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Elizabeth A. Brown
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*Attorneys for Defendants Christopher Khorsandi, M.D.,
Christopher Khorsandi, M.D., PLLC,
and Catherine Le Khorsandi*

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

SMITH PLASTIC SURGERY, INC., a Nevada
Corporation, and LANE F. SMITH, M.D., an
individual,

Plaintiffs,

v.

CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER
KHORSANDI, M.D., PLLC, a Nevada
Professional LLC, CATHERINE LE
KHORSANDI, an individual; CECILY S., a
pseudonym used by CATHERINE LE
KHORSANDI; Does I-X, and Roe
Corporations 1-X,

Defendants.

Case No.: A-19-804819-C
Dept. No.: XX

**DEFENDANTS CHRISTOPHER
KHORSANDI, M.D., CHRISTOPHER
KHORSANDI, M.D., PLLC, AND
CATHERINE LE KHORSANDI'S
NOTICE OF APPEAL**

1 Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and
2 Catherine Le Khorsandi, by and through their counsel of record, hereby appeal to the
3 Supreme Court of Nevada from the Order denying Defendants Christopher Khorsandi, M.D.,
4 Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss
5 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5),
6 entered March 4, 2020 and attached hereto as Exhibit 1, the Notice of Entry of Order which was
7 served on March 10, 2020, and is attached hereto as Exhibit 2.

8 DATED this 31st day of March, 2020.

9 PISANELLI BICE PLLC

10 By: /s/ Emily A. Buchwald
11 James J. Pisanelli, Esq., #4027
12 Emily A. Buchwald, Esq., #13442
13 400 South 7th Street, Suite 300
14 Las Vegas, Nevada 89101

15 *Attorneys for Defendants Christopher Khorsandi,*
16 *M.D., Christopher Khorsandi, M.D., PLLC, and*
17 *Catherine Le Khorsandi*
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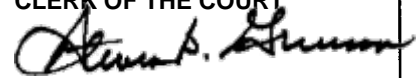
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 31st day of March, 2020, I caused to be served via the Court's e-filing/e-service system, true and correct copies of the above and foregoing **DEFENDANTS CHRISTOPHER KHORSANDI, M.D., CHRISTOPHER KHORSANDI, M.D., PLLC, AND CATHERINE LE KHORSANDI'S NOTICE OF APPEAL** to the following:

Anthony P. Sgro, Esq.
Jennifer Willis Arledge, Esq.
Justin W. Wilson, Esq.
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, NV 89101

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT 1



1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 SMITH PLASTIC SURGERY, INC., a
5 Nevada Corporation, and LANE F. SMITH,
M.D., an individual,

Case No. A-19-804819-C

Dept. No. XX

6 Plaintiffs,

7 v.

8 CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER KHORSANDI,
M.D., PLLC, a Nevada Professional LLC,
9 CATHERINE LE KHORSANDI, an individual;
CECILY S., a pseudonym used by CATHERINE
10 LE KHORSANDI; Does I-X, and Roe
Corporations I-X,

**ORDER ON DEFENDANTS
CHRISTOPHER KHORSANDI, M.D.,
CHRISTOPHER KHORSANDI, M.D.,
PLLC, AND CATHERINE LE
KHORSANDI'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660,
OR IN THE ALTERNATIVE, MOTION
TO DISMISS PURSUANT TO NRCP
12(B)(5)**

11 Defendants.

12 **INTRODUCTION**

13 THIS MATTER came on for hearing before Department XX of the Eighth Judicial District
14 Court, the Honorable Eric Johnson presiding, on February 19, 2020. Plaintiff was represented by
15 Jennifer Willis Arledge, ESQ. Defendants were represented by James Pisanelli, Esq. and Emily
16 Buchwald, Esq. At that time, the Court took the matter UNDER ADVISEMENT. After reviewing
17 the pleadings and papers on file herein, the Court finds the following:

18 **DISCUSSION**

19 Defendant argues that Nevada's Anti-SLAPP statute should apply to Plaintiff's complaint.
20 While Defendants deny making the statements which are the subject of the complaint, they note the
21 purported statements were made in direct connection with an issue of public interest in a public
22 forum. The Court agrees the quality of a doctor's patient care is most certainly an interest of public
23 interest and review sites like Yelp are public forums. Defendants argue that because the subject
24 matter of the purported statements falls within the ambient of communications the statute is intended

1 to protect, the burden should shift to the Plaintiffs to demonstrate they have “stated a legally
2 sufficient claim and made a prima facie showing sufficient to sustain a favorable judgment.” *Baral*
3 *v. Schnitt*, 376 P.3d 604, 608 (Cal. 2016).¹

4 The problem with the application of the Anti-SLAPP statute in this matter is that the
5 Defendants deny making the statements at issue. NRS 41.660(1) provides: “If an action is brought
6 against a person based upon a good faith communication in furtherance of the right to petition or the
7 right to free speech in direct connection with an issue of public concern: (a) The person against
8 whom the action is brought may file a special motion to dismiss.” NRS 41.637(4) in turn defines
9 “[g]ood faith communication in furtherance of the right to petition or the right to free speech in
10 direct connection with an issue of public concern” as any “[c]ommunication made in direct
11 connection with an issue of public interest in a place open to the public or in a public forum, which
12 is truthful or is made without knowledge of its falsehood.” Consequently, if Defendants did not
13 make the communications, the statute does not appear to apply to Plaintiff’s complaint.

14 Defendant’s argue the statements Plaintiff charge are the very type intended to be protected
15 under the under Nevada’s Anti-SLAPP statutes, and Plaintiffs unsupported allegations that
16 Defendants made the statements highlights that this is a strategic litigation against public
17 participation, or SLAPP, lawsuit. Plaintiffs largely admit that they currently have minimal evidence
18 supporting Defendants made the statements, relying on Yelp’s location feature for posts and travel
19 information concerning Defendants to suggest Defendants made the posts.

20 Defendants argue the Court should find the instant complaint falls within the Anti-SLAPP
21 statute under *Bel Air Internet LLC v. Morales*, 230 Cal.Rptr.3d 71 (2018), where the court applied
22 the California Anti-SLAPP statue in a case where defendants denied making the statements. The
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24 ¹ As Defendants note, “Nevada courts regularly look to California law for guidance on issues related to
anti-SLAPP [statutes] because California’s and Nevada’s statutes are similar in purpose and language.”

1 court stated “[the California] Supreme Court has explained that, ‘[i]n deciding whether the initial
2 ‘arising from’ requirement is met, a court considers ‘the pleadings, and supporting and opposing
3 affidavits stating the facts upon which the liability or defense is based.’” *Id.* at 80. “[I]f the
4 complaint itself shows that a claim arises from protected conduct (supplemented, if appropriate, with
5 the plaintiff’s description of the factual basis for its claim in its declarations), a moving party may
6 rely on the plaintiff’s allegations alone in making the showing necessary under prong one without
7 submitting supporting evidence.” *Id.* The court goes on to explain “a defendant may deny acts
8 alleged in the plaintiff’s complaint yet also recognize that those allegations describe protected
9 conduct. If the defendant is required to support an anti-SLAPP motion with evidence about the
10 nature of his or her conduct rather than relying on the complaint itself, the defendant might not be
11 able to do so without contradicting his or her own understanding of the relevant events. As
12 mentioned above, this would create an irrational procedure in which a defendant is precluded from
13 mounting an anti-SLAPP challenge to factually baseless claims.” *Id.* at 81.

14 However, the California Anti-SLAPP statute is arguably broader than the Nevada statute.

15 California: CA CIV PRO § 425.16(b)(1), provides:

16 A cause of action against a person arising from any act of that person in furtherance
17 of the person's right of petition or free speech under the United States Constitution or
18 the California Constitution in connection with a public issue shall be subject to a
special motion to strike, unless the court determines that the plaintiff has established
that there is a probability that the plaintiff will prevail on the claim.

19 The statute goes on to define an “act in furtherance of a person's right of petition or free
20 speech under the United States or California Constitution in connection with a public issue” to
21 include: “(3) any written or oral statement or writing made in a place open to the public or a public
22 forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the
23 exercise of the constitutional right of petition or the constitutional right of free speech in
24 connection with a public issue or an issue of public interest.” California: CA CIV PRO §

1 425.16(e)(3) and (4). Consequently, California protects "any act of [the person against whom
2 litigation is brought] in furtherance of the person's right of petition or free speech," where Nevada
3 provides such protection only to "good faith communication in furtherance of the right to petition or
4 the right to free speech."

5 In the context of the court's decision in *Morales* to apply the Anti-SLAPP statute despite
6 defendants' denials to making the alleged statements this distinction in statutes is important. The
7 *Morales* court concluded even if a fact finder had determined that defendants in that case had done
8 the acts alleged by plaintiffs, that is: encouraged other employees to quit their jobs and sue the
9 company, their actions would have been protected under the idea that such "petition-speech" is
10 protected under California state law. Consequently, defendants did not need to admit making the
11 statements for the Court to conclude the Anti-SLAPP statute was applicable to them.

12 Here, there is a fine line between saying that evaluation of a doctor's care is protected speech
13 and saying that potentially false statements are protected just because the subject matter of the false
14 statements regard a doctor's care. If this case was a case involving a former patient who denied
15 making the statements, then the *Morales* analysis would be more appropriate. But the issue here is
16 that, taking the Plaintiffs' allegations as true, the Defendants made the instant statements evaluating
17 Plaintiff without ever having been patients of Plaintiff. Accordingly, if Plaintiff's allegations are
18 true, Defendants cannot demonstrate a "good faith communication" required under the Nevada
19 statute as Defendants' statements under such an assumption would not constitute a communication
20 "which is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

21 Had the Defendants received the allegedly "bad" plastic surgery services from Plaintiff, and
22 consequently posted negative Yelp reviews, then maybe there would be an issue of chilling free
23 speech—since the purpose of anti-SLAPP litigation is to protect statements that a party actually
24 makes. But since Defendants deny making the statements, the Court finds there cannot be an

1 analysis whether the statements were made in “good faith,” which is the first consideration in each
2 of the NRS anti-SLAPP statutes: NRS 41.637(4), NRS 41.650, NRS 41.660.

3 The Court in *Morales* also recognized this distinction between protected conduct which is
4 denied and unprotected conduct which is denied. The court noted “[a]n anti-SLAPP motion is a
5 preliminary procedure designed to weed out meritless claims arising from protected conduct. It is
6 not a device to decide the ultimate merits of a claim by resolving factual disputes.” *Morales* at 83.
7 The court explained that is for purposes of the motion it “accept[s] plaintiff’s evidence as true” for
8 purposes of analyzing whether the plaintiff’s claim arose from protected activity. *Id.* “A defendant’s
9 declaration denying that he or she engaged in the conduct alleged in the complaint does not foreclose
10 the possibility that a fact-finder could later find that he or she did in fact engage in that conduct.
11 Foreclosing an anti-SLAPP motion based upon one version of the facts would irrationally and
12 unfairly disregard this possibility.” *Id.* Whether defendants made the statements is a question of fact
13 and if defendants did make the statements they would not be protected under the Nevada Anti-
14 SLAPP statute.

15 In the Court’s view, the issue at this time is not that Plaintiff has failed to state claims on
16 which relief can be granted, but that Plaintiff has virtually no evidence to support his
17 claims. Plaintiff has met the very low threshold for surviving a NRCP 12(b)(5) motion to dismiss
18 because he and his practice have stated claims on which relief can be granted. The Nevada Supreme
19 Court has held that a Plaintiff’s Complaint “should be dismissed only if it appears beyond a doubt
20 that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, Ltd. Liability*
21 *Co. v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).

22 The Court, however, is concerned with allowing litigation in this matter to go forward based
23 on the minimal evidence Plaintiff has to establish Defendants made the statements at issue. At the
24 hearing on Defendants’ motion, Plaintiff only presented evidence suggesting some posts made by

1 Cecily S. on Yelp were made at times and in locations where Defendants were
2 traveling. Consequently, the evidence Plaintiff currently possesses is arguably insufficient in the
3 Court's view to raise even a prima facie case against Defendants. NRCP 12 (d) provides that if on a
4 motion to dismiss for failure to state a claim upon which relief can be granted, the Court considers
5 matters outside the pleadings, the Court may treat the motion as one for summary judgment. *See*
6 *also Thompson v. City of North Las Vegas*, 108 Nev. 435, 438, 833 P.2d 1132 (1992). Here the
7 entire crux of this litigation is based on Plaintiff's assertion Defendants made the statements in
8 question. If Defendants did not make the statements, Plaintiff's case is at an end. Consequently, the
9 Court in view of the limited evidence Plaintiff presented at the hearing in support of his key
10 allegations, treats Defendant's motion to dismiss as one for summary judgement and provides for
11 additional time under NRCP 56(d) for limited discovery to allow Plaintiff to demonstrate a factual
12 issue for the jury as to defendants making the relevant statements.

13 **ORDER**

14 The Court HEREBY ORDERS a hearing on March 11, 2020 at 8:30am at which time
15 Plaintiff shall present a plan as to expedited discovery on the question of whether Defendants made
16 the statements in question to allow the Court to determine whether summary judgment should be
17 granted on that basis. The Court encourages the parties to meet and confer prior to the hearing to
18 attempt to reach a joint recommendation as to an expedited discovery plan.

19 DATED this 4th day of March, 2020.


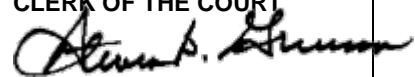
20 
21 _____
22 ERIC JOHNSON
23 DISTRICT COURT JUDGE
24

EXHIBIT 2



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Emily A. Buchwald, Esq., Bar No. 13442
EAB@pisanellibice.com
PISANELLI BICE PLLC
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Las Vegas, Nevada 89101
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*Attorneys for Defendants Christopher Khorsandi, M.D.,
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**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

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KHORSANDI, an individual; CECILY S., a
pseudonym used by CATHERINE LE
KHORSANDI; Does I-X, and Roe
Corporations 1-X,

Defendants.

Case No.: A-19-804819-C
Dept. No.: XX

**NOTICE OF ENTRY OF ORDER ON
DEFENDANTS' SPECIAL MOTION TO
DISMISS**

Date of Hearing: February 19, 2020

Time of Hearing: 10:30 a.m.

1 PLEASE TAKE NOTICE that an "Order on Defendants Christopher Khorsandi, M.D.,
2 Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss
3 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5)"
4 was entered in the above-captioned matter on March 4, 2020, a true and correct copy of which is
5 attached hereto.

6 DATED this 10th day of March, 2020.

7 PISANELLI BICE PLLC

8 By: /s/ Emily A. Buchwald
9 James J. Pisanelli, Esq., #4027
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11 400 South 7th Street, Suite 300
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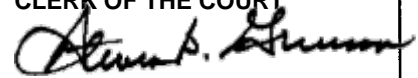
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th day of March, 2020, I caused to be served via the Court's e-filing/e-service system, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** to the following:

Anthony P. Sgro, Esq.
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1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

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14 Court, the Honorable Eric Johnson presiding, on February 19, 2020. Plaintiff was represented by
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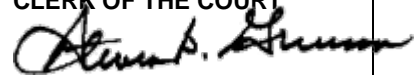
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9 Court in view of the limited evidence Plaintiff presented at the hearing in support of his key
10 allegations, treats Defendant's motion to dismiss as one for summary judgement and provides for
11 additional time under NRCP 56(d) for limited discovery to allow Plaintiff to demonstrate a factual
12 issue for the jury as to defendants making the relevant statements.

13 **ORDER**

14 The Court HEREBY ORDERS a hearing on March 11, 2020 at 8:30am at which time
15 Plaintiff shall present a plan as to expedited discovery on the question of whether Defendants made
16 the statements in question to allow the Court to determine whether summary judgment should be
17 granted on that basis. The Court encourages the parties to meet and confer prior to the hearing to
18 attempt to reach a joint recommendation as to an expedited discovery plan.

19 DATED this 4th day of March, 2020.

20 
21 _____
22 ERIC JOHNSON
23 DISTRICT COURT JUDGE
24



James J. Pisanelli, Esq., Bar No. 4027
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Emily A. Buchwald, Esq., Bar No. 13442
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*Attorneys for Defendants Christopher
Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC,
and Catherine Le Khorsandi*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SMITH PLASTIC SURGERY, INC., a Nevada
Corporation, and LANE F. SMITH, M.D., an
individual,

Plaintiffs,

v.

CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER
KHORSANDI, M.D., PLLC, a Nevada
Professional LLC, CATHERINE LE
KHORSANDI, an individual; CECILY S., a
pseudonym used by CATHERINE LE
KHORSANDI; Does I-X, and Roe
Corporations 1-X,

Defendants.

Case No.: A-19-804819-C
Dept. No.: XX

CASE APPEAL STATEMENT

1. Name of appellants filing this case appeal statement:

Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi.

2. The judge issuing the decision, judgment, or order appealed from:

The Honorable Eric Johnson, Dept. No. XX

3. Parties to the district court proceedings:

Plaintiffs: Smith Plastic Surgery, Inc. and Lane F. Smith, M.D.

Defendants: Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi.

4. Parties involved in this appeal:

Appellants: Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi.

Respondents: Smith Plastic Surgery, Inc. and Lane F. Smith, M.D.

5. Name, law firm, address and telephone number of all counsel on appeal:

Counsel for Plaintiffs/Appellants:

James J. Pisanelli, Esq., Bar No. 4027
Emily A. Buchwald, Esq., Bar No. 13442
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.21012

Counsel for Defendants/Respondents:

Anthony P. Sgro, Esq., Bar No. 3811
Jennifer Willis Arledge, Esq., Bar No. 8729
Colleen N. Savage, Esq., Bar No. 14947
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702.384.9800
Facsimile: 702.665-4120

6. Whether appellant is represented by appointed or retained counsel in the district court:

Appellant is represented by retained counsel in the district court.

1 **7. Whether appellant is represented by appointed or retained counsel on appeal:**

2 Appellant is represented by retained counsel on appeal.

3 **8. Whether appellant was granted leave to proceed in forma pauperis and the date of**
4 **entry of the district court order granting such leave:**

5 Appellant is not proceeding in forma pauperis.

6 **9. The date the proceedings commenced in the district court:**

7 November 4, 2019

8 **10. Brief description of the nature of the action and result in the district court, including**
9 **the type of judgment or order being appealed and the relief granted by the district**
10 **court:**

11 Plaintiffs/Respondents' action is based upon negative reviews about their medical practice
12 posted on the website Yelp that they claim were either authored by Defendants/Appellants or with
13 the knowledge of Defendants/Appellants. Plaintiffs/Respondents also seek to impose liability on
14 Defendant/Appellant Dr. Khorsandi for a statement he purportedly made to a patient during an
15 appointment. On November 11, 2019, Plaintiffs/Respondents brought the following causes of
16 action: (1) Slander Per Se; (2) Libel Per Se; (3) Libel Per Se; (4) Libel Per Se; (5) Libel Per Se;
17 (6); Libel Per Se; (7) Libel Per Se; (8) Concert of Action, Aiding and Abetting, Civil Conspiracy;
18 (9); Intentional Infliction of Emotional Distress; (10) False Light; (11) Punitive Damages;
19 (12) Negligent Hiring Supervision and Training; (13) Wrongful Interference with Prospective
20 Economic Advantage; (14) Preliminary Injunction.

21 Defendants/Appellants filed their Special Motion to Dismiss Pursuant to NRS 41.660, or
22 in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5) ("Special Motion"). While
23 Nevada's anti-SLAPP statute limits liability for good faith communications based on issues of
24 public concern, Defendants/Appellants submitted declarations denying that they made the
25 underlying statements in order to establish their good faith requirement, consistent with the
26 process set forth by California courts. Alternatively, Defendants/Appellants moved to dismiss for
27 failure to state a claim. Following argument on the Special Motion, the District Court took the
28 motion under advisement on February 19, 2020.

On March 4, 2020, the District Court entered its Order on Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) (hereinafter "Order"). The Order denied Defendants/Appellants' Special Motion, finding that despite Defendants/Appellants sworn declarations that they did not make the statements and Plaintiffs/Respondents' minimal evidence implicating any of the Defendants/Appellants in making the statements, Defendants/Appellants could not demonstrate that the statements were good faith communications as required by Nevada's anti-SLAPP statute. The District Court also denied Defendants/Appellants motion to dismiss pursuant to NRCP 12(b)(5).

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

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

12. Whether the appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. Whether the appeal involves the possibility of settlement:

A settlement conference may assist the parties in reaching a settlement.

DATED this 31st day of March, 2020.

PISANELLI BICE PLLC

By: /s/ Emily A. Buchwald
James J. Pisanelli, Esq., #4027
Emily A. Buchwald, Esq., #13442
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

*Attorneys for Defendants Christopher Khorsandi,
M.D., Christopher Khorsandi, M.D., PLLC, and
Catherine Le Khorsandi*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 31st day of March, 2020, I caused to be served via the Court's e-filing/e-service system, true and correct copies of the above and foregoing **CASE APPEAL STATEMENT** to the following:

Anthony P. Sgro, Esq.
Jennifer Willis Arledge, Esq.
Colleen N. Savage, Esq.
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, NV 89101

/s/ Kimberly Peets/
An employee of Pisanelli Bice PLLC

CASE SUMMARY**CASE NO. A-19-804819-C**

Smith Plastic Surgery, Inc., Plaintiff(s)
vs.
Christopher Khorsandi, M.D., Defendant(s)

§
§
§
§
§

Location: **Department 20**
 Judicial Officer: **Johnson, Eric**
 Filed on: **11/04/2019**
 Cross-Reference Case Number: **A804819**

CASE INFORMATIONCase Type: **Other Tort**

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

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

Case Number A-19-804819-C
 Court Department 20
 Date Assigned 11/04/2019
 Judicial Officer Johnson, Eric

PARTY INFORMATION














		<i>Lead Attorneys</i>
Plaintiff	Smith Plastic Surgery, Inc.	Sgro, Anthony P. <i>Retained</i> 702-384-9800(W)
	Smith, Lane F., M.D.	Sgro, Anthony P. <i>Retained</i> 702-384-9800(W)
Defendant	Christopher Khorsandi, M.D., PLLC	Pisanelli, James J <i>Retained</i> 702-214-2100(W)
	Khorsandi, Catherine Le	Pisanelli, James J <i>Retained</i> 702-214-2100(W)
	Khorsandi, Christopher, M.D.	Pisanelli, James J <i>Retained</i> 702-214-2100(W)

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

11/04/2019	 Complaint Filed By: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Complaint</i>
11/04/2019	 Initial Appearance Fee Disclosure Filed By: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
11/04/2019	 Demand for Jury Trial Filed By: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Demand for Jury Trial</i>

CASE SUMMARY

CASE NO. A-19-804819-C

11/05/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Summons - Christopher Khorsandi, M.D., PLLC</i>
11/05/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Summons - Christopher Khorsandi, M.D.</i>
11/05/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Summons - Catherine Le Khorsandi</i>
11/19/2019	 Affidavit of Service Filed By: Plaintiff Smith, Lane F., M.D. <i>Affidavit of Service - Christopher Khorsandi, M.D., PLLC</i>
12/16/2019	 Waiver Filed by: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Waiver of Summons and Complaint Pursuant to NRCP Section 4.1</i>
01/10/2020	 Motion to Dismiss Filed By: Defendant Khorsandi, Christopher, M.D. <i>Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
01/10/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Khorsandi, Christopher, M.D.; Defendant Christopher Khorsandi, M.D., PLLC; Defendant Khorsandi, Catherine Le <i>Initial Appearance Fee Disclosure</i>
01/13/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/24/2020	 Opposition to Motion to Dismiss Filed By: Plaintiff Smith Plastic Surgery, Inc.; Plaintiff Smith, Lane F., M.D. <i>Plaintiffs' Opposition to Defendants' Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
02/03/2020	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
02/12/2020	 Reply in Support Filed By: Defendant Khorsandi, Christopher, M.D. <i>Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Reply in Support of Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
03/04/2020	 Order <i>Order On Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss Pursuant to NRS 41.660, Or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5)</i>
03/10/2020	 Notice of Entry of Order Filed By: Defendant Khorsandi, Christopher, M.D.

CASE SUMMARY

CASE NO. A-19-804819-C

Notice of Entry of Order on Defendants' Special Motion to Dismiss

03/16/2020



Transcript of Proceedings

Transcript of Hearing: Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion To Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5) 2/19/2020

03/31/2020



Notice of Appeal

Filed By: Defendant Khorsandi, Christopher, M.D.
Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Notice of Appeal

03/31/2020



Case Appeal Statement

Filed By: Defendant Khorsandi, Christopher, M.D.
Case Appeal Statement

HEARINGS

02/19/2020



Motion to Dismiss (10:30 AM) (Judicial Officer: Johnson, Eric)

Defendants Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)

Decision Made;

Journal Entry Details:

Court noted it is not sure there is a SLAPP statute issue. Arguments by Mr. Pisanelli in support of his position. Court stated on Rule 12, it agrees that the complaint is pretty general but not sure he necessarily agrees that for purposes of a Motion to Dismiss, that it is appropriate; in large part, it looks more like argument for Summary Judgment and that they have no evidence that his clients made these statements. Continued arguments by Mr. Pisanelli. Arguments by Ms. Arledge in support of her position. Following additional arguments, Court advised it will take this under advisement, however, he tends not to see a dismissal under Rule 12 and has some real concerns about the application of the anti-SLAPP statute. If upon review, the Court feels the statute does apply, it will probably lean towards allowing limited discovery in terms of the depositions to challenge the declarations of the doctor and his wife. COURT ORDERED, matter taken UNDER ADVISEMENT. CLERK'S NOTE: For decision, please refer to the Court's Order filed 3/4/20.;

03/11/2020



Status Check: Discovery (8:30 AM) (Judicial Officer: Johnson, Eric)

Matter Heard;

Journal Entry Details:

Court noted it entered its Order last week and did not treat as falling within SLAP but does feel it needs to go forward on the issue of who made the statements. Statements by Ms. Arledge and Mr. Pisanelli. Ms. Arledge thought the scope was for her to be able to discover if Ms. Khorsandi posed as someone else with the knowledge of Dr. Khorsandi and posted the statements, however, the Defense wants to depose Dr. Smith. Following colloquy, Ms. Arledge will turn over any information she has as to this issue. Court will allow the deposition of Dr. Smith on a limited basis as to why he filed suit on this case. Following statements by Mr. Pisanelli, Court advised 30b6 will not be allowed at this time and if he feels it is necessary, Mr. Pisanelli will file a motion. Following continued arguments by Ms. Arledge and Mr. Pisanelli, each party will take 2 1/2 hrs per deposition for Dr. and Mrs. Khorsandi and Dr. Smith. Mr. Pisanelli requested there be a stay as to an appeal as to the SLAP issue. COURT ORDERED, the deadline is SET for ONE HUNDRED TEN (110) DAYS from today and the matter STAYED for TWO (2) WEEKS. Counsel was directed to contact chambers if he files an appeal so the time can be extended.;

DATE

FINANCIAL INFORMATION

Defendant Christopher Khorsandi, M.D., PLLC

Total Charges

30.00

Total Payments and Credits

0.00

Balance Due as of 4/2/2020

30.00

Defendant Khorsandi, Catherine Le

CASE SUMMARY

CASE NO. A-19-804819-C

Total Charges	30.00
Total Payments and Credits	0.00
Balance Due as of 4/2/2020	30.00

Defendant Khorsandi, Christopher, M.D.

Total Charges	247.00
Total Payments and Credits	24.00
Balance Due as of 4/2/2020	223.00

Plaintiff Smith Plastic Surgery, Inc.

Total Charges	300.00
Total Payments and Credits	300.00
Balance Due as of 4/2/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

CASE NO: A-19-804819-C
Department 20

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Smith Plastic Surgery, Inc. a Nevada Corp, & Lane F. Smith, M.D., an individual c/o Sgro & Roger, 720 S. 7th St., 3rd Fl., Las Vegas, NV 89101	Christopher Khorsandi, M.D., an individual, Christopher Khorsandi, M.D., PLLC, a LLC, Catherine Le Khorsandi, an individual
Attorney (name/address/phone):	Attorney (name/address/phone):
Anthony P. Sgro, Esq. NV Bar No. 3811 720 South 7th Street, Third Floor Las Vegas, Nevada 89101	

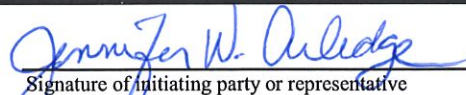
II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-\$20,000 <input type="checkbox"/> \$2,500 or less	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

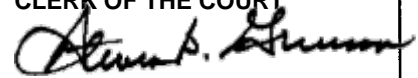
Business Court filings should be filed using the Business Court civil coversheet.

11-4-19

Date


 Signature of initiating party or representative

See other side for family-related case filings.



1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 SMITH PLASTIC SURGERY, INC., a
5 Nevada Corporation, and LANE F. SMITH,
M.D., an individual,

Case No. A-19-804819-C

Dept. No. XX

6 Plaintiffs,

7 v.

8 CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER KHORSANDI,
M.D., PLLC, a Nevada Professional LLC,
9 CATHERINE LE KHORSANDI, an individual;
CECILY S., a pseudonym used by CATHERINE
10 LE KHORSANDI; Does I-X, and Roe
Corporations I-X,

**ORDER ON DEFENDANTS
CHRISTOPHER KHORSANDI, M.D.,
CHRISTOPHER KHORSANDI, M.D.,
PLLC, AND CATHERINE LE
KHORSANDI'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660,
OR IN THE ALTERNATIVE, MOTION
TO DISMISS PURSUANT TO NRCP
12(B)(5)**

11 Defendants.

12 **INTRODUCTION**

13 THIS MATTER came on for hearing before Department XX of the Eighth Judicial District
14 Court, the Honorable Eric Johnson presiding, on February 19, 2020. Plaintiff was represented by
15 Jennifer Willis Arledge, ESQ. Defendants were represented by James Pisanelli, Esq. and Emily
16 Buchwald, Esq. At that time, the Court took the matter UNDER ADVISEMENT. After reviewing
17 the pleadings and papers on file herein, the Court finds the following:

18 **DISCUSSION**

19 Defendant argues that Nevada's Anti-SLAPP statute should apply to Plaintiff's complaint.
20 While Defendants deny making the statements which are the subject of the complaint, they note the
21 purported statements were made in direct connection with an issue of public interest in a public
22 forum. The Court agrees the quality of a doctor's patient care is most certainly an interest of public
23 interest and review sites like Yelp are public forums. Defendants argue that because the subject
24 matter of the purported statements falls within the ambient of communications the statute is intended

1 to protect, the burden should shift to the Plaintiffs to demonstrate they have “stated a legally
2 sufficient claim and made a prima facie showing sufficient to sustain a favorable judgment.” *Baral*
3 *v. Schnitt*, 376 P.3d 604, 608 (Cal. 2016).¹

4 The problem with the application of the Anti-SLAPP statute in this matter is that the
5 Defendants deny making the statements at issue. NRS 41.660(1) provides: “If an action is brought
6 against a person based upon a good faith communication in furtherance of the right to petition or the
7 right to free speech in direct connection with an issue of public concern: (a) The person against
8 whom the action is brought may file a special motion to dismiss.” NRS 41.637(4) in turn defines
9 “[g]ood faith communication in furtherance of the right to petition or the right to free speech in
10 direct connection with an issue of public concern” as any “[c]ommunication made in direct
11 connection with an issue of public interest in a place open to the public or in a public forum, which
12 is truthful or is made without knowledge of its falsehood.” Consequently, if Defendants did not
13 make the communications, the statute does not appear to apply to Plaintiff’s complaint.

14 Defendant’s argue the statements Plaintiff charge are the very type intended to be protected
15 under the under Nevada’s Anti-SLAPP statutes, and Plaintiffs unsupported allegations that
16 Defendants made the statements highlights that this is a strategic litigation against public
17 participation, or SLAPP, lawsuit. Plaintiffs largely admit that they currently have minimal evidence
18 supporting Defendants made the statements, relying on Yelp’s location feature for posts and travel
19 information concerning Defendants to suggest Defendants made the posts.

20 Defendants argue the Court should find the instant complaint falls within the Anti-SLAPP
21 statute under *Bel Air Internet LLC v. Morales*, 230 Cal.Rptr.3d 71 (2018), where the court applied
22 the California Anti-SLAPP statue in a case where defendants denied making the statements. The
23

24 ¹ As Defendants note, “Nevada courts regularly look to California law for guidance on issues related to
anti-SLAPP [statutes] because California’s and Nevada’s statutes are similar in purpose and language.”

1 court stated “[the California] Supreme Court has explained that, ‘[i]n deciding whether the initial
2 ‘arising from’ requirement is met, a court considers ‘the pleadings, and supporting and opposing
3 affidavits stating the facts upon which the liability or defense is based.’” *Id.* at 80. “[I]f the
4 complaint itself shows that a claim arises from protected conduct (supplemented, if appropriate, with
5 the plaintiff’s description of the factual basis for its claim in its declarations), a moving party may
6 rely on the plaintiff’s allegations alone in making the showing necessary under prong one without
7 submitting supporting evidence.” *Id.* The court goes on to explain “a defendant may deny acts
8 alleged in the plaintiff’s complaint yet also recognize that those allegations describe protected
9 conduct. If the defendant is required to support an anti-SLAPP motion with evidence about the
10 nature of his or her conduct rather than relying on the complaint itself, the defendant might not be
11 able to do so without contradicting his or her own understanding of the relevant events. As
12 mentioned above, this would create an irrational procedure in which a defendant is precluded from
13 mounting an anti-SLAPP challenge to factually baseless claims.” *Id.* at 81.

14 However, the California Anti-SLAPP statute is arguably broader than the Nevada statute.
15 California: CA CIV PRO § 425.16(b)(1), provides:

16 A cause of action against a person arising from any act of that person in furtherance
17 of the person's right of petition or free speech under the United States Constitution or
18 the California Constitution in connection with a public issue shall be subject to a
special motion to strike, unless the court determines that the plaintiff has established
that there is a probability that the plaintiff will prevail on the claim.

19 The statute goes on to define an “act in furtherance of a person's right of petition or free
20 speech under the United States or California Constitution in connection with a public issue” to
21 include: “(3) any written or oral statement or writing made in a place open to the public or a public
22 forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the
23 exercise of the constitutional right of petition or the constitutional right of free speech in
24 connection with a public issue or an issue of public interest.” California: CA CIV PRO §

1 425.16(e)(3) and (4). Consequently, California protects "any act of [the person against whom
2 litigation is brought] in furtherance of the person's right of petition or free speech," where Nevada
3 provides such protection only to "good faith communication in furtherance of the right to petition or
4 the right to free speech."

5 In the context of the court's decision in *Morales* to apply the Anti-SLAPP statute despite
6 defendants' denials to making the alleged statements this distinction in statutes is important. The
7 *Morales* court concluded even if a fact finder had determined that defendants in that case had done
8 the acts alleged by plaintiffs, that is: encouraged other employees to quit their jobs and sue the
9 company, their actions would have been protected under the idea that such "petition-speech" is
10 protected under California state law. Consequently, defendants did not need to admit making the
11 statements for the Court to conclude the Anti-SLAPP statute was applicable to them.

12 Here, there is a fine line between saying that evaluation of a doctor's care is protected speech
13 and saying that potentially false statements are protected just because the subject matter of the false
14 statements regard a doctor's care. If this case was a case involving a former patient who denied
15 making the statements, then the *Morales* analysis would be more appropriate. But the issue here is
16 that, taking the Plaintiffs' allegations as true, the Defendants made the instant statements evaluating
17 Plaintiff without ever having been patients of Plaintiff. Accordingly, if Plaintiff's allegations are
18 true, Defendants cannot demonstrate a "good faith communication" required under the Nevada
19 statute as Defendants' statements under such an assumption would not constitute a communication
20 "which is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

21 Had the Defendants received the allegedly "bad" plastic surgery services from Plaintiff, and
22 consequently posted negative Yelp reviews, then maybe there would be an issue of chilling free
23 speech—since the purpose of anti-SLAPP litigation is to protect statements that a party actually
24 makes. But since Defendants deny making the statements, the Court finds there cannot be an

1 analysis whether the statements were made in “good faith,” which is the first consideration in each
2 of the NRS anti-SLAPP statutes: NRS 41.637(4), NRS 41.650, NRS 41.660.

3 The Court in *Morales* also recognized this distinction between protected conduct which is
4 denied and unprotected conduct which is denied. The court noted “[a]n anti-SLAPP motion is a
5 preliminary procedure designed to weed out meritless claims arising from protected conduct. It is
6 not a device to decide the ultimate merits of a claim by resolving factual disputes.” *Morales* at 83.
7 The court explained that is for purposes of the motion it “accept[s] plaintiff’s evidence as true” for
8 purposes of analyzing whether the plaintiff’s claim arose from protected activity. *Id.* “A defendant’s
9 declaration denying that he or she engaged in the conduct alleged in the complaint does not foreclose
10 the possibility that a fact-finder could later find that he or she did in fact engage in that conduct.
11 Foreclosing an anti-SLAPP motion based upon one version of the facts would irrationally and
12 unfairly disregard this possibility.” *Id.* Whether defendants made the statements is a question of fact
13 and if defendants did make the statements they would not be protected under the Nevada Anti-
14 SLAPP statute.

15 In the Court’s view, the issue at this time is not that Plaintiff has failed to state claims on
16 which relief can be granted, but that Plaintiff has virtually no evidence to support his
17 claims. Plaintiff has met the very low threshold for surviving a NRCP 12(b)(5) motion to dismiss
18 because he and his practice have stated claims on which relief can be granted. The Nevada Supreme
19 Court has held that a Plaintiff’s Complaint “should be dismissed only if it appears beyond a doubt
20 that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, Ltd. Liability*
21 *Co. v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).


22 The Court, however, is concerned with allowing litigation in this matter to go forward based
23 on the minimal evidence Plaintiff has to establish Defendants made the statements at issue. At the
24 hearing on Defendants’ motion, Plaintiff only presented evidence suggesting some posts made by

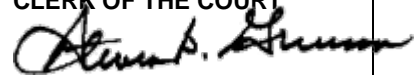
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2 traveling. Consequently, the evidence Plaintiff currently possesses is arguably insufficient in the
3 Court's view to raise even a prima facie case against Defendants. NRCP 12 (d) provides that if on a
4 motion to dismiss for failure to state a claim upon which relief can be granted, the Court considers
5 matters outside the pleadings, the Court may treat the motion as one for summary judgment. *See*
6 *also Thompson v. City of North Las Vegas*, 108 Nev. 435, 438, 833 P.2d 1132 (1992). Here the
7 entire crux of this litigation is based on Plaintiff's assertion Defendants made the statements in
8 question. If Defendants did not make the statements, Plaintiff's case is at an end. Consequently, the
9 Court in view of the limited evidence Plaintiff presented at the hearing in support of his key
10 allegations, treats Defendant's motion to dismiss as one for summary judgment and provides for
11 additional time under NRCP 56(d) for limited discovery to allow Plaintiff to demonstrate a factual
12 issue for the jury as to defendants making the relevant statements.

13 **ORDER**

14 The Court HEREBY ORDERS a hearing on March 11, 2020 at 8:30am at which time
15 Plaintiff shall present a plan as to expedited discovery on the question of whether Defendants made
16 the statements in question to allow the Court to determine whether summary judgment should be
17 granted on that basis. The Court encourages the parties to meet and confer prior to the hearing to
18 attempt to reach a joint recommendation as to an expedited discovery plan.

19 DATED this 4th day of March, 2020.

20 
21 _____
22 ERIC JOHNSON
23 DISTRICT COURT JUDGE
24



James J. Pisanelli, Esq., Bar No. 4027
JJP@pisanellibice.com
Emily A. Buchwald, Esq., Bar No. 13442
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PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Telephone: 702.214.2100
Facsimile: 702.214.2101

*Attorneys for Defendants Christopher Khorsandi, M.D.,
Christopher Khorsandi, M.D., PLLC,
and Catherine Le Khorsandi*

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

SMITH PLASTIC SURGERY, INC., a Nevada
Corporation, and LANE F. SMITH, M.D., an
individual,

Plaintiffs,

v.

CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER
KHORSANDI, M.D., PLLC, a Nevada
Professional LLC, CATHERINE LE
KHORSANDI, an individual; CECILY S., a
pseudonym used by CATHERINE LE
KHORSANDI; Does I-X, and Roe
Corporations 1-X,

Defendants.

Case No.: A-19-804819-C
Dept. No.: XX

**NOTICE OF ENTRY OF ORDER ON
DEFENDANTS' SPECIAL MOTION TO
DISMISS**

Date of Hearing: February 19, 2020

Time of Hearing: 10:30 a.m.

1 PLEASE TAKE NOTICE that an "Order on Defendants Christopher Khorsandi, M.D.,
2 Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss
3 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(B)(5)"
4 was entered in the above-captioned matter on March 4, 2020, a true and correct copy of which is
5 attached hereto.

6 DATED this 10th day of March, 2020.

7 PISANELLI BICE PLLC

8
9 By: /s/ Emily A. Buchwald
10 James J. Pisanelli, Esq., #4027
11 Emily A. Buchwald, Esq., #13442
12 400 South 7th Street, Suite 300
13 Las Vegas, Nevada 89101

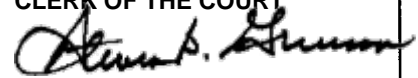
14 *Attorneys for Defendants Christopher Khorsandi,*
15 *M.D., Christopher Khorsandi, M.D., PLLC, and*
16 *Catherine Le Khorsandi*
17
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th day of March, 2020, I caused to be served via the Court's e-filing/e-service system, true and correct copies of the above and foregoing **NOTICE OF ENTRY OF ORDER** to the following:

Anthony P. Sgro, Esq.
Jennifer Willis Arledge, Esq.
Justin W. Wilson, Esq.
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, NV 89101

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC



1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 SMITH PLASTIC SURGERY, INC., a
5 Nevada Corporation, and LANE F. SMITH,
M.D., an individual,

Case No. A-19-804819-C

Dept. No. XX

6 Plaintiffs,

7 v.

8 CHRISTOPHER KHORSANDI, M.D., an
individual, CHRISTOPHER KHORSANDI,
M.D., PLLC, a Nevada Professional LLC,
9 CATHERINE LE KHORSANDI, an individual;
CECILY S., a pseudonym used by CATHERINE
10 LE KHORSANDI; Does I-X, and Roe
Corporations I-X,

**ORDER ON DEFENDANTS
CHRISTOPHER KHORSANDI, M.D.,
CHRISTOPHER KHORSANDI, M.D.,
PLLC, AND CATHERINE LE
KHORSANDI'S SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660,
OR IN THE ALTERNATIVE, MOTION
TO DISMISS PURSUANT TO NRCP
12(B)(5)**

11 Defendants.

12 **INTRODUCTION**

13 THIS MATTER came on for hearing before Department XX of the Eighth Judicial District
14 Court, the Honorable Eric Johnson presiding, on February 19, 2020. Plaintiff was represented by
15 Jennifer Willis Arledge, ESQ. Defendants were represented by James Pisanelli, Esq. and Emily
16 Buchwald, Esq. At that time, the Court took the matter UNDER ADVISEMENT. After reviewing
17 the pleadings and papers on file herein, the Court finds the following:

18 **DISCUSSION**

19 Defendant argues that Nevada's Anti-SLAPP statute should apply to Plaintiff's complaint.
20 While Defendants deny making the statements which are the subject of the complaint, they note the
21 purported statements were made in direct connection with an issue of public interest in a public
22 forum. The Court agrees the quality of a doctor's patient care is most certainly an interest of public
23 interest and review sites like Yelp are public forums. Defendants argue that because the subject
24 matter of the purported statements falls within the ambient of communications the statute is intended

1 to protect, the burden should shift to the Plaintiffs to demonstrate they have “stated a legally
2 sufficient claim and made a prima facie showing sufficient to sustain a favorable judgment.” *Baral*
3 *v. Schnitt*, 376 P.3d 604, 608 (Cal. 2016).¹

4 The problem with the application of the Anti-SLAPP statute in this matter is that the
5 Defendants deny making the statements at issue. NRS 41.660(1) provides: “If an action is brought
6 against a person based upon a good faith communication in furtherance of the right to petition or the
7 right to free speech in direct connection with an issue of public concern: (a) The person against
8 whom the action is brought may file a special motion to dismiss.” NRS 41.637(4) in turn defines
9 “[g]ood faith communication in furtherance of the right to petition or the right to free speech in
10 direct connection with an issue of public concern” as any “[c]ommunication made in direct
11 connection with an issue of public interest in a place open to the public or in a public forum, which
12 is truthful or is made without knowledge of its falsehood.” Consequently, if Defendants did not
13 make the communications, the statute does not appear to apply to Plaintiff’s complaint.

14 Defendant’s argue the statements Plaintiff charge are the very type intended to be protected
15 under the under Nevada’s Anti-SLAPP statutes, and Plaintiffs unsupported allegations that
16 Defendants made the statements highlights that this is a strategic litigation against public
17 participation, or SLAPP, lawsuit. Plaintiffs largely admit that they currently have minimal evidence
18 supporting Defendants made the statements, relying on Yelp’s location feature for posts and travel
19 information concerning Defendants to suggest Defendants made the posts.

20 Defendants argue the Court should find the instant complaint falls within the Anti-SLAPP
21 statute under *Bel Air Internet LLC v. Morales*, 230 Cal.Rptr.3d 71 (2018), where the court applied
22 the California Anti-SLAPP statue in a case where defendants denied making the statements. The
23

24 ¹ As Defendants note, “Nevada courts regularly look to California law for guidance on issues related to
anti-SLAPP [statutes] because California’s and Nevada’s statutes are similar in purpose and language.”

1 court stated “[the California] Supreme Court has explained that, ‘[i]n deciding whether the initial
2 ‘arising from’ requirement is met, a court considers ‘the pleadings, and supporting and opposing
3 affidavits stating the facts upon which the liability or defense is based.’” *Id.* at 80. “[I]f the
4 complaint itself shows that a claim arises from protected conduct (supplemented, if appropriate, with
5 the plaintiff’s description of the factual basis for its claim in its declarations), a moving party may
6 rely on the plaintiff’s allegations alone in making the showing necessary under prong one without
7 submitting supporting evidence.” *Id.* The court goes on to explain “a defendant may deny acts
8 alleged in the plaintiff’s complaint yet also recognize that those allegations describe protected
9 conduct. If the defendant is required to support an anti-SLAPP motion with evidence about the
10 nature of his or her conduct rather than relying on the complaint itself, the defendant might not be
11 able to do so without contradicting his or her own understanding of the relevant events. As
12 mentioned above, this would create an irrational procedure in which a defendant is precluded from
13 mounting an anti-SLAPP challenge to factually baseless claims.” *Id.* at 81.

14 However, the California Anti-SLAPP statute is arguably broader than the Nevada statute.
15 California: CA CIV PRO § 425.16(b)(1), provides:

16 A cause of action against a person arising from any act of that person in furtherance
17 of the person's right of petition or free speech under the United States Constitution or
18 the California Constitution in connection with a public issue shall be subject to a
special motion to strike, unless the court determines that the plaintiff has established
that there is a probability that the plaintiff will prevail on the claim.

19 The statute goes on to define an “act in furtherance of a person's right of petition or free
20 speech under the United States or California Constitution in connection with a public issue” to
21 include: “(3) any written or oral statement or writing made in a place open to the public or a public
22 forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the
23 exercise of the constitutional right of petition or the constitutional right of free speech in
24 connection with a public issue or an issue of public interest.” California: CA CIV PRO §

1 425.16(e)(3) and (4). Consequently, California protects "any act of [the person against whom
2 litigation is brought] in furtherance of the person's right of petition or free speech," where Nevada
3 provides such protection only to "good faith communication in furtherance of the right to petition or
4 the right to free speech."

5 In the context of the court's decision in *Morales* to apply the Anti-SLAPP statute despite
6 defendants' denials to making the alleged statements this distinction in statutes is important. The
7 *Morales* court concluded even if a fact finder had determined that defendants in that case had done
8 the acts alleged by plaintiffs, that is: encouraged other employees to quit their jobs and sue the
9 company, their actions would have been protected under the idea that such "petition-speech" is
10 protected under California state law. Consequently, defendants did not need to admit making the
11 statements for the Court to conclude the Anti-SLAPP statute was applicable to them.

12 Here, there is a fine line between saying that evaluation of a doctor's care is protected speech
13 and saying that potentially false statements are protected just because the subject matter of the false
14 statements regard a doctor's care. If this case was a case involving a former patient who denied
15 making the statements, then the *Morales* analysis would be more appropriate. But the issue here is
16 that, taking the Plaintiffs' allegations as true, the Defendants made the instant statements evaluating
17 Plaintiff without ever having been patients of Plaintiff. Accordingly, if Plaintiff's allegations are
18 true, Defendants cannot demonstrate a "good faith communication" required under the Nevada
19 statute as Defendants' statements under such an assumption would not constitute a communication
20 "which is truthful or is made without knowledge of its falsehood." NRS 41.637(4).

21 Had the Defendants received the allegedly "bad" plastic surgery services from Plaintiff, and
22 consequently posted negative Yelp reviews, then maybe there would be an issue of chilling free
23 speech—since the purpose of anti-SLAPP litigation is to protect statements that a party actually
24 makes. But since Defendants deny making the statements, the Court finds there cannot be an

1 analysis whether the statements were made in “good faith,” which is the first consideration in each
2 of the NRS anti-SLAPP statutes: NRS 41.637(4), NRS 41.650, NRS 41.660.

3 The Court in *Morales* also recognized this distinction between protected conduct which is
4 denied and unprotected conduct which is denied. The court noted “[a]n anti-SLAPP motion is a
5 preliminary procedure designed to weed out meritless claims arising from protected conduct. It is
6 not a device to decide the ultimate merits of a claim by resolving factual disputes.” *Morales* at 83.
7 The court explained that is for purposes of the motion it “accept[s] plaintiff’s evidence as true” for
8 purposes of analyzing whether the plaintiff’s claim arose from protected activity. *Id.* “A defendant’s
9 declaration denying that he or she engaged in the conduct alleged in the complaint does not foreclose
10 the possibility that a fact-finder could later find that he or she did in fact engage in that conduct.
11 Foreclosing an anti-SLAPP motion based upon one version of the facts would irrationally and
12 unfairly disregard this possibility.” *Id.* Whether defendants made the statements is a question of fact
13 and if defendants did make the statements they would not be protected under the Nevada Anti-
14 SLAPP statute.

15 In the Court’s view, the issue at this time is not that Plaintiff has failed to state claims on
16 which relief can be granted, but that Plaintiff has virtually no evidence to support his
17 claims. Plaintiff has met the very low threshold for surviving a NRCP 12(b)(5) motion to dismiss
18 because he and his practice have stated claims on which relief can be granted. The Nevada Supreme
19 Court has held that a Plaintiff’s Complaint “should be dismissed only if it appears beyond a doubt
20 that it could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, Ltd. Liability*
21 *Co. v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008).


22 The Court, however, is concerned with allowing litigation in this matter to go forward based
23 on the minimal evidence Plaintiff has to establish Defendants made the statements at issue. At the
24 hearing on Defendants’ motion, Plaintiff only presented evidence suggesting some posts made by

1 Cecily S. on Yelp were made at times and in locations where Defendants were
2 traveling. Consequently, the evidence Plaintiff currently possesses is arguably insufficient in the
3 Court's view to raise even a prima facie case against Defendants. NRCP 12 (d) provides that if on a
4 motion to dismiss for failure to state a claim upon which relief can be granted, the Court considers
5 matters outside the pleadings, the Court may treat the motion as one for summary judgment. *See*
6 *also Thompson v. City of North Las Vegas*, 108 Nev. 435, 438, 833 P.2d 1132 (1992). Here the
7 entire crux of this litigation is based on Plaintiff's assertion Defendants made the statements in
8 question. If Defendants did not make the statements, Plaintiff's case is at an end. Consequently, the
9 Court in view of the limited evidence Plaintiff presented at the hearing in support of his key
10 allegations, treats Defendant's motion to dismiss as one for summary judgment and provides for
11 additional time under NRCP 56(d) for limited discovery to allow Plaintiff to demonstrate a factual
12 issue for the jury as to defendants making the relevant statements.

13 **ORDER**

14 The Court HEREBY ORDERS a hearing on March 11, 2020 at 8:30am at which time
15 Plaintiff shall present a plan as to expedited discovery on the question of whether Defendants made
16 the statements in question to allow the Court to determine whether summary judgment should be
17 granted on that basis. The Court encourages the parties to meet and confer prior to the hearing to
18 attempt to reach a joint recommendation as to an expedited discovery plan.

19 DATED this 4th day of March, 2020.

20 
21 _____
22 ERIC JOHNSON
23 DISTRICT COURT JUDGE
24

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

February 19, 2020

A-19-804819-C	Smith Plastic Surgery, Inc., Plaintiff(s) vs. Christopher Khorsandi, M.D., Defendant(s)
---------------	---

February 19, 2020 10:30 AM Motion to Dismiss

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Skinner

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT:	Arledge, Jennifer Willis Attorney Buchwald, Emily A. Attorney Pisanelli, James J Attorney
-----------------	--

JOURNAL ENTRIES

- Court noted it is not sure there is a SLAPP statute issue. Arguments by Mr. Pisanelli in support of his position. Court stated on Rule 12, it agrees that the complaint is pretty general but not sure he necessarily agrees that for purposes of a Motion to Dismiss, that it is appropriate; in large part, it looks more like argument for Summary Judgment and that they have no evidence that his clients made these statements. Continued arguments by Mr. Pisanelli. Arguments by Ms. Arledge in support of her position. Following additional arguments, Court advised it will take this under advisement, however, he tends not to see a dismissal under Rule 12 and has some real concerns about the application of the anti-SLAPP statute. If upon review, the Court feels the statute does apply, it will probably lean towards allowing limited discovery in terms of the depositions to challenge the declarations of the doctor and his wife. COURT ORDERED, matter taken UNDER ADVISEMENT.

CLERK'S NOTE: For decision, please refer to the Court's Order filed 3/4/20.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

March 11, 2020

A-19-804819-C Smith Plastic Surgery, Inc., Plaintiff(s)
vs.
Christopher Khorsandi, M.D., Defendant(s)

March 11, 2020 8:30 AM Status Check: Discovery

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Linda Skinner

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT:	Arledge, Jennifer Willis	Attorney
	Buchwald, Emily A.	Attorney
	Pisanelli, James J	Attorney

JOURNAL ENTRIES

- Court noted it entered its Order last week and did not treat as falling within SLAP but does feel it needs to go forward on the issue of who made the statements. Statements by Ms. Arledge and Mr. Pisanelli. Ms. Arledge thought the scope was for her to be able to discover if Ms. Khorsandi posed as someone else with the knowledge of Dr. Khorsandi and posted the statements, however, the Defense wants to depose Dr. Smith. Following colloquy, Ms. Arledge will turn over any information she has as to this issue. Court will allow the deposition of Dr. Smith on a limited basis as to why he filed suit on this case. Following statements by Mr. Pisanelli, Court advised 30b6 will not be allowed at this time and if he feels it is necessary, Mr. Pisanelli will file a motion. Following continued arguments by Ms. Arledge and Mr. Pisanelli, each party will take 2 1/2 hrs per deposition for Dr. and Mrs. Khorsandi and Dr. Smith. Mr. Pisanelli requested there be a stay as to an appeal as to the SLAP issue. COURT ORDERED, the deadline is SET for ONE HUNDRED TEN (110) DAYS from today and the matter STAYED for TWO (2) WEEKS. Counsel was directed to contact chambers if he files an appeal so the time can be extended.



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

JAMES J. PISANELLI, ESQ.
400 S. 7TH ST., SUITE 300
LAS VEGAS, NV 89101

DATE: April 2, 2020
CASE: A-19-804819-C

RE CASE: SMITH PLASTIC SURGERY, INC.; LANE F. SMITH, M.D. vs. CHRISTOPHER KHORSANDI, M.D.;
CHRISTOPHER KHORSANDI, M.D., PLLC; CATHERINE LE KHORSANDI aka CECILY S.

NOTICE OF APPEAL FILED: March 31, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

DEFENDANTS CHRISTOPHER KHORSANDI, M.D., CHRISTOPHER KHORSANDI, M.D., PLLC, AND CATHERINE LE KHORSANDI'S NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER ON DEFENDANTS CHRISTOPHER KHORSANDI, M.D., CHRISTOPHER KHORSANDI, M.D., PLLC, AND CATHERINE LE KHORSANDI'S SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5); NOTICE OF ENTRY OF ORDER ON DEFENDANTS' SPECIAL MOTION TO DISMISS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SMITH PLASTIC SURGERY, INC.; LANE F. SMITH. M.D.,

Plaintiff(s),

vs.

CHRISTOPHER KHORSANDI, M.D.;
CHRISTOPHER KHORSANDI, M.D., PLLC;
CATHERINE LE KHORSANDI aka CECILY S.,

Defendant(s),

Case No: A-19-804819-C

Dept No: XX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of April 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

