreement, but I actually thought you were opposed. But again, agreements can be worked out. The point is to avoid either party marching into Court, if we settle.

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(702) 791-1912 (fax)
(702) 271-1050 (cell)
kstein@nevadafirm.com

From: Maggie <maggie@nvlitigation.com>
Sent: Tuesday, September 10, 2019 3:43 PM
To: Kimberly P. Stein <kstein@nevadafirm.com>
Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>; Mikkaela Vellis <mvellis@nevadafirm.com>
Subject: RE: Smith v. Zilverberg et al

- 1) Thanks for the clarification.
- 2) Yes, the award in addition to fees and costs is discretionary (while fees and costs to the prevailing party are mandatory). However, the amount is \$10,000 (each) not \$1,000.00.
- 3) Yes, understood re rights to appeal.
- 4) You indicated that my motion had an estimated 50/50 shot when we spoke; I certainly don't think it's vexatious.
- 5) I spent almost 40 minutes talking with you last week (when you called without a meeting time) and spoke to you again today. You did most of the talking during both calls. Am always willing to spend the time to discuss the case with you if we can be productive with our time and if I am also able to be heard.
- 6) Again, please do not take my disagreement with you regarding legal issues as "talking down to you." I am concerned about moving forward with settlement if you take the position that speech such as calling someone a bully is defamatory. I expressed my point of view on that point. I do think the law is with me. No personal insult intended.
- 7) To ensure that we don't settle and just end up back in court, I had asked you when we spoke last week for specifics of the actual statements by my client that you consider defamation per se. You haven't provided specifics but did indicate today that in the video, Ms. Zilverberg stated that your client actually caused someone to commit suicide. Here is what was actually said:

"I know there's been a couple people who were pushed to the point where they felt like maybe it was the best thing they could do was just kill themselves."	YT Video (26:54)
---	---------------------

Ideally, I would like to be sure we are on the same page about what is really at issue in this case if we litigate and, if we settle, my clients will want some assurances that you and your client won't be marching into court over non-actionable speech.

- 8) I have conferred with my clients and will get back to you as soon as possible. **In the interim, to avoid incurring fees and furthering possible speedy resolution, we will refrain from filing a motion to set aside the stipulated injunction if you will agree that you will not oppose such a motion based on timeliness grounds.**

Maggie McLetchie

<image001.png>

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From: Kimberly P. Stein <kstein@nevadafirm.com>

Sent: Tuesday, September 10, 2019 3:19 PM

To: Maggie <maggie@nvlitigation.com>

Cc: Pharan <pharan@nvlitigation.com>; Lacey <lacey@NVLITIGATION.COM>; Leo

Wolpert <Leo@NVLITIGATION.COM>; Andi Hughes <ahughes@nevadafirm.com>;

Mikkaela Vellis <mvellis@nevadafirm.com>

Subject: RE: Smith v. Zilverberg et al

Agreed

- 1) a walk away on both sides
- 2) mutual agreement not to commit defamation per se
- 3) Vicky would not repost the FB post

To add, we would dismiss the matter, and release the current injunction, which also releases the respective bonds.

To advise you as well, if you are successful you can get up to \$1,000, that is not a guaranteed number. Moreover, Pursuant to NRS 41.670 (2), if the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion. And again, as you are aware these motions can go either way, and we would have the right to appeal (and the Supreme Court has been favorable to our position).

Regrading name calling, I do not believe I was doing that. But also would say talking t=won to me is also not constructive. But also it does not appear you want to spend the time to truly discuss this matter. However, we are trying to do so. Prior counsel and I spoke at length in this matter with no issue. Let's move forward. Again, I hope we can represent our clients well.

EXHIBIT 8

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/17/19	Alina Shell	Per Ms. McLetchie's request, conduct research regarding legislative history of SB 286, the bill which added the \$10K award to anti-SLAPP statute.	0.4	\$375.00	\$150.00	0%	\$-	\$150.00
10/17/19	Alina Shell	Assist with finalization of brief. Review and edit draft declaration for Ms. McLetchie and the motion for attorney's fees. Review exhibits for accuracy.	1.1	\$375.00	\$412.50	0%	\$-	\$412.50
10/17/19	Leo Wolpert	Confer with Ms. McLetchie regarding brief; draft and edit and proofread remainder of motion for fees.	4.2	\$225.00	\$945.00	0%	\$-	\$945.00
10/17/19	Margaret McLetchie	Review transcript. Emails with clients.	0.4	\$550.00	\$220.00	20%	\$44.00	\$176.00
10/20/19	Leo Wolpert	Further edits to order granting anti-SLAPP motion to dismiss, incorporate elements of hearing transcript.	1.1	\$225.00	\$247.50	0%	\$-	\$247.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/21/19	Alina Shell	Review and provide comments on draft of proposed order granting anti-SLAPP motion to dismiss (for appellate purposes in light of Plaintiff's intention to appeal).	0.5	\$375.00	\$187.50	0%	\$-	\$187.50
10/21/19	Leo Wolpert	Finalize order granting anti-SLAPP motion to dismiss per Ms. McLetchie's instructions.	1.3	\$225.00	\$292.50	0%	\$-	\$292.50
10/21/19	Margaret McLetchie	Revise proposed order/ work with team re same and provide to Ms. Stein. Send to clients and Mr. Figler for comments, and to appellate counsel. Emails with Ms. Stein re order, Plaintiff's confirmed plan to appeal. Update client/ email conference re same; ask for Ms. Shell's assistance (firm lead appellate counsel).	1.1	\$550.00	\$605.00	100%	\$605.00	\$-

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/22/19	Alina Shell	Per Ms. McLetchie's request, review draft proposed order granting anti-SLAPP motion to dismiss and compare same to transcript of hearing on motion to ensure accuracy and completeness of proposed order.	0.9	\$375.00	\$337.50	0%	\$-	\$337.50
10/22/19	Leo Wolpert	Further edits to order granting anti-SLAPP motion to dismiss per Ms. McLetchie's directions.	0.3	\$225.00	\$67.50	0%	\$-	\$67.50
10/22/19	Margaret McLetchie	Edits to revised draft order; direct Mr. Wolpert to add more detail concerning public concern and Ms. Shell to re-check accuracy of order / check transcript. Address Ms. Stein's email. Review motion to retax costs.	0.6	\$550.00	\$330.00	0%	\$-	\$330.00
10/22/19	Pharan Burchfield	Download, save, and review Plaintiff's Motion to Retax Costs; update attorneys and calendar accordingly.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50
10/23/19	Margaret McLetchie	Attention to order. Review redline. Emails with opposing counsel.	0.5	\$550.00	\$275.00	0%	\$-	\$275.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/23/19	Pharan Burchfield	Download, save, and review Clerk's Notice of Hearing re Retax Costs; update attorneys and calendar accordingly.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50
10/24/19	Alina Shell	Proofread final draft of proposed order granting anti-SLAPP motion to dismiss.	0.4	\$375.00	\$150.00	0%	\$-	\$150.00
10/24/19	Ashley Barker	Travel to Phoenix building to drop off Letter and proposed Order on Defendants' Special Motion to Dismiss.	0.3	\$175.00	\$52.50	0%	\$-	\$52.50
10/24/19	Leo Wolpert	Accept/reject opposing counsel's changes to proposed order as appropriate.	0.4	\$225.00	\$90.00	0%	\$-	\$90.00
10/24/19	Margaret McLetchie	Attention to competing orders and communications re same.	0.9	\$550.00	\$495.00	0%	\$-	\$495.00
10/24/19	Pharan Burchfield	Finalize Defendants' Proposed Order; draft, finalize, send (email) Ms. McLetchie's letter to Judge Crockett re and including competing orders.	0.3	\$175.00	\$52.50	0%	\$-	\$52.50
10/30/19	Leo Wolpert	Attend portion of meeting with clients.	0.5	\$225.00	\$112.50	0%	\$-	\$112.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/30/19	Margaret McLetchie	Follow up email to chambers re no order received. Emails with Mr. Boschee re same. Prepare Ms. Shell for 10/31 hearing.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
10/30/19	Margaret McLetchie	Prepare for and attend meeting with clients.	1.0	\$550.00	\$550.00	0%	\$-	\$550.00
10/31/19	Ashley Barker	Travel to/from office to Phoenix Building to drop off Order Granting Special Motion to Dismiss.	0.4	\$50.00	\$20.00	0%	\$-	\$20.00
10/31/19	Alina Shell	In court for status check re order submission.	1.2	\$375.00	\$450.00	0%	\$-	\$450.00
10/31/19	Alina Shell	Per Ms. McLetchie's request, draft portion of argument for opposition to motion to re-tax costs.	0.5	\$375.00	\$187.50	0%	\$-	\$187.50
10/31/19	Alina Shell	Assist Ms. McLetchie in preparation of opposition to motion to retax costs by finding case law citations.	0.9	\$375.00	\$337.50	0%	\$-	\$337.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/31/19	Lacey Ambro	Travel to Phoenix Building, to pick signed Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP). File same. Prepare Notice of Entry. File and serve re same.	1.2	\$150.00	\$180.00	0%	\$-	\$180.00
10/31/19	Leo Wolpert	Research, draft substantial portion of opposition to motion to retax costs.	3.4	\$225.00	\$765.00	0%	\$-	\$765.00
10/31/19	Margaret McLetchie	Attention to order. Emails with clients.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
10/31/19	Margaret McLetchie	Review opposition to fees motion and begin drafting response/ outline of response. Review factual assertions and prepare initial response to same. Emails with clients.	1.6	\$550.00	\$880.00	0%	\$-	\$880.00
10/31/19	Margaret McLetchie	Attention to filing fee payment (not paid by prior counsel).	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
10/31/19	Margaret McLetchie	Confer with Ms. Shell.	0.1	\$550.00	\$55.00	100%	\$55.00	\$-

