

Electronically Filed  
Apr 03 2020 02:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

NOAS  
MCNUTT LAW FIRM, P.C.  
Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-1170 / Fax.: (702) 384-5529  
[drm@mcnuttlawfirm.com](mailto:drm@mcnuttlawfirm.com)  
[mcw@mcnuttlawfirm.com](mailto:mcw@mcnuttlawfirm.com)  
*Counsel for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ARMEN YEMENIDJIAN, an individual,  
  
Plaintiff,

Case No.: A-19-804785-C  
  
Dept. No.: 22

v.

**NOTICE OF APPEAL**

NICOLA SPIRTOS, an individual; DOES 1-  
20; and ROES 1-20,  
  
Defendant.

Pursuant to NRS 41.670(4) and all other rules, statutes, and law permitting an appeal of an interlocutory order denying a special motion to dismiss, Defendant Dr. Nicola M. Spirtos, M.D. (Dr. Spirtos) hereby appeals to the Nevada Supreme Court the order dated March 5, 2020, in which the district court denied his special motion to dismiss dated December 10, 2019.

DATED March 26, 2020.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt

Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
*Counsel for Defendant*

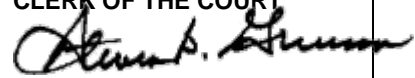
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned certifies that NRCP 5 and EDCR 8.05, on March 26, 2020, I served a true and correct copy of **NOTICE OF APPEAL** by mailing a copy by United States Postal Service, postage prepaid, via email, or via electronic mail through the Eighth Judicial District Court's E-Filing system to the following at their last known address or e-mail:

James Pisanelli, Esq. (SBN 4027)  
Todd Bice, Esq. (SBN 4534)  
Jordan Smith, Esq. (SBN 12097)  
Dustin Holmes, Esq. (SBN 12776)  
PISANELLI BICE PLLC  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101  
[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)  
[tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
[jts@pisanellibice.com](mailto:jts@pisanellibice.com)  
[dhh@pisanellibice.com](mailto:dhh@pisanellibice.com)  
*Counsel for Plaintiff*

/s/ Lisa Heller  
An Employee of McNutt Law Firm, P.C.



ASTA  
MCNUTT LAW FIRM, P.C.  
Daniel R. McNutt, Esq., Bar No. 7815  
Matthew C. Wolf, Esq., Bar No. 10801  
625 South Eighth Street  
Las Vegas, Nevada 89101  
Tel.: (702) 384-1170 / Fax.: (702) 384-5529  
[drm@mcnuttlawfirm.com](mailto:drm@mcnuttlawfirm.com)  
[mcw@mcnuttlawfirm.com](mailto:mcw@mcnuttlawfirm.com)  
*Counsel for Defendant*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ARMEN YEMENIDJIAN, an individual,  
  
Plaintiff,

Case No.: A-19-804785-C  
  
Dept. No.: 22

v.

**CASE APPEAL STATEMENT**

NICOLA SPIRTOS, an individual; DOES 1-  
20; and ROES 1-20,  
  
Defendant.

**1. Name of Appellant filing this Case Appeal Statement:**

Nicola Spirtos

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

The Honorable Susan Johnson

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

Daniel R. McNutt, Esq.  
Matthew C. Wolf, Esq.  
MCNUTT LAW FIRM, P.C.  
625 S. Eighth Street  
Las Vegas, NV 89101  
*Counsel for Appellant Nicola Spirtos*

**4. Identify each respondent and the name and address of counsel for each appellant:**

James Pisanelli, Esq.  
Todd Bice, Esq.  
Jordan Smith, Esq.  
Dustin Holmes, Esq.  
PISANELLI BICE PLLC  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101  
*Counsel for Respondent Armen Yemenidjian*

1       **5.     Indicate whether any attorney identified above in response to question 3 or 4 is**  
2       **not licensed to practice law in Nevada:**

3               The attorneys for Appellant and Respondent are licensed to practice law in Nevada.

4       **6.     Indicate whether appellant was represented by appointed or retained counsel**  
5       **in the district court:**

6               Retained

7       **7.     Indicate whether appellant is represented by appointed or retained counsel on**  
8       **appeal:**

9               Retained

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

12               No

13       **9.     Indicate the date the proceedings commenced in the district court (e.g., date**  
14       **complaint, indictment, information, or petition was filed):**

15               November 4, 2019

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

19               Respondent has filed claims against Petitioner for conspiracy and slander and is  
20               seeking damages. The Order being appealed is the March 5, 2020 Order Re: Special  
21               Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss  
22               Pursuant to NRCP 12(b)(5).

23       **11.    Indicate whether the case has previously been the subject of an appeal to or**  
24       **original writ proceeding the in Supreme Court:**

25               This case has not previously been the subject of an appeal or writ proceeding.

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

27               This case does not involve child custody or visitation.

28               ///

              ///

              ///

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

3           This is a civil case that involves the possibility of settlement.

4                       DATED March 26, 2020.

5                               MCNUTT LAW FIRM, P.C.

6                               /s/ Dan McNutt

7                               Daniel R. McNutt, Esq., Bar No. 7815  
8                               Matthew C. Wolf, Esq., Bar No. 10801  
9                               625 South Eighth Street  
                              Las Vegas, Nevada 89101  
                              *Counsel for Defendant*

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that NRCP 5 and EDCR 8.05, on March 26, 2020, I served a true  
3 and correct copy of **CASE APPEAL STATEMENT** by mailing a copy by United States Postal  
4 Service, postage prepaid, via email, or via electronic mail through the Eighth Judicial District  
5 Court's E-Filing system to the following at their last known address or e-mail:

6 James Pisanelli, Esq. (SBN 4027)  
7 Todd Bice, Esq. (SBN 4534)  
8 Jordan Smith, Esq. (SBN 12097)  
9 Dustin Holmes, Esq. (SBN 12776)  
10 PISANELLI BICE PLLC  
11 400 South 7<sup>th</sup> Street, Suite 300  
12 Las Vegas, NV 89101  
13 [jip@pisanellibice.com](mailto:jip@pisanellibice.com)  
14 [tlb@pisanellibice.com](mailto:tlb@pisanellibice.com)  
15 [jts@pisanellibice.com](mailto:jts@pisanellibice.com)  
16 [dhh@pisanellibice.com](mailto:dhh@pisanellibice.com)  
17 *Counsel for Plaintiff*

18 */s/ Lisa Heller*  
19 \_\_\_\_\_  
20 An Employee of McNutt Law Firm, P.C.  
21  
22  
23  
24  
25  
26  
27  
28

**CASE SUMMARY****CASE NO. A-19-804785-C**

**Armen Yemenidjian, Plaintiff(s)**  
**vs.**  
**Nicola Spirtos, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 22**  
Judicial Officer: **Johnson, Susan**  
Filed on: **11/04/2019**  
Cross-Reference Case Number: **A804785**

**CASE INFORMATION**Case Type: **Intentional Misconduct**

Case  
Status: **11/04/2019 Open**

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

Case Number A-19-804785-C  
Court Department 22  
Date Assigned 11/04/2019  
Judicial Officer Johnson, Susan

**PARTY INFORMATION**

**Plaintiff** **Yemenidjian, Armen**

*Lead Attorneys*

**Pisanelli, James J**  
*Retained*  
702-214-2100(W)

**Defendant** **Spirtos, Nicola**

**McNutt, Daniel R.**  
*Retained*  
702-384-1170(W)

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

11/04/2019



Initial Appearance Fee Disclosure  
Filed By: Plaintiff Yemenidjian, Armen  
*Initial Appearance Fee Disclosure*

11/04/2019



Complaint  
Filed By: Plaintiff Yemenidjian, Armen  
*Complaint for Conspiracy, Slander and Damages*

11/15/2019



Acceptance of Service  
Filed By: Plaintiff Yemenidjian, Armen  
*Acceptance Of Service*

12/10/2019



Initial Appearance Fee Disclosure  
*Initial Appearance Fee Disclosure*

12/10/2019



Motion to Dismiss  
Filed By: Defendant Spirtos, Nicola  
*Special Motion to Dismiss Pursuant to NRS 41.660, or in the alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)*

12/10/2019



Appendix

# CASE SUMMARY

CASE NO. A-19-804785-C

Filed By: Defendant Spirtos, Nicola

*Appendix of Exhibits in Support of Special Motion to Dismiss Pursuant to NRS 41.660, or in the alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)*

12/11/2019



Clerk's Notice of Hearing

*Notice of Hearing*

12/30/2019



Stipulation and Order

Filed by: Defendant Spirtos, Nicola

*Stipulation and Order to Continue Hearing on Defendant's Special Motion to Dismiss Pursuant to NRS 41.660, Or In the Alternative, Motion to Dismiss Pursuant ti NRCP 12(b)(5)*

12/30/2019



Notice of Entry

Filed By: Defendant Spirtos, Nicola

*Notice of Entry of Order*

01/06/2020



Opposition to Motion to Dismiss

Filed By: Plaintiff Yemenidjian, Armen

*Opposition to Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(50)*

01/16/2020



Reply in Support

Filed By: Defendant Spirtos, Nicola

*Reply in Support of Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(6)*

03/05/2020



Recorders Transcript of Hearing

*Recorder's Transcript of Hearing Re Special Motion to Dismiss Pursuant to NRS 41.660, or In the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5) January 23, 2020*

03/06/2020



Order

*Order Re: Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5)*

03/10/2020



Notice of Entry of Order

Filed By: Plaintiff Yemenidjian, Armen

*Notice of Entry of Order Re: Special Motion to Dismiss*

03/26/2020



Notice of Appeal

Filed By: Defendant Spirtos, Nicola

*Notice of Appeal*

03/26/2020



Case Appeal Statement

Filed By: Defendant Spirtos, Nicola

*Case Appeal Statement*

## **DISPOSITIONS**

03/06/2020

**Order of Dismissal Without Prejudice** (Judicial Officer: Johnson, Susan)

Debtors: Armen Yemenidjian (Plaintiff)

Creditors: Nicola Spirtos (Defendant)

