

**IN THE SUPREME COURT OF NEVADA**

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

Supreme Ct. No. 80154  
Dist. Ct. Case No.: A-19-798171-C  
Electronically Filed  
May 12 2020 04:42 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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

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

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**JOINT APPENDIX TO OPENING BRIEF - VOLUME 2**

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Dated this 11th day of May, 2020.

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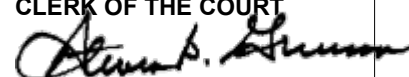
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**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XXIV

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' SPECIAL MOTION TO  
DISMISS PURSUANT TO NEV. REV.  
STAT. § 41.660 (ANTI-SLAPP)**

**Hearing Date:** October 3, 2019

**Hearing Time:** 9:00 a.m.

Plaintiff Jason T. Smith ("Plaintiff" or "Smith"), an individual, by and through counsel of record, the law firm of Holley Driggs Walch Fine Puze Stein & Thompson, hereby files his Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) (the "Opposition").

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This Opposition is made based upon the following Memorandum of Points and Authorities, the declaration of Jason T. Smith (“Smith Declaration”), attached hereto as **Exhibit “1”**, the papers and pleadings on file herein, and any such oral argument as may be adduced at a hearing on this matter.

Dated this 20th day of September 2019.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Defendants’ Katy Zilverberg (“Zilverberg”) and Victoria Eagan (“Eagan,” collectively with Zilverberg referred to herein as “Defendants”) Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP) (the “Motion to Dismiss”) is a misguided attempt to apply NRS 41.660 surrounding free speech to a situation where both Defendants intentionally set out on a course and pattern of conduct to defame and destroy Plaintiff’s name and livelihood before the world without privilege or justification. Ratification of Defendants’ logic and rationale of free speech as set forth in their Motion to Dismiss would effectively destroy well settled Nevada law and turn Tort law as it is known in the United States upside down.

///

When Defendants' Motion is stripped of its histrionics, inadmissible evidence, and unsupportable assertions, Defendants' chief argument is that the Court should summarily deny Smith the opportunity to challenge Defendants' defamatory statements and clear his name. To sway the Court in their favor, Defendants unabashedly purport to champion the cause of the public by protecting "free speech rights" and to portray themselves as the "courageous" victims. However, when the Court understands the malicious scheme devised by Defendants, and carried out by them, to ruin Smith's reputation and destroy his longstanding career in the thrifting community.

In an effort to conceal their misdeeds, Defendants omit telling the Court about their obvious motives to harm Smith. Defendants' respective declarations, each attached as exhibits to their Motion to Dismiss, portray to the Court that they are merely members of the thrifting community but fail to truly establish the relationship and personal animosity each Defendant has towards Smith. The truth is that Defendants have shown contempt for Smith for many years, resulting from an ended friendship and personal feud. Defendants' defamatory statements are not made as concerned individuals alerting the public on issues of public interest, but rather are fueled by nothing more than a personal vendetta against Smith due to a failing friendship and disputes arising therefrom. Defendants are attempting to rely on the fact that Smith is a "so-called" public figure in support of their arguments that Defendants' statements pertain to a public interest; however, just because Defendants allege that Smith is a "so-called" public figure, does not give them free reign to defame him and post false statements about him. The fact that Smith is a "so-called" public figure pertains to the malice requirement under a defamation per se claim, which Smith has clearly proven through scheme and vendetta to harm and injure Smith, but the fact that Smith is a "so-called" public figure does not prove that any statements they say about him automatically pertain to a matter of interest.

Defendants cannot meet their burden of persuasion under NRS 41.660, as Defendants had clear knowledge of the falsity of their statements and such statements were made to further bolster private animosity and dispute between the parties, not a matter of public interest. The facts are

clear in this matter – the statements posted about Smith are false. Defendants knew the statements were false and failed to verify the veracity such highly defamatory statements prior to posting them online, which could have been easily done through online records. However, it was a result of the failing friendship, hard feelings, and personal spite that Defendants subsequently created a scheme to injure Smith through his reputation and business in the thrifting community, a community which Defendants are involved in. Defendants posted false statements about temporary restraining orders against Smith and other criminal conduct for the purpose of bolstering support against Smith to cause greater harm to Smith and his reputation. Not only do Defendants have a personal spite against Smith, but Smith is also a direct competitor to Defendants. Defendants are looking to build their business in the thrifting community, giving Defendants additional intent to defame Smith in order to capitalize their own business by destroying the reputation and career of one of their top competitors.

It is clear here that we have a case of two individuals who have smeared another competitor, and former friend's name, throughout the thrifting community in hopes of intimidating and embarrassing him out of a lucrative marketplace. To suggest that such outrageous acts are protected based on alleged free speech would be disingenuous and improper.

Moreover, there has been no discovery conducted by Defendants in this matter to verify any of the facts or alleged evidence presented in this matter. The veracity and reliability of this evidence is not established and is disputed here, as Smith has not had the opportunity for any cross-examination of statements from third-party witnesses or verify that posts and text message threads used to support the Motion to Dismiss are not edited or varied in any way. Thereby, this Court should allow this case to move forward, allow discovery to take place, and allow this case to be heard on the merits, as it should, and Smith respectfully requests that this Court deny Defendants' Motion to Dismiss.

Based on the foregoing, Smith respectfully requests that the Court deny Defendants' Special Motion to Dismiss in its entirety. Smith also respectfully requests that this Court deny Defendants' requests for costs and fees, and award Smith costs and fees for having to respond to

Defendants’ baseless Motion to Dismiss.

## II. STATEMENT OF RELEVANT FACTS

Smith has been a long-time and well-known member of the thrifting community, a community of individuals who buy and sell used goods online. *See* Smith Declaration, ¶ 4, Exhibit 1. Over the years, Smith has built his reputation in the thrifting community and has established a highly successful business doing so. *Id.* at ¶ 5. Smith’s business is based on his well-known brand name and reputation as a knowledgeable and successful thrifter. *Id.* at ¶ 6. Smith is considered an expert in the thrifting community and many individuals seek advice and expertise from Smith relating to thrifting and buying and selling online, which is a lucrative and necessary part of Smith’s successful business. *Id.* ¶ 7.

Defendants are also a part of the thrifting community. *Id.* ¶ 8. Smith and Defendants have known each other for many years now. *Id.* ¶ 9. Smith and Eagan were friends prior to Eagan meeting Zilverberg. *Id.* ¶ 10. Smith introduced Eagan into the Facebook thrifting community. *Id.* Prior to Defendants meeting each other, Zilverberg was an administrator in Smith’s Facebook group, which has thousands of followers and supporters from the thrifting community *Id.* at ¶ 11. Smith was supportive of Zilverberg and her career in the thrifting community. *Id.* at ¶ 12. Smith personally helped Zilverberg gain supporters and rallied his Facebook group to vote for Zilverberg which led her to winning the Shine Award, a prestigious award given to members of the thrifting community each year at the annual eBay Open conference. *Id.* As a result, Zilverberg became well-known and established a successful business in the thrifting community. *Id.*

Eagan and Zilverberg eventually began a relationship, and Eagan informed Smith that she was going to leave her husband to continue a relationship with Zilverberg. *Id.* at ¶ 13. At that time, Smith was also friends with Eagan’s now ex-husband and was surprised at the news of Eagan and Zilverberg’s relationship. *Id.* at ¶ 14. Defendants became upset that Smith did not fully support their relationship, which was solely a result of the fact that Smith was previously friends with Eagan and her husband. *Id.* at ¶ 15. As a result, Defendants developed animosity and personal spite towards Smith, and Defendants tried to turn many of Smith’s friends against him. *Id.* at ¶ 16.

1 Since this time, Smith distanced himself from Defendants and cut off all relations with them. *Id.*  
2 at ¶ 17.

3 Soon thereafter, Defendants began a campaign against Smith to injure his business and  
4 smear his reputation in their inner circle of friends, which are all a part of the thrifting community,  
5 and the larger public thrifting community. *Id.* at ¶ 18. Upon information and belief, Defendants  
6 are now engaged. *Id.* at ¶ 19. Defendants are also in the process of trying to grow their businesses  
7 in the thrifting community, much of which is done through their online presence in the community  
8 and the YouTube video channel. *Id.* at ¶ 20. Smith is one of Defendants’ top competitors, as he is  
9 one of the most well-known thrifters and advisors in the community. *Id.*

10 On or about June 14, 2018, Zilverberg posted a video on YouTube entitled “Jason T Smith  
11 is an abusive bully” (the “YouTube Video”), wherein Zilverberg goes on an approximately 33-  
12 minute rant about Plaintiff. *Id.* at ¶ 21. Zilverberg calls Smith names and also makes numerous  
13 false statements that Smith has and will try to “take people down.” *Id.* at ¶ 22. For example,  
14 Zilverberg falsely states that Smith has, and will, intentionally get persons thrown out of various  
15 business events, again to allegedly “take people down.” *Id.* at ¶ 23. These statements made by  
16 Zilverberg falsely infer, among other things, that Plaintiff is predatory and has harassed  
17 individuals, which is not true. *Id.* at ¶ 24. The statements made by Zilverberg, and endorsed by  
18 Eagan, have had and continue to have a severe effect on Smith’s reputation and has damaged his  
19 business. *Id.* Defendants are aware that the YouTube video is still posted by other users online  
20 and have made no effort to have the YouTube video removed. *Id.* at ¶ 25.

21 On or about April 25, 2019, Eagan posted statements on her Facebook that Smith has  
22 multiple restraining orders against him. *Id.* at ¶ 26. This post was endorsed by Zilverberg. *Id.*  
23 Defendants have falsely alleged to the public that Smith has a criminal record of restraining orders  
24 and a verified history of harassment, which Plaintiff does not. *Id.* at ¶ 27. These statements have  
25 a severe impact on Plaintiff’s reputation and business in the community. *Id.* at ¶ 28. Smith has  
26 never had any restraining orders against him. *Id.* at ¶ 29. Defendants have attached a background  
27 check of a “Jason Todd Smith” to their Motion to Dismiss, *see* Exhibit 16 attached to Defendants’  
28

Motion to Dismiss; however, the majority of the criminal charges contained therein are not connected in any way to Smith. *Id.* at ¶ 30. The documents produced include criminal charges of an individual entirely unrelated to Smith. *Id.*

While Smith previously lived in Ohio, since September 2000 Smith has only ever lived in California and Nevada. *Id.* at ¶ 31. A majority of the criminal charges, including misdemeanors and felony charges, take place in Ohio after September 2000. *Id.* Smith was no longer residing in Ohio at the time these alleged charges occurred. *Id.* These charges are not related to Smith. *Id.* Smith admits that many of the traffic violations prior to the year 2000 contained in the background report are mine. *Id.* at ¶ 32. However, the charges also notably include a “minor in possession” and “carry a concealed weapon” in 2006 – in 2006 Smith was 35 years old, residing in Nevada, and Smith has never owned a gun in his life. *Id.* at ¶ 33. These charges, except for the traffic violations that Smith admits to, are clearly unrelated to Smith, yet Defendants continue to injure Smith’s reputation by now associating Smith’s name with additional false charges in a public Court document. *Id.* at ¶ 34. Notably, none of the charges included in the background report produced by Defendants include any restraining orders. *Id.* at ¶ 35.

Defendants’ false statements about Smith are fueled by a private dispute with Smith and a subsequent vendetta to injure Smith and his reputation. *Id.* at ¶ 36. Moreover, Defendants are trying to build their business in the thrifting community and also benefit and gain advantage if Smith’s reputation, as a top thrifter in the community, is ruined and his business is destroyed. *Id.* at ¶ 37. Defendants are also capitalizing by using Smith’s brand and creating controversy to bring viewers to their online social media and YouTube channel. *Id.* at ¶ 38. Defendants’ unlawful actions are nothing more than an attempt by Defendants to publicize a private dispute, gain supporters in the community, harm Smith’s brand name and reputation, and capitalize their business. *Id.* at ¶ 39.

As a result of the previous and ongoing defamatory statements and malicious conduct by Defendants, Plaintiff was forced to hire counsel and filed a Complaint against Defendants for 1) defamation per se; 2) conspiracy; and 3) permanent and preliminary injunction, in an attempt to

stop Defendants’ campaign to smear his name and reputation and to stop further irreparable harm and damage from occurring to his business. In or around July 16, 2019, Defendants agreed to a Joint Stipulation and Order for Preliminary Injunction, which was entered by the Court on or about July 19, 2019, which was agreed to by the parties to prevent further defamatory conduct and to prevent further harm. The parties were also trying to work out a settlement at such time, and Smith provided Defendants with a courtesy extension to file their Answer. Soon thereafter, Defendants hired new counsel and immediately filed their Motion to Dismiss, despite the fact the parties were attempting to work out a settlement. Defendants continue to cause Smith further harm and damage through their continued defamation and their tactics in this lawsuit. Defendants have no basis to bring their Motion to Dismiss pursuant to NRS 41.660, as established herein, and are causing Smith to spend additional unnecessary costs and expenses.

### III. LEGAL ARGUMENT

#### A. Legal Standard for Nevada’s Anti-SLAPP Law.

Under Nevada's anti-SLAPP statutes and pursuant to NRS 41.660, a defendant may file a Special Motion to Dismiss under § 41.660, which creates a two-step inquiry process for the Court 19. Nev. Rev. Stat. § 41.660(3).

“If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern: (a) The person against whom the action is brought may file a special motion to dismiss...”. (NRS 41.660(1)(a).) “If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

- a) Determine whether the moving party has established, by a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;
- b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim.

(NRS 41.660(3) (a and b).

Defendants must first establish, by a preponderance of the evidence, that their claim meets the requirements of NRS 41.660(3)(a), “a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” Absent such a finding, the Defendants’ instant Motion to Dismiss must be denied. If the court makes the required finding, “the burden shifts to the plaintiff to show ‘with prima facie evidence a probability of prevailing on the claim.’ *Shapiro v. Welt*, 133 Nev. 35, 38, 389 P.3d 262, 267.

**B. Defendants Fail to Satisfy the First Prong of the Anti-SLAPP Analysis and Thereby Their Motion to Dismiss Must Be Denied.**

Defendants’ Motion to Dismiss must be denied as Defendants cannot establish by a preponderance of the evidence that their claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. Defendants’ Motion to Dismiss fails in the application of NRS 41.637(2), a “Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern ... which is truthful or is made without knowledge of its falsehood.” (NRS 41.637(2).)

The operative phrase, “good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern,” has been “explicitly defined by statute in NRS 41.637.” *Shapiro*, 133 Nev. at 37. NRS 41.637 specifically defines the phrase “good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern” as any of the following:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum which is truthful or is made without knowledge of its falsehood.

NRS 41.637.

Importantly, these four categories are the only categories that are protected under the Nevada Anti-SLAPP statute. *See Delucchi v. Songer*, 133 Nev. 290, 299, 396 P.3d 826, 831 (“a defendant's conduct constitutes ‘good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern’ if it falls within one of the four categories enumerated in NRS 41.637 and ‘is truthful or is made without knowledge of its falsehood.’” (quoting NRS 41.637)).

***1. Defendants’ Statements Are False and Were Made with Knowledge of their Falsehood.***

The Court in *Shapiro* held,

We conclude that the term “good faith” does not operate independently within the anti-SLAPP statute. Rather, it is part of the phrase “good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” This phrase is explicitly defined by statute in NRS 41.637. Further, the phrase “made without knowledge of its falsehood” has a well-settled and ordinarily understood meaning. The declarant must be unaware that the communication is false at the time it was made.

*Shapiro*, 133 Nev. at 38.

The Court further held, “Finally, no communication falls within the purview of NRS 41.660 unless it is ‘truthful or is made without knowledge of its falsehood.’” *Id.* at 40. The right to free speech does not protect defamatory statements. *See Beauharnais v. Illinois*, 343 U.S. 250, 266 (1952) (holding that libelous statements are outside the realm of constitutionally protected speech); *Gertz v. Robert Welch, Inc.* 418 US 323, 340 (1974) (explaining that “there is no constitutional value in false statements of fact”).

Here, Defendant Eagan posted statements regarding Smith on her Facebook account, wherein she included a statement that Smith had multiple restraining orders against him, ultimately implying that not only does Smith have a criminal record but also that Smith has a verified history of harassment. Defendant Zilverberg endorsed this post on Eagan’s Facebook. Notably, nowhere in Defendants’ Motion to Dismiss is there any evidence that Smith has ever any restraining orders against him. Defendants attach an alleged investigation and “background report” on “Jason Todd Smith”, see Exhibit 16 attached to Defendants’ Motion to Dismiss, which includes criminal

records. However, Defendants clearly failed to do their due diligence when conducting the background investigation, as many of the alleged criminal charges provided in the background report have no relation to Smith. Notably, Jason Todd Smith is a common name. While Smith admits that many of the traffic violations included in the background report are his, the remaining alleged charges, including underage possession of a gun and aggregated disorderly conduct, which occurred in the State of Ohio, have no relation to Smith. Smith has only ever resided in California and Nevada. At no time has Smith ever resided in Ohio nor was he ever charged with such crimes as alleged in the Motion to Dismiss.

Rather this is a desperate attempt by Defendants to cover up their misdeeds by distracting the Court with irrelevant and false information. Defendants continue to defame Smith by falsely associating his identity with unrelated misdemeanor and felony charges in a public Court document, which is in line with furthering Defendants' scheme to injure Plaintiff and destroy his reputation and career. Moreover, even a complete review of the background report and all the evidence provided in the Motion to Dismiss illustrates that there is no evidence of any restraining orders against Smith as he has never had any restraining order, which Defendants are clearly aware of.

Moreover, Zilverberg posted a video on YouTube devoting over 33-minutes to ranting about Smith, wherein Zilverberg makes a false statement, among others, that Smith has, and will, find out where people live in order to "take them down," inferring that Smith stalks people. Zilverberg continues throughout the video to make false statements that Smith intentionally gets persons thrown out of various business events, again to "take people down." Defendants' Motion to Dismiss provides alleged statements from an individual who says that Smith "'dug up dirt' on a rival thrifter, which was sent to eBay, resulting in eBay rescinding her invite. *See* Defendants' Motion to Dismiss, 16:15-17. There is no evidence to establish that Smith "dug up dirt" nor do they even what such statement means. Furthermore, this evidence does not establish that intentional had her thrown out of an event to "take someone down" or intentionally cause harm. Nor does this establish any predatory or anti-social behavior, as Defendants allege.

Zilverberg also makes a false statement that Smith has and will find out where people live in order to take them down. There is no evidence set forth in Defendants' Motion to Dismiss that establishes Smith found out where someone lived in order to intentionally cause that person harm, because such is simply not true and Defendants.

Zilverberg also alleges that Smith has caused people to want to commit suicide. This statement is not only false, but it implicates Smith as criminal. This far exceeds any scope protected as free speech and goes far beyond mere opinion testimony. Yet, Defendants don't present any substantive evidence to establish this statement is true, because once again it is entirely false and Defendants are aware of this.

Defendant made numerous false and highly statements about Smith, including criminal charges. Defendants' Motion to Dismiss provides no evidence, substantive or otherwise, to establish any truth to any of these statements, but rather these statements were intentionally made with knowledge they were false, and/or without any due diligence to determine if they were true, to harm Smith resulting from a personal vendetta and a scheme to capitalize on their business through ruining Smith's business and reputation.

Moreover, it is entirely disingenuous and an insult to this Court for Defendants to post highly defamatory statements about Smith and now, in an attempt to excuse their misconduct, claim that this statement was made without knowledge of falsehood. Defendants had a personal relationship with Smith, had known him for a long time, and any information regarding alleged restraining order is public record and verifiable. Defendants cannot now attempt to turn the blind eye and play naïve to the situation after they posted such a defamatory statement, when it is clear Defendants had knowledge it was not true and the ability and duty to verify its veracity prior to posting a statement that infers Smith has a criminal history.

If this Court were to believe what Defendants have asserted in their Motion to Dismiss, then no individual could ever bring a claim for defamation and be successful, as any person accused of defamation could excuse their misconduct by a blanket statement they were unaware that the information was false. Such principal would allow individuals to post false and defamatory

statement for the purposes of hurting another out of spite, as we have here, and allow harm and damage to occur, without any repercussion as a result of the misconduct. Such principal would go against Tort law as established in this country and would render all causes of action for defamation moot.

Applicable law prevents exactly from what Defendants are attempting to do – make false statements about a business competitor in order to gain supporters, decrease the market-share, and increase their own personal businesses. This is unlawful. The statements posted about Smith are clearly false and Defendants cannot merely turn a blind eye and excuse their misconduct by alleging they did not know the statements were false, as such is one again not true.

**2. *Defendants Cannot Show That Their Communications Were Made in Good Faith.***

The communication for which Defendants seek NRS 41.660 relief were not good faith communications to promote the furtherance of free speech in direct connection with an issue of public concern. In an attempt to distract from their clear misdeeds, Defendants try to rely on the incorrect notion that because Smith is well-known and has notoriety in the thrifting community, they are entitled to say whatever they please about him, false or otherwise. Notably, Defendants rely on the fact that Smith is a well-known figure in the thrifting community to support their anti-SLAPP analysis, but also often refer to him as an “alleged” public figure in their Motion to Dismiss when appears convenient for their argument. However, regardless, stating that Smith has multiple restraining orders and inferring to the public that Smith finds out where people live to “take them down” is highly defamatory and is not covered under free speech protection.

Defendants’ statements regarding Smith go far beyond any opinion statements about Smith, but rather Defendants use their online social media and YouTube as avenues to make malicious and reckless false statement about Smith for purpose of destroying his reputation and career in the thrifting community, a community wherein Defendants are conveniently direct competitors of Smith. Defendants are not “courageous” victims, as they paint themselves to be, but rather such is just an attempt by Defendants to distract this Court from the clear vengeance and personal animosity Defendants have towards Smith, resulting from a failed friendship and

subsequent hurt feelings. Not only do Defendants have a personal relationship with Smith that clearly shows Defendants intent and motive to defame Smith, Defendants are also up and coming in the thrifting world, a world that some would say Smith dominates or at least is a top competitor in. Smith is a direct competitor to Defendants and Defendants would benefit if Smith's reputation was destroyed.

Aside from the fact that Defendants made clear false statements, which in itself establishes the communication were made in bad faith, there is nothing in Defendants' Motion to Dismiss that establishes Defendants statements were good faith out of public concern. On the contrary, it is clear Defendants, out of personal spite, are attempting any way possible to destroy Smith, his reputation, and his position in the thrifting world.

### 3. *Defendants' Communications are NOT "an Issue of Public Interest".*

Thus, in order to claim protection under the fourth category, the moving party must demonstrate three things: (1) that a communication directly connects to an issue of public interest; (2) that a particular communication was made in a place open to the public or in a public forum; and (3) that the communication was truthful or is made without knowledge of its falsehood.

In *Shapiro*, the Nevada Supreme Court adopted guiding principles articulated by California courts on what distinguishes a private interest from a "public interest:"

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

*Shapiro*, 389 P.3d at 268 (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F.Supp.2d 957, 968 (N.D. Cal. 2013), aff'd, 609 F. App'x 497 (9th Cir. 2015) (emphasis added);

see also *Pope v. Fellhauer*, 2019 WL 1313365, 437 P.3d 171 (Nev. March 21, 2019).

In *Pope v. Fellhauer*, a key mark case on Nevada’s anti-SLAPP law, the Nevada Supreme Court was unanimous in its decision for the litigants who had sued for defamation. 2019 WL 1313365, 437 P.3d 171 (Nev. March 21, 2019). The case involved a dispute between three cul-de-sac neighbors – the neighbors did not get along and had multiple verbal altercations. *Id.* In that case, Mr. Pope began making statements about the Fellhauers on social media sites, such as Twitter and Altert-ID, a “neighborhood crime-reporting website”, alleging that the Fellhauers were dangerous, sick, mentally unstable, they were the reason behind the neighborhood being labeled a “crime zone,” and asserting the Fellhauers recorded a naked 1-year old swimming in Mr. Pope’s pool. *Id.* Eventually, the Fellhauers filed a defamation complaint against Mr. Pope and in response Mr. Pope filed an anti-SLAPP motion to dismiss. *Id.* The Court looked to the above listed factors in determining whether there was a “public interest” or “public concern”, and in applying these factors, the Court determined that Mr. Pope was simply making public his private feud with the Fellhauers. *Id.* The Court found it significant that Mr. Pope engaged in name-calling: “it is unclear how calling the Fellhauers “‘weird,’ ‘wack-jobs,’ ‘EXTREMELY MENTALLY UNSTABLE,’ ‘crazy,’ and ‘sick’ conveyed anything other than ‘a single [person being] upset with the status quo.’... Thus, we cannot conclude that the derogatory remarks about his neighbors were directly related to an issue of public concern.” *Id.* at \*3. The Court ultimately concluded,, that “[w]e see no evidence that anyone—other than his two friends—were concerned with Pope’s commentary or that Pope was adding to a preexisting discussion.” *Id.* at \*2.

*Pope v. Fellhauer* is identical to the case at issue here. Similarly, here the evidence in this matter clearly establishes that this is not a public interest but a mere effort by Defendants to gather ammunition for another round of private controversy, which is not protected speech under the anti-SLAPP analysis. The parties clearly have an ongoing personal dispute relating to a failed friendship that has caused hurt feelings and personal spite. As a result, Defendants have used hurt feelings and personal spite to fuel a scheme to injure Smith and his reputation for their personal gain.

Moreover, Defendants allege in their Motion to Dismiss that they were protecting the thrifting world from Smith and his “anti-social behavior.” First, it is unclear how statements directed toward a community of approximately 55,000 people, out of approximately 330 million people living in the United States, constitutes a “public concern.” Second, it is unclear how statements that Smith allegedly has a criminal record, including temporary restraining order, is directly connected with Defendants’ alleged “public interest.” These statements are not directly connected to the thrifting, and buying and selling used goods, which is the market that Defendants’ statements were directed at. Rather, Defendants’ conduct proves to be motivated by the sole purpose of ruining Smith’s reputation out of personal spite and animosity and capitalizing on their own careers by destroying a competitor’s business, not any alleged “public interest” or “public concern.”

Defendants’ false statements were made in an effort to publicize personal and private controversy to gain supporters and sympathy against Smith. Defendants have failed to identify any legitimate public concern or interest, other than persuade others to dislike Smith as they do and find supporters to help damage and ruin Smith’s career.

The false and defamatory statements made by Defendants are not protected as free speech, as they were not made in good faith, are not a matter of public interest, and were made as a result of hurt feelings, spite, and a scheme on behalf of Defendant to harm Smith, and for these reasons, Defendants’ Motion to Dismiss must be denied.

**C. Defendants Fail to Satisfy the Second Prong of the Anti-SLAPP Analysis Because Smith Will Likely Prevail on His Claims.**

Even if the Anti-SLAPP statute is applicable to this case, the Motion to Dismiss should be denied because Plaintiffs have met the burden of establishing, by clear evidence, a prima facie case of defamation and conspiracy, as allege in Smith’s Complaint.

***1. Defamation Per Se.***

Defamation per se is used to “protect the personal reputation of an individual.” *Clark County Sch. Dist. V. Virtual Educ. Software, Inc.*, 213 P. 3d 496, 504 (Nev. 2009) (citing 53 C.J.S. Libel and Slander; Injurious Falsehood §312 (2005); *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749

1 S.W.2d 762, 766 (Tex. 1987)). A prima facie case is established if the plaintiff alleges: “(1) a false  
2 and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged  
3 publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed  
4 damages.” *Pacquiao v. Mayweather*, 803 F.Supp.2d 1208, 1211 (D. Nev. 2011) (citing *Wynn v.*  
5 *Smith*, 117 Nev. 6, 16 P.3d 424, 427 (2001)).

6 Smith has met his burden of establishing a prima facie claim for defamation per se and the  
7 evidence established thus far support all essential elements of his claim. Foremost, the statements  
8 posted on Defendant Eagan’s Facebook, and endorsed by Defendant Zilverberg, that Smith has  
9 multiple restraining orders are clearly defamatory and have been proven through public records to  
10 be false. Smith does not have any restraining orders.

11 Moreover, there is no evidence, which is proven in Defendants’ Motion to Dismiss, that  
12 establishes that Smith intentionally had individuals “kicked out” of thrifting events to “take them  
13 down”. Defendants’ statements far exceed the scope of opinion testimony and are not protected  
14 as free speech. The statements published on Defendants’ social media accounts are a false and  
15 malicious attack against Smith trade, business, and professional reputation. Smith was emotionally  
16 as well as financially damaged as a result of this public humiliation, false accusations regarding  
17 an alleged criminal history of restraining orders, and attack on his business reputation and his  
18 character. A reasonable jury could find, given the entire context of Defendants’ statements, the  
19 history between the parties, and Defendants’ clear vendetta against Smith and their scheme to get  
20 supporters to help them ruin Smith and his career, that said statements are defamation per se.

## 21 **2. Conspiracy.**

22 Nevada defines a civil conspiracy as “a combination of two or more persons, who by some  
23 concerted action, intend to accomplish some unlawful objective for the purpose of harming another  
24 which results in damage.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 662 P.2d 610, 622 (Nev.  
25 1983); *see also Ungaro v. Desert Palace*, 732 F.Supp. 1522, 1532 n.3 (D. Nev. 1989). “By  
26 participating in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of  
27 other coconspirators within the ambit of the conspiracy. In this way, a coconspirator incurs tort  
28

liability co-equal with the immediate tortfeasors.” *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 869 P.2d 454, 457 (Cal. 1994). “A civil conspiracy claim operates to extend, beyond the active wrongdoer, liability in tort to actors who have merely assisted, encouraged, or planned the wrongdoer’s acts.” *Wyatt v. Union Mortgage Co.*, 598 P.2d 45, 51 (Cal. 1979) (“The effect of charging ... conspiratorial conduct is to implicate all . . . who agree to the plan to commit the wrong as well as those who actually carry it out.”) (citations omitted).

To state a valid claim for civil conspiracy, a plaintiff must show: (1) defendants, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming the plaintiff; and (2) the plaintiff sustained damages as a result. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 862 P.2d 1207, 1210 (Nev. 1993) (citations omitted).

Here, the evidence clearly establishes that Defendants acted in concert, by both posting and endorsing, false and defamatory statements about Smith for the purpose of harming his business and his reputation in the thrifting world, a world that Defendants are just now up and coming in and seeking to profit in. It is to their advantage if Smith’s reputation is damaged and his business is destroyed. The facts in this matter, including the relationship between Defendants, their prior relationship and history with Smith, their clear vendetta against Smith, and their personal gain from harming Smith, clearly establishes the elements necessary to support a claim for conspiracy.

### 3. *Preliminary and Permanent Injunction.*

It is clear here that immediate and irreparable injury will result to Smith unless this Court enters an injunction, pursuant to NRCP 65. Defendants’ actions in posting the defamatory statements are causing irreparable harm to Plaintiff because such false statements regarding a history of restraining orders and false statements that Smith intentional “takes people down” continues cause severe and irreparable harm and injury to Smith’s goodwill, reputation, and his business. As a result of the irreparable harm, Plaintiff has no adequate remedy at law.

Thereby, if *arguendo* this Court finds that the anti-SLAPP statute is applicable in this matter, which Smith contends it’s not, Smith has met his burden by establishing that he is likely to prevail on his claims for both defamation per se, conspiracy, and preliminary and permanent

injunction. Therefore, Defendants' Motion to Dismiss must be denied.

**D. Public Policy Requires That This Matter Be Decided on Its Merits and Further Discovery is Necessary in This Matter.**

Pleadings are to be construed liberally and place into issue matters which are fairly noticed to the adverse party. *Langevin v. York*, 111 Nev. 1481 (1985); *Nevada State Bank v. Jamison Family Partnership*, 106 Nev. 792 (1990); *Hay v. Hay*, 100 Nev. 196, 198 (1984). Dismissal of an action is "a harsh remedy to be utilized only in extreme situations." *Moore v. Cherry*, 90 Nev. 390, 393 (1974). The decision to dismiss an action for any reason must be balanced against the strong public policy in favor of resolving issues on the merits. *Spiegelman v. Gold Dust Texaco*, 91 Nev. 542, 545 (1973). The discretion to be exercised under the circumstances of a particular case is a legal discretion, to be exercised in conformity with the spirit of the law and in such a manner as to subserve and not to impede or to defeat the ends of substantial justice. *Id.* The spirit of the law is that matters be heard on their merits; where a case is presently being prosecuted with diligence, it serves the interests of justice that the matter be presented to the trier of fact. *Id.*

Moreover, there has been no discovery conducted by Defendants in this matter to verify any of the facts or alleged evidence presented in this matter. The veracity and reliability of this evidence is not established and is disputed here, as Smith has not had the opportunity for any cross-examination of statements from third-party witnesses or verify that posts and text message threads used to support the Motion to Dismiss are not edited or varied in any way. Thereby, this Court should allow this case to move forward, allow discovery to take place, and allow this case to be heard on the merits, as it should.

**E. Smith is Entitled to Attorney's Fees, Costs, and a Statutory Award from Defendant.**

Defendant's request for attorneys' fees, costs, and/or a statutory award from Plaintiffs should be denied, as Defendants have failed to meet their burden of proof under NRS 41.660 as necessary to be successful in their Motion to Dismiss, as set forth and established herein.

However, NRS 41.670(2) provides that "[i]f the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall

award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion." Further, NRS 41.670(3) reads "[i]n addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award (a) An amount of up to \$10,000; and (b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions."

As set forth herein, Defendants filed their Motion to Dismiss with no basis for doing so, as they had clear knowledge of the falsity of their statements, and such statements were made to further bolster private animosity and dispute between the parties, not a matter of public interest.

#### IV. CONCLUSION

Based on the foregoing, Smith respectfully requests that the Court deny Defendants' Special Motion to Dismiss in its entirety as Defendants have failed to meet their burden of persuasion under NRS 41.660, and even if the Court *arguendo* finds that the NRS 41.660 applies in this matter, Smith has met his burden of establishing that he likely to prevail on his claims for defamation per se, conspiracy, and injunction. Moreover, this case should be heard on its merit and allowed to move forward. Smith also respectfully request that this Court deny Defendants' requests for costs and fees and award Smith costs and fees for having to respond to Defendants' baseless Motion to Dismiss.

Dated this 20th day of September 2019.

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

/s/Kimberly P. Stein

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **PLAINTIFF'S OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP)** was served in accordance with Administrative Order 14-2, this 20th day of September, 2019, addressed to the following:

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# EXHIBIT 1

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**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XXIV

**DECLARATION OF JASON T. SMITH IN**  
**SUPPORT OF PLAINTIFF'S**  
**OPPOSITION TO DEFENDANTS'**  
**SPECIAL MOTION TO DISMISS**  
**PURSUANT TO NEV. REV. STAT. §**  
**41.660 (ANTI-SLAPP)**

I, Jason T. Smith, hereby declare under penalty of perjury as follows:

1. I am the Plaintiff in the above-captioned matter. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

2. I am submitting this Declaration in support of Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (ANTI-SLAPP).

3. I make this Declaration based on my personal knowledge of the facts and matters in this action.

4. I have been a long-time and well-known member of the thrifting community, a community of individuals who buy and sell used goods online.

///

1           16. As a result, Defendants developed animosity and personal spite towards me, and  
2 Defendants tried to turn many of my friends against me.

3           17. Since then I have distanced myself from Defendants and cut off all relations with  
4 them.

5           18. It was soon thereafter that Defendants began a campaign against me to injure my  
6 business and smear my reputation in the larger public thrifting community and with our inner circle  
7 of friends, many of whom are also part of the thrifting community,

8           19. Upon information and belief, Defendants are now engaged.

9           20. I am aware that Defendants are also in the process of trying to grow their businesses  
10 in the thrifting community, much of which is done through their online presence in the community  
11 and the YouTube video channel. I am one of Defendants' top competitors.

12           21. On or about June 14, 2018, Zilverberg posted a video on YouTube entitled "Jason  
13 T Smith is an abusive bully" (the "YouTube Video"), wherein Zilverberg goes on an approximately  
14 33-minute rant about me.

15           22. Throughout the entire video, Zilverberg calls me names and also makes numerous  
16 false statements that I have and will try to "take people down." This is not true.

17           23. Zilverberg also falsely states that I have, and will, intentionally get people thrown  
18 out of various business events, again to allegedly "take people down". This is not true.

19           24. These statements made by Zilverberg falsely infer, among other things, that I am  
20 predatory and harass people, which is untrue and has a severe effect on my reputation and has  
21 damaged my business.

22           25. Defendants are aware that the YouTube video is still posted by other users online  
23 and have made no effort to have the YouTube video removed.

24           26. On or about April 25, 2019, Eagan posted statements on her Facebook that I have  
25 multiple restraining orders against me. This post was endorsed by Zilverberg. This is not true.

26           27. Defendants have falsely alleged to the public that I have a criminal record of  
27 restraining orders and a verified history of harassment, which I do not.

28

1           28.       These statements have had and continue to have a severe impact on my reputation  
2 and business in the community.

3           29.       I have never had any restraining orders against me.

4           30.       I have reviewed the background report of a "Jason Todd Smith" attached to  
5 Defendants' Motion to Dismiss, as Exhibit 16; however, the majority of the criminal charges  
6 contained therein are not connected in any way to me. The documents produced include criminal  
7 charges of an individual entirely unrelated to me.

8           31.       I previously lived in Ohio, but since September 2000, I have only ever lived in  
9 California and Nevada, and a majority of the criminal charges, including misdemeanors and felony  
10 charges, take place in Ohio after September 2000. I was no longer residing in Ohio at the time  
11 these alleged charges occurred. These charges are not related to me.

12          32.       I admit that many of the traffic violations prior to the year 2000 contained in the  
13 background report are mine.

14          33.       The charges also notably include, among other charges, a "minor in possession"  
15 and "carrying a concealed weapon" in 2006 – in 2006 I was 35 years old, residing in Nevada, and  
16 I have never owned a gun in my life.

17          34.       These charges, except for the traffic violations that I admit are mine, are clearly  
18 unrelated to me, yet Defendants continue to injure my reputation by now associating my name with  
19 additional false charges in a public Court document.

20          35.       None of the charges included in the background report produced by Defendants  
21 include any restraining orders.

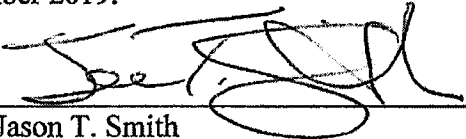
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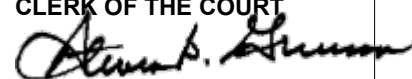
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26 community, is ruined and my business is destroyed.

1           38. I believe Defendants are also capitalizing by using my brand name and creating  
2 controversy surrounding my name to bring viewers to their online social media and YouTube  
3 channel.

4           39. Defendants posted the false statements about me to publicize a private dispute,  
5 resulting from a failed friendship and subsequent hard feelings; gain supporters in the community;  
6 harm my brand name and reputation; and capitalize their business.

7           I declare under penalty of perjury that the foregoing is true and correct and that this  
8 Declaration was executed on the 20 day of September 2019.

9  
10   
11 Jason T. Smith



ERR

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

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**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XXIV

**ERRATA TO PLAINTIFF'S OPPOSITION  
TO DEFENDANTS' SPECIAL MOTION  
TO DISMISS PURSUANT TO NEV. REV.  
STAT. § 41.660 (ANTI-SLAPP)**

Plaintiff Jason T. Smith ("Plaintiff" or "Smith"), an individual, by and through counsel of record, the law firm of Holley Driggs Walch Fine PuzeY Stein & Thompson, hereby files his Errata to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (ANTI-SLAPP) filed in this matter September 20, 2019 (hereinafter "Plaintiff's Opposition").

Plaintiff recently discovered that page 2 to Exhibit 1 to Plaintiff's Opposition, the Declaration of Jason T. Smith in Support of Plaintiff's Opposition (containing paragraphs 5-15) was inadvertently left out when it was scanned and filed with the Court.

The missing page from Plaintiff's Opposition was entirely inadvertent and only recently discovered and thus being corrected immediately with this Errata being filed forthwith.

Plaintiff therefore respectfully requests that this Court accept this Errata and correct Exhibit 1 to Plaintiff's Opposition to add page 2.

Dated this 23rd day of September 2019.

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

/s/Kimberly P. Stein

KIMBERLY P. STEIN, ESQ.

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Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **ERRATA TO PLAINTIFF’S OPPOSITION TO DEFENDANTS’ SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP)** was served in accordance with Administrative Order 14-2, this 23rd day of September, 2019, addressed to the following:

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

*Attorneys for Defendants  
Katy Zilverberg and Victoria Eagan*

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

**HOLLEY DRIGGS WALCH  
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*Attorneys for Plaintiff*

**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

Case No.: A-19-798171-C

Dept. No.: XIV

**DECLARATION OF JASON T. SMITH IN  
SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANTS'  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NEV. REV. STAT. §  
41.660 (ANTI-SLAPP)**

I, Jason T. Smith, hereby declare under penalty of perjury as follows:

1. I am the Plaintiff in the above-captioned matter. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

2. I am submitting this Declaration in support of Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (ANTI-SLAPP).

3. I make this Declaration based on my personal knowledge of the facts and matters in this action.

4. I have been a long-time and well-known member of the thrifting community, a community of individuals who buy and sell used goods online.

///

5. Over the years, I have built my reputation in the thrifting community and have established a highly successful business doing so.

6. My business is based on my well-known brand name and reputation as a knowledgeable and successful thrifter.

7. I am considered an expert in the thrifting community and many individuals seek advice and expertise from me relating to thrifting and buying and selling online, which is a lucrative and necessary part of my successful business.

8. Defendant Victoria Eagan ("Eagan") and Defendant Katy Zilverberg ("Zilverberg" collectively with Eagan, "Defendants") are also a part of the thrifting community.

9. I have known the Defendants for many years now.

10. I was friends with Eagan prior to Eagan ever meeting Zilverberg and prior to Eagan ever being involved in the Facebook thrifting community. I was the person to introduce Eagan into the Facebook thrifting community.

11. Prior to Zilverberg meeting Eagan, Zilverberg was an administrator in my Facebook group, which has thousands of followers and supporters from the thrifting community.

12. I was supportive of Zilverberg and her career in the thrifting community. I personally helped Zilverberg gain supporters and rallied my Facebook group to vote for Zilverberg which led her to winning the Shine Award, a prestigious award given to members of the thrifting community each year at the annual eBay Open conference. As a result, Zilverberg became well-known and established a successful business in the thrifting community.

13. I previously became aware that Eagan and Zilverberg eventually began a relationship, and Eagan informed me that she was going to leave her husband to continue a relationship with Zilverberg.

14. At that time, I was also friends with Eagan's now ex-husband and was surprised at the news of Eagan and Zilverberg's relationship.

15. Eagan and Zilverberg became upset that I did not fully support their relationship, which was solely a result of the fact that I was previously friends with Eagan and her husband.

1           16. As a result, Defendants developed animosity and personal spite towards me, and  
2 Defendants tried to turn many of my friends against me.

3           17. Since then I have distanced myself from Defendants and cut off all relations with  
4 them.

5           18. It was soon thereafter that Defendants began a campaign against me to injure my  
6 business and smear my reputation in the larger public thrifting community and with our inner circle  
7 of friends, many of whom are also part of the thrifting community,

8           19. Upon information and belief, Defendants are now engaged.

9           20. I am aware that Defendants are also in the process of trying to grow their businesses  
10 in the thrifting community, much of which is done through their online presence in the community  
11 and the YouTube video channel. I am one of Defendants' top competitors.

12           21. On or about June 14, 2018, Zilverberg posted a video on YouTube entitled "Jason  
13 T Smith is an abusive bully" (the "YouTube Video"), wherein Zilverberg goes on an approximately  
14 33-minute rant about me.

15           22. Throughout the entire video, Zilverberg calls me names and also makes numerous  
16 false statements that I have and will try to "take people down." This is not true.

17           23. Zilverberg also falsely states that I have, and will, intentionally get people thrown  
18 out of various business events, again to allegedly "take people down". This is not true.

19           24. These statements made by Zilverberg falsely infer, among other things, that I am  
20 predatory and harass people, which is untrue and has a severe effect on my reputation and has  
21 damaged my business.

22           25. Defendants are aware that the YouTube video is still posted by other users online  
23 and have made no effort to have the YouTube video removed.

24           26. On or about April 25, 2019, Eagan posted statements on her Facebook that I have  
25 multiple restraining orders against me. This post was endorsed by Zilverberg. This is not true.

26           27. Defendants have falsely alleged to the public that I have a criminal record of  
27 restraining orders and a verified history of harassment, which I do not.  
28

1           28.       These statements have had and continue to have a severe impact on my reputation  
2 and business in the community.

3           29.       I have never had any restraining orders against me.

4           30.       I have reviewed the background report of a “Jason Todd Smith” attached to  
5 Defendants’ Motion to Dismiss, as Exhibit 16; however, the majority of the criminal charges  
6 contained therein are not connected in any way to me. The documents produced include criminal  
7 charges of an individual entirely unrelated to me.

8           31.       I previously lived in Ohio, but since September 2000, I have only ever lived in  
9 California and Nevada, and a majority of the criminal charges, including misdemeanors and felony  
10 charges, take place in Ohio after September 2000. I was no longer residing in Ohio at the time  
11 these alleged charges occurred. These charges are not related to me.

12           32.       I admit that many of the traffic violations prior to the year 2000 contained in the  
13 background report are mine.

14           33.       The charges also notably include, among other charges, a “minor in possession”  
15 and “carrying a concealed weapon” in 2006 – in 2006 I was 35 years old, residing in Nevada, and  
16 I have never owned a gun in my life.

17           34.       These charges, except for the traffic violations that I admit are mine, are clearly  
18 unrelated to me, yet Defendants continue to injure my reputation by now associating my name with  
19 additional false charges in a public Court document.

20           35.       None of the charges included in the background report produced by Defendants  
21 include any restraining orders.

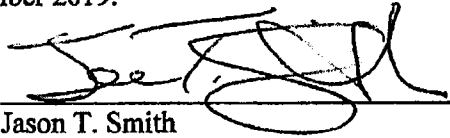
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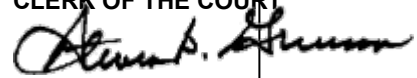
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2 controversy surrounding my name to bring viewers to their online social media and YouTube  
3 channel.

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5 resulting from a failed friendship and subsequent hard feelings; gain supporters in the community;  
6 harm my brand name and reputation; and capitalize their business.

7 I declare under penalty of perjury that the foregoing is true and correct and that this  
8 Declaration was executed on the 20 day of September 2019.

9   
10 Jason T. Smith



1 **RIS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

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9 Email: maggie@nvlitigation.com

10 *Counsel for Defendants Katy Zilverberg*

11 *and Victoria Eagan*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

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

21 Defendants.

**REPLY IN SUPPORT OF NOTICE  
OF NON-OPPOSITION AND  
OPPOSITION TO COUNTER-  
MOTION TO STRIKE NOTICE  
OF NON-OPPOSITION TO  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NEV. REV. STAT.  
§ 41.660 (ANTI-SLAPP)**

22 Defendants Katy Zilverberg and Victoria Eagan hereby reply to and oppose  
23 Plaintiff Jason T. Smith's Opposition and Countermotion to Strike (the "Countermotion")  
24 Defendants' Notice of Non-Opposition to Defendants' Special Motion to Dismiss Plaintiff's  
25 Complaint Pursuant to Nev. Rev. Stat. § 41.660 (the "Notice").

26 Dated this the 26<sup>th</sup> day of September, 2019.

27 /s/ Margaret A. McLetchie

28 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

**MCLEATCHIE LAW**

*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

On September 19, 2019, Ms. Zilverberg and Ms. Eagan filed the Notice making clear that Mr. Smith failed to timely file an opposition to their Anti-SLAPP Motion to Dismiss. In his Countermotion, Mr. Smith’s misapplies the law in arguing that that he did not miss the deadline to oppose the Anti-SLAPP Motion, as detailed below. While Mr. Smith did eventually file his Opposition to the Anti-SLAPP Motion to Dismiss, he did not do so until September 20, 2019, four days after the deadline. Preferring to remain steadfast in his misapplication of the rules, Mr. Smith has never sought an extension pursuant to EDCR 2.25 or other relief from deadlines. Accordingly, Mr. Smith’s Opposition to the Anti-SLAPP Motion to Dismiss is not properly before the Court. It should not be considered and Mr. Smith’s Countermotion to Strike must be denied.

### **II. ARGUMENT**

#### **A. No Timely Non-Opposition Was Filed.**

The Notice fully memorializes that Mr. Smith failed to comply with the deadlines set forth by the Nevada Rules of Civil Procedure, the Eighth Judicial District Court Rules, and Administrative Order 19-03. As detailed therein, the Eighth Judicial District Court Rules mandate that “within 10 days after service of [a] motion ... the opposing party *must* serve and file written notice of nonopposition or opposition thereto....” EDCR 2.20(e) (emphasis added). The Anti-SLAPP Motion to Dismiss was filed and served on September 6, 2019. Under NRCPP 6(a)(1)—which mandates that Saturdays, Sundays and legal holidays are included in computing deadlines—the deadline for opposing the Anti-SLAPP motion to dismiss was September 16, 2019.<sup>1</sup> *A full three days after the deadline*, on September 19, 2019, Defendants filed the Notice of Non-Opposition, properly alerting the Court that, because no opposition was filed, this Court may construe failure of an opposing party to

---

<sup>1</sup> Although EDCR 1.14(a) excludes Saturdays, Sundays, and non-judicial days from the computation of time, that rule was suspended on March 12, 2019 pursuant to Administrative Order 19-03 to comply with the revisions to the Nevada Rules of Civil Procedure.

1 serve and file written opposition “as an admission that the motion ... is meritorious and a  
2 consent to granting the same.” EDCR 2.20(e);

3 In his Countermotion, Mr. Smith claims that “NRCP 6(a) provides that ‘...time  
4 periods between 6 and 15 days are now set to 14 days...’” NRCP 6(a) does not provide as  
5 such—rather, the advisory committee notes to NRCP 6(a) provides that “***In general*** ... time  
6 periods between 6 and 15 days are now set to 14 days.” NRCP 6(a) advisory committee’s  
7 note (emphasis added). However, while omitted by Mr. Smith, that same advisory committee  
8 note goes on to warn: “Statutory-and rule-based time periods subject to this rule”—such as  
9 the time periods set forth in EDCR 2.20—“may not be changed concurrently with this rule.”  
10 *Id.*

11 Mr. Smith’s misinterpretation of the Court’s explicit notice regarding the  
12 computation of time does not exempt him from meeting deadlines for serving and filing  
13 oppositions. This Court can, and should, construe Mr. Smith’s failure to timely serve and file  
14 written opposition “as an admission that the motion ... is meritorious and a consent to  
15 granting the same.” EDCR 2.20(e). This is especially so in light of the tight timeline on which  
16 Anti-SLAPP motions must be adjudicated (*see* Nev. Rev. Stat. 41.660(3)(f)) and Mr. Smith’s  
17 refusal to seek an extension.

#### 18 **B. The Countermotion Must Be Denied.**

19 Rather than address his own failure to timely file his Opposition, in his  
20 Countermotion, Mr. Smith moved this Court to disregard and strike the Notice of Non-  
21 Opposition. (Opp., p. 2:16.) This Court should decline to do so because Mr. Smith does not  
22 meet the legal standard for a Motion to Strike. The Nevada Rules of Civil Procedure provide  
23 that “the court may order stricken from ***any pleading*** any insufficient defense or any  
24 redundant, immaterial, impertinent, or scandalous matter.” Nev. R. Civ. P. 12(f) (emphasis  
25 added). Pleadings are specifically enumerated in Nev. R. Civ. P. 7(a)—notices of a  
26 nonmoving party’s failure to oppose a motion do not appear in that list. Thus, this Court  
27 cannot strike Defendants’ Notice of Non-Opposition pursuant to Nev. R. Civ. P. 12(f)  
28 because it is not a pleading. Even if Mr. Smith were moving this Court to strike Defendants’

1 Notice of Non-Opposition pursuant to its inherent authority to manage its docket, this Court  
2 should decline to exercise said authority in striking the Notice of Non-Opposition.

3 As detailed above, the Notice of Non-Opposition correctly memorializes that Mr.  
4 Smith failed to comply with the deadlines set forth by the Nevada Rules of Civil Procedure,  
5 the Eighth Judicial District Court Rules, and Administrative Order 19-03. The Court should  
6 in fact not consider the untimely Opposition to the Motion to Dismiss, which was not filed  
7 until four business days after the deadline. Again, in light of the strict timelines applicable in  
8 this Anti-SLAPP proceeding, it is especially problematic that Plaintiff failed to follow the  
9 rules, shortening the time for Defendants to file their Reply<sup>2</sup> and the time available for the  
10 Court to review the briefs. Thus, as noted above, this Court should not even consider the  
11 Non-Opposition. Even if the Court ultimately declines to exercise said authority, there was  
12 nothing immaterial, impertinent or scandalous about Defendants notifying the Court of Mr.  
13 Smith's lack of timely opposition.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

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21 <sup>2</sup> EDCR 2.20 (h) provides that "[a] moving party may file a reply memorandum of points and  
22 authorities not later than 5 days before the matter is set for hearing." As noted above, EDCR  
23 1.14(a)-(c) has been suspended and, thus, the deadline for Defendants to file a reply is  
24 nominally Saturday, September 28, 2019, which is 5 days before the October 3, 2019 hearing  
25 on Defendants' Anti-SLAPP Motion to Dismiss. Because the "last day" of this 5-day time  
26 period is a Saturday, the 5-day period "continues to run until the end of the next day that is  
27 not a Saturday." Nev. R. Civ. P. 6(a)(1)(C). Because the time period is being measured before  
28 an event, the "next day" is determined by continuing to count backward. Nev. R. Civ. P.  
6(a)(5). Thus, Defendants' deadline to file a reply is Friday, September 27, 2019. It is being  
filed a day early to ensure the Court has ample time to review. Because the Opposition to the  
Anti-SLAPP Motion was filed late, Defendants only had 6, rather than 10, days to get a reply  
on file.

**III. CONCLUSION**

For all these reasons and for those set forth in the Notice, this Court should not consider the untimely Opposition to the Anti-SLAPP Motion and should deny Mr. Smith's Countermotion to Strike.

Respectfully submitted this 26<sup>th</sup> day of September, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLETCHE, Nevada Bar No. 10931

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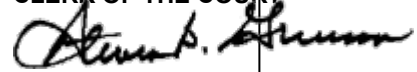
*Counsel for Defendants Katy Zilverberg  
and Victoria Eagan*

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 26<sup>th</sup> day of September, 2019, I did cause a true copy of the foregoing REPLY IN SUPPORT OF NOTICE OF NON-OPPOSITION AND OPPOSITION TO COUNTER-MOTION TO STRIKE NOTICE OF NON-OPPOSITION TO SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) in *Smith v. Zilverberg et al.*, Clark County District Court Case No. A-19-798171-C, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.

/s/ Pharan Burchfield

EMPLOYEE of McLetchie Law



1 **RIS**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

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10 *Counsel for Defendants Katy Zilverberg*

11 *and Victoria Eagan*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

17 **REPLY IN SUPPORT OF**  
18 **SPECIAL MOTION TO DISMISS**  
19 **PURSUANT TO NEV. REV. STAT.**  
20 **§ 41.660 (ANTI-SLAPP)**

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

**Hearing Date:** October 3, 2019

**Hearing Time:** 9:00 a.m.

25 Defendants.

26 Defendants Katy Zilverberg and Victoria Eagan hereby reply to Plaintiff Jason T.  
27 Smith's Response in Opposition to Defendants' Special Motion to Dismiss Plaintiff's  
28 complaint pursuant to Nev. Rev. Stat. § 41.660. This reply is based on the following  
Memorandum of Points and Authorities and exhibits attached thereto, the papers and  
pleadings already on file herein, and any oral argument the Court may permit at the hearing  
of this Motion.

Dated this the 27<sup>th</sup> day of September, 2019.

*/s/ Margaret A. McLetchie*

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

**MCLEATCHIE LAW**

*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

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2	133 Nev. 35, 389 P.3d 262 (2017) .....	12
3	<i>Shores v. Glob. Experience Specialists, Inc.</i> ,	
4	134 Nev. 503, 422 P.3d 1238 (2018) .....	22, 23
5	<i>Stubbs v. Strickland</i> ,	
6	129 Nev. 146, 297 P.3d 326 (2013) .....	25, 27
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

In this case based on exposure of his bullying of women in his business community, Plaintiff Jason Todd Smith dares to argue that the Defendants' anti-SLAPP Motion to Dismiss is full of "histrionics." (Opp., p. 3:1.) Besides being offensive, this is an effort to distract from Mr. Smith's inability to oppose the Motion on a substantive level. What is overblown and "histrionic" are Mr. Smith's own legal claims and arguments, none of which are cognizable. Now, in his untimely-filed Opposition,<sup>1</sup> Mr. Smith does not bother to refute the strong evidentiary and legal showing Defendants made in their Motion, which establish that their communications are entitled to anti-SLAPP protection and that Mr. Smith cannot meet his burden of establishing with prima facie evidence any probability of prevailing on his causes of action. Instead, Mr. Smith's opposition relies on irrelevant, unsupported distractions, and a hyperbolic but empty argument that the Motion is an effort to "destroy well settled Nevada law and turn Tort law in the United States upside down." (Opp., p. 2:25-26.) In fact, granting Defendants' Motion would vindicate a core principle underlying both First Amendment jurisprudence and anti-SLAPP law: a famous public figure and business leader cannot misuse the courts to squelch criticism of his behavior.

While Mr. Smith tries to spin this dispute as a private matter, his own allegations and argument belie that spin: he also argues that the statements made by Defendants were made in an effort to steal business from him. Neither is true. Defendants' decision to speak out against Mr. Smith was based on a desire to stand up to a man who, as the evidence provided with the Motion shows, uses his position in their business community to bully people and limit their ability to operate. In short, it is true that Mr. Smith has, through his bullying behavior, made severely negative impacts on numerous people: Ms. Eagan, Ms.

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<sup>1</sup> As noted in § III(A), *infra*, and detailed in Defendants' September 19, 2019 Notice of Non-Opposition and September 26, 2019 Reply and Opposition to Mr. Smith's Objections and Countermotion to Strike (on file with this Court), Mr. Smith's Opposition was filed 4 days late.

1 Zilverberg, and several other members of the thrifting community who were previously  
2 afraid to speak up for fear of Mr. Smith's reprisals. Mr. Smith holds a position of power and  
3 prestige in their shared business community, and Defendants' efforts to shed light on his  
4 abusive behavior and stop bullying in their business community is squarely in the public  
5 interest. While it is true that they operate in the same thrifting business community, however,  
6 Mr. Smith's efforts to disprove good faith by arguing that Defendants are his competitors  
7 also fails. As detailed below and in the attached Supplemental Declarations of Ms. Zilverberg  
8 and Ms. Eagan, Defendants are not in fact competitors of Mr. Smith. Instead, they each serve  
9 a specific niche market within the eBay thrifting/reselling community.

10 In sum, Defendants have met their burden of establishing by a preponderance of the  
11 evidence that their communications regarding Mr. Smith were good faith communications in  
12 direct connection with an issue of public concern, thus satisfying the first prong of Nevada's  
13 anti-SLAPP analysis. Mr. Smith has provided essentially no evidence to rebut Defendants'  
14 evidence or exhibits. Furthermore, Mr. Smith has presented insufficient evidence to  
15 demonstrate that he has any probability of prevailing on his claims, and has thus not met his  
16 burden under the second prong of Nevada's anti-SLAPP analysis. Therefore, this Court must  
17 grant Defendants' special Motion to Dismiss and award fees, costs, and a statutory award to  
18 Defendants.

## 19 II. REPLY TO PLAINTIFF'S FACTUAL AND PROCEDURAL HISTORY

20 Defendants have the initial burden of establishing, "by a preponderance of the  
21 evidence, that Mr. Smith's claim is based upon a good faith communication in furtherance  
22 of the right to petition or the right to free speech in direct connection with an issue of public  
23 concern." Nev. Rev. Stat. § 41.660(3)(a). To meet this burden, Ms. Zilverberg and Ms. Eagan  
24 must both show that the communications at issue in the Complaint both: (a) concern an issue  
25 of public concern; (b) were made in a public forum; and (c) were good faith communications.  
26 The following key facts central to resolution of this anti-SLAPP motion are undisputed:

- 27 • Mr. Smith is a public figure, a fact that he repeatedly emphasizes in his  
28 Complaint (*see* Compl., ¶¶ 7-12), his Opposition to Defendants' Motion  
(*see* Opp., pp. 5:3-4; 7:19; 13:1), and the declaration in support of his  
Opposition; (*see* Exh. 1 to Opposition, ¶¶ 4-7, 37)

- Defendants' communications were made in a public forum; (Motion, p. 13:4-17)
- Ms. Zilverberg stated in the YouTube video at issue in this matter that Mr. Smith tries to "take people down." (Compl., ¶¶ 22-23.)

Further, through their declarations and exhibits, Defendants submitted extensive evidence to establish that their communications concern an issue of public concern and were made in good faith. (*See generally* Motion, pp. 6:7 – 20:17; Exhs. 1 through 17 to the Motion.) In his Opposition, Mr. Smith makes a vague assertion that he needs to cross-examine Defendants and third parties (Opp., p. 19:17-18), but he fails to object to any specific evidence and does not actually making a showing of why discovery is necessary. Nor has he requested an evidentiary hearing or produced evidence to rebut any of the evidence Defendants provided.

As noted above, Mr. Smith tries to spin the dispute between the parties as a private matter and tries to erode the evidence of good faith submitted by Defendants by arguing that the statements made by Defendants were made in an effort to steal business from him. Neither is true. While Ms. Eagan did have short-lived friendship with Mr. Smith<sup>2</sup> and Ms. Zilverberg did act as an administrator of Mr. Smith's Facebook group,<sup>3</sup> their decision to speak out against him was based not on ill will or personal animus, but on a desire to stand up to a man who, as the evidence provided with the Motion shows, uses his position in their business community to bully people and limit their ability to operate. (*See* Exh. 18 [supplemental declaration of Katy Zilverberg], ¶¶ 3, 15, 17, 21; Exh. 19 [supplemental declaration of Victoria Eagan], ¶¶ 3, 15-16.)

While it is true that all parties operate in the same thrifting business community, Mr. Smith's efforts to demonstrate that the complained-of statements were not good faith communications by arguing that Defendants are his competitors also fails. As detailed below and in Exhibits 18 and 19 to this Reply, Defendants are not in fact competitors; instead, they

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<sup>2</sup> Said friendship ended in ended in August 2017. (Exh. 19, ¶ 17.)

<sup>3</sup> Ms. Zilverberg disclaims the notion that she and Mr. Smith were ever personal friends. (Exh. 18, ¶ 16.)

1 each cater to different segments of the thrifting community. For instance, there is no overlap  
2 between the items sold in Mr. Smith's eBay store and the items sold in Defendants' eBay  
3 stores, and thus no risk that Defendants would "steal" customers that otherwise would have  
4 patronized Mr. Smith's stores. (Exh. 18, ¶¶ 3-10; Exh. 19, ¶¶ 3-10.) Likewise, there is no  
5 competition between Mr. Smith's reseller educational products and groups—which he  
6 charges money for—and Defendants' free-of-charge reseller educational materials. (Exh. 18,  
7 ¶ 12; Exh. 19, ¶ 12.) Furthermore, there is no competition between Mr. Smith's Internet video  
8 broadcasts and those of Defendants, which are aired at different times. (Exh. 18, ¶ 13; Exh.  
9 19, ¶ 13.) Indeed, Defendants view their fellow thrifters not as rivals, but as co-workers  
10 whose success benefits both Defendants and the thrifting community as a whole; after all, if  
11 Defendants viewed the thrifting community as a dog-eat-dog competition, they would not  
12 give away helpful knowledge and information to the community free of charge. (Exh. 18, ¶  
13 11; Exh. 19, ¶ 11.) Far from being a competitor of Defendants, if Mr. Smith disappeared from  
14 the thrifting community tomorrow it would have no impact on Defendants' eBay businesses  
15 or YouTube channel (Exh. 18, ¶ 14; Exh. 19, ¶ 14) except perhaps to eliminate the stress of  
16 being subjected to Mr. Smith's bullying behavior.

17 Ms. Zilverberg's complained-of YouTube video was not posted to spite Mr. Smith,  
18 but rather to inform the thrifting community of Mr. Smith's behavior when it appeared that  
19 the powers-that-be at companies like eBay were unwilling to step in and protect the thrifting  
20 community. Indeed, Ms. Zilverberg's April 2018 interactions with Sophia Antillon, Mr.  
21 Smith's former assistant, gave Defendants reason to be worried that Mr. Smith would engage  
22 in abusive and bullying behavior at eBay Open 2018, a major business event in the thrifting  
23 community. (Exh. 18, ¶ 20.) Ms. Zilverberg first chose to email Audrey Tracey of eBay  
24 expressing her concerns about Mr. Smith attending eBay Open 2018. (*Id.*) Only after it  
25 appeared that eBay would not do anything to help Defendants feel safe attending eBay Open  
26 2018 did Ms. Zilverberg post the complained-of YouTube video on June 6, 2018. (*Id.*)

27 Ms. Zilverberg's purpose was not to harm Mr. Smith, but rather to warn others and  
28 hopefully stop Mr. Smith's anti-social behavior in the thrifting community. (*Id.*, ¶ 21.) This

1 is why, after Brian Burke of eBay informed Ms. Zilverberg on June 8, 2018 that eBay was  
2 aware of the situation, Ms. Zilverberg chose to remove the complained-of YouTube video  
3 on June 11, 2018. (*Id.*, ¶ 22.) Indeed, Ms. Zilverberg removed the video so that Mr. Smith  
4 would not be a focus of her and Ms. Eagan’s YouTube channel. (*Id.*) Furthermore, Ms.  
5 Zilverberg went out of her way to have YouTube take down copies of the complained-of  
6 video that were subsequently posted by third parties. (*Id.*, ¶¶ 23-24.) Had Defendants  
7 intended to capitalize on Mr. Smith’s reputation (or the lowering thereof), they would not  
8 have gone to such great lengths to ensure that the complained-of video not be reposted on  
9 the Internet. Defendants’ actions demonstrate that their intent in speaking about Mr. Smith  
10 was not to gain a competitive advantage in business by bringing him down, but rather to warn  
11 the thrifting community.

12 In short, Mr. Smith fails to overcome the fact that the preponderance of the evidence  
13 establishes that Defendants’ communications are entitled to anti-SLAPP protection. Because  
14 Defendants met their burden, Mr. Smith was required to provide prima facie evidence in his  
15 opposition to establish probability of prevailing on any claim. Nev. Rev. Stat. § 41.660(3)(b).  
16 Mr. Smith failed to do so, and therefore this Court must grant Defendants’ Motion.

### 17 **III. LEGAL ARGUMENT**

#### 18 **A. Mr. Smith’s Untimely Opposition Should Be Construed as a Non-** 19 **Opposition.**

20 As argued in Defendants’ September 19, 2019 Notice of Non-Opposition (on file  
21 with this Court), the Eighth Judicial District Court Rules mandate that “within 10 days after  
22 service of [a] motion ... the opposing party must serve and file written notice of  
23 nonopposition or opposition thereto, together with a memorandum of points and authorities  
24 and supporting affidavits, if any, stating facts showing why the motion and/or joinder should  
25 be denied.” EDCR 2.20(e). Defendants’ anti-SLAPP motion to dismiss was filed and served  
26 on September 6, 2019. Under Nev. R. Civ. P. 6(a)(1)—which includes Saturdays, Sundays  
27 and legal holidays in computing deadlines—the deadline for Mr. Smith to oppose  
28

1 Defendants' anti-SLAPP motion to dismiss was September 16, 2019.<sup>4</sup> Despite this, Mr.  
2 Smith's Opposition was filed four days late, on September 20, 2019.

3 Mr. Smith's misinterpretation of the Court's explicit notice regarding the  
4 computation of time does not exempt him from meeting deadlines for serving and filing  
5 oppositions. Strict adherence to deadlines is particularly important in the context of anti-  
6 SLAPP motions to dismiss, as they must be adjudicated within 20 judicial days. Nev. Rev.  
7 Stat. §41.660(3)(f). In the instant case, Mr. Smith's dilatory filing has left this Court with  
8 limited time to review the briefs and evidence, and has left Defendants six, rather than ten,  
9 days to prepare a reply. The late filing is especially problematic since this in anti-SLAPP  
10 matter and must be expedited. Moreover, the problems created by the late filing were  
11 exacerbated by Mr. Smith's failure to include a page of Exhibit 1 to his Opposition; Mr.  
12 Smith did not file an errata to correct this deficit until September 23, 2019, when Defendants'  
13 counsel notified Mr. Smith's counsel of his omission. Finally, Mr. Smith has not even  
14 bothered to seek an extension to excuse his late filing. In light of Mr. Smith's unjustified  
15 delay and failure to adhere to procedural rules, this Court can, and should, construe Mr.  
16 Smith's failure to timely serve and file written opposition "as an admission that the motion  
17 ... is meritorious and a consent to granting the same." EDCR 2.20(e).

18 **B. Defendants Satisfy the First Prong of the Anti-SLAPP Analysis.**

19 Mr. Smith claims that Defendants' Motion "must be denied as Defendants cannot  
20 establish by a preponderance of the evidence that their claim is based upon a good faith  
21 communication in furtherance of the right to petition or the right to free speech in direct  
22 connection with an issue of public concern." (Opp., p. 9:9-12.) Contrary to this assertion,  
23 Defendants do not fail "in the application of NRS 41.637(2) [sic]" (*id.*, p. 9:12) but rather  
24 demonstrate, in the Motion and *infra*, that Mr. Smith's lawsuit is based on their  
25 "[c]ommunication made in direct connection with an issue of public interest in a place open  
26

27 <sup>4</sup> Although EDCR 1.14(a) excludes Saturdays, Sundays, and non-judicial days from the  
28 computation of time, that rule was suspended on March 12, 2019 pursuant to Administrative  
Order 19-03.

1 to the public or in a public forum which is truthful or is made without knowledge of its  
2 falsehood.” Nev. Rev. Stat. § 41.637(4). Therefore, Defendants have satisfied the first prong  
3 of Nevada’s anti-SLAPP analysis—*i.e.*, they have “established, by a preponderance of the  
4 evidence, that the claim is based upon a good faith communication in furtherance of the right  
5 to ... free speech in direct connection with an issue of public concern.” Nev. Rev. Stat. §  
6 41.660(3)(a).

7 **1. Defendants’ Statements are All Either True, Made Without**  
8 **Knowledge of Their Falsehood, or Opinions Incapable of Being True**  
9 **or False.**

10 As demonstrated in the Motion and below, all of Defendants’ complained-of  
11 communications regarding Mr. Smith are either true, were made without knowledge of their  
12 falsehood, or were opinions incapable of being true or false, and are therefore “good faith  
13 communications” under Nev. Rev. Stat. § 41.637.

14 **a) Statements that Mr. Smith Finds Out Where People Live**  
15 **In Order to “Take Them Down” Are Truthful or Were Made**  
16 **Without Knowledge of Falsehood.**

17 Mr. Smith argues that in her YouTube video, Ms. Zilverberg stated “that Smith has,  
18 and will, find out where people live in order to ‘take them down,’ inferring [sic] that Smith  
19 stalks people.” (Opp., p. 11:18-20.) Mr. Smith continues in this vein, arguing that there “is  
20 no evidence set forth in Defendants’ Motion to Dismiss that establishes Smith found out  
21 where someone lived in order to intentionally cause that person harm, because such is simply  
22 not true and Defendants. [sic]” (*Id.*, p. 12:2-4 (emphasis in original).) To the contrary,  
23 Defendants argued (and provided ample evidence) that Mr. Smith found out a pseudonymous  
24 person’s address, then revealed her real name and hometown to unmask, mock and embarrass  
25 her in his own Facebook video. (*See* Motion, pp. 15:4 – 16:2.) While Mr. Smith may not  
26 have intended to cause that person physical harm by finding out her real name and address,  
27 Defendants have never alleged anything of the sort. Obviously, Mr. Smith’s acts of  
28 unmasking an intentionally pseudonymous internet user and mocking said person on the

internet were intended to cause that person emotional harm and lower her status in the thrifting community—*i.e.*, “take them down.” Mr. Smith has not contested, nor can he contest, the veracity of this allegation.

As further noted in the Motion, another member of the thrifting community alleged that Mr. Smith dug up her arrest record and shared said information with that person’s husband. (*See* Motion, p. 16:3-8.) Thus, Defendants have demonstrated their allegations regarding Mr. Smith’s gathering and revealing personal information to the detriment of his enemies in the thrifting community are substantially true, and therefore good faith communications.

**b) Statements that Mr. Smith Intentionally Has People Barred From Business Events to “Take People Down” Are Truthful or Were Made Without Knowledge of Falsehood.**

Mr. Smith cites to Defendants’ Motion, p. 16:15-17, in arguing that “Defendants’ Motion to Dismiss provides alleged statements from an individual who says that Smith ‘dug up dirt’ on a rival thrifter, which was sent to eBay, resulting in eBay rescinding her invite” and that “[t]here is no evidence to establish that Smith ‘dug up dirt’ nor do they even what such statement means.” (Opp., p. 11:21-25.) However, Mr. Smith ignores that the Defendants provided evidence that Mr. Smith advocated for organizers of eBay Open—a large annual convention of eBay sellers—to disinvite an individual named Nicole State. (*See* Motion, p. 16:18 – 17:1.) Mr. Smith does not, and cannot, deny that Exhibit 11 to the Motion reflects that Mr. Smith has used his influence to have Nicole State disinvited from eBay Open.

While Mr. Smith may deny his motives in doing so, he cannot deny that the natural, expected effect of having someone disinvited from a prestigious annual business conference would be to lower that person’s status and deny them opportunities in the thrifting community—*i.e.* “take them down.” While this alone may not “establish any predatory or anti-social behavior” (Opp., p. 11:26), whether “taking someone down” in such a manner is “predatory” or “anti-social” is a matter of opinion, incapable of being proven true or false. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (“Statements

of opinion cannot be defamatory because there is no such thing as a false idea.”) (quotation omitted; internal punctuation omitted). Thus, the statements in Ms. Zilverberg’s YouTube video alleging that Mr. Smith has had people barred or disinvited from business events are therefore good faith communications.

**c) Statements that Mr. Smith Has Caused People to Feel Suicidal Are Truthful or Were Made Without Knowledge of Falsehood.**

Mr. Smith attempts to argue that Ms. Zilverberg’s statement that Mr. Smith’s behavior has caused others to contemplate suicide is not a good faith communication because “it implicates Smith as a criminal” and that Defendants did not “present any substantive evidence to establish this statement is true, because once again it is entirely false and Defendants are aware of this.” (Opp., p. 12:5-9.)

To begin with, the fact that one’s behavior induced suicidal ideation in others does not implicate criminal behavior. One could easily imagine an extremely sensitive person being driven to dark thoughts by mean-spirited (though non-criminal) behavior that a less sensitive person may be capable of shrugging off. Nevertheless, it appears that Mr. Smith simply ignored the portion of the Motion in which Defendants set forth the circumstances, supported by evidence, in which multiple people either implied or flatly stated that they or their loved ones were contemplating self-harm or suicide as a result of Mr. Smith’s behavior. (Motion, pp. 17:11 – 18:24; Exh. 3, p. 23; Exh. 13; Exh. 14, p. 8.) Mr. Smith had an opportunity to present evidence contradicting the veracity of these claims or the evidence on which they are based. He did not, and he cannot. Therefore, Defendants have established by a preponderance of the evidence that Ms. Zilverberg’s statements that Mr. Smith’s behavior have caused others to contemplate suicide are substantially true or were made without knowledge of falsehood, and thus constitute good faith communications.

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**d) Defendants Did Not Claim that Mr. Smith Had Criminal Charges Against Him—But Even if They Did, They Had Reason to Believe it Was True.**

As a threshold matter, Mr. Smith has not provided any evidence beyond naked allegations that Defendants have ever said or implied that Mr. Smith has a criminal record. For instance, Mr. Smith claims that “Defendant [sic] made numerous false and highly statements about Smith, including criminal charges.” (Opp., p. 12:10-11.) Mr. Smith also claims that Defendants “have falsely alleged to the public that I have a criminal record of restraining orders and a verified history of harassment.” (Exh. 1 to Opp., ¶ 27.) However, unlike several of the other allegations in Mr. Smith’s Complaint, Mr. Smith has not bothered to specify any actual statements made by Defendants, let alone provide evidence of those statements, claiming Mr. Smith has a criminal record. As much as Mr. Smith wishes they were, allegations that others attempted to file restraining orders against him, or that he has engaged in bullying behavior, or even that his behavior has driven others to contemplate suicide, are not allegations that Mr. Smith is a criminal or has a criminal record.

Furthermore, Exhibit 16 to the Motion, a screenshot of an online background check of Jason Todd Smith, is not being proffered for proof that Mr. Smith committed all the acts alleged in the Exhibit. Nor is it a “desperate attempt by Defendants to cover up their misdeeds” as Mr. Smith alleges. (Opp., p. 11:9.)<sup>5</sup> Rather, it demonstrates that if Defendants accused Mr. Smith of criminal activity—which they did not—they had a reasonable basis for forming this opinion. Defendants are not police officers, private eyes or experts on

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<sup>5</sup> To the extent that Mr. Smith argues that “Defendants continue to defame Smith by falsely associating his identity with unrelated misdemeanor and felony charges in a public Court document” (Opp., p. 11:9-12 (emphasis in original)) such putative claims would be barred by Nevada’s litigation privilege, which precludes civil liability based on “communications uttered or published in the course of judicial proceedings.” *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). Additionally, far from being “in line with furthering Defendants’ scheme to injure Plaintiff and destroy his reputation and career” (Opp., p. 11:12-13), the inclusion of Exhibit 16 is necessary to establishing that Mr. Smith cannot prove the actual malice element of the defamation claim which he, a public figure, willingly pursued.

1 background reports and therefore need not, as Mr. Smith suggests, perform “due diligence”  
2 in deciding whether to believe the contents of a background report pertain to Mr. Smith.  
3 Furthermore, Mr. Smith has not refuted Defendants’ contention—supported by evidence—  
4 that Mr. Smith himself bragged about engaging in criminal activities in the past. (*See* Motion,  
5 p. 20:6-8; Exh. 17.) Thus, Mr. Smith’s allegations that the crimes in Exhibit 16 do not pertain  
6 to him (Opp., p. 7:4-15; pp. 10:27 – 11:8) are irrelevant to the determination of whether  
7 allegations that Mr. Smith engaged in criminal activity—which again, Defendants did not  
8 make—were made without knowledge of their falsehood and therefore good faith  
9 communications.

10 **e) Ms. Eagan Had Reason to Believe that Others Had Filed**  
11 **Restraining Orders Against Mr. Smith.**

12 Mr. Smith argues that “Defendant Eagan posted statements regarding Smith on her  
13 Facebook account, wherein she included a statement that Smith had multiple restraining  
14 orders against him, ultimately implying that not only does Smith have a criminal record but  
15 also that Smith has a verified history of harassment” and that “Defendant Zilverberg endorsed  
16 this post on Eagan’s Facebook.” (Opp., p. 10:22-25.) Mr. Smith further complains that there  
17 is not “any evidence that Smith has ever any restraining orders against him.” (*Id.*, p. 10:26-  
18 27 (emphasis in original).)

19 Even if Defendants have not produced evidence that anybody has successfully  
20 obtained a restraining order against Mr. Smith, and even if, *arguendo*, it is not true that Mr.  
21 Smith has had restraining orders filed against him, Defendants have produced sufficient  
22 evidence to demonstrate that the complained-of statement was made without knowledge of  
23 its falsehood. As is explained in Defendants’ Motion and not refuted in Mr. Smith’s  
24 Opposition, Ms. Eagan heard identical allegations from two trusted sources that two of his  
25 harassment victims, Danni Ackerman and Ms. Ackerman’s mother, had filed restraining  
26 orders. (*See* Motion, p. 19:6-16; Exh. 2, ¶¶ 14-15; Exh. 15.) As noted in the Motion, Danni  
27 Ackerman herself publicly commented on Ms. Zilverberg’s YouTube video that she and her  
28 mother “had police involved” in her encounters with Mr. Smith. (*See* Exh. 3, p. 48.) Thus,

1 even if it were not true, the statement that Mr. Smith has had restraining orders against him  
2 was made without knowledge of its falsehood and is therefore entitled to anti-SLAPP  
3 protection.

## 4                   2.       Defendants' Statements Were Made in Good Faith.

5           Mr. Smith cites to no statute or case law in arguing that Defendants' complained-  
6 of statements were not made in "good faith." (*See generally* Opp., p. 13:12 – 14:10.) That is  
7 because his entire argument is a bald-faced attempt to mislead the Court. Nevada's anti-  
8 SLAPP statute plainly defines a "good faith communication in furtherance ... of the right to  
9 free speech in direct connection with an issue of public concern" as a "[c]ommunication  
10 made in direct connection with an issue of public interest in a place open to the public or in  
11 a public forum which is truthful or is made without knowledge of its falsehood." Nev. Rev.  
12 Stat. § 41.637(4). Notably absent is a requirement that the speaker not have animosity toward  
13 her subject, or a requirement that speaker and the subject not be contemporaries in the same  
14 business community.

15           Indeed, the Nevada Supreme Court unambiguously held that "the term 'good faith'  
16 does not operate independently within the anti-SLAPP statute. Rather, it is part of the phrase  
17 'good faith communication in furtherance of the right to petition or the right to free speech  
18 in direct connection with an issue of public concern.'" *Shapiro v. Welt*, 133 Nev. 35, 38, 389  
19 P.3d 262, 267 (2017). The Court continued, "the phrase 'made without knowledge of its  
20 falsehood' has a well-settled and ordinarily understood meaning. ***The declarant must be***  
21 ***unaware that the communication is false at the time it was made.***" *Id.* (emphasis added).  
22 As argued at length in §III(B)(1), *supra*, in the Motion (pp. 13:18 - 20:17), and supported by  
23 the exhibits attached to the Motion, Defendants were unaware their statements about Mr.  
24 Smith—if they were indeed false—were false at the time they were made. Therefore,  
25 regardless of Mr. Smith's irrelevant and incorrect beliefs about Defendants' motives, the  
26 complained-of statements were good faith communications under the plain language of Nev.  
27 Rev. Stat. § 41.637(4).

28    ///

1                               **3. Defendants' Statements Were Directly Connected to a Matter of**  
2                               **Public Interest.**

3               Mr. Smith ably recites the *Weinberg* factors and accurately describes the factual  
4 circumstances of *Pope v. Fellhauer*, a “key mark [sic] case on Nevada’s anti-SLAPP law” in  
5 which the Nevada Supreme Court upheld the denial of a defamation defendant’s anti-SLAPP  
6 motion to dismiss. (Opp., pp. 14:16-15:20.) Beyond that, Mr. Smith’s arguments are  
7 unavailing. This case is very different from *Pope v. Fellhauer* and should be decided  
8 differently. Furthermore, discussion of Mr. Smith’s conduct in the thrifting community,  
9 while perhaps not directly related to the act of thrifting, is directly related to the issue of  
10 whether thrifters should purchase Mr. Smith’s products or patronize Mr. Smith’s groups,  
11 thereby exposing themselves to potential abuse and bullying, which is of concern to a  
12 substantial number of people and goes beyond “mere curiosity.”

13               Mr. Smith elides the Nevada Supreme Court’s explicit mandate that Nevada courts  
14 “define an issue of public interest broadly.” *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 10, 432  
15 P.3d 746, 751 (2019). Indeed, with regard to demonstrating whether a statement concerns an  
16 issue of public interest, “the bar for an anti-SLAPP defendant to overcome is not a  
17 particularly demanding one.” *Harris v. Mayweather*, No. B276174, 2018 WL 3424471, at \*5  
18 (Cal. Ct. App. July 16, 2018). As demonstrated below and in the Motion, discussion of Mr.  
19 Smith’s behavior in the community which made him famous clears this bar, is directly  
20 connected to an issue of public concern, and therefore merits anti-SLAPP protection.

21                               **a) The Instant Case is Distinguishable From *Pope v.***  
22                               ***Fellhauer*.**

23               Mr. Smith is absolutely wrong to assert that “*Pope v. Fellhauer* is identical to the  
24 case at issue here.” (Opp., p. 15:21.) As argued at length in Defendants’ Motion (pp. 9:10-  
25 12:8) there are many factors distinguishing the instant case from *Pope*. In *Pope*, the court  
26 held that there was “no evidence that anyone—other than his two friends—were concerned  
27 with Pope’s commentary or that Pope was adding to a preexisting discussion.” (Opp., p.  
28 15:18-20 (quoting *Pope*, 2019 WL 1313365 at \*2).) Here, by contrast, Defendants have

1 presented evidence that the complained-of statements added to a preexisting discussion of  
2 Mr. Smith’s conduct, and that their complained-of statements generated yet more discussion  
3 of said conduct. (*See* Motion, pp. 10:25-12:8 (citations to exhibits omitted).) This indicates  
4 that Mr. Smith’s conduct in the thrifting community is a matter of public interest, as it made  
5 public an ongoing discussion that the thrifting community had only spoken about *sub rosa*  
6 for fear of Mr. Smith’s retaliation and reprisals.

7           Indeed, there is more evidence that the communications at issue in this case—unlike  
8 those in *Pope*—contributed to an ongoing discussion of Mr. Smith’s conduct in the thrifting  
9 community. On June 6, 2018, an individual named Casey Parris shared the YouTube video  
10 at issue in this matter by posting it on Facebook, noting that he had received “many emails”  
11 regarding Mr. Smith’s conduct. (Exh. 20 [screenshot of Casey Parris’s June 6, 2018  
12 Facebook post and comments thereto], p. 1.) Several individuals commented on Casey  
13 Parris’s Facebook post to share their own stories of Mr. Smith’s abhorrent behavior.<sup>6</sup> As

14  
15 <sup>6</sup> (*See, e.g.*, Exh. 20, p. 1 (comment from Megan Lindsey stating, “Not only is he a bully, but  
16 he is verbally abusive behind the scenes.”); *id.*, p. 2 (comment from Kimmie Klock stating,  
17 “I was harassed by him and told many different things that were not at all accurate.”); *id.*  
18 (comment from Christina St Louis stating, “I left the group and he private messaged me  
19 harassing me. I had to block him.”); *id.* (comment from Esmeralda Valague stating, “He was  
20 1000% a bully to me when I was in TTB. He had his lifeguards cyber-stalk me in other groups  
21 sending him screenshots of everything I said about eBay thinking it was al about him.”); *id.*,  
22 p. 5 (comment from Stephanie Abernathy stating, “Jason is a dick who decided to destroy  
23 [his former co-host] just like he has done others when he is finished using them.”); *id.*, p. 6  
24 (comment from Alice Fay Means stating, “I had a bad experience with him ... He got very  
25 nasty in PMs.”); *id.* (comment from Candace Pitt stating, “He called me several names and  
26 ran his fat ugly mouth off to me because I disagreed w someone in his shitty group.”); *id.*  
27 (comment from Alice Fay Means stating, “He would not stop berating me ... he continued  
28 to attack me.”); *id.*, p. 7 (comment from Sandy Mae stating, “I was too afraid to comment on  
Katie’s video because I’m afraid he or his cronies will wreak havoc in my eBay store buying  
and leaving negative FB,” that Mr. Smith “reamed me a new a hole” and that she is “so glad  
Katie had the courage to speak up and tried to stop him from hurting other people.”); *id.*, p.  
8 (comment from Holli Hudson stating, “I left the group due to a disagreement and Jason T  
Smith came at me attacking me in my inbox.”); *id.*, p. 9 (comment from Susan Halteman  
stating, “Someone should have tried to stop this years ago, but we didn’t really have the  
platform. I had at least three negative experiences with Jason and I believe he was behind an  
attempt to discredit me as a seller.”); *id.*, p. 9 (comment from Brandy Simonton criticizing  
Mr. Smith and stating, “I am actually scared to post this. Him and his minions are scary.”);  
*id.* (comment from Susan Halteman stating, “He has a pattern of behavior that has directly

demonstrated by these comments, Defendants’ communications emboldened others to publicly discuss Mr. Smith’s behavior despite their not-unreasonable fears that Mr. Smith would seek vengeance against them.

Finally, in *Pope*, the parties were all private citizens whose dispute did not extend beyond the boundaries of their cul-de-sac. Here, by contrast, Mr. Smith is a public figure who has made his living projecting a certain image and cultivating his reputation not merely within the thrifting community, but with the general public as well. (Compl., ¶¶ 7 – 12; Exh. 1 to Opp., ¶¶ 4-7.) Although Defendants’ complained-of statements do speak to their own negative interactions with Mr. Smith, the complained-of statements go far beyond a mere personal dispute. Indeed, the complained-of statements speak to Mr. Smith’s long history of bullying and abuse not merely with Defendants, but with several other members of the thrifting community. (*See, e.g.* Motion, pp. 11-12, n.8 (list of comments posted on Ms. Zilverberg’s YouTube video in which many members of the thrifting community shared their stories of Mr. Smith’s bad behavior).) Therefore, in contrast to *Pope v. Fellhauer*, the communications at issue in this matter are directly connected to a matter of public concern, and thus merit anti-SLAPP protection.

**b) Mr. Smith’s Status as a Public Figure Necessarily Makes Mr. Smith’s Activities in the Thrifting Community a Matter of Public Concern.**

Mr. Smith argues that Defendants want “free reign to defame him and post false statements about him” because Mr. Smith is a “public figure,” and that whether Mr. Smith is a “public figure” pertains only to the actual malice requirement under his defamation claim, not whether such statements “automatically pertain to a matter of interest.” (Opp., p. 3:19-24.) Contrary to this assertion, and as demonstrated by case law, whether a SLAPP plaintiff is a “public figure” is critical to the determination of whether statements about said plaintiff

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affected a lot of us. Many have been afraid -and rightly so- to speak out for fear of retaliation. I have personally experienced it and I know of others that have.”); *id.* (comment from Kenny Long stating, “He is a bully and I left his group over a conversation we had on messenger.”).)

are made in direct connection with a matter of public concern.

“In general, [a] public issue is implicated if the subject of the statement or activity underlying the claim (1) *was a person or entity in the public eye*; (2) could affect large numbers of people beyond the direct participants; or (3) involved a topic of widespread, public interest.” *D.C. v. R.R.*, 106 Cal. Rptr. 3d 399, 417 (Cal. Ct. App. 2010) (internal quotation marks and citation omitted) (emphasis added). While thrifting in itself is arguably a “topic of widespread, public interest,” it is beyond debate that Mr. Smith is a public figure, *i.e.* a “person or entity in the public eye.” (*See* Compl., ¶¶ 7-12.)

As argued in the Motion, as a public figure, Mr. Smith’s conduct in the thrifting community is automatically of concern to a large number of people. *See Serova v. Sony Music Entm’t*, 26 Cal. App. 5th 759, 772, 237 Cal. Rptr. 3d 487, 496 (Ct. App. 2018), *as modified on denial of reh’g* (Sept. 13, 2018) (internal citations and quotation marks omitted) (“Public interest in the life and work of entertainers and other celebrities can create an ‘issue of public interest’ for purposes of [California’s anti-SLAPP statute]. There is a public interest which attaches to people who, by their accomplishments, mode of living, professional standing or calling, create a legitimate and widespread attention to their activities.”).

California courts have long held that a plaintiff’s status as a public figure is critical—if not dispositive—to the determination of whether a statement about said plaintiff is a matter of public concern. For instance, the California Court of Appeals held that allegedly defamatory statements about private conduct (specifically, a famous boxer’s ex-girlfriend’s decision to have cosmetic surgery) touched on a matter of public concern due to the parties’ notoriety. *Jackson v. Mayweather*, 10 Cal.App.5th 1240, 1255, 217 Cal.Rptr.3d 234, 248 (Cal. Ct. App. 2017). In one circumstance, a California court implicitly held that the plaintiff’s admission that he was a public figure was itself enough to connect statements about him and his church to an issue of public interest. *Heying v. Newsmax Media, Inc.*, 2018 WL 346001, \*4 (Cal. Ct. App. 2018). In the instant case, this Court need not look past Mr. Smith’s Complaint (*see* Compl., ¶¶ 7-12) to determine that he is a public figure whose accomplishments and professional standing create a legitimate and widespread attention to

1 his conduct in the thrifting community and beyond.

2 More recently, the California Supreme Court explicitly endorsed the proposition  
3 that a person’s status as a “figure in the public eye” is sufficient “to establish the statement  
4 is ‘free speech in connection with a public issue or an issue of public interest.’” *Wilson v.*  
5 *Cable News Network, Inc.*, 7 Cal. 5th 871, 902, 444 P.3d 706, 725 (2019). As Mr. Smith is  
6 undisputedly a public figure (Compl., ¶¶ 7-12), Defendants’ criticism of his behavior—  
7 particularly his behavior within the thrifting community—is necessarily in direct connection  
8 with an issue of public concern, and therefore merits protection under Nevada’s anti-SLAPP  
9 statute.

10 **c) Warning the Thrifting Community About Mr. Smith’s**  
11 **Anti-Social Behavior Is Directly Connected to a Matter of**  
12 **Public Concern.**

13 It is also beyond debate that warnings about Mr. Smith’s behavior affect large  
14 numbers of people beyond Mr. Smith and Defendants and are therefore directly connected  
15 to a matter of public concern. Mr. Smith correctly acknowledges that Defendants allege they  
16 were “protecting the thrifting world from Smith and his ‘anti-social behavior.’” (Opp., p.  
17 16:1-2.) However, he incorrectly argues that this is not a “matter of public interest” on two  
18 grounds. First, Mr. Smith feigns ignorance about “how statements directed toward a  
19 community of approximately 55,000 people, out of approximately 330 million people living  
20 in the United States, constitutes a ‘public concern.’” (Opp., p. 16:2-4.) However, even if this  
21 Court accepts Mr. Smith’s unsupported, conservative estimate of the size of the thrifting  
22 community, such estimated figures are irrelevant to whether allegations regarding Mr.  
23 Smith’s behavior are a matter of concern to a substantial number of people.

24 Even if Mr. Smith’s conduct toward his fellow members of the thrifting community  
25 were not automatically a matter of public concern by virtue of his widespread notoriety and  
26 undisputed status as a public figure, Defendants’ communications were directed to a  
27 substantial number of people—the thrifting community writ large, not merely members of  
28 Mr. Smith’s specific Facebook group. (See Exh. 18, ¶ 25; Exh. 19, ¶ 18.) Courts have rejected

1 the notion that a community must be larger than some “magic number” for communications  
2 made to it to merit anti-SLAPP protection. Recently, a California appellate court held that  
3 allegedly defamatory statements in a press release published by the non-profit Ethiopian  
4 Sport Federation (ESF) merited anti-SLAPP protection because the allegations against its  
5 former board member were “clearly issues that would affect, and thus be of interest to  
6 members of ESF and the Ethiopian community at large, i.e.,  
7 ***a discrete but substantial portion of the public.***” *Teferi v. Ethiopian Sports Fed’n in N. Am.*,  
8 No. B282403, 2019 WL 1292272, at \*7 (Cal. Ct. App. Mar. 20, 2019) (emphasis added).

9 Likewise, *Hecimovich v. Encinal School Parent Teacher Organization*, 203  
10 Cal.App.4th 450, 137 Cal.Rptr.3d 455 (Cal. Ct. App. 2012), demonstrates that even  
11 allegations which pertain to a tiny segment of the population can merit anti-SLAPP  
12 protection. In *Hecimovich*, the plaintiff sued over allegations regarding his fitness to coach  
13 the Encinal School’s after-school youth basketball team. *Id.* at 465-66, 467. Even though the  
14 only people directly affected by the plaintiff’s alleged actions (and the defendants’ alleged  
15 communications) were children who attended that specific school (and their parents), the  
16 court nevertheless held that the statements at issue touched on “an issue of public interest.”  
17 *Id.* at 466, 468. The court concluded that “safety in youth sports, not to mention problem  
18 coaches/problem parents in youth sports, is another issue of public interest within the SLAPP  
19 law.” *Id.* at 468, 469.

20 Notably, the court in *Teferi* did not entertain some sort of calculus to determine  
21 whether there were “enough” Ethiopians or persons of Ethiopian descent living in America  
22 to make statements concerning the Ethiopian community a matter of public concern. Nor did  
23 the court in *Hecimovich* entertain the question of how large a school must be to determine  
24 whether allegations about a coach at said school implicates a matter of public interest under  
25 anti-SLAPP law. This Court should decline to apply such a calculus here—as argued in the  
26 Motion, the thriving community is a discrete but substantial portion of the public,<sup>7</sup> and

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27  
28 <sup>7</sup> Indeed, if it were not a substantial portion of the public, Mr. Smith would never have been  
able to parlay his success in the thriving community into having his own cable TV show or

1 therefore statements regarding Mr. Smith’s conduct in said community are in direct  
2 connection with a matter of public concern.

3 Mr. Smith’s argument that Defendants’ statements “are not directly connected to  
4 the thrifting and buying and selling used goods” and therefore not directly connected to a  
5 matter of public concern (Opp., p. 16:6-8) is misplaced. First, thrifting is a social activity,  
6 and thrifting community members’ interactions with Mr. Smith are inextricably linked with  
7 people’s choices to do business with him in that community. Simply put, people have a right  
8 to base their decision to patronize a business not merely on the quality of that business’s  
9 product, but on how that business’s purveyor treats them and other members of the  
10 community as well.

11 Second, and more importantly, constricting the topics of speech directly connected  
12 to an issue of public concern to statements about Mr. Smith “directly connected to the  
13 thrifting, and buying and selling used goods” would be an unwarranted departure from the  
14 Nevada Supreme Court’s explicit mandate that courts define “public interest” broadly. *Coker*  
15 *v. Sassone*, 135 Nev. Adv. Op. 2, 10, 432 P.3d 746, 751 (2019). If this Court were to adopt  
16 Mr. Smith’s extremely narrow interpretation of “public interest,” it would exempt wide  
17 swaths of socially beneficial discussion from anti-SLAPP protection. For instance, under Mr.  
18 Smith’s rubric, public discussion of a casino owner’s alleged sexual misconduct would not  
19 be entitled to anti-SLAPP protection because those activities—despite being of great interest  
20 to millions—are not directly related to the business of owning and operating a casino. This  
21 Court should not countenance such an affront to First Amendment principles which  
22 encourage open and frank discussion of public figures’ conduct in the community, and  
23 therefore should hold that Defendants’ communications were made in direct connection with  
24 a matter of public concern.

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27 \_\_\_\_\_  
28 appearing as an expert on TV shows that have viewerships reaching far beyond the thrifting  
community to the public at large, such as Pawn Stars. (*See* Compl., ¶¶ 8, 10)

**C. Mr. Smith Cannot Satisfy the Second Prong of the Anti-SLAPP Analysis.**

Mr. Smith argues that “Plaintiffs [sic] have met the burden of establishing, by clear evidence, a prima facie case of defamation and conspiracy, as allege [sic] in Smith’s Complaint.” (Opp., p. 16:23-24.) This contention is easily refuted by reading the remainder of Mr. Smith’s Opposition: Mr. Smith’s arguments for why he has met his burden under the second prong are wholly devoid of evidentiary support. He does not even cite to his own self-serving declaration in attempting to explain how his claims have any chance of success on their merits. As one California court has held, an anti-SLAPP plaintiff “cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial.” *Heying v. Newsmax Media, Inc.*, No. B278384, 2018 WL 346001, at \*5 (Cal. Ct. App. Jan. 10, 2018). As Mr. Smith failed to produce any evidence—besides his own declaration, which essentially parrots the allegations made in his Complaint—to support any of his claims, the Court must rule that Mr. Smith failed to meet his burden under the second prong of Nevada’s anti-SLAPP analysis.

**1. Defamation**

Mr. Smith argues, in conclusory fashion, that he “has met his burden of establishing a prima facie claim for defamation per se and the evidence established thus far support [sic] all essential elements” of a defamation claim. (Opp., p. 17:6-7.) He bases this on the naked assertions that statements regarding Mr. Smith being the target of restraining orders “are clearly defamatory and have been proven though public records to be false” (*Id.*, p. 17:8-10) and that there is “no evidence ... that establishes that Smith intentionally had individuals ‘kicked out’ of thrifting events to ‘take them down.’” (*Id.*, p. 17:11-13.) As demonstrated in the Motion and in §III(B)(1), *supra*, Defendants have proffered evidence suggesting that individuals have sought restraining orders against Mr. Smith, and that Mr. Smith has had individuals barred (or had individuals’ invitations rescinded) from thrifting events, which would naturally have the effect of “taking down” someone who had hoped to attend those events. Mr. Smith has presented nothing beyond a declaration which does not contradict any

1 of the evidence proffered by Defendants. Thus, Mr. Smith has not provided prima facie  
2 evidence of fulfilling the first element of defamation—*i.e.* that the statements Defendants  
3 made about him were either false or defamatory.

4 Despite listing the elements of defamation (Opp., pp. 16:26 – 17:5), Mr. Smith’s  
5 Opposition is silent regarding the third element of defamation, fault. This is because Mr.  
6 Smith, a public figure by his own admission, knows he cannot demonstrate it. The standard  
7 required by the United States Constitution for fault when the subject of alleged defamation  
8 is a public figure is actual malice. *Wynn v. Smith*, 117 Nev. 6, 16, 16 P.3d 424, 430 (2001)  
9 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80, 84 S.Ct. 710, 11 L.Ed.2d 686  
10 (1964)). “Actual malice (or more appropriately, *constitutional* malice) is defined as  
11 knowledge of the falsity of the statement or a reckless disregard for the truth.” *Nevada Indep.*  
12 *Broad. Corp. v. Allen*, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983) (citing *New York Times*  
13 *Co. v. Sullivan*, 376 U.S. at 280) (emphasis in original). “In contrast to common law malice,  
14 the inquiry in ‘actual malice’ focuses largely on the defendant’s belief regarding truthfulness  
15 of the published material rather than on the defendant’s attitude toward the plaintiff.” *Id.*  
16 (citing *Greenbelt Coop. Pub. Ass’n, Inc. v. Bresler*, 398 U.S. 6, 10, 90 S.Ct. 1537, 1540, 26  
17 L.Ed.2d 6 (1970)).

18 In the instant case, Mr. Smith has provided no evidence—aside from the beliefs  
19 stated in his declaration—that Defendants entertained *any* doubt as to the truth of their  
20 statements. By contrast, Defendants have attached numerous exhibits to their Motion which  
21 demonstrate the bases for their belief in the truthfulness of their statements. Mr. Smith has  
22 failed to demonstrate by prima facie evidence that Defendants acted with actual (*i.e.*  
23 constitutional) malice and therefore his defamation claim must fail as a matter of law.  
24 Essentially, because Mr. Smith only makes conclusory arguments instead of presenting any  
25 evidence to support his defamation claim, he has utterly failed to provide prima facie  
26 evidence of any likelihood of success on the merits of said claim.

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28 ///

## 2. Conspiracy

After reciting the elements of civil conspiracy (Opp., p. 17:22 – 18:10) Mr. Smith argues—without citation to any evidence or case law—that “the evidence clearly establishes that Defendants acted in concert, by both posting and endorsing, false and defamatory statements about Smith for the purpose of harming his business and his reputation in the thrifting world, a world that Defendants are just now up and coming in and seeking to profit in.” (*Id.*, p. 18:11-14.)

As argued in the Motion and *supra*, there was nothing illegal or tortious about Defendants exercising their First Amendment right to criticize Mr. Smith’s behavior, and Mr. Smith’s conclusory allegations, repeated in his Opposition, do not make it otherwise. (Motion, p. 22:10-16.) Because Mr. Smith has not produced prima facie evidence that he has any probability of succeeding on his defamation claim, his derivative claim for conspiracy must also fail as a matter of law.

## 3. Injunctive Relief

As a threshold matter, Mr. Smith did not address any of Defendants’ arguments regarding the propriety of “injunctive relief” as a cause of action, including the key First Amendment issues inherent in any injunction barring speech (i.e., a prior restraint). (Motion, pp. 22:19 – 23:1.) Pursuant to EDCR 2.20(e) this should be construed as an admission that Defendants’ position is meritorious.

To obtain an injunction Mr. Smith must actually succeed—or, in the case of a preliminary injunction, establish a likelihood of success—on a real cause of action. *See, e.g., Shores v. Glob. Experience Specialists, Inc.*, 134 Nev. 503, 507, 422 P.3d 1238, 1242 (2018) (holding that “the party seeking a preliminary injunction must demonstrate a reasonable probability of success on the merits”). As argued *supra* and in the Motion, Mr. Smith cannot establish *any* probability of success on his claim for defamation (or his conspiracy claim which is wholly derivative of his defamation claim), and therefore is not entitled to injunctive relief as a matter of law.

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To obtain injunctive relief, Mr. Smith must also “demonstrate that the nonmoving party’s conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate.” *Id.* Mr. Smith does not provide *prima facie* evidence that he will suffer from irreparable harm. Instead, he just argues, without and legal or factual support, “that immediate and irreparable injury will result to Smith unless this Court enters an injunction” as “such false statements ... continues cause [sic] severe and irreparable harm and injury to Smith’s goodwill, reputation and his business.” (Opp., p. 18:20-23.) It is unclear what “continuing conduct” Mr. Smith hopes to enjoin. Ms. Zilverberg’s allegedly defamatory YouTube video was published on June 6, 2018 and voluntarily taken down five days later by Ms. Zilverberg on June 11, 2018. (Exh. 1, ¶¶ 7, 14; Exh. 18, ¶ 22.) Mr. Smith has not established that Ms. Eagan’s Facebook post is still accessible online. Mr. Smith has failed to point to any other publication in which Defendants allegedly defamed him.

Furthermore, aside from his conclusory assertions (Exh. 1 to Opp., ¶¶ 24, 28), Mr. Smith has not provided evidence of *any* harm to his reputation or his business, much less that said harm was proximately caused by Defendants’ statements which, as noted above, are no longer online. There is no factual basis for this Court to issue a preliminary (let alone permanent) injunction because there is neither “continuing behavior” to enjoin nor “irreparable harm” being suffered by Mr. Smith. Moreover, as noted above, the claim for an injunction fails as a matter of law as it is not a cause of action and impermissible under the First Amendment. Therefore, Mr. Smith has not established any chance of prevailing on his “cause of action” for injunctive relief, as it must fail as a matter of law.<sup>8</sup>

**D. Public Policy Requires that This Matter Be Disposed of Expeditiously.**

To avoid dismissal on anti-SLAPP grounds, Mr. Smith makes vague and inapplicable arguments asking that the Court allow this case to drag on. (*See, e.g.*, Opp., p.

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<sup>8</sup> Additionally, Mr. Smith does not appear to oppose Defendants’ assertion that prior restraints on speech—*i.e.* the type of injunctive relief sought by Mr. Smith here—are presumptively unconstitutional. (Motion, pp. 23:2-25:11.) This should be construed as a non-opposition and an admission by Mr. Smith that said argument is meritorious. *See* EDCR 2.20(e).

19:15-21.) His arguments fail in this anti-SLAPP context. The anti-SLAPP statute is designed to protect free speech by protecting speakers from liability and Mr. Smith’s effort to prolong this case must be rejected. Mr. Smith was also required to make a specific showing to obtain discovery and failed to do so. Thus, Mr. Smith’s effort to delay on the grounds that discovery is needed must necessarily fail.

### 1. The Anti-SLAPP Legal Standard Applies.

Anti-SLAPP law exists to deter precisely the litigation Mr. Smith has engaged in. While he generally recites the correct legal standard at pages 8 and 9 of his Opposition, Mr. Smith incorrectly asserts that, even though this is a Motion to Dismiss pursuant to Nev. Rev. Stat. § 41.660 rather than a motion to dismiss pursuant to Nev. R. Civ. P. 12(b)(5), his pleadings must be “construed liberally construed liberally and place into issue matters which are fairly noticed to the adverse party.” (Opp., p. 19:4-5.)<sup>9</sup> As a Hail Mary pass, Mr. Smith trots out generic case law regarding Nevada’s notice pleading standard—all of which predates Nevada’s enactment of its anti-SLAPP law in 1993—to stand for the proposition that his frivolous lawsuit be spared the “harsh remedy” of dismissal. (Opp., p. 19:4-14.) While it may “serve the interests of justice” that a matter be presented to the trier of fact where a case is “presently being prosecuted with diligence” (*id.*, p. 19:13-14) this is not such a case. Rather, this is a case where a famous plaintiff is attempting to use the legal system as a cudgel to silence his critics, precisely the type of lawsuit Nevada’s anti-SLAPP statute was intended to discourage.

“Nevada’s anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss ‘meritless lawsuit[s] that a party initiates primarily to chill a defendant’s exercise of his or her First Amendment free speech rights’ *before incurring the costs of litigation.*” *Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d

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<sup>9</sup> Given that Mr. Smith has repeatedly failed to point to the actual, specific statements underlying his claims—*e.g.*, that Defendants stated he had a criminal record—he has arguably failed to provide notice of his claims to Defendants even under Nevada’s notice pleading standard.

1 746, 748 (2019) (citing *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013))  
2 (emphasis added). Indeed, Nevada’s anti-SLAPP statute stands for the proposition that the  
3 interests of justice are best served when some cases—such as the instant one—are disposed  
4 of before the plaintiff “wins by default,” *i.e.* makes it financially untenable for defendants to  
5 continue to defend their First Amendment rights. This is why Nevada’s anti-SLAPP law  
6 mandates adjudication within 20 judicial days (Nev. Rev. Stat. § 41.660(3)(f))—so that a  
7 SLAPP plaintiff cannot endlessly extend a frivolous suit to increase defendants’ costs. This  
8 is why Nevada’s anti-SLAPP law stays discovery (Nev. Rev. Stat. § 41.660(3)(e))—so that a  
9 SLAPP plaintiff cannot increase defendants’ legal bills by forcing them and their attorneys  
10 to engage in time-consuming (but ultimately pointless) discovery.

11 This Court should not entertain Mr. Smith’s invitation to abrogate Nevada’s anti-  
12 SLAPP law from the bench and must instead apply Nevada’s anti-SLAPP law to dispense  
13 with this quintessential SLAPP once and for all. Indeed, based on his refusal to even bother  
14 to state with particularity Defendants’ allegedly defamatory statements, his unsupported  
15 allegations of damages, the paucity of evidence and case law presented by Mr. Smith to  
16 support any of his arguments, and Mr. Smith’s failure to meet the deadline for filing his  
17 Opposition, this Court should infer that Mr. Smith’s intention in filing this suit was not to  
18 ultimately prevail on the merits, but to force Defendants to choose between incurring the cost  
19 of litigation and waiving their First Amendment right to criticize him.<sup>10</sup>

20 In a further flimsy effort to fight dismissal, Mr. Smith also argues that there has  
21 been no discovery in this matter. Again, Mr. Smith’s argument is at odds with the legal  
22 standard governing anti-SLAPP motions to dismiss. As detailed in § III(E), *infra*, if Mr.  
23 Smith contends that discovery was necessary before resolution of this Motion, he has to make  
24 a showing that limited discovery is necessary to meet his burden of coming forth *prima facie*  
25 evidence a probability of prevailing on the claim. *See* Nev. Rev. Stat. § 41.660(4). This he

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27 <sup>10</sup> Thus, as noted in the Motion and below, the Court should not only dismiss this case with  
28 prejudice and award fees and costs to Defendants, but additionally award Ms. Zilverberg and  
Ms. Eagan each \$10,000.00 to Nev. Rev. Stat. 41.670(1)(b).

1 did not do.

2                   **2.       Granting Defendants’ Motion Would Not “Render All Causes**  
3                   **of Action For Defamation Moot.”**

4           Mr. Smith argues that if this Court grants Defendants’ Motion, “then no individual  
5 could ever bring a claim for defamation and be successful, as any person accused of  
6 defamation could excuse their misconduct by a blanket statement they were unaware that the  
7 information was false. Such principal [sic] would allow individuals to post false and  
8 defamatory statement [sic] for the purposes of hurting another out of spite ... and allow harm  
9 and damage to occur, without any repercussion as a result of the misconduct. Such principal  
10 [sic] would go against Tort law as established in this country and would render all causes of  
11 action for defamation moot.” (Opp., pp. 12:24 – 13:4.)

12           Mr. Smith’s bizarre argument—perhaps designed to distract from his abject failure  
13 to include sufficient evidence to support his claims—completely elides two key facts. First,  
14 Mr. Smith is no ordinary defamation plaintiff—he is a public figure. (Compl., ¶¶ 7-12.) As a  
15 public figure, he must establish not only that Defendants’ statements were false, but also that  
16 Defendants made such false statements with “actual malice,” not mere negligence. (See §  
17 III(C)(1), *supra*.) Second—unlike Mr. Smith—Defendants have produced much more than a  
18 “blanket statement that they were unaware that the information was false.” (Opp., p. 12:26-  
19 27.) Defendants have attached several exhibits to their Motion and the instant Reply  
20 demonstrating the veracity of their claims and their bases for believing in the truthfulness of  
21 their statements. Contrary to Mr. Smith’s assertion, the tort of defamation is alive and well,  
22 even in states with strong anti-SLAPP statutes. A defamation plaintiff—even a public  
23 figure—can still prevail by sufficiently pleading all the elements of defamation and providing  
24 evidence to support his claims. As demonstrated *supra*, Mr. Smith has simply failed to do so  
25 here, and therefore this Court should grant Defendants’ Motion without any worry that doing  
26 so will somehow bar future defamation plaintiffs from pursuing meritorious claims.

27 ///

28 ///

**E. Mr. Smith is Not Entitled to Discovery in this Matter.**

Mr. Smith correctly notes that “there has been no discovery conducted by Defendants [sic] in this matter to verify any of the facts or alleged evidence presented in this matter.” (Opp., p. 19:15-16.) Indeed, neither party has conducted discovery in this matter, in accordance with Nev. Rev. Stat. § 41.660(3)(e) (staying discovery pending the Court’s ruling and disposition of an appeal from said ruling). This is in line with the spirit of Nevada’s anti-SLAPP law, as staying discovery protects SLAPP defendants from having to endure the invasive, time-consuming, and costly process of civil discovery.

Nevada anti-SLAPP law does allow for “limited discovery” for the purpose of ascertaining “information necessary to meet or oppose the burden [of the second prong of anti-SLAPP analysis].” Nev. Rev. Stat. § 41.660(4). However, the propriety of such limited discovery is premised “[u]pon a showing by a party that information ... is in the possession of another party or a third party and is not reasonably available without discovery.” *Id.* Mr. Smith does not make a showing that any such information is not reasonably available without discovery; rather, Mr. Smith nakedly claims that he is entitled to broad discovery to challenge the “veracity and reliability” of Defendants’ evidence and to “cross-exam[ine] statements from third-party witnesses or verify that posts and text message threads used to support the Motion to Dismiss are no [sic] edited or varied in any way.” (Opp., p. 19:15-19.)

This naked allegation is not even close to sufficient to demonstrate good cause, which “should include some explanation of ‘what additional facts [plaintiff] expects to uncover.’” *1-800 Contacts, Inc. v. Steinberg*, 107 Cal. App. 4th 568, 593–94, 132 Cal. Rptr. 2d 789 (2003). Mr. Smith’s Opposition is entirely devoid of any additional facts he expects to uncover in the discovery process, and therefore he is not entitled to discovery in this matter. Indeed, Mr. Smith had a chance to dispute the authenticity and veracity of Defendants’ evidence in his Opposition and his own declaration, attached as Exhibit 1 to the Opposition. He also had the opportunity to present his own evidence, and at the very least specify the statements that form the gravamen of his Complaint. He had the opportunity to timely file written evidentiary objections to any or all of Defendants’ exhibits. He did not, and his

1 silence speaks volumes. Therefore, this Court may not permit any discovery in this matter,  
2 and should grant the Motion in its entirety.

3 **F. Mr. Smith is Not Entitled to Any Award, But Rather Should Be Liable**  
4 **for Defendants’ Attorney’s Fees, Costs, and Statutory Awards.**

5 Mr. Smith boldly argues that this Court should not only deny Defendants’ Motion,  
6 but award Mr. Smith attorney’s fees, costs and a statutory award of up to \$10,000 under Nev.  
7 Rev. Stat. § 41.670(2)-(3). (Opp., pp. 19:23 – 20:5.) Mr. Smith further argues—without any  
8 citation or support—that “Defendants filed their Motion to Dismiss with no basis for doing  
9 so, as they had clear knowledge of the falsity of their statements, and such statements were  
10 made to further bolster private animosity and dispute between the parties, not a matter of  
11 public interest.” (*Id.*, p. 20:6-8.)

12 As argued *supra* and in the Motion, Defendants have met both prongs of Nevada’s  
13 anti-SLAPP calculus, and are therefore entitled to dismissal of this suit, attorney’s fees and  
14 costs, and a discretionary award of \$20,000. Nev. Rev. Stat. §41.670(1)(a)-(b). However,  
15 should this Court deny Defendants’ anti-SLAPP Motion to Dismiss, the wealth of evidence  
16 and case law cited by Defendants in both the Motion and the instant Reply demonstrate that  
17 there was ample basis in fact and law for Defendants to move for dismissal under Nev. Rev.  
18 Stat. § 41.660. Thus, even if this Court does not grant the instant Motion, it cannot conclude  
19 that the Motion was “frivolous or vexatious” and therefore cannot order Defendants to pay  
20 Mr. Smith attorney’s fees and costs or any other statutory awards under Nev. Rev. Stat. §  
21 41.670(2)-(3).

22 **IV. CONCLUSION**

23 As thoroughly argued in Defendants’ anti-SLAPP Motion to Dismiss and *supra*,  
24 Defendants have satisfied both prongs of Nevada’s anti-SLAPP analysis: they have  
25 demonstrated by a preponderance of the evidence that Mr. Smith’s lawsuit is based on their  
26 good faith communications in direct connection with an issue of public concern, and they  
27 have established that Mr. Smith cannot demonstrate any probability of prevailing on the  
28 merits of his claims. Mr. Smith’s Opposition, which is essentially lacking in citations to

1 relevant case law or evidence to support his arguments, does not give this Court any reason  
2 to hold otherwise. This Court must therefore grant Defendants' anti-SLAPP Motion to  
3 Dismiss, award attorney's fees and costs to Defendants, and exercise its discretion to award  
4 \$10,000.00 to both Ms. Zilverberg and Ms. Eagan.

5 Respectfully submitted this 27<sup>th</sup> day of September, 2019.

6 /s/ Margaret A. McLetchie

7 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

8 ALINA M. SHELL, Nevada Bar No. 11711

9 LEO S. WOLPERT, Nevada Bar No. 12658

10 **MCLEATCHIE 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 Zilverberg*  
16 *and Victoria Eagan*

## CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 27<sup>th</sup> day of September, 2019, I did cause a true copy of the foregoing REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS PURSUANT TO NEV. REV. STAT. § 41.660 (ANTI-SLAPP) in *Smith v. Zilverberg et al.*, Clark County District Court Case No. A-19-798171-C, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.

/s/ Pharan Burchfield

EMPLOYEE of McLetchie Law

### INDEX OF EXHIBITS

Exhibit	Description	Bates Nos.
18	Supplemental Declaration of Katy Zilverberg	Z-E-141-Z-E-147
	A – Screenshots of Mr. Smith’s eBay store	Z-E-148-Z-E-149
	B – Screenshots of Ms. Zilverberg’s eBay store	Z-E-150-Z-E-151
	C – Screenshots of Ms. Eagan’s eBay store	Z-E-152-Z-E-153
	D – Email from Ms. Zilverberg to Audrey Tracy	Z-E-154-Z-E-159
	E – June 13, 2018 email from YouTube re takedown of video	Z-E-160-Z-E-161
	F – July 16, 2019 email from YouTube re takedown of video	Z-E-162-Z-E-163
19	Supplemental Declaration of Victoria Eagan	Z-E-164-Z-E-167
	A – Screenshots of Mr. Smith’s eBay store	Z-E-168-Z-E-169
	B – Screenshots of Ms. Zilverberg’s eBay store	Z-E-170-Z-E-171
	C – Screenshots of Ms. Eagan’s eBay store	Z-E-172-173
20	Screenshot of June 6, 2018 Facebook post and comments	Z-E-174-Z-E-182

# EXHIBIT 18

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
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.

**DECLARATION**

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

Defendants.

**SUPPLEMENTAL DECLARATION OF KATY ZILVERBERG IN SUPPORT OF  
SPECIAL ANTI-SLAPP MOTION TO DISMISS**

I, KATY ZILVERBERG, hereby declare as follows:

1. I make this supplemental declaration in support of my special anti-SLAPP Motion to Dismiss in the above-captioned matter, to authenticate the exhibits attached thereto, and to respond to some of Mr. Smith's factual allegations in his Opposition to the Motion to Dismiss and supporting declaration. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.

2. Vikki Eagan and I are thrifters / resellers like Plaintiff Jason Todd Smith and we are all part of the thrifting / reselling community.

3. Mr. Smith claims Ms. Eagan and I are "trying to build [our] business in the

1 thrifting community and also benefit and gain advantage of Smith's reputation, as a top  
2 thrifter in the community, is ruined and his business is destroyed." (Exh. 1 to Opp., ¶ 37.)  
3 This is untrue. I just want to speak the truth about Mr. Smith's conduct and stop bullying and  
4 abusive behavior in our community.

5 4. Furthermore, Ms. Eagan and I are not competitors of Mr. Smith's at all. We  
6 all sell different types of thrifted items. Moreover, each item we sell is also generally a  
7 unique, rare item. Due to the lack of overlap in goods, a sale made by my store or Ms. Eagan's  
8 stores is not a "sale lost" from Mr. Smith's store (and vice versa).

9 5. Mr. Smith currently has just under 1,000 listings in his eBay store. Almost  
10 400 items are music, records, CDs, and cassettes. I have less than 40 records in my store of  
11 over 2,200 listings, while Ms. Eagan has about 80 music items in her store of over 2,500  
12 listings. None of our listings are of the same items that Mr. Smith has in his store.

13 6. True and correct screenshots of Mr. Smith's eBay store, taken September  
14 26, 2019, which reflect that of 940 items listed by Mr. Smith, 379 pertain to music, are  
15 attached as Exhibit A to this Declaration.

16 7. True and correct screenshots of my eBay store, taken September 26, 2019,  
17 which reflect that of the 2,224 items listed only 36 pertain to music, are attached as Exhibit  
18 B to this Declaration.

19 8. True and correct screenshots of Ms. Eagan's eBay store, taken September  
20 26, 2019, which reflect that of the 2,540 items listed only 79 pertain to music, are attached  
21 as Exhibit C to this Declaration.

22 9. Typically, when buyers shop on eBay, they do a site-wide search for  
23 whatever item they are looking to buy, rather than first narrowing their search to a specific  
24 store or reseller.

25 10. At no time are our items in competition with Mr. Smith's items. There are  
26 millions of sellers on eBay and billions of items. See  
27 <https://www.ebayinc.com/company/who-we-are/> (last accessed September 26, 2019.)

28 11. I do not see other sellers as competition; I see them as co-workers. It is

1 beneficial to us and our businesses if other sellers also carry quality items and use best  
2 practices when selling as it creates a positive experience for the buyer and ensures they will  
3 return to the platform to buy again. This is why Ms. Eagan and I give away our knowledge  
4 for free on our YouTube channel to other sellers. We show what we buy and sell, we give  
5 “BOLOs” (be on the lookout) and teach others how to be better sellers. If I or Ms. Eagan  
6 considered other sellers our direct competitors, we would not be helping them free of charge.

7 12. As far as the idea that Mr. Smith is a direct competitor as a reseller educator  
8 in the thrifting community goes, this is not true either. Ms. Eagan and I do not sell anything  
9 to members of the thrifting community, we do not offer thrifting classes, and we do not  
10 charge people for any of our content. In contrast, Mr. Smith charges sellers for thrifting  
11 classes. He also has a paid Facebook group called The Secret Beach with just over 800  
12 members. <https://www.facebook.com/groups/secretbeachclub/>; *see also*  
13 <http://www.thesecretbeach.club> (last accessed September 26, 2019.) Members of The Secret  
14 Beach pay on average about \$30 per person per month to be members. Ms. Eagan and I do  
15 not have a paid group, nor do we plan to start one. We give our knowledge away for free, we  
16 are not trying to capitalize on it. Thus, Mr. Smith is not our competitor.

17 13. The only place Ms. Eagan and I do make a very small amount of money is  
18 with ad revenue from our YouTube channel. Ad revenue on YouTube is based on the number  
19 of views our videos get. Our videos are mostly live, and our live shows are scheduled on the  
20 same days/times every week: 11 a.m. pacific time on Wednesdays and 2 p.m. pacific time on  
21 Sundays. Mr. Smith’s live shows on his YouTube channel are not scheduled at the same time  
22 as ours, as they are generally scheduled for Thursday evenings and Sunday mornings pacific  
23 time. If people want to watch both of our channels, they can do so without having to choose  
24 one over the other. Furthermore, after our live shows conclude, viewers can go back and  
25 watch the recordings of said live shows at any time. It’s like saying that Saturday morning  
26 cartoons are in direct competition with Sunday NFL football.

27 14. If Mr. Smith were to suddenly quit reselling and quit making videos or  
28 doing anything in the thrifting community, it would have no impact—positive or negative—

1 on either my eBay business or Ms. Eagan's eBay business and would in no way boost or help  
2 our YouTube channel.

3 15. My issues with Mr. Smith have nothing to do with competition or furthering  
4 my thrifting and reselling career. Rather, my issues with Mr. Smith stem from his conduct  
5 and treatment of me, Ms. Eagan, and several other members of the thrifting community,  
6 which I believe to constitute bullying and harassing behavior that is unacceptable.

7 16. Mr. Smith says that he and I have known each other for many years.  
8 (Exh. 1 to Opp., ¶ 9.) I did not actually know Mr. Smith at all when he asked me to be an  
9 admin/lifeguard for Facebook group "The Thrifting Board" at the end of March 2017. It is  
10 my understanding that he asked me to be an admin/lifeguard based on multiple  
11 recommendations from other admins who thought I would be a good fit based on how much  
12 I helped others in the group. I did not meet Mr. Smith in person until eBay Open in July of  
13 2017, one month before our supposed friendship was dissolved. I did not know him "for  
14 many years," nor would I characterize him as a personal friend. My experiences with Mr.  
15 Smith were all centered around the thrifting business and as colleagues within the thrifting  
16 community.

17 17. My concerns about Mr. Smith's behavior are not personal. I do not want  
18 Mr. Smith continuing to be an abusive part of the business community I work in. Mr. Smith  
19 tries to make this a personal issue claiming by that Ms. Eagan and I were upset he "did not  
20 fully support [our] relationship, which was solely a result of the fact that Smith was  
21 previously friends with Eagan and her husband." (Exh. 1 to Opp., ¶ 15.)

22 18. Mr. Smith told me himself that his main issue was not that Ms. Eagan's  
23 relationship with her then-husband was ending, but rather that he was not the first person  
24 told about my and Ms. Eagan's relationship. Further, Mr. Smith expressed concerns about  
25 how the relationship between me and Ms. Eagan would negatively affect his business  
26 somehow.

27 19. Mr. Smith also alleges that we "are also capitalizing by using Smith's brand  
28 and creating controversy to bring viewers to their online social media and YouTube channel."

1 (Exh. 1 to Opp., ¶ 38.) This is not true. The end of my relationship with Mr. Smith happened  
2 in late August 2017. I did not post my video on YouTube until June 6, 2018—10 months  
3 later. For the 10 months prior to my posting of the YouTube video, Mr. Smith was repeatedly  
4 working to spread lies and rumors about us amongst the thrifting community, and even  
5 systematically harassing people like Theresa Cox for her decision to remain friends with us  
6 and work with us.

7 20. Talking with Sophia Antillon, Mr. Smith's former assistant, in April 2018  
8 is what finally convinced me and Ms. Eagan that we had reason to be worried about Mr.  
9 Smith' behavior and what he might try to do to us in public, particularly at eBay Open 2018.  
10 At this point I talked to my contact at eBay who advised me to write a letter to eBay and  
11 have others with similar experiences do the same. A true and correct copy of my April 20,  
12 2018 email to Audrey Tracy is attached as Exhibit D to this Declaration. When eBay chose  
13 not to handle the situation or do anything to help us feel safe to attend eBay Open 2018, I  
14 then posted the video on June 6, 2018.

15 21. The purpose of the video was to make Mr. Smith's behavior public to  
16 hopefully stop his harassment and interference in our business and personal relationships and  
17 to warn others in the thrifting community of his pattern of abusive behavior toward other  
18 resellers.

19 22. On or about June 8, 2018, I spoke with Brian Burke from eBay regarding  
20 fears that Mr. Smith would subject myself and others to harassment at eBay Open. Once I  
21 knew eBay was aware of the situation, I felt comfortable taking the video down, and did so  
22 on June 11, 2018. I was not told to or asked to remove the video; I chose to do so as we did  
23 not want Mr. Smith to be a focus on our channel.

24 23. Mr. Smith claims Ms. Eagan and I "are aware that the YouTube video is  
25 still posted by other users online and have made no effort to have the YouTube video  
26 removed." (Exh. 1 to Opp., ¶ 25.) As far as I know, this is not true. I have searched multiple  
27 times and have not found any. Since the original video was taken down on June 11, 2018, I  
28 know of three other copies that were uploaded to YouTube by people unknown to me. All

1 three were taken down after I filed copyright claims with YouTube. The first and second  
2 ones were filed by me on June 13, 2018 and removed by YouTube on June 16, 2018. The  
3 URLs even say "This video is no longer available due to a copyright claim by Katy  
4 Zilverberg" (see <https://www.youtube.com/watch?v=9jIYmwXxDb8> (last accessed  
5 September 26, 2019) and <https://www.youtube.com/watch?v=mlcXKozYaqs> (last accessed  
6 September 26, 2019).) A true and correct copy of the YouTube Copyright Infringement  
7 Notification Confirmation I received on June 13, 2018 is attached as Exhibit E to this  
8 Declaration.

9 24. I did not actively search for other copies of the video after June, 2018.  
10 However, when we were sued by Mr. Smith in July, 2019, I learned that a third copy of the  
11 video had been posted to YouTube. I thereafter filed another copyright claim regarding that  
12 copy on July 16, 2019 and it was removed by YouTube that same day:  
13 <https://www.youtube.com/watch?v=6ceOcA6SzfM> (last accessed September 26, 2019.) A  
14 true and correct copy of the YouTube Copyright Infringement Notification Confirmation I  
15 received on July 16, 2019 is attached as Exhibit F to this Declaration.

16 25. Mr. Smith states in his response that "it is unclear how statements directed  
17 toward a community of approximately 55,000 people, out of approximately 330 million  
18 people living in the United States, constitutes a 'public concern.'" (Opp., p. 16:2-4.) The  
19 "55,000" figure is probably a reference to Mr. Smith's Facebook group The Thrifting Board,  
20 which has approximately 55,000 members. My YouTube video was not directed solely at the  
21 members of The Thrifting Board. Instead, my video was directed to the online thrifting and  
22 reselling community at large. The video was shared across multiple social media platforms  
23 and shared in groups much larger than The Thrifting Board.

24 26. For example, on June 6, 2018, Casey Parris, an administrator of the Thrifter  
25 & Reseller World Facebook group, posted a link to my YouTube video to said group. That  
26 group has approximately 110,000 members and is just one post in one of many thrifting  
27 groups on Facebook and elsewhere on the Internet.

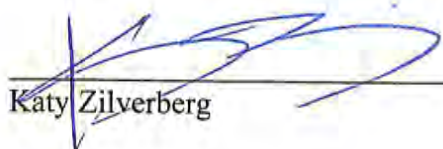
28 27. In addition to sharing criticism of Mr. Smith's behavior, Casey Parris's June

1 6, 2018 post generated discussion in Facebook comments in which several individuals shared  
2 their negative experiences with Mr. Smith in the thrifting community.

3 28. Exhibit 20 to the Reply is a true and correct screenshot of Casey Parris's  
4 June 6, 2018 Facebook post and the comments thereto.

5  
6 I declare under penalty of perjury under the laws of the State of Nevada that the  
7 foregoing is true and correct to the best of my knowledge and belief.

8  
9 Dated this 26<sup>th</sup> day of September, 2019 in Las Vegas, NV.

10  
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13 Katy Zilverberg  
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# EXHIBIT A

Categories

Music

- Vinyl Records
- Music CDs
- More ▼

Clothing, Shoes & Accessories

- Men's Vintage Hats
- Men's T-Shirts
- Men's Jeans
- Men's Casual Button-Down Shirts
- Women's Bags & Handbags
- More ▼

Collectibles

- Collectible Hawaiian Mugs & Cups
- Other Decorative Collectibles
- Collectible Blankets
- Contemporary Disney Apparel & Accessories (1968-Now)
- Collectible Historical Memorabilia
- More ▼

Art & Craft Supplies

Entertainment Memorabilia

Home & Garden

Sports Memorabilia, Fan Shop & Sports Cards

Toys & Hobbies

Books

Computers, Tablets & Network Hardware

DVDs & Movies

Art

Health & Beauty

Video Games & Consoles

Sporting Goods

Cameras & Photo

Business & Industrial

Travel

Pet Supplies

All Listings | Auction | Buy It Now

Sort: Best Match | View:

940 results | Save this search



Chicos Pretty Floral Print Mandarin Collar Zipper Front Light Jacket Size 3

\$24.89



Was: ~~\$29.99~~  
or Best Offer  
+\$6.99 shipping

Free Returns

17% off

Watch



Elvira Mistress Of The Dark The Original Kreepsville Scare Wear 3XL Made in USA

Pre-Owned

\$33.19

Guaranteed by Tue, Oct. 1

Was: ~~\$39.99~~  
or Best Offer  
+\$4.99 shipping

17% off

Watch



Vtg E.T. Phone Home Apron 1982 Universal City Studios Steven Spielberg Made USA

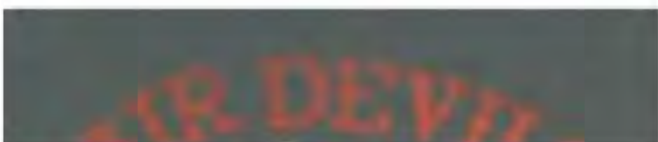
\$58.09

Guaranteed by Tue, Oct. 1

Was: ~~\$69.99~~  
or Best Offer  
+\$4.99 shipping

17% off

Watch



Dive Bar Shirt Club Air Devils Inn Don't Drink & Skywrite XXL T-Shirt Louisville

Pre-Owned



Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **tikipugmusic** (17761 ★) | Save this seller

☐ Include description

## Categories

### Music

[Music](#)  
[Records](#)  
[CDs](#)  
[Cassettes](#)  
[Wholesale Lots](#)

### Format

[see all](#)

- ☒ All Listings
- ☐ Auction
- ☐ Buy It Now

### Guaranteed Delivery

[see all](#)

- ☒ No Preference
- ☐ 1 Day Shipping
- ☐ 2 Day Shipping
- ☐ 3 Day Shipping
- ☐ 4 Day Shipping

### Condition

[see all](#)

- ☐ Brand New (52)
- ☐ Like New (107)
- ☐ Very Good (70)
- ☐ Good (2)

### Price

- ☐ Under \$35.00
- ☐ Over \$35.00

\$  to \$  >>

### Item Location

[see all](#)

- ☒ Default
- ☐ Within  
 of
- ☐ US Only
- ☐ North America
- ☐ Worldwide

[All Listings](#) [Auction](#) [Buy It Now](#)

Sort: [Best Match](#) ▾ View: [Grid](#) ▾

379 results in **Music** | Save this search



#### Complete Death Compilation LP 1986 Metal Blade sDRI Corrosion Of Conformity

Pre-Owned

**\$29.04**

Was: ~~\$34.99~~  
or Best Offer  
+\$6.99 shipping

**Free Returns**

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



#### New NoNeed Tenchi Original Soundtrack CD Shin Tenchi Muyo Volume 1 Manga w/ OBI

New (Other)

**\$20.74**

Was: ~~\$24.99~~  
or Best Offer  
+\$4.99 shipping

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



#### Michael Jackson Off The Wall Cassette Rock With You She's Out Of My Life Epic

New (Other)

**\$18.25**

Was: ~~\$21.99~~  
or Best Offer  
+\$2.99 shipping

**Free Returns**

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



# EXHIBIT B



Shop by category ▼

Search for anything

All Categories ▼

Search

Advanced

Items for sale from **aboutiqueforhim** (2772 ★) | Save this seller

☐ Include description

## Categories

Clothing, Shoes & Accessories

Men's T-Shirts

Men's Vintage T-Shirts

Men's Coats & Jackets

Men's Hoodies & Sweatshirts

More ▼

Sports Memorabilia, Fan Shop & Sports Cards

NFL Fan Apparel & Souvenirs

NCAA Fan Apparel & Souvenirs

NBA Fan Apparel & Souvenirs

More ▼

Sporting Goods

Music

Collectibles

Art

Home & Garden

eBay Motors

All Listings

Auction

Buy It Now

Sort:

Best Match ▼

View:



2,224 results

Save this search



### Howling Moon Wolves Mens T Shirt Gray Timber Wolf The Mountain Tie Dye Large

Pre-Owned

**\$27.99**

Was: ~~\$39.99~~

or Best Offer

Free Shipping

Free Returns

30% off

Watch

Guaranteed by **Tue, Oct. 1**



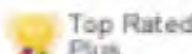
### San Francisco 49ers T Shirt Vintage 90s Steve Young Made In USA Size Medium

Pre-Owned

**\$34.99**

Was: ~~\$49.99~~

Guaranteed by **Tue, Oct. 1**





Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **aboutiqueforhim** (2772 ★) | | Save this seller

☐ Include description

## Categories

Music

[Music](#)

[Records](#)

Format

[see all](#)

- ☒ All Listings
- ☐ Auction
- ☐ Buy It Now

Guaranteed Delivery

[see all](#)

- ☒ No Preference
- ☐ 1 Day Shipping
- ☐ 2 Day Shipping
- ☐ 3 Day Shipping
- ☐ 4 Day Shipping

Condition

[see all](#)

☐ Brand New (30)

Price

\$  to \$  [»](#)

Item Location

[see all](#)

- ☒ Default
- ☐ Within

All Listings

Auction

Buy It Now

Sort: **Best Match** ▾

View: ▾

36 results in Music Save this search



### They Live Soundtrack John Carpenter LP Vinyl Record 180 Gram Formaldehyde Face

Brand New

**\$59.99**

Was: ~~\$79.99~~

or Best Offer

Free Shipping

Free Returns

**25% off**

Watch



### Mortal Kombat 1 & 2 Game Soundtrack Dan Forden LP Vinyl Record Reptile Acid

Brand New

**\$59.99**

Was: ~~\$79.99~~

or Best Offer

Free Shipping



Free Returns

**25% off**

Watch



# EXHIBIT C

Items for sale from **lvpinkpeacock** (13279 )  |  Save this seller

☐ Include description

## Categories

### Clothing, Shoes & Accessories

[Women's Dresses](#)  
[Men's Casual Button-Down Shirts](#)  
[Men's Coats & Jackets](#)  
[Women's Coats, Jackets & Vests](#)  
[Women's Clothing](#)  
[More](#)

### Collectibles

[Collectible Mugs & Cups](#)  
[Collectible Blankets](#)  
[Other Hallmark Collectibles](#)  
[Modern Christmas Collectibles \(1946-1990\)](#)  
[Current Christmas Ornaments \(1991-Now\)](#)  
[More](#)

### Toys & Hobbies

[Contemporary Manufacture Board & Traditional Games](#)  
[TV & Movie Character Toys](#)  
[More](#)

### Home & Garden

[Flatware & Silverware](#)  
[More](#)

### Sports Memorabilia, Fan Shop & Sports Cards


[NFL Fan Apparel & Souvenirs](#)  
[NCAA Fan Apparel & Souvenirs](#)  
[More](#)

### Music

### Dolls & Teddy Bears

[All Listings](#)
[Auction](#)
[Buy It Now](#)

Sort: [Best Match](#)

View: 

2,540 results  Save this search



#### Golfknickers Navy Stewart Ramie Plaid Par 5 Ladies Golf Cap Hat

Brand New

**\$29.96**

or Best Offer

Free Shipping

 Watch

Guaranteed by **Tue, Oct. 1**



#### NEW LISTING Enzo Angiolini Purple Lavender Leather 8.5 Shoes Pumps Heels Bow

Pre-Owned

**\$39.95**

or Best Offer

Free Shipping

 Watch

Guaranteed by **Tue, Oct. 1**



#### NEW LISTING Mephisto Mobils Red Leather Comfort Clog Walking Shoes Size 5.5 Air Relax

Pre-Owned

**\$29.95**

or Best Offer

Guaranteed by **Tue, Oct. 1**



Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **lvpinkpeacock** (13279 ★) | Save this seller

☐ Include description

## Categories

### Music

[Music](#)

[Records](#)

[CDs](#)

[Other Formats](#)

[Cassettes](#)

### Format

[see all](#)

- ☒ All Listings
- ☐ Auction
- ☐ Buy It Now

### Guaranteed Delivery

[see all](#)

- ☒ No Preference
- ☐ 1 Day Shipping
- ☐ 2 Day Shipping
- ☐ 3 Day Shipping
- ☐ 4 Day Shipping

All Listings

Auction

Buy It Now

Sort: **Best Match** ▾

View: ▾

79 results in **Music** | Save this search



## Hustlers Club Vol 1 Connected Inc 2009 Rap CD New Sealed

Brand New

**\$10.47**

Was: ~~\$14.95~~

or Best Offer

**Free Shipping**

**29% off**

Watch

Guaranteed by **Tue, Oct. 1**



NEW LISTING

## Theme From Antony and Cleopatra LP Record Album Sutton SSU-301

Pre-Owned

# EXHIBIT D

---

**Jason T. Smith**

---

**Katy Zilverberg** <aboutiqueforhim@gmail.com>

Fri, Apr 20, 2018 at 11:53 AM

To: "Tracy, Audrey" &lt;audtracy@ebay.com&gt;

This email is to express my concerns about Jason T. Smith, an eBay Influencer and leader in the seller community.

I first joined The Thrifting Board facebook group maybe mid 2016. I was only months into being an eBay seller but I'm a fast learner so it wasn't long before I was answer people's questions and giving advice. I didn't know Jason T. Smith other than knowing he was the leader of the group. I had virtually no interactions with him prior to being asked to be a lifeguard or admin for his group. In the spring of 2017 they were looking for new lifeguards and a couple of the others had recommended me based on my activity in the group so Jason asked me to join. In this email I'm going to give a chronological list of incidents, some involving myself, some involving others.

\* When I first started in the spring of 2017, there was an incident with a Thrifting Board (TTB) member who posted in the Mid Century Modern facebook group basically talking about how much she didn't like Jason. Of course someone alerted him to it and he proceeded to throw anyone out of TTB who "liked" or participated in the MCM thread about him. He then posted in TTB while this woman was still a member, tagged her, and attacked her for the whole group to see. As soon as he did this, he went in the Lifeguard private chat and basically said "ok girls, go get her", instructing us all to go attack. I didn't and neither did a couple others but some did. It was super ugly and I believe someone sent screenshots of that post to eBay, it may have been why he got pulled from the main stage at eBay Open last year, he told us about it. The woman also was using a fake name on facebook, Jason had on of his followers track down her real name, her home address, and her workplace. I don't know that he ever did anything with it but he threatened to. She was aware he had this information.

\* Next there was an incident with Lynn Hudziak, an eBay seller and TTB member as well as a member of Jason's paid group, the Secret Beach. I don't completely understand what happened or the truth behind it because it was all based on Jason's telling. He was trying to raise money to help his friend Nadene who was in a tough spot, Lynn shared Nadene's paypal email for people to contribute to and I believe this is where it all started because he was angry that she did that instead of waiting for him to tell people how to help. Again, I'm not sure what all went do but I know he turned on Lynn, threw her out of TTB and the Secret Beach, as far as I know he was badgering her through messages. I've attached a screenshot titled "LynnHudziak1" that just shows how he talked about her in the lifeguard chat. I know she has said that his bullying landed her in the hospital, I don't know what that's all about. I know Lynn would be willing to talk to someone at eBay about what actually happened. She runs the Thrifty Adventures facebook group, she's just an older eBay seller who's pretty involved in the seller community.

\* Jason also just has a history of having big fall outs with friends and attacking them whenever he can. I know he gets very threatened by other leaders in the seller community when they get attention from eBay. He absolutely hates Kathy Terrill and was angry when he found out she was being sent to the eCom Chicago conference to talk about Promoted Listings. He's somehow connected to the people who run that conference and he said he was going to talk to them and tell them not to let Kathy speak there. I don't know that he actually did that or not but he said he was going to.

Here's where my story comes in. Jason and Victoria Eagan (LV Pink Panther) were close friends, both eBay sellers, both living in Vegas they met a few years ago. Vikki has been a full-time eBay seller for over 10 years now and has even done some blogging for eBay Open. She was never a lifeguard in TTB but she appeared on some of his YouTube shows and was a prominent member of the group, known to be Jason's thrifting buddy. I knew her through TTB but didn't really have any one on one interactions with her. I finally Vikki in person at eBay Open 2017 and we made a real connection. We continued to talk after Open as friends but it soon became apparent there was something more between us. She was married and it was a complicated situation obviously. She was scared but decided to leave her husband for me even though she knew it was possibly going to end some friendships and turn her whole world upside down. This all developed in the matter of two weeks and took place without us so much as holding hands, not that it's really anyone's business.

The only other person who knew what was happening was Robyn Haas, another seller and close friend to Vikki and Jason both. Also there was a private chat ongoing with Vikki, myself, Robyn, and a few other eBay ladies. In the short period of time that things were happening, Vikki disclosed to the lady chat that she was leaving her husband. One of the women jokingly said it was probably for me and the truth all came out. A few days later Vikki finally went to Jason to tell him everything. She had almost told him earlier but she was scared about how he would react. I reassured her that he would be fine, I was wrong. When she told Jason, his first reaction was to be upset that he wasn't the first person told. When he found out Vikki had told her friend Dana who is also her assistant, and the women in the lady chat, he took that as a slam against him, that he didn't matter. I've attached screenshots titled "JasonKaty1-4" to show that this was the focus of his

anger. He also was for some reason concerned that the situation would hurt him and his business. Vikki had recently started a Las Vegas Meetup group and had asked Jason to co-lead it with her. A month or so earlier he had asked me to be his "second in command" in TTB, he was going to pay me \$100 a month. He felt that because we were doing these two ventures with him, we should have told him sooner. Again, this all happened in a two week period, Vikki was still processing her feelings and had no obligation to tell anyone anything.

Jason became increasingly more upset. He threw Vikki out of TTB, blocked her on facebook, and soon after several other people in the seller community also unfriended and blocked her. We do not know entirely what he told them but I do know that he demanded loyalty and for people to choose. Theresa Cox has always kept out of any drama, she's an awesome, positive influence in the seller community. She was also a lifeguard at this time as well as helping Jason in the Secret Beach. She refused to drop Vikki and me as friends and was very supportive throughout this whole ordeal even though Jason confronted her multiple times tell her she was being a terrible friend by continuing to associate with us. She told him she would not choose sides. She and I did some videos together recently as I've been growing my YouTube channel, he confronted her about that. She then make me a co-leader of her BOSS facebook group, he confronted her about that. If she had listened to him, I wouldn't have had the opportunity to help run that group and it's a major part of my YouTube channel and influence. He tried to keep that from happening for me, which does affect my business. Theresa has also expressed to me that she wants to distance herself from Jason but she's afraid he will retaliate against her like he did with Vikki.

So soon after this all went down late August, early September, Jason went on a campaign to hurt Vikki and make her lose as many friends as possible. He contacted friends of hers all over the country, contacted her soon to be ex husband, telling many lies, inserting himself into her marriage. At the time we didn't know what all was being said but Vikki has recently found out the major lie Jason has been telling to turn people against Vikki but first I need to give a little background.

In 2003 there was a fire at the Station club is West Warwick Rhode Island. The hair band Great White was playing, they set off pyrotechnics at the beginning of the first song and within 90 seconds the whole building was blazing. 100 people died that night, hundreds more injured. Vikki was in that fire, she was extremely lucky to escape with little long lasting injuries, just some permanent lung damage and of course issues with PTSD. Soon after, Vikki started a nonprofit to raise money to help survivors of the fire. Lawsuit money wasn't awarded for about 6 years but of course there was immediate need for survivors and their families. So Vikki with no experience started a nonprofit and over time raised millions to help the survivors. She was the public face of this tragedy because of her role in raising money, she was interviewed countless times, featured on national tv, in national publications, etc. There's video footage from that night that show's Vikki being pulled out of the building, she was there with 4 friends, one died. She was part of the class action lawsuit, testified in front of a grand jury. Here is a Rolling Stone article from the 10 year anniversary where Victoria Eagan (Vikki) is quoted multiple times:

<https://www.rollingstone.com/music/news/the-great-white-nightclub-fire-ten-years-later-20130715>

Website for documentary film that's coming out this year that Vikki is a part of:

<https://www.theguestlistfilm.com/about/>

Since then, Vikki works with two major charities related to burn survivors, one is the Phoenix Society who puts on a national burn conference every year, Vikki volunteers at it, is part of the planning. The other is a summer week-long camp in Washington for children who are burn survivors. The Station fire and working with burn survivors is a major part of Vikki's identity and because of her work as an eBay seller, she has the freedom and the financial ability to give so much of her time to helping others.

The reason I'm giving all this info is to express the gravity of what Jason has done. It turns out he has been telling who knows how many people that Vikki was not actually in the Station fire, her presence is an easily verifiable fact, and that she lied about being in it to get attention. This is a devastating and despicable lie for Jason to spread about Vikki. To anyone that has heard this lie and believes, it probably should be no surprise that they would want nothing to do with her. Luckily at least some people recognized it as a lie. I know Jason told Theresa Cox that she lied about the fire. I've also attached a screenshot from the lifeguard private chat that Lorna Thompson gave me before she left the lifeguard team and TTB in our defense. The file is titled "JasonFire". Everything he says there is a total fabrication.

I also recently spoke with Sophia Antillon, Jason's former assistant. I met her briefly at eBay Open but I really liked her and she offered to take me hiking if I ever came for just a fun visit. When everything went down in late Aug/early Sept, she sent me a nice message just saying she would understand if I needed to "unfriend" her. A screenshot is attached titled "SophiaAntillon1". When I came to Vegas for a visit in October, I invited Sophia to go to haunted houses with us. She came and when we expressed concern about her possible getting in trouble with Jason (she was still working for him at this time), she said he knew she was going to hang out with us and he said it was fine. So we hung out that night and then I didn't talk to or hear from Sophia again for months. I then heard she wasn't working for Jason anymore and I noticed that we weren't fb friends anymore. We finally connected again to try and arrange a hike and I asked what happened. I've attached screenshots of everything she told me and I'm sure she would be willing to talk to someone at eBay about her concerns about what Jason might try to do to us in retaliation. They are titles "SophiaAntillon2-11".

Jason doesn't like not having control and the more successful Vikki and I are, and more in the public eye, I do think he's dangerous. I've underestimated him before and I wouldn't put anything past him now. He has hurt a lot of people, he has a pattern of bullying. I know there are several people out there that he has hurt but they are afraid to come forward because think he'll retaliate in some way. He hurts the eBay brand far more than he helps it. I understand that there are no perfect leaders in the eBay seller community but Jason's influence is toxic and it's only a matter of time before he really takes something too far. I don't think eBay wants to be connected to the path of destruction he leaves behind. I'm sure I'm not the first person to bring these kinds of concerns to you. At this point Vikki has gone as far as speaking to a lawyer and while he says she does have a case to go after Jason, ideally we wouldn't go that route.

My apologies for the very long winded account in this email but I wanted to make sure I got all the facts out there. Please let me know if you have any questions or need any clarification.

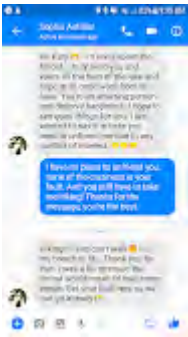
Katy Zilverberg

**17 attachments**



Z-E-156  
312





SophiaAntillon2.png

150K



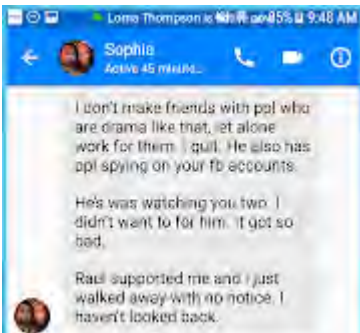
SophiaAntillon3.png

159K



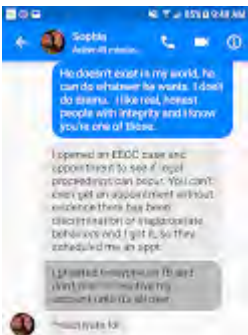
SophiaAntillon4.png

220K



SophiaAntillon5.png

183K



SophiaAntillon6.png

196K



# EXHIBIT E

## YouTube Copyright Complaint Submission

**YouTube Copyright** <youtube-disputes+2he5py5in5lyj07@google.com>

Wed, Jun 13, 2018 at 7:11 AM

Reply-To: YouTube Copyright <youtube-disputes+2he5py5in5lyj07@google.com>

To: aboutiqueforhim@gmail.com



### Copyright Infringement Notification Confirmation

Thank you for your submission. It is under review to ensure it is valid and includes all [required elements](#). We will reply to this email when we've taken action on your request.

Here is the information you filled in:

Copyright Owner Name (Company Name if applicable): Katy Zilverberg  
Your Full Legal Name (Aliases, usernames or initials not accepted): Katy Zilverberg  
Your Title or Job Position (What is your authority to make this complaint?): owner  
Address:  
83 Huntfield Dr  
Henderson, NV 89074  
US  
Username: Katy Zilverberg  
Email Address: [aboutiqueforhim@gmail.com](mailto:aboutiqueforhim@gmail.com)  
Phone: 5038819350

URL of allegedly infringing video to be removed:

<http://www.youtube.com/watch?v=9jYmwXxDbS>

Describe the work allegedly infringed: My YouTube video was reuploaded by another user

- YouTube URL: <https://youtu.be/cet4vTRq1Oo>
- Where does the content appear? Entire video

URL of allegedly infringing video to be removed:

<http://www.youtube.com/watch?v=mlcXKozYaqS>

Describe the work allegedly infringed: My YouTube video was reuploaded by another user

- YouTube URL: <https://youtu.be/cet4vTRq1Oo>
- Where does the content appear? Entire video

Country where copyright applies: US

I state UNDER PENALTY OF PERJURY that:

- I am the owner, or an agent authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- I have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- This notification is accurate.
- I acknowledge that under Section 512(f) of the DMCA any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages.

- I understand that abuse of this tool will result in termination of my YouTube account.

Authorized Signature: Katy Zilverberg

Sincerely,

— The [YouTube Team](#)

[Help center](#) • [Email options](#)

©2018 YouTube, LLC [901 Cherry Ave, San Bruno, CA 94066, USA](#)

# EXHIBIT F

## YouTube Copyright Complaint Submission

YouTube Copyright <youtube-disputes+0guppp3cehcww07@google.com>

Tue, Jul 16, 2019 at 3:22 PM

Reply-To: YouTube Copyright <youtube-disputes+0guppp3cehcww07@google.com>

To: aboutiqueforhim@gmail.com



### Copyright Infringement Notification Confirmation

Thank you for your submission. It is under review to ensure it is valid and includes all [required elements](#). We will reply to this email when we've taken action on your request.

Here is the information you filled in:

Copyright Owner Name (Company Name if applicable): Katy Zilverberg  
Your Full Legal Name (Aliases, usernames or initials not accepted): Katy Zilverberg  
Your Title or Job Position (What is your authority to make this complaint?): It's my video  
Address:  
83 Huntfield Dr  
Henderson, Nevada 89074  
US  
Username: Katy & Vikki  
Email Address: [aboutiqueforhim@gmail.com](mailto:aboutiqueforhim@gmail.com)  
Phone: 5038819350

URL of allegedly infringing video to be removed:

<http://www.youtube.com/watch?v=6ceOcA6SzfM>

Describe the work allegedly infringed: My YouTube video was reuploaded by another user

- YouTube URL: <http://www.youtube.com/watch?v=cet4vTRq1Oo>
- Where does the content appear? Entire video

Country where copyright applies: US

I state UNDER PENALTY OF PERJURY that:

- I am the owner, or an agent authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- I have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- This notification is accurate.
- I acknowledge that under Section 512(f) of the DMCA any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages.
- I understand that abuse of this tool will result in termination of my YouTube account.

Authorized Signature: Katy Zilverberg

Sincerely,

— The [YouTube Team](#)

[Help center](#) • [Email options](#)

©2019 YouTube, LLC [901 Cherry Ave, San Bruno, CA 94066, USA](#)

# EXHIBIT 19

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
LEO S. WOLPERT, Nevada Bar No. 12658  
**MCLEITCHIE LAW**  
701 E. Bridger Avenue, Suite 520  
Las Vegas, NV 89101  
Telephone: (702) 728-5300; Fax (702) 425-8220  
Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
*Counsel for Defendants Katy Zilverberg  
and Victoria Eagan*

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

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

Case No.: A-19-798171-C

Dept. No.: XXIV

**DECLARATION**

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

**SUPPLEMENTAL DECLARATION OF VICTORIA EAGAN IN SUPPORT OF  
SPECIAL ANTI-SLAPP MOTION TO DISMISS**

I, VICTORIA EAGAN, hereby declare as follows:

1. I make this supplemental declaration in support of my special anti-SLAPP Motion to Dismiss in the above-captioned matter, and to authenticate the exhibits attached thereto. This declaration is based on my personal knowledge. I am competent to testify as to the truth of these statements if called upon to do so.

2. Katy Zilverberg and I are thrifters / resellers like Plaintiff Jason Todd Smith, and we are all part of the thrifting / reselling community.

3. Mr. Smith claims Ms. Zilverberg and I are “trying to build [our] business in the thrifting community and also benefit and gain advantage of Smith’s reputation, as a top thrifter in the community, is ruined and his business is destroyed.” (Exh. 1 to Opp., ¶ 37.)

1 This is untrue. I just want to speak the truth about Mr. Smith's conduct and stop bullying and  
2 abusive behavior in our community.

3 4. Furthermore, Ms. Zilverberg and I are not competitors of Mr. Smith's at all.  
4 We all sell different types of thrifted items. Moreover, each item we sell is also generally a  
5 unique, rare item. Due to the lack of overlap in goods, a sale made by my store or Ms.  
6 Zilverberg's stores is not a "sale lost" from Mr. Smith's store (and vice versa).

7 5. Mr. Smith currently has just under 1,000 listings in his eBay store. Almost  
8 400 items are music, records, CDs, and cassettes. I have about 80 music items in my store of  
9 over 2,500 listings, while Ms. Zilverberg has less than 40 records in her store of over 2,200  
10 listings. None of our listings are of the same items that Mr. Smith has in his store.

11 6. True and correct screenshots of Mr. Smith's eBay store, taken September  
12 26, 2019, which reflect that of 940 items listed by Mr. Smith, 379 pertain to music, are  
13 attached as Exhibit A to this Declaration.

14 7. True and correct screenshots of Ms. Zilverberg's eBay store, taken  
15 September 26, 2019, which reflect that of the 2,224 items listed only 36 pertain to music, are  
16 attached as Exhibit B to this Declaration.

17 8. True and correct screenshots of my eBay store, taken September 26, 2019,  
18 which reflect that of the 2,540 items listed only 79 pertain to music, are attached as Exhibit  
19 C to this Declaration.

20 9. Typically, when buyers shop on eBay, they do a site-wide search for  
21 whatever item they are looking to buy.

22 10. At no time are our items in competition with Mr. Smith's items. There are  
23 millions of sellers on eBay and billions of items. See  
24 <https://www.ebayinc.com/company/who-we-are/> (last accessed September 26, 2019.)

25 11. I do not see other sellers as competition; I see them as co-workers. It is  
26 beneficial to us and our businesses if other sellers also carry quality items and use best  
27 practices when selling as it creates a positive experience for the buyer and ensures they will  
28 return to the platform to buy again. This is why Ms. Zilverberg and I give away our

1 knowledge for free on our YouTube channel to other sellers. We show what we buy and sell,  
2 we give “BOLOs” (be on the lookout) and teach others how to be better sellers. If I or Ms.  
3 Zilverberg considered other sellers our direct competitors, we would not be helping them  
4 free of charge.

5 12. As far as the idea that Mr. Smith is a direct competitor as a reseller educator  
6 in the thrifting community goes, this is not true either. Ms. Zilverberg and I do not sell  
7 anything to members of the thrifting community, we do not offer thrifting classes, and we do  
8 not charge people for any of our content. In contrast, Mr. Smith charges sellers for thrifting  
9 classes. He also has a paid Facebook group called The Secret Beach with just over 800  
10 members. <https://www.facebook.com/groups/secretbeachclub/>; *see also*  
11 <http://www.thesecretbeach.club> (last accessed September 26, 2019.) Members of The Secret  
12 Beach pay on average about \$30 per person per month to be members. Ms. Zilverberg and I  
13 do not have a paid group, nor do we plan to start one. We give our knowledge away for free,  
14 we are not trying to capitalize on it. Thus, Mr. Smith is not our competitor.

15 13. The only place Ms. Zilverberg and I do make a very small amount of money  
16 is with ad revenue from our YouTube channel. Ad revenue on YouTube is based on the  
17 number of views our videos get. Our videos are mostly live, and our live shows are scheduled  
18 on the same days/times every week: 11 a.m. pacific time on Wednesdays and 2 p.m. pacific  
19 time on Sundays. Mr. Smith’s live shows on his YouTube channel are not scheduled at the  
20 same time as ours, as they are generally scheduled for Thursday evenings and Sunday  
21 afternoons pacific time. If people want to watch both of our channels, they can do so without  
22 having to choose one over the other. Furthermore, after our live shows conclude, viewers can  
23 go back and watch the recordings of said live shows at any time. It’s like saying that Saturday  
24 morning cartoons are in direct competition with Sunday NFL football.

25 14. If Mr. Smith were to suddenly quit reselling and quit making videos or  
26 doing anything in the thrifting community, it would have no impact—positive or negative—  
27 on either my eBay business or Ms. Zilverberg’s eBay business and would in no way boost  
28 or help our YouTube channel.

1           15.       My issues with Mr. Smith have nothing to do with competition or furthering  
2 my thrifting and reselling career. Rather, my issues with Mr. Smith stem from his conduct  
3 and treatment of me, Ms. Zilverberg, and several other members of the thrifting community,  
4 which I believe to constitute bullying and harassing behavior that is unacceptable.

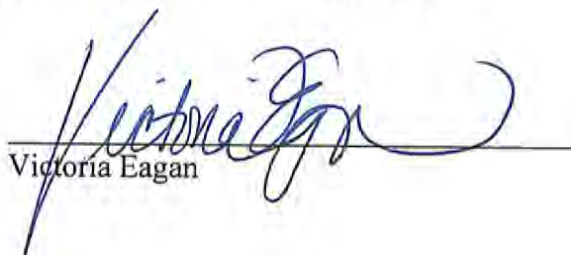
5           16.       My concerns about Mr. Smith's behavior are not personal. I do not want  
6 Mr. Smith continuing to be an abusive part of the business community I work in.

7           17.       Mr. Smith also alleges that we "are also capitalizing by using Smith's brand  
8 and creating controversy to bring viewers to their online social media and YouTube channel."  
9 (Exh. 1 to Opp., ¶ 38.) This is not true. The end of my relationship with Mr. Smith happened  
10 in late August 2017. I did not make the Facebook post referenced in Mr. Smith's Complaint  
11 until April 25, 2019—20 months later.

12           18.       Mr. Smith states in his response that "it is unclear how statements directed  
13 toward a community of approximately 55,000 people, out of approximately 330 million  
14 people living in the United States, constitutes a 'public concern.'" (Opp., p. 16:2-4.) The  
15 "55,000" figure is probably a reference to Mr. Smith's Facebook group The Thrifting Board,  
16 which has approximately 55,000 members. My Facebook post was not directed solely at the  
17 members of The Thrifting Board. Instead, my post was directed to the online thrifting and  
18 reselling community at large, which is much larger than The Thrifting Board.

19  
20           I declare under penalty of perjury under the laws of the State of Nevada that the  
21 foregoing is true and correct to the best of my knowledge and belief.

22           Dated this 26<sup>th</sup> day of September, 2019 in Las Vegas, NV.

23  
24  
25             
26 Victoria Eagan  
27  
28

# EXHIBIT A

Categories

- Music
  - Vinyl Records
  - Music CDs
  - More ▾
- Clothing, Shoes & Accessories
  - Men's Vintage Hats
  - Men's T-Shirts
  - Men's Jeans
  - Men's Casual Button-Down Shirts
  - Women's Bags & Handbags
  - More ▾
- Collectibles
  - Collectible Hawaiian Mugs & Cups
  - Other Decorative Collectibles
  - Collectible Blankets
  - Contemporary Disney Apparel & Accessories (1968-Now)
  - Collectible Historical Memorabilia
  - More ▾
- Art & Craft Supplies
- Entertainment Memorabilia
- Home & Garden
- Sports Memorabilia, Fan Shop & Sports Cards
- Toys & Hobbies
- Books
- Computers, Tablets & Network Hardware
- DVDs & Movies
- Art
- Health & Beauty
- Video Games & Consoles
- Sporting Goods
- Cameras & Photo
- Business & Industrial
- Travel
- Pet Supplies

All ListingsAuctionBuy It Now

Sort: Best Match ▾View: ▾

940 results Save this search



Chicos Pretty Floral Print Mandarin Collar Zipper Front Light Jacket Size 3

**\$24.89**

Was: ~~\$29.99~~or Best Offer+\$6.99 shipping

Free Returns

17% off

Watch

Top Rated Plus



Elvira Mistress Of The Dark The Original Kreepsville Scare Wear 3XL Made in USA

Pre-Owned

**\$33.19**

Was: ~~\$39.99~~or Best Offer+\$4.99 shipping

17% off

Watch

Guaranteed by Tue, Oct. 1



Vtg E.T. Phone Home Apron 1982 Universal City Studios Steven Spielberg Made USA

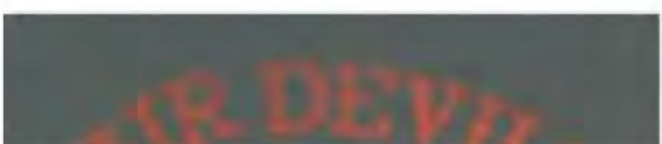
**\$58.09**

Was: ~~\$69.99~~or Best Offer+\$4.99 shipping

17% off

Watch

Guaranteed by Tue, Oct. 1



Dive Bar Shirt Club Air Devils Inn Don't Drink & Skywrite XXL T-Shirt Louisville

Pre-Owned



Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **tikipugmusic** (17761 ★) | Save this seller

☐ Include description

## Categories

### Music

[Music](#)  
[Records](#)  
[CDs](#)  
[Cassettes](#)  
[Wholesale Lots](#)

### Format

[see all](#)

☒ All Listings  
☐ Auction  
☐ Buy It Now

### Guaranteed Delivery

[see all](#)

☒ No Preference  
☐ 1 Day Shipping  
☐ 2 Day Shipping  
☐ 3 Day Shipping  
☐ 4 Day Shipping

### Condition

[see all](#)

☐ Brand New (52)  
☐ Like New (107)  
☐ Very Good (70)  
☐ Good (2)

### Price

☐ Under \$35.00  
☐ Over \$35.00

\$  to \$  >>

### Item Location

[see all](#)

☒ Default  
☐ Within  
 of  >>  
☐ US Only  
☐ North America  
☐ Worldwide

[All Listings](#) [Auction](#) [Buy It Now](#)

Sort: [Best Match](#) ▾ View: [Grid](#) ▾

379 results in **Music** | Save this search



#### Complete Death Compilation LP 1986 Metal Blade sDRI Corrosion Of Conformity

Pre-Owned

**\$29.04**

Was: \$34.99  
or Best Offer  
+\$6.99 shipping

**Free Returns**

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



#### New NoNeed Tenchi Original Soundtrack CD Shin Tenchi Muyo Volume 1 Manga w/ OBI

New (Other)

**\$20.74**

Was: \$24.99  
or Best Offer  
+\$4.99 shipping

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



#### Michael Jackson Off The Wall Cassette Rock With You She's Out Of My Life Epic

New (Other)

**\$18.25**

Was: \$21.99  
or Best Offer  
+\$2.99 shipping

**Free Returns**

**17% off**

[Watch](#)

Guaranteed by **Tue, Oct. 1**



# EXHIBIT B



Shop by  
category ▼

Search for anything

All Categories ▼

Search

Advanced

Items for sale from **aboutiqueforhim** (2772 ★) | Save this seller

☐ Include description

## Categories

Clothing, Shoes & Accessories

Men's T-Shirts

Men's Vintage T-Shirts

Men's Coats & Jackets

Men's Hoodies & Sweatshirts

More ▼

Sports Memorabilia, Fan Shop &  
Sports Cards

NFL Fan Apparel & Souvenirs

NCAA Fan Apparel & Souvenirs

NBA Fan Apparel & Souvenirs

More ▼

Sporting Goods

Music

Collectibles

Art

Home & Garden

eBay Motors

All Listings

Auction

Buy It Now

Sort:

Best Match ▼

View:



2,224 results

Save this search



### Howling Moon Wolves Mens T Shirt Gray Timber Wolf The Mountain Tie Dye Large

Pre-Owned

**\$27.99**

Was: ~~\$39.99~~

or Best Offer

Free Shipping

Free Returns

30% off

Watch

Guaranteed by **Tue, Oct. 1**



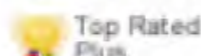
### San Francisco 49ers T Shirt Vintage 90s Steve Young Made In USA Size Medium

Pre-Owned

**\$34.99**

Was: ~~\$49.99~~

Guaranteed by **Tue, Oct. 1**





Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **aboutiqueforhim** (2772 ★) | Save this seller

☐ Include description

## Categories

Music

Music

Records

Format

see all

- ☒ All Listings
- ☐ Auction
- ☐ Buy It Now

Guaranteed Delivery

see all

- ☒ No Preference
- ☐ 1 Day Shipping
- ☐ 2 Day Shipping
- ☐ 3 Day Shipping
- ☐ 4 Day Shipping

Condition

see all

☐ Brand New (30)

Price

\$  to \$  >>

Item Location

see all

- ☒ Default
- ☐ Within

All Listings

Auction

Buy It Now

Sort: Best Match ▾

View: ▾

36 results in Music [Save this search](#)



### They Live Soundtrack John Carpenter LP Vinyl Record 180 Gram Formaldehyde Face

Brand New

**\$59.99**

Was: ~~\$79.99~~

or Best Offer

Free Shipping

Free Returns

25% off

[Watch](#)



### Mortal Kombat 1 & 2 Game Soundtrack Dan Forden LP Vinyl Record Reptile Acid

Brand New

**\$59.99**

Was: ~~\$79.99~~

or Best Offer

Free Shipping


Free Returns

25% off

[Watch](#)



# EXHIBIT C

Items for sale from **lvpinkpeacock** (13279 )  |  Save this seller

☐ Include description

## Categories

### Clothing, Shoes & Accessories

[Women's Dresses](#)  
[Men's Casual Button-Down Shirts](#)  
[Men's Coats & Jackets](#)  
[Women's Coats, Jackets & Vests](#)  
[Women's Clothing](#)  
[More](#)

### Collectibles

[Collectible Mugs & Cups](#)  
[Collectible Blankets](#)  
[Other Hallmark Collectibles](#)  
[Modern Christmas Collectibles \(1946-1990\)](#)  
[Current Christmas Ornaments \(1991-Now\)](#)  
[More](#)

### Toys & Hobbies

[Contemporary Manufacture Board & Traditional Games](#)  
[TV & Movie Character Toys](#)  
[More](#)

### Home & Garden

[Flatware & Silverware](#)  
[More](#)

### Sports Memorabilia, Fan Shop & Sports Cards


[NFL Fan Apparel & Souvenirs](#)  
[NCAA Fan Apparel & Souvenirs](#)  
[More](#)

### Music

### Dolls & Teddy Bears

[All Listings](#)
[Auction](#)
[Buy It Now](#)

Sort: [Best Match](#)

View: 

2,540 results  Save this search



#### Golfknickers Navy Stewart Ramie Plaid Par 5 Ladies Golf Cap Hat

Brand New

**\$29.96**

or Best Offer

Free Shipping

 Watch

Guaranteed by **Tue, Oct. 1**



#### NEW LISTING Enzo Angiolini Purple Lavender Leather 8.5 Shoes Pumps Heels Bow

Pre-Owned

**\$39.95**

or Best Offer

Free Shipping

 Watch

Guaranteed by **Tue, Oct. 1**



#### NEW LISTING Mephisto Mobils Red Leather Comfort Clog Walking Shoes Size 5.5 Air Relax

Pre-Owned

**\$29.95**

or Best Offer

Guaranteed by **Tue, Oct. 1**



Shop by category ▾

Search for anything

Music ▾

Search

Advanced

Items for sale from **lvpinkpeacock** (13279 ★) | Save this seller

☐ Include description

## Categories

### Music

[Music](#)

[Records](#)

[CDs](#)

[Other Formats](#)

[Cassettes](#)

### Format

[see all](#)

☒ All Listings

☐ Auction

☐ Buy It Now

### Guaranteed Delivery

[see all](#)

☒ No Preference

☐ 1 Day Shipping

☐ 2 Day Shipping

☐ 3 Day Shipping

☐ 4 Day Shipping

All Listings

Auction

Buy It Now

Sort: **Best Match** ▾

View: ▾

79 results in **Music** | Save this search



### Hustlers Club Vol 1 Connected Inc 2009 Rap CD New Sealed

Brand New

**\$10.47**

Was: ~~\$14.95~~

or Best Offer

**Free Shipping**

**29% off**

Watch

Guaranteed by **Tue, Oct. 1**



NEW LISTING

### Theme From Antony and Cleopatra LP Record Album Sutton SSU-301

Pre-Owned

# EXHIBIT 20



**Casey Parris** shared a link.

**Admin** · June 6, 2018

I think everyone in this group can agree that Katy Zilverberg is a pretty stand up chick. I have nothing but good things to say about her, and I just watched her youtube channel and a video she posted and I'm literally jaw dropped.

Now I'm not saying I didn't have a clue about what she discusses in the video because I most certainly did as iv received many emails regarding the subject matter... HOWEVER I had no idea it was on the scale that it was. I can't say it totally surprised me though from the messages/emails I received.

So im not linking the video in order to cause outrage or to cause any negative things or start drama etc... SIMPLY to say... I hope the lying, scheming, bullying, backlash against GOOD PEOPLE stops...and stops TONIGHT... you never know whats on the other side of a screen, a phone, a computer or anywhere else.. Keep that in mind.

OOO yeah,, go support Katie and check out her channel and the video and her other awesome content beyond this unfortunate video topic. She is super cool. And if you go to Ebay open say hello to her and buy this Chica a drink!!



About this website

YOUTUBE.COM

**Jason T Smith Is A Bully And The Time To Keep Silent Is Over**

Too many people in the eBay seller community have been targeted,

155

463 Comments



**Megan Lindsey** Not only is he a bully, but he is verbally abusive behind the scenes. I'm going to watch this video as soon as my people are fed.

Like 1y

13



**GW Frederick** I met Jason once, and knew right away he was a dick, and it was confirmed the way he treats his cohost on the on his YT show. maybe it was that TV show he did he let it go to his head.

Like · 1y



3



**Kimmie Klock** OMG I'm so glad she is addressing this!!! I was harassed by him and told many different things that were not at all accurate. He told me I didn't know what I was doing. Yah, million dollars in sales (over the years) means I certainly don't know what I'm doing. 😬😬 Tool!!! Shove those tiki cups up your..... woops, almost got out of hand there. 😬😬

Like · 1y



15



**Christina St Louis** He's a big joke! I used to be in that group and I made a post once about a buyer claiming a pair of Levi's they already had for a couple weeks was fake. They just happened to have them with them out shopping and happened to ask the manager of the store if they were fake. I knew it was BS. They were wanting a partial refund and said they wanted to throw the jeans away. These jeans were originally purchased at department store. Well he just started talking crap and saying not to get emotional about it which I wasn't. He started talking more shit so finally I gave him a piece of my mind, he did not like that. I left the group and he private messaged me harassing me. I had to block him. Look through his feedback he doesn't follow the advice he gives. He just likes to talk crap so he can harass people.

Like · 1y



4



**Pete Janowski Jr.** Fwiw I got a nasty message from from him last year and banned from his group because I called bs on one of his videos.

Like · 1y



6



**Kimmie Klock** Typical for his behavior. Sadly.

Like · 1y



**Esmeralda Valague** He was 1000% a bully to me when I was in TTB. He had his lifeguards cyber-stalk me in other groups sending him screenshots of everything I said about eBay thinking it was all about him.

Like · 1y · Edited



5



**Cimarron Hatch** I never joined that group. When I was brand new to reselling I heard a lot of stories about this guy and the group so I've never joined. And I started reselling around 2014 so yeah this has been going on a long time.

Like · 1y



2



**Melissa Verna** I want to say I was in his group maybe 2012-2013 somewhere around then. I know it was before his show. He was a jackass before the show.

Like · 1y



1



**Shari Umpstead** Yep, I bailed on that group after a couple months of watching the insane amount of butt kissing and bullying that went on. He's a tool.

Like · 1y



5



**Heather Hadry** Why did him and his former cohost fall out?

Like · 1y



^ Hide 16 Replies



**Victoria Potvin Eagan** You would have to ask her, or them, but they are both my friends, and their stories are not mine to tell.

Like · 1y



**Heather Hadry** Victoria Potvin Eagan no the guy on the show they had together.

Like · 1y



**Victoria Potvin Eagan** ahh, Brian... I couldn't tell you, to be honest. I met him after they had parted ways, I do not know Brian.

Like · 1y



**Heather Hadry** Victoria Potvin Eagan I was in the group then with him and Brian and then one night it got crazy and new groups set up and old group almost wiped out.

Like · 1y



🔒 **Angela Thornton Canny** That was nuts. That group was huge, and he he just deleted it because his ego is apparently even bigger.

Like · 1y



**Victoria Potvin Eagan** I know that story, but it was before we met.

Like · 1y



**Kimberly Marie** 🔒 Angela Thornton Canny what group was deleted?

Like · 1y





**Jackie Phillips** Jason and his minions deleted thousands of members in the middle of the night, then changed the group setting to Secret so people could not find their way back to it.

Like · 1y



1



**Jackie Phillips** Brian is part of a different group now. He is very nice and helpful. When I spoke out about Jason deleting all those members (me included) without considering how we would feel about it, Jason PM me and pulled the bullying crap and insults. He is a jerk.

Like · 1y



**Heather Hadry** Jackie Phillips yea Brian seemed nice. I actually felt bad when it happened it seemed like a ambush

Like · 1y



**Jackie Phillips** Heather Hadry I think that the group was originally Brian's but when he and Jason parted ways the Moderators that were friendly with Jason coordinated the destruction of the group

Like · 1y



🔒 **Angela Thornton** Canny Yep - what Jackie Phillips said. He and his TV partner had a group together. They had a falling out, and #TeamJason destroyed the group in the middle of the night. And yes, I was also under the impression that the group was originally Brian's.

Like · 1y · Edited



**Stephanie Abernathy** Bryan is a wonderful person. Jason is a dick who decided to destroy him just like he has done others when he is finished using them.

Like · 1y



1



🔒 **Clint Dixon** I got banned by Jason. He is a true coward.

Like · 1y



4



**Candace Pitt** He's a piece of shit

Like · 1y



2



**Kimmie Klock** He banned me too. Since I didn't conform to his ways. Next hitler - it's scary....

Like · 1y



1



**Alice Fay Means** I had a bad experience with him. He is one cruel man. I was selling some things and donating all of the proceeds to Alex's Lemonade Stand in memory of my friend's little son who had died from cancer. He told me I absolutely could not share it and that kids die all the time from cancer, that he couldn't let me share. He got very nasty in PMs. Evil.

Like · 1y



8



**Angella Hill Mueller** Ew

Like · 1y



**Michael Reinert** Wow, whats the name of that group, so I'll never join it. Thanks in advance.

Like · 1y



**Candace Pitt** Yea hes sick... He called me several names and ran his fat ugly mouth off to me because i disagreed w someone is his shitty group

Like · 1y



1



**Alice Fay Means** I still have the convo in my PMs. I just reread it. He was awful.

Like · 1y



1



**Angella Hill Mueller** [Michael Reinert](#) The Thrifting Board

Like · 1y



1



**Candace Pitt** I cnat find mine ugh

Like · 1y



**Kari Moore** [Candace Pitt](#) I never experienced it first hand but observed it and was blown away at his massive ego and the power trips that all the "lifeguards" were on. That's a small, pitiful life and I had no interest in being a part of that BS.

Like · 1y



1



**Alice Fay Means** I apologized for posting it & told him to have a good day. He would not stop berating me. I did this 3-4 times & he continued to attack me. He said people die from cancer everyday & kept saying his lifeguards didn't delete anything. At the end of the conversation he said HE would have deleted it though, had he seen it. He had asked me at some point if I still felt he was awesome (??) last thing I said to him is no. You aren't awesome at all.

Like · 1y



**Sandy Mae** I was too afraid to comment on Katie's video because I'm afraid he or his cronies will wreak havoc in my eBay store buying and leaving negative FB.

When I joined his group I was new to Facebook. I mentioned that I blocked a buyer who became verbally abusive to me swearing, etc. One of his cronies messaged me and said, "You know, Jason doesn't like this kind of talk and he doesn't allow talk of blocking buyers. Something to the effect of a warning that, "I should be careful." Then I got a direct message from Jason T. (America's #1 thrifter, really (tiki mugs?...lol) He reamed me a new a hole. I explained I was new to social media (FB) and didn't realize I couldn't mention blocking a buyer. His reply was "You should know better, you've been here for six weeks. Do it again and you'll get removed" or something to that effect. I was shocked and a little shaken. I mentioned it in my other Facebook group and they were supportive and said they knew about him and that he doesn't allow talk about blocking buyers. I decided to stay in his group to learn and read posts from other sellers but not post anything myself.

I'm so glad Katie had the courage to speak up and tried to stop him from hurting other people.

I really wish Ebay would have the courage to do something about him. He seems to be friends with Griff, so maybe that's why he gets by with it.

Well, I'll let you know if I get kicked out of his group now or if strange things start happening in my eBay store.

Like · 1y



4



**Kimmie Klock** The fact that you are scared to comment on her video just shows how much bullying and craziness he has caused. It's sad. We got yo' back girl!

Like · 1y



1



**Kari Moore** I left that group a long time ago due to egos that were way too big and the way they treated people. It was a dictatorship and if you didn't agree with them they'd kick you out. Glad I'm not a part of that.

Like · 1y



7



**Seth Mamane** Just an example of Jason Smiths rage issues towards women



Like · 1y



**Seth Mamane**



Like · 1y



**Holli Hudson** The title to this video is very very accurate.

Like · 1y



**Holli Hudson** I left the group due to a disagreement and Jason T Smith came at me attacking me in my inbox. Blocked...bitch!

Like · 1y





**Susan Halteman** #metoo Katy you are a strong and beautiful woman and I appluad you for taking this stand. Someone should have tried to stop this years ago, but we didn't really have the platform. I had at least three negative experiences with Jason and I believe he was behind an attempt to discredit me as a seller. I am very small time and not sure how I was a threat to him other than having more knowledge than he on certain subjects and making him look like a fool in his own group.

Like · 1y Edited



1



**Susan Halteman** Yes, I got the "how dare you contradict me in my own group" message after that.

Like · 1y



2



**Susan Halteman** And then friend requests from random people, I guess in an attempt to get info on me.

Like · 1y



3



**Susan Halteman** Gotten two today already.

Like · 1y



**Brandy Simonton** I don't know Katy or Vicky but I am so sorry for the crap you have been put through. I have only blocked 3 people ever on my FB and Jason T Smith is one of them. I blocked him several years ago. He is absolutely crazy and creepy! I believe her 100%. I am actually scared to post this. Him and his minions are scary.

Like · 1y



3



**Susan Halteman** Truth. Be strong. Let your voice be heard!

Like · 1y



**Susan Halteman** It's not simply that. He has a pattern of behavior that has directly affected a lot of us. Many have been afraid -and rightly so- to speak out for fear of retaliation. I have personally experienced it and I know of others that have. You can choose to ignore it and scroll on by, but sometimes things need to be brought out into the open.

Like · 1y



4



**Kenny Long** He is a bully and I left his group over a conversation we had on messenger. Never liked him and he is one of the very few resellers I just don't like or trust. It seemed like he got a little bit of t.v. fame and he let it go to his head. Thinks he is above all of us. That's why I will stick with Craigslist hunter Pete. Seems very genuine.

Like · 1y



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TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

JASON SMITH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. A-19-798171-C
	)	Dept. No. 24
KATY ZILVERBERG, ET AL,	)	
	)	
<u>Defendants.</u>	)	

MOTION TO DISMISS

Before the Honorable Jim Crockett  
Thursday, October 3, 2019, 9:00 a.m.  
Reporter's Transcript of Proceedings

REPORTED BY:  
  
BILL NELSON, RMR, CCR #191  
CERTIFIED COURT REPORTER

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APPEARANCES:

For the Plaintiff: Mikkaela Vellis, Esq.  
Brian Boscher, Esq.

For the Defendants: Margaret McLetchie, Esq.

1 Las Vegas, Nevada, Thursday, October 3, 2019

2 \* \* \* \* \*

3  
4 THE COURT: Page 16, Jason Smith versus  
5 Katy Zilverberg.

6 MS. MC LETCHIE: Maggie McLetchie for the  
7 Defendant.

8 MR. BOSCHER: Good morning.  
9 Brian Boscher and Mikkaela Vellis for the  
10 Plaintiff.

11 THE COURT: All right.  
12 Have a seat.

13 So this is the Defendant's special motion  
14 to dismiss pursuant to Nevada Revised Statute 41.660,  
15 Nevada's anti-slap statute.

16 The Plaintiff, Jason Smith, sued the  
17 Defendants, claiming that they defamed him.

18 Defendants claim that they were exercising  
19 their first amendment rights to make good  
20 communications in furtherance of the rights to free  
21 speech and to in direct connection with an issue of  
22 public concern and are ostensibly justifying and  
23 filing their anti-slap motion to dismiss.

24 The Defendants have presented very  
25 comprehensive information in the form of admissible

1 evidence as required by EDCR 2.21, with supporting  
2 affidavits and exhibits, to explain why they have  
3 said the things they did, why the things they said  
4 were stated in good faith in an effort to educate and  
5 alert the public community involved in this thrifting  
6 activity as to concerns they have about the  
7 integrity, honesty and tactics of Mr. Smith.

8 In contrast to this factual information  
9 offered by the Defendants to support their actions,  
10 Mr. Smith's affidavit is comprised almost entirely of  
11 what would be inadmissible conclusory statements  
12 about what he presumes to be their intentions,  
13 motivations, the Defendant's intentions, motivations,  
14 state of mind, and inner most thoughts.

15 Rather than attest to the factual  
16 information which he could observe and be a  
17 percipient witness to, he made statements without  
18 offering any factual support, such as, quote, Eagan  
19 and Zilverberg became upset that I did not fully  
20 support their relationship, close quotes.

21 They became upset.

22 So Mr. Smith is telling us he crawled  
23 inside the mind of the Defendants and ascertained  
24 that they became upset.

25 Instead of offering overt factual

1 information that would allow the Court to conclude  
2 that is what was going on, he claims to know this.

3 He offers no admissible evidence to support  
4 his conclusion that they, quote, became upset, close  
5 quotes.

6 The next paragraph he states that the  
7 Defendants, quote, developed animosity and personal  
8 spite towards me, close quotes.

9 This is entirely conclusory. And again, he  
10 offers nothing in the way of specific factual  
11 evidence that would lead the Court to make that  
12 conclusion, or would justify such an inference being  
13 made.

14 In another paragraph, paragraph 25, Smith  
15 states, quote, Defendant's are aware that the YouTube  
16 video is still posted by other users on-line, close  
17 quotes.

18 Again, he's attesting that he knows what  
19 the Defendants are aware of, but he's not offering  
20 any evidence as to how it is that they would be aware  
21 of that constructively or actually, and his  
22 justification for making the statement is that  
23 according to him still it's posted by other users,  
24 not the Defendants, but again he offers no evidence  
25 of this either.

1           The remainder of the affidavit makes more  
2       valid attempts to correct the record regarding his  
3       criminal record, or lack there of, as a minor and as  
4       an adult, but the Defendant's provide sufficient  
5       information to justify why they believe certain  
6       claims regarding restraining orders and criminal  
7       history to be true.

8           And one of the Defendant's said in her  
9       affidavit that Smith boasted to her that he had a  
10      criminal history as a youth, that did not pursue him,  
11      and that he had committed other felonies for which he  
12      managed to allowed detection and prosecution.

13          Smith does not dispute or contest Eagan's  
14      statement that he told her, paragraph 17 of her  
15      affidavit, quote, on several occasions that he was  
16      arrested when he was younger, close quotes.

17          I do want to know that Exhibit 10 cannot be  
18      offered as justification for things alleged to have  
19      taken place prior to the receipt of the writing by  
20      Theresa Cox, since it is claimed that it was received  
21      August 10th, 2019, over a year after the statements  
22      had actually been alleged by the Plaintiff to be  
23      actionable.

24          But on balance, there can be little serious  
25      doubt that the Defendant's actions were justified,

1 they were in good faith, and with regard to the  
2 standards that apply the Supreme Court in Pope versus  
3 Felhauer, F-e-l-h-a-u-e-r, laid out exactly the kinds  
4 of standards that apply.

5 The moving parties must first show by a  
6 preponderance of the evidence that the claim was  
7 based upon a good faith communication in furtherance  
8 of the right to petition or the right to free speech  
9 and in direct connection with an issue of public  
10 concern.

11 The Defendant has clearly done that.

12 The Supreme Court goes on to say, if the  
13 moving party meets this burden, then the District  
14 Court must determine whether the non-moving party has  
15 established by clear and convincing evidence a  
16 probability of prevailing on the claim, and that is  
17 clearly not the case here, the non-moving party has  
18 not come close to demonstrating by clear and  
19 convincing evidence a probability of prevailing on  
20 the claim.

21 The Supreme Court says that, a statement is  
22 protected under the anti-slap laws if it meets one of  
23 the four categories of protected speech under NRS  
24 41.637.

25 One, it relates to an issue of public

1 interest. This clearly relates to an issue of public  
2 interest. It doesn't have to be the entire public  
3 because nothing is ever of interest to the entire  
4 public, there are always different sectors of the  
5 population going to have a greater interest in an  
6 issue than perhaps others, but it still relates to an  
7 issue of public interest.

8 Second, it has to be made in the public  
9 forum. Clearly that is the case.

10 And third, the statements have to be either  
11 true or made without knowledge of their falsity, and  
12 the Defendant's have clearly demonstrated that they  
13 did not know that any of their statements contained  
14 falsehoods.

15 The Supreme Court in Pope versus Felhauer  
16 said, in Shapiro we explained that the legislature  
17 had not defined, quote, public concern, close quotes,  
18 so we adopted California principles to guide the  
19 analysis.

20 They set forth five factors.

21 First, a public interest does not equate  
22 with mere curiosity. Clearly this is not simply a  
23 matter of mere curiosity.

24 Second, the matter of public interest  
25 should be something of concern to a substantial

1 number of people, a matter of concern to a speaker,  
2 and a relatively small specific audience is not a  
3 matter of public interest. This is not a relatively  
4 small specific audience. This is a large body of  
5 people.

6 Third, there should be some degree of  
7 closeness between the challenged statements and the  
8 asserted public interest. Clearly that is the case  
9 here.

10 Fourth, the focus of the speaker's conduct  
11 should be for public interest, rather than a mere  
12 effort to gather ammunition for another round of  
13 private controversy. Clearly the affidavits and the  
14 documentation offered indicate that the speaker's  
15 concern here has to do with the integrity of the  
16 thrifting industry, the bullying tactics of Mr.  
17 Smith, his dishonesty, his stalking efforts, his  
18 giving people private information, and he's someone  
19 who's run amok in this industry.

20 And fifth, the person cannot turn otherwise  
21 private information into a matter of public interest  
22 simply by communicating it to a large number of  
23 people, and that is not the case here.

24 So I think that the case meets the  
25 requirements of the statute in Pope versus Felhauer,

1 and the standards have been adopted from California  
2 regarding the public interest.

3 So I think that the motion is appropriate  
4 under the anti-slap statute and should be granted.

5 I'm happy to hear anything either side  
6 wishes to offer, in addition to what was said in your  
7 briefs.

8 MS. MC LETCHIE: Your Honor, just very  
9 briefly, I did want to note for the Court that you  
10 had mentioned that the evidentiary burden was clear  
11 and convincing.

12 Once it passes to the Defendants it has  
13 been changed by the Nevada Legislature to a prima  
14 facie case, but even that let's our standard --  
15 clearly they don't meet it.

16 THE COURT: Thank you.

17 MR. BOSCHER: That was going to be my first  
18 comment, so that makes it easier.

19 The concerns I have, Judge, and I  
20 understand what you're saying in your ruling, when we  
21 are talking about some of the defamatory statement, I  
22 don't think we could be candid, some of these  
23 statements aside from the public interest are clearly  
24 defamatory, when they are saying that somebody has a  
25 restraining order against them, and they don't, and

1 putting it out in the world, I mean that is clearly a  
2 false statement of fact that is out to injure his  
3 reputation.

4 The only evidence that I saw --

5 THE COURT: The problem is, it's not  
6 defamatory per se.

7 You would have to demonstrate if there was  
8 actual damage to the Plaintiff.

9 MR. BOSCHER: That's where I was going to  
10 ask Your Honor the question, because that to me seems  
11 to go kind of side and side with the statement has to  
12 concern the public interest.

13 I don't really understand Your Honor's  
14 ruling as it relates to the fact that this person may  
15 or may not have restraining orders against them, and  
16 the other one that is head-scratching is that he  
17 apparently according to the statements the Defendants  
18 provided was convicted of being a minor in possession  
19 of alcohol when he was 35 years old living in a state  
20 he didn't live in, so --

21 THE COURT: I saw that.

22 MR. BOSCHER: I don't understand how that  
23 could be -- how you could in good faith make that  
24 statement when the age is in discrepancy, it is what  
25 it is, but I understand what you're saying about

1     defamation per se and relation, but it seems to be  
2     the same standard for the anti-slap standard.

3             Again, the only evidence I saw that was --  
4     showed good faith is that they thought that he had  
5     restraining orders against him is hearsay.

6             There was an e-mail and a couple of  
7     conversations I think would be inadmissible evidence,  
8     and that is the basis by which they are saying --  
9     putting out in the world my client has restraining  
10    orders against him, and that has anything to the with  
11    thrifting, nothing to do with everything else they've  
12    talked about.

13            They are saying, he's committed criminal  
14    violations for which restraining orders were entered  
15    against him based upon an e-mail and an off-the-cuff  
16    statement that again is inadmissible hearsay.

17            THE COURT: Remember that there's not a  
18    prohibition against making false statements.

19            There is a prohibition against making  
20    statements known to be false.

21            Big difference.

22            False statements can be made, but unless  
23    they are known to be false they are not actionable  
24    under this context.

25            MR. BOSCHER: I understand that, Your

1 Honor, but I guess my reading of Pope is, the  
2 standard is a little higher than someone told me  
3 something, and so I went and told the world that this  
4 other person has restraining orders against them, or  
5 has apparently created an environment that caused  
6 people wanted to commit suicide, those are very bold,  
7 big statements against, and individual's  
8 representation, and a business representation,  
9 whatever you want to say, basically implying he's  
10 causing people to commit suicide, he's a criminal,  
11 has restraining orders against him, and the only  
12 basis for making those statements and putting them  
13 out on YouTube and as far as I can tell from the  
14 e-mail, an e-mail and statements that are kind of  
15 second and thirdhand hearsay, I don't think that  
16 rises to the showing of a good faith belief, that or  
17 lack of knowledge these statements are false, they  
18 didn't do anything to back it up.

19 In fact, if you look at the evidence that  
20 they presented, they ran a criminal investigation  
21 record of my client that was just wrong. I mean, it  
22 was just blatantly someone else that --

23 THE COURT: I understand these are your  
24 contentions, but you know where is the evidence you  
25 want to offer in opposition to that?

1           The affidavit of Mr. Smith was grossly  
2   insufficient to make this prima facie showing there's  
3   a probability of prevailing on the merits.

4           MR. BOSCHER: I understand Your Honor's  
5   concern about the affidavit, but then I would ask the  
6   back up question is, how do I prove a negative, other  
7   than Mr. Smith saying I was not convicted of minor  
8   possession of alcohol when I was 35 years old,  
9   because I was 35 years old, didn't live in Ohio, I'm  
10   not really sure what other evidence I could provide.

11          THE COURT: Here's the problem:

12          There are other statements that are made  
13   with supporting documentation, the outing of that  
14   individual, okay, publishing her personal home  
15   address, her real name and so forth. He doesn't deny  
16   that.

17          The accusations of intimidation and  
18   bullying and excluding people from panels and  
19   presentations at thrifting seminars, he hasn't denied  
20   that, so there are things that are said.

21          Is everything the Defendant said about him  
22   true?

23          No.

24          I think they would concede that.

25          But the overall impression that one has is,

1 that they were basically providing information about  
2 his reputation and specific acts and his character  
3 based upon experience they had with him personally,  
4 or experienced that others had with these people  
5 regarded as reliable reporters of information, and  
6 some of those people were not reliable, but given the  
7 overall context, I think the Defendants clearly  
8 demonstrate to this Court they were acting in good  
9 faith.

10 I think they would in fact concede that  
11 some of their information turned out to be incorrect,  
12 but the bulk of it, the overwhelming majority,  
13 appears to be well-founded and to have been  
14 communicated truthfully and in good faith.

15 And as to those items that were truthfully  
16 communicated, Mr. Smith just avoids dealing with them  
17 head on, he chooses to, since apparently he can't  
18 deny under oath they took place, he just doesn't  
19 mention those.

20 Instead, he focuses all of his attention on  
21 the errors in terms of the restraining order and  
22 criminal history.

23 He doesn't deny he has a conversation with  
24 Miss Eagan where she says he accuses her of having  
25 reported to others he had a criminal history.

1           She says, I never told anybody about his  
2 criminal history, but I can tell you that he told me  
3 he had a criminal history.

4           So these are important considerations,  
5 Smith doesn't address it in his effort to disqualify  
6 these statements as in good faith dealing with the  
7 matter of public interest, and therefore is entitled  
8 to protection of the anti-slap statute.

9           MR. BOSCHER: Well, now my other concern I  
10 guess, maybe I misunderstood the standard the Supreme  
11 Court adopted, that I think what Your Honor's saying  
12 is, if most of this wasn't -- if some turned out to  
13 be not true, whether they investigate or not, if it  
14 was in good faith, the fact the handful of these  
15 things turned out to be not true, the fact most of it  
16 is true, unrebutted, is enough for Your Honor, and  
17 I'll take that if that's it.

18           THE COURT: There's no demonstration of  
19 known falsehood anywhere.

20           MR. BOSCHER: The other thing -- or other  
21 question I have, this again, the question I had was  
22 of the public concern.

23           I don't think if I asked Your Honor before  
24 you read the motion if I walked around the courtroom,  
25 asked a hundred people if they knew who Jason T.

1 Smith was, they would know.

2 I don't think if I walked down Fremont  
3 Street, asked 200 people who Jason T. Smith is, or  
4 his relationship history, that they would know.

5 I have a real problem, he's a public  
6 figure, and this is a public concern.

7 This isn't rats running around a restaurant  
8 going to make anybody goes there sick, this is a very  
9 small insulate community, and again the communication  
10 to me seemed very much of people with personal beefs  
11 against each other squabbling on-line and squabbling  
12 in a public forum, which again doesn't rise to the  
13 standard that you would have to have for a anti-slap  
14 motion, I don't see the public concern, or that he's  
15 even a public figure either.

16 THE COURT: Well, remember it doesn't have  
17 to be all of the public, it just has to be a public  
18 concern, and if the issues that are raised and talked  
19 about by the Defendants are of interest to the  
20 thrifting community, the thrifting community is a  
21 public interest, and although it's definitely smaller  
22 than all of the Democrats, or all the Republicans, or  
23 all the people that live in Nevada, but definitely a  
24 much smaller group, but in fact because of the fact  
25 that it's an internet-based marketing system, it

1 actually touches upon many, many people, I think  
2 maybe I read 55,000 people are involved in this  
3 thrifting activity, that is a large number of people,  
4 as opposed to somebody beefing in an HOA situation  
5 and complaining and making comments about other  
6 members of the board, that is a very small insular  
7 body, and I don't think the public interest would be  
8 invoked.

9 I suppose it could be under certain  
10 circumstances, but generally I would say, no.

11 So while it is not the public at large, I  
12 do think it's the public interest concern.

13 MR. BOSCHER: Okay.

14 Well, Your Honor's made your point.

15 I respectfully disagree, but that is okay,  
16 that's why you wear the robe and I don't.

17 So those are my questions.

18 I didn't think that was --

19 THE COURT: All right.

20 MR. BOSCHER: Thank you.

21 MS. MC LETCHIE: If I may, Your Honor, Mr.  
22 Smith can't actually contest today he's not famous,  
23 or a public figure, because he put in his Complaint  
24 he is.

25 You or I may not have known him.

1           THE COURT: His beef was, I'm so  
2 well-known, I understand that.

3           MS. MC LETCHIE: I think the confusion  
4 about whether or not somebody is in the public  
5 interest, this would affect a substantial business  
6 community like this, it is.

7           Another issue the Plaintiff's confused  
8 about the criminal history issue, there's amorphous  
9 allegations my client said he had a criminal history,  
10 we did not include that printout to say that's what  
11 they said, or say the things that appeared in that  
12 report were true, but rather that they had seen them.

13           Most fundamentally I think the central  
14 confusion the Plaintiff has is that the Plaintiff's  
15 going to have to establish actual malice, not just  
16 there's no requirement the Defendants or any member  
17 of the public before they speak make sure that their  
18 statements are based on non-hearsay.

19           The hearsay issue's an issue for this case,  
20 but not for what they said, Your Honor.

21           With regards to the take-down and the  
22 bullying issues, those are likely non-actionable, or  
23 we've already proven them to be true if they are  
24 factual matters because so many people have said the  
25 Plaintiff did bully, Your Honor.

1 THE COURT: Okay.

2 So I think the anti-slap motion is  
3 appropriate, well-supported in law, and based upon  
4 the admissible evidence I'm granting it.

5 There remains the issue of awarding of  
6 damages to the Defendants and the award of attorney's  
7 fees.

8 Are we here to address that today?

9 MS. MC LETCHIE: Well, Your Honor, I would  
10 like leave to file a motion for attorney's fees.

11 I do think we have established due to I  
12 think the problematic nature of the Complaint, and  
13 even the response to the motion to dismiss, I do  
14 think this is a case in which the Defendants have  
15 relatively small access to funds compared to the  
16 Plaintiff, I do think this is the kind of case in  
17 which the Plaintiff is entitled to the award, but I'm  
18 happy to address that additionally in the motion for  
19 fees and costs if the Court would prefer.

20 THE COURT: My reading is, I think you are  
21 entitled to an award of statutory damages too, but  
22 that is just a leaning, so I would like to address  
23 that separately, and let's don't re-argue whether or  
24 not I think the motion, the anti-slap motion, should  
25 have been granted, let's focus our attention now I've

1 decided that to look at the issue of whether or not  
2 this is a case where the Plaintiff should be -- the  
3 Defendants should be awarded the statutory damages  
4 and attorney's fees.

5 All right?

6 MR. BOSCHER: We'll take a look what  
7 counsel files and address just that issue when we  
8 argue.

9 THE COURT: All right.

10 MS. MC LETCHIE: Your Honor, there's one  
11 remaining issue.

12 Before I was counsel on the case the  
13 parties did enter into a stipulated preliminary  
14 injunction.

15 My client's not intending to re-put up the  
16 Facebook post. I don't even know they are intending  
17 to re-put up the YouTube video, but we're going to  
18 seek to dissolve that stipulated preliminary  
19 injunction.

20 THE COURT: That is not in front of me.

21 MS. MC LETCHIE: Correct, Your Honor.

22 THE COURT: So let's focus on the issue of  
23 statutory damages and attorney's fees.

24 How much time do you need to file your  
25 motion for damages and attorney's fees?

1 MS. MC LETCHIE: I would say, two weeks,  
2 Your Honor.

3 THE COURT: Okay.

4 THE CLERK: October 17th.

5 THE COURT: October 17th for the motion to  
6 refile, and then ten days, two weeks?

7 They've changed this whole date  
8 calculation, so let's say two weeks to file an  
9 opposition.

10 MR. BOSCHER: So due on the 31st?

11 THE COURT: October 31st.

12 MR. BOSCHER: I did want to adress that  
13 whole thing because I think the rules are a little in  
14 flux, but --

15 THE COURT: There was just an article that  
16 was written in the Clark County Bar by Justice  
17 Gibbons and Justice Pickering, and one of the  
18 emphasis that it made was that we're too -- we  
19 gravitate towards these seven, fourteen, twenty-one,  
20 multiples of seven days, it makes sense, I mean the  
21 whole three day, ten day, twenty-one, but none of  
22 those ever made sense in terms of trying to keep  
23 track of them, so I think that we're going to try to  
24 err on the side of using these in multiples of seven  
25 days, and then seven or fourteen days, to file your

1       reply.

2                   MS. MC LETCHIE:   Seven days is fine, Your  
3       Honor.

4                   THE COURT:   Okay.

5                   THE CLERK:   November 7th.

6                   THE COURT:   November 7th.

7                   And then let's set it out for the 19th,  
8       November 19th for the hearing.

9                   Now --

10                  MS. MC BRIDE:   I think the 19th is really  
11       full, but the 21st isn't.

12                  THE COURT:   The 21st.

13                  I don't need anything this thick.

14                  MS. MC LETCHIE:   Okay.

15                  THE COURT:   All right.

16                  THE CLERK:   November 21st at 9 a.m.

17                  THE COURT:   November 21st, 9 a.m., is the  
18       hearing.

19                  MR. BOSCHER:   For judicial efficiency, if  
20       we are going to seek -- or you are going to seek to  
21       dissolve the injunctions in place, maybe we do it in  
22       the same briefings heard on the 21st, see if we can  
23       get rid of it?

24                  THE COURT:   No, I would rather sequester  
25       the issues, but if you want to file a separate issue

1 to dissolve that, you can do it with the same  
2 timetable.

3 MR. BOSCHER: I was wanting to make sure  
4 we're efficient, not having two hearings on related  
5 issues.

6 THE COURT: How do we make sure that gets  
7 heard on the 21st?

8 MS. MC BRIDE: Just put it on calendar for  
9 two matters that day.

10 THE COURT: All right.

11 Now, remember EDCR 2.20 puts on the moving  
12 party the obligation to see to it I have the motion,  
13 they provide a copy of their opponent's opposition,  
14 and their reply.

15 So you can't sit back and wait for the  
16 opponent to get the courtesy copy to me.

17 I just wanted to reiterate that.

18 Thank you.

19 MR. BOSCHER: Thank you, Judge.

20 MS. MC BRIDE: Your Honor, before the  
21 status check, this motion to dismiss is going to  
22 close this case, so a status check on the order on  
23 the motion to dismiss, how long?

24 MR. BOSCHER: I would think in terms of the  
25 same question, presumably She will run the order by

1 me, we will get it submitted within the time frames.

2 I don't know we need a status check before  
3 the next hearing, unless you really want us to come  
4 back in.

5 MS. MC BRIDE: The Court wants the order on  
6 file prior to all of this.

7 THE COURT: November 21st is a long way  
8 away, and we're talking about an order I need within  
9 ten days from today.

10 MR. BOSCHER: We can have a status check on  
11 the 31st, like you've done with all the other orders,  
12 and then no problem.

13 THE COURT: That's fine.

14 MS. MC BRIDE: Filed, not submitted.

15 MR. BOSCHER: Filed, yes.

16 MS. MC LETCHIE: Filed by?

17 THE CLERK: Filed by October 31st.

18 THE COURT: Filed before October 31st.

19 So you don't have to be here.

20 MR. BOSCHER: Understood, Your Honor.

21 Thank you.

22 MS. MC LETCHIE: Thank you, Your Honor.

23 THE CLERK: That's at 9:00 a.m.

24 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter  
in and for the State of Nevada, hereby certify that  
pursuant to NRS 2398.030 I have not included the  
Social Security number of any person within this  
document.

I further Certify that I am not a relative  
or employee of any party involved in said action, not  
a person financially interested in said action.

\_\_\_\_\_/s/ Bill Nelson\_\_\_\_\_

Bill Nelson, RMR, CCR 191

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) SS .

I, Bill Nelson, RMR, CCR 191, do hereby  
certify that I reported the foregoing proceedings;  
that the same is true and correct as reflected by my  
original machine shorthand notes taken at said time  
and place.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191  
Certified Court Reporter  
Las Vegas, Nevada

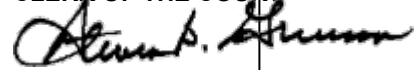
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22:23  <b>TRAN</b> <sup>[1]</sup> - 1:1</p>	<p><b>Transcript</b> <sup>[1]</sup> - 1:19  <b>true</b> <sup>[9]</sup> - 6:7, 8:11, 14:22, 16:13, 16:15, 16:16, 19:12, 19:23, 27:12  <b>truthfully</b> <sup>[2]</sup> - 15:14, 15:15  <b>try</b> <sup>[1]</sup> - 22:23  <b>trying</b> <sup>[1]</sup> - 22:22  <b>turn</b> <sup>[1]</sup> - 9:20  <b>turned</b> <sup>[3]</sup> - 15:11, 16:12, 16:15  <b>twenty</b> <sup>[2]</sup> - 22:19, 22:21  <b>twenty-one</b> <sup>[1]</sup> - 22:19  <b>twenty-one1</b> <sup>[1]</sup> - 22:21  <b>two</b> <sup>[5]</sup> - 22:1, 22:6, 22:8, 24:4, 24:9</p> <p style="text-align: center;"><b>U</b></p> <p><b>under</b> <sup>[6]</sup> - 7:22, 7:23, 10:4, 12:24, 15:18, 18:9  <b>understood</b> <sup>[1]</sup> - 25:20  <b>unless</b> <sup>[2]</sup> - 12:22, 25:3  <b>unrebutted</b> <sup>[1]</sup> - 16:16  <b>up</b> <sup>[4]</sup> - 13:18, 14:6, 21:15, 21:17  <b>upset</b> <sup>[4]</sup> - 4:19, 4:21, 4:24, 5:4  <b>users</b> <sup>[2]</sup> - 5:16, 5:23</p> <p style="text-align: center;"><b>V</b></p> <p><b>valid</b> <sup>[1]</sup> - 6:2  <b>Vegas</b> <sup>[2]</sup> - 3:1, 27:20  <b>Vellis</b> <sup>[2]</sup> - 2:4, 3:9  <b>versus</b> <sup>[4]</sup> - 3:4, 7:2, 8:15, 9:25  <b>video</b> <sup>[2]</sup> - 5:16, 21:17  <b>violations</b> <sup>[1]</sup> - 12:14  <b>vs</b> <sup>[1]</sup> - 1:11</p> <p style="text-align: center;"><b>W</b></p> <p><b>wait</b> <sup>[1]</sup> - 24:15  <b>walked</b> <sup>[2]</sup> - 16:24, 17:2  <b>wants</b> <sup>[1]</sup> - 25:5  <b>wear</b> <sup>[1]</sup> - 18:16  <b>weeks</b> <sup>[3]</sup> - 22:1, 22:6, 22:8  <b>well-founded</b> <sup>[1]</sup> - 15:13  <b>well-known</b> <sup>[1]</sup> - 19:2  <b>well-supported</b> <sup>[1]</sup> - 20:3  <b>whole</b> <sup>[3]</sup> - 22:7, 22:13, 22:21  <b>wishes</b> <sup>[1]</sup> - 10:6  <b>witness</b> <sup>[1]</sup> - 4:17  <b>world</b> <sup>[3]</sup> - 11:1, 12:9, 13:3  <b>writing</b> <sup>[1]</sup> - 6:19  <b>written</b> <sup>[1]</sup> - 22:16</p>	<p style="text-align: center;"><b>Y</b></p> <p><b>year</b> <sup>[1]</sup> - 6:21  <b>years</b> <sup>[3]</sup> - 11:19, 14:8, 14:9  <b>younger</b> <sup>[1]</sup> - 6:16  <b>youth</b> <sup>[1]</sup> - 6:10  <b>YouTube</b> <sup>[3]</sup> - 5:15, 13:13, 21:17</p> <p style="text-align: center;"><b>Z</b></p> <p><b>Zilverberg</b> <sup>[2]</sup> - 3:5, 4:19  <b>ZILVERBERG</b> <sup>[1]</sup> - 1:12</p>
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**MOT**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

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*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JASON T. SMITH, an individual,

Case No.: A-19-798171-C

Plaintiff,

Dept. No.: XXIV

vs.

**MOTION TO DISSOLVE**  
**PRELIMINARY INJUNCTION**

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

**Hearing Date: November 21, 2019**

**Hearing Time: 9:00 a.m.**

Defendants.

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

Dated this the 17<sup>th</sup> day of October, 2019.

/s/ Margaret A. McLetchie

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

**MCLEATCHIE LAW**

*Counsel for Defendants Katy Zilverberg*

*and Victoria Eagan*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

On July 19, 2019, the parties to this litigation entered into a stipulated preliminary injunction mutually enjoining each other from making “verbal comments or statements, and from directing or requesting others to make any verbal comments or statements, about [each other] and/or [their] businesses to any third parties at any time, including at any conventions attended by [the parties].” (July 19, 2019 Joint Stipulation and Order for Preliminary Injunction, on file with this Court (the “Speech Injunction”) pp. 2-3.) This stipulated temporary injunction is set to “expire at the conclusion of the trial on the merits.” (*Id.*, p. 4.)

The Speech Injunction must accordingly be dissolved immediately. This matter has been resolved because the Court granted Defendants’ Special Anti-SLAPP Motion to Dismiss. The resolution operates as an adjudication on the merits. *See* Nev. Rev. Stat. § 41.660(5) (“If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.”). Thus, pursuant to the plain language of the Joint Stipulation and Order for Preliminary Injunction and the operation of Nevada’s anti-SLAPP statute, this Court must order the Preliminary Injunction dissolved.

Even if this were not the case, there is good cause to dissolve the Preliminary Injunction, which was entered before Defendants had counsel with First Amendment experience to protect their rights in this case.

### **II. PROCEDURAL HISTORY**

On July 9, 2019, Mr. Smith filed a Complaint against Ms. Zilverberg and Ms. Eagan alleging causes of action for defamation, conspiracy, and injunctive relief.

On July 19, 2019, the parties entered into a joint stipulation for a preliminary injunction, which resulted in an order entered by the Court on July 19, 2019 drastically limiting the speech of the parties (the “Speech Injunction”). In addition to mandating removal of social media posts regarding each other, the Speech Injunction enjoining the parties from making future social media posts or other communications regarding each other (or the

1 instant litigation). In pertinent part, the Stipulation and Order limits the speech of Ms.  
2 Silberberg and Ms. Eagan as follows:

3 Defendants and/or their agents are enjoined from making any verbal  
4 comments or statements, and from directing or requesting others to make  
5 any verbal comments or statements, about Plaintiff and/or his businesses to  
6 any third parties at any time, including at any conventions attended by the  
7 Defendants. If any persons specifically ask Defendants about the above-  
8 captioned litigation and/or Plaintiffs' involvement therein, Defendants  
agree to not provide any comment to such persons regarding Plaintiff or the  
above-captioned litigation.

### 9 III. LEGAL ARGUMENT

10 As noted above, the Speech Injunction must be dissolved due to the resolution of  
11 this case pursuant to the anti-SLAPP statute.

12 Even if this were not the case, there is good cause to set aside the Speech Injunction.  
13 As detailed in Defendants Special Motion to Dismiss (at pp. 22:19 – 25:11, on file with this  
14 Court) an injunction is a prior restraint, and is generally impermissible to silence speech.  
15 Both the U.S. Constitution and the Nevada Constitution protect the right to speak freely,  
16 which includes the right to engage in speech critical of businesses. The First Amendment,  
17 applied to the states through the Fourteenth Amendment, of course protects “free speech.”  
18 Similarly, Article 1, section 9 of the Nevada Constitution unequivocally provides that “every  
19 citizen may freely speak, write and publish his sentiments on all subjects, being responsible  
20 for the abuse of that right.” The Nevada Supreme Court has observed “the constitutional  
21 right to free speech . . . embraces every form and manner of dissemination of ideas held by  
22 our people” and that “[f]ree speech . . . must be given the greatest possible scope and have  
23 the least possible restrictions imposed upon it, for it is basic to representative democracy.”  
24 *Culinary Workers Union v. Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990, 993, 994  
25 (1949);<sup>1</sup> see also *People for the Ethical Treatment of Animals (PETA) v. Bobby Berosini*,

26  
27 <sup>1</sup> In *Culinary Workers*, on a writ of prohibition, the Nevada Supreme Court overturned a  
28 district court injunction against peaceful picketing that had been based in part on the fact that  
an “unfair” sign was untruthful. *Id.* at 995. The Supreme Court noted that statements of  
opinion “are not subject to judicial restraint.” *Id.*

*Ltd.*, 111 Nev. 615, 625 (Nev. 1995) (reversing injunctive relief in a defamation case and holding that the “the constitutional privilege provided by the Nevada Constitution protects the animal rights activists [speakers] from defamation liability.”); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978)(“the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”).

While here, the parties stipulated to the Speech Injunction, Defendants did so before they had counsel to address the First Amendment implications of doing so and in the case in general. Accordingly, while parties are ordinarily bound by their stipulations, courts will set them aside to prevent manifest injustice<sup>2</sup>— and, like any agreement, a stipulation is subject to being set aside if based on mistake. As the Nevada Supreme Court has explained:

A stipulation may be set aside upon a showing that it was entered into through mistake, fraud, collusion, accident or some ground of like nature. *See Gottwals vs. Rencher*, 60 Nev. 35, 47, 98 P.2d 481 (1940). Whether a stipulation should be set aside on such grounds is generally left to the discretion of the trial court. *Los Angeles City Sch. Dist. vs. Landier Management Co.*, 177 Cal.App.2d 744, 2 Cal.Rptr. 662 (Ct.App.1960); *Singleton vs. Pichon*, 102 Idaho 588, 635 P.2d 254 (Idaho 1981); *McFarling vs. Demco, Inc.*, 546 P.2d 625 (Okla.1976).

*Citicorp Servs., Inc. v. Lee*, 99 Nev. 511, 513, 665 P.2d 265, 266–67 (1983). Here, even if there were not a final resolution on the merits, the Speech Injunction must be set aside as it was based on mistake and impinges on Defendants’ First Amendment rights.

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<sup>2</sup> *See, e.g.,* § 8:50.Stipulations, 4 Williston on Contracts § 8:50 (4th ed.).

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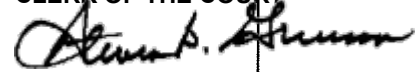
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1 **MEMC**  
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
3 ALINA M. SHELL, Nevada Bar No. 11711  
4 LEO S. WOLPERT, Nevada Bar No. 12658  
5 **MCLEATCHIE LAW**  
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9 Email: maggie@nvlitigation.com  
10 *Counsel for Defendants Katy Zilverberg*  
11 *and Victoria Eagan*

8 **EIGHTH JUDICIAL DISTRICT COURT**  
9  
10 **CLARK COUNTY, NEVADA**

11 JASON T. SMITH, an individual,  
12  
13 Plaintiff,  
14  
15 vs.

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

**MEMORANDUM OF COSTS AND**  
**DISBURSEMENTS**

14 KATY ZILVERBERG, an individual;  
15 VICTORIA EAGAN, an individual; and  
16 DOES I through X, inclusive, and ROE  
17 CORPORATIONS I through X, inclusive,  
18  
19 Defendants.

Filing Fees .....	\$488.00
Mileage. ....	\$14.04
Legal Research. ....	\$949.74
Copying Costs. ....	\$60.56
Court Reporting Expense. ....	\$275.00

**TOTAL \$1,787.34**

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STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

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

EXECUTED this the 17<sup>th</sup> day of October, 2019.

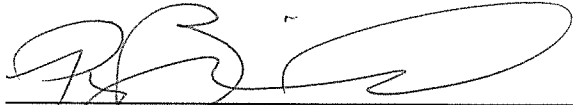


MARGARET A. MCLEATCHIE, Nevada Bar No. 10931  
ALINA M. SHELL, Nevada Bar No. 11711  
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and Victoria Eagan*

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**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 17<sup>th</sup> day of October, 2019, I did cause a true copy of the foregoing MEMORANDUM OF COSTS AND DISBURSEMENTS in *Smith v. Zilverberg et al.*, Clark County District Court Case No. A-19-798171-C, to be served using the Odyssey E-File & Serve electronic court filing system, to all parties with an email address on record.



EMPLOYEE of McLetchie Law

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

<b>Date</b>	<b>Category</b>	<b>Vendor / Reference</b>	<b>Quantity</b>	<b>Rate</b>	<b>Total</b>	<b>Description</b>
10/11/2019	Mileage		0.6	\$0.58	\$0.35	Travel to Phoenix Building located at 330 S. 3rd St., 0.6 miles at \$0.58.
10/17/2019	E-filing Fee	Odyssey File & Serve (5074030)	1.0	\$3.50	\$3.50	Motion to Dissolve Preliminary Injunction.
					<b>\$1,787.34</b>	<b>Total Costs and Expenses</b>

## YOUR TRIP TO:

8670 W Cheyenne Ave

**18 MIN | 11.8 MI** **Est. fuel cost: \$1.53**

Trip time based on traffic conditions as of 12:14 PM on October 17, 2019. Current Traffic: Heavy



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

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

Then 0.03 miles

0.03 total miles

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

Then 0.09 miles

0.12 total miles

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

Then 0.22 miles

0.33 total miles

4. Turn **right** onto S 4Th St.*If you reach S 3rd St you've gone a little too far.*

Then 0.49 miles

0.83 total miles



5. Merge onto US-95 N.

Then 8.38 miles

9.21 total miles

6. Take the **Cheyenne Ave** exit, EXIT 83.

Then 0.32 miles

9.53 total miles

7. Keep **left** at the fork in the ramp.

Then 0.04 miles

9.57 total miles

8. Turn **left** onto W Cheyenne Ave/NV-574. Continue to follow W Cheyenne Ave.

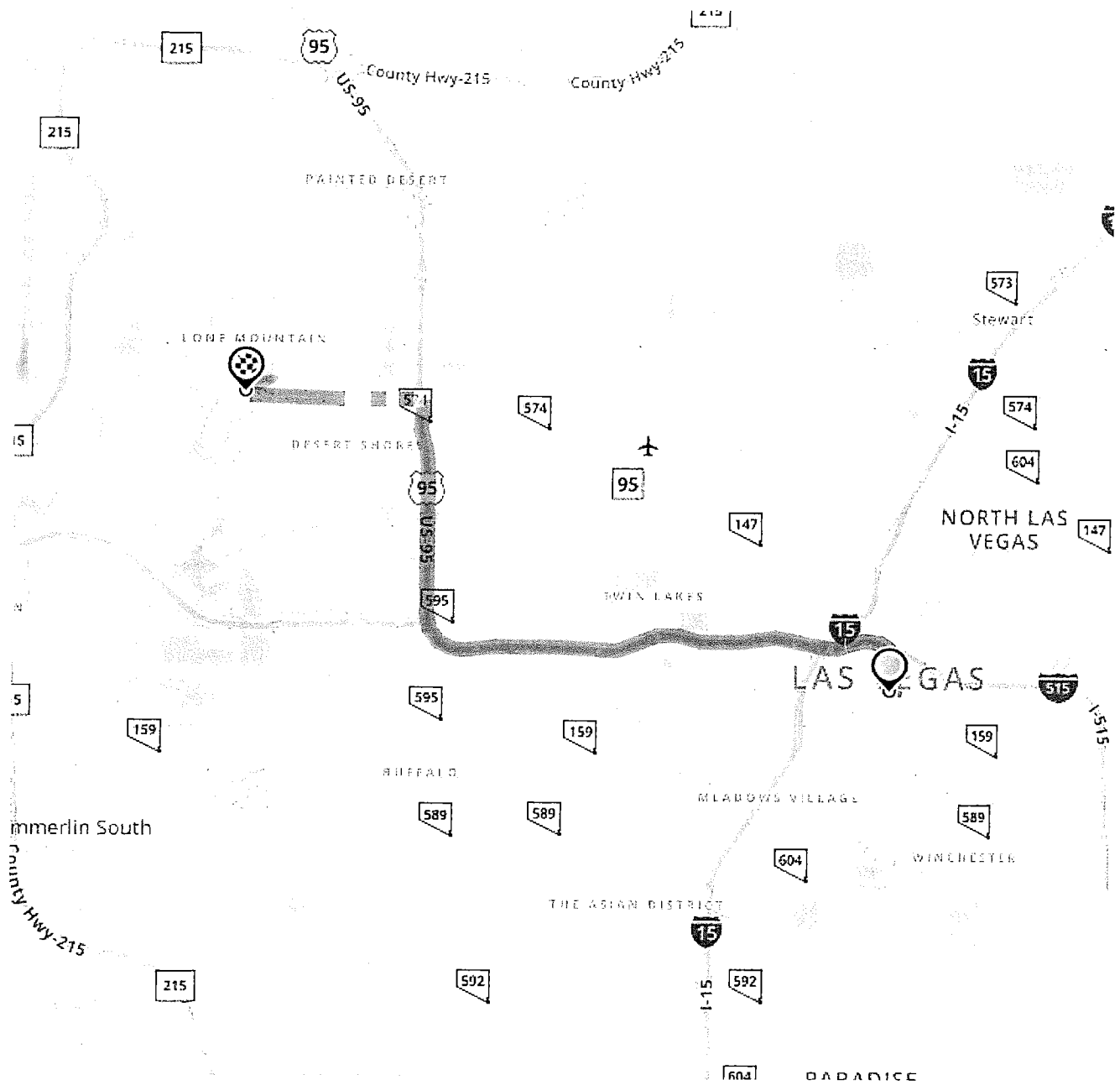
Then 2.20 miles

11.76 total miles

9. 8670 W Cheyenne Ave, Las Vegas, NV 89129-7260, 8670 W CHEYENNE AVE is on the **right**.*If you reach Chelmsford St you've gone about 0.1 miles too far.*

Save to My Maps

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



**Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,****Envelope Information****Envelope Id**

4771816

**Submitted Date**

8/19/2019 2:57 PM PST

**Submitted User Name**

lacey@nvlitigation.com

**Case Information****Location**

Department 20

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Johnson, Eric

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Substitution of Attorney - SUBT (CIV)

**Filing Description**

Substitution of Attorney

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg,Victoria Eagan

**Filing Status**

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**Accepted Date**

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Attorney.pdf**Description**Substitution of Attorney -  
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Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Shell, LLC	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Shell, LLC	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Shell, LLC	Yes	Not Opened
Sent	Alina M Shell	McLetchie Shell, LLC	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
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Court Copy**eService Details**

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

## Fees

### Substitution of Attorney - SUBT (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

### Substitution of Attorney - SUBT (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$3.50</b>

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	5776945
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	004771816-0

<b>Transaction Response</b>	Payment Complete
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## Copying Costs - August 2019

[illegible]

TASKalfa 5052ci				8/30/2019 12:39
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TASKalfa 5052ci	586	Zilverberg	35	8/30/2019 12:39
TASKalfa 5052ci				8/30/2019 12:39
TASKalfa 5052ci				8/30/2019 12:39
TASKalfa 5052ci				8/30/2019 12:39
TASKalfa 5052ci				8/30/2019 12:39
TASKalfa 5052ci	Other	Other	0	8/30/2019 12:39

**Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,****Envelope Information****Envelope Id**  
4865297**Submitted Date**  
9/6/2019 10:38 AM PST**Submitted User Name**  
efile@nvlitigation.com**Case Information****Location**  
Department 20**Category**  
Civil**Case Type**  
Other Tort**Case Initiation Date**  
7/9/2019**Case #**  
A-19-798171-C**Assigned to Judge**  
Johnson, Eric**Filings****Filing Type**  
EFileAndServe**Filing Code**  
Peremptory Challenge - CHLG (CIV)**Filing Description**  
Peremptory Challenge of Judge**Courtesy Copies**  
efile@nvlitigation.com**Filing on Behalf of**  
Katy Zilverberg,Victoria Eagan**Filing Status**  
Accepted**Accepted Date**  
9/6/2019 10:40 AM PST**Accept Comments**  
Auto Review Accepted**Lead Document****File Name**  
ZILVERBERG - 2019.09.06 CHLG  
Peremptory Challenge (Johnson).pdf**Description**  
Peremptory Challenge -  
CHLG (CIV)**Security****Download**  
Original File  
Court Copy**eService Details**

Status	Name	Firm	Served	Date Opened
Sent	Mikkaela Vellis	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/6/2019 10:42 AM
Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/6/2019 10:40 AM
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	9/6/2019 10:40 AM
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/6/2019 10:40 AM

## Fees

### Peremptory Challenge - CHLG (CIV)

Description	Amount
Filing Fee	\$450.00
<b>Filing Total:</b>	<b>\$450.00</b>

Total Filing Fee	\$450.00
Payment Service Fee	\$13.50
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$467.00</b>

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$467.00
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	5881583
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	004865297-0
<b>Transaction Response</b>	Payment Complete		

**Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,****Envelope Information****Envelope Id**

4870372

**Submitted Date**

9/6/2019 6:05 PM PST

**Submitted User Name**

lacey@nvlitigation.com

**Case Information****Location**

Department 24

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Crockett, Jim

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Motion to Dismiss - MDSM (CIV)

**Filing Description**Special Motion to Dismiss Pursuant to  
Nev. Rev. Stat. § 41.660 (ANTI-SLAPP)**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg,Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

9/6/2019 6:08 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**ZILVERBERG - 2019.09.06 Anti-SLAPP  
MTD FINAL.pdf**Description**Motion to Dismiss - MDSM  
(CIV)**Security****Download**Original File  
Court Copy**eService Details**

Status	Name	Firm	Served	Date Opened
Sent	Mikkaela Vellis	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/6/2019 6:31 PM P
Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/6/2019 6:19 PM P
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	9/6/2019 6:10 PM P
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	9/7/2019 11:14 AM I
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/9/2019 8:15 AM P

**Filing Type**

EFileAndServe

**Filing Code**

Exhibits - EXHS (CIV)

**Filing Description**

Appendix of Exhibits in Support of Special  
Motion to Dismiss Pursuant to Nev. Rev.  
Stat. § 41.660 (ANTI-SLAPP)

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg, Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

9/6/2019 6:08 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**

ZILVERBERG - 2019.09.06 EXHS  
Appendix of Exhibits.pdf

**Description**

Exhibits - EXHS (CIV)

**Security****Download**

Original File  
Court Copy

## eService Details

Status	Name	Firm	Served	Date Opened
Sent	Mikkaela Vellis	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	9/6/2019 6:09 PM P
Sent	Paul C Ray		Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/9/2019 8:17 AM P
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	9/7/2019 11:15 AM I

## Fees

### Motion to Dismiss - MDSM (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

### Exhibits - EXHS (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$3.50</b>

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	<b>\$3.50</b>
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<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	5887375
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	004870372-0
<b>Transaction Response</b>	Payment Complete		

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Version: 2017.2.5.7059

**Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,****Envelope Information****Envelope Id**

4932932

**Submitted Date**

9/19/2019 12:03 PM PST

**Submitted User Name**

efile@nvlitigation.com

**Case Information****Location**

Department 24

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Crockett, Jim

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Notice of Non Opposition - NNOP (CIV)

**Filing Description**

Notice of Non-Opposition to Special  
Motion to Dismiss Pursuant to Nev. Rev.  
Stat. 41.660 (ANTI-SLAPP)

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg, Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

9/19/2019 12:04 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**

ZILVERBERG - 2019.09.19 Notice of  
Non-Opposition.pdf

**Description**

Notice of Non Opposition -  
NNOP (CIV)

**Security****Download**

Original File  
Court Copy

**eService Details**

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

4

▶

## Fees

### Notice of Non Opposition - NNOP (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total: \$0.00</b>	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total: \$3.50</b>	

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	5958235
<b>Filing Attorney</b>	Leo Wolpert	<b>Order Id</b>	004932932-0
<b>Transaction Response</b>	Payment Complete		

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Version: 2017.2.5.7059

**Case # A-19-798171-C - Jason Smith, Plaintiff(s) vs. Katy Zilverberg,****Envelope Information****Envelope Id**

4971601

**Submitted Date**

9/26/2019 5:50 PM PST

**Submitted User Name**

efile@nvlitigation.com

**Case Information****Location**

Department 24

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Crockett, Jim

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Reply in Support - RIS (CIV)

**Filing Description**

Reply in Support of Notice of Non-  
Opposition and Opposition to  
Counter-motion to Strike Notice of Non-  
Opposition to Special Motion to Dismiss  
Pursuant to Nev. Rev. Stat. 41.660 (anti-  
SLAPP)

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg, Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

9/26/2019 5:51 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**

ZILVERBERG - 2019.09.26 RIS Reply  
ISO Notice of Non-Opposition and

**Description**

Reply in Support - RIS (CIV)

**Security****Download**

Original File  
Court Copy

Opposition to Countermotion to  
Strike.pdf

## eService Details

Status	Name	Firm	Served	Date Opened
Sent	Mikkaela Vellis	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	9/26/2019 5:51 PM
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened

## Fees

### Reply in Support - RIS (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total:</b>	<b>\$0.00</b>

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total:</b>	<b>\$3.50</b>

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	6001677
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	004971601-0

**Transaction Response**

Payment Complete

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Version: 2018.1.7.8190

**Case # A-19-798171-C - Jason Smith, Plaintiff(s) vs. Katy Zilverberg,****Envelope Information****Envelope Id**

4972187

**Submitted Date**

9/27/2019 8:32 AM PST

**Submitted User Name**

efile@nvlitigation.com

**Case Information****Location**

Department 24

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Crockett, Jim

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Reply in Support - RIS (CIV)

**Filing Description**

Reply in Support of Special Motion to  
Dismiss Pursuant to Nev. Rev. Stat. §  
41.660 (anti-SLAPP)

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg, Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

9/27/2019 8:35 AM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**

ZILVERBERG - 2019.09.27 RIS Reply  
ISO Anti-SLAPP MTD Motion to  
Dismiss.pdf

**Description**

Reply in Support - RIS (CIV)

**Security****Download**

Original File  
Court Copy

## eService Details

Status	Name	Firm	Served	Date Opened
Sent	Mikkaela Vellis	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/27/2019 8:35 AM
Sent	Kimberly P. Stein	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	9/27/2019 8:44 AM
Sent	Margaret A McLetchie	McLetchie Law	Yes	Not Opened
Sent	Margaret A McLetchie	McLetchie Law	Yes	9/27/2019 8:35 AM
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Leo S Wolpert	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Alina M Shell	McLetchie Law	Yes	Not Opened
Sent	Paul C Ray		Yes	Not Opened
Sent	Andi Hughes	Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson	Yes	Not Opened

## Fees

### Reply in Support - RIS (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total: \$0.00</b>	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total: \$3.50</b>	

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	6002432
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	004972187-0
<b>Transaction Response</b>	Payment Complete		

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Version: 2018.1.7.8190

## Copying Costs - September 2019

[illegible]

[illegible]



[illegible]

QuickView+ - Report

Client 0586					
User Name MCLEATCHIE,MAGGIE (14115986)					
Day 09/05/2019					
Totals for Included	9	315.00 USD	10.24 USD	10.24 USD	
Totals for Day 09/05/2019	9	315.00 USD	10.24 USD	10.24 USD	
Day 09/06/2019					
Totals for Included	39	2,812.00 USD	91.40 USD	91.40 USD	
Totals for Day 09/06/2019	39	2,812.00 USD	91.40 USD	91.40 USD	
Day 09/26/2019					
Totals for Included	7	599.00 USD	19.47 USD	19.47 USD	
Totals for Excluded	2	278.00 USD	0.00 USD	278.00 USD	
Totals for Day 09/26/2019	9	877.00 USD	19.47 USD	297.47 USD	
Totals for User Name MCLEATCHIE,MAGGIE (14115986)	57	4,004.00 USD	121.11 USD	399.11 USD	
User Name SHELL,ALINA (14115985)					
Day 09/26/2019					
Totals for Included	16	1,032.00 USD	33.54 USD	33.54 USD	
Totals for Day 09/26/2019	16	1,032.00 USD	33.54 USD	33.54 USD	
Day 09/27/2019					
Totals for Included	1	35.00 USD	1.14 USD	1.14 USD	
Totals for Day 09/27/2019	1	35.00 USD	1.14 USD	1.14 USD	
Totals for User Name SHELL,ALINA (14115985)	17	1,067.00 USD	34.68 USD	34.68 USD	
User Name WOLPERT,LEO (17518775)					
Day 09/03/2019					
Totals for Included	9	374.00 USD	12.16 USD	12.16 USD	
Totals for Day 09/03/2019	9	374.00 USD	12.16 USD	12.16 USD	
Day 09/04/2019					
Totals for Included	36	1,968.00 USD	63.97 USD	63.97 USD	
Totals for Day 09/04/2019	36	1,968.00 USD	63.97 USD	63.97 USD	
Day 09/05/2019					
Totals for Included	79	3,237.00 USD	105.21 USD	105.21 USD	
Totals for Day 09/05/2019	79	3,237.00 USD	105.21 USD	105.21 USD	
Day 09/06/2019					
Totals for Included	4	515.00 USD	16.74 USD	16.74 USD	
Totals for Day 09/06/2019	4	515.00 USD	16.74 USD	16.74 USD	

10/1/2019

## QuickView+ - Report

Day 09/19/2019						
Totals for Included		17		713.00 USD	23.17 USD	23.17 USD
Totals for Day 09/19/2019		17		713.00 USD	23.17 USD	23.17 USD
Day 09/20/2019						
Totals for Included		9		492.00 USD	15.99 USD	15.99 USD
Totals for Day 09/20/2019		9		492.00 USD	15.99 USD	15.99 USD
Day 09/21/2019						
Totals for Included		34		1,485.00 USD	48.27 USD	48.27 USD
Totals for Day 09/21/2019		34		1,485.00 USD	48.27 USD	48.27 USD
Day 09/23/2019						
Totals for Included		51		2,257.00 USD	73.36 USD	73.36 USD
Totals for Day 09/23/2019		51		2,257.00 USD	73.36 USD	73.36 USD
Day 09/24/2019						
Totals for Included		28		1,216.00 USD	39.52 USD	39.52 USD
Totals for Day 09/24/2019		28		1,216.00 USD	39.52 USD	39.52 USD
Day 09/25/2019						
Totals for Included		29		1,664.00 USD	54.08 USD	54.08 USD
Totals for Day 09/25/2019		29		1,664.00 USD	54.08 USD	54.08 USD
Day 09/26/2019						
Totals for Included		44		1,953.00 USD	63.48 USD	63.48 USD
Totals for Day 09/26/2019		44		1,953.00 USD	63.48 USD	63.48 USD
Totals for User Name WOLPERT,LEO (17518775)		340		15,874.00 USD	515.95 USD	515.95 USD
Totals for Client 0586		414		20,945.00 USD	671.74 USD	949.74 USD

**McLETCHIE LAW GROUP PLLC**  
701 E BRIDGER AVE STE 520  
LAS VEGAS, NV 89101-8956

1163

94-72/1224 NV  
61353

DATE 10-10-19

PAY TO THE ORDER OF BILL NELSON & ASSOCIATES LLC \$ 275.<sup>00</sup>  
TWO HUNDRED SEVENTY-FIVE <sup>200</sup>/<sub>100</sub> DOLLARS

**BANK OF AMERICA** 

ACH R/T 122400724

FOR SILVERBERG TRANSCRIPT (A-19-178171-C)

 Photo  
Safe  
Deposit  
Box

## YOUR TRIP TO:

330 S 3rd St

**4 MIN | 0.6 MI** **Est. fuel cost: \$0.08**

Trip time based on traffic conditions as of 12:12 PM on October 17, 2019. Current Traffic: Heavy



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

Start of next leg of route



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

Then 0.03 miles

0.03 total miles



2. Take the 1st **right** onto S 7TH St.

*If you reach S 6Th St you've gone a little too far.*

Then 0.09 miles

0.12 total miles



3. Turn **left** onto E Carson Ave.

*If you reach Fremont St you've gone a little too far.*

Then 0.29 miles

0.41 total miles



4. Turn **left** onto S 3rd St.

*S 3rd St is just past S 4Th St.*

*If you reach S Casino Center Blvd you've gone a little too far.*

Then 0.17 miles

0.58 total miles



5. 330 S 3rd St, Las Vegas, NV 89101-6002, 330 S 3RD ST is on the **right**.

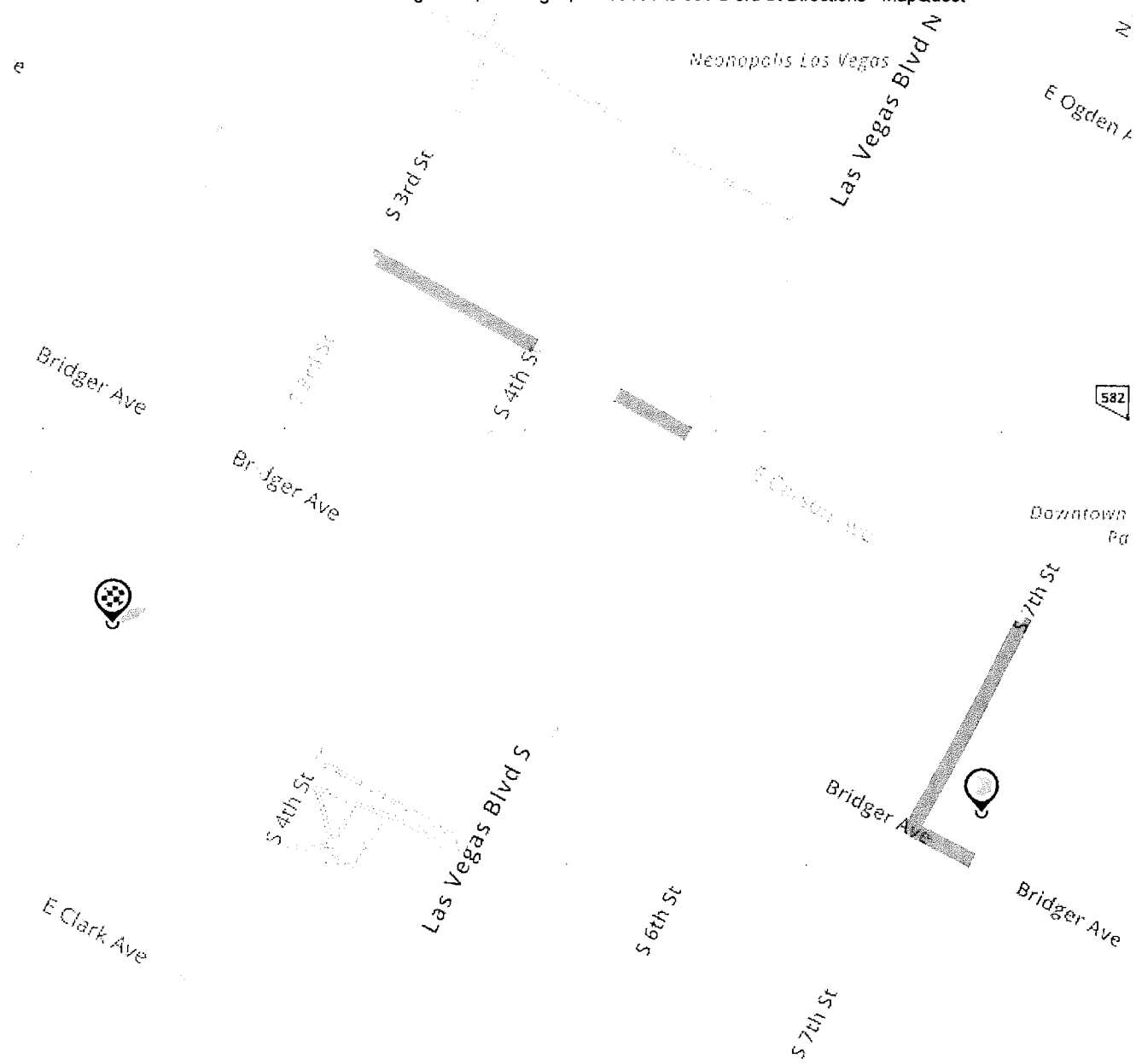
*Your destination is just past Bridger Ave.*

*If you reach Lewis Ave you've gone a little too far.*



Save to My Maps

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



**Case # A-19-798171-C - Jason Smith, Plaintiff(s)vs.Katy Zilverberg,****Envelope Information****Envelope Id**

5074030

**Submitted Date**

10/17/2019 12:43 PM PST

**Submitted User Name**

efile@nvlitigation.com

**Case Information****Location**

Department 24

**Category**

Civil

**Case Type**

Other Tort

**Case Initiation Date**

7/9/2019

**Case #**

A-19-798171-C

**Assigned to Judge**

Crockett, Jim

**Filings****Filing Type**

EFileAndServe

**Filing Code**

Motion - MOT (CIV)

**Filing Description**

Motion to Dissolve Preliminary Injunction

**Courtesy Copies**

efile@nvlitigation.com

**Filing on Behalf of**

Katy Zilverberg,Victoria Eagan

**Filing Status**

Accepted

**Accepted Date**

10/17/2019 12:45 PM PST

**Accept Comments**

Auto Review Accepted

**Lead Document****File Name**ZILVERBERG - 2019.10.17 MOT  
Motion to Dissolve Preliminary  
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Motion - MOT (CIV)

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## Fees

### Motion - MOT (CIV)

Description	Amount
Filing Fee	\$0.00
<b>Filing Total: \$0.00</b>	

Total Filing Fee	\$0.00
E-File Fee	\$3.50
<b>Envelope Total: \$3.50</b>	

<b>Party Responsible for Fees</b>	Katy Zilverberg	<b>Transaction Amount</b>	\$3.50
<b>Payment Account</b>	MLAW (AMEX)	<b>Transaction Id</b>	6117917
<b>Filing Attorney</b>	Margaret McLetchie	<b>Order Id</b>	005074030-0
<b>Transaction Response</b>	Payment Complete		