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/31/19	Pharan Burchfield	Download, save, and review (1) Plaintiff's Limited Opposition to Defendants' Motion to Dissolve Preliminary Injunction and (2) Plaintiff's Opposition to Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. § 41.670; update attorneys and calendar accordingly. Email to Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50
10/31/19	Pharan Burchfield	Phone call with Mr. Simeon of Department 24 re order and outstanding filing fee; draft, file, and pay Initial Appearance Fee Disclosure (NRS Chapter 19).	0.2	\$175.00	\$35.00	0%	\$-	\$35.00
11/1/19	Leo Wolpert	Continue drafting and editing opposition to motion to retax costs.	2.2	\$225.00	\$495.00	0%	\$-	\$495.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
11/1/19	Leo Wolpert	Meeting with Ms. McLetchie to discuss final edits to opposition to motion to retax.	0.1	\$225.00	\$22.50	0%	\$-	\$22.50
11/1/19	Leo Wolpert	Finish drafting, editing opposition to motion to retax costs, including review of supplemental memorandum of costs and disbursements, incorporating references and arguments regarding such into opposition.	1.3	\$225.00	\$292.50	0%	\$-	\$292.50
11/1/19	Margaret McLetchie	Attention to opposition to motion to retax.	0.8	\$550.00	\$440.00	0%	\$-	\$440.00
11/1/19	Margaret McLetchie	Attention to supplement to memo of costs.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
11/1/19	Pharan Burchfield	Finalize, file, and serve Opposition to Motion to Retax Costs; draft, prepare exhibits, file, and serve Supplement to Memorandum of Costs and Disbursements; update attorneys and Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	1.3	\$175.00	\$227.50	0%	\$-	\$227.50
11/4/19	Margaret McLetchie	Emails with clients.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
11/4/19	Margaret McLetchie	Continue initial drafting / outlining of reply in support fees.	0.3	\$550.00	\$165.00	0%	\$-	\$165.00
11/4/19	Pharan Burchfield	Finalize, file, and serve Errata to Opposition to Motion to Retax Costs; update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	100%	\$17.50	\$-
11/4/19	Pharan Burchfield	Finalize, file, and serve Second Errata to Opposition to Motion to Retax Costs; update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	100%	\$17.50	\$-
11/6/19	Leo Wolpert	Draft, research, edit reply in support of fees motion, specific attention to researching reasonable hours, standards for imposition of fees and discretionary awards, and opposing counsel's past SLAPP cases.	6.3	\$225.00	\$1,417.50	0%	\$-	\$1,417.50
11/6/19	Margaret McLetchie	Revise draft of reply in support of fees. Send rough draft to clients for review.	0.8	\$550.00	\$440.00	0%	\$-	\$440.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
11/7/19	Leo Wolpert	Finish drafting, editing, compiling exhibits and declarations for reply in support of fees motion.	6.2	\$225.00	\$1,395.00	50%	\$697.50	\$697.50
11/7/19	Margaret McLetchie	Work on reply in support of fees. Draft introduction; edit declaration; address strategic issues; attention to review of supplemental time.	3.9	\$550.00	\$2,145.00	50%	\$1,072.50	\$1,072.50
11/7/19	Pharan Burchfield	Prepare exhibits, finalize, file and serve Reply in Support of Motion for Attorneys and Costs and Statutory Award; finalize, file and serve Reply in Support of Motion to Dissolve Preliminary Injunction.	1.1	\$175.00	\$192.50	0%	\$-	\$192.50
TOTAL FEES								\$13,843.50

EXHIBIT 9

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/17/19	Alina Shell	Per Ms. McLetchie's request, conduct research regarding legislative history of SB 286, the bill which added the \$10K award to anti-SLAPP statute.	0.4	\$375.00	\$150.00	0%	\$-	\$150.00
10/17/19	Alina Shell	Assist with finalization of brief. Review and edit draft declaration for Ms. McLetchie and the motion for attorney's fees. Review exhibits for accuracy.	1.1	\$375.00	\$412.50	0%	\$-	\$412.50
10/21/19	Alina Shell	Review and provide comments on draft of proposed order granting anti-SLAPP motion to dismiss (for appellate purposes in light of Plaintiff's intention to appeal).	0.5	\$375.00	\$187.50	0%	\$-	\$187.50
10/22/19	Alina Shell	Per Ms. McLetchie's request, review draft proposed order granting anti-SLAPP motion to dismiss and compare same to transcript of hearing on motion to ensure accuracy and completeness of proposed order.	0.9	\$375.00	\$337.50	0%	\$-	\$337.50
10/24/19	Alina Shell	Proofread final draft of proposed order granting anti-SLAPP motion to dismiss.	0.4	\$375.00	\$150.00	0%	\$-	\$150.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/31/19	Alina Shell	In court for status check re order submission.	1.2	\$375.00	\$450.00	0%	\$-	\$450.00
10/31/19	Alina Shell	Per Ms. McLetchie's request, draft portion of argument for opposition to motion to re-tax costs.	0.5	\$375.00	\$187.50	0%	\$-	\$187.50
10/31/19	Alina Shell	Assist Ms. McLetchie in preparation of opposition to motion to retax costs by finding case law citations.	0.9	\$375.00	\$337.50	0%	\$-	\$337.50
TOTAL HOURS FOR ALINA SHELL			5.9	TOTAL FEES FOR ALINA SHELL				\$2,212.50
10/24/19	Ashley Barker	Travel to Phoenix building to drop off Letter and proposed Order on Defendants' Special Motion to Dismiss.	0.3	\$175.00	\$52.50	0%	\$-	\$52.50
10/31/19	Ashley Barker	Travel to/from office to Phoenix Building to drop off Order Granting Special Motion to Dismiss.	0.4	\$50.00	\$20.00	0%	\$-	\$20.00
TOTAL HOURS FOR ASHLEY BARKER			0.7	TOTAL FEES FOR ASHLEY BARKER				\$72.50
10/31/19	Lacey Ambro	Travel to Phoenix Building, to pick signed Order Granting Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP). File same. Prepare Notice of Entry. File and serve re same.	1.2	\$150.00	\$180.00	0%	\$-	\$180.00
TOTAL HOURS FOR LACEY AMBRO			1.2	TOTAL FEES FOR LACEY AMBRO				\$180.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/17/19	Leo Wolpert	Confer with Ms. McLetchie regarding brief; draft and edit and proofread remainder of motion for fees.	4.2	\$225.00	\$945.00	0%	\$-	\$945.00
10/20/19	Leo Wolpert	Further edits to order granting anti-SLAPP motion to dismiss, incorporate elements of hearing transcript.	1.1	\$225.00	\$247.50	0%	\$-	\$247.50
10/21/19	Leo Wolpert	Finalize order granting anti-SLAPP motion to dismiss per Ms. McLetchie's instructions.	1.3	\$225.00	\$292.50	0%	\$-	\$292.50
10/22/19	Leo Wolpert	Further edits to order granting anti-SLAPP motion to dismiss per Ms. McLetchie's directions.	0.3	\$225.00	\$67.50	0%	\$-	\$67.50
10/24/19	Leo Wolpert	Accept/reject opposing counsel's changes to proposed order as appropriate.	0.4	\$225.00	\$90.00	0%	\$-	\$90.00
10/30/19	Leo Wolpert	Attend portion of meeting with clients.	0.5	\$225.00	\$112.50	0%	\$-	\$112.50
10/31/19	Leo Wolpert	Research, draft substantial portion of opposition to motion to retax costs.	3.4	\$225.00	\$765.00	0%	\$-	\$765.00
11/1/19	Leo Wolpert	Continue drafting and editing opposition to motion to retax costs.	2.2	\$225.00	\$495.00	0%	\$-	\$495.00
11/1/19	Leo Wolpert	Meeting with Ms. McLetchie to discuss final edits to opposition to motion to retax.	0.1	\$225.00	\$22.50	0%	\$-	\$22.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
11/1/19	Leo Wolpert	Finish drafting, editing opposition to motion to retax costs, including review of supplemental memorandum of costs and disbursements, incorporating references and arguments regarding such into opposition.	1.3	\$225.00	\$292.50	0%	\$-	\$292.50
11/6/19	Leo Wolpert	Draft, research, edit reply in support of fees motion, specific attention to researching reasonable hours, standards for imposition of fees and discretionary awards, and opposing counsel's past SLAPP cases.	6.3	\$225.00	\$1,417.50	0%	\$-	\$1,417.50
11/7/19	Leo Wolpert	Finish drafting, editing, compiling exhibits and declarations for reply in support of fees motion.	6.2	\$225.00	\$1,395.00	50%	\$697.50	\$697.50
TOTAL HOURS FOR LEO WOLPERT			27.3	TOTAL FEES FOR LEO WOLPERT			\$5,445.00	
10/17/19	Margaret McLetchie	Review transcript. Emails with clients.	0.4	\$550.00	\$220.00	20%	\$44.00	\$176.00

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/21/19	Margaret McLetchie	Revise proposed order/ work with team re same and provide to Ms. Stein. Send to clients and Mr. Figler for comments, and to appellate counsel. Emails with Ms. Stein re order, Plaintiff's confirmed plan to appeal. Update client/ email conference re same; ask for Ms. Shell's assistance (firm lead appellate counsel).	1.1	\$550.00	\$605.00	100%	\$605.00	\$-
10/22/19	Margaret McLetchie	Edits to revised draft order; direct Mr. Wolpert to add more detail concerning public concern and Ms. Shell to re-check accuracy of order / check transcript. Address Ms. Stein's email. Review motion to retax costs.	0.6	\$550.00	\$330.00	0%	\$-	\$330.00
10/23/19	Margaret McLetchie	Attention to order. Review redline. Emails with opposing counsel.	0.5	\$550.00	\$275.00	0%	\$-	\$275.00
10/24/19	Margaret McLetchie	Attention to competing orders and communications re same.	0.9	\$550.00	\$495.00	0%	\$-	\$495.00
10/30/19	Margaret McLetchie	Follow up email to chambers re no order received. Emails with Mr. Boschee re same. Prepare Ms. Shell for 10/31 hearing.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00

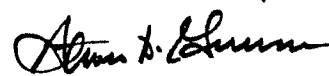
Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/30/19	Margaret McLetchie	Prepare for and attend meeting with clients.	1.0	\$550.00	\$550.00	0%	\$-	\$550.00
10/31/19	Margaret McLetchie	Attention to order. Emails with clients.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
10/31/19	Margaret McLetchie	Review opposition to fees motion and begin drafting response/ outline of response. Review factual assertions and prepare initial response to same. Emails with clients.	1.6	\$550.00	\$880.00	0%	\$-	\$880.00
10/31/19	Margaret McLetchie	Attention to filing fee payment (not paid by prior counsel).	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
10/31/19	Margaret McLetchie	Confer with Ms. Shell.	0.1	\$550.00	\$55.00	100%	\$55.00	\$-
11/1/19	Margaret McLetchie	Attention to opposition to motion to retax.	0.8	\$550.00	\$440.00	0%	\$-	\$440.00
11/1/19	Margaret McLetchie	Attention to supplement to memo of costs.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
11/4/19	Margaret McLetchie	Emails with clients.	0.2	\$550.00	\$110.00	0%	\$-	\$110.00
11/4/19	Margaret McLetchie	Continue initial drafting / outlining of reply in support fees.	0.3	\$550.00	\$165.00	0%	\$-	\$165.00
11/6/19	Margaret McLetchie	Revise draft of reply in support of fees. Send rough draft to clients for review.	0.8	\$550.00	\$440.00	0%	\$-	\$440.00
11/7/19	Margaret McLetchie	Work on reply in support of fees. Draft introduction; edit declaration; address strategic issues; attention to review of supplemental time.	3.9	\$550.00	\$2,145.00	50%	\$1,072.50	\$1,072.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
TOTAL HOURS FOR MARGARET MCLETCHE			13.0	TOTAL FEES FOR MARGARET MCLETCHE				\$5,373.50
10/22/19	Pharan Burchfield	Download, save, and review Plaintiff's Motion to Retax Costs; update attorneys and calendar accordingly.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50
10/23/19	Pharan Burchfield	Download, save, and review Clerk's Notice of Hearing re Retax Costs; update attorneys and calendar accordingly.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50
10/24/19	Pharan Burchfield	Finalize Defendants' Proposed Order; draft, finalize, send (email) Ms. McLetchie's letter to Judge Crockett re and including competing orders.	0.3	\$175.00	\$52.50	0%	\$-	\$52.50
10/31/19	Pharan Burchfield	Download, save, and review (1) Plaintiff's Limited Opposition to Defendants' Motion to Dissolve Preliminary Injunction and (2) Plaintiff's Opposition to Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. § 41.670; update attorneys and calendar accordingly. Email to Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	0%	\$-	\$17.50

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
10/31/19	Pharan Burchfield	Phone call with Mr. Simeon of Department 24 re order and outstanding filing fee; draft, file, and pay Initial Appearance Fee Disclosure (NRS Chapter 19).	0.2	\$175.00	\$35.00	0%	\$-	\$35.00
11/1/19	Pharan Burchfield	Finalize, file, and serve Opposition to Motion to Retax Costs; draft, prepare exhibits, file, and serve Supplement to Memorandum of Costs and Disbursements; update attorneys and Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	1.3	\$175.00	\$227.50	0%	\$-	\$227.50
11/4/19	Pharan Burchfield	Finalize, file, and serve Errata to Opposition to Motion to Retax Costs; update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	100%	\$17.50	\$-
11/4/19	Pharan Burchfield	Finalize, file, and serve Second Errata to Opposition to Motion to Retax Costs; update attorneys, Ms. Zilverberg, Ms. Eagan, and Mr. Figler re same.	0.1	\$175.00	\$17.50	100%	\$17.50	\$-

Date	User	Description	Hours	Rate	Total	Reduction (%)	Reduction (\$)	Final Total
11/7/19	Pharan Burchfield	Prepare exhibits, finalize, file and serve Reply in Support of Motion for Attorneys and Costs and Statutory Award; finalize, file and serve Reply in Support of Motion to Dissolve Preliminary Injunction.	1.1	\$175.00	\$192.50	0%	\$-	\$192.50
TOTAL HOURS FOR PHARAN BURCHFIELD			3.40	TOTAL FEES FOR PHARAN BURCHFIELD				\$560.00
TOTAL FEES								\$13,843.50

EXHIBIT 10



CLERK OF THE COURT

ORDER

Marc J. Randazza (NV Bar No.: 12265)
 Ronald D. Green (Nevada Bar No. 7360)
 Alex J. Shepard (Nevada Bar No. 13582)
 RANDAZZA LEGAL GROUP, PLLC
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 ecf@randazza.com

Attorneys for Defendant
 TMZ Productions, Inc.

DISTRICT COURT**CLARK COUNTY, NEVADA**

DAN BRANDON BILZERIAN, an individual
 Plaintiff,

vs.

Case No.: A-15-722801-C
 Dept. No.: XXXII

[PROPOSED] ORDER

DIRTY WORLD, LLC, a Delaware limited
 liability company, d/b/a THEDIRTY.COM;
 HOOMAN KARAMIAN, an individual,
 d/b/a Nik Richie; TMZ PRODUCTIONS,
 INC., a California Corporation; DOES I-X,
 inclusive; and ROE BUSINESS ENTITIES I-X,
 inclusive

Defendants.

**[PROPOSED] ORDER GRANTING DEFENDANT TMZ PRODUCTIONS, INC.'S SPECIAL
 MOTION TO DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant TMZ
 Productions, Inc.'s ("TMZ") Special Motion to Dismiss Under NRS 41.660, and it
 appearing, upon argument of counsel and for good cause shown:

NRS 41.635 et seq., Nevada's Anti-SLAPP statute, creates a procedure for
 early dismissal of cases, which are targeted at speech and conduct protected
 by the First Amendment and that lack minimal merit. The statute creates a two-

1 step analysis for courts to follow in deciding whether to dismiss a case under its
2 provisions, and an Anti-SLAPP motion is treated as a motion for summary
3 judgment. First, under NRS 41.660(3)(a), the moving defendant has the burden
4 of showing, by a preponderance of the evidence, that the plaintiff's suit is
5 "based upon a good faith communication in furtherance of the right to petition
6 or the right to free speech in direct connection with an issue of public concern."
7 If the moving defendant meets this burden, the burden of proof then shifts to the
8 plaintiff to establish "by prima facie evidence a probability of prevailing on the
9 claim." NRS 41.660(3)(b). The plaintiff must introduce evidence establishing his
10 claims to satisfy this burden. As an Anti-SLAPP motion is treated as a motion for
11 summary judgment, the plaintiff can survive a special motion to dismiss by
12 establishing a genuine issue of material fact. If the plaintiff fails to do this, his
13 case must be dismissed.

14 FINDINGS OF FACT

- 15 1. In the August 1, 2015 publication that the Dirty World LLC ("Dirty World")
16 caused to be publicized, Defendant Jane Doe alleged that she had sex
17 with Mr. Bilzerian and that Mr. Bilzerian gave her the sexually transmitted
18 disease ("STD") chlamydia.
- 19 2. Mr. Bilzerian filed his initial complaint in this Court on August 7, 2015 against
20 Defendants The Dirty and Mr. Richie, claiming that the August 1, 2015
21 comment was false and defamatory.
- 22 3. This complaint did not specify the STD alleged in the comment on
23 <thedirty.com>.
- 24 4. On August 10, 2015, TMZ posted an article titled "Dan Bilzerian Sues
25 Website ... I Don't Have Any STDs!!!"
26
27

1 5. In this article, TMZ reports that Mr. Bilzerian "says he's clean as a whistle,
2 which is why he's suing a website for claiming he's riddled with an STD,"
3 and quotes the portion of the comment on <thedirty.com> specifying the
4 STD that Mr. Bilzerian allegedly transmitted.

5 6. On August 11, 2015, Bilzerian filed his amended complaint to include TMZ
6 as a defendant, alleging that TMZ's article is false and defamatory.

7 7. On October 12, 2015, TMZ filed an Anti-SLAPP motion under NRS 41.660

8 **CONCLUSIONS OF LAW**
9

10 1. TMZ has met its burden of proof under the first prong of Nevada's Anti-
11 SLAPP statute.

12 2. The parties stipulated at the hearing that Plaintiff Dan Bilzerian is a public
13 figure for purposes of this litigation. As TMZ's article was a report on a
14 lawsuit filed by a public figure, it is thus a communication based upon a
15 matter of public concern. If a public figure files a lawsuit then the media,
16 TMZ in this case, can report on it as a matter of public concern, as a
17 matter of fairness, and as a matter of Nevada law.

18 3. Although Mr. Bilzerian's complaint characterized the comment on
19 <thedirty.com> as alleging that he had an "STD" -- without specifically
20 identifying that STD as chlamydia -- a cursory investigation of the facts
21 underlying the complaint would reveal this fact, and TMZ's reporting on it
22 was accurate.

23 4. As there are no issues of material fact as to these issues, TMZ has satisfied
24 the first prong of the Anti-SLAPP statute.

25 5. Mr. Bilzerian fails to satisfy his burden of proof under the second prong of
26 the Anti-SLAPP statute.
27

6. TMZ is protected by Nevada's "fair report" privilege, which provides absolute immunity from liability for fair reports of judicial proceedings.

7. While Mr. Bilzerian's initial Complaint did not specifically identify the STD the comment on <thedirty.com> asserted that Mr. Bilzerian had transmitted, TMZ was entitled to investigate the underlying basis for Mr. Bilzerian's allegations in the lawsuit and fairly report on them to the public, which it did. Moreover, anyone at TMZ (or any member of the general public) could perform a cursory investigation and discover the specific allegations in the comment on <thedirty.com>.

8. There is no indication of malice on the part of TMZ. While TMZ may have employed colorful language to describe Mr. Bilzerian's lawsuit, there is no material difference between stating that Mr. Bilzerian has an STD, or stating that he is "riddled" with an STD.

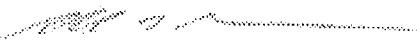
9. The record shows that TMZ performed a reasonable investigation after learning of Mr. Bilzerian's initial Complaint and accurately reported on it. Rather than exhibiting reckless disregard for the truth, TMZ should be commended for doing its homework. In fact, the average reader might have assumed that Mr. Bilzerian had a more serious STD than chlamydia had TMZ confined its reporting to the allegations of an unspecified STD in Mr. Bilzerian's complaint.

10. There is no issue of material fact on the question of whether TMZ enjoys the fair report privilege. Mr. Bilzerian has thus failed to satisfy his evidentiary burden under the second prong of Nevada's Anti-SLAPP statute, and his claims against TMZ must thus be dismissed under the statute.

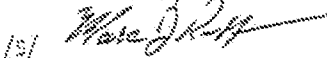
Accordingly, IT IS HEREBY ORDERED that TMZ's Motion is GRANTED. It is ORDERED and adjudged that all Plaintiff's claims against Defendant TMZ Productions, Inc. are hereby DISMISSED.

1 It is FURTHER ORDERED that, TMZ may provide separate briefing regarding
2 its entitlement to fees, costs, and damages under NRS 41.670(1)(a)-(b).

3
4 Dated this 17 day of Dec, 2015

5
6
7 
DISTRICT COURT JUDGE

8 Submitted by:

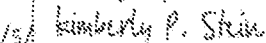
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10 Marc J. Randazza (NV Bar No.: 12265)
11 Ronald D. Green (Nevada Bar No. 7360)
12 Alex J. Shepard (Nevada Bar No. 13582)
13 RANDAZZA LEGAL GROUP, PLLC
14 3625 S. Town Center Drive, Suite 150
15 Las Vegas, NV 89135
ecf@randazza.com

16 Counsel for Defendant
17 TMZ Productions, Inc.

18 Approved as to form:

19 Designated by

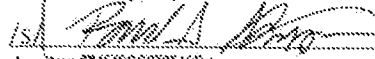
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Counsel for Plaintiff Dan Bilzerian

Approved as to form and content:

28 Designated by

29 

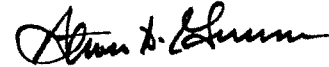
30 Josh Cole Aicklen
31 Nevada Bar No. 00254
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Counsel for Defendants

Dirty World, LLC and Nik Lamas-Richie

EXHIBIT 11

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CLERK OF THE COURT

ORDR

Marc J. Randazza (NV Bar No.: 12265)
Ronald D. Green (Nevada Bar No. 7360)
Alex J. Shepard (Nevada Bar No. 13582)
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ecf@randazza.com

Attorneys for Defendant
TMZ Productions, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual

Plaintiff,

vs.

DIRTY WORLD, LLC, a Delaware limited
liability company, d/b/a THEDIRTY.COM;
HOOMAN KARAMIAN, an individual,
d/b/a Nik Richie; TMZ PRODUCTIONS,
INC., a California Corporation; DOES I-X,
inclusive; and ROE BUSINESS ENTITIES I-X,
inclusive

Defendants.

Case No.: A-15-722801-C
Dept. No.: XXXII

**ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR COSTS,
ATTORNEYS' FEES, AND DAMAGES
UNDER NRS 41.670**

This matter, having come before the Court on Defendant TMZ Productions, Inc.'s ("TMZ") Motion for Costs, Attorneys' Fees, and Damages under NRS 41.670, upon argument of counsel and for good cause shown:

1. NRS 41.670(1) states in pertinent part, if the court grants an Anti-SLAPP Special Motion to Dismiss, "[t]he court shall award reasonable costs and attorney's fees to the person against whom the action was brought."

1 2. This Court heard oral argument on Defendant's Special Motion to
2 Dismiss Pursuant Under NRS 41.660 on November 17, 2015 and entered a written
3 order granting the Motion on December 18, 2015.

4 3. Defendant filed its Motion for Costs, Attorneys' Fees, and Damages
5 under NRS. 41.670 on December 1, 2015, requesting attorneys' fees, costs, and
6 statutory damages.

7 **THIS COURT HEREBY FINDS THAT:**

8 4. Factors to consider in determining the reasonable value of
9 attorneys' services are the quality of service, character of work to be done, work
10 actually performed by the attorneys, and the result. *Brunzell v. Golden Gate*
11 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

12 5. The *Brunzell* factors weigh in favor of Defendants request.

13 6. Specifically, Defendant's counsel are high quality advocates, the
14 character of the work was important, the work actually performed was
15 exemplary, and Defendant TMZ received the best possible result.

16 7. This Court finds a reasonable award of attorneys' fees is \$22,000.

17 8. Defendant's requested costs in the amount of \$455.25 are
18 reasonable.

19 9. This Court declines to award statutory damages under 41.670(1)(b).

20 Accordingly,

21 **IT IS HEREBY ORDERED** TMZ's Motion for Costs, Attorneys' Fees, and
22 Damages Under NRS 41.670 is GRANTED IN PART.

23 **IT IS FURTHER ORDERED** TMZ is awarded \$22,000 in attorneys' fees.

24 **IT IS FURTHER ORDERED** TMZ is awarded \$455.25 in costs.

25 **IT IS FURTHER ORDERED** that TMZ's request for statutory damages is denied.
26
27

1 **IT IS FURTHER ORDERED** that TMZ's awarded costs and attorneys' fees be
2 paid in full within 30 days from the date of this signed Order, unless the parties
3 agree otherwise.

4 **IT IS FURTHER ORDERED** A status check on this Order is scheduled for June
5 22, 2016 in chambers. Parties need not appear.

6
7 Dated this 2 day of May, 2016

8
9 

DISTRICT COURT JUDGE
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

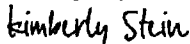
10 Submitted by:

11 /s/ Marc J. Randazza
12 Marc J. Randazza (NV Bar No.: 12265)
13 Ronald D. Green (Nevada Bar No. 7360)
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15 RANDAZZA LEGAL GROUP, PLLC
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16 Counsel for Defendant,
17 TMZ Productions, Inc.

18 **Approved as to form and content:**


DocuSigned by:



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22 Kimberly P. Stein, Esq.
23 Nevada Bar No. 8675
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25 HOLLEY DRIGGS WALCH FINE WRAY
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Counsel for Plaintiff Dan Bilzerian

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Las Vegas, Nevada 89118
Counsel for Defendants,
Dirty World, LLC and Nik Lamas-Richie

Other Tort

COURT MINUTES

November 21, 2019

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

November 21, 2019 09:00 AM Hearing: Defendant's Motion for Attorney's Fees, Costs &
Damages / Dissolution of Preliminary Injunction

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

COURT CLERK: Ortega, Natalie

RECORDER:

REPORTER:

PARTIES PRESENT:

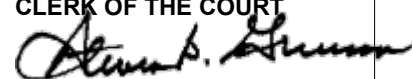
Brian W. Boschee Attorney for Plaintiff

Margaret A. McLetchie Attorney for Defendant

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



NTC
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
BRIAN W. BOSCHKEE, ESQ.
Nevada Bar No. 7612
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Telephone: (702) 791-0308
Attorneys for Plaintiff

DISTRICT COURT
COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XXIV

NOTICE OF APPEAL

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 26th day of November 2019.

HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON

/s/Kimberly P. Stein

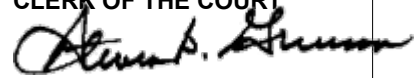
BRIAN W. BOSCHKEE, ESQ. (NBN 7612)
KIMBERLY P. STEIN, ESQ. (NBN 8495)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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

*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. BOSCHEE, ESQ.
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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. BOSCHEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8675

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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. MCLEATCHIE, Nevada Bar No. 10931
ALINA M. SHELL, Nevada Bar No. 11711
LEO S. WOLPERT, Nevada Bar No. 12658
MCLEATCHIE 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 26th 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

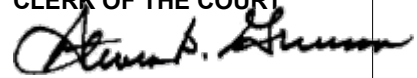
CERTIFICATE OF SERVICE

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
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Las Vegas, NV 89101
E-mail: maggie@lvlitigation.com

*Attorneys for Defendants
Katy Zilverberg and Victoria Eagan*

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



MSTY
HOLLEY DRIGGS WALCH
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Telephone: (702) 791-0308
Attorneys for Plaintiff

DISTRICT COURT

COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XXIV

**PLAINTIFF'S MOTION TO STAY
PENDING APPEAL**

HEARING REQUESTED

PLAINTIFF, JASON T. SMITH (hereinafter referred to as "Plaintiff"), by and through his counsel of record, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, respectfully requests that this Court stay this entire proceeding pending the resolution of an appeal. Plaintiff has appealed this Court's ORDER GRANTING DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) entered on October 31, 2019.