Judgment: 03/06/2020, Docketed: 03/06/2020

Comment: Certain Claim

## **HEARINGS**

01/14/2020


**CANCELED Motion to Dismiss** (8:30 AM) (Judicial Officer: Johnson, Susan)



EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-19-804785-C**

01/23/2020	<p><i>Vacated - Set in Error</i>  <i>Defendant's Special Motion to Dismiss Pursuant to NRS 41.660, or in the alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)</i></p> <p> <b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Johnson, Susan)  <i>Special Motion to Dismiss Pursuant to NRS 41.660, or in the alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>  12/24/2019      <i>Continued to 01/23/2020 - Stipulation and Order - Yemenidjian, Armen; Spirtos, Nicola</i></p> <p>Decision Made;  Journal Entry Details:  <i>Argument by counsel regarding the Motion to Dismiss. Court advised counsel that it would like to review the authorities and would issue a decision from chambers. ;</i></p>	
------------	---	--

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Spirtos, Nicola	
Total Charges	247.00
Total Payments and Credits	24.00
<b>Balance Due as of 3/30/2020</b>	<b>223.00</b>
<b>Plaintiff</b> Yemenidjian, Armen	
Total Charges	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 3/30/2020</b>	<b>0.00</b>

# DISTRICT COURT CIVIL COVER SHEET

County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

**CASE NO: A-19-804785-C**  
**Department 22**

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

Plaintiff(s) (name/address/phone): <p style="text-align: center;">ARMEN YEMENIDJIAN, an individual</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">NICOLA SPIRTOS, an individual</p>
Attorney (name/address/phone): <p style="text-align: center;">James J. Pisanelli, Esq., Bar No. 4027 Todd L. Bice, Esq., Bar No. 4534 PISANELLI BICE, PLLC 400 S. 7th St. #300, Las Vegas, NV 89101, 702-214-2100</p>	Attorney (name/address/phone): 

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


### Civil Case Filing Types

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

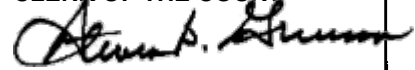
*Business Court filings should be filed using the Business Court civil coversheet.*

**November 4, 2019**

Date

  
 Signature of initiating party or representative

*See other side for family-related case filings.*



1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 **ARMEN YEMENIDJIAN, an individual,**  
5  
6 **Plaintiff,**

**Case No. A-19-804785-C**  
**Dept. No. XXII**

7 **Vs.**

8 **NICOLA SPIRTOS, an individual; DOES**  
9 **1-20; and ROES 1-20,**  
10 **Defendants.**

11 **ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE**  
12 **ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**

13 This matter, concerning Defendant NICOLA SPIRTOS' Special Motion to Dismiss Pursuant  
14 to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5) filed December  
15 10, 2019, came on for hearing on the 23<sup>rd</sup> day of January 2020 at the hour of 9:00 a.m. before  
16 Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with  
17 JUDGE SUSAN JOHNSON presiding; Plaintiff ARMEN YEMENIDJIAN appeared by and through  
18 his attorney, TODD L. BICE, ESQ. of the law firm, PISANELLI BICE; and Defendant NICOLA  
19 SPIRTOS appeared by and through his attorneys, DANIEL R. MCNUTT, ESQ. and EMILY A.  
20 BUCHWALD, ESQ. of the law firm, MCNUTT LAW FIRM. Having reviewed the papers and  
21 pleadings on file herein, heard oral arguments of the lawyers and taken this matter under  
22 advisement, this Court makes the following Findings of Fact and Conclusions of Law:  
23  
24

25 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

26 **1.** On November 4, 2019, Plaintiff ARMEN YEMENIDJIAN filed his lawsuit against  
27 Defendant NICOLA SPIRTOS, asserting claims of civil conspiracy and slander *per se* based upon  
28

1 allegations DR. SPIRTOS made knowingly false and slanderous statements MR. YEMENIDJIAN  
2 engaged in corruption to secure state licenses to legally dispense cannabis or marijuana to the public  
3 for both medical and recreational purposes. DR. SPIRTOS is also alleged to have engaged in a  
4 campaign with others intending an unlawful objective of harming MR. YEMENIDJIAN. By way of  
5 his Complaint, MR. YEMENIDJIAN seeks, *inter alia*, compensatory and punitive damages. DR.  
6 SPIRTOS now specially moves this Court for dismissal of the Complaint under the State's Anti-  
7 SLAPP<sup>1</sup> statutes, i.e. NRS 41.635, *et seq.*, or alternative, under Rule 12(b)(5) of the Nevada Rules of  
8 Civil Procedure (NRCP).  
9

10       2. As DR. SPIRTOS now moves for dismissal, *inter alia*, under NRCP 12(b)(5), this  
11 Court must construe the pleadings liberally, and thus, assumes the statements made within MR.  
12 YEMENIDJIAN'S Complaint are true. MR. YEMENIDJIAN is alleged to be one of the most  
13 successful businessmen in the growing legal cannabis industry, and co-founder and Chief Executive  
14 Officer (CEO) of INTEGRAL ASSOCIATES doing business as ESSENCE. Under MR.  
15 YEMENIDJIAN'S direction, ESSENCE made fifteen (15) different license applications to legally  
16 dispense cannabis or marijuana for both medical and recreational use in the State of Nevada and it  
17 was awarded all 15 licenses. Similarly, in California, ESSENCE submitted seven (7) different  
18 applications and was awarded all 7 licenses there. The entities under MR. YEMENIDJIAN  
19 consistently have been ranked by government graders "as being top tier in the industry."<sup>2</sup>  
20  
21

22       3. The Complaint further alleges the track record of DR. SPIRTOS is in "stark  
23 contrast"<sup>3</sup> with that of MR. YEMENIDJIAN. DR. SPIRTOS, through his company, D.H.  
24 FLAMINGO, INC., applied for one license to legally dispense cannabis or marijuana in Nevada, and  
25 initially, it was rejected by the State's Department of Taxation. Ultimately, DR. SPIRTOS was able  
26

27 <sup>1</sup>"SLAPP" is the acronym for "Strategic Litigation Against Public Policy."  
28 <sup>2</sup>See Plaintiff's Complaint, p. 3, paragraph 9, filed November 4, 2019.

<sup>3</sup>*Id.*, paragraph 10.

1 to enter the medical marijuana industry “by default”<sup>4</sup> when the state’s legislature increased the  
2 number of licenses. In 2018, DR. SPIRTOS and D.H. FLAMINGO, INC. sought a license to  
3 dispense recreational marijuana, but were rejected by Nevada’s licensing officials.

4       4. Upon learning of the State’s rejection in 2018, DR. SPIRTOS contacted his good  
5 friend and his children’s godfather,<sup>5</sup> GEORGE KELESIS, who served on the Nevada Tax  
6 Commission, the governmental body that oversees the department responsible for selecting the  
7 successful recreational licenses. DR. SPIRTOS is also alleged to have had “as many as a dozen  
8 private cell conversations with Kelesis about undoing the result of his unsuccessful application.”<sup>6</sup>  
9 According to Plaintiff’s Complaint, MR. KELESIS criticized the Department of Taxation’s selection  
10 process in a manner designed to benefit his friend at a tax commission meeting, but never disclosed  
11 DR. SPIRTOS’ prior contacts with him.  
12

13       5. On January 18, 2019, at the Governor’s Inaugural Ball held at the Aria Hotel and  
14 Casino, DR. SPIRTOS approached lobbyist and former assemblyman, JOHN OCEGUERA, an  
15 individual he (SPIRTOS) knew worked in the cannabis industry with MR. YEMENIDJIAN.  
16 According to the Complaint, DR. SPIRTOS told MR. OCEGUERA MR. YEMENIDJIAN “had  
17 engaged in outright corruption in order to secure licenses.”<sup>7</sup> MR. YEMENIDJIAN also believes  
18 DR. SPIRTOS has made the same or similar slanderous statements to others.  
19  
20

21       6. The Complaint also alleges DR. SPIRTOS has admitted under oath he has no factual  
22 basis for accusing MR. YEMENIDJIAN of such impropriety. DR. SPIRTOS fabricated the story as  
23 he hoped it would generate adverse publicity and interfere with MR. YEMENIDJIAN’S ability to  
24 receive future licenses.  
25

---

26 <sup>4</sup>*Id.*

27 <sup>5</sup>As set forth in Plaintiff’s Complaint, p. 4, paragraph 14, DR. SPIRTOS “and Kelesis attend the same Greek  
church and under their religion, their children are the equivalent of cousins and also are the godparents to each other’s  
respective children.”

28 <sup>6</sup>See Complaint, p. 4, paragraph 13.

<sup>7</sup>*Id.*, p. 4, Paragraph 18.

1           7.       DR. SPIRTOS now moves this Court for dismissal under both the anti-SLAPP  
2 statutes and NRCP 12(b)(5) given the following reasons. *First*, with respect to his conversation with  
3 MR. OCEGUERA at the Governor's Ball in January 2019, DR. SPIRTOS argues he expressed his  
4 opinion to MR. OCEGUERA and others the Department of Taxation's application process had been  
5 corrupted; he claims he never mentioned MR. YEMENIDJIAN by name or suggested he  
6 (YEMENIDJIAN) was involved in corrupt or criminal activity. *Second*, notwithstanding that  
7 premise, DR. SPIRTOS' comments made at the inaugural gala "were pertinent to a pending case  
8 filed by" D.H. FLAMINGO, INC. and thus, Plaintiff's Complaint is barred by the litigation  
9 privilege, and further, they involve matters of public interest in a place open to the public. *Third*, the  
10 Complaint was filed just one month after DR. SPIRTOS was deposed in a lawsuit related to the  
11 Department of Taxation's application where he revealed he had been cooperating with the Federal  
12 Bureau of Investigation (FBI) in its investigation of the Department; the timing of the lawsuit shows  
13 MR. YEMENIDJIAN'S attempt to intimidate and silence DR. SPIRTOS. *Fourth*, the conspiracy  
14 claim fails as it (1) was brought against only one defendant, (2) does not identify DR. SPIRTOS'  
15 alleged co-conspirators, (3) is devoid of any facts concerning any concerted acts between DR.  
16 SPIRTOS and his unnamed co-conspirators and (4) is redundant of the slander claim. *Fifth*, the  
17 slander *per se* claim fails as MR. YEMENIDJIAN is a limited purpose public figure in the marijuana  
18 industry, and the Complaint sets forth no facts that would support an inference DR. SPIRTOS acted  
19 with actual malice; economic motives alone cannot establish actual malice as a matter of law. *Sixth*,  
20 the punitive damages prayer fails as the Complaint does not allege any facts to support an inference  
21 MR. YEMENIDJIAN suffered cruel and unjust hardships or DR. SPIRTOS knew he would suffer  
22 such adversities.

