

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CHRISTOPHER KHORSANDI, M.D.;
CHRISTOPHER KHORSANDI, M.D., PLLC;
CATHERINE LE KHORSANDI,

v.

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

No. 80957

DOCKETING
CIVIL APPEALS

Electronically Filed
May 01 2020 01:21 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 XX
County Clark Judge Eric Johnson
District Ct. Case No. A-19-804819-C

2. Attorney filing this docketing statement:

Attorney James J. Pisanelli Telephone 702-214-2100
Firm Pisanelli Bice PLLC
Address 400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Client(s) Appellants

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 Anthony P. Sgro; Jennifer Arledge Telephone 702-384-9800
Firm Sgro & Roger
Address 720 South 7th Street, Third Floor
Las Vegas, NV 89101

Client(s) Smith Plastic Surgery, Inc.; Lane F. Smith, M.D.

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 checked="" type="checkbox"/> Other (specify): <u>NRS 41.670</u> |
| <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 type="checkbox"/> Other disposition (specify): _____ |

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:

Smith Plastic Surgery, Inc. and Lane F. Smith, M.D. filed a cross-appeal.

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:

N/A

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

Respondents brought suit against Appellants for statements posted to internet review websites about the quality of services provided by Respondents. Respondents claim that the reviews contained false and defamatory information and were posted by Appellant Catherine Le Khorsandi using a pseudonym and with the approval of Appellant Christopher Khordsandi M.D. Appellants moved to dismiss Respondents' complaint under NRS 41.660 and NRCP 12(b)(5). In support of their motion, Appellants Christopher Khorsandi, M.D. and Catherine L Khorsandi submitted sworn declarations stating they did not post the defamatory statements that form the basis for Respondents' complaint. The District Court issued a written order denying Appellants' motion to dismiss, finding that Respondents' complaint had adequately stated a claim under NRCP 12(b)(5) and that Appellants were not entitled to protections under Nevada's anti-SLAPP statute because they deny making the statements in the complaint. However, because Respondents had failed to provide substantive evidence to support their claims for relief, the District Court ordered expedited discovery.

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

Appellants bring this appeal to determine the scope of Nevada's anti-SLAPP statutes and whether defendants who did not make the allegedly defamatory statement are entitled to the protections of Nevada's anti-SLAPP statutes, including an expedited determination on the merits. Other jurisdictions, such as California (who this Court has said it looks to on issues related to anti-SLAPP) has held that communications that would otherwise constitute communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, but that the defendant denies making, constitute protected communications for the purpose of the anti-SLAPP statutory scheme. This Court has not previously considered this issue.

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: This action involves a issue of first impression about the scope and purpose of Nevada's anti-SLAPP statute, NRS 41.660. Specifically, this appeal raises the issue of whether a party who did not make the allegedly defamatory or libelous statement can obtain protections under the anti-SLAPP statute.

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:

Under NRS 41.670, an interlocutory appeal of the denial of a special motion to dismiss is retained by 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 10, 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 31, 2020

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:

Respondents/Plaintiffs Smith Plastic Surgery, Inc. and Lane F. Smith, M.D. filed an untimely cross-appeal on April 22, 2020, outside the 14-day period allowed by NRAP 14(a)(2).

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)

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 41.670</u> | |
-

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

NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

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

(a) Parties:

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

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

(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:

"Cecily S." is not a party to this appeal. Cecily S. was identified as a pseudonym in Respondent's complaint and has not been served. Cecily S. was not involved in the underlying motion to dismiss.

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.

See Exhibit A attached hereto

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:

Because the district court denied Appellants' Motion to Dismiss, all of the claims brought by Respondents/Plaintiffs remain.

(b) Specify the parties remaining below:

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

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

(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)):

NRS 41.670(4) allows for an interlocutory appeal of a denial of a motion to dismiss 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.

Christopher Khorsandi, M.D., et al.
Name of appellant

James J. Pisanelli
Name of counsel of record

May 1, 2020
Date

/s/ James J. Pisanelli
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of May, 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.)

Anthony P. Sgro, Esq.
Jennifer Arledge, Esq.
SGRO & ROGER
720 South 7th Street, Third Floor
Las Vegas, NV 89101
Attorneys for Respondents

Thomas J. Tanksley
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Settlement Judge

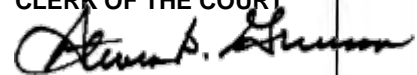
Dated this 1st day of May, 2020

/s/ Kimberly Peets
Signature

EXHIBIT A TO DOCKETING STATEMENT

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.

- 1) Slander Per Se - Google Review on Khorsandi Website
- 2) Libel Per Se - August 7, 2019 YELP review by Cecily S.
- 3) Libel Per Se - August 8, 2019 YELP Review
- 4) Libel Per Se - August 9, 2019 YELP Review
- 5) Libel Per Se - August 14, 2019 YELP Review;
- 6) Libel Per Se - August 14, 2019 Reply to Jessica on YELP Review
- 7) Libel Per Se - August 14, 2019 Google Review as You Tuber
- 8) Concert of Action, Aiding and Abetting, Civil Conspiracy - conspired to defame Appellants
- 9) Intentional Infliction of Emotional Distress - allegedly posting reviews on Yelp
- 10) False Light - allegedly posting review on Yelp
- 11) Punitive Damages – allegedly posting reviews on Yelp
- 12) Negligent Hiring Supervision and Training – employment of Appellant Catherine Khorsandi
- 13) Wrongful Interference with Prospective Economic Advantage – lost customers due to Yelp comments
- 14) Preliminary Injunction – prevent Appellants from posting reviews



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

1 **COM**

2 ANTHONY P. SGRO, ESQ.
3 Nevada State Bar No. 3811
4 JENNIFER WILLIS ARLEDGE, ESQ.
5 Nevada Bar No. 8729
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16 *Attorneys for Plaintiffs*

11
12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14
15 SMITH PLASTIC SURGERY, INC, a Nevada
16 Corporation, and LANE F. SMITH, M.D., an
individual,

17 Plaintiff,

18 vs.

19 CHRISTOPHER KHORSANDI, M.D., an
20 individual, CHRISTOPHER KHORSANDI,
21 M.D., PLLC, a Nevada Professional LLC,
22 CATHERINE LE KHORSANDI, an individual,
23 CECILY S., a pseudonym used by CATHERINE
LE KHORSANDI, Does I – X, and Roe
Corporations I – X,

24 Defendants.
25
26
27
28

Case No.:

Dept. No.:

COMPLAINT

1 **COMPLAINT**

2 COME NOW, Plaintiffs, SMITH PLASTIC SURGERY INC. (SMITH PLASTIC
3 SURGERY”), a Nevada Corporation, and LANE F. SMITH, M.D., an Individual, by and
4 through their attorneys of record, ANTHONY P. SGRO, ESQ., JENNIFER WILLIS
5 ARLEDGE, ESQ., and JUSTIN W. WILSON, ESQ., of the law firm of SGRO & ROGER, and
6 for causes of action against the Defendants, jointly and severally, alleges as follows:

7 **I.**

8 **THE PARTIES**

9 1. Plaintiff, SMITH PLASTIC SURGERY, INC. (“SMITH PLASTIC SURGERY”) is a
10 Nevada Corporation doing business in Clark County Nevada.

11 2. Plaintiff, LANE F. SMITH, M.D., (“Dr. SMITH”) is a licensed Nevada Medical
12 Doctor practicing medicine in, and a resident of, Clark County, Nevada.

13 3. Defendant, CHRISTOPHER KHORSANDI, M.D., (“Dr. KHORSANDI”) is a licensed
14 Medical Doctor practicing medicine in, and a resident of, Clark County, Nevada

15 4. Defendant, CHRISTOPHER KHORSANDI, M.D. PLLC, is a Nevada Professional
16 LLC doing business in Clark County, Nevada.

17 5. Defendant, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, (“CATHERINE
18 KHOURSANDI”) is the practice manager at VIP Cosmetic Surgery, and the wife of Defendant
19 CHRISTOPHER KHORSANDI, M.D., and a resident of Clark County, Nevada.

20 6. Defendant, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, posts Yelp reviews
21 under the pseudonym “CECILY S.”

22 7. The names of DOES I - X and ROE Corporations I - X, are currently unknown to
23 Plaintiffs. Plaintiffs, therefore, sue said DOES I - X and ROE Corporations I - X by such
24 fictitious names and when their true names and capacity are ascertained, Plaintiffs will amend
25 this Complaint accordingly to insert the same herein. Upon information and belief Plaintiffs
26 allege that Defendants and each them, designed as DOES and/or ROE Corporations, are in
27 some manner, responsible for the occurrence and injuries sustained by Plaintiffs, as alleged
28 herein. In particular, said DOES and ROE Corporations those whose intentional acts were

1 committed in the course and scope of their employment and as individuals they were
2 responsible for the damages of the Plaintiffs. The negligent and intentional acts of said DOES
3 and ROE Corporations caused injuries and damages to Plaintiffs as alleged herein.

4 II.

5 JURISDICTION AND VENUE

6 8. Plaintiffs repeat and re-allege each and every allegation contained in this Complaint as
7 though fully set forth herein.

8 9. The acts complained of herein occurred in, or had a desired and actual affect in, Clark
9 County, Nevada and have caused damages to the Plaintiffs in excess of \$15,000.00.

10 III.

11 INTRODUCTION

12 10. Defendants, acting in concert, made repeated libelous statements against Plaintiffs
13 posing as Plaintiffs' actual former patient.

14 11. Defendants statements were made with actual malice, are patently false, and are clearly
15 damaging to Plaintiff, Dr. SMITH's, individual reputation, and Plaintiff, SMITH PLASTIC
16 SURGERY's, business reputation.

17 12. Defendant's statements did not concern a public controversy, or issue, and were made
18 solely in the monetary interests of Defendants' and their plastic surgery practice.

19 13. The statements made by Defendants concerning Dr. SMITH's surgical skills are libel
20 *per se*, which injured Dr. SMITH's reputation as an individual, the reputation of SMITH
21 PLASTIC SURGERY, and damaged Dr. SMITH's standing in his profession as a plastic
22 surgeon.

23 14. Plaintiffs are entitled to both presumed and general damages. General damages are
24 those awarded for "loss of reputation, shame, mortification and hurt feelings." General
25 damages are presumed upon proof of defamation alone, because the proof establishes that there
26 was an injury that damaged Plaintiffs' professional and private reputations, and because of the
27 impossibility of affixing an exact monetary amount for present and future injury to the
28 Plaintiffs' reputation, wounded feelings and humiliation, loss of business, and any

1 consequential physical illness or pain all to be proved at trial.

2 **IV.**

3 **STATEMENT OF FACTS**

4 15. On or about July 1, 2019, Plaintiffs became aware of a Google Review on Dr.
5 KHORSANDI's website from a Gabby Debruno that stated the following:

6 "I went in for a consultation with Dr. KHORSANDI because of a botched breast
7 augmentation from Lane Smith. Dr. KHORSANDI was extremely welcoming
8 and although there were three people in the room to examine me I felt totally
9 comfortable with him and his team. **He examined me and came to the**
10 **conclusion within five minutes that Lane Smith had put one of my implants**
11 **in BACKWARDS.** I was shocked I had spent seven months in emotional
12 distress for something that could have been fixed way sooner. Anticipating I
13 would be going into surgery again, Dr. KHORSANDI asked me to lean forward
14 so he could manipulate the breast that was lower than the other and just
15 disfigured looking. It was about three minutes of a little uncomfortableness but
when I saw the result I was almost in tears. He fixed the augmentation that my
previous surgeon told me would be thousands to fix because he wasn't at fault.
Not only did Dr. KHORSANDI get my augmentation back to symmetrical, he
has brought back my confidence and my trust in the field I trust him 100% and
10/10 would recommend."

16 16. On or about July 12, 2019, Plaintiffs sent Dr. KHORSANDI a cease and desist letter
17 asking Dr. KHORSANDI to remove any reference to Dr. SMITH in the review as this was
18 defamatory.

19 17. Plaintiff denies placing the breast implant backwards, as that has never happened in his
20 practice.

21 18. "CECILY S." is a pseudonym used by CATHERINE LE, a.k.a. CATHERINE
22 KHORSANDI, who is Dr. KHORSANDI'S office manager and wife.

23 19. Defendant, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, a.k.a. "CECILY S.,"
24 has never been a patient of SMITH PLASTIC SURGERY CENTER.

25 20. "CECILY S" YELP Reviews were made during times, and from locations where Dr.
26 KHORSANDI was located, which establishes that they were together; and on information and
27 belief, the Defendants conspired to jointly produce them.

28 21. "CECILY S." stalks many other plastic surgeons' YELP pages clicking "Funny" or

1 “Useful” on all of the one star reviews of various Las Vegas Plastic Surgeons.

