

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

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

No. 80348

Electronically Filed  
Jan 17 2020 03:08 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT  
CIVIL APPEALS**

### GENERAL INFORMATION

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

### WARNING

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

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

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

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

**2. Attorney filing this docketing statement:**

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

Client(s) JASON T. SMITH

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

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

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

Client(s) KATY ZILVERBERG AND VICTORIA EAGAN

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:                          |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>NRS 41.670</u>  |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

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

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

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

JASON T. SMITH, an individual,  
Appellant,  
vs.

KATY ZILVERBERG, an individual; and VICTORIA EAGAN, an individual,  
Respondents.

Docket 80154

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

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

A Complaint was filed by the Plaintiff alleging causes of action for defamation, conspiracy, and injunctive relief. After service of the Complaint, the parties entered into a Stipulated Preliminary Injunction. Thereafter, Defendants changed counsel and filed a Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP), to which the District Court Granted the Motion to Dismiss, to which Plaintiff filed an appeal on November 26, 2019. 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. On December 20, 2019, the district court entered a post-judgment order awarding attorney's fees, costs and statutory awards. On December 30, 2019, the Plaintiff appealed this order.

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

When an Anti-SLAPP motion special motion to dismiss is granted, NRS 41.670 provides in pertinent part: (a) that a prevailing party is entitled to an award of attorney's fees, and b) that 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.

The prevailing party is still obligated to substantiate the basis for any award of attorney's fees and costs, which must be reasonable. The district court misapplied NRS 41.670 when it concluded Defendants are entitled to all their requested attorney's fees and costs in the sum of \$69,002.53 for one motion, and allowed fees and costs for work not specifically related to the successful Motion to Dismiss under NRS 41.660.

This matter was brought against Defendants collectively. The district court misapplied NRS 41.670 when it awarded each Defendant \$10,000 in this matter.

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

None known

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

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

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

Was it a bench or jury trial? N/A

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

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** December 20, 2019.

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

**17. Date written notice of entry of judgment or order was served** December 20, 2019.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

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

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

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

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** December 30, 2019.

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

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

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order: Plaintiff appeals from the district court's post-judgment order granting attorney's fees and costs.

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

(a) Parties:

Plaintiff, JASON T. SMITH

Defendants, KATY ZILVERBERG and VICTORIA EAGAN

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

N/A

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

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

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

## VERIFICATION

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

JASON T. SMITH

Name of appellant

KIMBERLY P. STEIN, ESQ.

Name of counsel of record

January 17, 2020

Date



Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 17th day of January, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Margaret A. McLetchie, Esq.

Alina M. Shell, Esq.

Leo S. Wolpert, Esq.

McLetchie Law

701 E. Bridger, Avenue, Suite 520

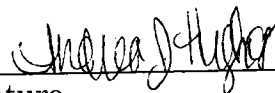
Las Vegas, NV 89101

William C. Turner – Settlement Judge

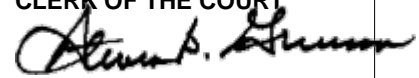
59 Oakmarsh Drive

Henderson, NV 89074

Dated this 17th day of January, 2020



Signature



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

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

**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual,  
  
Plaintiff,

Case No:  
Dept. No.:

**COMPLAINT**

v.

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

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

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

**THE PARTIES**

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

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

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

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

#### **JURISDICTION AND VENUE**

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

#### **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**FIRST CLAIM FOR RELIEF**  
**(Defamation Per Se)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECOND CLAIM FOR RELIEF**  
**(Conspiracy)**

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

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

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

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

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

justifying an award of punitive and exemplary damages.

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

**THIRD CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunction)**

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

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

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

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

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

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

**PRAYER FOR RELIEF**

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

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

Dated this 9th day of July, 2019.

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

/s/Kimberly P. Stein

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

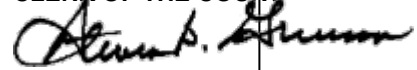
MIKKAELA VELLIS, ESQ.

Nevada Bar No. 14294

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*



1 **NEOJ**  
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*

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 20<sup>th</sup> 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.

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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 20<sup>th</sup> day of December, 2019.

6 /s/ Margaret A. McLetchie

7 MARGARET A. MCLETCHIE, Nevada Bar No. 10931

8 ALINA M. SHELL, Nevada Bar No. 11711

9 LEO S. WOLPERT, Nevada Bar No. 12658

10 **MCLETCHIE LAW**

11 701 E. Bridger Avenue, Suite 520

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 20<sup>th</sup> 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.

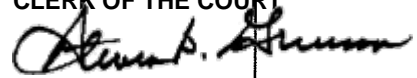
23 /s/ Pharan Burchfield

24 EMPLOYEE of McLetchie Law

### 25 **INDEX OF EXHIBITS**

26 Exhibit	Description
27 1	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**

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*

**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
<b>TOTAL</b>	<b>\$69,002.53</b>

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.

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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).

25. 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).

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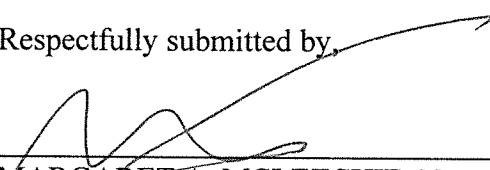
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1           60. IT IS FURTHER ORDERED that nothing in this Order precludes  
2 Defendants from seeking additional compensation for fees and costs incurred, if appropriate,  
3 upon the conclusion of the appeal in this matter, or upon other submission.

4  
5 IT IS SO ORDERED this 13 <sup>December</sup> 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](mailto:maggie@nvlitigation.com)

18 *Counsel for Defendants Katy Zilverberg*  
19 *and Victoria Eagan*  
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