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///

This Motion is based upon the Memorandum of Points and Authorities and exhibits attached thereto, the pleadings and papers on file herein, and any oral argument that this Honorable Court may allow at the time of the hearing.

Dated this 26th 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As the Court is well versed in the facts and background of the case, an entire recitation will not be set forth herein, but is included in the Order Granting 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") entered on October 31, 2019.

In the present matter a hearing was held on October 3, 2019, before the Honorable Jim Crockett. The Court granted the Special Motion to Dismiss, which became a final order of this Court. While if a Court grants a special anti-SLAPP motion to dismiss, the defendants may be entitled to an award of reasonable costs and attorneys' fees and statutory awards pursuant to Nev. Rev. Stat. § 41.670(1)(a), the Defendants had to file a separate motion seeking fees, costs, and any statutory award post final judgement.

Plaintiff has appealed the Court's ORDER GRANTING DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP). The Notice of Appeal was filed on November 26, 2019.

On October 17, 2019, Defendants filed a Motion for Attorney's Fees, Costs and a Statutory Award (the "Fees Motion") pursuant to Nev. Rev. Stat. § 41.670. On October 31, 2019, Plaintiff

1 timely filed a response in opposition to the Fees Motion. On November 7, 2019, Defendants timely
2 filed a reply in support of the Fees Motion. A hearing on the Fees Motion was held on
3 November 21, 2019, wherein the Court granted the Fees Motion in the amount of \$89,002.53. As
4 of the filing of the Notice of Appeal and/or this Motion, the Order regarding this Court's granting
5 Defendants' motion for attorney's fees, costs and statutory awards pursuant to Nev. Rev. Stat.
6 § 41.670 had not been entered. Upon entry of that Order, Plaintiff will file an additional Notice of
7 Appeal. Due to timing and for the purpose of judicial economy, Plaintiff requests that this Court
8 consider this Motion's request for a stay to include the Order to be entered on the Fees Motion.¹

9 Plaintiff now respectfully requests that the Court stay this entire case pending the resolution
10 of Plaintiff's Appeal. The Court should stay this case because (1) the object of the appeal will be
11 defeated if the case is not stayed, (2) public interest favors staying the case, (3) the parties will not
12 be harmed by the stay, (4) judicial efficiency favors the case, and (5) the appeal is not frivolous.
13 The District Court is divested of jurisdiction upon filing of an appeal on the issues that are the
14 subject of the appeal. As such, it would not be possible to proceed forward on the issue of fees,
15 costs and statutory awards. More importantly, if the Plaintiff is successful on appeal, then the
16 basis for Defendants' Fee Motion will be nullified, and will create an unnecessary and problematic
17 scenario for the Court and the Parties. Additionally, if Plaintiff is successful on appeal, then
18 pursuant to Nev. Rev. Stat. § 41.670(2), "the court shall award reasonable costs and attorney's
19 fees" to the Plaintiff.

20 ///

21 ///

22 ///

23 ///

24
25
26 ¹ While pursuant to NRCP 62 (a)(1), "no execution may issue on a judgment, nor may proceedings be taken to
27 enforce it, until 30 days have passed after service of written notice of its entry," Plaintiff is concerned Defendants
28 will attempt to ignore this Rule and try to proceed early. Needless to say, even then, this Motion should be heard
prior to the expiration of the thirty days.

II. ARGUMENT

A. This Court is authorized to Stay this Case Pending Resolution of Plaintiffs Appeal.

This Court is authorized to stay this case pending resolution of the appeal. *See* NRAP 8(a). NRAP 8(a)(1)(A) specifically provides: “A party must ordinarily move first in the District Court for the following relief: (A) a stay of ... proceedings, pending appeal to the Supreme Court.”

B. The Court Should Stay This Case.

Whether to grant a stay pending appeal is within the sound discretion of the Court. *See Aspen Fin. Servs v. District Court*, 128 Nev. Adv. Op. 57, 289 P.3d. 201, 205 (2012). Generally in determining whether to issue a stay pending disposition of an appeal the Nevada Supreme Court considers the following factors:

(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Mikohn Gaming Court. McCrea, 120 Nev. 248, 89 P.3d 36, 28 (2004); NRAP 8(a) (stating the factors the Nevada Supreme Court must consider. In addition, the Ninth Circuit has instructed courts to consider the following similar factors:

(1) the interest of the Plaintiffs in preceding expeditiously with this litigation, or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending ... litigations.

Keating v. Office of Thrift Supervisions, 45 F.3d 322, 325 (9th Cir. 1995).

In considering these factors, the court may grant a stay when one or two strong factors “counterbalance other weak factors”. *Mikohn Gaming*, 89 P.3d at 38 (*quoting Hansen*, 6 P.3d at 986). Thus, not all factors must weigh in favor of a stay in order for the Court to grant a stay. Here, the Court should stay this case because (1) the object of the appeal will be defeated if the case is not stayed, (2) public interest favors staying the case, (3) the parties will not be harmed by the stay, (4) judicial efficiency favors staying the case, and (5) the appeal is not frivolous.

1 Proceeding forward on the issue of fees, costs and statutory awards in this case would deny
2 Plaintiff the ability to raise certain defenses. More importantly, if the Plaintiff is successful on
3 appeal, then the basis for Defendants' Fee Motion will be nullified, and will create an unnecessary
4 and problematic scenario for the Court and the Parties.

5 **1. The Object of the Appeal Will Be Defeated if the Case is Not Stayed.**

6 The object of the Appeal in this matter is overturning the judicial determination that
7 Defendants can establish by a preponderance of the evidence that their claim is based upon a good
8 faith communication in furtherance of the right to petition or the right to free speech in direct
9 connection with an issue of public concern. The Defendants pending Fee Motion is a result of the
10 Court's ruling on granting the Special Motion to Dismiss. Thereafter, Defendants filed the Fees
11 Motion. A hearing on the Fees Motion was held on November 21, 2019, wherein the Court granted
12 the Fees Motion in the amount of \$89,002.53. As of the filing of the Notice of Appeal and/or this
13 Motion, the Order regarding this Court granting Defendants' motion for attorney's fees, costs and
14 statutory awards pursuant to Nev. Rev. Stat. § 41.670 had not been entered. Upon entry of that
15 Order, the Defendant's Motion is successful, they will undoubtedly initiate collection proceedings
16 against Plaintiff. Accordingly, if Plaintiff is successful on their appeal, then the basis for
17 Defendants' Order on the Fees Motion will be nullified. This will create an unnecessary and
18 problematic scenario for the Court and the Parties,

19 **2. Public Policy Favors Staying the Case.**

20 For example, this court held that extraordinary relief was warranted in a matter where
21 "sound judicial economy and administration militated in favor of such petitions," *Smith v. District*
22 *Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997) ("The interests of judicial economy will
23 remain the primary standard by which this court exercises its discretion."). While the District Court
24 ruled in favor of the Defendants, recent Nevada Supreme Court cases have been directly opposite
25 in ruling with regards to the definition of "public concern." Thus, Plaintiff is likely to prevail on
26 appeal. As stated above, allowing the Defendants to proceed with their Fees Motion, and, if
27 successful, collection activity, if Plaintiff is successful on appeal, the Parties will be forced to
28 reverse that activity and, in doing so, waste judicial resources and incur unnecessary fees and costs

in the process. Therefore, public policy favors staying this case pending the resolution of the appeal.

3. The Parties Will Not be Harmed by the Stay.

The Court should stay the case because the parties will not suffer harm if the case is stayed. “Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay. *Mikohn Gaming*, 89 P.3d at 39. This is because, “[n]ormally, the only cognizant harm threatened to the parties is increased litigation costs and delay.” *Id.* The Nevada Supreme Court, “ha[s] ... explained that litigation costs, even if potentially substantial, are not irreparable harm. *Id.* (Citing NRS 38.205(1)(a) (currently enrolled as NRS 38.247); *see also Hansen*, 6 P.3d at 986 (noting that “[mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough” to show irreparable harm)).

Here, a stay will not cause irreparable or serious harm. The only potential harm is staying the case is the delay caused by waiting for a resolution of the appeal. However, as stated above, such a delay is not a serious or irreparable harm.

4. Judicial Efficiency Favors Staying the Case.

The “convenience of the [C]ourt in the management of its cases, and the efficient use of judicial resources” favors staying this case. *Keating v. Office of Thrift Supervision*, 45 F.3d, 322, 325 (9th Cir. 1995). If the Court does not stay the case and Plaintiff ultimately succeeds on appeal, the Court’s efforts in continuing to conduct the litigation will have been for naught. *Cf Wynn Resorts, Ltd. v. Atl.-Pac. Capital, Inc.*, No. 2:10-CV-00722-KJD-LRL (D. Nev. Oct. 10, 2011)(“If [the defendant] prevails on the appeal, then all litigation conducted during the pendency of the appeal will be wasted resources”). Simultaneously using this Court’s and the Nevada Supreme Court’s resources when Defendants may ultimately have a judgment entered against them is not an efficient use of judicial resources. This is especially true in this case, where the mere delay caused by staying the case will not result in serious or irreparable harm to the Defendants.

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1 **5. The Appeal is Not Frivolous or Purely for Dilatory Purposes.**

2 The Nevada Supreme Court considers the likelihood of success on appeal when granting a
3 stay. NRAP 8(c). In considering the likelihood of success, the Nevada Supreme Court has focused
4 on whether the appeal was frivolous or purely for dilatory purposes. *Mikohn Gaming*, 89 P.3d at
5 40. The Court has stated,

6 ... [T]he party opposing the stay motion can defeat the motion by making a strong
7 showing that appellate relief is unattainable. In particular, if the appeal appears frivolous
8 or if the appellant apparently filed the stay motion purely for dilatory purposes, the court
9 should deny the stay ... but a stay should generally be granted in other cases.

10 *Id.*

11 For this factor to weigh in favor of not staying the case, Defendants bear the heavy burden
12 of “making a strong showing that appellate relief is unattainable” or dilatory. *See Id.* Defendants
13 cannot do so in this case, however, because appellate relief is not unattainable for Plaintiff.
14 Therefore, this factor weighs in favor of a stay.

15 **III. NRCP 62(d) Permits an Appellant to Obtain a Stay of Judgment from the District**
16 **Court Upon the Posting of a Supersedeas Bond.**

17 When an appeal is taken the appellant by giving a supersedeas bond may obtain a
18 stay. The bond may be given at or after the time of filing the notice of appeal. The stay is
19 effective when the supersedeas bond is filed.

20 The purpose of a supersedeas bond “is to protect the prevailing party from loss resulting
21 from a stay of execution of the judgment.” *McClulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d
22 302,303 (1983). In this matter any bond requirement should be de minimis as the District Court
23 is divested of jurisdiction upon filing of an appeal on the issues that are the subject of the appeal.
24 Upon appeal, the district court is divested of jurisdiction over the issues pending before an
25 appellate court. *See Kantor v. Kantor*, 116 Nev. 886, 894-95, 8 P.3d 825, 830 (2000) (timely notice
26 of appeal divests the district court of jurisdiction); *See Wilmurth v. District Court*, 80 Nev. 337,
27 393 P.2d 302 (1964) (“Indeed, a timely notice of appeal divests the district court of jurisdiction to
28 act and vests jurisdiction in this court.”). As such, it would not be possible to proceed forward on

the issue of fees, costs and statutory awards, and as of the filing of the Notice of Appeal, the Order granting fees, costs and statutory awards had not been entered by the Court. Thus, no damage judgment has been awarded at this time. In this case, Plaintiff respectfully requests that the Court enter an order staying the matter pending resolution of the appeal and set a de minimis bond.

In the event, the Court does proceed forward and enter the Order on the Fees Motion, Plaintiff requests a stay and that Court consider the ramifications of a reversal, and set a supersedes bond in amount no more than fifty percent of the total awarded in the Fees Motion.

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court stay the case pending the resolution of Plaintiff's appeal.

Dated this 26th day of November 2019.

HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON

/s/Kimberly P. Stein

BRIAN W. BOSCHKEE, 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

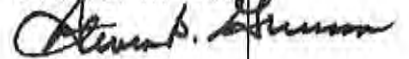
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **PLAINTIFF’S MOTION TO STAY PENDING 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

*Attorneys for Defendants
Katy Zilverberg and Victoria Eagan*

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



1 **OPPM**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

5 **MCLEATCHIE LAW**

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9 Email: maggie@nvlitigation.com

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 **OPPOSITION TO MOTION TO**
18 **STAY PENDING APPEAL**

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

Hearing Date: January 14, 2020

Hearing Time: 9:00 a.m.

23 Defendants.

24 Defendants Katy Zilverberg and Victoria Eagan hereby oppose Plaintiff Jason T.
25 Smith's Motion to Stay Pending Appeal. This Opposition is based on the following
26 Memorandum of Points and Authorities and exhibits attached hereto, the papers and
27 pleadings already on file herein, and any oral argument the Court may permit at the hearing
28 of this Motion.

Dated this the 6th day of December, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

MCLEATCHIE LAW

Counsel for Defendants Katy Zilverberg

and Victoria Eagan

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should deny Plaintiff Jason T. Smith's Motion for a Stay Pending Appeal (the "Motion") in this case for multiple reasons. First, as a preliminary matter, the Motion is an improper effort to avoid attorney's fees and costs. Indeed, Mr. Smith claims that if his stay is granted, that "it would not be possible to proceed forward on the issue of fees, costs and statutory awards, and as of the filing of the Notice of Appeal, the Order granting fees, costs and statutory awards had not been entered by the Court." (Mot., pp. 6:28 – 7:2.) In fact, while the Motion seeks to "stay the proceedings," there is nothing to stay with regard to the order that Mr. Smith has appealed. The Order granting the anti-SLAPP Motion to Dismiss has already been entered, and Defendants' Motion for Fees, Costs and Statutory Award has already been briefed, argued and granted. The only remaining issue for this Court, aside from the instant Motion, is to formally approve, enter (and subsequently enforce) the order granting fees, costs, and the statutory award (the "Fees and Award Order"). While Mr. Smith has filed a notice of appeal of this Court's order granting Defendants' anti-SLAPP Motion to Dismiss, this Court retains jurisdiction to enter—and enforce—the anticipated Fees and Award Order. *See Kantor v. Kantor*, 116 Nev. 886, 894–95, 8 P.3d 825, 830 (2000). Mr. Smith's transparent effort to block the entry of the Fees and Awards Order should be rejected by this Court. Indeed, delaying entry of the Fees and Award Order would undermine the important policy underlying Nevada's anti-SLAPP statute.

Second, even if Mr. Smith's Motion were properly before the Court and could stop the Court from entering the Fees and Award Order, Mr. Smith cannot establish that he is entitled to a stay—of either "the proceedings" or the Fees and Awards Order. This is because none of the factors enumerated in Nev. R. App. P. 8(c) weigh in favor of awarding a stay. Most fundamentally, Mr. Smith has not even bothered to articulate any basis for his claim that this Court erred. It is exactly this repeated failure to support arguments that properly resulted in the dismissal of Mr. Smith's case. While nothing in the law is certain, it is hard to imagine how Mr. Smith could correct any of his failures on appeal. Furthermore, as noted

1 above, public policy weighs heavily against a stay, as protracted delay in resolving this matter
2 undermines the goal of Nevada's anti-SLAPP statute—speedy disposition of SLAPP suits
3 like Mr. Smith's. Indeed, granting a stay of the Fees and Award Order would be especially
4 inappropriate in this case because Mr. Smith has indicated that he may pursue bankruptcy to
5 avoid paying any award in this case. This would jeopardize Defendants' rights to be
6 immunized from liability in this case and undermine the important policies and First
7 Amendment rights the anti-SLAPP statute is designed to further and protect. Indeed, it would
8 encourage Mr. Smith to keep burying Defendants in litigation, even if it is baseless, in the
9 hopes that they run out of funds to fend off his efforts to silence them.

10 Third and finally, if this Court does decide to enter a stay in this matter, it should
11 require a supersedeas bond in amount that would fully compensate Defendants for losses that
12 may result from a stay of execution of the judgment. While it should go without saying that
13 the current \$500.00 bond is insufficient, a bond in an amount of "no more than fifty percent
14 of the total awarded in the Fees Motion," as proposed by Mr. Smith (Mot., p. 8:7), is also
15 insufficient to compensate Defendants from losses resulting from a stay of enforcing the Fees
16 and Award Order. Thus, if the Court does grant a stay, which it should not do, it should
17 require Mr. Smith to post a supersedeas bond in the full amount of \$89,002.53. Indeed, that
18 amount may still be insufficient to compensate Defendants, as fees and costs continue to
19 accrue in this matter.

20 II. LEGAL ARGUMENT

21 "A stay is not a matter of right, even if irreparable injury might otherwise result."
22 *Nken v. Holder*, 556 U.S. 418, 433, 129 S. Ct. 1749, 1760 (2009) (internal citation omitted).
23 "The party requesting a stay bears the burden of showing that the circumstances justify an
24 exercise of that discretion." *Id.*, 556 U.S. at 433-434, 129 S. Ct. at 1761. Mr. Smith
25 disingenuously claims that this Court should "consider this Motion's request for a stay to
26 include the Order to be entered on the Fees Motion" due to "timing and for the purpose of
27 judicial economy." (Mot., p. 3:7-8.) However, this falls well short of Mr. Smith's burden.
28 Indeed, Mr. Smith's Motion is nothing more than an attempt to stall the entry of the Fees and

1 Awards Order and its enforcement. Because the Court retains jurisdiction to enter and
2 enforce the Fees and Award Order, and because none of the factors enumerated by the United
3 States Supreme Court and Nevada Supreme Court in analyzing whether to grant a stay
4 weighs in favor of a stay, this Court should decline to stay the proceedings. Further, the
5 frivolous nature of the Motion underscores the importance of Defendants' rights to the Fees
6 and Award Order.

7 **A. This Court Retains Jurisdiction Over the Fees and Award Order.**

8 As Mr. Smith himself notes, this Court "is divested of jurisdiction upon filing of an
9 appeal *on the issues that are the subject of the appeal*." (Mot., p. 3:13-14 (emphasis added).)
10 Here, the only issue that is subject to appeal is whether this Court properly granted
11 Defendants' special anti-SLAPP Motion to Dismiss. (Mot., p. 5:6-9 ("The object of the
12 Appeal in this matter is overturning the judicial determination that Defendants can establish
13 by a preponderance of the evidence that their claim is based upon a good faith communication
14 in furtherance of the right to petition or the right to free speech in direct connection with an
15 issue of public concern").) Thus, this Court lacks jurisdiction to modify or reverse its order
16 granting Defendants' anti-SLAPP Motion to Dismiss.

17 However, this Court retains jurisdiction to award attorney fees in the underlying
18 matter even after notice of appeal is filed. *Kantor v. Kantor*, 116 Nev. 886, 894–95, 8 P.3d
19 825, 830 (2000) (holding that, although a timely notice of appeal divests the district court of
20 jurisdiction and vests jurisdiction in the appellate court, the district court had jurisdiction to
21 award attorney fees while an appeal of the underlying divorce decree was pending because
22 the "collateral matter did not affect the merits of [the appellant's] appeal"); *see also Emerson*
23 *v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 672, 677–78, 263 P.3d
24 224, 228 (2011). Thus, this Court should deny Mr. Smith's Motion to stay proceedings and
25 enter the Fees and Costs Award—and enforce it as needed.

26 **B. None of the Relevant Factors Weighs in Favor of Granting a Stay.**

27 "In deciding whether to issue a stay..., the Supreme Court or Court of Appeals will
28 generally consider the following factors: (1) whether the object of the appeal ... will be

1 defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer
2 irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real
3 party in interest will suffer irreparable or serious injury if the stay or injunction is granted;
4 and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
5 petition.” Nev. R. App. P. 8(c). *accord Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of*
6 *Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *accord Mikohn Gaming Corp. v. McCrea*,
7 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). In addition, courts must also consider “where the
8 public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted);
9 *accord NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-492-RFB-VCF, 2015 WL
10 3489684, at *4 (D. Nev. June 3, 2015).

11 In the instant case, none of the factors weighs in favor of a stay. First, whether Mr.
12 Smith can forestall payment has absolutely no effect on the object of the appeal, *i.e.* whether
13 the underlying anti-SLAPP Motion to Dismiss was properly granted. Second, Mr. Smith has
14 provided no evidence that he will suffer “irreparable or serious injury” if he is forced to pay
15 now instead of later. Third, by contrast, Defendants’ have set forth in attached declarations
16 that they will suffer serious injury if Mr. Smith is granted a stay. Fourth, Mr. Smith is not
17 likely to prevail on the merits of his appeal—it is well established that the communications
18 at issue are protected by Nevada’s anti-SLAPP law. Fifth and finally, the public interest lies
19 in denying a stay, as the purpose of Nevada’s anti-SLAPP statute—deterring and expediting
20 the disposition of meritless suits—would not be served by delaying compensation and
21 allowing Mr. Smith to find ways to escape liability to Defendants, such as strategically filing
22 for bankruptcy. His whole purpose in filing this case was to litigate the defendants into
23 silence; a stay could help him effectuate that purpose despite the Court’s ruling on the anti-
24 SLAPP motion. Thus, this Court should deny Mr. Smith’s Motion.

25 1. The Object of the Appeal Will Not Be Defeated.

26 Mr. Smith correctly articulates that the object of his appeal “is overturning the
27 judicial determination that Defendants can establish by a preponderance of the evidence that
28 their claim is based upon a good faith communication” under Nevada’s anti-SLAPP law.

(Mot., p. 5:6-9.) Because “Defendants [sic] pending Fee Motion [sic]¹ is a result of the Court’s ruling on granting the Special Motion to Dismiss” (*id.*, p. 5:9-10) Mr. Smith believes that if he “is successful on their [sic] appeal, then the basis for [the Fees and Award Order] will be nullified,” (*id.*, p. 5:16-17) which would in turn “create an unnecessary and problematic scenario for the Court and the Parties[.]” (*Id.*, p. 5:17-18.)

Nowhere in his Motion does Mr. Smith articulate how failure to stay this case would defeat—or have any impact whatsoever on—the Appellate Court’s determination of whether this Court erred in granting Defendants’ anti-SLAPP Motion to Dismiss. This is because there is no effect.

Indeed, there would not be any effect even if Plaintiff were appealing the Fees and Award Order. This is so because “[p]ayment of a judgment only waives the right to appeal or renders the matter moot when the payment is intended to compromise or settle the matter.” *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003); *accord Jones v. McDaniel*, 717 F.3d 1062, 1069 (9th Cir. 2013). Under this precedent, compliance with this Court’s pending Fees and Award Order—which is not a payment that is “intended to compromise or settle the matter”—would not render Mr. Smith’s appeal moot or constitute a waiver of Mr. Smith’s right to appeal. Rather, if Mr. Smith were to prevail on appeal after paying the mandated fees and award, this Court (or the Appellate Court) could easily order the money be returned to Mr. Smith. Thus, the object of Mr. Smith’s appeal will not be defeated absent a stay, and this factor weighs against granting a stay in this matter.

2. Mr. Smith Will Not Suffer Irreparable or Serious Injury if the Stay is Denied.

Mr. Smith admits that “a stay will not cause irreparable or serious harm” to him because “[t]he only potential harm is [sic] staying the case is the delay caused by waiting for a resolution of the appeal.” (Mot., p. 6:13-15.) Indeed, as Mr. Smith has demonstrated the

¹ As noted above, Defendants’ Fee Motion has been fully briefed, argued, and granted, is no longer pending before this Court. Aside from the instant Motion, the only issue pending before this Court is formal entry of the written Fees and Award Order.

1 financial resources to both litigate this baseless action before this Court and Nevada's
2 appellate courts, this factor weighs against issuing a stay.

3 **3. Defendants Will Suffer Serious Injury If the Stay Is Granted.**

4 Mr. Smith argues that "the mere delay caused by staying the case will not result in
5 serious or irreparable harm to the Defendants." (Mot., p. 6:25-26.) However, "[a]rguments
6 of counsel are not evidence and do not establish the facts of the case." *Jain v. McFarland*,
7 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993). As demonstrated in their attached
8 declarations, Defendants have limited means to continuously defend themselves against this
9 litigation absent collection of Fees, Costs, and an Award from Mr. Smith. (Eagan Decl., ¶¶
10 2-7; Zilverberg Decl., ¶¶ 2-9.) Defendants should not be forced to bankrupt themselves to
11 vindicate their First Amendment rights. As briefed in this case, the whole point of the anti-
12 SLAPP statute is to immunize a defendant from liability for exercising his or her free speech
13 rights. Entry—and enforcement—of the Fees and Award Order is necessary to uphold the
14 purpose of Nevada's anti-SLAPP statute, which is to make a "person who engages in a good
15 faith communication in furtherance of the right to ... free speech in direct connection with
16 an issue of public concern ... *immune from any civil action* for claims based upon the
17 communication." Nev. Rev. Stat. § 41.650 (emphasis added); *accord Wanland v. Law Offices*
18 *of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 22 (Cal. Ct. App. 2006) (anti-
19 SLAPP fee shifting provision "is broadly construed so as to effectuate the legislative purpose
20 of reimbursing the prevailing defendant for expenses incurred in extracting herself from a
21 baseless lawsuit.").

22 Moreover, as noted on the record on the hearing on the fees, costs, and statutory
23 award, Mr. Smith's counsel has indicated that he may seek bankruptcy to avoid complying
24 with the Fees and Awards Order. This reflects Mr. Smith's desire to do anything he can to
25 avoid payment and enforcement of the Order, and heightens Defendants' need for immediate
26 entry and enforcement. Thus, this factor also weighs against issuing a stay.

27 ///

28 ///

1 **4. Mr. Smith Cannot Establish Any Likelihood of Success.**

2 The Nevada Supreme Court has held that while “a movant does not always have to
3 show a probability of success on the merits, the movant must a present a substantial case on
4 the merits when a serious legal question is involved and show that the balance of equities
5 weighs heavily in favor of granting the stay.” *Hansen v. Eighth Judicial Dist. Court ex rel.*
6 *County of Clark*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (citation and internal quotation
7 marks omitted). In his Motion, Mr. Smith does not present any case, much less a substantial
8 one, on the merits of his appeal; therefore, this factor weighs heavily against issuing a stay.

9 As is his wont, Mr. Smith argues in conclusory fashion and provides no legal or
10 factual support for his argument that he can prevail on appeal. Here, he claims that he is
11 “likely to prevail on appeal” because “recent Nevada Supreme Court cases have been directly
12 opposite in ruling with regards to the definition of ‘public concern.’” (Mot., p. 5:24-26.)
13 However, Mr. Smith fails to cite to any Nevada Supreme Court decisions² that even pertain
14 to Nevada’s anti-SLAPP statute, much less a decision which held that a public figure’s
15 conduct in his business community is not a matter of “public concern.”

16 This silence is damning and demonstrates that Mr. Smith cannot attain appellate
17 relief. As this Court’s October 31, 2019 Order Granting Defendants’ Anti-SLAPP Motion to
18 Dismiss reflects, the Nevada Supreme Court has explicitly held that courts should define
19 “public interest” broadly. (October 31, 2019 Order, ¶ 38 (citing *Coker v. Sassone*, 135 Nev.
20 Adv. Op. 2, 10, 432 P.3d 746, 751 (2019).) This Court then carefully analyzed the relevant
21 factors under *Shapiro v. Welt*, 133 Nev. 35, 389 P.3d 262, 268 (2017) to reach the conclusion
22 that the communications at issue in direct connection with an issue of public interest.

23
24 ² Assuming that Mr. Smith is obliquely referring to the Nevada Supreme Court’s holding
25 affirming denial of an anti-SLAPP Motion to Dismiss in *Pope v. Felhauer*, 2019 WL
26 1313365 (Nev. 2019), *Pope* was briefed at length and clearly distinguished from the instant
27 matter. (See Special Motion to Dismiss, pp. 9:10 – 13:3; Reply in Support of Special Motion
28 to Dismiss, pp. 13:3 – 15:16.) Indeed, the Court explicitly stated at the October 3, 2019
hearing in this matter that “the case meets the requirements of the statute in *Pope v. Felhauer*
[sic], and the standards have been adopted from California regarding the public interest.”
(Transcript of October 2, 2019 Hearing, pp. 9:24 – 10:2.)

1 (October 21, 2019 Order, ¶¶ 39-49.) Mr. Smith does not even attempt to explain how the
2 Court's reasoning was incorrect with regard to this issue, or how Defendants' voluminous
3 evidence failed to meet the "preponderance of the evidence" standard.

4 Indeed, this Court emphasized that this case was not a close one. For example, this
5 Court held that "Defendants presented comprehensive information in the form of admissible
6 evidence as required by EDCR 2.21, with supporting affidavits and exhibits, demonstrating
7 that their communications were made in good faith[.]" (October 21, 2019 Order, ¶ 56.) The
8 Court then explored Mr. Smith's abject failure to rebut any of Defendants' evidence: "In
9 contrast to Defendants' evidence, Plaintiff's affidavit is comprised almost entirely of
10 inadmissible, conclusory statements about what he presumes to be Defendants' intentions,
11 motivations, states of mind, and innermost thoughts." (*Id.*, ¶ 57.)

12 Defendants meet the burden of "making a strong showing that appellate relief is
13 unattainable." Accordingly, Mr. Smith has little, if any, possibility of prevailing on appeal,
14 and this factor therefore also weighs in favor of denying a stay.

15 5. Public Policy Weighs in Favor of Denying a Stay.

16 Nevada's anti-SLAPP statute is designed to uphold speakers' First Amendment
17 rights by protecting them from costly litigation intended to silence them—and to deter
18 lawsuits like Mr. Smith's that improperly target free speech. The anti-SLAPP statute
19 achieves these purposes by providing a means for expeditiously disposing of cases and
20 shifting the burden of fees and costs (and a statutory award) onto the SLAPP plaintiff.
21 Granting Mr. Smith a stay in the instant matter would defeat this purpose by dragging out
22 the proceedings, delaying (or potentially denying, if Mr. Smith succeeds in discharging the
23 judgment against him in bankruptcy) Defendants their just compensation for defending
24 themselves against Mr. Smith's suit.

25 Mr. Smith's appeal to "judicial efficiency"—arguing that if he "ultimately succeeds
26 on appeal, the Court's efforts in continuing to conduct the litigation will have been for
27 naught" and that "[s]imultaneously using this Court's and the Nevada Supreme Court's
28 resources when Defendants may ultimately have a judgment entered against them is not an

1 efficient use of judicial resources” (Mot., p. 6:19-25)—is unavailing. Aside from the instant
2 Motion, the only issue remaining for this Court to expend resources on is entry and
3 enforcement of the Fees and Award Order.

4 **C. This Court Should Require a Supersedeas Bond in the Full Amount.**

5 Even if a motion to stay proceedings were properly before this Court, and even if
6 Plaintiff were able to establish an entitlement to a stay, a full bond would need to be posted.
7 “The purpose of a supersedeas bond is to protect the prevailing party from loss resulting from
8 a stay of execution of the judgment. Thus, a supersedeas bond posted under NRCP 62 should
9 usually be set in an amount that will permit full satisfaction of the judgment. [But a] district
10 court, in its discretion, may provide for a bond in a lesser amount, or may permit security
11 other than a bond, *when unusual circumstances exist and so warrant.*” *McCulloch v.*
12 *Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), *dismissed*, 100 Nev. 816, 808 P.2d 18
13 (1984), and *holding modified by Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005)
14 (footnote omitted) (emphasis added).

15 Here, Mr. Smith points to absolutely no unusual circumstances which justify
16 posting a supersedeas bond in less than the full amount Defendants are entitled to pursuant
17 to the pending Fees and Award Order. This is because there are no unusual circumstances in
18 this case—Mr. Smith merely wants to delay payment of the judgment that is soon to be
19 entered against him.³

20 This Court must consider five factors to determine “when a full supersedeas bond
21 may be waived and/or alternate security substituted: (1) the complexity of the collection
22 process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal;
23 (3) the degree of confidence that the district court has in the availability of funds to pay the
24

25 ³ Worse yet, Mr. Smith misstates the law, claiming that “it would not be possible to proceed
26 forward on the issue of fees, costs and statutory awards, and as of the filing of the Notice of
27 Appeal, the Order granting fees, costs and statutory awards had not been entered by the
28 Court.” (Mot., pp. 6:28 – 7:2.) As noted above, this position has been rejected by the Nevada
Supreme Court, which explicitly held that the district court retains jurisdiction over issues
collateral to those on appeal. *Kantor*, 116 Nev. at 894–95, 8 P.3d at 830.

judgment; (4) whether the [appellant's] ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the [appellant] is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.” *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006).

Here, Mr. Smith has provided absolutely no evidence regarding any of these five factors, leaving Defendants to guess as to how difficult it will be to collect a judgment against Mr. Smith, how long it will take, or whether Mr. Smith has funds available to pay the judgment to be entered against him. Thus, because Mr. Smith has not met his burden of establishing that unusual circumstances exist and warrant a decreased supersedeas bond, if this Court grants his Motion to Stay it should require him to post a bond sufficient to cover the full amount of \$89,002.53 awarded in the Fees and Award Order.

III. CONCLUSION

Contrary to Mr. Smith's assertions, the instant Motion to Stay is nothing more than a dilatory tactic intended to delay payment and give Mr. Smith more time and options—such as bankruptcy—to attempt to dodge the liability he brought upon himself by pursuing a baseless SLAPP suit against Defendants. Thus, for the foregoing reasons, this Court should deny Mr. Smith's Motion to Stay; should this Court exercise its discretion to grant Mr. Smith's Motion, it should require Mr. Smith to post a supersedeas bond sufficient to cover the full amount of \$89,002.53 awarded in the Fees and Award Order.

Respectfully submitted this 6th day of December, 2019.

/s/ Margaret A. McLetchie

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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 6th day of December, 2019, I did cause a true copy of the foregoing OPPOSITION TO MOTION TO STAY PENDING APPEAL 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/ Pharan Burchfield
EMPLOYEE of McLetchie Law

INDEX OF EXHIBITS

Exhibit	Description
n/a	Declaration of Katy Zilverberg in Support of Opposition to Motion for Stay
n/a	Declaration of Victoria Eagan in Support of Opposition to Motion for Stay

MARGARET A. MCLETTCHIE, 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*

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

Jason T. SMITH, an individual,

Plaintiff,

vs.

Case No.: A-19-798171-C

Dept. No.: XXIV

DECLARATION

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

Defendants.

**DECLARATION OF KATY ZILVERBERG IN SUPPORT OF OPPOSITION TO
MOTION FOR STAY**

I, KATY ZILVERBERG, hereby declare as follows:

1. I make this declaration in support of my Opposition to Plaintiff's Motion to Stay this matter.
2. In his Motion to Stay, Mr. Smith claims that staying the proceedings in this matter would not cause me serious injury. This is not true.
3. Mr. Smith's lawsuit has caused, and continues to cause, me significant financial hardship.
4. I was involved in an automobile accident in December 2018 that required several days of hospitalization and treatment for severe burns.
5. As a result of this accident, I have incurred significant medical debt.

1 6. Before Mr. Smith filed the instant lawsuit, I was considering filing for
2 bankruptcy due to this medical debt.

3 7. The instant lawsuit has only exacerbated these financial difficulties.

4 8. Furthermore, the costs of the instant lawsuit have caused me and Ms. Eagan
5 to postpone our wedding, which was scheduled for October 2019.

6 9. Prompt entry and enforcement of the order awarding fees, costs and a
7 statutory award in this matter, as well as a speedy end to this litigation, is critical to
8 maintaining my financial solvency.

9 I declare under penalty of perjury under the laws of the State of Nevada that the
10 foregoing is true and correct to the best of my knowledge and belief.

11
12 Dated this 6th day of December, 2019 in Las Vegas, NV.

13
14 
15 Katy Zilverberg
16

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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.

DECLARATION

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

Defendants.

**DECLARATION OF VICTORIA EAGAN IN SUPPORT OF OPPOSITION TO
MOTION FOR STAY**

I, VICTORIA EAGAN, hereby declare as follows:

1. I make this declaration in support of my Opposition to Plaintiff's Motion to Stay this matter.

2. In his Motion to Stay, Mr. Smith claims that staying the proceedings in this matter would not cause me serious injury. This is not true.

3. Mr. Smith's lawsuit has caused, and continues to cause, me significant financial hardship.

4. For instance, the instant lawsuit has forced me to pay attorney's fees out-of-pocket via credit cards.

5. My credit cards now carry high balances which are accruing interest. This

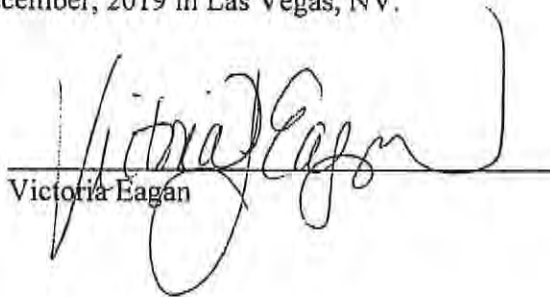
1 has caused my credit rating to decrease.

2 6. Furthermore, the costs of the instant lawsuit have caused me and Ms.
3 Zilverberg to postpone our wedding, which was scheduled for October 2019.

4 7. Prompt entry and enforcement of the order awarding fees, costs and a
5 statutory award in this matter, as well as a speedy end to this litigation, is critical to
6 maintaining my financial solvency.

7 I declare under penalty of perjury under the laws of the State of Nevada that the
8 foregoing is true and correct to the best of my knowledge and belief.

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10 Dated this 6th day of December, 2019 in Las Vegas, NV.

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14 Victoria Eagan
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