2 22. On August 7, 2019, Defendant, CATHERINE LE, a.k.a. CATHERINE KHORSANDI,
3 posing as “CECILY S.” posted a One-Star YELP Review on Plaintiffs’ YELP and stated the
4 following:

5 This has got to be the worse doctor on the planet. PLS READ and do NOT go
6 here. They will tell you all these bad reviews are fake. Do me a favor and read
7 them. Then read the non suggested ones too. You will see all similar
8 experiences. I bet after this review he will have his staff and friends post more
9 “good” reviews of how great and nice dr Smith is. It’s a pattern folks. READ
10 them and u will see. These real reviews with pics and personal experiences that
11 are NOT fake. If you read all the bad reviews they have similar stories. Dr
12 Smith threaten me with a stupid letter from your ambulance chaser lawyer will
13 not scare me or keep me away from spreading my story. You should of had
14 more respect for your patients and acknowledged you messed me up and wanted
15 to do nothing about it. I never wanted you to touch me again but i wanted you
16 to have respect for me as a patient. You should be an honest doctor but you are
17 too money hungry and arrogant. Then your office claims these are all fake
18 reviews instead of owning up to it. Save your money, time and body and do not
19 go here.

20 He botched my bbl and refuse to fix it or admit he did a horrible job. This
21 office only cares about \$. My stomach was uneven and I had lose skin and my
22 butt is uneven as well!!!! Jessica is the rudest staff ever. So unprofessional.
23 This doctor is so creepy too and tried to add me on face book when he’s actually
24 married. What an unprofessional place. His bedside manner are disgusting and
25 he’s a horrible surgeon. I had to go to the other side of town to get my body
26 fixed by dr k at Vip In Henderson. I needed bodytite for my lose skin and dr
27 Smith never even suggested this or offered this. I did some research and saw
28 that he doesn’t even do Bodytite. He is so dishonest and is a horrible surgeon. I
don’t wish this on my worst enemy. I wasted money and time.

Oh and wait for the reply from Jessica about all the awards he has won. Just so
everyone know. Best og Ladd vegas aware is fake. lol he hAd to pay them to
advertise so they let him win for best breast surgery last year 2018. It’s a award
that is “voted” but you have to advertise and pay them \$. Don’t be fooled folks.
These awards are fake. Read people’s real life experiences and look at the pics
and see how they are treated when there’s an issue. Do u want someone like
that doing surgery on u?”

23. Plaintiffs immediately disputed the review with YELP, knowing it was false and
defamatory in content.

1 24. Defendant's bad review of DR. SMITH was simultaneously endorsement of Dr.
2 KHORSANDI and the Bodytite device, which he uses in his practice.

3 25. YELP subsequently removed the defamatory August 7, 2019, review. However, the
4 review had been up long enough to have lasting damaging effects on Plaintiffs.

5 26. On August 8, 2019, the very next day, CATHERINE LE, a.k.a. CATHERINE
6 KHORSANDI, posing as "CECILY S." posted the following one-star review, which stated the
7 following:

8 STAY AWAY from this doctor and office. Dr land smith is horrible at her job
9 and the rudest human being I've ever met. I thought doctors are supp to be
10 professional and have compassion? Not dr Smith !!!This doctor has horrible
11 bedside manners and is so rude to his patients. He botched my liposuction and
12 refused to fix it. He wants more money instead of fixing what he did wrong. I
13 wouldn't wish this on my worse enemy. I had to go across town to Henderson
14 to get my lipo fixed. My butt was even and I had lose skin on my stomach. I
wouldn't waste your hard earning money or time with this doctor. Go read all
the other 1 star reviews then ask yourself if you think this is how you want to be
treated if something goes wrong?

15 27. Plaintiffs again asked for YELP to remove this One Star Review, which YELP did.
16 However, the damage had already been done.

17 28. Once again, Defendants, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, posing
18 as "CECILY S.," posted another One-Star Review for Plaintiffs on August 9, 2019, which
19 stated the following:

20 STAY AWAY from this doctor and office. Dr. land smith is horrible at her job
21 and the rudest human being I've ever met. I thought doctors are supp to be
22 professional and have compassion? Not dr Smith !!!This doctor has horrible
23 bedside manners and is so rude to his patients. He botched my liposuction and
24 refused to fix it. He wants more money and instead of fixing what he did
25 wrong. I wouldn't wish this on my worse enemy. I had to go across town to
26 Henderson to get my lipo fixed. My butt was even and I had lose skin on my
stomach. I wouldn't waste your hard earning money or time with this doctor.
Go read all the other 1 star reviews then ask yourself if you think this is how
you want to be treated if something goes wrong?

27 29. Plaintiffs again asked for YELP to remove this One Star Review, which YELP did, but
28 as with the previous paragraph the damage had already been done.

1 30. On August 14, 2019, CECILY S. again placed a One Star YELP review and stated the
2 following:

3 STAY AWAY from his doctor and office. Dr. land smith is horrible at her job
4 and the rudest human being I've ever met. I thought doctors are supp to be
5 professional and have compassion? Not dr Smith !!!This doctor has horrible
6 bedside manners and is so rude to his patients. He botched my liposuction and
7 refused to fix it. He wants more money and instead of fixing what he did
8 wrong. I wouldn't wish this on my worse enemy. I wouldn't waste your hard
9 earning money or time with this doctor. Go read all the other 1 star reviews
10 then ask yourself if you think this is how you want to be treated if something
11 goes wrong?

12 31. Plaintiffs again asked for YELP to remove this One Star Review, which YELP did.

13 32. Additionally, this time Plaintiffs replied to "CECILY S.," informing her that Plaintiffs
14 knew she was the wife of a competitor, and that YELP had already removed her other false and
15 defamatory reviews.

16 33. Before YELP removed the review again on August 14, 2019, Defendant CATHERINE
17 LE, a.k.a. CATHERINE KHORSANDI, posing as "CECILY S." replied to Plaintiffs reply in
18 the following manner:

19 REPLY to JESSICA

20 "Jessica I do think it's time for you to find a different place to work. A place
21 that you don't need to lie and defend the doctor like this. I am a real patient and
22 I'd be happy to send you my pic of who I am. STOP RESPONDING to
23 everyone who writes negative reviews that they are someone else or they are not
24 a real patient or never had surgery here. NO one has the time to go on here and
25 fight with you or share their experiences unless they had a real problem. Are
26 you going to ever realized you shouldn't have to work at a place that you have
27 to constantly lie and defend the doctor? You have no morals just like the doctor
28 you are employed by and any negative review has to be a competitor or it's
fake. You look 1000 worse by doing this and I'd be happy to tell you who I am
so that the readers know what kind of place this is. I see that many of the
patients had to "prove" who they are. And with that still no apology. All you
can do is call the patient to take down the review or come back in to pay more
to get it fixed. You should be ashamed of yourself for blaming us who are the
victims in this. No one wants to waste \$, put their lives at risks for surgery and
have horrible outcome."

1 34. Yelp subsequently removed both the initial review, and Defendant's reply to Plaintiffs
2 response.

3 35. Subsequent to being confronted with her defamatory conduct, Defendant CATHERINE
4 LE, a.k.a. CATHERINE KHORSANDI completely shut down the pseudonym YELP account
5 for "CECILY S.;" likely because Plaintiffs informed Defendants that they knew "CECILY S."
6 was really CATHERINE LE, a.k.a. CATHERINE KHORSANDI.

7 36. On or about August 14, 2019, another false and defamatory One-Star Review appeared
8 on Google Reviews for SMITH PLASTIC SURGERY, under the moniker "You Tuber." This
9 review was also written by Defendant CATHERINE LE, a.k.a. CATHERINE KHORSANDI,
10 which stated the following:

11 "STAY away from this place!!! This doctor botched by bbl And refuse to do
12 anything to fix it. They are so horrible and only care about money. They are
13 only nice to you until you book Surgery and if you have any problems , they
14 will not do anything about it. Do you want to go to a doctor that doesn't want
15 to take care of you? This doctor needs to learn bedside manners. I encourage
16 you to go on YELP and read all of his reviews. Look at all the Negative ones
17 and the un recommended ones. You will see how horrible he treats his patients
18 and how Everyone has similar stories , how he treats people when there's an
19 issue. Do you want to give a doctor your hard earning \$ and be treated this
20 poorly when he does something wrong to your body? The staff are horrible here
21 too. No one cares about you when you have a problem. Stay away!!!!
22 My lipo is uneven and I have lose skin on my stomach. I had to go across town
23 to Henderson to another doctor to get it fixed. I recommend you stay way from
24 dr lane smith!!!!!!"

25 37. Defendants have posted other false and defamatory reviews under fake accounts against
26 Dr. LANE F. SMITH personally, and SMITH PLASTIC SURGERY. Plaintiffs will request
27 leave of the court to amend the Complaint when other information comes available.

28 **FIRST CAUSE OF ACTION**

(Slander Per Se - Google Review on Khorsandi Website)

38. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
Complaint as though fully set forth herein.

39. Defendant CATHERINE KHORSANDI, either on her own volition or at the direction
of one or both of the other Defendants made the slanderous statement to a patient during a pre-

1 surgery consultation, which incited a negative on-line patient review.

2 40. Defendant's slanderous statement is presumed damaging as it was made concerning Dr.
3 SMITH's surgical skills, and had the malicious effect of harming Dr. SMITH's business
4 reputation.

5 41. The statement is clearly false and defamatory, as Plaintiffs have created specific
6 protocols that are implemented when inserting implants of this kind, and there is an indicator
7 on the bottom of all breast implants that designate front and back. Dr. SMITH follows his own
8 established office protocols, follows the instructions on the implants themselves, and as a result
9 always places implants properly.

10 42. The statement was intentionally slanderous; as Defendants know that breast implants
11 can flip and there is no way to determine how the implant flipped and it is defamatory to allege
12 that Dr. SMITH placed the implant upside down.

13 43. In this matter there are actual and presumed damages in excess of \$15,000.00 to be
14 proved at trial.

15 44. As a direct and proximate result of Defendants' malicious defamation Plaintiffs have
16 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
17 and is entitled to reasonable attorney's fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **(Libel Per Se August 7, 2019 YELP Review by CECILY S.)**

20 45. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
21 Complaint as though fully set forth herein.

22 46. On August 7, 2019, Defendant, CATHERINE KHORSANDI, either on her own
23 volition or at the direction of one or both of the other Defendants and posing as "CECILY S."
24 posted the following YELP review:

25 "This has got to be the worse doctor on the planet. PLS READ and do NOT go
26 here. They will tell you all these bad reviews are fake. Do me a favor and read
27 them. Then read the non suggested ones too. You will see all similar
28 experiences. I bet after this review he will have his staff and friends post more
"good" reviews of how great and nice dr Smith is. It's a pattern folks. READ
them and u will see. These real reviews with pics and personal experiences that
are NOT fake .If you read all the bad reviews they have similar stories. Dr

1 Smith threaten me with a stupid letter from your ambulance chaser lawyer will
2 not scare me or keep me away from spreading my story. You should of had
3 more respect for your patients and acknowledged you messed me up and wanted
4 to do nothing about it. I never wanted you to touch me again but i wanted you
5 to have respect for me as a patient. You should be an honest doctor but you are
6 too money hungry and arrogant. Then your office claims these are all fake
7 reviews instead of owning up to it. Save your money, time and body and do not
8 go here. He botched my bbl and refuse to fix it or admit he did a horrible job.
9 This office only cares about \$. My stomach was uneven and I had lose skin and
10 my butt is uneven as well!!!! Jessica is the rudest staff ever. So unprofessional.
11 This doctor is so creepy too and tried to add me on face book when he's actually
12 married. What an unprofessional place. His bedside manner are disgusting and
13 he's a horrible surgeon. I had to go to the other side of town to get my body
14 fixed by dr k at Vip In Henderson I needed bodytite for my lose skin and dr
15 Smith never even suggested this or offered this. I did some research and saw
16 that he doesn't even do Bodytite. He is so dishonest and is a horrible surgeon. I
17 don't wish this on my worst enemy. I wasted money and time. Oh and wait for
18 the reply from Jessica about all the awards he has won. Just so everyone know.
19 Best og Ladd vegas aware is fake. lol he hAd to pay them to advertise so they
20 let him win for best breast surgery last year 2018. It's a award that is "voted"
21 but you have to advertise and pay them \$. Don't be fooled folks. These awards
22 are fake. Read people's real life experiences and look at the pics and see how
23 they are treated when there's an issue. Do u want someone like that doing
24 surgery on u?"

16 47. This above statement constitutes malicious defamation as Defendant, CATHERINE
17 LE, a.k.a. CATHERINE KHORSANDI, who posed as "CECILY S." is not a patient of SMITH
18 PLASTIC SURGERY, but rather the Office Manager of VIP Cosmetic Surgery ("VIP") and
19 the wife of VIP's chief surgeon, Dr. CHRISTOPHER KHORSANDI. Upon information and
20 belief VIP is a d.b.a. or trade name for Dr. KHORSANDI and/or CHRISTOPHER
21 KHORSANDI, M.D., PLLC.

22 48. The statements were made with actual malice and were wholly false and clearly
23 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
24 Inc.'s business reputation. The statements did not concern a public controversy or issue and
25 were made solely in the individual interests of Defendants and Defendants' plastic surgery
26 practice. The statements made by Defendants concerning Dr. SMITH's surgical skills was
27 libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
28 with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages

1 are those awarded for “loss of reputation, shame, mortification and hurt feelings.”

2 49. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
3 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
4 are also entitled to punitive damages.

5 50. As a direct and proximate result of Defendants’ malicious defamation, Plaintiffs have
6 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
7 and is entitled to reasonable attorney’s fees and costs.

8 **THIRD CAUSE OF ACTION**

9 **(Libel Per Se - August 8, 2019 YELP Review)**

10 51. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
11 Complaint as though fully set forth herein.

12 52. On August 8, 2019, Defendant, CATHERINE KHORSANDI, either on her own
13 volition or at the direction of one or both of the other Defendants and posing as “CECILY S.”
14 posted another One-Star review on YELP which stated the following:

15 STAY AWAY from this doctor and office. Dr land smith is horrible at her job
16 and the rudest human being I’ve ever met. I thought doctors are supp to be
17 professional and have compassion? Not dr Smitht !!!This doctor has horrible
18 bedside manners and is so rude to his patients. He botched my liposuction and
19 refused to fix it. He wants more money instead of fixing what he did wrong. I
20 wouldn’t wish this on my worse enemy. I had to go across town to Henderson
21 to get my lipo fixed. My butt was even and I had lose skin on my stomach.
I wouldn’t waste your hard earning money or time with this doctor. Go read all
the other 1 star reviews then ask yourself if you think this is how you want to be
treated if something goes wrong?

22 53. This above statement constitutes malicious defamation as Defendant, CATHERINE
23 LE, a.k.a. CATHERINE KHORSANDI, who posed as “CECILY S.” is not a patient of SMITH
24 PLASTIC SURGERY, but rather the Office Manager of VIP Cosmetic Surgery (“VIP”) and
25 the wife of VIP’s chief surgeon, Dr. CHRISTOPHER KHORSANDI.

26 54. The statements were made with actual malice and were wholly false and clearly
27 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
28 Inc.’s business reputation. The statements did not concern a public controversy or issue and

1 were made solely in the individual interests of Defendants and Defendants' plastic surgery
2 practice. The statements made by Defendants concerning Dr. SMITH's surgical skills was
3 libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
4 with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages
5 are those awarded for "loss of reputation, shame, mortification and hurt feelings."

6 55. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
7 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
8 are also entitled to punitive damages.

9 56. As a direct and proximate result of Defendants' malicious defamation, Plaintiffs have
10 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
11 and is entitled to reasonable attorney's fees and costs.

12 **FOURTH CAUSE OF ACTION**

13 **(Libel Per Se - August 9, 2019 YELP Review)**

14 57. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
15 Complaint as though fully set forth herein.

16 58. On August 9, 2019, Defendant, CATHERINE KHORSANDI, either on her own
17 volition or at the direction of one or both of the other Defendants and posing as "CECILY S."
18 posted another One-Star review on YELP which stated the following:

19 STAY AWAY from this doctor and office. Dr. land smith is horrible at her job
20 and the rudest human being I've ever met. I thought doctors are supp to be
21 professional and have compassion? Not dr Smith !!!This doctor has horrible
22 bedside manners and is so rude to his patients. He botched my liposuction and
23 refused to fix it. He wants more money and instead of fixing what he did
24 wrong. I wouldn't wish this on my worse enemy.

25 I had to go across town to Henderson to get my lipo fixed. My butt was even
26 and I had lose skin on my stomach.

27 I wouldn't waste your hard earning money or time with this doctor. Go read all
28 the other 1 star reviews then ask yourself if you think this is how you want to be
treated if something goes wrong?

59. This above statement constitutes malicious defamation as Defendant, CATHERINE
LE, a.k.a. CATHERINE KHORSANDI, who posed as "CECILY S." is not a patient of SMITH
PLASTIC SURGERY, but rather the Office Manager of VIP Cosmetic Surgery ("VIP") and

1 the wife of VIP's chief surgeon, Dr. CHRISTOPHER KHORSANDI.

2 60. The statements were made with actual malice and were wholly false and clearly
3 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
4 Inc.'s business reputation. The statements did not concern a public controversy or issue and
5 were made solely in the individual interests of Defendants and Defendants' plastic surgery
6 practice. The statements made by Defendants concerning Dr. SMITH's surgical skills was
7 libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
8 with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages
9 are those awarded for "loss of reputation, shame, mortification and hurt feelings."

10 61. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
11 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
12 are also entitled to punitive damages.

13 62. As a direct and proximate result of Defendants' malicious defamation, Plaintiffs have
14 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
15 and is entitled to reasonable attorney's fees and costs.

16 **FIFTH CAUSE OF ACTION**

17 **(Libel Per Se - August 14, 2019 YELP Review)**

18 63. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
19 Complaint as though fully set forth herein.

20 64. On August 14, 2019, Defendant, CATHERINE KHORSANDI, either on her own
21 volition or at the direction of one or both of the other Defendants and posing as "CECILY S."
22 posted another One-Star review on YELP which stated the following:

23 STAY AWAY from his doctor and office. Dr. land smith is horrible at her job
24 and the rudest human being I've ever met. I thought doctors are supp to be
25 professional and have compassion? Not dr Smith !!!This doctor has horrible
26 bedside manners and is so rude to his patients. He botched my liposuction and
27 refused to fix it. He wants more money and instead of fixing what he did
28 wrong. I wouldn't wish this on my worse enemy.
I wouldn't waste your hard earning money or time with this doctor. Go read all
the other 1 star reviews then ask yourself if you think this is how you want to be
treated if something goes wrong?

1 65. This above statement constitutes malicious defamation as Defendant, CATHERINE
2 LE, a.k.a. CATHERINE KHORSANDI, who posed as "CECILY S." is not a patient of SMITH
3 PLASTIC SURGERY, but rather the Office Manager of VIP Cosmetic Surgery ("VIP") and
4 the wife of VIP's chief surgeon, Dr. CHRISTOPHER KHORSANDI.

5 66. The statements were made with actual malice and were wholly false and clearly
6 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
7 Inc.'s business reputation. The statements did not concern a public controversy or issue and
8 were made solely in the individual interests of Defendants and Defendants' plastic surgery
9 practice. The statements made by Defendants concerning Dr. SMITH's surgical skills was
10 libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
11 with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages
12 are those awarded for "loss of reputation, shame, mortification and hurt feelings."

13 67. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
14 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
15 are also entitled to punitive damages.

16 68. As a direct and proximate result of Defendants' malicious defamation, Plaintiffs have
17 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
18 and is entitled to reasonable attorney's fees and costs.

19 **SIXTH CAUSE OF ACTION**

20 **(Libel Per Se - August 14, 2019 Reply to Jessica on YELP Review)**

21 69. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
22 Complaint as though fully set forth herein.

23 70. Again on August 14, 2019, Defendant, CATHERINE KHORSANDI, either on her own
24 volition or at the direction of one or both of the other Defendants and posing as "CECILY S."
25 posted another One-Star review on YELP which stated the following:

26 REPLY to JESSICA

27 "Jessica I do think it's time for you to find a different place to work. A place
28 that you don't need to lie and defend the doctor like this. I am a real patient and
I'd be happy to send you my pic of who I am. STOP RESPONDING to
everyone who writes negative reviews that they are someone else or they are not

1 a real patient or never had surgery here. NO one has the time to go on here and
2 fight with you or share their experiences unless they had a real problem. Are
3 you going to ever realized you shouldn't have to work at a place that you have
4 to constantly lie and defend the doctor? You have no morals just like the doctor
5 you are employed by and any negative review has to be a competitor or it's
6 fake. You look 1000 worse by doing this and I'd be happy to tell you who I am
7 so that the readers know what kind of place this is. I see that many of the
8 patients had to "prove" who they are. And with that still no apology. All you
9 can do is call the patient to take down the review or come back in to pay more
10 to get it fixed. You should be ashamed of yourself for blaming us who are the
11 victims in this. No one wants to waste \$, put their lives at risks for surgery and
12 have horrible outcome."

13 71. This above statement constitutes malicious defamation as Defendant, CATHERINE
14 LE, a.k.a. CATHERINE KHORSANDI, who posed as "CECILY S." is not a patient of SMITH
15 PLASTIC SURGERY CENTER, but rather the Office Manager of VIP Cosmetic Surgery
16 ("VIP") and the wife of VIP's chief surgeon, Dr. CHRISTOPHER KHORSANDI.

17 72. The statements were made with actual malice and were wholly false and clearly
18 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
19 Inc.'s business reputation. The statements did not concern a public controversy or issue and
20 were made solely in the individual interests of Defendants and Defendants' plastic surgery
21 practice. The statements made by Defendants concerning Dr. SMITH's surgical skills was
22 libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
23 with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages
24 are those awarded for "loss of reputation, shame, mortification and hurt feelings."

25 73. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
26 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
27 are also entitled to punitive damages.

28 74. As a direct and proximate result of Defendants' malicious defamation, Plaintiffs have
been required to retain the services of the law firm SGRO & ROGER to prosecute this action
and is entitled to reasonable attorney's fees and costs.

1 **SEVENTH CAUSE OF ACTION**

2 **(Libel Per Se - August 14, 2019 Google Review as You Tuber)**

3 75. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
4 Complaint as though fully set forth herein.

5 76. On or about August 14, 2019, Defendant, CATHERINE KHORSANDI, either on her
6 own volition or at the direction of one or both of the other Defendants and posing as “You
7 Tuber” left a One-Star review on Google which stated the following:

8 “STAY away from this place!!! This doctor botched by bbl And refuse to do
9 anything to fix it. They are so horrible and only care about money. They are
10 only nice to you until you book Surgery and if you have any problems , they
11 will not do anything about it. Do you want to go to a doctor that doesn’t want
12 to take care of you? This doctor needs to learn bedside manners. I encourage
13 you to go on YELP and read all of his reviews. Look at all the Negative ones
14 and the un recommended ones. You will see how horrible he treats his patients
15 and how Everyone has similar stories , how he treats people when there’s an
16 issue. Do you want to give a doctor your hard earned \$ and be treated this
17 poorly when he does something wrong to your body? The staff are horrible here
18 too. No one care about you when you have a problem. Stay away!!!!!!”

19 My lipo is uneven and I have lose skin on my stomach. I had to go across town
20 to Henderson to another doctor to get it fixed. I recommend you stay away
21 from dr lane smith!!!!!!!!”

22 77. This above statement constitutes malicious defamation as Defendant, CATHERINE
23 LE, a.k.a. CATHERINE KHORSANDI, who posed as “CECILY S.” is not a patient of SMITH
24 PLASTIC SURGERY, but rather the Office Manager of VIP Cosmetic Surgery (“VIP”) and
25 the wife of VIP’s chief surgeon, Dr. CHRISTOPHER KHORSANDI.

26 78. The statements were made with actual malice and were wholly false and clearly
27 damaging to Plaintiff, LANE F. SMITH, M.D. and Plaintiff, SMITH PLASTIC SURGERY,
28 Inc.’s business reputation. The statements did not concern a public controversy or issue and
were made solely in the individual interests of Defendants and Defendants’ plastic surgery
practice. The statements made by Defendants concerning Dr. SMITH’s surgical skills was
libel per se, which would tend to injure Dr. SMITH and his medical practice in his profession,
with libel per se, the Plaintiffs are entitled to presumed, general damages. General damages

1 are those awarded for “loss of reputation, shame, mortification and hurt feelings.”

2 79. Defendants defamed Dr. SMITH and SMITH PLASTIC SURGERY, and the Plaintiffs
3 have suffered damages in excess of \$15,000.00 to be proved at trial in this matter. Plaintiffs
4 are also entitled to punitive damages.

5 80. As a direct and proximate result of Defendants’ malicious defamation, Plaintiffs have
6 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
7 and is entitled to reasonable attorney’s fees and costs.

8 **EIGHTH CAUSE OF ACTION**

9 **(CONCERT OF ACTION, AIDING AND ABETTING, CIVIL CONSPIRACY)**

10 **(As to all Defendants)**

11 81. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
12 Complaint as though fully set forth herein.

13 82. Defendants, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, a.k.a. “CECILY
14 S.”, a.k.a. “YOU TUBER”, and CHRISTOPHER KHORSANDI, M.D., worked together to
15 repeatedly maliciously libel LANE F. SMITH, M.D., and SMITH PLASTIC SURGERY, as
16 articulated in NRS 200.510.

17 83. Defendants worked in concert to impeached the honesty, integrity, virtue and reputation
18 of Dr. SMITH, and SMITH PLASTIC SURGERY, which exposed Dr. SMITH and SMITH
19 PLASTIC SURGERY to public hatred, contempt, and ridicule by the above malicious and
20 despicable written statements.

21 84. Defendants worked together to accomplish the unlawful objective of maliciously
22 defaming SMITH, and SMITH PLASTIC SURGERY, to harm Plaintiffs’ personal reputation
23 as a surgeon, and his business’ reputation. Additionally, these malicious acts of defamation
24 serve to enhance the personal standing of Dr. KHORSANDI and VIP COSMETIC SURGERY.

25 85. Defendants worked together to repeatedly leave One-Star Yelp reviews masquerading
26 as a real patient of Dr. SMITH; all of these efforts were to crush the competition and present
27 themselves in a more flattering light to increase their business and standing in the plastic
28 surgery community.

1 86. Defendants, CATHERINE LE, a.k.a. CATHERINE KHORSANDI, a.k.a. "CECILY
2 S.", a.k.a. "YOU TUBER", and CHRISTOPHER KHORSANDI, M.D., have also been
3 stalking other surgeons profiles on public review sites, following each one-star review by
4 marking the review as "Useful" or "Funny."

5 87. Defendants plan was to accomplish the unlawful objective of criminally libeling Plaintiffs
6 and causing extreme harm to Dr. SMITH and SMITH PLASTIC SURGERY.

7 88. Defendants committed libel in furtherance of their agreement.

8 89. Defendants' libelous conduct has caused significant damage to Dr. SMITH'S
9 reputation and SMITH PLASTIC SURGERY'S business reputation.

10 90. Defendants maliciously libeled Dr. SMITH and SMITH PLASTIC SURGERY, and
11 the Plaintiffs have suffered damages in excess of \$15,000.00 to be proved at trial. Plaintiffs are
12 also entitled to punitive damages.

13 91. As a direct and proximate result of Defendants' agreement to commit libel on Plaintiff,
14 Plaintiffs have been required to retain the services of the law firm SGRO & ROGER to
15 prosecute this action and is entitled to reasonable attorney's fees and costs.

16 **NINTH CAUSE OF ACTION**

17 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

18 **(As to all Defendants)**

19 92. Plaintiff hereby repeats and realleges the allegations set forth in the above paragraphs.

20 93. Defendants, each of them, acted extremely and outrageously toward Plaintiffs with
21 intentional and reckless disregard for the emotional well-being of the Plaintiff.

22 94. Defendant, CATHERINE KHORSANDI, either on her own volition or at the direction
23 of one or both of the other Defendants and a.k.a. "CECILY S.", and/or a.k.a. "YOU TUBER,"
24 posed as real patients and called Plaintiff the "worse doctor on the planet."

25 95. Defendant, CATHERINE KHORSANDI, either on her own volition or at the direction
26 of one or both of the other Defendants and, a.k.a. "CECILY S." and/or, a.k.a. "YOU TUBER,"
27 called Dr. SMITH'S bedside manner "disgusting" and stated that "he's a horrible surgeon."

28 96. Defendant, CATHERINE KHORSANDI, either on her own volition or at the direction

1 of one or both of the other Defendants and a.k.a. "CECILY S." and/or a.k.a. "YOU TUBER,"
2 also stated that, "[Dr. SMITH] is so creepy too and tried to add me on face book when he's
3 actually married." All of these outrageous claims are defamation per se, and completely
4 without merit, as CATHERINE LE, a.k.a. CATHERINE KHORSANDI, a.k.a. "CECILY S.",
5 a.k.a. "YOU TUBER," has never been Dr. SMITH'S patient.

6 97. As a result of the conduct of the Defendants, the Plaintiff, LANE F. SMITH, M.D. has
7 suffered severe and extreme emotional distress.

8 98. The conduct of the Defendants was the actual and proximate cause of Plaintiff's
9 emotional distress.

10 99. As a result of the extremely outrageous conduct of the Defendants, Plaintiff has
11 suffered actual damages in excess of \$15,000.00, for the severe emotional distress.

12 100. As a result of the Defendants' acts Plaintiff is entitled to pain and suffering damages, in
13 an amount in excess of \$15,000.00.

14 101. It has been necessary for Plaintiff to retain the services of the law firm SGRO &
15 ROGER to prosecute this action and is entitled to reasonable attorney's fees and costs.

16 **TENTH CLAIM FOR RELIEF**

17 **False Light**

18 **(As to All Defendants)**

19 102. Plaintiffs hereby repeats and realleges the allegations set forth in the above paragraphs
20 as though fully set forth herein.

21 103. Defendants engaged in a systematic pattern of publishing information about Plaintiff,
22 LANE F. SMITH, M.D., to the general public, in numerous on-line review sites purporting to
23 be a former patient of Dr. SMITH'S.

24 104. Defendants' systematic pattern of publishing false information about Plaintiff was both
25 patently false, and materially misleading to those reading the reviews.

26 105. Defendants published the above mentioned statements with a reckless disregard as to
27 their offensiveness.

28 106. Defendant's false and misleading statements were highly offensive, and would be

1 embarrassing to even the most resilient members of society.

2 107. As a result of the Defendants' acts, which were done with maliciousness, Plaintiff is
3 entitled to damages in an amount in excess of \$15,000.00.

4 108. It has been necessary for Plaintiff to retain the services of the law firm SGRO & ROGER
5 to prosecute this action and is entitled to reasonable attorney's fees and costs.

6 **ELEVENTH CLAIM FOR RELIEF**

7 **PUNITIVE DAMAGES**

8 **(As to all Defendants)**

9 109. Plaintiff hereby repeats and realleges the allegations set forth in the above paragraphs.

10 110. As a direct and proximate consequence of the acts, omissions, and events complained of
11 herein, Plaintiff suffered severe emotional pain and discomfort, extreme emotional distress and
12 other damages to be proven at trial.

13 111. Defendants' wrongful conduct alleged herein was willful, intentional, and at times
14 illegal. It was done in both an intentional, and reckless disregard of its possible consequences.

15 112. Plaintiff alleges that his damages arise directly from the intentional conduct of repeated
16 defamation per se, and repeated criminal libel, which attempted to besmirch the good
17 reputation of Dr. SMITH individually, and the excellent business reputation of SMITH
18 PLASTIC SURGERY.

19 113. As a result of the conduct and failures of the Defendants, Plaintiff has suffered actual
20 damages in excess of \$15,000.00, for the defamation per se and the intentional defamation to
21 both Dr. SMITH individually, and SMITH PLASTIC SURGERY.

22 114. As a result of the Defendants' repeated libelous acts, which were done with wanton
23 disregard for the truth, Plaintiffs are entitled to punitive damages, in an amount in excess of
24 \$15,000.00.

25 115. It has been necessary for Plaintiff to retain the services of the law firm SGRO & ROGER
26 to prosecute this action and is entitled to reasonable attorney's fees and costs.

27
28 **TWELFTH CAUSE OF ACTION**

1 **NEGLIGENT HIRING SUPERVISION AND TRAINING**

2 **(CHRISTOPHER KHORSANDI, M.D. and**

3 **CHRISTOPHER KHORSANDI, M.D., PLLC, a Nevada Professional LLC)**

4 116. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
5 complaint as though fully set herein and incorporates the same herein by reference.

6 117. The Defendants, CHRISTOPHER KHORSANDI, M.D. and CHRISTOPHER
7 KHORSANDI, M.D., PLLC, were responsible to hire, supervise, train and ensure that their
8 employees performed their duties and obligations in a legal and ethical manner.

9 118. Defendants' hiring and supervision obligations included a responsibility to Plaintiffs,
10 wherein Defendant is prohibited from hiring or retaining an employee who would commit
11 criminal libel or engage in malicious defamation against Plaintiff using a fake name.

12 119. Specifically, the Defendants, CHRISTOPHER KHORSANDI, M.D. and
13 CHRISTOPHER KHORSANDI, M.D., PLLC, failed to hire, supervise, train and prevent
14 CHRISTOPHER KHORSANDI'S office manager, and wife, CATHERINE LE, a.k.a.
15 CATHERINE KHORSANDI , a.k.a. "CECILY S." , a.k.a. "YOU TUBER," from stalking
16 Plaintiff's Yelp pages, and leaving libelous and defamatory reviews to intentionally destroy Dr.
17 SMITH'S professional reputation, and SMITH PLASTIC SURGERY'S business reputation.

18 120. Defendants' attempted destruction of Plaintiffs' reputations was undoubtedly to give
19 Defendants a competitive edge by portraying Defendants' business as superior to Plaintiffs'.

20 121. As a direct and proximate result of the negligent hiring, supervision and training,
21 Plaintiffs have suffered economic damages and damages for libel per se, which entitle
22 Plaintiffs to damages in excess of \$15,000.00.

23 122. As a direct and proximate result of the foregoing, and as a result of the acts of
24 Defendants, Plaintiffs have incurred and will incur future reputational damages in an amount
25 to be proven at trial.

26 123. As a direct and proximate result of the foregoing, and as a result of the acts and
27 omissions of Defendants, Plaintiffs have sustained a loss of earnings and earning capacity, in
28 an amount to be proven at trial.

1 124. As a direct and proximate result of the foregoing, and as a result of the acts and
2 omissions of the Defendants, Plaintiffs have suffered intense mental pain, shock, agony,
3 mortification, and embarrassment in an amount in excess of \$15,000.00.

4 125. The acts and conduct of Defendants, were willful, wanton, and in conscious disregard
5 of the rights and reputation of Dr. LANE F. SMITH and SMITH PLASTIC SURGERY, which
6 entitle Plaintiffs to an award of punitive damages against CHRISTOPHER KHORSANDI,
7 M.D. and CHRISTOPHER KHORSANDI, M.D., PLLC.

8 126. It has been necessary for Plaintiff to retain the services of the law firm SGRO &
9 ROGER to prosecute this action and is entitled to reasonable attorney's fees and costs.

10 **THIRTEENTH CAUSE OF ACTION**

11 **WRONGFUL INTERFERENCE WITH**

12 **PROSPECTIVE ECONOMIC ADVANTAGE**

13 127. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
14 complaint as though fully set herein and incorporates the same herein by reference.

15 128. Plaintiffs operate a plastic surgery center in Las Vegas are in the business of
16 performing plastic surgery on prospective customers.

17 129. Defendants have knowledge that Plaintiffs are in the business of performing plastic
18 surgery on prospective customers.

19 130. Defendants intended to harm Plaintiffs' business, and prevent them from entering
20 into contractual relationships with prospective customers by engaging in a systematic on-line
21 smear campaign designed to harm Dr. LANE F. SMITH'S reputation personally, and SMITH
22 PLASTIC SURGERY's business reputation.

23 131. Defendants conduct constitutes libel per se, slander per se, and false light.

24 132. Defendants' conduct caused actual harm in excess of \$15,000.00 to Plaintiffs by
25 preventing them from continuing to operate their businesses without wrongful interference.

26 133. It has been necessary for Plaintiff to retain the services of the law firm SGRO &
27 ROGER to prosecute this action and is entitled to reasonable attorney's fees and costs.

1 **FOURTEENTH CAUSE OF ACTION**

2 **PRELIMINARY INJUNCTION**

3 134. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
4 complaint as though fully set herein and incorporates the same herein by reference.

5 135. Plaintiffs have demanded that Defendants cease engaging in their systematic on-line
6 smear campaign designed to harm Dr. LANE F. SMITH'S reputation personally, and SMITH
7 PLASTIC SURGERY'S business reputation.

8 136. Defendants have continued to engage in a systematic on-line smear campaign designed
9 to harm Dr. LANE F. SMITH'S reputation personally, and SMITH PLASTIC SURGERY'S
10 business reputation.

11 137. That there are no legal justifications for Defendants' actions or conduct toward
12 Plaintiffs.

13 138. That pursuant to NRS 33.010, an injunction may be granted when it shall appear by the
14 Complaint that Plaintiffs are entitled to the relief demanded, and such relief or any part thereof
15 consists of restraining the commission or continuance of the act complained of, either for a
16 limited period or perpetually.

17 139. Defendants have continued in their systematic on-line smear campaign designed to
18 harm Dr. LANE F. SMITH'S reputation personally, and SMITH PLASTIC SURGERY'S
19 business reputation.

20 140. Plaintiffs have no adequate remedy at law for the injuries that will be suffered if
21 Defendants continue their systematic on-line smear campaign designed to harm Dr. LANE F.
22 SMITH'S reputation personally, and SMITH PLASTIC SURGERY'S business reputation.

23 141. An order enjoining Defendants from utilizing online review sites to defame Plaintiffs is
24 appropriate where, as here, the activity being restrained "poses a serious and imminent threat to
25 a protected competing interest, the order is narrowly drawn, and less restrictive alternatives are
26 not available." Levine v. U.S. Dist. Court for Cent. Dist. of Cal., 764 F.2d 590, 595 (9th Cir.
27 1985).

1 142. It has been necessary for Plaintiff to retain the services of the law firm SGRO &
2 ROGER to prosecute this action and is entitled to reasonable attorney's fees and costs.


3
4 WHEREFORE, the Plaintiffs respectfully pray for judgment against the Defendants,
5 jointly and severally, as follows:

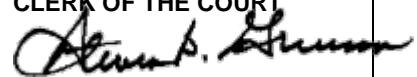
- 6 1. The removal of all offending Posts from any and all social media websites
7 including but not limited to YELP, Instagram, Google, and Facebook, and an Order
8 restraining Defendants from further negative posting about the Plaintiffs on such
9 platforms;
- 10 2. Special Damages for expenses and costs incurred as a result of Defendants'
11 actions;
- 12 3. General Damages as requested in an amount in excess of \$15,000.00 on each
13 and every cause of action;
- 14 4. Punitive Damages for the malicious defamation
- 15 5. For reasonable attorneys' fees and costs of the suit incurred herein; and
- 16 6. For such other and further relief as the Court may deem lawful and just.

17 DATED this 4 day of November, 2019.

18 Respectfully submitted,

19 SGRO & ROGER

20
21 
22 _____
23 ANTHONY P. SGRO, ESQ.
24 Nevada State Bar No. 3811
25 JENNIFER WILLIS ARLEDGE, ESQ.
26 Nevada Bar No. 8729
27 JUSTIN W. WILSON, ESQ.
28 Nevada Bar No. 14646
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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

**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

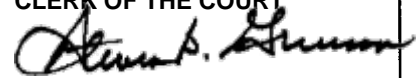
14 *Attorneys for Defendants Christopher Khorsandi,*
15 *M.D., Christopher Khorsandi, M.D., PLLC, and*
16 *Catherine Le Khorsandi*
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19
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21
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23
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CERTIFICATE 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 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