

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

NICOLA SPIRTOS, an individual,  
Appellant,

vs.

ARMEN YEMENIDJIAN, an individual  
Respondent

No. 80922

DOCKETING

CIVIL APPEALS

Electronically Filed  
Apr 24 2020 04:01 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## GENERAL INFORMATION

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

## WARNING

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

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

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

1. Judicial District Eighth Department 22  
County Clark Judge Honorable Susan Johnson  
District Ct. Case No. A-19-804785-C

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

Attorney Dan McNutt, Esq. Telephone 702.384.1170  
Firm McNutt Law Firm, P.C.  
Address 625 S. 8th Street  
Las Vegas, NV 89101

Client(s) Nicola Spirtos

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

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

Attorney Todd Bice, Esq. Telephone 702.214.2100  
Firm Pisanelli Bice, PLLC  
Address 400 South 7th Street, Suite 300  
Las Vegas, NV 89101

Client(s) Armen Yemenidjian

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

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

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                     |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                                       |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification               |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>NRS 41.670(4)</u> |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

none

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

none

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

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

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

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, Dr. Nicola M. Spirtos, M.D. 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.

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

n/a

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This is an interlocutory appeal of the denial of a special motion to dismiss, and under NRS 41.670(4), that denial may be appealed “to the Supreme Court.”

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

Was it a bench or jury trial? \_\_\_\_\_

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

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** March 5, 2020

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

**17. Date written notice of entry of judgment or order was served** March 10, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

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

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

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

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

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

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

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** March 26, 2020

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

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

NRAP 4(a)

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**SUBSTANTIVE APPEALABILITY**

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

(a)

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 41.660</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:



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

(a) Parties:

Nicola Spirtos

Armen Yemenidjian

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

none

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

Respondent has filed claims against Appellant for conspiracy and slander and is seeking damages. This is an interlocutory appeal of the denial of a special motion to dismiss, and under NRS 41.670(4), that denial may be appealed "to the Supreme Court."

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

Conspiracy and Slander

(b) Specify the parties remaining below:

Respondent has filed claims against Petitioner for conspiracy and slander and is seeking damages

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

The Order being appealed is the March 5, 2020 Order Re: Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b) (5). This is an interlocutory appeal of the denial of a special motion to dismiss, and under NRS 41.670(4), that denial may be appealed "to the Supreme Court."

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

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

## VERIFICATION

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

Nicola Spirtos  
Name of appellant

Dan McNutt, Esq.  
Name of counsel of record

April 24, 2020  
Date

/s/ Dan McNutt  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 24th day of April, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

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

Electronically to:

Todd Bice, Esq.

PISANELLI BICE PLLC

400 South 7th Street, Suite 300

Las Vegas, NV 89101

Attorney for Respondent

By Mail to:

Paul Haire

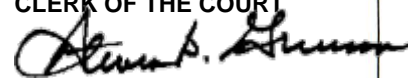
10161 Park Run Drive, Suite 150

Las Vegas, NV 89145

Settlement Judge

Dated this 24th day of April, 2020

/s/ Lisa Heller  
Signature



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

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*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.:

Dept. No.:

**COMPLAINT FOR CONSPIRACY,  
SLANDER AND DAMAGES**

For his Complaint, Plaintiff alleges as follows:

**INTRODUCTION**

1. Defendant Nicola Spirtos ("Spirtos") is an admitted liar. He has confessed under oath: "I lie." One of the individuals about whom Spirtos has been spreading lies – false accusations of crimes – is Plaintiff Armen Yemenidjian ("Yemenidjian"). Yet, it is Spirtos who has now been forced to admit that he is the one who has engaged in criminal activity. Spirtos, in concert with others, undertook a scheme to slander Mr. Yemenidjian, because he has proven to be one of the most successful businessmen in the legal cannabis business, not only in Nevada but elsewhere. The same cannot be said for Spirtos. Indeed, in every instance in which Spirtos' applications have been judged against others, in particular Mr. Yemenidjian, he has failed. Rather than own his failures, Spirtos has resorted to smearing and spreading lies against others to harm

1 their existing and future business opportunities. Spirtos and those acting with him undertook this  
2 false campaign with the hope that they could cause damages in excess of one hundred million  
3 dollars. Spirtos' scheme is deplorable and entitles Mr. Yemenidjian to punitive damages as well.

#### 4 PARTIES

5 2. Plaintiff Armen Yemenidjian is, and at all relevant times was, an individual  
6 residing in Clark County Nevada and one of the most successful executives in the growing  
7 cannabis business in the United States.

8 3. Defendant Nicola Spirtos is, and at all relevant times was upon information and  
9 belief, an individual residing in Clark County Nevada and a former owner of  
10 D.H. Flamingo, LLC, an unsuccessful applicant for a recreational cannabis license in the State of  
11 Nevada.

12 4. Defendants DOES 1-20 are believed to be individuals who have acted in concert  
13 with Spirtos for the purpose of carrying out the unlawful scheme at issue in this action. Upon  
14 discovering their true identities, Plaintiff will seek leave of this Court to add these parties.

15 5. Defendant ROES 1-20 are believed to be legal entities that acted in concert with  
16 Spirtos for the purpose of carrying out the unlawful scheme at issue in this action. Upon  
17 discovering their true identities, Plaintiff will seek leave of this Court to add these parties.

#### 18 COMMON ALLEGATIONS

##### 19 **A. Spirtos' Scheme to Sabotage Others.**

20 6. Mr. Yemenidjian is one of the leading executives in the legal cannabis business in  
21 the United States. He was the co-founder and CEO of Integral Associates d/b/a Essence  
22 ("Essence"). Since starting in this business in 2014, Mr. Yemenidjian has successfully  
23 spearheaded licensing applications in Nevada and California. Being immersed in what it takes to  
24 be successful in this business, companies under Mr. Yemenidjian's control and/or direction have  
25 successfully applied for and received 22 cannabis licenses in California and Nevada.

26 7. Under Mr. Yemenidjian's direction, the Essence entities have made fifteen  
27 different applications in the State of Nevada, first for medical marijuana and then later for  
28 recreational marijuana when authorized by the State, and were awarded all fifteen licenses. In

1 each of those application processes, the Essence entities were graded as top tier applicants, if not  
2 being ranked first.

3 8. The same is true in California, where the Essence entities submitted seven different  
4 applications and were awarded all seven licenses, again being ranked in the top tier if not being  
5 ranked first.

6 9. Simply put, in multiple jurisdictions involving different applications and different  
7 graders, the entities under Mr. Yemenidjian's direction were consistently ranked by these diverse  
8 government graders as being top tier in the industry. And that is why, when entities under Mr.  
9 Yemenidjian's control and direction have applied for licenses in various jurisdictions, they have  
10 been successful. Each jurisdiction has found the Essence applicants to be superior.

11 10. That track record stands in stark contrast to that of Defendant Spirtos and the one  
12 cannabis company he founded, D.H. Flamingo. Even when Nevada first legalized medical  
13 cannabis, Spirtos spearheaded an effort to obtain one such license and was rejected by the State as  
14 an operator. He thus waged a legal campaign and reached out to those with whom he believed he  
15 had political clout in an attempt to reverse those results. Ultimately, Spirtos was only able to  
16 enter the fledgling medical marijuana industry when the Nevada legislature increased the number  
17 of licenses so that Spirtos could get into the business by default, as opposed to based on  
18 qualifications or merits.

19 11. Despite his lack of success in actually qualifying based on merit, Spirtos proceeded  
20 down the same deficient path when he and D.H. Flamingo sought a Nevada recreational cannabis  
21 license in 2018. Despite having shown his lack of qualifications previously, Spirtos repeated this  
22 tactic again, admitting that he personally prepared as much as 90% of the application on his own.

23 12. Proving again Einstein's definition of insanity – repeating the same flawed course  
24 of conduct but expecting a different result – Spirtos' unprofessional approach resulted in the same  
25 outcome: rejection by the State licensing officials because he and his entity were less qualified  
26 than others. Indeed, once again, Spirtos' application was ranked well below that of others.

27 13. Upon learning of his latest rejection, Spirtos sprang into action to try and undo his  
28 latest failure. Spirtos somehow knew to almost immediately contact his friend George Kelesis

1 ("Kelesis"), who served on the Nevada Tax Commission, the very body that oversees the  
2 department responsible for selecting the successful recreational licensees. Indeed, Spirtos admits  
3 that he may have had as many as a dozen private cell phone conversations with Kelesis about  
4 undoing the result of his unsuccessful application.

5 14. Despite the closeness of their relationship, Kelesis has never disclosed his contacts  
6 with Spirtos, and then proceeded to participate in tax commission meetings where he spearheaded  
7 criticism of the Department's selection process in a manner designed to benefit Spirtos. Indeed,  
8 according to Spirtos, he and Kelesis attend the same Greek church and under their religion, their  
9 children are the equivalent of cousins and also are the godparents to each other's respective  
10 children.

11 15. Once again, Spirtos has sought to use an illegitimate means to achieve an  
12 illegitimate end: Obtaining a recreational marijuana license for which he was not qualified and  
13 was not selected.

14 **B. Spirtos Employs Slander as Part of the Scheme.**

15 16. Spirtos did not stop at just trying to elicit help through his friends. Spirtos also  
16 undertook a campaign to slander Mr. Yemenidjian and others.

17 17. For instance, on January 18, 2018, Spirtos attended the Governor's Ball at Aria  
18 Hotel & Casino. While there, he approached John Ocegüera, an individual that Spirtos knew  
19 worked in the cannabis industry with Mr. Yemenidjian.

20 18. Spirtos proceeded to slander Mr. Yemenidjian, claiming to Ocegüera that Mr.  
21 Yemenidjian had engaged in outright corruption in order to secure licenses. This statement  
22 falsely accused Mr. Yemenidjian of criminal activity, just as Spirtos had intended it.

23 19. Ocegüera was shocked and appalled by Spirtos' slander, and was alarmed by  
24 Spirtos' tactics attempting to undermine Mr. Yemenidjian and harm his reputation and business.

25 20. Mr. Yemenidjian believes and alleges that Spirtos has made the same or similar  
26 slanderous statements to others as well.

1           **C.     Spirtos Admits His Slander is False.**

2           21.     Spirtos has now admitted, including under oath, that he has no factual basis for  
3 accusing Mr. Yemenidjian of such impropriety. In reality, Spirtos simply fabricated the story  
4 because he hoped that it would generate adverse publicity and interfere with Mr. Yemenidjian's  
5 ability to get licensed in the future. Spirtos also hoped and planned that his slander would  
6 interfere with the State of Nevada's licensing process for recreational marijuana, since he did not  
7 obtain a license.

8           22.     Spirtos and those acting in concert with him have simply decided that maintaining  
9 their own market share and delaying competition in the marketplace is preferable. Thus, Spirtos  
10 and others have undertaken a campaign to lie about and slander Mr. Yemenidjian.

11          23.     The irony that Spirtos would falsely accuse Mr. Yemenidjian of criminal activity is  
12 apparent in light of Spirtos' own actions which he has now admitted under oath. Indeed, in early  
13 January, 2019, Spirtos arranged a meeting at the offices of the Nevada Department of Taxation in  
14 Las Vegas, ostensibly for purposes of reviewing the scoring of his applications. In truth, the  
15 purpose of this meeting was actually an attempt by Spirtos to dupe State agents with a series of  
16 questions that had been prepared by Spirtos' legal counsel, despite the fact that Spirtos knew that  
17 there was ongoing litigation and that these State agents were represented by legal counsel.

18          24.     As he admitted in deposition, as part of his plan of deception, Spirtos entered the  
19 State offices intentionally armed with a phone application to surreptitiously record the meeting  
20 and then proceeded to record his conversation with Department of Taxation agents without their  
21 knowledge or consent. Thus, the party engaged in unlawful conduct here is Spirtos and those  
22 acting in concert with him. *See* NRS 331.220 (it is "unlawful" for a person to engage in any kind  
23 of surreptitious electronic surveillance on the grounds of any facility owned or leased by the State  
24 of Nevada).

25     ...

26     ...

27     ...



**FIRST CAUSE OF ACTION**

**(Civil Conspiracy)**

25. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 24 above as though fully set forth herein.

26. As outlined above, Spirtos undertook a campaign with others, intending to accomplish an unlawful objective for the purpose of harming Mr. Yemenidjian.

27. Mr. Yemenidjian has sustained damage as a result of Spirtos' unlawful conduct, in an amount that will be proven at trial, but in excess of \$15,000 for purposes of this Court's jurisdiction.

28. Spirtos' conduct was undertaken with oppression and in conscious disregard of Mr. Yemenidjian's rights and entitles Mr. Yemenidjian to an award of punitive damages to punish Spirtos, discourage him from repeating his misconduct in the future, and discourage others from engaging in similar deplorable conduct.

29. Plaintiff has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs to the extent allowed under Nevada law.

**SECOND CAUSE OF ACTION**

**(Slander Per Se)**

30. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 29 above as though fully set forth herein.

31. As outlined above, Spirtos made at least one false and slanderous statement concerning Mr. Yemenidjian.

32. That statement was defamatory per se because it falsely accused Mr. Yemenidjian of criminal activity and is unprivileged.

33. Unable to deny that his accusations are slander, Spirtos has now resorted to falsely denying that he made the statement, confirming that Spirtos knows how outrageous his conduct to be.

34. Because Spirtos' statement is slander per se, the law presumes damages. Those damages are in an amount to be proven at trial, but are in excess of \$15,000 for the purpose of this Court's jurisdiction.

35. Spirtos' conduct was undertaken with oppression and in conscious disregard of Mr. Yemenidjian's rights and entitles Mr. Yemenidjian to an award of punitive damages to punish Spirtos, discourage him from repeating his misconduct in the future, and discourage others from engaging in similar deplorable conduct.

36. Plaintiff has been forced to hire an attorney to prosecute this action and therefore seeks recovery of his attorneys' fees and court costs to the extent permitted under Nevada law.

WHEREFORE, Plaintiff prays for judgment as follows:

1. An award of damages against Spirtos;
2. An award of punitive damages against Spirtos;
4. An award of reasonable costs and attorneys' fees; and
5. Any additional relief this Court deems to be just and proper on the evidence presented at trial.

DATED this 4th day of November, 2019.

PISANELLI BICE

By: 

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 **ORDER**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4  
5 **ARMEN YEMENIDJIAN, an individual,**  
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.  
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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.  
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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  
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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.  
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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).

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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.

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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  
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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  
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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.  
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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.  
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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.  
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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,  
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<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

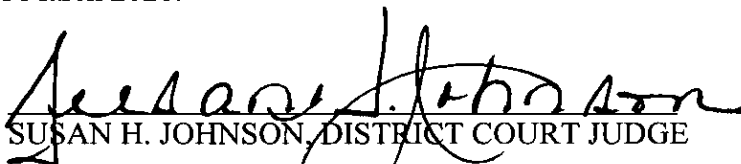
8 13. All in all, this Court concludes dismissal of the Complaint is not warranted under the  
9 anti-SLAPP statute, NRS 41.660. In addition, the Complaint does state a claim for which relief may  
10 be granted with respect to the First Cause of Action (civil conspiracy). It also states a claim for  
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.

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27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
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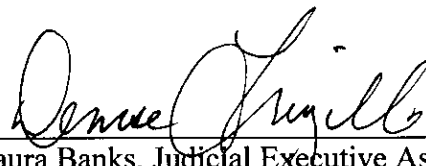


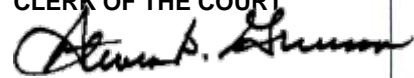
**CERTIFICATE OF SERVICE**

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:

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*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: 

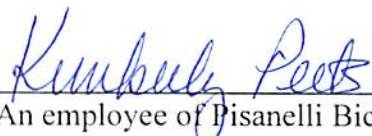
#13442

James J. Pisanelli, Esq., #4027  
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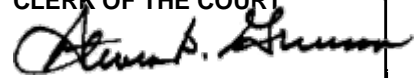
1 CERTIFICATE OF SERVICE

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.

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9 An employee of Pisanelli Bice PLLC

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PISANELLI BICE PLLC  
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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>  
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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

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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  
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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.  
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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  
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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  
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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.  
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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.  
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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,  
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<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

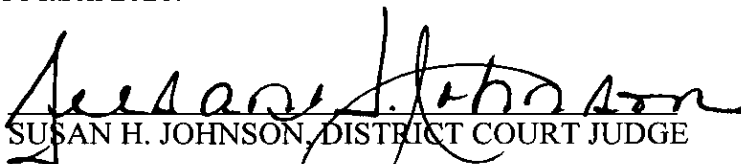
8 13. All in all, this Court concludes dismissal of the Complaint is not warranted under the  
9 anti-SLAPP statute, NRS 41.660. In addition, the Complaint does state a claim for which relief may  
10 be granted with respect to the First Cause of Action (civil conspiracy). It also states a claim for  
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.

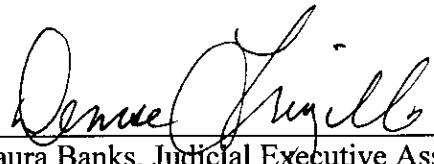
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26   
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
28

**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:

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for Laura Banks, Judicial Executive Assistant