23           8.       MR. YEMENIDJIAN opposes the motions upon the following bases: *First*,  
24 Nevada's anti-SLAPP statutes protect citizens making truthful statements in good faith about matters  
25  
26  
27  
28

1 of public importance, “principally when those statements are made to government officials in an  
2 attempt to achieve some legitimate government action.”<sup>8</sup> Here, DR. SPIRTOS claims he never  
3 disparaged MR. YEMENIDJIAN which takes the matter outside the protections of the anti-SLAPP  
4 statutes. That is, a party cannot claim the statutes’ protection when he simultaneously claims he  
5 made no statement that falls within the laws’ purview. Notwithstanding that premise, DR. SPIRTOS  
6 did make slanderous and false statements as evidenced by MR. OCEGUERA’S affidavit attached as  
7 Exhibit 1 to the Opposition and such are not protected by the anti-SLAPP statutes. *Second*, the  
8 litigation privilege does not apply to DR. SPIRTOS’ statements made to MR. OCEGUERA at the  
9 January 2019 Governor’s Ball. *Third*, although MR. YEMENIDJIAN disagrees he is a “limited-  
10 purpose public figure,” the argument he falls in that category is not relevant as the Complaint alleges  
11 MR. SPIRTOS made slanderous comments with actual malice. *Fourth*, and notwithstanding the  
12 aforementioned, when presented with a Motion to Dismiss under NRCP 12(b)(5), this Court must  
13 accept all factual allegations contained in the Complaint as true. Here, MR. YEMENIDJIAN’S  
14 allegations plainly state a claim for conspiracy and entitlement to punitive damages.

### 17 CONCLUSIONS OF LAW

18 1. NRCP 12(b) specifically provides in pertinent part: “Every defense, in law or fact, to  
19 a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim,  
20 shall be asserted in the responsive pleading thereto if one is required, except that the following  
21 defenses may at the option of the pleader be made by motion: ... (5) failure to state a claim upon  
22 which relief may be granted, ....” Case law interpreting NRCP 12(b)(5) provides a complaint will  
23 not be dismissed for failure to state a claim unless it appears beyond a doubt the plaintiff could prove  
24 no set of facts which, if accepted by the trier of fact, would entitled him or her to relief. Simpson v.  
25

---

26  
27  
28 <sup>8</sup>See Opposition to Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss  
Pursuant to NRCP 12(b)(5) filed January 6, 2020, p. 1.

1 Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). That is, on a motion to dismiss for failure  
2 to state a claim for relief, the trial court and the Supreme Court must construe the pleading liberally  
3 and draw every fair intendment in favor of the plaintiff. Merluzzi v. Larson, 96 Nev. 409, 411, 610  
4 P.2d 739, 741 (1980), *overruled on other grounds*, Smith v. Clough, 106 Nev. 568, 796 P.2d 592  
5 (1990).

6  
7 2. Pursuant to NRS 41.660(1), Nevada's anti-SLAPP statute, a defendant may file a  
8 special motion to dismiss if the complaint is based upon defendant's "good faith communication in  
9 furtherance of the right to petition or the right to free speech in direct connection with an issue of  
10 public concern." NRS 41.637 identifies four types of communication that constitute a "[g]ood faith  
11 communication in furtherance of the right to petition or the right to free speech in direct connection  
12 with an issue of public concern:"

13  
14 1. Communication that is aimed at procuring any governmental or electoral  
action, result or outcome;

15 2. Communication of information or a complaint to a Legislator, officer or  
16 employee of the Federal Government, this state or a political subdivision of this state,  
regarding a matter reasonably of concern to the respective government entity;

17 3. Written or oral statement made in direct connection with an issue under  
18 consideration by a legislative, executive or judicial body, or any other official proceeding  
authorized by law; or

19 4. Communication made in direct connection with an issue of public interest in a  
place open to the public or in a public forum, ....

20 3. "[A] moving party seeking protection under NRS 41.660 need only demonstrate [by a  
21 preponderance of evidence] that his or her conduct falls within one of [NRS 41.637's] four...defined  
22 categories of speech,"<sup>9</sup> and the statement is made truthfully or without knowledge of its falsehood.  
23 See NRS 41.637. "If a defendant makes this initial showing, the burden shifts to the plaintiff to  
24 show with prima facie evidence a probability of prevailing on the claim." See Shapiro v. Welt, 133  
25 Nev. 35, 38, 389 P.3d 262, 267 (2017), *quoting* NRS 41.660(3)(b).

26  
27  
28 <sup>9</sup>See Coker v. Sassone, 135 Nev. 8, 12, 432 P.3d 746, 749-750 (2019), *citing* Delucci v. Songer, 133 Nev. 290,  
299, 396 P.3d 826, 833 (2017).



1           4.       Considering the first of the four defined categories of speech, i.e. “[c]ommunication  
2 that is aimed at procuring any governmental or electoral action, result or outcome,” the Complaint  
3 does not specify what conversations DR. SPIRTOS had with MR. KELESIS, although, allegedly,  
4 there were many. Notwithstanding that premise, any alleged communications made by DR.  
5 SPIRTOS to MR. KELESIS, arguably, were aimed at procuring governmental action, result or  
6 outcome, i.e. undoing the result of his unsuccessful application. Further, the Complaint makes no  
7 mention whether the statements DR. SPIRTOS allegedly made to MR. KELESIS were untrue or  
8 with knowledge of their falsehood. The Complaint is also deficient as to the harm MR.  
9 YEMENIDJIAN may have suffered as the allegation is MR. KELESIS was critical of the  
10 Department of Taxation’s selection process as a result of the communications. Hence, while,  
11 arguably, the anti-SLAPP statute may preclude MR. YEMENIDJIAN’S slander claim based upon  
12 communications between DR. SPIRTOS and MR. KELESIS, this Court finds the Second Cause of  
13 Action as it relates to the SPIRTOS-KELESIS conversations to be deficiently pled under NRCP  
14 8(a). It therefore grants the Motion to Dismiss under NRCP 12(b)(5) *without prejudice* as it pertains  
15 to the Second Cause of Action concerning DR. SPIRTOS’ alleged conversations with MR.  
16 KELESIS.

17  
18  
19           DR. SPIRTOS’ communication with MR. OCEGUERA at the January 2019 Governor’s  
20 Inaugural Ball, on the other hand, was not aimed at procuring governmental action, result or  
21 outcome. Although MR. OCEGUERA, at one time, was an elected official,<sup>10</sup> he did not serve in  
22 such a capacity in January 2019 when the alleged statement MR. YEMENIDJIAN “had engaged in  
23 outright corruption in order to secure licenses”<sup>11</sup> was made by DR. SPIRTOS. MR. OCEGUERA,  
24 as a former assemblyman, could not have procured any governmental action, result or outcome upon  
25

26  
27           <sup>10</sup>This Court understands MR. OCEGUERA served as State Assemblyman, District 16 from 2000-2012, and  
28 was elected as Speaker of the Assembly by his peers in 2011.

<sup>11</sup>*Id.*, p. 4, Paragraph 18.

1 receiving DR. SPIRTOS' communication. Further, such statements are alleged to be false and  
2 slanderous within the Complaint. It follows, then, DR. SPIRTOS' discussion with MR.  
3 OCEGUERA at the January 2019 Governor's Ball does not fall within the first of the four defined  
4 categories of speech constituting a "[g]ood faith communication in furtherance of the right to  
5 petition or the right to free speech in direct connection with an issue of public concern."

6  
7 5. For reasons set forth above, this Court concludes DR. SPIRTOS' 2019  
8 communication to MR. OCEGUERA does not fall within the second of the four defined categories  
9 of speech, i.e. "[c]ommunication of information or a complaint to a Legislator, officer or employee  
10 of the Federal Government, this state or a political subdivision of this state, regarding a matter  
11 reasonably of concern to the respective government entity." Again, in January 2019, MR.  
12 OCEGUERA was not a legislator or other elected or governmental official, and the statements are  
13 alleged to be false and slanderous. This Court, likewise, determines DR. SPIRTOS' comments to  
14 MR. OCEGUERA in 2019 do not fall within the third of the four defined categories, i.e. "[w]ritten  
15 or oral statement made in direct connection with an issue under consideration by a legislative,  
16 executive or judicial body, or any other official proceeding authorized by law." Notwithstanding  
17 the fact MR. OCEGUERA was not a governmental official at the time, there was nothing to suggest  
18 the oral communication was "made in direct connection with an issue under consideration by a  
19 legislative, executive or judicial body, or any other official proceeding authorized by law."  
20  
21

22 6. The next issue is whether DR. SPIRTOS' January 2019 statements to MR.  
23 OCEGUERA falls within the fourth defined category, i.e. "communication made in direct  
24 connection with an issue of public interest in a place open to the public or in a public forum." As  
25 addressed in Shapiro, 133 Nev. at 39, 389 Nev. at 268, an issue of public interest as distinguished  
26 from a private one (1) "does not equate with mere curiosity;" and (2) should be something of  
27 concern to a substantial number of people, a matter of concern to a speaker and a relatively small  
28

1 specific audience is not a matter of public interest.” Further, “there should be some degree of  
2 closeness between the challenged statements and the asserted public interest—the assertion of a  
3 broad and amorphous public interest is not sufficient.” In addition, the focus of the speaker’s  
4 conduct should be the public interest rather than a mere effort to gather ammunition for another  
5 round of private controversy” and “a person cannot turn otherwise private information into a matter  
6 of public interest simply by communicating it to a large number of people.” This Court again notes  
7 no communication falls within the purview of NRS 41.660 unless it is “truthful or is made without  
8 knowledge of its falsehood.”  
9

10 This Court concludes the communication does not fall within the fourth category for at least  
11 two reasons. *First*, DR. SPIRTOS making an accusation to one person his (SPIRTOS’) competitor  
12 engaged “in outright corruption in order to secure licenses”<sup>12</sup> is not made in direct connection with  
13 an issue of public interest as defined in *Shapiro*. *Secondly*, the statement was not made “in a place  
14 open to the public or in a public forum.” Indeed, while there were perhaps hundreds, if not  
15 thousands of attendees at a governor’s inaugural ball, such an event or party is either by invitation or  
16 paid ticket, meaning not just anyone may come and join. Notwithstanding that point, *even if* the Ball  
17 were considered a “public forum,” the statement allegedly was made privately to MR. OCEGUERA.  
18 In addition, the Complaint plainly alleges the statement made to MR. OCEGUERA was false and  
19 slanderous. In short, this Court concludes dismissal of MR. YEMENIDJIAN’S Complaint under the  
20 anti-SLAPP statute is not warranted. The Special Motion to Dismiss under the Anti-SLAPP statutes  
21 as it applies to DR. SPIRTOS’ January 2019 utterances to MR. OCEGUERA, therefore, is denied.  
22

23  
24 7. DR. SPIRTOS argues, even if it denies his special motion under the Anti-SLAPP  
25 statute, this Court should dismiss the Complaint under NRCP 12(b)(5) for several reasons, including  
26 it being barred by the litigation privilege “which protects all statements pertinent to the subject  
27

---

28 <sup>12</sup>*Id.*, p. 4, Paragraph 18.

1 pending litigation.”<sup>13</sup> In this Court’s view, DR. SPIRTOS’ argument is misplaced and construes the  
2 litigation privilege in an overly broad fashion. Considering the authority DR. SPIRTOS cited, the  
3 litigation privilege is recognized as “the long-standing common law rule that communications  
4 uttered or published in the course of judicial proceedings are absolutely privileged,” rendering those  
5 who made the communications immune from civil liability. Greenberg Traurig v. Frias Holding  
6 Co., 130 Nev. 627, 630, 331 P.3d 901 (2014), *quoting* Fink v. Oshins, 118 Nev. 428, 432-433, 49  
7 P.3d 640, 643 (2002), *in turn, quoting* Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657  
8 P.2d 101, 104 (1983). “The policy behind the [litigation] privilege, as it applies to attorneys  
9 participating in judicial proceedings, is to grant them ‘as officers of the court the utmost freedom in  
10 their efforts to obtain justice for their clients.’” *Id.*, 130 Nev. at 630, *quoting* Fink, 118 Nev. at 433,  
11 49 P.3d at 643, *in turn, quoting* Bull v. McCuskey, 96 Nev. 706, 712, 615 P.2d 957, 961 (1980),  
12 *abrogated on other grounds by* Ace Truck & Equipment Rentals, Inc. v. Kahn, 103 Nev. 503, 746  
13 P.2d 132 (1987), *abrogated by* Bongiovi v. Sullivan, 122 Nev. 556, 138 P.3d 433 (2006). Notably,  
14 the privilege also applies to communications made by either an attorney or non-lawyer that are  
15 related to ongoing litigation or future litigation contemplated in good faith. Jacobs v. Adelson, 130  
16 Nev. 408, 413, 325 P.3d 1282, 1285 (2014). Further, for a statement to fall within the scope of  
17 absolute litigation privilege, it must be made to a recipient who has a significant interest in the  
18 outcome of the litigation or who has a role in the litigation. Shapiro, 133 Nev. at 41, 389 P.3d at  
19 269, *citing* Fink, 118 Nev. at 436, 49 P.3d at 645. In order to determine whether a person who is not  
20 directly involved in the judicial proceeding still may be “significantly interested in the proceeding,”  
21 this Court must review “the recipient’s legal relationship to the litigation, not their interest as an  
22 observer.” *Id.*, *citing* Jacobs, 130 Nev. at 416, 325 P.3d at 1287. In sum, contrary to what DR.  
23  
24  
25  
26

---

27  
28 <sup>13</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
NRCP 12(b)(5) filed December 10, 2019, p. 3.

1 SPIRTOS argued in his motion, the litigation privilege does not “protect[] all statements pertinent to  
2 the subject pending litigation.”<sup>14</sup>

3 8. Here, DR. SPIRTOS claims he is entitled to the protections of the absolute litigation  
4 privilege as to his alleged utterance to MR. OCEGUERA at the Governor’s Ball as such relates to  
5 ongoing litigation, and specifically the case, In Re: D.O.T. Litigation, Case No. A-19-787004-B,  
6 filed in Department XI of the Eighth Judicial District Court;<sup>15</sup> that case, along with the consolidated  
7 matters, deals with the Department of Taxation’s process of selecting licenses to legally dispense  
8 recreational and/or medical marijuana or cannabis. It is undisputed his statements were not uttered  
9 or published in the course of judicial proceeding, although, arguably, they are related to the ongoing  
10 litigation. The next issue is whether the recipient of the utterance had a significant interest in the  
11 proceeding. In this regard, DR. SPIRTOS claims MR. OCEGUERA has a significant interest, not as  
12 a party, but given his relationship to MR. YEMENIDJIAN as his paid lobbyist. MR.  
13 OCEGUERA’S work as a lobbyist for MR. YEMENIDJIAN, however, does not equate to him  
14 having a role in or legal relationship to DR. SPIRTOS’ company’s litigation lodged against the  
15 Department of Taxation and/or MR. YEMENIDJIAN’S entity, ESSENCE. At best, MR.  
16 OCEGUERA may have an interest in the litigation as an observer given his business relationship  
17 with MR. YEMENIDJIAN. Accordingly, this Court concludes DR. SPIRTOS is not entitled to the  
18 protections of the absolute litigation privilege as it relates to his statements made to MR.  
19 OCEGUERA in January 2019.  
20  
21  
22

23 9. DR. SPIRTOS also argues the slander *per se* claim fails as MR. YEMENIDJIAN is a  
24 limited purpose public figure in the marijuana industry, and the Complaint sets forth no facts that  
25 would support an inference DR. SPIRTOS acted with actual malice. This Court disagrees with DR.  
26

---

27 <sup>14</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
28 NRCP 12(b)(5) filed December 10, 2019, p. 3.

<sup>15</sup>Such case is consolidated with seven (7) other cases.

1 SPIRTOS' reading of the Complaint. The pleading's first lines indicate DR. SPIRTOS is an  
2 "admitted liar," who "has been spreading lies – false accusations of crimes -" against MR.  
3 YEMENIDJIAN. The Complaint further alleges on page 4, DR. SPIRTOS' statement to MR.  
4 OCEGUERA "falsely accused Mr. Yemenidjian of criminal activity, just as Spirtos had intended it."  
5 On page 5 of the Complaint, DR. SPIRTOS is alleged to have admitted, even under oath, he had no  
6 factual basis for accusing MR. YEMENIDJIAN of impropriety. Further, the Complaint avers DR.  
7 SPIRTOS "and others have undertaken a campaign to lie about and slander Mr. Yemenidjian."<sup>16</sup> In  
8 short, while the Complaint admittedly does not specifically include the words "actual malice," the  
9 pleading is replete with language synonymous with those terms to place DR. SPIRTOS on notice of  
10 the grounds for relief. *See* NRCP 8(a).

12       10. DR. SPIRTOS also proposes MR. YEMENIDJIAN'S First Cause of Action for "civil  
13 conspiracy" should be dismissed for four reasons: *First*, DR. SPIRTOS is the only non-fictitious  
14 defendant named in the claim, and Nevada law requires concerted action by "two or more persons"<sup>17</sup>  
15 in a conspiracy claim. *Second*, while the Complaint indicates DR. SPIRTOS "undertook a campaign  
16 with others," it failed to identify the "others." *Third*, the Complaint does not provide DR. SPIRTOS  
17 fair notice of the supposed conspiracy "because it is devoid of any factual allegations concerning an  
18 agreement to conspire and concerned actions engaged in by the co-conspirators."<sup>18</sup> *Fourth*, to the  
19 extent MR. YEMENIDJIAN alleges DR. SPIRTOS conspired to slander him, the conspiracy claim  
20 is redundant or duplicative, and thus, should be dismissed.

22       11. In Nevada, civil conspiracy liability may attach where two or more persons undertake  
23 some concerted action with the intent to commit an unlawful objective, not necessarily a tort. Cadle  
24

26  
27 <sup>16</sup>See Complaint, p. 5, paragraph 22.

<sup>17</sup>Citing Cadle Co. v. Woods & Erickson, LLP, 131 Nev. 114, 117-118, 345 P.3d 1049, 1052 (2015).

28 <sup>18</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
NRCP 12(b)(5), p. 11.

1 Co., 131 Nev. at 117-118. Here, after repeating and realleging the allegations contained in  
2 Paragraphs 1 through 24 of the Complaint, MR. YEMENIDJIAN alleged “[DR SPIRTOS]  
3 undertook a campaign with others intending to accomplish an unlawful objective for the purpose of  
4 harming [MR. YEMENIDJIAN].”<sup>19</sup> The Complaint also avers, p. 5, “Spirtos and others have  
5 undertaken a campaign to lie about and slander Mr. Yemenidjian.” In this Court’s view, the co-  
6 conspirators need not be specifically identified, and the reference to “others” are enough to state a  
7 claim for which relief may be granted under NRCP 8(a). For this reason, this Court denies DR.  
8 SPIRTOS’ motion brought under NRCP 12(b)(5) as it seeks dismissal of the Complaint’s First  
9 Cause of Action.  
10

11       12. DR. SPIRTOS next argues the punitive damages prayer fails as the Complaint does  
12 not allege any facts to support an inference MR. YEMENIDJIAN suffered cruel and unjust  
13 hardships or DR. SPIRTOS knew he would suffer such hardships. This Court disagrees with DR.  
14 SPIRTOS’ position. Whether the plaintiff suffered “cruel and unjust hardships” as a result of the  
15 defendant’s conduct is not what needs to be proved in order to recover punitive damages. NRS  
16 42.005(1) provides in salient part: “...in an action for the breach of an obligation not arising from  
17 contract, where it is proven by clear and convincing evidence that the defendant has been guilty of  
18 oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory  
19 damages, may recover damages for the sale of example and by way of punishing the defendant.”  
20 Case law, interpreting NRS 42.005, provides punitive damages are designed not to reward the victim  
21 but to punish the wrongdoer and deter fraudulent, malicious or oppressive conduct. *See Turnbow v.*  
22 *Department of Human Resources, Welfare Division*, 109 Nev. 493, 496, 853 P.2d 97, 99 (1993).  
23 That is, injury a plaintiff may have suffered is encompassed within compensatory, not punitive  
24 damages. *See Lombardi v. Maryland Casualty co.*, 894 F.Supp. 369, 371 (D.C. Nev. 1995). Hence,  
25  
26  
27  
28

---

<sup>19</sup>See Complaint, p. 6, paragraph 26.

1 whether MR. YEMENIDJIAN suffered cruel and unjust hardship as a result of DR. SPIRTOS'  
2 utterances is not an element necessary to be proved for punitive damages to be awarded. Further,  
3 the Complaint clearly states, p. 6, paragraph 28, "SpiRTOS' conduct was undertaken with oppression  
4 and in conscious disregard of Yemenidjian's rights and entitles Mr. Yemenidjian to an award of  
5 punitive damages...." In short, the Complaint does state the basis for an award of punitive damages.  
6 See NRS 42.005(1).  
7

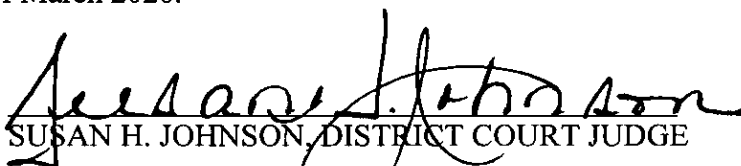
8 13. All in all, this Court concludes dismissal of the Complaint is not warranted under the  
9 anti-SLAPP statute, NRS 41.660. In addition, the Complaint does state a claim for which relief may  
10 be granted with respect to the First Cause of Action (civil conspiracy). It also states a claim for  
11 which relief may be granted with respect to the Second Cause of Action (slander *per se*), except as  
12 to the alleged conversations DR. SPIRTOS allegedly had with MR. KELESIS; in this regard, this  
13 Court concludes the allegations are insufficiently pled under NRCP 8(a).  
14

15 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant NICOLA  
17 SPIRTOS' Special Motion to Dismiss Pursuant to NRS 41.660 filed December 10, 2019 is denied.  
18

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant NICOLA  
20 SPIRTOS' Motion to Dismiss Pursuant to NRCP 12(b)(5) is granted in part, denied in part. The  
21 motion is granted, *without prejudice*, with respect to the alleged conversations Defendant had with  
22 MR. KELESIS as this Court determines such averments were insufficiently pled under NRCP 8(a).  
23 The motion is denied in all other respects.

24 DATED this 5<sup>th</sup> day of March 2020.

25  
26   
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
28

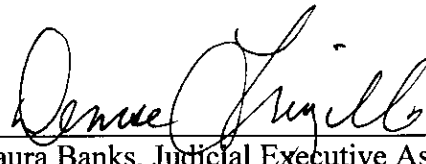


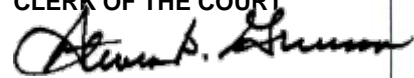
**CERTIFICATE OF SERVICE**

I hereby certify, on the 5<sup>th</sup> day of March 2020, I electronically served (E-served), placed within the attorneys' folders' located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5) to the following attorneys of record, and first-class postage was fully prepaid thereon:

TODD L. BICE, ESQ.  
PISANELLI BICE, PLLC  
400 South Seventh Street, Suite 300  
Las Vegas, Nevada 89101  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)

DANIEL R. MCNUTT, ESQ.  
MCNUTT LAW FIRM, P.C.  
625 South Eighth Street  
Las Vegas, Nevada 89101  
[drm@mcnuttlaw.firm.com](mailto:drm@mcnuttlaw.firm.com)

  
for Laura Banks, Judicial Executive Assistant



James J. Pisanelli, Esq., Bar No. 4027  
[JJP@pisanellibice.com](mailto:JJP@pisanellibice.com)  
Todd L. Bice, Esq., Bar No. 4534  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)  
Jordan T. Smith, Esq., Bar No. 12097  
[JTS@pisanellibice.com](mailto:JTS@pisanellibice.com)  
Dustun H. Holmes, Esq., Bar No. 12776  
[DHH@pisanellibice.com](mailto:DHH@pisanellibice.com)  
PISANELLI BICE PLLC  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101  
Telephone: 702.214.2100  
Facsimile: 702.214.2101

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ARMEN YEMENIDJIAN, an individual,

Plaintiff,

v.

NICOLA SPIRTOS, an individual;  
DOES 1-20; and ROES 1-20,

Defendants.

Case No.: A-19-804785-C

Dept. No.: XXII

**NOTICE OF ENTRY OF ORDER RE:  
SPECIAL MOTION TO DISMISS**

Hearing Date: January 23, 2020

Hearing Time: 9:00 a.m.

PLEASE TAKE NOTICE that an "Order Re: Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)" was entered in the above-captioned matter on March 6, 2020, a true and correct copy of which is attached hereto.

DATED this 10th day of March, 2020.

PISANELLI BICE

By: 

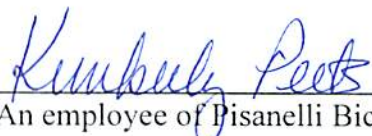
#13442

James J. Pisanelli, Esq., #4027  
Todd L. Bice, Esq., #4534  
Jordan T. Smith, Esq., #12097  
Dustun H. Holmes, Esq., #12776  
400 South 7th Street, Suite 300  
Las Vegas, Nevada 89101

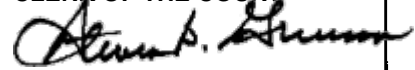
*Attorneys for Plaintiff*

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th  
3 day of March, 2020, I caused to be served via the Court's e-filing/e-service system true and  
4 correct copies of the above **NOTICE OF ENTRY OF ORDER** to all parties listed on the Court's  
5 Master Service List.

6  
7   
8 \_\_\_\_\_  
9 An employee of Pisanelli Bice PLLC

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
PISANELLI BICE PLLC  
400 SOUTH 7TH STREET, SUITE 300  
LAS VEGAS, NEVADA 89101  
702.214.2100



1 **ORDR**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 **ARMEN YEMENIDJIAN, an individual,**  
5  
6 **Plaintiff,**

**Case No. A-19-804785-C**  
**Dept. No. XXII**

7 **Vs.**

8 **NICOLA SPIRTOS, an individual; DOES**  
9 **1-20; and ROES 1-20,**  
10 **Defendants.**

11 **ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE**  
12 **ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**

13 This matter, concerning Defendant NICOLA SPIRTOS' Special Motion to Dismiss Pursuant  
14 to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5) filed December  
15 10, 2019, came on for hearing on the 23<sup>rd</sup> day of January 2020 at the hour of 9:00 a.m. before  
16 Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with  
17 JUDGE SUSAN JOHNSON presiding; Plaintiff ARMEN YEMENIDJIAN appeared by and through  
18 his attorney, TODD L. BICE, ESQ. of the law firm, PISANELLI BICE; and Defendant NICOLA  
19 SPIRTOS appeared by and through his attorneys, DANIEL R. MCNUTT, ESQ. and EMILY A.  
20 BUCHWALD, ESQ. of the law firm, MCNUTT LAW FIRM. Having reviewed the papers and  
21 pleadings on file herein, heard oral arguments of the lawyers and taken this matter under  
22 advisement, this Court makes the following Findings of Fact and Conclusions of Law:  
23  
24

25 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

26 **1.** On November 4, 2019, Plaintiff ARMEN YEMENIDJIAN filed his lawsuit against  
27 Defendant NICOLA SPIRTOS, asserting claims of civil conspiracy and slander *per se* based upon  
28

1 allegations DR. SPIRTOS made knowingly false and slanderous statements MR. YEMENIDJIAN  
2 engaged in corruption to secure state licenses to legally dispense cannabis or marijuana to the public  
3 for both medical and recreational purposes. DR. SPIRTOS is also alleged to have engaged in a  
4 campaign with others intending an unlawful objective of harming MR. YEMENIDJIAN. By way of  
5 his Complaint, MR. YEMENIDJIAN seeks, *inter alia*, compensatory and punitive damages. DR.  
6 SPIRTOS now specially moves this Court for dismissal of the Complaint under the State's Anti-  
7 SLAPP<sup>1</sup> statutes, i.e. NRS 41.635, *et seq.*, or alternative, under Rule 12(b)(5) of the Nevada Rules of  
8 Civil Procedure (NRCP).  
9

10       2. As DR. SPIRTOS now moves for dismissal, *inter alia*, under NRCP 12(b)(5), this  
11 Court must construe the pleadings liberally, and thus, assumes the statements made within MR.  
12 YEMENIDJIAN'S Complaint are true. MR. YEMENIDJIAN is alleged to be one of the most  
13 successful businessmen in the growing legal cannabis industry, and co-founder and Chief Executive  
14 Officer (CEO) of INTEGRAL ASSOCIATES doing business as ESSENCE. Under MR.  
15 YEMENIDJIAN'S direction, ESSENCE made fifteen (15) different license applications to legally  
16 dispense cannabis or marijuana for both medical and recreational use in the State of Nevada and it  
17 was awarded all 15 licenses. Similarly, in California, ESSENCE submitted seven (7) different  
18 applications and was awarded all 7 licenses there. The entities under MR. YEMENIDJIAN  
19 consistently have been ranked by government graders "as being top tier in the industry."<sup>2</sup>  
20  
21

22       3. The Complaint further alleges the track record of DR. SPIRTOS is in "stark  
23 contrast"<sup>3</sup> with that of MR. YEMENIDJIAN. DR. SPIRTOS, through his company, D.H.  
24 FLAMINGO, INC., applied for one license to legally dispense cannabis or marijuana in Nevada, and  
25 initially, it was rejected by the State's Department of Taxation. Ultimately, DR. SPIRTOS was able  
26

27 <sup>1</sup>"SLAPP" is the acronym for "Strategic Litigation Against Public Policy."  
28 <sup>2</sup>See Plaintiff's Complaint, p. 3, paragraph 9, filed November 4, 2019.

<sup>3</sup>*Id.*, paragraph 10.

1 to enter the medical marijuana industry “by default”<sup>4</sup> when the state’s legislature increased the  
2 number of licenses. In 2018, DR. SPIRTOS and D.H. FLAMINGO, INC. sought a license to  
3 dispense recreational marijuana, but were rejected by Nevada’s licensing officials.

4       4. Upon learning of the State’s rejection in 2018, DR. SPIRTOS contacted his good  
5 friend and his children’s godfather,<sup>5</sup> GEORGE KELESIS, who served on the Nevada Tax  
6 Commission, the governmental body that oversees the department responsible for selecting the  
7 successful recreational licenses. DR. SPIRTOS is also alleged to have had “as many as a dozen  
8 private cell conversations with Kelesis about undoing the result of his unsuccessful application.”<sup>6</sup>  
9 According to Plaintiff’s Complaint, MR. KELESIS criticized the Department of Taxation’s selection  
10 process in a manner designed to benefit his friend at a tax commission meeting, but never disclosed  
11 DR. SPIRTOS’ prior contacts with him.  
12

13       5. On January 18, 2019, at the Governor’s Inaugural Ball held at the Aria Hotel and  
14 Casino, DR. SPIRTOS approached lobbyist and former assemblyman, JOHN OCEGUERA, an  
15 individual he (SPIRTOS) knew worked in the cannabis industry with MR. YEMENIDJIAN.  
16 According to the Complaint, DR. SPIRTOS told MR. OCEGUERA MR. YEMENIDJIAN “had  
17 engaged in outright corruption in order to secure licenses.”<sup>7</sup> MR. YEMENIDJIAN also believes  
18 DR. SPIRTOS has made the same or similar slanderous statements to others.  
19  
20

21       6. The Complaint also alleges DR. SPIRTOS has admitted under oath he has no factual  
22 basis for accusing MR. YEMENIDJIAN of such impropriety. DR. SPIRTOS fabricated the story as  
23 he hoped it would generate adverse publicity and interfere with MR. YEMENIDJIAN’S ability to  
24 receive future licenses.  
25

---

26 <sup>4</sup>*Id.*

27 <sup>5</sup>As set forth in Plaintiff’s Complaint, p. 4, paragraph 14, DR. SPIRTOS “and Kelesis attend the same Greek  
church and under their religion, their children are the equivalent of cousins and also are the godparents to each other’s  
respective children.”

28 <sup>6</sup>See Complaint, p. 4, paragraph 13.

<sup>7</sup>*Id.*, p. 4, Paragraph 18.

1           7.       DR. SPIRTOS now moves this Court for dismissal under both the anti-SLAPP  
2 statutes and NRCP 12(b)(5) given the following reasons. *First*, with respect to his conversation with  
3 MR. OCEGUERA at the Governor's Ball in January 2019, DR. SPIRTOS argues he expressed his  
4 opinion to MR. OCEGUERA and others the Department of Taxation's application process had been  
5 corrupted; he claims he never mentioned MR. YEMENIDJIAN by name or suggested he  
6 (YEMENIDJIAN) was involved in corrupt or criminal activity. *Second*, notwithstanding that  
7 premise, DR. SPIRTOS' comments made at the inaugural gala "were pertinent to a pending case  
8 filed by" D.H. FLAMINGO, INC. and thus, Plaintiff's Complaint is barred by the litigation  
9 privilege, and further, they involve matters of public interest in a place open to the public. *Third*, the  
10 Complaint was filed just one month after DR. SPIRTOS was deposed in a lawsuit related to the  
11 Department of Taxation's application where he revealed he had been cooperating with the Federal  
12 Bureau of Investigation (FBI) in its investigation of the Department; the timing of the lawsuit shows  
13 MR. YEMENIDJIAN'S attempt to intimidate and silence DR. SPIRTOS. *Fourth*, the conspiracy  
14 claim fails as it (1) was brought against only one defendant, (2) does not identify DR. SPIRTOS'  
15 alleged co-conspirators, (3) is devoid of any facts concerning any concerted acts between DR.  
16 SPIRTOS and his unnamed co-conspirators and (4) is redundant of the slander claim. *Fifth*, the  
17 slander *per se* claim fails as MR. YEMENIDJIAN is a limited purpose public figure in the marijuana  
18 industry, and the Complaint sets forth no facts that would support an inference DR. SPIRTOS acted  
19 with actual malice; economic motives alone cannot establish actual malice as a matter of law. *Sixth*,  
20 the punitive damages prayer fails as the Complaint does not allege any facts to support an inference  
21 MR. YEMENIDJIAN suffered cruel and unjust hardships or DR. SPIRTOS knew he would suffer  
22 such adversities.

23           8.       MR. YEMENIDJIAN opposes the motions upon the following bases: *First*,  
24 Nevada's anti-SLAPP statutes protect citizens making truthful statements in good faith about matters  
25  
26  
27  
28

1 of public importance, “principally when those statements are made to government officials in an  
2 attempt to achieve some legitimate government action.”<sup>8</sup> Here, DR. SPIRTOS claims he never  
3 disparaged MR. YEMENIDJIAN which takes the matter outside the protections of the anti-SLAPP  
4 statutes. That is, a party cannot claim the statutes’ protection when he simultaneously claims he  
5 made no statement that falls within the laws’ purview. Notwithstanding that premise, DR. SPIRTOS  
6 did make slanderous and false statements as evidenced by MR. OCEGUERA’S affidavit attached as  
7 Exhibit 1 to the Opposition and such are not protected by the anti-SLAPP statutes. *Second*, the  
8 litigation privilege does not apply to DR. SPIRTOS’ statements made to MR. OCEGUERA at the  
9 January 2019 Governor’s Ball. *Third*, although MR. YEMENIDJIAN disagrees he is a “limited-  
10 purpose public figure,” the argument he falls in that category is not relevant as the Complaint alleges  
11 MR. SPIRTOS made slanderous comments with actual malice. *Fourth*, and notwithstanding the  
12 aforementioned, when presented with a Motion to Dismiss under NRCP 12(b)(5), this Court must  
13 accept all factual allegations contained in the Complaint as true. Here, MR. YEMENIDJIAN’S  
14 allegations plainly state a claim for conspiracy and entitlement to punitive damages.

### 17 CONCLUSIONS OF LAW

18 1. NRCP 12(b) specifically provides in pertinent part: “Every defense, in law or fact, to  
19 a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim,  
20 shall be asserted in the responsive pleading thereto if one is required, except that the following  
21 defenses may at the option of the pleader be made by motion: ... (5) failure to state a claim upon  
22 which relief may be granted, ....” Case law interpreting NRCP 12(b)(5) provides a complaint will  
23 not be dismissed for failure to state a claim unless it appears beyond a doubt the plaintiff could prove  
24 no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. Simpson v.  
25

---

26  
27  
28 <sup>8</sup>See Opposition to Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss  
Pursuant to NRCP 12(b)(5) filed January 6, 2020, p. 1.



1 Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). That is, on a motion to dismiss for failure  
2 to state a claim for relief, the trial court and the Supreme Court must construe the pleading liberally  
3 and draw every fair intendment in favor of the plaintiff. Merluzzi v. Larson, 96 Nev. 409, 411, 610  
4 P.2d 739, 741 (1980), *overruled on other grounds*, Smith v. Clough, 106 Nev. 568, 796 P.2d 592  
5 (1990).

6  
7 2. Pursuant to NRS 41.660(1), Nevada's anti-SLAPP statute, a defendant may file a  
8 special motion to dismiss if the complaint is based upon defendant's "good faith communication in  
9 furtherance of the right to petition or the right to free speech in direct connection with an issue of  
10 public concern." NRS 41.637 identifies four types of communication that constitute a "[g]ood faith  
11 communication in furtherance of the right to petition or the right to free speech in direct connection  
12 with an issue of public concern:"

13  
14 1. Communication that is aimed at procuring any governmental or electoral  
action, result or outcome;

15 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,  
16 regarding a matter reasonably of concern to the respective government entity;

17 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  
18 authorized by law; or

19 4. Communication made in direct connection with an issue of public interest in a  
place open to the public or in a public forum, ....

20 3. "[A] moving party seeking protection under NRS 41.660 need only demonstrate [by a  
21 preponderance of evidence] that his or her conduct falls within one of [NRS 41.637's] four...defined  
22 categories of speech,"<sup>9</sup> and the statement is made truthfully or without knowledge of its falsehood.  
23 See NRS 41.637. "If a defendant makes this initial showing, the burden shifts to the plaintiff to  
24 show with prima facie evidence a probability of prevailing on the claim." See Shapiro v. Welt, 133  
25 Nev. 35, 38, 389 P.3d 262, 267 (2017), *quoting* NRS 41.660(3)(b).

26  
27  
28 <sup>9</sup>See Coker v. Sassone, 135 Nev. 8, 12, 432 P.3d 746, 749-750 (2019), *citing* Delucci v. Songer, 133 Nev. 290,  
299, 396 P.3d 826, 833 (2017).

1           4.       Considering the first of the four defined categories of speech, i.e. “[c]ommunication  
2 that is aimed at procuring any governmental or electoral action, result or outcome,” the Complaint  
3 does not specify what conversations DR. SPIRTOS had with MR. KELESIS, although, allegedly,  
4 there were many. Notwithstanding that premise, any alleged communications made by DR.  
5 SPIRTOS to MR. KELESIS, arguably, were aimed at procuring governmental action, result or  
6 outcome, i.e. undoing the result of his unsuccessful application. Further, the Complaint makes no  
7 mention whether the statements DR. SPIRTOS allegedly made to MR. KELESIS were untrue or  
8 with knowledge of their falsehood. The Complaint is also deficient as to the harm MR.  
9 YEMENIDJIAN may have suffered as the allegation is MR. KELESIS was critical of the  
10 Department of Taxation’s selection process as a result of the communications. Hence, while,  
11 arguably, the anti-SLAPP statute may preclude MR. YEMENIDJIAN’S slander claim based upon  
12 communications between DR. SPIRTOS and MR. KELESIS, this Court finds the Second Cause of  
13 Action as it relates to the SPIRTOS-KELESIS conversations to be deficiently pled under NRCP  
14 8(a). It therefore grants the Motion to Dismiss under NRCP 12(b)(5) *without prejudice* as it pertains  
15 to the Second Cause of Action concerning DR. SPIRTOS’ alleged conversations with MR.  
16 KELESIS.

17  
18  
19           DR. SPIRTOS’ communication with MR. OCEGUERA at the January 2019 Governor’s  
20 Inaugural Ball, on the other hand, was not aimed at procuring governmental action, result or  
21 outcome. Although MR. OCEGUERA, at one time, was an elected official,<sup>10</sup> he did not serve in  
22 such a capacity in January 2019 when the alleged statement MR. YEMENIDJIAN “had engaged in  
23 outright corruption in order to secure licenses”<sup>11</sup> was made by DR. SPIRTOS. MR. OCEGUERA,  
24 as a former assemblyman, could not have procured any governmental action, result or outcome upon  
25

---

26  
27           <sup>10</sup>This Court understands MR. OCEGUERA served as State Assemblyman, District 16 from 2000-2012, and  
28 was elected as Speaker of the Assembly by his peers in 2011.

<sup>11</sup>*Id.*, p. 4, Paragraph 18.

1 receiving DR. SPIRTOS' communication. Further, such statements are alleged to be false and  
2 slanderous within the Complaint. It follows, then, DR. SPIRTOS' discussion with MR.  
3 OCEGUERA at the January 2019 Governor's Ball does not fall within the first of the four defined  
4 categories of speech constituting a "[g]ood faith communication in furtherance of the right to  
5 petition or the right to free speech in direct connection with an issue of public concern."

6  
7 5. For reasons set forth above, this Court concludes DR. SPIRTOS' 2019  
8 communication to MR. OCEGUERA does not fall within the second of the four defined categories  
9 of speech, i.e. "[c]ommunication of information or a complaint to a Legislator, officer or employee  
10 of the Federal Government, this state or a political subdivision of this state, regarding a matter  
11 reasonably of concern to the respective government entity." Again, in January 2019, MR.  
12 OCEGUERA was not a legislator or other elected or governmental official, and the statements are  
13 alleged to be false and slanderous. This Court, likewise, determines DR. SPIRTOS' comments to  
14 MR. OCEGUERA in 2019 do not fall within the third of the four defined categories, i.e. "[w]ritten  
15 or oral statement made in direct connection with an issue under consideration by a legislative,  
16 executive or judicial body, or any other official proceeding authorized by law." Notwithstanding  
17 the fact MR. OCEGUERA was not a governmental official at the time, there was nothing to suggest  
18 the oral communication was "made in direct connection with an issue under consideration by a  
19 legislative, executive or judicial body, or any other official proceeding authorized by law."  
20  
21

22 6. The next issue is whether DR. SPIRTOS' January 2019 statements to MR.  
23 OCEGUERA falls within the fourth defined category, i.e. "communication made in direct  
24 connection with an issue of public interest in a place open to the public or in a public forum." As  
25 addressed in Shapiro, 133 Nev. at 39, 389 Nev. at 268, an issue of public interest as distinguished  
26 from a private one (1) "does not equate with mere curiosity;" and (2) should be something of  
27 concern to a substantial number of people, a matter of concern to a speaker and a relatively small  
28

1 specific audience is not a matter of public interest.” Further, “there should be some degree of  
2 closeness between the challenged statements and the asserted public interest—the assertion of a  
3 broad and amorphous public interest is not sufficient.” In addition, the focus of the speaker’s  
4 conduct should be the public interest rather than a mere effort to gather ammunition for another  
5 round of private controversy” and “a person cannot turn otherwise private information into a matter  
6 of public interest simply by communicating it to a large number of people.” This Court again notes  
7 no communication falls within the purview of NRS 41.660 unless it is “truthful or is made without  
8 knowledge of its falsehood.”  
9

10 This Court concludes the communication does not fall within the fourth category for at least  
11 two reasons. *First*, DR. SPIRTOS making an accusation to one person his (SPIRTOS’) competitor  
12 engaged “in outright corruption in order to secure licenses”<sup>12</sup> is not made in direct connection with  
13 an issue of public interest as defined in *Shapiro*. *Secondly*, the statement was not made “in a place  
14 open to the public or in a public forum.” Indeed, while there were perhaps hundreds, if not  
15 thousands of attendees at a governor’s inaugural ball, such an event or party is either by invitation or  
16 paid ticket, meaning not just anyone may come and join. Notwithstanding that point, *even if* the Ball  
17 were considered a “public forum,” the statement allegedly was made privately to MR. OCEGUERA.  
18 In addition, the Complaint plainly alleges the statement made to MR. OCEGUERA was false and  
19 slanderous. In short, this Court concludes dismissal of MR. YEMENIDJIAN’S Complaint under the  
20 anti-SLAPP statute is not warranted. The Special Motion to Dismiss under the Anti-SLAPP statutes  
21 as it applies to DR. SPIRTOS’ January 2019 utterances to MR. OCEGUERA, therefore, is denied.  
22

23  
24 7. DR. SPIRTOS argues, even if it denies his special motion under the Anti-SLAPP  
25 statute, this Court should dismiss the Complaint under NRCP 12(b)(5) for several reasons, including  
26 it being barred by the litigation privilege “which protects all statements pertinent to the subject  
27

---

28 <sup>12</sup>*Id.*, p. 4, Paragraph 18.

1 pending litigation.”<sup>13</sup> In this Court’s view, DR. SPIRTOS’ argument is misplaced and construes the  
2 litigation privilege in an overly broad fashion. Considering the authority DR. SPIRTOS cited, the  
3 litigation privilege is recognized as “the long-standing common law rule that communications  
4 uttered or published in the course of judicial proceedings are absolutely privileged,” rendering those  
5 who made the communications immune from civil liability. Greenberg Traurig v. Frias Holding  
6 Co., 130 Nev. 627, 630, 331 P.3d 901 (2014), *quoting* Fink v. Oshins, 118 Nev. 428, 432-433, 49  
7 P.3d 640, 643 (2002), *in turn, quoting* Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657  
8 P.2d 101, 104 (1983). “The policy behind the [litigation] privilege, as it applies to attorneys  
9 participating in judicial proceedings, is to grant them ‘as officers of the court the utmost freedom in  
10 their efforts to obtain justice for their clients.’” *Id.*, 130 Nev. at 630, *quoting* Fink, 118 Nev. at 433,  
11 49 P.3d at 643, *in turn, quoting* Bull v. McCuskey, 96 Nev. 706, 712, 615 P.2d 957, 961 (1980),  
12 *abrogated on other grounds by* Ace Truck & Equipment Rentals, Inc. v. Kahn, 103 Nev. 503, 746  
13 P.2d 132 (1987), *abrogated by* Bongiovi v. Sullivan, 122 Nev. 556, 138 P.3d 433 (2006). Notably,  
14 the privilege also applies to communications made by either an attorney or non-lawyer that are  
15 related to ongoing litigation or future litigation contemplated in good faith. Jacobs v. Adelson, 130  
16 Nev. 408, 413, 325 P.3d 1282, 1285 (2014). Further, for a statement to fall within the scope of  
17 absolute litigation privilege, it must be made to a recipient who has a significant interest in the  
18 outcome of the litigation or who has a role in the litigation. Shapiro, 133 Nev. at 41, 389 P.3d at  
19 269, *citing* Fink, 118 Nev. at 436, 49 P.3d at 645. In order to determine whether a person who is not  
20 directly involved in the judicial proceeding still may be “significantly interested in the proceeding,”  
21 this Court must review “the recipient’s legal relationship to the litigation, not their interest as an  
22 observer.” *Id.*, *citing* Jacobs, 130 Nev. at 416, 325 P.3d at 1287. In sum, contrary to what DR.  
23  
24  
25  
26

---

27  
28 <sup>13</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
NRCP 12(b)(5) filed December 10, 2019, p. 3.

1 SPIRTOS argued in his motion, the litigation privilege does not “protect[] all statements pertinent to  
2 the subject pending litigation.”<sup>14</sup>

3 8. Here, DR. SPIRTOS claims he is entitled to the protections of the absolute litigation  
4 privilege as to his alleged utterance to MR. OCEGUERA at the Governor’s Ball as such relates to  
5 ongoing litigation, and specifically the case, In Re: D.O.T. Litigation, Case No. A-19-787004-B,  
6 filed in Department XI of the Eighth Judicial District Court;<sup>15</sup> that case, along with the consolidated  
7 matters, deals with the Department of Taxation’s process of selecting licenses to legally dispense  
8 recreational and/or medical marijuana or cannabis. It is undisputed his statements were not uttered  
9 or published in the course of judicial proceeding, although, arguably, they are related to the ongoing  
10 litigation. The next issue is whether the recipient of the utterance had a significant interest in the  
11 proceeding. In this regard, DR. SPIRTOS claims MR. OCEGUERA has a significant interest, not as  
12 a party, but given his relationship to MR. YEMENIDJIAN as his paid lobbyist. MR.  
13 OCEGUERA’S work as a lobbyist for MR. YEMENIDJIAN, however, does not equate to him  
14 having a role in or legal relationship to DR. SPIRTOS’ company’s litigation lodged against the  
15 Department of Taxation and/or MR. YEMENIDJIAN’S entity, ESSENCE. At best, MR.  
16 OCEGUERA may have an interest in the litigation as an observer given his business relationship  
17 with MR. YEMENIDJIAN. Accordingly, this Court concludes DR. SPIRTOS is not entitled to the  
18 protections of the absolute litigation privilege as it relates to his statements made to MR.  
19 OCEGUERA in January 2019.  
20  
21  
22

23 9. DR. SPIRTOS also argues the slander *per se* claim fails as MR. YEMENIDJIAN is a  
24 limited purpose public figure in the marijuana industry, and the Complaint sets forth no facts that  
25 would support an inference DR. SPIRTOS acted with actual malice. This Court disagrees with DR.  
26

---

27 <sup>14</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
28 NRCP 12(b)(5) filed December 10, 2019, p. 3.

<sup>15</sup>Such case is consolidated with seven (7) other cases.

1 SPIRTOS' reading of the Complaint. The pleading's first lines indicate DR. SPIRTOS is an  
2 "admitted liar," who "has been spreading lies – false accusations of crimes -" against MR.  
3 YEMENIDJIAN. The Complaint further alleges on page 4, DR. SPIRTOS' statement to MR.  
4 OCEGUERA "falsely accused Mr. Yemenidjian of criminal activity, just as Spirtos had intended it."  
5 On page 5 of the Complaint, DR. SPIRTOS is alleged to have admitted, even under oath, he had no  
6 factual basis for accusing MR. YEMENIDJIAN of impropriety. Further, the Complaint avers DR.  
7 SPIRTOS "and others have undertaken a campaign to lie about and slander Mr. Yemenidjian."<sup>16</sup> In  
8 short, while the Complaint admittedly does not specifically include the words "actual malice," the  
9 pleading is replete with language synonymous with those terms to place DR. SPIRTOS on notice of  
10 the grounds for relief. *See* NRCP 8(a).

12       **10.** DR. SPIRTOS also proposes MR. YEMENIDJIAN'S First Cause of Action for "civil  
13 conspiracy" should be dismissed for four reasons: *First*, DR. SPIRTOS is the only non-fictitious  
14 defendant named in the claim, and Nevada law requires concerted action by "two or more persons"<sup>17</sup>  
15 in a conspiracy claim. *Second*, while the Complaint indicates DR. SPIRTOS "undertook a campaign  
16 with others," it failed to identify the "others." *Third*, the Complaint does not provide DR. SPIRTOS  
17 fair notice of the supposed conspiracy "because it is devoid of any factual allegations concerning an  
18 agreement to conspire and concerned actions engaged in by the co-conspirators."<sup>18</sup> *Fourth*, to the  
19 extent MR. YEMENIDJIAN alleges DR. SPIRTOS conspired to slander him, the conspiracy claim  
20 is redundant or duplicative, and thus, should be dismissed.

22       **11.** In Nevada, civil conspiracy liability may attach where two or more persons undertake  
23 some concerted action with the intent to commit an unlawful objective, not necessarily a tort. Cadle  
24

26  
27 <sup>16</sup>See Complaint, p. 5, paragraph 22.

<sup>17</sup>Citing Cadle Co. v. Woods & Erickson, LLP, 131 Nev. 114, 117-118, 345 P.3d 1049, 1052 (2015).

28 <sup>18</sup>See Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to  
NRCP 12(b)(5), p. 11.

1 Co., 131 Nev. at 117-118. Here, after repeating and realleging the allegations contained in  
2 Paragraphs 1 through 24 of the Complaint, MR. YEMENIDJIAN alleged “[DR SPIRTOS]  
3 undertook a campaign with others intending to accomplish an unlawful objective for the purpose of  
4 harming [MR. YEMENIDJIAN].”<sup>19</sup> The Complaint also avers, p. 5, “Spirtos and others have  
5 undertaken a campaign to lie about and slander Mr. Yemenidjian.” In this Court’s view, the co-  
6 conspirators need not be specifically identified, and the reference to “others” are enough to state a  
7 claim for which relief may be granted under NRCP 8(a). For this reason, this Court denies DR.  
8 SPIRTOS’ motion brought under NRCP 12(b)(5) as it seeks dismissal of the Complaint’s First  
9 Cause of Action.  
10

11 12. DR. SPIRTOS next argues the punitive damages prayer fails as the Complaint does  
12 not allege any facts to support an inference MR. YEMENIDJIAN suffered cruel and unjust  
13 hardships or DR. SPIRTOS knew he would suffer such hardships. This Court disagrees with DR.  
14 SPIRTOS’ position. Whether the plaintiff suffered “cruel and unjust hardships” as a result of the  
15 defendant’s conduct is not what needs to be proved in order to recover punitive damages. NRS  
16 42.005(1) provides in salient part: “...in an action for the breach of an obligation not arising from  
17 contract, where it is proven by clear and convincing evidence that the defendant has been guilty of  
18 oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory  
19 damages, may recover damages for the sale of example and by way of punishing the defendant.”  
20 Case law, interpreting NRS 42.005, provides punitive damages are designed not to reward the victim  
21 but to punish the wrongdoer and deter fraudulent, malicious or oppressive conduct. *See Turnbow v.*  
22 *Department of Human Resources, Welfare Division*, 109 Nev. 493, 496, 853 P.2d 97, 99 (1993).  
23 That is, injury a plaintiff may have suffered is encompassed within compensatory, not punitive  
24 damages. *See Lombardi v. Maryland Casualty co.*, 894 F.Supp. 369, 371 (D.C. Nev. 1995). Hence,  
25  
26  
27  
28

---

<sup>19</sup>See Complaint, p. 6, paragraph 26.



1 whether MR. YEMENIDJIAN suffered cruel and unjust hardship as a result of DR. SPIRTOS'  
2 utterances is not an element necessary to be proved for punitive damages to be awarded. Further,  
3 the Complaint clearly states, p. 6, paragraph 28, "SpiRTOS' conduct was undertaken with oppression  
4 and in conscious disregard of Yemenidjian's rights and entitles Mr. Yemenidjian to an award of  
5 punitive damages...." In short, the Complaint does state the basis for an award of punitive damages.  
6 See NRS 42.005(1).  
7

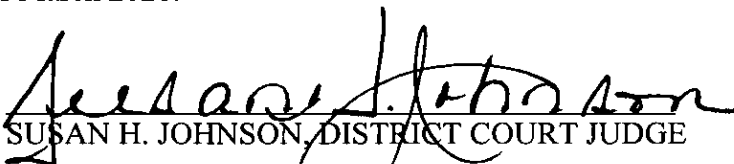
8 13. All in all, this Court concludes dismissal of the Complaint is not warranted under the  
9 anti-SLAPP statute, NRS 41.660. In addition, the Complaint does state a claim for which relief may  
10 be granted with respect to the First Cause of Action (civil conspiracy). It also states a claim for  
11 which relief may be granted with respect to the Second Cause of Action (slander *per se*), except as  
12 to the alleged conversations DR. SPIRTOS allegedly had with MR. KELESIS; in this regard, this  
13 Court concludes the allegations are insufficiently pled under NRCP 8(a).  
14

15 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant NICOLA  
17 SPIRTOS' Special Motion to Dismiss Pursuant to NRS 41.660 filed December 10, 2019 is denied.  
18

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant NICOLA  
20 SPIRTOS' Motion to Dismiss Pursuant to NRCP 12(b)(5) is granted in part, denied in part. The  
21 motion is granted, *without prejudice*, with respect to the alleged conversations Defendant had with  
22 MR. KELESIS as this Court determines such averments were insufficiently pled under NRCP 8(a).  
23 The motion is denied in all other respects.

24 DATED this 5<sup>th</sup> day of March 2020.

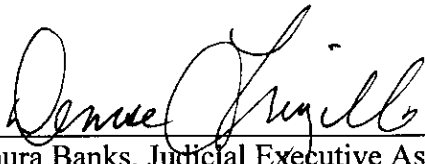
25  
26   
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
28

**CERTIFICATE OF SERVICE**

I hereby certify, on the 5<sup>th</sup> day of March 2020, I electronically served (E-served), placed within the attorneys' folders' located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5) to the following attorneys of record, and first-class postage was fully prepaid thereon:

TODD L. BICE, ESQ.  
PISANELLI BICE, PLLC  
400 South Seventh Street, Suite 300  
Las Vegas, Nevada 89101  
[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)

DANIEL R. MCNUTT, ESQ.  
MCNUTT LAW FIRM, P.C.  
625 South Eighth Street  
Las Vegas, Nevada 89101  
[drm@mcnuttlaw.firm.com](mailto:drm@mcnuttlaw.firm.com)

  
for Laura Banks, Judicial Executive Assistant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Intentional Misconduct**

**COURT MINUTES**

**January 23, 2020**

---

A-19-804785-C      Armen Yemenidjian, Plaintiff(s)  
vs.  
Nicola Spirtos, Defendant(s)

---

**January 23, 2020      9:00 AM      Motion to Dismiss**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Jill Chambers

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Bice, Todd L      Attorney  
                 Buchwald, Emily A.      Attorney  
                 McNutt, Daniel R.      Attorney

**JOURNAL ENTRIES**

- Argument by counsel regarding the Motion to Dismiss. Court advised counsel that it would like to review the authorities and would issue a decision from chambers.



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**DANIEL R. MCNUTT, ESQ.**  
**625 S. EIGHTH ST.**  
**LAS VEGAS, NV 89101**

**DATE: March 30, 2020**  
**CASE: A-19-804785-C**

**RE CASE:** ARMEN YEMENIDJIAN vs. NICOLA SPIRTOS

NOTICE OF APPEAL FILED: March 26, 2020

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

---

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

*\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCp 12(B)(5); NOTICE OF ENTRY OF ORDER RE: SPECIAL MOTION TO DISMISS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ARMEN YEMENIDJIAN,

Plaintiff(s),

vs.

NICOLA SPIRTOS,

Defendant(s),

Case No: A-19-804785-C

Dept No: XXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 30 day of March 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk