

**IN THE SUPREME COURT OF NEVADA**

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

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

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

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

**JOINT APPENDIX TO OPENING BRIEF - VOLUME 4**

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Dated this 11th day of May, 2020.

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/s/Margaret A. McLetchie

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12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

**NOTICE OF ENTRY OF ORDER**

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

21 Defendants.

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

23 PLEASE TAKE NOTICE that on the 20<sup>th</sup> day of December, 2019, the Order: (1)  
24 Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to  
25 Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction;  
26 and (3) Denying Plaintiff's Motion to Retax was entered in the above-captioned action.  
27  
28

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

5 DATED this the 20<sup>th</sup> day of December, 2019.

6 /s/ Margaret A. McLetchie

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11 Counsel for Defendants Katy Zilverberg  
12 and Victoria Eagan

13  
14 **CERTIFICATE OF SERVICE**

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

20  
21 /s/ Pharan Burchfield

22 EMPLOYEE of McLetchie Law

23 **INDEX OF EXHIBITS**

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

# EXHIBIT 1

*Steven D. Grierson*

**ORDR**

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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JASON T. SMITH, an individual,

Case No.: A-19-798171-C

Plaintiff,

Dept. No.: XXIV

vs.

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

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

Defendants.

Defendants Katy Zilverberg and Victoria Eagan's Motion for Attorney's Fees, Costs and Statutory Awards, having come on for hearing on November 21, 2019, the Honorable Jim Crockett presiding, Plaintiff Jason T. Smith, appearing by and through counsel of record, Brian W. Boschee of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, and Defendants Katy Zilverberg and Victoria Eagan, appearing by and through their counsel of record, Margaret A. McLetchie of McLetchie Law, and the Court, having read and considered all of the papers and pleadings on file, and heard argument of counsel, and being fully advised, and good cause appearing therefor, hereby makes the following Findings of Fact, Conclusions of Law, and Order:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **D. Plaintiff's Motion to Retax Costs.**

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

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

14 **E. Defendants' Motion to Dissolve Preliminary Injunction.**

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

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

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

21 **F. November 21, 2019 Hearing.**

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

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

28 ///

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

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

## II. CONCLUSIONS OF LAW

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

23. Recovery of attorney's fees as a cost of litigation is permissible by agreement, statute, or rule. See *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001).

24. If a Court grants a special anti-SLAPP motion to dismiss, the defendants are entitled to an award of reasonable costs and attorneys' fees. Nev. Rev. Stat. § 41.670(1)(a).

25. All fees incurred in defending oneself from a SLAPP suit are recoverable when all claims are dismissed under the anti-SLAPP statute. See *Graham-Suit v. Clainos*, 738 F.3d 1131, 1159 (9th Cir. 2013) (affirmed in *Graham-Suit v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014)) (finding that awarding all attorney's fees incurred in connection with a case, even if not directly related to the anti-SLAPP motion, are recoverable if all claims are dismissed).

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

### B. The Motion to Retax Costs.

27. Nev. Rev. Stat. § 18.110(4) states that, with regard to a memorandum of costs, "Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge shall settle the costs."

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

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

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

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

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

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

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

1 compensable.

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

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

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

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

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

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

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

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

1 case law to support that proposition.

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

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

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

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

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

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

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

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

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

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

1 statutory award of \$10,000.00.

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

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

6 **III. CONCLUSION**

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

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

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

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

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

4  
5 IT IS SO ORDERED this 13 <sup>December</sup> day of ~~November~~, 2019.

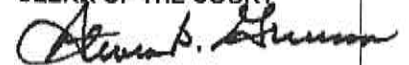
6  
7   
8 HONORABLE JUDGE JIM CROCKETT  
9

10 Respectfully submitted by,

11   
12 MARGARET A. MCLETCHIE, Nevada Bar No. 10931  
13 ALINA M. SHELL, Nevada Bar No. 11711  
14 LEO S. WOLPERT, Nevada Bar No. 12658  
15 **MCLETCHIE LAW**  
16 701 E. Bridger Avenue, Suite 520  
17 Las Vegas, NV 89101  
18 Telephone: (702) 728-5300; Fax (702) 425-8220  
19 Email: [maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
20 Counsel for Defendants Katy Zilverberg  
21 and Victoria Eagan  
22  
23  
24  
25  
26  
27  
28

**MCLETCHIE LAW**

ATTORNEYS AT LAW  
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Elizabeth A. Brown  
Clerk of Supreme Court

NTC  
HOLLEY DRIGGS WALCH  
FINE PUZEY STEIN & THOMPSON  
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Nevada Bar No. 7612  
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Las Vegas, Nevada 89101  
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*Attorneys for Plaintiff*

DISTRICT COURT  
COUNTY OF CLARK, NEVADA

JASON T. SMITH, an individual

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

Plaintiff,

vs.

NOTICE OF APPEAL

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

Defendant(s).

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

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///

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

Dated this 30th day of December 2019.

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

/s/Kimberly P. Stein

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

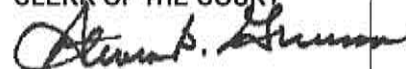
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **NOTICE OF APPEAL** was served in accordance with Administrative Order 14-2, this 30th day of December, 2019, addressed to the following:

Margaret A. McLetchie, Esq.  
Alina M. Shell, Esq.  
Leo S. Wolpert, Esq.  
McLetchie Law  
701 E. Bridger, Avenue, Suite 520  
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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



1 **STAT**  
2 **HOLLEY DRIGGS WALCH**  
3 **FINE PUZEY STEIN & THOMPSON**  
4 **BRIAN W. BOSCHEE, ESQ.**  
5 Nevada Bar No. 7612  
6 **KIMBERLY P. STEIN, ESQ.**  
7 Nevada Bar No. 8675  
8 E-mail: kstein@nevadafirm.com  
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10 Las Vegas, Nevada 89101  
11 Telephone: (702) 791-0308  
12 *Attorneys for Plaintiff*

8 **DISTRICT COURT**  
9 **COUNTY OF CLARK, NEVADA**

10 JASON T. SMITH, an individual

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

11 Plaintiff,

12 vs.

**CASE APPEAL STATEMENT**

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

15 Defendant(s).

- 16 1. Name of appellant filing this case appeal statement:

17 JASON T. SMITH

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

19 HONORABLE JUDGE JIM CROCKETT

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

21 JASON T. SMITH

22 Counsel for Appellant:

23 BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

24 KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8675

25 E-mail: kstein@nevadafirm.com

26 400 S. Fourth Street, Third Floor

Las Vegas, Nevada 89101

27 Telephone: (702) 791-0308

28

- 1 4. Identify each respondent and the name and address of appellate counsel, if known, for each  
2 respondent (if the name of a respondent's appellate counsel is unknown, indicate as much  
3 and provide the name and address of that respondent's trial counsel):

4 KATY ZILVERBERG, and VICTORIA EAGAN

5 Counsel for Respondents:

6 MARGARET A. MCLETCHE, Nevada Bar No. 10931

7 ALINA M. SHELL, Nevada Bar No. 11711

8 LEO S. WOLPERT, Nevada Bar No. 12658

9 MCLETCHE LAW

701 E. Bridger Avenue, Suite 520

Las Vegas, NV 89101

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

Email: maggie@nvlitigation.com

- 11 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed  
12 to practice law in Nevada and, if so, whether the district court granted that attorney  
13 permission to appear under SCR 42 (attach a copy of any district court order granting such  
14 permission):

15 Based upon information and belief, all attorneys listed in questions 3 and 4 are licensed to  
16 practice law in Nevada.

- 17 6. Indicate whether appellant was represented by appointed or retained counsel in the district  
18 court:

19 Appellant was represented by retained counsel in District Court.

- 20 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

21 Appellant is represented by retained counsel on appeal.

- 22 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of  
23 entry of the district court order granting such leave:

24 Not Applicable

- 25 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,  
26 indictment, information, or petition was filed):

27 COMPLAINT FILED ON Jul 9, 2019.

28

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

A Complaint was filed by the Plaintiff alleging causes of action for defamation, conspiracy, and injunctive relief. After service of the Complaint, the parties entered into a Stipulated Preliminary Injunction. Thereafter, Defendants changed counsel and filed a Special Motion to Dismiss Pursuant to Nev. Rev. Stat. § 41.660 (Anti-SLAPP), to which the District Court Granted the Motion to Dismiss, to which Plaintiff has filed an appeal. Plaintiff now also appeals from the district court's order granting the Defendants full attorney's fees, costs and statutory awards pursuant to NRS 41.670, as well as dissolving the stipulated preliminary injunction in this matter based on dismissing the case

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

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

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

This case does not involve child custody or visitation.

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///

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

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

Dated this 30th day of December 2019.

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

/s/Kimberly P. Stein

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

KIMBERLY P. STEIN, ESQ.

Nevada Bar No. 8495

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Plaintiff*

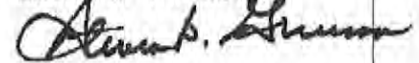
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **CASE APPEAL STATEMENT** was served in accordance with Administrative Order 14-2, this 30th day of December, 2019, addressed to the following:

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



**RPLY**  
**HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON**  
BRIAN W. BOSCHKE, ESQ.  
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Telephone: (702) 791-0308  
*Attorneys for Plaintiff*

**DISTRICT COURT**

**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual

Plaintiff,

vs.

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

Defendant(s).

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

**PLAINTIFF'S REPLY IN SUPPORT OF  
MOTION TO STAY PENDING APPEAL**

**Hearing Date: January 14, 2020**  
**Hearing Time: 9:00 a.m.**

Plaintiff, JASON T. SMITH (hereinafter referred to as "Plaintiff" or "Smith"), by and through his counsel of record, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, hereby files his Reply in Support of Motion to Stay Pending Appeal (the "Reply").

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

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Since the filing of the underlying Motion, this Court's Order granting Defendants' motion for attorney's fees, costs and statutory awards pursuant to Nev. Rev. Stat. § 41.670 has now been entered. As stated in the Motion, Plaintiff has also filed an additional Notice of Appeal on this order. As requested in the underlying Motion, Plaintiff Smith requests that this Court consider this Motion's request for a stay to include the order entered on the Fees Motion.

Despite the Defendants Katy Zilverberg and Victoria Eagan ("Defendants") attempt to convolute the factual disputes regarding the procedural history of the case with regards to the Appeal and underlying the instant Motion; the core issues of this Motion and the Appeal are straightforward.

Specifically, this Court found that Defendants met their initial burden of establishing by a preponderance of the evidence that Plaintiff Smith's claim is based on Defendants' good faith communications in furtherance of the right to free speech in direct connection with an issue of public concern, that such communications were made in a public forum and were truthful or made without knowledge of falsehood. The Court further found that Smith failed to meet his burden to show a probability of prevailing on his claims. Plaintiff Smith contends now on appeal that Defendants did not meet their initial burden as Defendants; statements were not made in good faith, were NOT an issue of public interest, and were false and made with knowledge of such falsehood.

Concisely stated, the issues on appeal are:

(1) Whether Smith's standing in the "thrifting" community makes him a "public figure," rising to the level of the need to alert the public on issues of public interest rather than being a personal vendetta by the Defendants.

(2) Whether a party establishes his burden of proof under the first prong of the Anti-SLAPP statute by providing non-substantiated evidence and false evidence to demonstrate the truthfulness of its statements.

///

(3) Whether the Court can ignore some of the *Shapiro* factors adopted by the Nevada Supreme Court in analyzing what distinguishes a private interest from a "public interest," versus considering all factors as intended. *Shapiro v. Welt*, 133 Nev. 35, 39, 389 P.3d 262, 268.

While Plaintiff Smith respectfully disagrees with this Court's findings, this does not take away his right to appeal. In the underlying proceedings, Defendants alleged 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, buying and selling of used goods, which is the market to which Defendants' statements were directed. 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 Plaintiff Smith. Defendants have failed to identify any legitimate public concern or interest, other than to 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. Yet, despite acknowledging that some of the evidence was provided was unsubstantiated and false, the Court stated that since some evidence, even though not relevant to the statements that were the subject of the underlying defamation, were true, the Court could rely on false evidence to show good faith and a public interest.

Previous decisions rendered by the Nevada Supreme Court, including recent decisions concerning Anti-SLAPP, favor Smith as to the law on these issues. *See, e.g., Coker v. Sassone*,

1 135 Nev. Adv. Op. 2, 7–8 (Jan. 3, 2019) (holding that Defendants bear the burden of demonstrating  
2 that their statements were made in good faith and “in direct connection with an issue of the public  
3 interest” to succeed on an Anti-SLAPP motion). Here, Smith maintains that Defendants  
4 defamatory statements did not concern matters that would be deemed to be in the “public interest,”  
5 and will demonstrate the same on appeal. *See also Pope v. Fellhauer*, a key mark case on Nevada’s  
6 Anti-SLAPP law, where the Nevada Supreme Court was unanimous in its decision for the litigants  
7 who had sued for defamation. 2019 WL 1313365, 437 P.3d 171 (Nev. March 21, 2019).

8 A review of the Opposition to the Motion to Stay Pending Appeal filed in this matter by  
9 the Defendants shows further baseless claims by the Defendants, which again are not properly part  
10 of the record or before this Court. For example, Defendants argue that Plaintiff Smith has indicated  
11 that he may pursue bankruptcy to avoid paying any award in this case. Yet, there is nothing in the  
12 record, except Defendants’ statement, to this effect. More importantly, it is unclear how the  
13 Plaintiff Smith filing bankruptcy jeopardizes the Defendants’ First Amendment Rights. In fact, if  
14 Plaintiff Smith filed bankruptcy, which could occur at any time during Defendants attempts to  
15 collect a judgment, Defendants could file a claim in the bankruptcy based on their judgment. Yet,  
16 Defendants attempt to misstate bankruptcy law to scare this Court. Defendants also ignore the fact  
17 that the Order granting Defendants’ motion for attorney’s fees, costs and statutory awards pursuant  
18 to Nev. Rev. Stat. § 41.670 was not entered until December 20, 2019, and pursuant to NRCP 62  
19 (a)(1), “no execution may issue on a judgment, nor may proceedings be taken to enforce it, until  
20 30 days have passed after service of written notice of its entry.”

21 Defendants further ignore the most significant issue regarding this Motion—that public  
22 policy favors a stay, and that if Plaintiff is successful on his appeal, then the basis for Defendants’  
23 Order on the Fees Motion will be nullified. This will create an unnecessary and problematic  
24 scenario for the Court and the Parties in the likely event that Plaintiff Smith prevails on appeal. In  
25 that scenario, Defendants will have initiated collection proceedings against Plaintiff, driving up  
26 legal fees in the process, only to then force the parties and the Court to battle over how to reverse  
27 those collection efforts. Such efforts may prove fruitless if Defendants spend (or otherwise  
28 dispose of) the amounts collected prior to the conclusion of the appeal, which will undoubtedly

1 result in prolonged and expensive proceedings between the parties to execute the final Judgment.  
2 And further, a review of the Opposition, Defendants have stated that they may bankrupt  
3 themselves due to defending the appeal. A review of the Declaration of Defendant Zilverberg  
4 states that due to an accident in December of 2018 that before this lawsuit, she was considering  
5 bankruptcy. Yet, she never states that she has paid any legal fees, which is solely the subject of  
6 the stay.

7 But in any event, if Plaintiff Smith is successful on appeal, Defendants are not entitled to  
8 the fees awarded. This goes against the harm to Plaintiff Smith, who if having to post the full  
9 amount of a supersedeas bond, not only causes him harm, ignored the ramifications of a reversal  
10 by the Nevada Supreme Court. At a minimum, this Court should stay the collection efforts on  
11 behalf of the Defendants, as the subject of the appeal is also the subject of the same damage award,  
12 and set a de minimis bond. Defendants would not be in any worse position by this stay financially,  
13 but again, Plaintiff Smith would be.

14 Further, Defendants argue that Plaintiff Smith's Motion fails to meet Defendants' burden  
15 of "making a strong showing that appellate relief is unattainable." Yet, again, recent Nevada  
16 Supreme Court cases are contrary to the Defendants' position. Defendants rely solely on evidence  
17 presented to this Court, which again, part of which was shown to be baseless and/or false.  
18 Ultimately, Plaintiff Smith has chosen to exercise his rights to appeal based on the complex legal  
19 doctrines at issue in this case, which Smith respectfully submits favor his positions. As discussed  
20 further herein, the balance of factors weighs in favor of preserving the status quo until such time  
21 as these legal issues are addressed by the Nevada Supreme Court on appeal.

## 22 II. ARGUMENT

### 23 A. Staying Defendant's Ability to Execute of the Order on the Fees' Motion is an 24 Appropriate Course of Action Pending Resolution of Plaintiff Smith's Appeal.

25 Because the Supreme Court of Nevada has not resolved Plaintiff Smith's appeal with  
26 regard to the basis for awarding the fees in light of the recent Nevada Supreme Court decisions,  
27 the appropriate course of action is for this Court to stay Defendants' ability to execute on the Order  
28 on the Fees' Motion. Plaintiff Smith's Motion should therefore be granted.

1. **Staying the Order on the Fees' Motion Pursuant to NRCP 62(d) Is Warranted.**

As an initial matter, this Court should stay the Order on the Fees' Motion pending resolution of Plaintiff Smith's appeal pursuant to NRCP 62(d), which provides:

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

Plaintiff Smith has timely and properly filed his appeal with the Supreme Court of Nevada and Plaintiff Smith has specifically stated in his Motion that he is prepared to post a supersedeas bond. Therefore, no legitimate basis exists for not staying the Order on the Fees' Motion pursuant to this rule and Defendants offer no meritorious argument in its Opposition upon which this Court should refuse to apply this rule.

Defendants' argument misses the point that the Order on the Fees' Motion itself cannot stand if Plaintiff Smith prevails on his appeal. That is, the Order on the Fees' Motion would be void as a matter of law, not merely avoidable or unenforceable. The very appeal filed by Plaintiff Smith is intended to avoid that possible result, and therefore staying the Order on the Fees' Motion pursuant to NRCP 62(d) is warranted and this Court should grant Plaintiff Smith's request in its Motion for this relief. Further, if Plaintiff Smith is successful on appeal, then, pursuant to Nev. Rev. Stat. § 41.670(2), "the court shall award reasonable costs and attorney's fees" to Plaintiff Smith.

2. **Under Mikohn, this Court Should Grant the Stay.**

Under *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36, 28 (2004), the Nevada Supreme Court set forth four factors that this Court must weigh in determining whether to stay the underlying action pending appeal.<sup>1</sup> In considering these factors, the court may grant a stay when one or two strong factors "counterbalance other weak factors." *Mikohn Gaming*, 89 P.3d at 38

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<sup>1</sup> The factors include: "(1) whether the object of the appeal will be defeated if the stay is denied, (2) whether appellant will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether appellant is likely to prevail on the merits in the appeal." 120 Nev. at 251.

(quoting *Hansen*, 6 P.3d at 986). Thus, not all factors must weigh in favor of a stay in order for the Court to grant a stay.

First, the object of the appeal will be defeated if the stay is denied by this Court. If Plaintiff is successful on their appeal, then the basis for Defendants' Order on the Fees Motion will be nullified. As to the second and third factors, there would be irreparable injury to the Plaintiff if the stay is denied, and no additional harm to the Defendants. Allowing the Defendants to proceed with their Fees Motion, and, if successful, collection activity, if Plaintiff is successful on appeal, the Parties will be forced to reverse that activity and, in doing so, waste judicial resources and incur unnecessary fees and costs in the process. The only potential harm in staying the case is the delay caused by waiting for a resolution of the appeal. Finally, the last factor is the Plaintiff is likely to succeed on the merits in the appeal; Plaintiff is likely to succeed on the merits of his appeal. This appeal is not frivolous or purely for dilatory purposes. As stated above, the recent Nevada Supreme Court cases favor Plaintiff Smith.

**B. This Court Should Waive or Set an Amount Less Than the Order on the Fees' Motion for the Supersedeas Bond.**

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect judgement if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." *Nelson v. Heer*, 121 New. 832, 835, 122 P.3d 1252, 1254 (2005). In *Nelson v. Heer*, the Nevada Supreme Court recognized several factors for the district courts to weigh in determining when a full supersedeas bond may be waived or alternative security may be substituted.

(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

*Id.* at 836, 1254 (quoting *Dillon v. City of Chicago*, 866 F.2d 902, 904-905 (7th Cir. 1988). The decision to allow a bond in an amount less than the judgment or to allow security other than a bond is within the district court's discretion. *Id.* at 834-835, 1253. A supersedeas bond should

not be the judgment debtor's sole remedy. *Id.*

Here, the collection process is straightforward. By granting a supersedeas bond in an amount of the current Order on the Fees' Motion, the Court would put the Defendants in a stronger position than they are in currently. Their collection efforts have not yet begun. Moreover, the amount is not final, as Defendants have already stated and per the Order on the Fees' Motion, they can and will be asking the Court for further fees. Further, as this is a personal collection, the requirement to post a bond would require substantial collateral and place other creditors, who are currently secured (unlike the Defendants) in an insecure position, the fifth factor of *Nelson v. Neer*. Therefore, this Court should waive the requirement to post a supersedes bond or in its discretion set an amount substantially lower than the full amount of the Order on the Fees' Motion (as requested by the Defendants).

### III. CONCLUSION

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

Dated this this 6th day of January, 2020.

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

/s/Kimberly P. Stein  
BRIAN W. BOSCHKEE, ESQ.  
Nevada Bar No. 7612  
KIMBERLY P. STEIN, ESQ.  
Nevada Bar No. 8495  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*


CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO STAY PENDING APPEAL** was served in accordance with Administrative Order 14-2, this 6th day of January, 2020, 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  
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*Attorneys for Defendants  
Katy Zilverberg and Victoria Eagan*

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



1 **NPP**  
2 BRIAN W. BOSCHKEE, ESQ.  
3 Nevada Bar No. 7612  
4 KIMBERLY P. STEIN, ESQ.  
5 Nevada Bar No. 8675  
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7 **HOLLEY DRIGGS WALCH**  
8 **FINE PUZEY STEIN & THOMPSON**  
9 400 S. Fourth Street, 3<sup>rd</sup> Street  
10 Las Vegas, Nevada 89101  
11 Telephone: (702) 791-0308  
12 *Attorneys for Plaintiff*

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**DISTRICT COURT**  
**COUNTY OF CLARK, NEVADA**

JASON T. SMITH, an individual,  
  
Plaintiff,

Case No: A-19-798171-C  
Dept. No.: 20

**NOTICE OF POSTING SUPERSEDEAS  
BOND**

v.

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

NOTICE IS HEREBY GIVEN on behalf of Plaintiff in the above-captioned case, that a  
supersedeas bond in the amount of \$89,002.53 has been posted pursuant to the Court's order at the  
hearing on January 14, 2020 on Plaintiff's Motion to Stay Pending Appeal, and Nevada Rules of  
Civil Procedure Rule 62(d)(1). A copy of the Official Receipt is issued by the Court is attached  
hereto.

Dated this 17th day of January, 2020.

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

/s/ Kimberly P. Stein

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the **NOTICE OF POSTING SUPERSEDEAS BOND** was served in accordance with Administrative Order 14-2, this 17th day of January, 2020, 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

# OFFICIAL RECEIPT

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

Payor  
Holley Driggs Walch Fine

Receipt No.  
**2020-03262-CCCLK**

Transaction Date  
01/17/2020

Description	Amount Paid
On Behalf Of Smith, Jason T A-19-798171-C Jason Smith, Plaintiff(s) vs. Katy Zilverberg, Defendant(s) Supersedeas Bond	
Supersedeas Bond	89,002.53
<b>SUBTOTAL</b>	<b>89,002.53</b>

**PAYMENT TOTAL** **89,002.53**

Check (Ref #3100) Tendered	89,002.53
Total Tendered	89,002.53
Change	0.00

Holley Driggs Walch Fine on Behalf of Jason Smith for the amount of 89,002.53 by ck # 3100. per 12/20/19 Order: (1) Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction; and (3) Denying Plaintiff's Motion to Retax

01/17/2020  
09:42 AM

Cashier  
Station AIKO

Audit  
37331707

## OFFICIAL RECEIPT

# OFFICIAL RECEIPT

District Court Clerk ( ) The Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
Holley Driggs Walch Fine

Receipt No.  
**2020-03262-CCCLK**

Transaction Date  
01/17/2020

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

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

Supersedeas Bond  
**SUBTOTAL**

89,002.53  
**89,002.53**

**PAYMENT TOTAL** **89,002.53**

Check (Ref #3100) Tendered 89,002.53  
Total Tendered 89,002.53  
Change 0.00

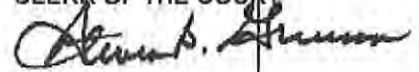
Holley Driggs Walch Fine on Behalf of Jason Smith for the amount of 89,002.53 by ck # 3100. per 12/20/19 Order: (1) Granting Defendants' Motion for Attorney's Fees, Costs and Statutory Awards Pursuant to Nev. Rev. Stat. 41.670; (2) Granting Defendants' Motion to Dissolve Preliminary Injunction; and (3) Denying Plaintiff's Motion to Retax

01/17/2020  
09:42 AM

Cashier  
Station AIKO

Audit  
37331707

## OFFICIAL RECEIPT



1 **NEOJ**

2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 LEO S. WOLPERT, Nevada Bar No. 12658

5 **MCLEATCHIE LAW**

6 701 E. Bridger Avenue, Suite 520

7 Las Vegas, NV 89101

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

9 Email: maggie@nvlitigation.com

10 *Counsel for Defendants Katy Silverberg*

11 *and Victoria Eagan*

12 **EIGHTH JUDICIAL DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASON T. SMITH, an individual,

Case No.: A-19-798171-C

15 Plaintiff,

Dept. No.: XXIV

16 vs.

**NOTICE OF ENTRY OF ORDER**

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

21 Defendants.

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

23 PLEASE TAKE NOTICE that on the 21<sup>st</sup> day of January, 2020, an Order Granting  
24 Plaintiff's Motion to Stay Pending Appeal and Requiring Supersedeas Bond was entered in  
25 the above-captioned action.  
26  
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1 A copy of the Order Granting Plaintiff's Motion to Stay Pending Appeal and  
2 Requiring Supersedeas Bond is attached hereto as **Exhibit 1**.

3 DATED this the 21<sup>st</sup> day of January, 2020.

4 /s/ Margaret A. McLetchie

5 MARGARET A. MCLETCHE, Nevada Bar No. 10931

6 ALINA M. SHELL, Nevada Bar No. 11711

7 LEO S. WOLPERT, Nevada Bar No. 12658

8 **MCLETCHE LAW**

9 701 E. Bridger Avenue, Suite 520

10 Las Vegas, NV 89101

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

12 Email: maggie@nvlitigation.com

13 *Counsel for Defendants Katy Zilverberg*

14 *and Victoria Eagan*

15 **CERTIFICATE OF SERVICE**

16 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on  
17 this 21<sup>st</sup> day of January, 2020, I did cause a true copy of the foregoing NOTICE OF ENTRY  
18 OF ORDER in *Smith v. Zilverberg et al.*, Clark County District Court Case No. A-19-  
19 798171-C, to be served using the Odyssey E-File & Serve electronic court filing system, to  
20 all parties with an email address on record.

21 /s/ Pharan Burchfield

22 EMPLOYEE of McLetchie Law

23 **INDEX OF EXHIBITS**

Exhibit	Description
1	January 21, 2020 Order Granting Plaintiff's Motion to Stay Pending Appeal and Requiring Supersedeas Bond

# EXHIBIT 1

*Steven D. Grierson*

**ORDR**

MARGARET A. MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

LEO S. WOLPERT, Nevada Bar No. 12658

**MCLEATCHIE LAW**

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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.

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

Defendants.

Case No.: A-19-798171-C

Dept. No.: XXIV

**ORDER GRANTING PLAINTIFF'S  
MOTION TO STAY PENDING  
APPEAL AND REQUIRING  
SUPERSEDEAS BOND**

Hearing Date: January 14, 2020

Hearing Time: 9:00 a.m.

This matter came on for hearing upon Plaintiff Jason T. Smith's (hereinafter referred to as "Plaintiff") Motion to Stay Pending Appeal (the "Motion") on January 14, 2020; Brian W. Boschee, Esq. of the law firm Holley Driggs Walch Fine Puzey Stein & Thompson appeared on behalf of Plaintiff; Margaret A. McLetchie, Esq. of McLetchie Law appeared on behalf of Defendants Katy Zilverberg and Victoria Eagan (hereinafter referred to as "Defendants"); the Court reviewed all papers and pleadings on file herein and heard arguments of counsel; and good cause appearing, the Court finds and rules as follows:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion to Stay Pending Appeal is GRANTED as follows:

1. Enforcement and execution of the Order Granting Defendants' Motion For

Attorney's Fees, Costs and Statutory Awards Pursuant To Nev. Rev. Stat. § 41.670 (the "Fees and Award Order") is stayed because Plaintiff has posted a supersedeas bond in the amount of \$89,002.53 (the "Bond"), which Bond is security for staying execution and enforcement of the Fees and Award Order pending resolution on appeal;

2. The Bond has been posted by Plaintiff;

3. Upon application by Defendants, the Bond may be increased based on further fees and costs incurred in this action;

4. The Bond will stay in place until further order of the Court; and.

5. If Plaintiff does not prevail on appeal, funds from the Bond shall be released to Defendants to satisfy the Fees and Awards Order and any other amounts due and owing Defendants pursuant to Court order(s) and/or judgments if not paid by Plaintiff in a timely fashion upon application by Defendants.

IT IS SO ORDERED this 20 day of January, 2020.

  
DISTRICT COURT JUDGE

Respectfully submitted by,

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