

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

Electronically Filed
Jan 06 2020 03:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

Case No.: A-19-798171-C

Dept. No.: XXIV

Plaintiff,

vs.

NOTICE OF APPEAL

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

Defendant(s).

NOTICE IS HEREBY GIVEN that the above-named Plaintiff, Jason T. Smith, by and through his counsel of record, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, hereby appeals to the Supreme Court of Nevada from the ORDER: (1) GRANTING DEFENDANTS' DEFENDANTS' MOTION FOR ATTORNEY'S FEES, COSTS AND STATUTORY AWARDS PURSUANT TO NEV. REV. STAT. § 41.670; (2) GRANTING DEFENDANTS' MOTION TO DISSOLVE PRELIMINARY INJUNCTION; (3) DENYING PLAINTIFF'S MOTION TO RETAX entered on December 20, 2019 by the Eighth Judicial

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District Court in the above-captioned action. Plaintiff, Jason T. Smith has already appealed the Court's prior dispositive order. The appeal is assigned Supreme Court docket number 80154.

Dated this 30th day of December 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

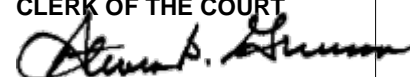
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **NOTICE OF APPEAL** was served in accordance with Administrative Order 14-2, this 30th day of December, 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



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

DISTRICT COURT

COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

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

Plaintiff,

vs.

CASE APPEAL STATEMENT

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

Defendant(s).

1. Name of appellant filing this case appeal statement:

JASON T. SMITH

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

HONORABLE JUDGE JIM CROCKETT

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

JASON T. SMITH

Counsel for Appellant:

BRIAN W. BOSCHÉE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8675

E-mail: kstein@nevadafirm.com

400 S. Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: (702) 791-0308

- 1 4. Identify each respondent and the name and address of appellate counsel, if known, for each
2 respondent (if the name of a respondent's appellate counsel is unknown, indicate as much
3 and provide the name and address of that respondent's trial counsel):
4 KATY ZILVERBERG, and VICTORIA EAGAN
5 Counsel for Respondents:
6 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
7 ALINA M. SHELL, Nevada Bar No. 11711
8 LEO S. WOLPERT, Nevada Bar No. 12658
9 MCLEATCHIE LAW
10 701 E. Bridger Avenue, Suite 520
11 Las Vegas, NV 89101
12 Telephone: (702) 728-5300; Fax (702) 425-8220
13 Email: maggie@nvlitigation.com
14
15 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed
16 to practice law in Nevada and, if so, whether the district court granted that attorney
17 permission to appear under SCR 42 (attach a copy of any district court order granting such
18 permission):
19 Based upon information and belief, all attorneys listed in questions 3 and 4 are licensed to
20 practice law in Nevada.
21
22 6. Indicate whether appellant was represented by appointed or retained counsel in the district
23 court:
24 Appellant was represented by retained counsel in District Court.
25
26 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
27 Appellant is represented by retained counsel on appeal.
28
29 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of
30 entry of the district court order granting such leave:
31 Not Applicable
32
33 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
34 indictment, information, or petition was filed):
35 COMPLAINT FILED ON Jul 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 an appeal. Plaintiff now also appeals from the district court's order granting the Defendants full attorney's fees, costs and statutory awards pursuant to NRS 41.670, as well as dissolving the stipulated preliminary injunction in this matter based on dismissing the case

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:

Yes, the Plaintiff's appeal concerning the district court's dispositive order is the subject of Supreme Court docket number 80154.

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

This case does not involve child custody or visitation.

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

This case involves the possibility of settlement. The appeal involving the prior dispositive order for which the order that is the subject of this appeal is based has already been assigned to the NRAP Settlement Program and to settlement judge William C. Turner.

Dated this 30th day of December 2019.

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

/s/Kimberly P. Stein
BRIAN W. BOSCHEE, 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

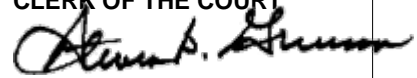
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **CASE APPEAL STATEMENT** was served in accordance with Administrative Order 14-2, this 30th day of December, 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 Puze Stein & Thompson



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

DISTRICT COURT

COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual,

Plaintiff,

v.

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.: 20

**NOTICE OF POSTING COST BOND ON
APPEAL**

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

Dated this 30th day of December, 2019. **HOLLEY, DRIGGS, WALCH,
FINE, PUZEY, STEIN & THOMPSON**

/s/Kimberly P. Stein

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

Attorneys for Plaintiff

HOLLEY DRIGGS
WALCH | FINE | PUZEY | STEIN | THOMPSON

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **NOTICE OF POSTING COST BOND ON APPEAL** was served in accordance with Administrative Order 14-2, this 30th day of December, 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

OFFICIAL RECEIPT

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

Payor
Holley Driggs Walch Fine Puzey Stein & Thompson

Receipt No.
2019-77402-CCCLK

Transaction Date
12/30/2019

Description	Amount Paid
-------------	-------------

On Behalf Of Smith, Jason T
A-19-798171-C
Jason Smith, Plaintiff(s) vs. Katy Zilverberg, Defendant(s)
Appeal Bond

Appeal Bond	500.00
SUBTOTAL	500.00

PAYMENT TOTAL	500.00
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Check (Ref #20063) Tendered	500.00
Total Tendered	500.00
Change	0.00

Notice of Appeal filed 12/30/19

12/30/2019
02:15 PM

Cashier
Station AIKO

Audit
37317356

OFFICIAL RECEIPT

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

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

§
§
§
§
§
§

Location: **Department 24**
 Judicial Officer: **Crockett, Jim**
 Filed on: **07/09/2019**
 Case Number History:
 Cross-Reference Case **A798171**
 Number:
 Supreme Court No.: **80154**

CASE INFORMATION**Statistical Closures**

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

Case Type: **Other Tort**

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

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

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

PARTY INFORMATION**Plaintiff**

Smith, Jason T

Lead Attorneys

Stein, Kimberly P.
Retained
 702-667-4800(W)

Defendant

Eagan, Victoria
 Removed: 10/31/2019
 Dismissed

Zilverberg, Katy

McLetchie, Margaret A.
Retained
 702-728-5300(W)

McLetchie, Margaret A.
Retained
 702-728-5300(W)

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

07/09/2019



Complaint

Filed By: Plaintiff Smith, Jason T
Complaint

07/09/2019



Initial Appearance Fee Disclosure

Filed By: Plaintiff Smith, Jason T
Initial Appearance Fee Disclosure

07/09/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Smith, Jason T
Summons-Zilverberg

07/09/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Smith, Jason T
Summons-Eagan

CASE SUMMARY

CASE NO. A-19-798171-C

07/12/2019	 Proof of Service Filed by: Plaintiff Smith, Jason T <i>Proof of Service-Katy Zilverberg, an individual</i>
07/12/2019	 Proof of Service Filed by: Plaintiff Smith, Jason T <i>Proof of Service-Victoria Eagan, an individual</i>
07/16/2019	 Notice of Appearance Party: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Notice of Appearance</i>
07/19/2019	 Stipulation and Order Filed by: Plaintiff Smith, Jason T <i>Joint Stipulation and Order for Preliminary Injunction</i>
07/19/2019	 Notice of Entry Filed By: Plaintiff Smith, Jason T <i>Notice of Entry of Joint Stipulation and Order for Preliminary Injunction</i>
07/19/2019	 Notice of Posting Bond Filed By: Plaintiff Smith, Jason T <i>Notice of Posting Bond</i>
07/22/2019	 Notice of Posting Bond Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Notice of Posting of Bond</i>
08/19/2019	 Substitution of Attorney Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Substitution of Attorney</i>
08/19/2019	 Substitution of Attorney Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Substitution of Attorney</i>
09/06/2019	 Peremptory Challenge Filed by: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Peremptory Challenge of Judge</i>
09/06/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
09/06/2019	 Peremptory Challenge Filed by: Plaintiff Smith, Jason T <i>Peremptory Challenge of Judge</i>
09/06/2019	 Motion to Dismiss Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)</i>
09/06/2019	 Exhibits Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria <i>Appendix of Exhibits in Support of Special Motion to Dismiss Pursuant to Nev. Rev. Stat.</i>

CASE SUMMARY

CASE NO. A-19-798171-C

41.660 (ANTI-SLAPP)

09/09/2019



Notice of Department Reassignment
Notice of Department Reassignment

09/11/2019



Clerk's Notice of Hearing
Notice of Hearing

09/19/2019



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

09/19/2019



Opposition
Filed By: Plaintiff Smith, Jason T
Opposition to Notice of Non-Opposition to Special Motion to Dismiss Pursuant to Nev. Rev. Stat. section 41.660 (ANTI-SLAPP); and Counter-Motion to Strike Notice of Special Motion to Dismiss Pursuant to Nev. Rev. Statute section 41.660 (ANTI-SLAPP)

09/20/2019



Opposition to Motion
Filed By: Plaintiff Smith, Jason T
Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)

09/23/2019



Errata
Filed By: Plaintiff Smith, Jason T
Errata to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. 41.660 (ANTI-SLAPP)

09/26/2019



Reply in Support
Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria
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)

09/27/2019



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

10/17/2019



Motion
Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria
Motion to Dissolve Preliminary Injunction

10/17/2019



Memorandum of Costs and Disbursements
Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria
Memorandum of Costs and Disbursements

10/17/2019



Motion for Attorney Fees and Costs
Filed By: Defendant Zilverberg, Katy; Defendant Eagan, Victoria
Motion for Attorney's Fees, Costs, and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670

10/22/2019



Motion to Retax
Filed By: Plaintiff Smith, Jason T
Plaintiff's Motion to Retax Costs

CASE SUMMARY

CASE NO. A-19-798171-C

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

CASE SUMMARY

CASE NO. A-19-798171-C

Reply in Support of Motion for Fees and Costs and Motion for Statutory Award; and Supplement to Motion for Fees and Costs

11/26/2019



Notice of Appeal

Filed By: Plaintiff Smith, Jason T
Notice of Appeal

11/26/2019



Case Appeal Statement

Filed By: Plaintiff Smith, Jason T
Case Appeal Statement

11/26/2019



Motion to Stay

Filed By: Plaintiff Smith, Jason T
Plaintiff's Motion to Stay Pending Appeal

11/26/2019



Notice of Posting Bond

Filed By: Plaintiff Smith, Jason T
Notice of Posting Cost Bond on Appeal

11/26/2019



Clerk's Notice of Hearing

Notice of Hearing

12/06/2019



Opposition to Motion

Filed By: Defendant Zilverberg, Katy
Opposition to Motion to Stay Pending Appeal

12/20/2019



Order

Filed By: Defendant Zilverberg, Katy
Order: (1) Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction; and (3) Denying Plaintiff's Motion to Retax

12/20/2019



Notice of Entry of Order

Filed By: Defendant Zilverberg, Katy
Notice of Entry of Order

12/30/2019



Notice of Appeal

Filed By: Plaintiff Smith, Jason T
Notice of Appeal

12/30/2019



Case Appeal Statement

Filed By: Plaintiff Smith, Jason T
Case Appeal Statement

12/30/2019



Notice of Posting Bond

Filed By: Plaintiff Smith, Jason T
Notice of Posting Cost Bond on Appeal

DISPOSITIONS

10/31/2019

Order of Dismissal (Judicial Officer: Crockett, Jim)

Debtors: Jason T Smith (Plaintiff)

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

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

12/20/2019

Order (Judicial Officer: Crockett, Jim)

CASE SUMMARY

CASE NO. A-19-798171-C

Debtors: Jason T Smith (Plaintiff)
 Creditors: Katy Zilverberg (Defendant), Victoria Eagan (Defendant)
 Judgment: 12/20/2019, Docketed: 12/23/2019
 Total Judgment: 69,002.53
 Debtors: Jason T Smith (Plaintiff)
 Creditors: Katy Zilverberg (Defendant)
 Judgment: 12/20/2019, Docketed: 12/23/2019
 Total Judgment: 10,000.00
 Debtors: Jason T Smith (Plaintiff)
 Creditors: Victoria Eagan (Defendant)
 Judgment: 12/20/2019, Docketed: 12/23/2019
 Total Judgment: 10,000.00

HEARINGS

10/03/2019



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

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

Motion Granted;

Journal Entry Details:

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

10/31/2019



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

Status Check: Filing Order for Motion to Dismiss

Set Status Check;

Journal Entry Details:

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

11/21/2019



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

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

Vacated Per 10.31.19 Order

Matter Heard;

Journal Entry Details:

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 ADDITIONALLLY ORDERED, \$10,000.00 damage award GRANTED as to each Defendant. Counsel for Defendant to submit the order; opposing counsel to review as to form and content. Counsel directed to submit the order to chambers within 10 days from today, pursuant to EDCR 7.21. COURT ORDERED, Status Check SET regarding filing or the order. 01/23/20 9:00 AM STATUS CHECK: FILING OF ORDER;

11/26/2019

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

Vacated

Status Check: Order (10/31/2019)

EIGHTH JUDICIAL DISTRICT COURT

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

12/05/2019	CANCELED Motion to Retax (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Judge</i> <i>Plaintiff's Motion to Retax Costs</i>
01/14/2020	Motion to Stay (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiff's Motion to Stay Pending Appeal</i>
01/23/2020	CANCELED Status Check (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Law Clerk</i> STATUS CHECK: FILING OF ORDER

DATE	FINANCIAL INFORMATION
------	-----------------------

Defendant Zilverberg, Katy	
Total Charges	703.00
Total Payments and Credits	703.00
Balance Due as of 1/3/2020	0.00
Plaintiff Smith, Jason T	
Total Charges	768.00
Total Payments and Credits	768.00
Balance Due as of 1/3/2020	0.00
Defendant Zilverberg, Katy	
Injunction Balance as of 1/3/2020	100.00
Plaintiff Smith, Jason T	
Injunction Balance as of 1/3/2020	100.00
Plaintiff Smith, Jason T	
Appeal Bond Balance as of 1/3/2020	1,000.00

DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

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

JASON T. SMITH, an individual

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

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

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

I through X, inclusive

Attorney (name/address/phone):

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

Attorney (name/address/phone):

Mikkaela N. Vellis, Esq. (NBN 14294)

Holley Driggs Walch Fine Puzey Stein & Thompson

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

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

Civil Case Filing Types

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

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

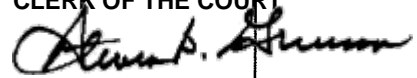
July 9, 2019

Date

/s/Kimberly P. Stein

Signature of initiating party or representative

See other side for family-related case filings.



ORDR

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ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

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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: (1) GRANTING
DEFENDANTS' MOTION FOR
ATTORNEY'S FEES, COSTS AND
STATUTORY AWARDS
PURSUANT TO NEV. REV. STAT.
§ 41.670; (2) GRANTING
DEFENDANTS' MOTION TO
DISSOLVE PRELIMINARY
INJUNCTION; and (3) DENYING
PLAINTIFF'S MOTION TO
RETAX**

Defendants.

Defendants Katy Zilverberg and Victoria Eagan's Motion for Attorney's Fees, Costs and Statutory Awards, having come on for hearing on November 21, 2019, the Honorable Jim Crockett presiding, Plaintiff Jason T. Smith, appearing by and through counsel of record, Brian W. Boschee 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:

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

2 **A. The Complaint and Early Stipulation.**

3 1. On July 7, 2019, Plaintiff filed a Complaint alleging causes of action for
4 defamation, conspiracy, and injunctive relief based upon the above-mentioned
5 communications.

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

8 **B. Defendants' Special Anti-SLAPP Motion to Dismiss.**

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

11 4. On September 20, 2019, Plaintiff filed a response in opposition to the
12 Special Motion to Dismiss.

13 5. On September 26, 2019, Defendants timely filed a reply in support of their
14 Special Motion to Dismiss.

15 6. On October 3, 2019, the Court heard oral argument on Defendants' Special
16 Motion to Dismiss.

17 7. On October 3, 2019, the Court orally granted Defendants' Special Motion
18 to Dismiss.

19 8. On October 31, 2019, this Court entered a written order granting
20 Defendants' Special Motion to Dismiss.

21 **C. Defendants' Motion for Attorney's Fees, Costs and Statutory Award.**

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

24 10. On October 31, 2019, Plaintiff timely filed a response in opposition to the
25 Fees Motion.

26 11. On November 7, 2019, Defendants timely filed a reply in support of the
27 Fees Motion.

28 12. In their Motion, Reply and supporting exhibits, Defendants requested the

following total compensation for the work performed and costs expended in this matter through November 7, 2019:

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

13. Defendants provided detail for the work performed, as well as declarations supporting the reasonableness of the rates and the work performed.

D. Plaintiff's Motion to Retax Costs.

14. On October 22, 2019, Plaintiff filed a Motion to Retax Costs pursuant to Nev. Rev. Stat. § 18.110(4).

15. On November 1, 2019, Defendants filed a response in opposition to the Motion to Retax Costs.

E. Defendants' Motion to Dissolve Preliminary Injunction.

16. On October 17, 2019, Defendants filed a Motion to Dissolve the Preliminary Injunction.

17. On October 31, 2019, Plaintiff timely filed a response in partial opposition to the Motion to Dissolve the Preliminary Injunction.

18. On November 7, 2019, Defendants timely filed a reply in support of their Motion to Dissolve the Preliminary Injunction.

F. November 21, 2019 Hearing.

19. On November 21, 2019, the Court heard oral argument on Defendants' Fees Motion and Motion to Dissolve the Preliminary Injunction, as well as Plaintiff's Motion to Retax Costs.

20. At this hearing, the Court orally granted Defendants' Fees Motion in its entirety, awarding all requested fees and costs, and a statutory award of \$10,000 to each Defendant.

///

21. At this hearing, the Court orally granted Defendants' Motion to Dissolve the Preliminary Injunction.

22. At this hearing, the Court orally denied Plaintiff's Motion to Retax Costs.

II. CONCLUSIONS OF LAW

A. Legal Standard for Award of Attorney's Fees and Costs.

23. 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).

24. 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).

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26. Furthermore, awarding all fees and costs incurred in defending oneself from a SLAPP suit—including the fees incurred in preparing the motion for fees and costs—is in accordance with the purpose of Nevada's anti-SLAPP statute, which is to make speakers "immune from any civil action for claims based upon the communication." Nev. Rev. Stat. § 41.650.

B. The Motion to Retax Costs.

27. Nev. Rev. Stat. § 18.110(4) states that, with regard to a memorandum of costs, "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."

1 28. As a threshold matter, Defendants’ Motion to Retax Costs was untimely, as
2 it was filed on October 22, 2019—five days after Defendants served their Memorandum of
3 Costs attached as an exhibit to the Fees Motion on October 17, 2019.

4 29. Even if the Motion to Retax Costs were properly before the Court, the costs
5 requested by Defendants are reasonable and are compensable pursuant to the anti-SLAPP
6 statute.

7 **C. The Requested Fees and Costs Are Reasonable and the *Brunzell***
8 **Factors Support a Full Award of Fees and Costs to Defendants.**

9 30. As noted above, Defendants are entitled to their reasonable attorney’s fees
10 and costs in this matter.

11 31. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31
12 (1969), the court must consider four elements in determining the reasonable value of
13 attorneys’ services: (1) the qualities of the advocate: his ability, his training, education,
14 experience, professional standing and skill; (2) the character of the work to be done: its
15 difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
16 and the prominence and character of the parties where they affect the importance of the
17 litigation; (3) the work actually performed by the lawyer: the skill, time and attention given
18 to the work; (4) the result: whether the attorney was successful and what benefits were
19 derived. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); *accord Shuette v. Beazer*
20 *Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

21 32. After reviewing and considering the Fees Motion, supporting details of
22 work performed and costs, and supporting declarations in light of the *Brunzell* factors, the
23 Court finds that all factors weigh in favor of awarding Defendants all their requested
24 attorney’s fees to date. The Court also notes that Defendants will be entitled to additional
25 fees and costs associated with additional work.

26 33. As to the first factor, the “qualities of the advocate,” the Court finds that the
27 rates sought are reasonable in light of their ability, training, education, experience,
28 professional standing and skill. The rates sought for staff are also reasonable, and

1 compensable.

2 34. Specifically, the firm responsible for the majority of the work in this matter,
3 McLetchie Law, has substantial experience in litigating First Amendment cases and anti-
4 SLAPP matters. Its requested rates are in line with what attorneys of comparable experience
5 and training would demand.

6 35. The Court further finds that lead counsel, Margaret A. McLetchie, was
7 judicious in allocating work to less costly but still highly skilled attorneys, including Leo
8 Wolpert.

9 36. The Court also finds that the second *Brunzell* factor, the “character of the
10 work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of a
11 full award of fees and costs to Defendants.

12 37. The attorneys at McLetchie Law did a superb job in presenting the legal and
13 factual issues in this case, including marshaling the facts.

14 38. Anti-SLAPP motions “tend to present complex issues. *Piping Rock*
15 *Partners, Inc. v. David Lerner Assocs., Inc.*, No. 12-CV-04634-SI, 2015 WL 4932248, at *5
16 (N.D. Cal. Aug. 18, 2015) (internal citation omitted). Indeed, “the special motion to dismiss
17 again functions like a summary judgment motion procedurally[.]” *Coker v. Sassone*, 135
18 Nev. Adv. Op. 2, 432 P.3d 746, 748 (2019).

19 39. The anti-SLAPP motion in this matter required Defendants to carry the
20 burden of demonstrating, by a preponderance of the evidence, that Plaintiff’s suit was based
21 upon Defendants’ “good faith communications in furtherance of ... the right to free speech
22 in direct connection with an issue of public concern.” Nev. Rev. Stat. § 41.637.

23 40. Defendants were required to demonstrate by a preponderance of the
24 evidence that the communications at issue were both “made in direct connection with an
25 issue of public interest” and that the communications were “truthful or made without
26 knowledge of [their] falsehood.” Nev. Rev. Stat. § 41.637.

27 41. With regard to demonstrating that the communications were “made in direct
28 connection with an issue of public interest,” Defendants provided an abundance of pertinent

1 case law to support that proposition.

2 42. With regard to demonstrating that the communications were “truthful or
3 made without knowledge of [their] falsehood,” Defendants provide a wealth of admissible
4 evidence to support that proposition for all communications that formed the basis of
5 Plaintiff’s claims.

6 43. The authority and evidence presented by Defendants in their papers
7 exceeded their burden under Nevada’s anti-SLAPP statute.

8 44. As to the third factor, the work actually performed by counsel, the Court
9 finds that Defendants’ counsel exercised appropriate discretion in the time and attention they
10 dedicated to litigating this matter, and how they structured work in this matter. In particular,
11 the largest portion of the work in this matter was performed by a qualified associate who
12 billed at a lower rate.

13 45. Additionally, Defendants’ counsel deducted or omitted entries where
14 appropriate.

15 46. The final *Brunzell* factor requires this Court to consider “the result: whether
16 the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at 349,455
17 P. 2d at 33.

18 47. In the instant case, the result obtained by Defendants was complete
19 dismissal of Plaintiff’s suit under Nevada’s anti-SLAPP Statute, which operates as an
20 adjudication on the merits. Nev. Rev. Stat. § 41.660(5).

21 48. Having considered the *Brunzell* factors, and having considered the papers
22 and pleadings on file in this matter, including the documentation provided by Defendants in
23 support of their Fees Motion, the Court finds Defendants are entitled to all their requested
24 attorney’s fees and costs through November 7, 2019 in this matter, in the sum of \$69,002.53.

25 **D. Defendants Are Entitled to a Statutory Award**

26 49. In addition to awarding fees and costs, the Court may also award an amount
27 of up to \$10,000.00 to each Defendant. Nev. Rev. Stat. § 41.670(1)(a)-(b).

28 50. The Court exercises its discretion to award each Defendant the maximum

1 statutory award of \$10,000.00.

2 51. The Court finds that the instant lawsuit was brought and prosecuted by
3 Plaintiff without reasonable basis in fact or law.

4 52. The Court also finds that the award of \$10,000 to each Defendant is an
5 appropriate sanction to deter future filing of SLAPP suits.

6 **III. CONCLUSION**

7 53. Accordingly, for the reasons stated above, IT IS HEREBY ORDERED,
8 ADJUDICATED, AND DECREED that Defendants' Fees Motion is GRANTED.

9 54. IT IS FURTHER ORDEDED that Defendants are awarded \$66,615.00 in
10 attorney's fees and \$2,387.53 for costs pursuant to Nev. Rev. Stat. § 41.670(1)(a), to be paid
11 by Plaintiff.

12 55. IT IS FURTHER ORDERED that Defendants' Motion for a Statutory
13 Award is GRANTED,

14 56. IT IS FURTHER ORDERED that Defendants are awarded \$10,000.00
15 each, for a total of \$20,000.00 pursuant to Nev. Rev. Stat. § 41.670(1)(b), to be paid by
16 Plaintiff.

17 57. IT IS FURTHER ORDERED that Plaintiff's Motion to Retax Costs is
18 DENIED.

19 58. IT IS FURTHER ORDERED that Defendants' request to hold Plaintiff's
20 counsel personally liable for fees and costs pursuant to Nev. Rev. Stat. § 7.085 is DENIED.

21 59. IT IS FURTHER ORDERED that Defendants' Motion to Dissolve the
22 preliminary junction is GRANTED.

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25 ///

26 ///

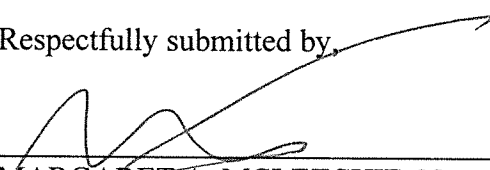
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28 ///

1 60. IT IS FURTHER ORDERED that nothing in this Order precludes
2 Defendants from seeking additional compensation for fees and costs incurred, if appropriate,
3 upon the conclusion of the appeal in this matter, or upon other submission.

4
5 IT IS SO ORDERED this 13 ^{December} day of ~~November~~, 2019.

6
7 
8 HONORABLE JUDGE JIM CROCKETT
9

10 Respectfully submitted by, 

11
12 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

13 ALINA M. SHELL, Nevada Bar No. 11711

14 LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHIE LAW

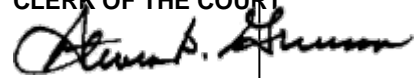
15 701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

17 Email: maggie@nvlitigation.com

18 *Counsel for Defendants Katy Zilverberg*
19 *and Victoria Eagan*
20
21
22
23
24
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28



1 **NEOJ**
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
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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*

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 JASON T. SMITH, an individual,
11
12 Plaintiff,

Case No.: A-19-798171-C

Dept. No.: XXIV

13 vs.

NOTICE OF ENTRY OF ORDER

14
15 KATY ZILVERBERG, an individual;
16 VICTORIA EAGAN, an individual; and
17 DOES I through X, inclusive, and ROA
CORPORATIONS I through X, inclusive,

18 Defendants.

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

20 PLEASE TAKE NOTICE that on the 20th day of December, 2019, the Order: (1)
21 Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to
22 Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction;
23 and (3) Denying Plaintiff's Motion to Retax was entered in the above-captioned action.

24 ///

25 ///

26 ///

27 ///

28 ///

1 A copy of the Order: (1) Granting Defendants' Motion for Attorney's Fees, Costs
2 and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion
3 to Dissolve Preliminary Injunction; and (3) Denying Plaintiff's Motion to Retax is attached
4 hereto as **Exhibit 1**.

5 DATED this the 20th day of December, 2019.

6 /s/ Margaret A. McLetchie

7 MARGARET A. MCLETCHE, Nevada Bar No. 10931

8 ALINA M. SHELL, Nevada Bar No. 11711

9 LEO S. WOLPERT, Nevada Bar No. 12658

10 **MCLETCHE LAW**

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12 Las Vegas, NV 89101

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

14 Email: maggie@nvlitigation.com

15 *Counsel for Defendants Katy Silverberg*
16 *and Victoria Eagan*

17 **CERTIFICATE OF SERVICE**

18 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on
19 this 20th day of December, 2019, I did cause a true copy of the foregoing NOTICE OF
20 ENTRY OF ORDER in *Smith v. Silverberg et al.*, Clark County District Court Case No. A-
21 19-798171-C, to be served using the Odyssey E-File & Serve electronic court filing system,
22 to all parties with an email address on record.

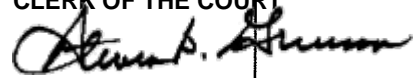
23 /s/ Pharan Burchfield

24 EMPLOYEE of McLetchie Law

25 **INDEX OF EXHIBITS**

26 Exhibit	Description
27 1	28 December 20, 2019 Order: (1) Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction; and (3) Denying Plaintiff's Motion to Retax

EXHIBIT 1



ORDR

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ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

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Counsel for Defendants Katy Zilverberg

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3 Costs attached as an exhibit to the Fees Motion on October 17, 2019.

4 29. Even if the Motion to Retax Costs were properly before the Court, the costs
5 requested by Defendants are reasonable and are compensable pursuant to the anti-SLAPP
6 statute.

7 **C. The Requested Fees and Costs Are Reasonable and the *Brunzell***
8 **Factors Support a Full Award of Fees and Costs to Defendants.**

9 30. As noted above, Defendants are entitled to their reasonable attorney’s fees
10 and costs in this matter.

11 31. Pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31
12 (1969), the court must consider four elements in determining the reasonable value of
13 attorneys’ services: (1) the qualities of the advocate: his ability, his training, education,
14 experience, professional standing and skill; (2) the character of the work to be done: its
15 difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
16 and the prominence and character of the parties where they affect the importance of the
17 litigation; (3) the work actually performed by the lawyer: the skill, time and attention given
18 to the work; (4) the result: whether the attorney was successful and what benefits were
19 derived. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33 (citation omitted); *accord Shuette v. Beazer*
20 *Homes Holding Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005).

21 32. After reviewing and considering the Fees Motion, supporting details of
22 work performed and costs, and supporting declarations in light of the *Brunzell* factors, the
23 Court finds that all factors weigh in favor of awarding Defendants all their requested
24 attorney’s fees to date. The Court also notes that Defendants will be entitled to additional
25 fees and costs associated with additional work.

26 33. As to the first factor, the “qualities of the advocate,” the Court finds that the
27 rates sought are reasonable in light of their ability, training, education, experience,
28 professional standing and skill. The rates sought for staff are also reasonable, and

1 compensable.

2 34. Specifically, the firm responsible for the majority of the work in this matter,
3 McLetchie Law, has substantial experience in litigating First Amendment cases and anti-
4 SLAPP matters. Its requested rates are in line with what attorneys of comparable experience
5 and training would demand.

6 35. The Court further finds that lead counsel, Margaret A. McLetchie, was
7 judicious in allocating work to less costly but still highly skilled attorneys, including Leo
8 Wolpert.

9 36. The Court also finds that the second *Brunzell* factor, the “character of the
10 work” performed in this case, *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, weighs in favor of a
11 full award of fees and costs to Defendants.

12 37. The attorneys at McLetchie Law did a superb job in presenting the legal and
13 factual issues in this case, including marshaling the facts.

14 38. Anti-SLAPP motions “tend to present complex issues. *Piping Rock*
15 *Partners, Inc. v. David Lerner Assocs., Inc.*, No. 12-CV-04634-SI, 2015 WL 4932248, at *5
16 (N.D. Cal. Aug. 18, 2015) (internal citation omitted). Indeed, “the special motion to dismiss
17 again functions like a summary judgment motion procedurally[.]” *Coker v. Sassone*, 135
18 Nev. Adv. Op. 2, 432 P.3d 746, 748 (2019).

19 39. The anti-SLAPP motion in this matter required Defendants to carry the
20 burden of demonstrating, by a preponderance of the evidence, that Plaintiff’s suit was based
21 upon Defendants’ “good faith communications in furtherance of ... the right to free speech
22 in direct connection with an issue of public concern.” Nev. Rev. Stat. § 41.637.

23 40. Defendants were required to demonstrate by a preponderance of the
24 evidence that the communications at issue were both “made in direct connection with an
25 issue of public interest” and that the communications were “truthful or made without
26 knowledge of [their] falsehood.” Nev. Rev. Stat. § 41.637.

27 41. With regard to demonstrating that the communications were “made in direct
28 connection with an issue of public interest,” Defendants provided an abundance of pertinent

1 case law to support that proposition.

2 42. With regard to demonstrating that the communications were “truthful or
3 made without knowledge of [their] falsehood,” Defendants provide a wealth of admissible
4 evidence to support that proposition for all communications that formed the basis of
5 Plaintiff’s claims.

6 43. The authority and evidence presented by Defendants in their papers
7 exceeded their burden under Nevada’s anti-SLAPP statute.

8 44. As to the third factor, the work actually performed by counsel, the Court
9 finds that Defendants’ counsel exercised appropriate discretion in the time and attention they
10 dedicated to litigating this matter, and how they structured work in this matter. In particular,
11 the largest portion of the work in this matter was performed by a qualified associate who
12 billed at a lower rate.

13 45. Additionally, Defendants’ counsel deducted or omitted entries where
14 appropriate.

15 46. The final *Brunzell* factor requires this Court to consider “the result: whether
16 the attorney was successful and what benefits were derived.” *Brunzell*, 85 Nev. at 349,455
17 P. 2d at 33.

18 47. In the instant case, the result obtained by Defendants was complete
19 dismissal of Plaintiff’s suit under Nevada’s anti-SLAPP Statute, which operates as an
20 adjudication on the merits. Nev. Rev. Stat. § 41.660(5).

21 48. Having considered the *Brunzell* factors, and having considered the papers
22 and pleadings on file in this matter, including the documentation provided by Defendants in
23 support of their Fees Motion, the Court finds Defendants are entitled to all their requested
24 attorney’s fees and costs through November 7, 2019 in this matter, in the sum of \$69,002.53.

25 **D. Defendants Are Entitled to a Statutory Award**

26 49. In addition to awarding fees and costs, the Court may also award an amount
27 of up to \$10,000.00 to each Defendant. Nev. Rev. Stat. § 41.670(1)(a)-(b).

28 50. The Court exercises its discretion to award each Defendant the maximum

1 statutory award of \$10,000.00.

2 51. The Court finds that the instant lawsuit was brought and prosecuted by
3 Plaintiff without reasonable basis in fact or law.

4 52. The Court also finds that the award of \$10,000 to each Defendant is an
5 appropriate sanction to deter future filing of SLAPP suits.

6 **III. CONCLUSION**

7 53. Accordingly, for the reasons stated above, IT IS HEREBY ORDERED,
8 ADJUDICATED, AND DECREED that Defendants' Fees Motion is GRANTED.

9 54. IT IS FURTHER ORDEDED that Defendants are awarded \$66,615.00 in
10 attorney's fees and \$2,387.53 for costs pursuant to Nev. Rev. Stat. § 41.670(1)(a), to be paid
11 by Plaintiff.

12 55. IT IS FURTHER ORDERED that Defendants' Motion for a Statutory
13 Award is GRANTED,

14 56. IT IS FURTHER ORDERED that Defendants are awarded \$10,000.00
15 each, for a total of \$20,000.00 pursuant to Nev. Rev. Stat. § 41.670(1)(b), to be paid by
16 Plaintiff.

17 57. IT IS FURTHER ORDERED that Plaintiff's Motion to Retax Costs is
18 DENIED.

19 58. IT IS FURTHER ORDERED that Defendants' request to hold Plaintiff's
20 counsel personally liable for fees and costs pursuant to Nev. Rev. Stat. § 7.085 is DENIED.

21 59. IT IS FURTHER ORDERED that Defendants' Motion to Dissolve the
22 preliminary junction is GRANTED.

23 ///

24 ///

25 ///

26 ///

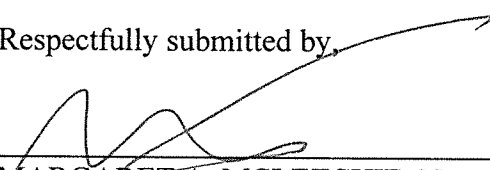
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1 60. IT IS FURTHER ORDERED that nothing in this Order precludes
2 Defendants from seeking additional compensation for fees and costs incurred, if appropriate,
3 upon the conclusion of the appeal in this matter, or upon other submission.

4
5 IT IS SO ORDERED this 13 ^{December} day of ~~November~~, 2019.

6
7 
8 HONORABLE JUDGE JIM CROCKETT
9

10 Respectfully submitted by, 

11
12 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

13 ALINA M. SHELL, Nevada Bar No. 11711

14 LEO S. WOLPERT, Nevada Bar No. 12658

MCLETCHIE LAW

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

17 Email: maggie@nvlitigation.com

18 *Counsel for Defendants Katy Zilverberg*
19 *and Victoria Eagan*
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

October 03, 2019

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

October 03, 2019 9:00 AM Motion to Dismiss

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

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

October 31, 2019

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

October 31, 2019 9:00 AM Status Check

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

COURT CLERK:
Nicole McDevitt

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

November 21, 2019

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

November 21, 2019 9:00 AM Hearing

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

COURT CLERK:
Natalie Ortega

RECORDER:

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING COST BOND ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER: (1) GRANTING DEFENDANTS' MOTION FOR ATTORNEY'S FEES, COSTS AND STATUTORY AWARDS PURSUANT TO NEV.REV.STAT. 41.670; (2) GRANTING DEFENDANTS' MOTION TO DISSOLVE PRELIMINARY INJUNCTION; AND (3) DENYING PLAINTIFF'S MOTION TO RETAX; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

JASON T. SMITH,

Plaintiff(s),

vs.

KATY ZILVERBERG; VICTORIA EAGAN,

Defendant(s),

Case No: A-19-798171-C

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 3 day of January 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk