

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants/Cross-Respondents,

vs.

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

Respondents/Cross-Appellants.

Case No. 80957

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Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX IN SUPPORT OF
APPELLANTS/CROSS-
RESPONDENTS' OPENING
BRIEF**

VOLUME OF I OF I

DATED this 22nd day of July, 2021.

PISANELLI BICE PLLC

By: /s/ James J. Pisanelli

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CHRONOLOGICAL INDEX

DOCUMENT	DATE	VOL.	PAGE
Complaint filed in Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-804819-C	11/04/19	I	APP 001-025
Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)	01/10/20	I	APP 026-102
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)	01/24/20	I	APP 103-122
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)	02/12/20	I	APP 123-138
Transcript of Hearing on Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)	02/19/20	I	APP 139-166
Notice of Entry of Order on Defendants' Special Motion to Dismiss	03/10/20	I	APP 167-175
Case Appeal Statement	03/31/20	I	APP 176-180
Notice of Appeal	03/31/20	I	APP 181-200

ALPHABETICAL INDEX

DOCUMENT	DATE	VOL.	PAGE
Case Appeal Statement	03/31/20	I	APP 176-180
Complaint filed in Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-804819-C	11/04/19	I	APP 001-025
Notice of Appeal	03/31/20	I	APP 181-200
Notice of Entry of Order on Defendants' Special Motion to Dismiss	03/10/20	I	APP 167-175
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)	01/24/20	I	APP 103-122
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)	02/12/20	I	APP 123-138
Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)	01/10/20	I	APP 026-102
Transcript of Hearing on Special Motion to Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)	02/19/20	I	APP 139-166

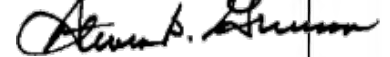
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of July, 2021, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF APPELLANTS/CROSS-RESPONDENTS' OPENING BRIEF** properly addressed to the following:

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

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11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **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 Smith !!!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."

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

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

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

24 74. As a direct and proximate result of Defendants' malicious defamation, Plaintiffs have
25 been required to retain the services of the law firm SGRO & ROGER to prosecute this action
26 and is entitled to reasonable attorney's fees and costs.
27
28

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.

28

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
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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

HEARING REQUESTED

**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. INTRODUCTION

Plaintiffs, Dr. Lane F. Smith ("Dr. Smith") and his company, Smith Plastic Surgery, Inc. (collectively, "Plaintiffs" or the "Smith Parties"), have an unflattering history of retaliating against those who speak out critically about the quality of Plaintiffs' care. This action is yet another chapter in Plaintiffs' ill-advised campaign. Notwithstanding that their surgical abilities and practices are clearly a matter of public concern, Plaintiffs routinely attempt to chill free speech through bully tactics, including vexatious litigation like the present case.

1 Plaintiffs' playbook is nothing if not consistent. When Plaintiffs receive negative public
2 reviews of their services, they demand that review sites, like Yelp, remove those posts. If review
3 sites refuse to remove negative reviews, Dr. Smith sends threatening cease and desist letters to
4 prevent his patients from informing the public about mistakes Dr. Smith has made in past
5 surgeries. If these tactics do not stifle his patients, Dr. Smith is known to file suit against his
6 former patients for posting critical reviews. (*See* Ex. A, Complaint in Case No. A-19-799154-C,
7 *Smith Plastic Surgery Inc. v. Brook*.)¹

8 In this action, Plaintiffs have taken their silencing efforts to a new level. Here, Plaintiffs
9 bring a litany of claims against Ms. Catherine Le Khorsandi, Dr. Christopher Khorsandi
10 ("Dr. Khorsandi"), and Christopher Khorsandi, M.D., PLLC (the "Practice") (collectively the
11 "Khorsandi Parties") about a series of *anonymous* reviews and one by a known *patient* of
12 Plaintiffs.² While the Khorsandi Parties deny posting these reviews, these reviews and the
13 statements underlying them are protected speech under Nevada's Anti-SLAPP (Strategic Lawsuit
14 Against Public Participation) laws, codified in NRS 41.635 *et seq.* All of Plaintiffs' claims stem
15 from this protected speech, and therefore should all be dismissed.

16 In addition to their improper attempts to stifle public discussions about the concerns of
17 their patients, Plaintiffs' Complaint fails to state claims upon which relief can be granted under
18 NRCP 12(b)(5). First, Plaintiffs attack Dr. Khorsandi for providing a medical opinion to a
19 patient, a statement Dr. Khorsandi denies making. To find that this statement is actionable would

20 ¹ Plaintiffs' playbook is so well known that their Yelp page includes the following warning:
21 "**Consumer Alert: Questionable Legal Threats** This business may have tried to abuse the legal
22 system in an effort to stifle free speech, for example through legal threats or contractual gag
23 clauses. As a reminder, reviewers who share their experiences have a First Amendment right to
express their opinions on Yelp." (Ex. B; *see also* Ex. C, Cease and Desist Letter from Dr. Smith
available at https://s3-media3.fl.yelpcdn.com/saphoto/QvnLXvwXk-VJpWrW_MJ99Q/o.jpg (last
visited Jan. 10, 2020).)

24 ² Plaintiffs have wrongly alleged, without any basis whatsoever, that "CECILY S." is a
25 pseudonym used by CATHERINE LE KHORSANDI." Recklessly, Plaintiffs name "Cecily S."
26 as an actual "fictitious party." The use of a fictitious name to identify a defendant in a complaint
27 is allowed only when the pleader does not know the defendant's true name. NRCP 10(d). Here,
the caption and complaint explicitly state that Plaintiffs do know the true identity of Cecily S.,
28 and therefore the inclusion of Cecily S. as a fictitious defendant is not allowed. Because Cecily S.
is improperly identified as a pseudonym by Plaintiffs, as opposed to an actual person, it cannot
and will not file a responsive pleading. Ms. Khorsandi denies that she has used the pseudonym of
Cecily S., and intends to prove otherwise.

1 have a chilling effect on doctors who are called upon to provide medical treatment to patients who
2 have previously seen another doctor. The law protects all doctors' ability to provide their honest
3 medical opinion to their patients. Next, Plaintiffs republish what they claim are defamatory
4 statements made by third parties about the quality of care they received from Dr. Smith. Such
5 vexatious litigation tactics are insufficient to sustain a claim under Nevada law.

6 Finally, Plaintiffs attempt to bring a host of additional tagalong claims, but these too fail
7 as a matter of law. The facts underlying the civil conspiracy claim are identical to the libel
8 claims, and also fail to allege any action by Dr. Khorsandi or the Practice. The intentional
9 infliction of emotional distress claim fails to plead facts that show the purported statements
10 constituted outrageous conduct. Plaintiffs' recitation of the law regarding Dr. Khorsandi and the
11 Practice's duty of care misstates the standard, placing a far higher burden on them than the law
12 allows. While Plaintiffs ask to recover damages for interference with prospective clients, they
13 have failed to identify any such potential clients or purported damages. Lastly, punitive damages
14 and preliminary injunction are not independent causes of action. Accordingly, Plaintiffs'
15 Complaint must be dismissed in its entirety. Anything short of a complete dismissal can work
16 only to reward this abusive litigation campaign.

17 **II. FACTUAL ALLEGATIONS³**

18 Dr. Smith is a plastic surgeon, practicing in Las Vegas, Nevada. (Compl. ¶¶ 1-2.) While
19 Plaintiffs claim they have a positive reputation in the community, (*Id.* ¶ 13, ¶ 112), their reviews
20 (and even their own pleading) show otherwise (*Id.* ¶ 15). To suppress negative public opinion
21 and facts, Plaintiffs are actively involved in maintaining public platforms, including challenging
22 individuals who post negative reviews about the services Plaintiffs provided. (*Id.* ¶ 16.)
23
24
25

26 ³ Although the Khorsandi Parties dispute many of Plaintiffs' factual allegations, they must
27 be accepted as true for purposes of the motion to dismiss under NRCP 12(b) only. *DeBoer v.*
28 *Sr. Bridges of Sparks Fam. Hosp.*, 128 Nev. 406, 409, 282 P.3d 727, 730 (2012). However, in
considering the Khorsandi Parties' special motion to dismiss, the Court must look to the totality of
the evidence presented to determine whether the speech is protected under the anti-SLAPP
statute. *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019).

1 By way of example, on or about July 1, 2019, Plaintiffs became aware of a positive
2 Google review of Dr. Khorsandi and the Practice posted by a patient. (*Id.* ¶ 15.) In that review,
3 the patient stated that she had received breast augmentation from Dr. Smith, and it was
4 Dr. Khorsandi's conclusion that one of the implants was placed in backwards by Dr. Smith.⁴ (*Id.*)
5 The patient wrote that Dr. Khorsandi was able to alleviate her pain and fix her implant. (*Id.*)
6 Displeased by the negative public review, Plaintiffs sent Dr. Khorsandi a cease and desist letter
7 asking him to remove the review, even though Dr. Khorsandi had not posted it in the first place.
8 (*Id.* ¶ 16.)

9 Plaintiffs further allege that, beginning on August 7, 2019, an anonymous poster using the
10 pseudonym "Cecily S." began posting negative comments and opinions about Plaintiffs.
11 (*Id.* ¶ 22.) According to Plaintiffs, Defendant "Cecily S." is a pseudonym used by Ms. Khorsandi,
12 but the Complaint provides no information or factual allegation to support this claim (because it is
13 untrue). (*Id.* ¶ 18.) Plaintiffs attempt to extend liability to Dr. Khorsandi for the postings of
14 "Cecily S." by stating that the "YELP reviews were made during times, and from locations where
15 Dr. Khorsandi was located, which establishes that they were together; and *on information and*
16 *belief*, the Defendants conspired to jointly produce them." (*Id.* ¶ 20 (emphasis added).) These
17 allegations are rank speculation, not facts. Plaintiffs fail to identify what role, if any, the Practice
18 had in making these statements.

19 To be clear, the Complaint identifies multiple reviews posted by "Cecily S." about
20 Plaintiffs, all of which were promptly taken down by Yelp following Plaintiffs' threats. The
21 August 7, 2019 review was removed by Yelp the same day. (*Id.* ¶ 25.) So were the reviews on
22 August 8, 9, and 14, 2019. (*Id.* ¶¶ 27, 29, 31, 34.) Plaintiffs also identify a review posted on
23 Google Reviews that they claim was also written by Ms. Khorsandi under another screen name,
24 but it is unclear from the Complaint the basis for this conclusion. (*Id.* ¶ 36.) Plaintiffs' Complaint
25 summarily states that the statements made by "Cecily S." were made with actual malice (*id.* ¶ 11),
26 in an acknowledgement that Dr. Smith is a limited-purpose public figure. Predictably, Plaintiffs
27

28 ⁴ Dr. Khorsandi denies stating to the patient that her implant was placed in backwards, or
attributing a mistake to Dr. Smith. (Ex. D, Decl. of Christopher Khorsandi, ¶ 4.)

1 fail to allege any facts to support their malice allegation. The Khorsandi Parties deny making
2 these statements.

3 **III. ARGUMENT**

4 **A. The Conduct Complained of by Plaintiffs is Protected Under Nevada's**
5 **Anti-SLAPP Statutes.**

6 A SLAPP lawsuit is "a meritless lawsuit that a plaintiff initiates to chill a defendant's
7 freedom of speech and right to petition under the First Amendment." *Pope v. Fellhauer*, 437 P.3d
8 171, 2019 WL 1313365, at *2 (Nev. March 21, 2019) (unpublished disposition) (citing
9 NRS 41.637). "The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage
10 over one's adversary by increasing litigation costs until the adversary's case is weakened or
11 abandoned." *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009)
12 (superseded by amended statute).⁵

13 Nevada's anti-SLAPP law protects certain good faith communications that are truthful or
14 made without knowledge of their falsehood in direct connection with an issue "of public interest
15 in a place open to the public or in a public forum." NRS 41.637 (3). A defendant can file a
16 special motion to dismiss, asserting immunity from claims related to protected communications.
17 NRS 41.650, NRS 41.660. These early motions to dismiss "provide[] a procedure for weeding
18 out, at an early stage, *meritless* claims arising from activity that is protected by the law."
19 *Abir Cohen Treyzon Salo, LLP v. Lahiji*, 254 Cal. Rptr. 3d, 1, 4-5 (2d Dist. 2019) (emphasis in
20 original).⁶

21 The Court undertakes a two-prong analysis to determine whether a communication is
22 protected under the anti-SLAPP statute. First, the moving party bears the burden of showing, by a
23 preponderance of the evidence, "that the claim is based upon a good faith communication in

24 ⁵ In a startling escalation, on or about November 21, 2019 (only days after filing this
25 abusive lawsuit), Dr. Khorsandi received in the mail a copy of a news article covering this case
26 implicitly and expressly threatening to bankrupt Dr. Khorsandi and his practice by and through
27 this litigation. (Ex. D-1) Dr. Khorsandi believes that it was Dr. Smith who sent the news article
28 to him. (Ex. D, Decl. of Christopher Khorsandi, ¶ 5.)

⁶ Nevada courts regularly look to California law for guidance on issues related to
anti-SLAPP because California and Nevada's statutes are similar in purpose and language.
Shapiro v. Welt, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017).

1 furtherance of . . . the right to free speech in direct connection with an issue of public concern."
2 NRS 41.660(3)(a). Once the moving party has made that showing, the burden shifts to the
3 plaintiff to present prima facie evidence a probability of prevailing on the claims.
4 NRS 41.660(3)(b).

5 Here, the Khorsandi Parties cannot, and therefore will not, admit that they made the
6 statements in question. First, Dr. Khorsandi never told his patient that the breast implant was
7 placed in backwards, and certainly never attributed it to Dr. Smith. (Ex. D, Decl. of Christopher
8 Khorsandi.) Likewise, the posts by "Cecily S." are alleged to be made by only one of
9 25 defendants (including "Does"), *i.e.*, Ms. Khorsandi. Importantly, Ms. Khorsandi denies that
10 she made those posts. (Ex. E, Decl. of Catherine Le Khorsandi.) The other defendants are in no
11 position to admit or deny making them as they are not alleged to have made them. Thus, under
12 these unusual circumstances (all of Plaintiffs' making as they are the masters of their own
13 Complaint), the Khorsandi Parties are limited to establishing their good faith by establishing
14 simply that they had nothing to do with the posts. That showing necessarily satisfies the first
15 prong of the anti-SLAPP analysis.

16 *Bel Air Internet, LLC v. Morales* is instructive. 230 Cal. Rptr. 3d 71, 75 (2018). There,
17 the court found that a defendant denying the allegations can rely on the plaintiff's allegations in
18 the pleading to determine whether the statements are of the type that are protected by the
19 anti-SLAPP statute. *Id.* "Otherwise, a defendant who disputes the plaintiff's allegations (as
20 appellants do here) might be precluded from bringing an anti-SLAPP motion. That would have
21 the perverse effect of making anti-SLAPP relief unavailable when a plaintiff makes a baseless
22 claim," the exact situation the anti-SLAPP statute was designed to address. *Id.*⁷

23
24 ⁷ Even accepting Plaintiffs' allegation as true without admissions (as required by
25 Rule 12(b)), Plaintiffs' claims clearly fail under Nevada's anti-SLAPP statute. For instance, to the
26 extent Plaintiffs rely on their allegation that Ms. Khorsandi was never a patient of Dr. Smith to
27 argue that the statements were not made in good faith, the Nevada Supreme Court has recently
28 addressed the issue in *Rosen v. Tarkanian*, 135 Nev. Adv. Op. 59 (2019). "The fundamental
problem in [plaintiffs'] argument is that it ignores the gist of the statements and instead attempts
to parse each individual word in the statements to assess it for its truthfulness. But in a
defamation action, 'it is not the literal truth of each word or detail used in a statement which
determines whether or not it is defamatory; rather, the determinative question is whether the 'gist
and sting' of the statement is true or false.'" *Id.* (quoting *Oracle USA, Inc. v. Rimini St., Inc.*,

1 The purported statements that form the basis of Plaintiffs' Complaint were "made in direct
2 connection with an issue of public interest in a place open to the public or in a public forum,"
3 NRS 41.637(4). The quality of a doctor's patient care is most certainly an issue of public interest.
4 See, e.g., *Carver v. Bonds*, 135 Cal. Rptr. 3d 480, 493 (2005); *Nagel v. Twin Labs., Inc.*,
5 134 Cal. Rptr. 2d 420, 425 (2003). The purported statements relate to the quality of care that
6 Dr. Smith provides, and therefore were in direct connection with an issue of public interest.
7 Courts have also held that Yelp, in addition to other internet review websites, are places open to
8 the public or public forums, as required by NRS 41.637(4). *Chaker v. Mateo*, 147 Cal. Rptr. 3d
9 496, 502 (2012) ("[W]e view the Internet as an electronic bulletin board open to literally billions
10 of people all over the world.") In *Wong v. Jing*, the court found that a patient's critical statements
11 about a dentist's practice on Yelp were "part of a public discussion and dissemination of
12 information on issues of public concern" for purposes of an anti-SLAPP motion.
13 117 Cal. Rptr. 3d 747, 760 (2010). Here, the purported statements related to Plaintiffs' patient
14 care were made in direct connection with an issue of public interest in a public forum, and are
15 therefore entitled to protection under the anti-SLAPP statute.

16 As the Khorsandi Parties have satisfied the first prong of the test to show that the
17 statements are protected, the burden shifts to Plaintiffs to present prima facie evidence
18 demonstrating a probability of success on the merits. NRS 41.6660(3)(b). This second-prong

19
20 6 F. Supp. 3d 1108, 1131 (D. Nev. 2014)). The concerns about patients' safety and outcomes in
21 purported statements are mirrored in numerous other patient reviews on Yelp. (See, e.g., Ex F,
22 Review by Sheila D, Smith Plastic Surgery, YELP, (May 9, 2019),
23 [https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=Lz4_fUDzrBtzHC5OXde1ZQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=Lz4_fUDzrBtzHC5OXde1ZQ&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)); Ex G, Review by Annie N, Smith Plastic Surgery, YELP,
24 (dated May 2, 2019), [https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=NIp3r3DIGsIXM3TZSnud1w&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=NIp3r3DIGsIXM3TZSnud1w&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)); Ex H, Review by Jamiee B, Smith Plastic Surgery, YELP,
25 (Apr. 23, 2018), [https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=RBC_112bieedqKrrAQ0Pzg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=RBC_112bieedqKrrAQ0Pzg&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)); Ex I, Review by Karla C, Smith Plastic Surgery,
26 YELP, (Aug. 22, 2016), [https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=4kYlnp9zqmYN0TQd_vNw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=\(direct\)](https://www.yelp.com/biz/smith-plastic-surgery-las-vegas-3?hrid=4kYlnp9zqmYN0TQd_vNw&utm_campaign=www_review_share_popup&utm_medium=copy_link&utm_source=(direct)); see also Ex. 6 to Ex. A.) In other words, the statements
27 made by "Cecily S." that form the basis for this litigation contain the "gist and sting" of numerous
28 other reviews of Plaintiffs. Therefore, even assuming "Cecily S." postings were made by
Ms. Khorsandi (they were not), they would still be unactionable under Nevada law.

entails a summary judgment-like analysis, which requires the court to determine "whether the plaintiff has stated a legally sufficient claim and made a prima facie showing sufficient to sustain a favorable judgment." *Baral v. Schitt*, 376 P.3d 604, 608 (Cal. 2016). As discussed below, Plaintiffs have failed to adequately plead claims. But in light of the burden shift, even adequately alleging facts that the Khorsandi Parties made these statements is no longer enough. Plaintiffs must now come forward with prima facie evidence to support each of their claims, including showing that any defendant was actively involved in making the statements.

To meet their burden, Plaintiffs must also show that the statements purportedly made by the Khorsandi Parties were made with actual malice, as Dr. Smith is a limited-purpose public figure because he has "voluntarily injected [himself] into the public concern for the limited purpose of reporting on its goods and services." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 721, 57 P.3d 82, 92 (2002) (holding that a restaurant was a limited public figure for the purposes of a food review). "[A]ctual malice is proven when a statement is published with knowledge that it was false or with reckless disregard for the veracity." *Id.* at 722, 57 P.3d at 92. Plaintiffs will not be able to present evidence that meets this heightened standard, as opposed to the rank and hollow speculation included in their Complaint as to the Khorsandi Parties' purported conduct.

The purpose of the anti-SLAPP statute is to prevent meritless claims intended to chill free speech. While the Khorsandi Parties deny making or publishing any statements about Plaintiffs, they have met their burden to show that the purported statements are protected statements under the anti-SLAPP statute. As Plaintiffs are not able to make a prima facie showing that they will prevail on their claims (as they have not even adequately pled their claims), their Complaint must be dismissed under NRS 41.660.

B. Plaintiffs Failed to State Claims Under NRCP 12(b)(5).

A court may grant a motion to dismiss when the plaintiff fails "to state a claim upon which relief can be granted." NRCP 12(b)(5). Dismissal for failure to state a claim is appropriate when the plaintiff cannot prove any set of facts that would entitle it to relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 671-73 (2008). In considering a

1 motion to dismiss, the Court must accept the non-moving party's factual allegations as true and
2 construe them in its favor. *Id.* at 227, 181 P.3d at 672. The Court is not, however, bound to
3 accept as true a legal conclusion couched as a factual allegation. *See id; see also Bailey v. Gates*,
4 52 Nev. 432, 437, 290 P. 411, 412 (1930) ("Good pleading requires that . . . the facts relating to
5 the matter be averred, leaving the court to draw the legal conclusion . . .").

6 **C. Plaintiffs Fail to Allege Sufficient Facts to Support their Defamation Claims.**

7 Plaintiffs bring a claim for slander per se based on a patient's Google review of
8 Dr. Khorsandi, and another six claims for libel per se based on what Dr. Smith claims were
9 reviews posted by Ms. Khorsandi. To state a claim for slander or libel, a plaintiff must allege:
10 (1) a false and defamatory statement of fact *by a defendant about the plaintiff*; (2) the
11 unprivileged publication of this statement to a third person; (3) the defendant was at least
12 negligent in making the statement; and (4) the plaintiff sustained damages as a result of the
13 statement. *Pegasus*, 118 Nev. at 718, 57 P.3d at 90 (emphasis added). Plaintiffs are
14 limited-purpose public figures for the purposes of public review, and therefore the defamatory
15 statements must be made with actual malice. *Id.* at 721, 57 P.3d at 92. Even accepting the factual
16 allegations (as opposed to conclusions of law framed as factual allegations) as true, Plaintiffs
17 failed to state claims for slander or libel.

18 ***1. Dr. Khorsandi's statements to his patient are privileged.***

19 Plaintiffs allege that, in the course of performing a consultation on a patient,
20 Dr. Khorsandi stated his professional medical opinion that her breast implant was placed in
21 backwards by her prior surgeon, Dr. Smith. (Compl. ¶ 15.) The patient then posted a review of
22 Dr. Khorsandi on a review site for the Practice, mentioning Dr. Khorsandi's opinion about
23 Dr. Smith. (*Id.*) Somehow, Dr. Khorsandi's statement and later republication by their mutual
24 patient forms the basis for Plaintiffs' slander claim. Even though Dr. Khorsandi denies making
25 this statement, a doctor's statement to his patient is privileged, and therefore cannot be the basis
26 for a claim for slander as a matter of law.⁸

27
28 ⁸ The Complaint is also deficient because it alleges that Ms. Khorsandi, as opposed to Dr. Khorsandi, made the slanderous statement to the client. Based on the text of the review, it

1 In *Cucinotta v. Deloitte & Touche, L.L.P.*, the Nevada Supreme Court favorably discussed
2 Section 592A of the Restatement (Second) of Torts, which provides that "[o]ne who is required
3 by law to publish defamatory matter is absolutely privileged to publish it." 129 Nev. 322, 325-26,
4 302 P.3d 1099, 1101. Section 592A "rests upon the principle that one who is required by law to
5 do an act does not incur any liability for doing it." *Id.* (quoting Restatement (Second) of
6 Torts § 592A cmt. a (1977)). The Nevada Supreme Court noted that "[j]urisdictions throughout
7 the country have adopted [Section 592A's] rationale in cases where a party was compelled by law
8 to publish defamatory information." *Id.* at 326, 302 P.3d 1101. Ultimately, in *Cucinotta*, the
9 Nevada Supreme Court affirmatively adopted the Restatement (Second) of Torts Section 592A;
10 however, the court commented that "[t]he class of absolutely privileged communications
11 recognized by this court remains narrow and is limited to those communications made in judicial
12 or quasi-judicial proceedings *and communications made in the discharge of a duty under*
13 *express authority of law.*" *Id.* at 326, 302 P.3d at 1102 (emphasis added).

14 Here, Dr. Khorsandi's purported statements to his patient are absolutely privileged
15 because, accepting the allegations in the Complaint as true, Dr. Khorsandi made these statements
16 in the context of fulfilling his duties as a physician to his patient. Under Nevada law, a physician
17 must be permitted to have full and frank discussions with his or her patient, and provide advice
18 and analysis as to the patient's medical condition and treatment. Indeed, it explains why Nevada
19 recognizes the doctor-patient privilege in the first instance: "The doctor-patient privilege is
20 'intended to inspire confidence in the patient' and encourage candor in making a full disclosure so
21 the best possible medical care can be given." *Rogers v. State*, 127 Nev. 323, 327, 255 P.3d 1264,
22 1266 (2011) (quoting *Hetter v. District Court*, 110 Nev. 513, 516, 874 P.2d 762, 763 (1994)).
23 Further, such a disclosure is consistent with the patient's bill of rights, codified in
24 NRS 449A.106. NRS 449A.106 provides, among other things: "Every patient of a medical
25 facility or facility for the dependent has the right to: . . . 5. Receive from his or her physician a
26 complete and current description of the patient's diagnosis, plan for treatment and prognosis in

27 was actually Dr. Khorsandi who provided his client with medical advice. (See Compl. ¶¶ 15, 39.)
28 As neither Ms. Khorsandi nor the Practice is alleged to have made any statements that form the
basis for the slander claim, the first claim for relief must be dismissed as to both.

1 terms which the patient is able to understand 6. Receive from his or her physician the
2 information necessary for the patient to give his or her informed consent to a procedure or
3 treatment."

4 Here, Dr. Khorsandi's medical opinion that one of his patient's breast implants was in
5 backwards would have needed to be conveyed to his patient because it not only related to her
6 diagnosis, but also was information required to be communicated so as to obtain the patient's
7 informed consent for the manipulation procedure, and therefore privileged. Because the
8 communication was privileged, it cannot form the basis for the slander claim, and the claim must
9 be dismissed as to Dr. Khorsandi.

10 **2. The Complaint does not allege that Dr. Khorsandi or the Practice made**
11 **any statements.**

12 The fundamental element a plaintiff must allege to support a claim for libel is that the
13 defendant made a defamatory statement about the plaintiff. *Pegasus*, 118 Nev. at 718, 57 P.3d
14 at 90. The complaint must specifically include an allegation that a defendant "actually made a
15 defamatory statement." *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1252 (D. Nev. 2003)
16 (applying *Pegasus*, 118 Nev. at 718, 57 P.3d at 90.) In *Flowers*, the court applying Nevada law
17 determined that allegations a defendant had directed others to make defamatory statements were
18 insufficient to state an actionable claim. *Id.* In their Complaint, Plaintiffs fail to allege that either
19 Dr. Khorsandi or the Practice made any statement about Plaintiffs. Instead, Plaintiffs repeatedly
20 state that Ms. Khorsandi "either on her own volition or at the direction of one or both of the other
21 Defendants and posing as 'Cecily S.'" posted the reviews.⁹ (Compl. ¶¶ 46, 52, 58, 64, 70, 76.)
22 That is not enough to support the libel per se claims against Dr. Khorsandi or the Practice. The
23 Second through Seventh Claims for Relief should be dismissed against Dr. Khorsandi and the
24 Practice.

25
26
27 ⁹ Ms. Khorsandi, once again, denies making the statements attributed to her, but the
28 allegations must be taken as true for purposes of a motion to dismiss under NRCP 12(b)(5).
Buzz Stew, 124 Nev. at 227, 181 P.3d at 672.

1 Similarly, Plaintiffs' Complaint fails to identify any actions taken by Dr. Khorsandi or the
2 Practice that would place them in a false light. "[A]n action for false light arises when one who
3 *gives publicity* to a matter concerning another that places the other before the public in a false
4 light . . . if (a) the false light in which the other was placed would be highly offensive to a
5 reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the
6 falsity of the publicized matter and the false light in which the other would be placed." *Franchise*
7 *Tax Bd. of Cal. v. Hyatt*, 130 Nev. 662, 685, 335 P.3d 125, 141 (2014), *vacated and remanded on*
8 *other grounds by Franchise Tax Bd. of Cal. v. Hyatt*, 136 S. Ct. 1277 (2016) (citing Restatement
9 (Second) of Torts § 652E (1977)) (emphasis added). The Complaint alleges that all of the
10 Khorsandi Parties "engaged in a systematic pattern of publishing information" regarding
11 Plaintiffs. (Comp. ¶ 103.) But, as with the claims for libel, the Complaint is bereft of instances
12 by Dr. Khorsandi or the Practice actually publishing information. Without this essential element,
13 a claim for false light cannot stand, and the claim must be dismissed.

14 **D. Plaintiffs Fail to Identify Facts to Support Their Conspiracy Claim.**

15 Plaintiffs' cause of action for "Concert of Action, Aiding and Abetting, Civil Conspiracy"
16 is nothing more than a repackaging of their libel claims with the same flaws. To state a claim for
17 civil conspiracy, a plaintiff must plead facts alleging the defendants acted in concert with the
18 intention of accomplishing an unlawful objective for the purpose of harming the plaintiff, and the
19 plaintiff sustained damages as a result of defendants' actions. *Guilfoyle v. Olde Monmouth Stock*
20 *Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 198 (2014). This claim fails, just like the
21 libel claims, because the Complaint does not allege facts showing the Khorsandi Parties acted
22 together to make libelous statements against Plaintiffs. Instead, the Complaint simply states the
23 legal conclusion that the Khorsandi Parties worked together to libel Plaintiffs, failing to identify
24 any actions each defendant took to further the conspiracy to defame Plaintiffs.
25 (Compl. ¶¶ 83-85, 87.) The mere recitation of the elements is insufficient. *See Buzz Stew*,
26 124 Nev. at 227, 181 P.3d at 672. Plaintiffs have not alleged facts to support their Eighth Cause
27 of Action, and therefore it must be dismissed.

1 **E. Cecily S.'s Comments Do Not Rise to The Level of Outrageous Conduct.**

2 For Dr. Smith to state a claim for intentional infliction of emotional distress, he must
3 allege facts that show: "(1) extreme and outrageous conduct on the part of the defendant;
4 (2) intent to cause emotional distress or reckless disregard for causing emotional distress; (3) that
5 the plaintiff actually suffered extreme or severe emotion distress; and (4) causation." *Miller v.*
6 *Jones*, 114 Nev. 1291, 1299-1300, 970 P.2d 571, 577 (1998). "[E]xtreme and outrageous conduct
7 is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a
8 civilized community," but a person "must necessarily be expected and required to be hardened . . .
9 to occasional acts that are definitely inconsiderate and unkind." *Maduike v. Agency Rent-A-Car*,
10 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal citations omitted).

11 In addition to the Complaint's pervasive failure to identify any actions taken by anyone
12 other than Cecily S., the statements identified by Dr. Smith are not outside all possible bounds of
13 decency. As a doctor who maintains a Yelp profile, Dr. Smith invites the public to review their
14 experiences with him, and even monitors the site for negative reviews. (Compl. ¶¶ 23, 25, 27, 29,
15 31, 33.) While he may disagree with them and may find them to be inconsiderate and unkind,
16 statements that Dr. Smith is the "worse doctor on the planet" or that "he's a horrible_surgeon" are
17 not outside all possible bounds of decency – they are protected opinions. Therefore, the claim for
18 intentional infliction of emotional distress against Ms. Khorsandi for purportedly making
19 statements as Cecily S. should be dismissed as the statements she allegedly made do not rise to
20 the level of outrageous conduct for purposes of a claim for intentional infliction of emotional
21 distress. Additionally, the Court should dismiss the intentional infliction of emotional distress
22 claims against Dr. Khorsandi and the Practice because the Complaint fails to identify any conduct
23 on their part, let alone conduct that is extreme or outrageous.

24 **F. Dr. Khorsandi and the Practice Were Not Negligent in Hiring, Supervising, or**
25 **Training Ms. Khorsandi.**

26 Plaintiffs fail to allege facts to support the claim for negligent hiring, supervision, or
27 training. (Compl. ¶¶ 116-26.) The tort of negligent hiring imposes "a general duty on an
28 employer to conduct a reasonable background check on a potential employee to ensure that the

1 employee is fit for the position." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1392, 930 P.2d 94, 98 (1996).
2 This duty is breached when the employer "hires an employee even though the employer knew, or
3 should have known, of that employee's dangerous propensities." *Id.* Here, Plaintiffs do not allege
4 that Dr. Khorsandi or the Practice were negligent in conducting background checks upon
5 Ms. Khorsandi. (See Compl. ¶¶ 116-26.) Nor do they allege that Dr. Khorsandi or the Practice
6 knew or should have known of any purported dangerous propensity of Ms. Khorsandi when hired.
7 Indeed, Plaintiffs' Complaint is void of any reference of the Khorsandi Parties' purported hiring
8 practices or how Dr. Khorsandi or the Practice's hiring practices fell below any imaginable
9 standard of care, instead stating the legal conclusion that they were negligent in hiring
10 Ms. Khorsandi. Simply put, Plaintiffs do not and cannot assert any factual allegations to support
11 a negligent hiring claim.

12 Once again, Plaintiffs fail to allege any facts indicating how Dr. Khorsandi or the Practice
13 failed to use reasonable care in the training and supervisions of Ms. Khorsandi.
14 (Compl. ¶¶ 118-19.) The elements of the related tort of negligent supervision and training are:
15 (1) a general duty on the employer to use reasonable care in the training and supervision of
16 employees to ensure that they are fit for their positions, (2) breach, (3) injury, and (4) causation.
17 *Hall*, 112 Nev. at 1392, 930 P.2d at 98; *Jespersen v. Harrah's Operating Co.*, 280 F. Supp. 2d
18 1189, 1195 (D. Nev. 2002). Although an employer has a general duty to use reasonable care in
19 the training and supervision of his or her employees, a plaintiff must allege facts specifically
20 indicating how the employer violated this duty. *Burnett v. C.B.A. Sec. Serv., Inc.*, 107 Nev. 787,
21 789, 820 P.2d 750, 752 (1991); *Colquhoun v. BHC Montevista Hosp., Inc.*,
22 No. 2:10-CV00144-RLH-PAL, 2010 WL 2346607, at *3 (D. Nev. June 9, 2010). Instead,
23 Plaintiffs' theory is that Dr. Khorsandi and the Practice are liable because its employee
24 purportedly acted wrongfully. Yet, the law refutes such an inference, requiring that the complaint
25 pleads facts indicating how the employer violated the duty. *Colquhoun*, 2010 WL 2346607, at *3
26 (citing *Burnett*, 107 Nev. 787, 820 P.2d 750). The mere "fact that an employee acts wrongfully
27 does not in and of itself give rise to a claim for negligent hiring, training, or supervision." *Id.*
28 Because Plaintiffs' Complaint fails to include the factual allegations that show Dr. Khorsandi or

1 the Practice were negligent in hiring, supervising, or training Ms. Khorsandi, the claim must be
2 dismissed.

3 **G. Plaintiffs Fail to Identify any Prospective Relationships That Were Interfered**
4 **With or Any Damages Suffered.**

5 Plaintiffs argue that the reviews posted by "Cecily S." wrongfully interfered with their
6 relationship with prospective clients. (Compl. ¶¶ 127-131.) To state a claim for interference with
7 prospective economic advantage, the plaintiff must plead: "(1) a prospective contractual
8 relationship between the plaintiff and a third party; (2) the defendant's knowledge of this
9 prospective relationship; (3) the intent to harm the plaintiff by preventing the relationship; (4) the
10 absence of privilege or justification by the defendant; and, (5) actual harm to the plaintiff as a
11 result of the defendant's conduct." *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 88, 734 P.2d 1221,
12 1225 (1987).

13 Plaintiffs allege that they are in the business of performing plastic surgery on prospective
14 customers and that the Khorsandi Parties had knowledge that they were in the business.¹⁰
15 (Compl. ¶¶ 128-29.) That is not enough. The Complaint fails to include factual allegations that
16 Plaintiffs had specific prospective contractual relationships that were interfered with, or that any
17 actual harm actually occurred as a result of the Khorsandi Parties' alleged conduct. Instead,
18 Plaintiffs circularly claim that their business was wrongly interfered with by the Khorsandi
19 Parties, and they are therefore entitled to damages. (*Id.* ¶ 132.) Plaintiffs' failure to identify any
20 prospective contractual relationships or actual harm that occurred as a result of the Khorsandi
21 Parties' conduct means the claim must be dismissed.

22 **H. Punitive Damages and Preliminary Injunctions Are Not Independent Causes**
23 **of Action.**

24 Plaintiffs bring separate causes of action for punitive damages (Compl. ¶¶ 109-15) and
25 preliminary injunction (*id.* ¶¶ 134-42). Neither punitive damages nor preliminary injunction is
26 properly brought as a separate cause of action. Punitive damages is a remedy, not an independent

27 ¹⁰ Once again, even incorporating the previous allegations, the Complaint fails to identify
28 any actions taken by Dr. Khorsandi or the Practice that go to the "systematic on-line smear
campaign." (Compl. ¶ 130.)

1 cause of action. Instead, they can only be awarded by a jury once it first finds that compensatory
2 damages should be awarded. *See City of Reno v. Silver State Flying Servs.*, 84 Nev. 170, 180-81,
3 438 P.2d 257, 264 (1968); NRS 42.005. A plaintiff is not automatically entitled to punitive
4 damages. *Bongiovi v. Sullivan*, 122 Nev. 556, 581, 138 P.3d 433, 450-51 (2006). A plaintiff may
5 only recover punitive damages if it proves "by clear and convincing evidence that the defendant
6 has been guilty of oppression, fraud or malice, express or implied." NRS 42.005(1). Simply
7 reciting the standard to recover, without the necessary facts, is insufficient. *Bonavito v. Nev.*
8 *Prop. 1 LLC*, No. 2:13-CV-417-JAD-CWH, 2014 WL 1347051, at *1 (D. Nev. Apr. 2, 2014)
9 ("[A] plaintiff must still plead the facts to support an award of punitive damages to maintain a
10 prayer for them in his complaint and pursue them at trial."). Plaintiffs' Complaint fails to allege
11 facts that would support a clear and convincing inference that they are entitled to punitive
12 damages. (Compl. ¶¶ 49, 55, 61, 67, 73, 79, 90, 109-14.) Accordingly, Plaintiffs' request for
13 punitive damages absent facts supporting the award should be dismissed as insufficiently pled.

14 Similarly, a preliminary injunction is not a stand-alone cause of action, but a type of relief.
15 Plaintiffs argue that they are entitled to a preliminary injunction based on the Complaint alone.
16 (*Id.* ¶ 138.) But in order to be awarded a preliminary injunction, a plaintiff must show "(1) a
17 likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's
18 conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an
19 inadequate remedy." *Univ. & Cmty. College Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev.
20 712, 721, 100 P.3d 179, 187 (2004). While a request for injunctive relief in the Complaint is
21 necessary, it alone is insufficient to allow a plaintiff to move for a preliminary injunction. *See*
22 *NRCP 65(a)*. Accordingly, the Court should dismiss Plaintiffs' independent cause of action for
23 preliminary injunction.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Khorsandi Parties respectfully request that the Court dismiss
3 Plaintiffs' Complaint with prejudice.

4 DATED this 10th day of January, 2020.

5 PISANELLI BICE PLLC

6
7 By: 

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

8
9
10 *Attorneys for Defendants Christopher Khorsandi,*
11 *M.D., Christopher Khorsandi, M.D., PLLC, and*
12 *Catherine Le Khorsandi*

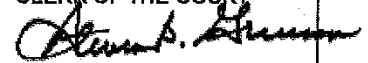
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 10th day of January, 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 SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(6)** 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


An employee of Pisanelli Bice PLLC

EXHIBIT A



CASE NO: A-19-799154-C
Department 16

1 **COMP**
2 **KRISTINE J. MAXWELL, ESQ.**
3 Nevada Bar No. 9860
4 8275 S. Eastern Ave., Ste. 200
5 Las Vegas, Nevada 89123
6 Telephone: (702) 664-2074
7 Facsimile: (702) 940-4088
8 Email: kristinemaxwell@yahoo.com
9 *Attorney for Plaintiffs*

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

10 SMITH PLASTIC SURGERY INC., a
11 Nevada Corporation, THE PLASTIC
12 SURGERY INSTITUTE OF LAS VEGAS,
13 LLC, a Nevada Limited Liability Company,
14 LANE F. SMITH, M.D., an Individual,

15 Plaintiffs,

16 vs.

17 CARALYN BROOK, an individual,

18 Defendants.

Case No.
Dept. No.

COMPLAINT

19 COMES NOW, Plaintiffs, SMITH PLASTIC SURGERY INC., a Nevada Corporation,
20 THE PLASTIC SURGERY INSTITUTE OF LAS VEGAS, LLC, a Nevada Limited Liability
21 Company, LANE F. SMITH, M.D., an Individual, by and through their attorney of record,
22 Kristine J. Maxwell, Esq., and as for their Complaint against Defendant, allege as follows:

23 **I.**
24 **THE PARTIES**

25 1. Plaintiff, SMITH PLASTIC SURGERY INC., is a Nevada Corporation doing business in
26 Clark County Nevada.
27
28

1 2. Plaintiff, THE PLASTIC SURGERY INSTITUTE OF LAS VEGAS, LLC, a Nevada,
2 Limited Liability Company, doing business in Clark County Nevada.

3 3. Plaintiff, LANE F. SMITH, M.D., is a Licensed Nevada Medical Doctor practicing
4 medicine in Clark County, Nevada.

5
6 4. The Defendant, CARALYN BROOK, had plastic surgery performed in Las Vegas and
7 signed an agreement in Clark County Nevada. Ms. Brooks posts claim she is from Las Vegas,
8 Nevada. Upon information and belief, Ms. Brooks currently resides in St. George, Utah.

9
10 **II.**
JURISDICTION AND VENUE

11 5. Plaintiffs repeat and re-allege those allegations set forth in Paragraphs 1 through 4 above
12 as if fully set forth herein.

13
14 6. The Defendant signed the two attached Release of All Claims in Clark County Nevada in
15 advance of her surgeries which were conducted in Clark County, Nevada. Defendant breached
16 the contracts and defamed the Plaintiffs and posted on websites viewable in Clark County
17 Nevada. The posts indicate that Ms. Brook is from Las Vegas, Nevada.

18
19 7. The acts complained of herein occurred in Clark County, Nevada and have caused
20 damages to the Plaintiffs in excess of \$15,000.00.

21 **III.**
STATEMENT OF FACTS

22
23 8. On or about August 11, 2016, Defendant had a Rhinoplasty from Plaintiffs. The results
24 were excellent as documented by photographs taken at the time. Nearly 10 months later,
25 Defendant began to complain about an infection in her nose. The origin of this infection is
26 unknown. Typically, an infection caused by a surgery would appear within 30 days.
27
28

1 9. On or about December 28, 2017, Defendant signed a Release of All Claims, attached
2 hereto as Exhibit 1. This agreement was signed in Clark County Nevada. Following the signing
3 of this agreement in a bargained for exchange, Dr. Smith performed a nose exploration surgery
4 for Defendant in Las Vegas, Nevada at little to no cost.
5

6 10. On or about February 27, 2018, Defendant signed another Release of All Claims, attached
7 hereto as Exhibit 2. This second Release of All Claims was signed in Clark County Nevada.
8 Following the signing of this agreement in a bargained for exchange, Dr. Smith performed a
9 exploration of nasal tip surgery for Defendant in Las Vegas, Nevada at little to no cost.
10

11 11. The operative paragraph of both Release of All Claims signed by Defendant twice in
12 paragraph 3(e) states:

13 "CARALYN BROOK agrees not to make any derogatory comments or negative
14 statements of any sort about Dr. Lane Smith or his staff to any person or media
15 representative or media entity including but not limited to newspapers, magazines,
16 internet sites, internet forums, television, movies, or radio. CARALYN BROOK
agrees that she will not make any negative comments about Dr. Lane Smith."

17 12. On or about July 16, 2019, Ms. Brook placed a false and defamatory review on Yelp. This
18 review was extremely negative in nature. See Exhibit 3.

19 13. On or about July 17, 2019, Ms. Brook was provided with a Cease and Desist Letter
20 requesting that she remove the offending posts and providing her a copy of the Release of All
21 Claims that she signed. See Exhibit 4.
22

23 14. Ms. Brook then posted more false and defamatory statements and posted a copy of the
24 Cease and Desist Letter that she was served. Again and again, Ms. Brook made more and more
25 false and defamatory statements and negative statements about Dr. Smith and all Plaintiffs in this
26 matter despite being warned that to do so would cause extreme damage and that it would result in
27 this litigation.
28

1 15. Further, she enlisted her friend or relative Rachel J. to make false defamatory and
2 disparaging comments as well on Yelp. This individual was also served a cease and desist letter
3 on July 24, 2019. See Exhibit 5.
4

5 16. On or about July 16, 2019 through July 23, 2019, Ms. Brook made repeated comments in
6 violation of the Release of All Claims and even claimed that somehow Dr. Smith was the cause
7 of her child's infection at birth. See Exhibit 6.

8 17. Defendant has also posted on her Instagram Story many false and defamatory negative
9 statements about Plaintiffs all in violation of her two signed Release of Claims. Her Instagram
10 story is filled with wild false and defamatory statements that must be removed pursuant to the
11 Release of Claims that she signed on two separate occasions noted above. Ms. Brook also posted
12 the same false, defamatory, and negative comments on Facebook. Ms. Brooks statements are
13 severely damaging Plaintiffs' reputations.
14

15 18. Despite all of the opportunities afforded to Defendant to remove the offending posts, she
16 refuses to remove the offending posts in violation of the terms of the Release of All Claims and
17 in fact has become more aggressive in her false, defamatory, and negative posts, which resulted
18 in this litigation.
19

20 **FIRST CAUSE OF ACTION**

21 **(Breach of Contract)**

22 19. Plaintiffs repeat and re-allege each and every fact and allegation contained in this
23 Complaint as though fully set forth herein.
24

25 20. The Defendant signed the attached Releases of All Claims on December 28, 2017 and
26 again on February 27, 2018, and received two additional nasal surgeries for minimal charge.
27 This bargained for exchange included the Defendant receiving surgeries well below cost and
28 Defendant agreeing to the terms of the Release.

1 21. Defendant breached the Release on July 16, 2019, by posting an offensive defamatory and
2 derogatory review. Defendant breached the Release agreement and has posted repeated false,
3 defamatory, and negative comments on her Instagram Story and on Facebook all in violation of
4 the Release Agreement.
5

6 22. On July 17, 2019, Defendant was given a cease and desist letter requesting the removal of
7 the offending post and warning Defendant that failure to remove would cause this litigation.
8

9 23. Instead of removing the offending post, the Defendant posted on Yelp more derogatory
10 and offensive statements and also posted a copy of the cease and desist letter acknowledging that
11 she received the letter and went on to further disparage the Plaintiffs.

12 24. Defendant had a duty to comply with the Release of All Claims. Defendant breached her
13 duties under the Release and the Plaintiffs have suffered damages in excess of \$15,000.00 to be
14 proved at trial in this matter.
15

16 25. As a direct and proximate result of Defendant's breach it has been necessary for Plaintiffs
17 to retain an attorney to prosecute this action, and Plaintiffs are entitled to recover reasonable
18 attorney's fees and costs.
19

20 **SECOND CAUSE OF ACTION**

21 **(Injunctive Relief - Motion for a Temporary Restraining Order)**

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

24 27. During the pendency of this litigation, the offending posts should be immediately
25 removed as it continues to cause damage on a daily basis. The appropriate Motion for a
26 Temporary Restraining Order will be filed after this Complaint is filed.
27

28 28. The Defendant breached the agreement and the offending posts on Yelp, Facebook, and
Defendant's Instagram Story and where ever else she has posted negative comments should be

1 removed to stop the damages from accruing as each day that the post remains causes Plaintiffs
2 further damages.

3
4 29. Defendant accepted the benefit of having two additional surgeries upon her nose and did
5 not abide by the terms of the Release of All Claims, which was the bargained for exchange.

6 30. This breach of contract and duty caused damages to Plaintiffs in excess of \$15,000.00.

7 31. As a direct and proximate result of Defendant's foresaid actions, it has been necessary for
8 Plaintiffs to retain counsel to prosecute this action, and Plaintiffs are entitled to recover
9 reasonable attorney's fees and costs.

10
11 WHEREFORE, the Plaintiffs respectfully pray for judgment against the Defendant as
12 follows:

13 1. The removal of all offending Post from any and all social media websites including
14 but not limited to Yelp, Instagram and Facebook. And, an Order restraining Defendant from
15 further negative posting about the Plaintiffs.

16
17 2. General Damages as requested in an amount in excess of \$15,000.00 on each and
18 every cause of action;

19 3. Preliminary or Permanent Injunctive relief restraining and enjoining Defendant and her
20 friends and family from making negative posts about Plaintiffs.

21 4. For reasonable attorneys' fees and costs of the suit incurred herein; and

22 5. For such other and further relief as the Court may deem lawful and just.

23
24 DATED this 24th day of July, 2019.

25 /s/ Kristine J. Maxwell, Esq.

26 **KRISTINE J. MAXWELL, ESQ.**
27 Nevada State Bar No. 9860
28 8275 S. Eastern Avenue, Suite 200
Las Vegas, Nevada 89123
Attorney for Plaintiffs

EXHIBIT 1

Release of All Claims

This Release of All Claims is entered into and between Lane F. Smith, MD, Smith Plastic Surgery Inc., and The Plastic Surgery Institute of Las Vegas or any other organization related to or associated with Dr. Lane F. Smith, (all referred to in this Release as "Smith or Releasee"), and "CARALYN BROOK" hereinafter also referred to in this Release as the "Party" or Parties".

RECITALS

This Mutual Release of Claims is made and delivered with the reference to the following facts:

- A. The Parties hereby agree to settle disputes and forever discharge one another from any and all liability related thereto.

TERMS OF RELEASE;

1. CARALYN BROOK, on behalf of herself and respective spouses, heirs, successors, now and forever releases and discharges each other, and their respective spouses, heirs, successors, attorneys, insurers, brokers, agents and employees, from any and all claims, demands, losses, expenses, damages, liabilities, actions and causes of action of any nature and agrees to the Release language set forth below:

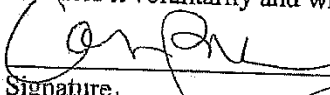
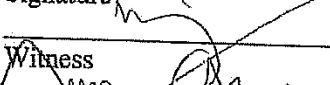

That each party represents and warrants that they have considered the possibility that claims, liabilities, injuries, damages and causes of action that they do not presently know or suspect to exist in their favor may develop, accrue, or be discovered in the future, and that they voluntarily assume that risk is a part of the consideration for this release.

2. CARALYN BROOK covenants and agrees that she will not make, assert, or maintain any claim, demand, action or cause of action that is discharged by this Release, against any Releasee named or described in this Release. agrees to indemnify, defend and hold each Releasee named or described in this Release and their successors in interest, harmless against any claim, demand, damage, liability, action, cost or expense, including attorney fees, resulting from a breach of the covenant contained in this paragraph.
3. CARALYN BROOK represents and warrants that:
 - a. She has consulted with and relied upon legal counsel concerning the settlement and execution of this release. CARALYN BROOK represents and warrants that she is

relying solely upon her own investigation, knowledge information, belief, and judgment or advice of her own attorney, and not upon any statements, opinions, or representations of any party or any other party's attorneys, employees or agents in settling their claims and executing this Release.

- b. There has not been any lawsuit filed relating to the facts giving rise to this Release.
 - c. The releasing party has not contacted nor will contact in the future, any administrative body, local, state, or federal relating to this matter. This includes any hospital or surgery centers will not be contacted, nor have they been contacted relating to this matter.
 - d. CARALYN BROOK agrees completely that no malpractice errors of any sort have occurred, and that the results have been an improvement.
 - e. CARALYN BROOK agrees not to make any derogatory comments or negative statements of any sort about Dr. Lane Smith or his staff to any person or media representative or media entity including but not limited to newspapers, magazines, internet sites, internet forums, television, movies, or radio. CARALYN BROOK agrees that she will not make any negative comments about Dr. Lane Smith.
4. This document can be executed in counterparts of each whom will be deemed as original.
5. If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall remain in force and shall not be affected by invalidity of any other provision.

The undersigned affirms that they have read this Release, understands all of its terms, and executes it voluntarily and with full knowledge of its significance.


Signature

Witness

Witness

12/28/2017
Date
12-28-17
Date
12-28-17
Date

EXHIBIT 2

Release of All Claims

This Release of All Claims is entered into and between Lane F. Smith, MD, Smith Plastic Surgery Inc., and The Plastic Surgery Institute of Las Vegas or any other organization related to or associated with Dr. Lane F. Smith, (all referred to in this Release as "Smith or Releasee"), and "CARALYN BROOK" hereinafter also referred to in this Release as the "Party" or Parties".

RECITALS

This Mutual Release of Claims is made and delivered with the reference to the following facts:

- A. The Parties hereby agree to settle disputes and forever discharge one another from any and all liability related thereto.

TERMS OF RELEASE;

1. CARALYN BROOK, on behalf of herself and respective spouses, heirs, successors, now and forever releases and discharges each other, and their respective spouses, heirs, successors, attorneys, insurers, brokers, agents and employees, from any and all claims, demands, losses, expenses, damages, liabilities, actions and causes of action of any nature and agrees to the Release language set forth below:

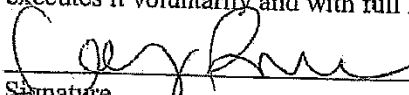

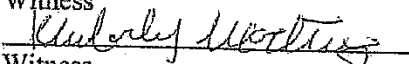
That each party represents and warrants that they have considered the possibility that claims, liabilities, injuries, damages and causes of action that they do not presently know or suspect to exist in their favor may develop, accrue, or be discovered in the future, and that they voluntarily assume that risk is a part of the consideration for this release.

2. CARALYN BROOK covenants and agrees that she will not make, assert, or maintain any claim, demand, action or cause of action that is discharged by this Release, against any Releasee named or described in this Release. agrees to indemnify, defend and hold each Releasee named or described in this Release and their successors in interest, harmless against any claim, demand, damage, liability, action, cost or expense, including attorney fees, resulting from a breach of the covenant contained in this paragraph.
3. CARALYN BROOK represents and warrants that:
 - a. She has consulted with and relied upon legal counsel concerning the settlement and execution of this release. CARALYN BROOK represents and warrants that she is

relying solely upon her own investigation, knowledge information, belief, and judgment or advice of her own attorney, and not upon any statements, opinions, or representations of any party or any other party's attorneys, employees or agents in settling their claims and executing this Release.

- b. There has not been any lawsuit filed relating to the facts giving rise to this Release.
 - c. The releasing party has not contacted nor will contact in the future, any administrative body, local, state, or federal relating to this matter. This includes any hospital or surgery centers will not be contacted, nor have they been contacted relating to this matter.
 - d. CARALYN BROOK agrees completely that no malpractice errors of any sort have occurred, and that the results have been an improvement.
 - e. CARALYN BROOK agrees not to make any derogatory comments or negative statements of any sort about Dr. Lane Smith or his staff to any person or media representative or media entity including but not limited to newspapers, magazines, internet sites, internet forums, television, movies, or radio. CARALYN BROOK agrees that she will not make any negative comments about Dr. Lane Smith.
4. This document can be executed in counterparts of each whom will be deemed as original.
5. If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall remain in force and shall not be affected by invalidity of any other provision.

The undersigned affirms that they have read this Release, understands all of its terms, and executes it voluntarily and with full knowledge of its significance.


Signature

Witness

Witness

2/27/18
Date
2/27/18
Date
2/27/18
Date

EXHIBIT 3

7/17/2019

Reviews | Smith Plastic Surgery | Yelp for Business Owners

for Business Owners

Smith Plastic Surgery
7650 W Sahara Ave
Las Vegas, NV 89147

Reviews

Read and respond to reviews on the go.

Download the for iOS and Android.

128 Reviews for Smith Plastic Surgery

You may message 1000 more customers today, and your business may make up to 20 more public comments.

Las Vegas, NV

771 friends

3 reviews



7/16/2019

Absolutely awful experience. Wouldn't wish it on my worst enemy.

I suffered with an infection after my rhinoplasty for 2 years. After suffering for a few months Dr. Smith suggested we go back into surgery to remove the permanent sutures. I was now pregnant so we had to go into surgery with a local anesthetic. After surgery my nose got substantially worse. A month or so after that he went into surgery again to see if he had "missed anything". My nose continued to get infected. I was pregnant extremely ill, in danger of getting a brain infection and on heavy doses of antibiotics for my entire pregnancy. I went to numerous doctors but they all assumed there were no foreign bodies based on Smith's TWO surgeries looking for them.

My nose got substantially worse and was creating large black sores. Smith wanted to have ANOTHER surgery but he refused to answer my questions and was treating me like a criminal so I went to another amazing doctor.

I finally found out through Smith's own surgical reports that in the surgeries he never removed A SINGLE PERMANENT SUTURE. In fact HE ADDED ONE. I cannot for the life of me explain this except to assume he forgot what he was in surgery to do then proceeded to lie to me for a year. I was in real pain and struggling for years and he couldn't even be bothered to tell me the truth so I could get help elsewhere. I am now free of infection now thanks to another surgeon even tho it is scarred from the infections.

If you are skeptical of bad reviews just look at the incredibly unprofessional replies to the bad reviews instead. They attack clients and take zero responsibility for anything, that's not the maturity level you want from someone who is going to be using a scalpel on you.

Having surgery with Dr. Smith is like taking a road trip without a seatbelt
Don't do it. Find someone else.



Before and after photo of a woman's nose



Before and after photo of a woman's nose

Comment from Jessica E. of Smith Plastic Surgery
Business Manager

9/20/2016 • Thank you so much for the kind words, Ciara. We're glad that you received outstanding patient care and Dr. Smith was able to accomplish your goals with the "T". We appreciate that, as we understand how difficult it is to achieve perfection.

And yes, we really do apologize for his wait times. As you know, Dr. Smith makes sure to give you the time you need, so it does end up affecting his schedule. But like you said, you're here for his results, not to be rushed through. Still, we're always striving to reduce our wait times, and thank you for the feedback.

Las Vegas, NV

0 friends

2 reviews



7/15/2019 • Updated review



Let's recap from my previous review if any professionalism was displayed during my consult. Let's remember, I was the FIRST appointment of the day, 9:00 AM. I was at the office at 8:40 and witnessed each staff member arrive AFTER me.

EXHIBIT 4

HUGGINS & MAXWELL

LAW OFFICE

8275 S. Eastern Avenue, Suite 200

Las Vegas, Nevada 89123

Telephone (702) 371-6921

July 17, 2019

Caralyn Brook
2275 E. Meadow Valley Lane
St. George, Utah 84790
Sent via Federal Express

Re: Cease and Desist – Removal of False and Defamatory Reviews from All Social Media Websites

Dear Ms. Brook:

Please be advised that our office represents Lane F. Smith, M.D. and all legal entities associated and related to Smith Surgery Center, Chic La Vie, and Dr. Smith. We noticed that you posted the attached review which makes you in breach of a contract that you signed on February 27, 2018, in advance of a touch up surgery performed by Dr. Smith. ***This is your opportunity to mitigate damages and remove all negative posts, which are a breach of the contract that you signed.***

As you are aware, you signed a Release of Claims attached hereto in which you contractually agreed not to make derogatory or negative comments. In return, Dr. Smith performed multiple touch up surgeries for you at minimal cost. Please see Paragraph 3(e) of the Release of Claims that you signed, which states the following:

“e. CARALYN BROOK agrees not to make any derogatory comments or negative statements of any sort about Dr. Lane Smith or his staff to any person or media representative or media entity including but not limited to newspapers, magazines, internet sites, internet forums, television, movies or radio. CARALYN BROOK agrees that she will not make any negative comments about Dr. Lane Smith.”

My clients are willing to use all available legal remedies to stop your breach of contract and continued defamation. To avoid further negative consequences of from the breach of contract, we respectfully request the following be done forthwith:

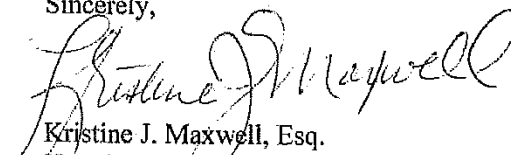
1. Cease and desist from all false and defamatory posting regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.
2. Immediately remove any and all posts on social media, Yelp, review websites, and print media regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.

3. Cease and desist from all slanderous, defamatory and breach of contract comments regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.

We trust that you will govern yourself accordingly and remove all negative posts. If you fail to do so then, Smith Plastic Surgery and Dr. Lane F. Smith, will file a case against you for breach of contract and defamation. Based upon your breach of contract, we shall file litigation against you for damages, which we estimate are in excess of \$100,000.00. *We will check all relevant websites 48 hours after service of process is effectuated upon you.*

If you have any questions or concerns, please feel free to contact our office.

Sincerely,



Kristine J. Maxwell, Esq.
Huggins & Maxwell

Release of All Claims

This Release of All Claims is entered into and between Lane F. Smith, MD, Smith Plastic Surgery Inc., and The Plastic Surgery Institute of Las Vegas or any other organization related to or associated with Dr. Lane F. Smith, (all referred to in this Release as "Smith or Releasee"), and "CARALYN BROOK" hereinafter also referred to in this Release as the "Party" or Parties".

RECITALS

This Mutual Release of Claims is made and delivered with the reference to the following facts:

- A. The Parties hereby agree to settle disputes and forever discharge one another from any and all liability related thereto.

TERMS OF RELEASE;

1. CARALYN BROOK, on behalf of herself and respective spouses, heirs, successors, now and forever releases and discharges each other, and their respective spouses, heirs, successors, attorneys, insurers, brokers, agents and employees, from any and all claims, demands, losses, expenses, damages, liabilities, actions and causes of action of any nature and agrees to the Release language set forth below:

That each party represents and warrants that they have considered the possibility that claims, liabilities, injuries, damages and causes of action that they do not presently know or suspect to exist in their favor may develop, accrue, or be discovered in the future, and that they voluntarily assume that risk is a part of the consideration for this release.

2. CARALYN BROOK covenants and agrees that she will not make, assert, or maintain any claim, demand, action or cause of action that is discharged by this Release, against any Releasee named or described in this Release. agrees to indemnify, defend and hold each Releasee named or described in this Release and their successors in interest, harmless against any claim, demand, damage, liability, action, cost or expense, including attorney fees, resulting from a breach of the covenant contained in this paragraph.
3. CARALYN BROOK represents and warrants that:
 - a. She has consulted with and relied upon legal counsel concerning the settlement and execution of this release. CARALYN BROOK represents and warrants that she is

relying solely upon her own investigation, knowledge information, belief, and judgment or advice of her own attorney, and not upon any statements, opinions, or representations of any party or any other party's attorneys, employees or agents in settling their claims and executing this Release.

- b. There has not been any lawsuit filed relating to the facts giving rise to this Release.
 - c. The releasing party has not contacted nor will contact in the future, any administrative body, local, state, or federal relating to this matter. This includes any hospital or surgery centers will not be contacted, nor have they been contacted relating to this matter.
 - d. CARALYN BROOK agrees completely that no malpractice errors of any sort have occurred, and that the results have been an improvement.
 - e. CARALYN BROOK agrees not to make any derogatory comments or negative statements of any sort about Dr. Lane Smith or his staff to any person or media representative or media entity including but not limited to newspapers, magazines, internet sites, internet forums, television, movies, or radio. CARALYN BROOK agrees that she will not make any negative comments about Dr. Lane Smith.
4. This document can be executed in counterparts of each whom will be deemed as original.
5. If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall remain in force and shall not be affected by invalidity of any other provision.

The undersigned affirms that they have read this Release, understands all of its terms, and executes it voluntarily and with full knowledge of its significance.

Signature [Handwritten Signature]
Witness [Handwritten Signature]
Witness [Handwritten Signature]

Date 2/27/18
Date 2/27/18
Date 2/27/18

EXHIBIT 5

HUGGINS & MAXWELL

LAW OFFICE

8275 S. Eastern Avenue, Suite 200

Las Vegas, Nevada 89123

Telephone (702) 371-6921

July 24, 2019

Rachel Jacob
3094 E. 3100 S.
St. George, Utah 84790
*Sent via email to: email2rachelj@gmail.com
& Via Federal Express*

Re: Cease and Desist – Removal of False and Defamatory Reviews from All Social Media Websites

Dear Ms. Jacob:

Please be advised that our office represents Lane F. Smith, M.D. and all legal entities associated and related to Smith Surgery Center, Chic La Vie, and Dr. Smith. We noticed that you posted the attached review which violates the terms of the Non-Disparagement Consent Agreement, which specifically restricts your ability to post any negative commentary to any website including Yelp.

You are in breach of the Non-Disparagement Consent Agreement that you signed on December 21, 2018. ***This is your opportunity to mitigate damages and remove all negative posts, which are a breach of the Agreement that you signed and avoid further damages.***

The Agreement states the following:

“The patient and Smith Surgery Center, Lane F. Smith, M.D., Chic La Vie, staff and employees of all related entities, specifically acknowledge that this provision restricts their ability to post any negative commentary to any website, social media (including but not limited to Facebook, Instagram, Twitter, Yelp etc.) Both parties acknowledge that they have understand their obligations. Additionally, if either party violates this agreement a cease and desist letter shall be issued which will require the removal of any such writing. Any verbal violation shall be remedied by a written statement withdrawing such verbal statements. In addition, a violation may result in legal action against the violator and the prevailing party shall be awarded attorney’s fees and cost.”

You have already agreed to remove the post based upon the above paragraph. Doing so immediately will mitigate damages. My clients are willing to use all available legal remedies to stop your breach of contract and continued defamation.

To avoid further negative consequences from the breach of contract, we respectfully request the following be done forthwith:

1. Cease and desist from all false and defamatory posting regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.
2. Immediately remove any and all posts on social media, Yelp, review websites, and print media regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.
3. Cease and desist from all slanderous, defamatory and breach of contract comments regarding Dr. Smith, Smith Plastic Surgery and any entity associated with the aforementioned.

We trust that you will govern yourself accordingly and remove all negative posts. If you fail to do so then, Smith Plastic Surgery and Dr. Lane F. Smith, will file a case against you for breach of contract and defamation. Based upon your breach of contract, we shall file litigation against you for damages, which we estimate are in excess of \$100,000.00. *We will check all relevant websites 48 hours after service of process is effectuated upon you.*

If you have any questions or concerns, please feel free to contact our office.

Sincerely,



Kristine J. Maxwell, Esq.
Huggins & Maxwell

Reviews | Plastic Surgery | Yelp for Business Owners

used during her pregnancy, in fact on her public Instagram page she posted that her baby had pneumonia which is typically caused by muconium aspiration. The use of antibiotics during pregnancy has never been shown to cause an infection in babies post-partum. The fact that her children may be prone to infection would perhaps explain why she is prone to infection. She has said so many false and derogatory things that we do intend to sue her. It is illegal to simply make up stuff to damage someone's business and reputation. You can go to her public Instagram and find the picture dated August 5, 2018 showing her with a beautiful nose holding a beautiful, healthy baby. Her nose does not look infected in any way and arguably looks much better than her current nose after her last surgery by another surgeon approximately four months ago. Unfortunately, when we tried to post the picture, Yelp does not allow business owners to post photos. This picture was taken 6 months after Dr. Smith's last intervention and she looks great.

St. George, UT

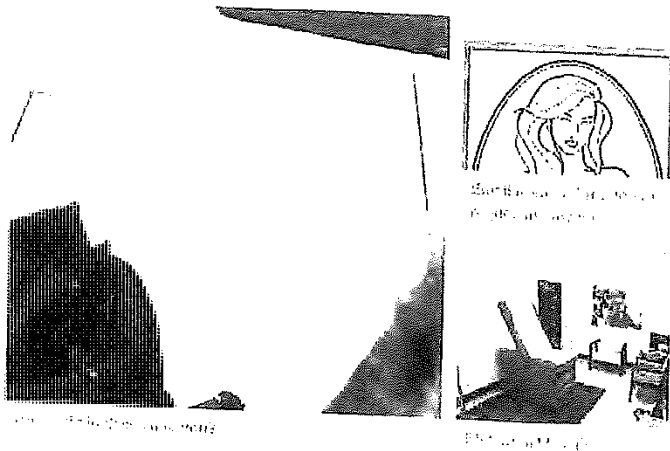
0 friends

1 review

7/23/2019 • Updated review

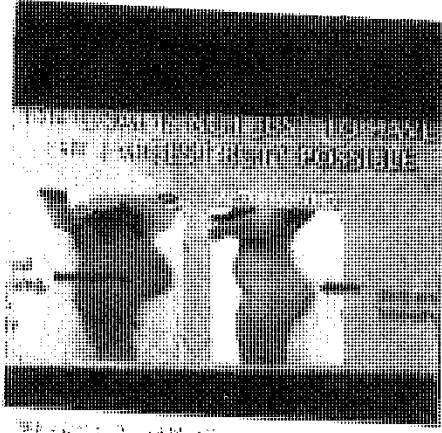
1

I don't normally write reviews but I received an email to vote for Dr. Smith for some fancy Vegas award and I thought I'd better take a moment and talk about my personal experience. I went for a consultation with Dr. Smith in January. Sitting in the waiting room I heard EXTREMELY loud and unprofessional conversations about patients, between office staff. I was watching the T.V. displaying before and after photos and was shocked by the derogatory comments about women's bodies prior to surgery. I noticed that the office was very dirty, this was unsettling considering that they do in house surgery. I didn't really start to worry until I met Dr. Smith he did not wash his hands when he came in the room or when he examined me, and he was extremely unkempt. He had slop on his white coat, and messy greasy hair. He also never made eye contact with me and seemed shifty and agitated. This is not someone that I would want to trust my life with. So I walked my "fat weird looking butt" out the damn door! I'll get a "sexier butt" elsewhere. Thanks.



7/21/2019 • Previous review

Like I said I opted out of using Dr. Smith for my surgery. This was BEFORE I knew he was not only a slob, but an actual mad man. Thank the good lord above. Trust your instincts. Bedside manner, cleanliness and professionalism is much more important than fancy awards that these doctors panhandle for.



Comment from Jessica E. of Smith Plastic Surgery
Business Manager

7/23/2019 • Beware this post is a "HIT JOB." This woman is not a patient of Dr. Smith and has never had any surgery performed by Dr. Smith. She only came in for a brief consult eight months ago last year. She is a friend of the very angry Cara B below and clearly trying to disparage and defame Dr. Smith. Her entire post is a complete lie. For example, she misrepresents the contents of the slide show. This slide from Dr. Smith warns patients against the illegal and dangerous practice of direct injections of silicone to the buttocks. Also, notice that Dr. Smith corrected the patient's condition in the slide through a surgery and that she is much improved. Like with this slide, everything this woman states is mischaracterized and distorted or a flat out lie. Dr. Smith's office and appearance are always clean and neat. This concerted effort to defame his practice will not be successful as Dr. Smith is in high demand because he has been voted Best Cosmetic Surgeon for three years in a row. In 2018, he became the only surgeon ever to win all three major awards for cosmetic surgery through the Las Vegas Review Journal as the Best Cosmetic Surgeon 2018, Best Surgery Center 2018, Best Breast Augmentation Surgery 2018. Dr. Smith always strives to be very professional and informative with patients and is never derogatory about women's bodies and only wishes to help patients reach their surgical goals.

Buena Vista, CO

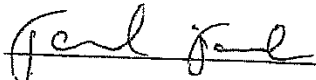
0 friends

1 review

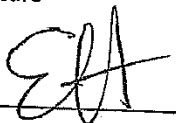
NON-DISPARAGEMENT CONSENT AGREEMENT:

Non-disparagement Agreement and Consent: The parties (patient / Smith Surgery Center, Lane F. Smith, M.D., Chic La Vie, staff and employees of all related entities) agree not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage, or in any way criticize the personal or business reputation, practices, or conduct of each other in any medium be it verbal, in print, electronic, or any and all social media. The parties understand that this non-disparagement consent and agreement, if breached by either party would cause irreparable harm to the party or parties affected by such a breach. The patient and Smith Surgery Center, Lane F. Smith, M.D., Chic La Vie, staff and employees of all related entities, specifically acknowledge that this provision restricts their abilities to post any negative commentary to any website, social media (including but not limited to Facebook, Instagram, Twitter, Yelp, etc.) Both parties acknowledge that they have read this consent and agreement and affirmatively represent that they understand their obligations. Additionally, if either party violates this agreement a cease and desist letter shall be issued which will require the removal of any such writing. Any verbal violations shall be remedied by a written statement withdrawing such verbal statements. In addition, a violation of this may result in legal action against the violator and the prevailing party shall be awarded attorney's fees and cost. The patient acknowledges that they have had an opportunity to have legal counsel of their choosing review any and all agreements prior to this signing.

DATED this 21 day of DEC, 2018.



Patient Signature



Representative of Smith Plastic Surgery Center

EXHIBIT 6

7/24/2019

Reviews | Smith Plastic Surgery | Yelp for Business Owners

for Business Owners

Smith Plastic Surgery
7650 W Sahara Ave
Las Vegas, NV 89147

Reviews

Read and respond to reviews on the go.

Download the for iOS and Android.

137 Reviews for Smith Plastic Surgery

You may message 1000 more customers today, and your business may make up to 20 more public comments.

Las Vegas, NV
776 friends
3 reviews



7/23/2019 • Updated review

In response to the Doctors response:

There you have it, folks. This surgeon thinks that giving someone a two year long infection and lying repeatedly about what he did in surgery is a good deed. This medical professional actually believes the mantra "no good deed goes unpunished." Sounds like a doctor you want caring for you.

For the record he never removed a single permanent suture from my nose. Contaminated permanent sutures were the entire cause of my problems and reason we went back into surgery. Instead he ADDED ANOTHER permanent suture and then haphazardly cut the permanent sutures up so my new surgeon had to painstakingly take my entire nose apart to locate and remove them all. I didn't ask for multiple damaging surgeries to only make things worse and I did not want them. Had I been told the truth at any point I would have certainly opted out of this "good deed".

It's as if a waiter brought you feces instead of what you ordered and is appalled that you aren't grateful he went to all that trouble...But much much worse.

I never said it was the antibiotics that caused my child's infection. Although, it is certainly the case that having an infection prolonged during pregnancy can cause infection in the baby. It was not meconium aspiration. Trust me I feel guilt about it daily.

Also to address the conspiracy theory they've posted: Rachel J's experience is her own, I did not ask her to write a review. It's a pattern for these responses to attack and assume odd things of their patients.

There is not a single lie in my review. I have photos and documents to prove every single thing I said. Please do sue me. I'd love for your terrible business practices to come to light in a court room.



My original nose
After 2nd surgery
After 3rd surgery

My original nose
After 2nd surgery
After 3rd surgery



My original nose
After 2nd surgery
After 3rd surgery

7/24/2019

Reviews | Smith Plastic Surgery | Yelp for Business Owners



7/16/2019 • Previous review

Absolutely awful experience. Wouldn't wish it on my worst enemy.

UPDATE: I received a letter from a malpractice attorney who also happens to be the office manager at Smith Surgery threatening to sue me if I do not remove this review. That explains why there aren't FAR more negative reviews here as most people want to avoid being sued. I refuse to be bullied and have said nothing untrue, people deserve to see honest reviews especially when their health and safety is at stake. Very scary situation. (Letter attached in photos.)

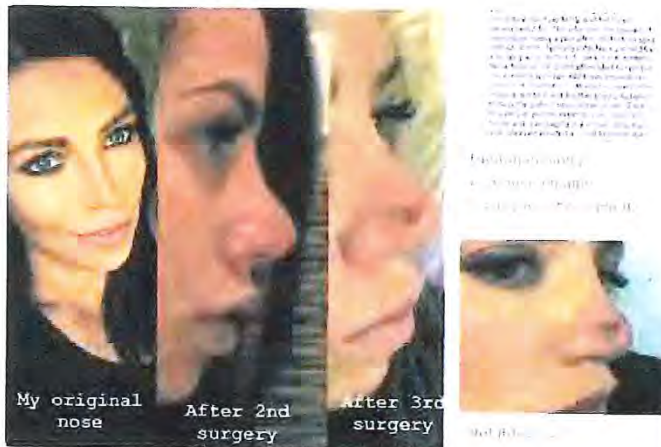
I suffered with an infection after my rhinoplasty for 2 years. After suffering for a few months Dr. Smith suggested we go back into surgery to remove the permanent sutures. I was now pregnant so we had to go into surgery with a local anesthetic. After surgery my nose got substantially worse. A month or so after that he went into surgery again to see if he had "missed anything". My nose continued to get infected. I was pregnant extremely ill, in danger of getting a brain infection and on heavy doses of antibiotics for my entire pregnancy. My child was born with an infection and spent 10 days in the NICU. I went to numerous doctors but they all assumed there were no foreign bodies based on Smith's TWO surgeries looking for them. I honestly trusted him and thought he was doing his best.

My nose got substantially worse and was creating large black sores. Smith wanted to have ANOTHER surgery but he refused to answer my questions and was treating me like a criminal so I went to another doctor who was willing to actually help me.

I finally found out through Smith's own surgical reports and results from 4th surgery that in his multiple surgeries he never removed A SINGLE PERMANENT SUTURE. In fact HE ADDED ONE. I cannot for the life of me explain this except to guess that he forgot what he was in surgery to do then proceeded to lie to me for a year. I was in real pain and struggling for years and he couldn't even be bothered to tell me the truth so I could get help elsewhere. I am free of infection now thanks to another surgeon even though it is scarred from the contaminated sutures.

If you are skeptical of bad reviews just look at the incredibly unprofessional replies to the bad reviews instead. They attack clients and take zero responsibility for anything, that's not the maturity level you want from someone who is going to be using a scalpel on you.

Having surgery with Dr. Smith is like taking a road trip without a seatbelt
Don't do it. Find someone else.



Comment from Jessica E. of Smith Plastic Surgery
Business Manager

7/23/2019 • This patient left a very nice positive review in 2016 when she first had her procedure. The procedure went perfectly and her nose looked beautiful. The infection she speaks of developed nearly a year after her first surgery with Dr. Smith. Typically infections caused by a surgery arise within 30 days of the surgery. Nevertheless, Dr. Smith attempted to resolve her problem with two additional procedures which she insisted on. He also involved other medical doctors and another plastic surgeon to help the patient resolve her issues. Clearly this person wishes extreme ill upon Dr. Smith and is engaging in a smear campaign and has even enlisted a friend to disparage Dr. Smith - See Rachel J above. The mantra - "no good deed goes unpunished is a perfect fit here," as Dr. Smith diligently and repeatedly attempted to help this patient providing two additional surgeries and consults with other medical professionals. Sadly, this patient's response is to defame and disparage him. Very sad indeed. Almost everything Cara B. said is an outright lie or distortion of the facts. We have tried to be polite and take the high road. Any antibiotics given to Cara B. while she was pregnant were approved by her OB-Gyn. Dr. Smith at times actually recommended against antibiotics because he did not see infection. The fact that she would use her baby in this argument shows what kind of person she is. Whatever infection her baby did or did not have has nothing to do with Dr. Smith or any antibiotics

7/24/2019

Reviews | Smith Plastic Surgery | Yelp for Business Owners

used during her pregnancy, in fact on her public Instagram page she posted that her baby had pneumonia which is typically caused by muconium aspiration. The use of antibiotics during pregnancy has never been shown to cause an infection in babies post-partum. The fact that her children may be prone to infection would perhaps explain why she is prone to infection. She has said so many false and derogatory things that we do intend to sue her. It is illegal to simply make up stuff to damage someone's business and reputation. You can go to her public Instagram and find the picture dated August 5, 2018 showing her with a beautiful nose holding a beautiful, healthy baby. Her nose does not look infected in any way and arguably looks much better than her current nose after her last surgery by another surgeon approximately four months ago. Unfortunately, when we tried to post the picture, Yelp does not allow business owners to post photos. This picture was taken 6 months after Dr. Smith's last intervention and she looks great.

St. George, UT

0 friends

1 review



7/23/2019 • Updated review



I don't normally write reviews but I received an email to vote for Dr. Smith for some fancy Vegas award and I thought I'd better take a moment and talk about my personal experience. I went for a consultation with Dr. Smith in January. Sitting in the waiting room I heard EXTREMELY loud and unprofessional conversations about patients, between office staff. I was watching the T.V. displaying before and after photos and was shocked by the derogatory comments about women's bodies prior to surgery. I noticed that the office was very dirty, this was unsettling considering that they do in house surgery. I didn't really start to worry until I met Dr. Smith he did not wash his hands when he came in the room or when he examined me, and he was extremely unkempt. He had slop on his white coat, and messy greasy hair. He also never made eye contact with me and seemed shifty and agitated. This is not someone that I would want to trust my life with. So I walked my "flat weird looking butt" out the damn door! I'll get a "sexier butt" elsewhere. Thanks.



Don't let your "flat weird butt"...



Photo of Dr. Smith's Surgery
Room - 10/10/18



Dr. Smith's waiting room

7/24/2019

Reviews | Smith Plastic Surgery | Yelp for Business Owners



7/21/2019 • Previous review

Like I said I opted out of using Dr. Smith for my surgery. This was BEFORE I knew he was not only a slob, but an actual mad man. Thank the good lord above. Trust your instincts. Bedside manner, cleanliness and professionalism is much more important than fancy awards that these doctors panhandle for.



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Business Manager

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Buena Vista, CO

0 friends

1 review

EXHIBIT B

Hey there, we've updated our [Terms of Service](#) and [Privacy Policy](#). Take a look to see what's new.

tacos, cheap dinn Las Vegas, NV

For Businesses

Write a Review

Log In

Sign Up

Restaurants

Home Services

Auto Services

More



Smith Plastic Surgery

Claimed



144 reviews

Details

Cosmetic Surgeons, Plastic Surgeons

Edit

Write a Review

Add Photo

Share

Save

Photos and Videos



See All 105

See All 105

Review Highlights

"I had such a wonderful outcome from Dr. Lane Smith that I just had vaser lipo of the arms, back and bralene." [in 23 reviews](#)

"I have Shannon's email (she is one of the nurses there) and I have emailed her with at least one question per day." [in 13 reviews](#)



"Dr. Smith & his team are the best, I recommend him to everyone who asks or is considering plastic surgery." [in 92 reviews](#)

You Might Also Consider

Sponsored



Jeffrey J Roth MD, FACS - Las Vegas Plastic Surgery

5 star rating 28 reviews

5.2 miles away from Smith Plastic Surgery

Kathy M. said "Update from 8/17/17 I wrote about how coolsculpting didn't Work for me months ago. I told Dr Roth's Staff how I felt. It was a misunderstanding On my part,they worked with me so I could Be Happy. I had 2 more treatments and Wow.I..." [read more](#)

in Plastic Surgeons, Cosmetic Surgeons



The Center for Oral Surgery of Las Vegas

5 star rating 49 reviews

3.5 miles away from Smith Plastic Surgery

Lauren K. said "Omg this office is ran by angels I am so happy I found this place, I was literally on my death bed in pain, I had to get a Apicoectomy. And getting the run around with other doctors and not being from Vegas it was very difficult. I..." [read more](#)

in Oral Surgeons

About the Business



Lane S.
Business Owner

The Smith Plastic Surgery is owned and operated by an award-winning plastic surgeon, Dr. Lane F. Smith. Dr. Smith has been in practice for more than 14 year offering cosmetic procedures to help reveal a more beautiful you. Our state-of-the-art facility is fully accredited and provides o...

[Read more](#)

Location & Hours



Mon	9:00 am - 5:00 pm
Tue	9:00 am - 5:00 pm Closed now
Wed	9:00 am - 5:00 pm
Thu	9:00 am - 5:00 pm
Fri	9:00 am - 5:00 pm
Sat	Closed
Sun	Closed

[Edit business info](#)

Amenities

Accepts Credit Cards **Yes**

Gender Neutral Restrooms **Yes**

smithsurgery.com

(702) 838-2455

[Get Directions](#)

\$25 off Any Spa Service at Chic La Vie
[Send to your Phone](#)

You Might Also Consider Sponsored ⓘ



Signature Plastic Surgery & Dermatology

64 reviews

12.7 miles

Leonard R. said "The Dermatologist, Dr. Alexandria Booth, saved me. I'd reached out to several..." [read more](#)



MyShape Lipo

51 reviews

Megan L. said "To everyone reading, I waited around 7 months before writing my review. Most..." [read more](#)

Consumer Alert: Questionable Legal Threats

This business may have tried to abuse the legal system in an effort to stifle free speech, for example through legal threats or contractual gag clauses. As a reminder, reviewers who share their experiences have a First Amendment right to express their opinions on Yelp.

More information about the action that led to this Consumer Alert is available [here](#).

Got it, thanks!

EXHIBIT C

EXHIBIT D

1 **DECLARATION OF DR. CHRISTOPHER KHORSANDI IN SUPPORT OF**
2 **DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN**
3 **THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**

4 I, CHRISTOPHER KHORSANDI, declare as follows:

5 1. I am over 18 years of age and am competent to testify as to the matters set forth in
6 this Declaration based upon my own personal knowledge, except as to those matters stated on
7 information and belief, which I believe to be true

8 2. I make this Declaration in support of Defendants Christopher Khorsandi, M.D.,
9 Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss
10 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)
11 ("Special Motion")

12 3. I have reviewed the Complaint filed in this action on November 4, 2019, including
13 the reviews posted by Gabby Debruno, as quoted in Paragraph 15 of Plaintiffs' Complaint.

14 4. I did examine Ms. Debruno, but I did not tell her that her implant had been placed
15 in backwards in her surgery. In the conversation with Ms. Debruno, I never attributed the issues
16 with her implant to Dr. Lane Smith.

17 5. I received the letter, a copy of which is attached hereto as Exhibit 1, on or about
18 November 21, 2019. It is my belief that Dr. Smith wrote the message and sent it to me and my
19 wife.

20 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
21 is true and correct.

22 Executed this 10 day of JANUARY, 2020.

23 
24 CHRISTOPHER KHORSANDI
25
26
27
28

EXHIBIT D-1

Surgeon sues rival over Yelp reviews Says comments on his practice fake

By Mary Hynes
Las Vegas Review-Journal

A Las Vegas plastic surgeon has sued a Henderson plastic surgeon and his wife for defamation, claiming they posed as a dissatisfied patient to post fake reviews and Dr. Lane Smith filed the lawsuit in District Court on Monday claiming that Christopher Khorsandi, Le Khorsandi, Catherine Le Khorsandi, and his wife, Catherine Le Khorsandi, posed several fake reviews on Yelp, a crowd-sourced review service, and on other websites. "Defendants worked together to repeatedly have one-star Yelp reviews masquerading as a real patient of Dr. Smith," the lawsuit states. "All these efforts were to crush the competition and pressure themselves in a more flattering light to increase their business and standing in the plastic surgery community." The Khorsandis did not respond to requests for comment Tuesday. According to the lawsuit, Catherine Le Khorsandi, the practice follows his own office protocols, See FAKE REVIEWS on

Get fake check books out!

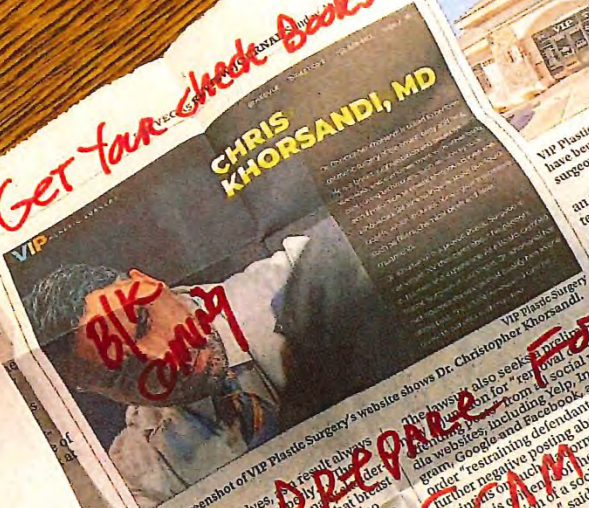
CHRIS KHORSANDI, MD

Blk coming

Twitter prepare for

Blk fan steam

Artist Khorsandi's



Google Street View shows VIP Plastic Surgery's owner and his wife surgeon or posting false reviews.

an responded. "Our user support team reviews each piece of flagged content, and if it's in violation, will remove it from the site. This includes reviews that are not based on firsthand experience with a business, reviews that use hate speech, or reviews that describe a clear conflict of interest."

Yelp also weighed in, placing this alert on Smith Plastic Surgery's review pages. "This business may have tried to abuse the legal system in an effort to stifle free speech for example through legal threats or contractual gag clauses, as a reminder, reviewers who share their experiences have a First Amendment right to express their opinion on Yelp."

First Amendment woman said the alert was placed after a Yelp user submitted evidence indicating that the practice had a gag clause in its contracts, purportedly allowing it to sue clients for posting reviews.

Contact Mary Hynes at myreviewjournal.com or 702- Follow @MaryHynes1 on

Get fax check books OUT!

CHRIS KHORSANDI, MD

FAKE REVIEWS

Continued from Page 1B

Manager for VIP Plastic Surgery, provided glowing reviews about Smith under the pseudonym "Cecily." A Yelp review posted on Aug. 14 read in part: "This has got to be the worst doctor on the planet. My stomach was uneven and I had loose skin and my butt is uneven as well." His bedside manner is disgusting and he's a horrible surgeon. I had to go to the other side of town to get my body fixed by Dr. K."

Lasting damaging effects

"Plaintiff immediately disputed the review with Yelp, claiming it was false and defamatory in context," the lawsuit states.

Yelp removed the review, but the effects on plaintiff's reputation were enough to have her sue.

The defendant's lawyer, who is also a Yelp reviewer, says Smith is a phony and 14, according to the lawsuit, as well as "other false and derogatory reviews under a fake account."

The lawsuit also alleges Smith's reviews slandered Smith's defendants, which "incited a negative speaking with one of his former patients, which 'incited a negative on-line patient review.'"

The review posted by the plaintiff stated that Dr. Khorsandi "examined me and came to the conclusion within five minutes that Lane Smith had put one of my (breast) implants in backwards."

The lawsuit states, "Dr. Smith follows his own office protocols."

This screenshot of VIP Plastic Surgery's website shows Dr. Khorsandi's response to the review.

Dr. Khorsandi's response to the review states as defendant's lawyer, who is also a Yelp reviewer, says Smith is a phony and 14, according to the lawsuit, as well as "other false and derogatory reviews under a fake account."

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BETTER PREPARE FOR BLK coming ARTIST Khorasandi's

Contact Mary Hynes at maryhynes@maryhynes.com or 703-553-0000. Follow @MaryHynes on Twitter.

2779 Sunridge Heights Pkwy
#100 89052

SN BERNARDINO CA 924

12 NOV 2019 PM 7:1



CHALSSY & CATHY KHORASNDI
2779 Sunridge Heights Pkwy
#100
Henderson, NV 89052

89052-505125

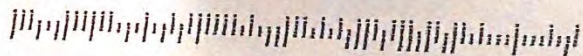


EXHIBIT E

1 **DECLARATION OF CATHERINE LE KHORSANDI IN SUPPORT OF DEFENDANTS'**
2 **SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE**
3 **ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRC P 12(b)(5)**

4 I. CATHERINE LE KHORSANDI, declare as follows:

5 1. I am over 18 years of age and am competent to testify as to the matters set forth in
6 this Declaration based upon my own personal knowledge, except as to those matters stated on
7 information and belief, which I believe to be true.

8 2. I make this Declaration in support of Defendants Christopher Khorsandi, M.D.,
9 Christopher Khorsandi, M.D., PLLC, and Catherine Le Khorsandi's Special Motion to Dismiss
10 Pursuant to NRS 41.660, or in the Alternative, Motion to Dismiss Pursuant to NRC P 12(b)(5)
11 ("Special Motion")

12 3. I have reviewed the Complaint filed in this action on November 4, 2019, including
13 the reviews attributed to "CECILY S." on the Yelp review site on or about August 7, August 8,
14 August 9, and August 14, 2019 as included in the Complaint. I did not write or post those
15 reviews.

16 4. I have also reviewed the post attributed to "You Tuber" on the Google Review site
17 on August 14, 2019. I did not write or post those reviews.

18 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
19 is true and correct.

20 Executed this 10 day of JANUARY, 2020.

21 
22 CATHERINE LE KHORSANDI
23
24
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27
28

EXHIBIT F

1/10/2020

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Las Vegas, NV



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Smith Plastic Surgery Claimed



143 reviews

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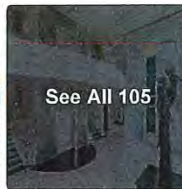
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Review Highlights



"I had such a wonderful outcome from Dr. [Lane Smith](#) that I just had vaser lipo of the arms, back and bralaine." [in 23 reviews](#)



"I have [Shannon's](#) email (she is one of the nurses there) and I have emailed her with at least one question per day." [in 13 reviews](#)



"[Dr. Smith](#) & his team are the best, I recommend him to everyone who asks or is considering plastic surgery." [in 91 reviews](#)

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The Center for Oral Surgery of Las Vegas

[★★★★★](#) 49 reviews

3.5 miles away from Smith Plastic Surgery

[Julie P.](#) said "I'm not usually one to post a review, however, after having had a dental implant successfully completed by Dr. Letelier, I had to share. Dr. Letelier was recommended to me by my General Dentist who said if he ever needed a dental..." [read more](#)

in Oral Surgeons



Hangover Heaven IV Hydration

[★★★★★](#) 120 reviews

4.5 miles away from Smith Plastic Surgery

[Elle J.](#) said "Awesome! This place saved my life, and they did it in style. I am no stranger to IV fluids and knowing how it is really the only way to feel better when your hung over or even just sick. Those in the medical field can attest to just..." [read more](#)

in Iv Hydration

1/10/2020

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About the Business



Lane S.
Business Owner

The Smith Plastic Surgery is owned and operated by an award-winning plastic surgeon, Dr. Lane F. Smith. Dr. Smith has been in practice for more than 14 year offering cosmetic procedures to help reveal a more beautiful you. Our state-of-the-art facility is fully accredited and provides our...

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Location & Hours



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Jeffrey J Roth MD, FACS - Las Vegas Plastic Surgery

★ ★ ★ ★ ★ 28 reviews

📍 5.2 miles

Kathy M. said "Update from 8/17/17 I wrote about how coolsculpting didn't Work for me months ago. ..."

[read more](#)



Richards Cosmetic Surgery, Med Spa & Laser Center

★ ★ ★ ★ ★ 268 reviews

📍 3.6 miles

Eva V. said "So I normally don't do reviews but today is the day that I start my journey on my..."

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Amenities



Accepts Credit Cards Yes



Gender Neutral Restrooms Yes

Ask the Community

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Sheila D.
Las Vegas, NV
★ ★ ★ ★ ★ 1 friend
★ ★ ★ ★ ★ 5 reviews



5/9/2019

I went twice to see dr .smith 2 different years. This year 2019, when I'm finally able to afford it after working on my credit to get approved for financial help. Had a appointment in January had to pay 100 dollars since this is my second consultation....(which is fine) met with dr smith, everything still the same, they still had my picture from the first time.. COOL.....

March set a appointment, payed my thousand dollars.. surgery next month April..

1/10/2020

Call to confirm my appointment, and they tell me Dr. Smiths feel he can't meet my expectations, and they're going to refund my 1000.

Speechless... Meet 'MY' expectations... I didn't ask for anything specific or to look like someone... He computerized my nose and told me that's what he could do. So he lied basically.

I've been waiting forever to do this.. Then the lady tell me she met with him after my consultation, and that's when he said he wouldn't be able to meet my expectation..... SEE HOW MUCH THEY COMMUNICATE.. a consultation in January, but no one mention it then, Now I'm making a appointment in March And still no word about his expectation... I never been so mad in my life, so disappointed..I'm all for honest. Because if u can't do the job . I don't want you working on my face. But I could've been pursuing another doctor..... and not the one they recommended me to see,, a lot of TIME WASTED.. I suggest future patients ask him during consultation if he sure he could meet his own expectation before u leave the office, so you want get played like I did a month before surgery..... Thanks Dr. Smith & staff

Useful 12 Funny 2 Cool 4



Comment from Jessica E. of Smith Plastic Surgery
Business Manager

5/13/2019 · Dr. Smith strives to make all his patients happy. Dr. Smith felt that he could not meet the expectations of this patient. While there are many plastic surgeons that would be happy to take her money, Dr. Smith did the honorable thing by refusing to take her money, because he did not feel that she would be happy with the results. All plastic surgery is elective and no professional has an obligation to perform surgery unless the professional feels that they can meet the expectations and needs of the patient. Dr. Smith and his staff wish this patient only the very best.

[Read less](#)



Megan D.
Las Vegas, NV
5 friends
11 reviews
7 photos



11/29/2019

I do not even know where to begin.
From the moment I went in for my first breast augmentation consultation I knew this would be somewhere I was going to continue to go. I knew Dr. Smith was amazing but was more concerned about how the post Op care would be and the assistance he would have working with him. I'm pleased to say they were all so informative and also made me feel so comfortable during the whole process beginning to end. Lastly, I wanted to acknowledge Dr. Smith's anesthesiologists. He was quite possibly one of the most kind hearted and welcoming people I have ever had put me under. I've been under anesthesia multiple times and he has surpassed every other experience I've ever had!!
Amazing group
And the job he did was... superb!!

EXHIBIT G

1/10/2020

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Las Vegas, NV



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Smith Plastic Surgery ✓ Claimed



143 reviews

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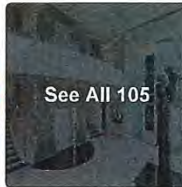
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Review Highlights

"I had such a wonderful outcome from Dr. [Lane](#) Smith that I just had vaser lipo of the arms, back and bralene." [in 23 reviews](#)

"I have [Shannon](#)'s email (she is one of the nurses there) and I have emailed her with at least one question per day." [in 13 reviews](#)



"[Dr. Smith](#) & his team are the best, I recommend him to everyone who asks or is considering plastic surgery." [in 91 reviews](#)

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The Center for Oral Surgery of Las Vegas



49 reviews

[3.5 miles away from Smith Plastic Surgery](#)

[Julie P.](#) said "I'm not usually one to post a review, however, after having had a dental implant successfully completed by Dr. Letelier, I had to share. Dr. Letelier was recommended to me by my General Dentist who said if he ever needed a dental..." [read more](#)

in Oral Surgeons



Lubritz & Nasri

[6.8 miles away from Smith Plastic Surgery](#)

[Christi D.](#) said "I love this group of doctors and their assistants. They are helpful, friendly and always willing to answer questions. They go above and beyond to ensure the best care of their patients." [read more](#)

in Audiologist, Ear Nose & Throat, Cosmetic Surgeons

1/10/2020

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Location & Hours



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Ageless Forever

★★★★★ 7 reviews

4.6 miles

Tara R. said "From Julie at the front desk to Hollie, the nutritionist, everyone is professional...." [read more](#)



Aces Dental

★★★★ 46 reviews

4.7 miles

Jessica W. said "I came to this place because it was the only dentist office I took my insurance,..." [read more](#)

Amenities



Accepts Credit Cards Yes



Gender Neutral Restrooms Yes

Ask the Community

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Recommended Reviews



Your trust is our top concern, so businesses can't pay to alter or remove their reviews. [Learn more.](#)

Search within reviews



Sort by **Yelp Sort**



[Start your review of Smith Plastic Surgery.](#)

Annie N.

Las Vegas, NV

0 friends

4 reviews

2 photos



5/2/2019 • Updated review



Very BAD business. After I put in my review I received a call back from the staff to verify that I'm the actual patient and was told to send pictures of my scars. I did what was asked and finally get a call back after me leaving messages to see what can be done. First thing I was asked was to remove my review before even making an appointment to fix the problem...What??? Nothing has been done to correct the problem or for me to update a better review. If you are so proud of your doctor for all the awards then prove it with

1/10/2020

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your work. Then I was told that I would have to pay more money...Why??? I paid for the initial procedure, paid again to have a bad job correction, and now pay more for what? Then I was told to wait for a call back and that was the end of that...no call back...no appointment...nothing was done. Now I have to save up money to go else where and have your work fix. My previous procedure else where was beautiful. I only did it again because I want to try the new gummy and go bigger. Being new in Vegas I thought I did my research well for the best doctor with many rewards...Biggest MISTAKE EVER!!! I've called and leave messages but no call back was ever made after I refused to take my review down unless I get it fix and done right. I brought the attention to yelp so future patients can be aware and take their money else where if they want things done right and worth their money. I didn't have keloid in my before picture...so should I thank your doctor now that after he worked on me that I get keloid??? Quit bragging about all the awards and deny your responsibility by blaming the patients or saying that we are not actual patients after you had taken our hard working money when we...your actual patients are very unhappy. All you want is more money...not making your patient happy or delivering the result to charge that kind of money. What more work was I expecting done other than fixing what he had done? How is it a touch up when it wasn't done right the first time with the procedure...the second time cutting me open again because you admitted injecting too much steroids causing unevenness in the scars you never mention keloid and I still have to pay...and now I have keloid no where else but where he had worked on??? And I have to pay more...for how many more times before this ugly work gets done right??? Calling it a touch up???



Useful 11

Funny

Cool



4/30/2019 · Previous review

Very BAD business. After I put in my review I received a call back from the staff to verify that I'm the actual patient...

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10/11/2018 · Previous review

After my experience, I would give 1 star just for the nurse. The front office was very nice at first until everything was...

[Read more](#)



Megan D.
Las Vegas, NV
5 friends
11 reviews
7 photos



11/29/2019

1 photo

I do not even know where to begin.

From the moment I went in for my first breast augmentation consultation I knew this would be somewhere I was going to continue to go. I knew Dr. Smith was amazing but was more concerned about how the post Op care would be and the assistance he would have working with him. I'm pleased to say they were all so informative and also made me feel so comfortable during the whole process beginning to end. Lastly, I wanted to acknowledge Dr. Smith's anesthesiologists. He was quite possibly one of the most kind hearted and welcoming people I have ever had put me under. I've been under anesthesia multiple times and he

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Smith Plastic Surgery ✓ Claimed



143 reviews

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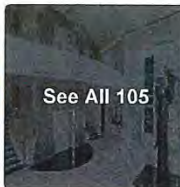
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"I had such a wonderful outcome from Dr. [Lane](#) Smith that I just had vaser lipo of the arms, back and braline." [in 23 reviews](#)



"I have [Shannon](#)'s email (she is one of the nurses there) and I have emailed her with at least one question per day." [in 13 reviews](#)



"[Dr. Smith](#) & his team are the best, I recommend him to everyone who asks or is considering plastic surgery." [in 91 reviews](#)

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Phantastic Dental Care

22 reviews

1.6 miles away from Smith Plastic Surgery

Neila M. said "I absolutely love Dr. Phan! He is always so kind and never fails to make me laugh. Whenever I have any questions or don't understand something he will explain word for word and make sure I am aware. Every time I come for my check..." [read more](#)
in General Dentistry



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Carepoint Dental Office

29 reviews

17.0 miles away from Smith Plastic Surgery

Bo C. said "I visited the office when one of my teeth got swollen that I had root canal from another dentist, and a few other dentists had advised me to extract before visiting Dr. Cho's office. Instead of simply extracting the tooth, he took..." [read more](#)
in Dentists



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Wed	9:00 am - 5:00 pm
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Fri	9:00 am - 5:00 pm
Sat	Closed
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Amenities

Accepts Credit Cards Yes

Gender Neutral Restrooms Yes

Ask the Community

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Recommended Reviews

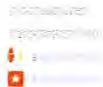


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Jaimee B.
Henderson, NV
2 friends
31 reviews
12 photos



4/23/2018 · Updated review

Well, the three hour wait felt like five hours, when he was strapping my wrists in prematurely (I don't care if it was standard procedure or not), it was frightening. These are all negative human emotions that I felt. Try to remember that for your future customers/patients instead of trying to defend yourself. Remember, I'm not the only one complaining on his reviews, so that must mean this isn't an isolated incident. Never again will I step foot in that office. Have a great day.



Linda Woodson Dermatology

4.6 miles

Annah R. said "Based on the reviews, I wasn't sure what to expect. I had hoped for the best, but..." [read more](#)



Risas Dental and Braces - Civic Center


20 reviews

8.7 miles

Cherry B. said "I have lived in Las Vegas for 2 years and have not been able to find a great..." [read more](#)

1/10/2020

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 Useful 11

 Funny 1

 Cool



4/5/2018 · Previous review

Facts can be stubborn things?! What about the day of surgery the anesthesiologist got the time wrong and I had to wait an additional 5 hours? OR when the anesthesiologist started strapping my wrists in restraints before I was put under, that was extremely stressful, OR that 90% of all of my post op appointments I was waiting minimum 45 minutes to be seen OR out of all of my post op appointments, I only saw Dr Smith one time. It's true that when I called and complained about a possible problem, you guys booked me one month out, so I left a Yelp review, and you guys suddenly called me with urgency. You guy proceeded to book me an appointment a few days out and I missed it due to my hectic work schedule. YOU guys have been unprofessional from the start, so yes, FACTS can be stubborn. Have a great day.

 Useful 8

 Funny 2

 Cool 1



Comment from Jessica E. of Smith Plastic Surgery
Business Manager

4/20/2018 · We are sorry you are not happy, and we don't want to fight with you, but since you have made...

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1/31/2018 · Previous review

I find it frustrating that after 10k spent on a surgery and barely three months post op, I'm experiencing serious discomfort and I believe I'll need some sort of reconstructive surgery. But that's not my main issue, my main issue is that I call and tell them that I need to be seen immediately but the next appointment is a month out, completely unacceptable!

 Useful 9

 Funny 1

 Cool

[Read less](#)



Megan D.
Las Vegas, NV
 5 friends
 11 reviews
 7 photos



11/29/2019

 1 photo

I do not even know where to begin.
From the moment I went in for my first breast augmentation consultation I knew this would be somewhere I was going to continue to go. I knew Dr. Smith was amazing but was more concerned about how the post Op care would be and the assistance he would have working with him. I'm pleased to say they were all so informative and also made me feel so comfortable during the whole process beginning to end. Lastly, I wanted to acknowledge Dr. Smith's anesthesiologists. He was quite possibly one of the most kind hearted and welcoming people I have ever had put me under. I've been under anesthesia multiple times and he has surpassed every other experience I've ever had!!
Amazing group
And the job he did was... superb!!

EXHIBIT I

1/10/2020

Smith Plastic Surgery - 105 Photos & 143 Reviews - Cosmetic Surgeons - 7650 W Sahara Ave, Westside, Las Vegas, NV - Phone Numb...

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Las Vegas, NV



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Smith Plastic Surgery Claimed



143 reviews

[Details](#)

Cosmetic Surgeons, Plastic Surgeons [Edit](#)

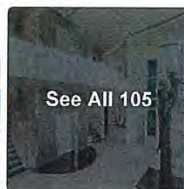
[Write a Review](#)

[Add Photo](#)

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Photos and Videos



See All 105

[See All 105](#)

Review Highlights

"I had such a wonderful outcome from Dr. [Lane Smith](#) that I just had vaser lipo of the arms, back and bralrline." [in 23 reviews](#)

"I have [Shannon's](#) email (she is one of the nurses there) and I have emailed her with at least one question per day." [in 13 reviews](#)



"[Dr. Smith](#) & his team are the best, I recommend him to everyone who asks or is considering plastic surgery." [in 91 reviews](#)

You Might Also Consider Sponsored i



Regenerate Me

44 reviews

5.2 miles away from Smith Plastic Surgery

Bruce S. said "Came to Vegas expecting to have the best vacation but ended up having the worst hangover ever. My head was throbbing, I was nauseas. And wanted to stay in bed. Not exactly the vacation I was planning. A family member who lived in..." [read more](#)
in Iv Hydration



Richards Cosmetic Surgery, Med Spa & Laser Center

268 reviews

3.6 miles away from Smith Plastic Surgery

Eva V. said "So I normally don't do reviews but today is the day that I start my journey on my first surgery which is going to be a BBL for those that don't know a BBL is a Brazilian butt lift augmentation. I had went to an initial consultation..." [read more](#)
in Cosmetic Surgeons, Medical Spas



1/10/2020

Smith Plastic Surgery - 105 Photos & 143 Reviews - Cosmetic Surgeons - 7650 W Sahara Ave, Westside, Las Vegas, NV - Phone Num...

About the Business



Lane S.
Business Owner

The Smith Plastic Surgery is owned and operated by an award-winning plastic surgeon, Dr. Lane F. Smith. Dr. Smith has been in practice for more than 14 year offering cosmetic procedures to help reveal a more beautiful you. Our state-of-the-art facility is fully accredited and provides our...

[Read more](#)

Location & Hours



Mon	9:00 am - 5:00 pm
Tue	9:00 am - 5:00 pm
Wed	9:00 am - 5:00 pm
Thu	9:00 am - 5:00 pm
Fri	9:00 am - 5:00 pm
Sat	Closed
Sun	Closed

Open now

[Edit business info](#)

Amenities



Accepts Credit Cards Yes



Gender Neutral Restrooms Yes

Ask the Community

Got a question about Smith Plastic Surgery? Ask the Yelp community!

[Ask a Question](#)

[See all 3 questions for Smith Plastic Surgery](#)

Recommended Reviews



Your trust is our top concern, so businesses can't pay to alter or remove their reviews. [Learn more.](#)

Search within reviews



Sort by **Yelp Sort**

2020/01/10



Karla C.
Las Vegas, NV
20 friends
2 reviews



8/22/2016 · Updated review

I was a previous patient of Dr. Smith (2014) and had a wonderful experience, I returned for a second consultaion (2016) because I wanted to undergo a second procedure. I paid a \$100 consultation fee to speak with the doctor, I then had an awkward consultation because the doctor seemed confused on what procedure I previously had with him and which patient I was. . Jessica his financial coordinator provided me with a quote, I paid a \$3,000 deposit two weeks later, and set a surgery date. Jessica confirmed my suspicions when she called to let me know that doctor Smith confused me with another patient as a result, I had to

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The Center for Oral Surgery of Las Vegas

49 reviews

3.5 miles

Julie P. said "I'm not usually one to post a review, however, after having had a dental implant..." [read more](#)



Signature Plastic Surgery & Dermatology

64 reviews

12.7 miles

Erica G. said "I recently had a tummy tuck, breast lift, implant, and lipo. Dr. Shah was so kind..." [read more](#)

1/10/2020

Smith Plastic Surgery - 105 Photos & 143 Reviews - Cosmetic Surgeons - 7650 W Sahara Ave, Westside, Las Vegas, NV - Phone Numb...

pay an additional \$3,000 - \$4,000 for the surgery. I let Jessica know that I had gone over what procedures he performed during our consultation and that there was no reason for the confusion. Jessica simply stated that she was going to speak with the doctor but that the increase was inevitable. I promptly asked for my deposit back and made the choice to go elsewhere. . What a let down!! . . (UPDATED REVIEW) Jessica the reason for one star is because on my first consultation Dr. Smith stated that I had abdominal hernia that is why I had the first surgery to tighten my abdominal muscles (mini tuck). Two years later within my second consultation he stated I had hernia. . . Again! I did obtain a second and third opinion by other cosmetic surgeons and I do not have abdominal hernia. In addition, the doctor does have access to the patients chart it is the physicians responsibility to read the information prior to entering the examination room. Reviewing the chart will allow the physician to recall vital information about the patient therefore, preventing misunderstandings. I hope this helps understand the rating.

 Useful 7

 Funny 1

 Cool 1



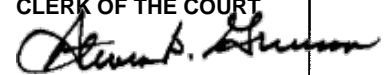
Comment from Jessica E. of Smith Plastic Surgery
Business Manager

8/30/2016 · Dear Karla, we are so sorry for the confusion. Apparently you are very happy with the surgery that Dr. Smith actually performed on you in 2014. At that time he performed a mini-tummy tuck. In 2014 you were seen for consultation for corrective breast surgery for work that had been done by another surgeon. You also had developed scar tissue around your breast implant, called capsular contracture. At that consultation Dr. Smith's staff gave you a printed piece of paper with the price to do this difficult surgery to correct the other surgeon's work. The price quoted to you in 2014 was approximately \$10,100 and this was clearly given to you. You chose not to do the corrective surgery at that time. You returned approximately 2 years later. Somehow, Dr. Smith was given the impression, either by you accidentally or by his staff, that it was his own surgery he was correcting and not another surgeons. When Dr. Smith does a touch-up to one of his own surgeries he typically just charges anesthesia fees. He does not charge a fee for his services or the Operating room or the operating room staff and he covers those expenses personally. The price you were mistakenly given would barely cover half of the actual expenses let alone pay Dr. Smith for his 3 hours of work. Therefore you were accidentally given that price although you previously had been clearly given the correct price for corrective surgery to correct the problems left after another surgeon's work. We are sorry for the confusion. I must admit that when Dr. Smith saw that you gave him a one star rating simply because there was some confusion over pricing (Instead of a two or three star,) he was a little shocked as you were very happy with the first surgery and he has always treated you with kindness and respect. We have refunded any money you gave in down payment for the surgery and Dr. Smith has asked the staff to refund your \$100 consultation fee. We wish you luck in your in all your future endeavors,

[Read less](#)

★★★★★ 1/24/2015 · Previous review

Doctor Lane Smith is caring, knowledgeable, and a perfectionist. He takes pride in the work performed and makes sure his patients are happy with the results. I would absolutely recommend doctor Smith to friends and family because of the positive outcome and experience I had.



OPP

ANTHONY P. SGRO, ESQ.
Nevada State Bar No. 3811
JENNIFER WILLIS ARLEDGE, ESQ.
Nevada Bar No. 8729
COLLEEN N. SAVAGE
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Attorneys for Plaintiffs

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

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

Plaintiff,

vs.

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 I – X,

Defendants.

Case No.: A-19-804819-C

Dept. No.: XX

**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)**

COME NOW, Plaintiffs, SMITH PLASTIC SURGERY INC. (SMITH PLASTIC
SURGERY"), a Nevada Corporation, and LANE F. SMITH, M.D., an individual, by and
through their attorneys of record, ANTHONY P. SGRO, ESQ., and JENNIFER WILLIS

1 ARLEDGE, ESQ., of the law firm of SGRO & ROGER, hereby oppose the Special Motion to
2 Dismiss Pursuant to NRS 41.660 or in the Alternative Motion to Dismiss Pursuant to NRCP
3 12(b)(5). This opposition is based upon the attached memorandum of points and authorities,
4 the pleadings on file in this matter and oral argument at the time of the hearing.

5 DATED this 24th day of January, 2020.

6 Respectfully submitted,

7 SGRO & ROGER

8
9 

10 ANTHONY P. SGRO, ESQ.

11 Nevada State Bar No. 3811

12 JENNIFER WILLIS ARLEDGE, ESQ.

13 Nevada Bar No. 8729

14 720 South 7th Street, Third Floor

15 Las Vegas, Nevada 89101

16 *Attorneys for Plaintiffs*

I.

INTRODUCTION

Defendants' Motion to Dismiss should be denied because the defamatory language published by Defendants against Dr. Smith and his business, Smith Plastic Surgery is not protected communication under NRS 41.635 or other Nevada law. Further, the Complaint clearly states valid causes of action against Defendants and meets Nevada's liberal pleading standards under NRCP 8.

The statements contained within the reviews posted by Defendants are wholly false and clearly damaging to Plaintiff and Plaintiff's business reputation. Defendants' Special Motion to Dismiss Pursuant to NRS 41.660 must be denied because the repeated, malicious defamation on Yelp is not a "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." Nor is Defendants' repeated defamation a "communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which, is truthful or is made without knowledge of its falsehood." Instead, the communications are false and defamatory and were made with knowledge of the same.

Additionally, because genuine issues of material fact remain, discovery will need to be conducted. For example, whether or not Defendants published these statements and the truth or falsity of those statements is the crux of this lawsuit. As such, Plaintiffs would need to depose Defendants regarding their knowledge of the statements and identity of Cecily S and You Tuber. Preliminary research shows that the defamatory statements were made at times and locations around the country where Dr. Khorsandi and Mrs. Khorsandi were located. As such, the evidence obtained through discovery will reveal that Defendants intentionally and maliciously defamed Plaintiffs and that Defendants worked in concert to post these statements in an attempt to create false, negative reviews pertaining to Dr. Smith and his practice Smith Plastic Surgery, a competing plastic surgeon in Dr. Khorsandi's line of work. At the very least, there remain a number of disputed issues of material fact that warrant a trial on the merits. Therefore, Defendants' Motion to Dismiss should be denied in its entirety.

1 II.

2 STATEMENT OF FACTS

3 This case arises out of the multiple salacious and defamatory statements pertaining to
4 Dr. Smith made by Catherine Khorsandi, posing under pseudonyms such as "Cecily S." and
5 You Tuber. Neither Catherine Khorsandi nor a "Cecily S." has ever been a patient of Dr.
6 Smith. Instead, these reviews were posted by Catherine Khorsandi, the wife of plastic surgeon
7 Dr. Khorsandi, in an attempt to harm Dr. Smith's reputation and business.

8 On or about July 1, 2019, Plaintiffs became aware of a Google Review on Dr.
9 Khorsandi's website from a patient referred to as Gabby Debruno that stated the following:

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

25 On or about July 12, 2019, Plaintiffs sent Dr. Khorsandi a cease and desist letter asking
26 him to remove any reference to Dr. Smith in the review, as it was defamatory.

27 On August 7, 2019, Defendant, Catherine Khorsandi, posing as "Cecily S." posted a
28 One-Star Yelp Review on Plaintiffs' Yelp and stated the following:

29 "This has got to be the worse doctor on the planet. PLS READ and do NOT go
30 here. They will tell you all these bad reviews are fake. Do me a favor and read
31 them. Then read the non suggested ones too. You will see all similar
32 experiences. I bet after this review he will have his staff and friends post more
33 "good" reviews of how great and nice dr Smith is. It's a pattern folks. READ
34 them and u will see. These real reviews with pics and personal experiences that
35 are NOT fake. If you read all the bad reviews they have similar stories. Dr
36 Smith threaten me with a stupid letter from your ambulance chaser lawyer will
37 not scare me or keep me away from spreading my story. You should of had

1 more respect for your patients and acknowledged you messed me up and wanted
2 to do nothing about it. I never wanted you to touch me again but i wanted you
3 to have respect for me as a patient. You should be an honest doctor but you are
4 too money hungry and arrogant. Then your office claims these are all fake
reviews instead of owning up to it. Save your money, time and body and do not
go here.

5 He botched my bbl and refuse to fix it or admit he did a horrible job. This
6 office only cares about \$. My stomach was uneven and I had lose skin and my
7 butt is uneven as well!!!! Jessica is the rudest staff ever. So unprofessional.
8 This doctor is so creepy too and tried to add me on face book when he's actually
9 married. What an unprofessional place. His bedside manner are disgusting and
10 he's a horrible surgeon. I had to go to the other side of town to get my body
fixed by dr k at Vip In Henderson. I needed bodytite for my lose skin and dr
Smith never even suggested this or offered this. I did some research and saw
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.

11 Oh and wait for the reply from Jessica about all the awards he has won. Just so
12 everyone know. Best og Ladd vegas aware is fake. lol he hAd to pay them to
13 advertise so they let him win for best breast surgery last year 2018. It's a award
14 that is "voted" but you have to advertise and pay them \$. Don't be fooled folks.
15 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?"

16 Plaintiffs immediately disputed the review with Yelp, knowing it was false and
17 defamatory in content. Defendants' bad review of Dr. Smith simultaneously and
18 conveniently endorsed Dr. Khorsandi and the Bodytite precedure, which Dr.
19 Khorsandi uses in his practice. Yelp subsequently removed the defamatory August 7,
20 2019, review. However, the review had been up long enough to have lasting damaging
21 effects on Plaintiffs.
22

23 On August 8, 2019, the very next day, Catherine Khorsandi, posing as "Cecily
24 S." posted another one-star review, which stated the following:

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

1 to get my lipo fixed. My butt was even and I had lose skin on my stomach. I
2 wouldn't waste your hard earning money or time with this doctor. Go read all
3 the other 1 star reviews then ask yourself if you think this is how you want to be
treated if something goes wrong?"

4 Again, Plaintiffs asked Yelp to remove this review, which they did. However as
5 before, irreparable damage to Plaintiffs' reputation had already been done. Once again, on
6 August 9, 2019, Defendant, Catherine Khorsandi posing as "Cecily S." posted another One-
7 Star Review, which stated:

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 and instead of fixing what he did
13 wrong. I wouldn't wish this on my worse enemy. I had to go across town to
14 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?

15 Plaintiffs again asked for Yelp to remove this review, which they did, but as with the
16 previous reviews, the damage had already been done. On August 14, 2019, Cecily S. again
17 placed a One Star Yelp review stating the following:

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

24 Plaintiffs again petitioned Yelp to remove this review, which was ultimately taken
25 down. Additionally, this time Plaintiffs replied to "Cecily S.," informing her that Plaintiffs
26 knew she was the wife of a competitor, and that Yelp had already removed her other false and
27 defamatory reviews. Before Yelp removed the review again on August 14, 2019, Defendant
28 Catherine Khorsandi, posing as "Cecily S." responded to Plaintiffs reply in the following
manner:

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

17 Yelp subsequently removed both the initial review, and Defendant’s reply to Plaintiffs
18 response. Subsequent to being confronted with her defamatory conduct, Defendant Catherine
19 Khorsandi, a.k.a. “Cecily S.” completely shut down the pseudonym Yelp account for “Cecily
20 S.,” likely because Plaintiffs informed Defendants that they knew “Cecily S.” was really
21 Catherine Khorsandi.

22 However, this did not stop Catherine Khorsandi’s quest to defame Plaintiffs. On or
23 about August 14, 2019, another false and defamatory One-Star Review appeared on Google
24 Reviews for Smith Plastic Surgery, this time under the moniker “You Tuber.” Upon
25 information and belief, this review was also written by Defendant Catherine Le, a.k.a.
26 Catherine Khorsandi, which stated the following:

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

1 dr lane smith!!!!!!”

2 Defendants’ defamatory reviews posted under fake accounts are harmful to Dr. Smith’s
3 business reputation, and on November 4, 2019, Plaintiffs initiated this action against
4 Defendants setting forth fourteen (14) causes of action in an effort to preclude Defendants from
5 partaking in such defamatory actions and recover damages for injuries sustained to Plaintiffs’
6 business and reputation.

7 **III.**

8 **LEGAL ARGUMENT**

9
10 **A. Defendants’ Special Motion to Dismiss Should Be Treated as a Motion for
Summary Judgement.**

11 In the seminal Nevada case in this area, *John v. Douglas County School District*, the
12 Nevada Supreme Court determined “the district court shall treat [Anti-SLAPP] motions to
13 dismiss as a motion for summary judgment, and its granting the motion is an adjudication upon
14 the merits.” *John*, 125 Nev. 746 (2009); see also NRS 41.660(3)(a), (5). Similar to a motion for
15 summary judgment, “the district court can only grant the Anti-SLAPP motion to dismiss if
16 there is no genuine issue of material fact and ‘the moving party is entitled to a judgment as a
17 matter of law.’” *John*, 125 Nev. at 753-54 (quoting NRCP 56(c)).

18 After an Anti-SLAPP motion is filed, “a court must first ‘[d]etermine whether the
19 moving party has established, by a preponderance of the evidence, that the claim is based upon
20 a good faith communication in furtherance of the right to petition or the right to free speech in
21 direct connection with an issue of public concern.” *Delucchi v. Songer*, 133 Nev. Adv. Rep.
22 42 (Nev. 2017). Importantly, the moving party has the “initial burden of production and
23 persuasion” on its claims. *Delucchi* at 831. In other words, “the moving party must first make a
24 threshold showing that the lawsuit is based on a protected communication pursuant to NRS
25 41.637.” Only after the moving party has satisfied this threshold showing does the burden shift
26 to the nonmoving party to “demonstrate with prima facie evidence a probability of prevailing
27 on the claim. The Plaintiffs’ evidence is accepted as true and the defendant's evidence is
28 evaluated to determine if it defeats the plaintiffs showing as a matter of law. *City of Montebello*

1 *v. Vasquez*, 1 Cal. 5th 409, 376 P.3d 624 (2016). Accepting the plaintiffs' evidence as true and
2 requiring the plaintiff to satisfy the minimal burden of stating a "legally sufficient claim" is
3 intended to allow "claims with the requisite minimal merit [to] proceed" *Id.*

4 This means that the Motion to Dismiss is treated as a "motion for summary judgment,
5 and if granted, as an adjudication on the merits. NRS 41.660(3)-(4). When deciding a summary
6 judgment motion, the court must accept the non-moving party's evidence and all reasonable
7 inferences derived therefrom, as true. *Wood v. Safeway, Inc.*, 121 Nev. 724, (2005). As this
8 Court shall see, there are multiple genuine issues of material fact for a jury decide. As such,
9 Defendants' cannot meet their burden as a matter of law and the Court should deny the Motion.

10 **B. Under Nevada's Anti-SLAPP Statute, Defendants Must Satisfy a Two-Prong Test.**

11 NRS 41.660(3) requires that two (2) prongs must be satisfied for Defendants' Special
12 Motion to Dismiss to be granted:

- 13 (1) Defendants must establish, by a preponderance of the evidence, that the
14 reviews about Dr. Smith are based upon their good faith communication in
15 furtherance of the right to petition or the right to free speech in direct
16 connection with an issue of public concern; and
(2) if Defendants meet this burden, then Dr. Smith must provide prima facie
evidence that he has a likelihood of prevailing on his claims.

17 **1. The Good Faith Requirement.**

18 For the Defendants to succeed under the first prong of NRS 41.660 they must prove by
19 a preponderance of the evidence that the speech in question was a "good faith communication"
20 and was "truthful or made without the knowledge of its falsehood." NRS 41.637. Defendants'
21 Motion argues that it is Dr. Smith's responsibility to prove the falsity of the statements, but in
22 fact, Defendants have the obligation under the first prong to establish truthfulness or that the
23 statements were made without knowledge of falsehood, which they have failed to do. Further,
24 all evidence Defendants rely upon in a request for relief under the Anti-SLAPP Special Motion
25 to Dismiss, must be admissible, and the evidence is not weighed by the court; but presumed
26 true if in favor of the Plaintiff. *Piping Rock Partners, Inc. v. David Lerner Assocs.*, 946 F.
27 Supp. 2d 957, 967 (N.D. Cal. 2013).

1 Although Defendants' statements may be part of a public forum because they were
2 posted on websites such as Yelp, these statements still fail to obtain the protection of NRS
3 41.660 because they were not made in "good faith" under NRS 41.637 since they were not
4 truthful. Catherine Khorsandi, who posed as Cecily S. is not, nor has she ever been, a patient of
5 Smith Plastic Surgery, but rather, she is the Office Manager of a competing business in the Las
6 Vegas area, VIP Cosmetic Surgery and the wife of VIP's chief surgeon Dr. Khorsandi. Mrs.
7 Khorsandi posted these reviews with knowledge of their falsity and the specific intent of
8 harming Plaintiff's business reputation. Therefore, it is impossible for her to have made the
9 reviews in good faith.

10 Defendants would like the Court to believe that because their statements were
11 disseminated on a public website, about a matter of public concern, that the First Amendment
12 protects the speech. However, as stated, Defendants fail to acknowledge that Nevada's Anti-
13 SLAPP statute does not protect individuals when they knowingly make false statements. The
14 United States Supreme Court ruled that "the most repulsive speech enjoys immunity provided
15 it falls short of a deliberate or reckless untruth." *Linn v. Plant Guard Workers*, 383 U.S. 53
16 (1965). If such speech is not truthful or made with knowledge of falsehood, it is not in good
17 faith and at the very least, there is an issue of material fact as to this issue. Defendants thus
18 have not carried their burden under the first prong of the Anti-SLAPP statute, and the Court
19 must deny the Motion.

20 **2. Likelihood of Prevailing on the Merits.**

21 For Dr. Smith to meet his burden under the second prong of the Anti-SLAPP analysis,
22 he must "demonstrate with prima facie evidence a probability of prevailing on the claim." NRS
23 41.660(3)(b). The "prima facie" evidentiary burden is defined as "the same burden of proof
24 that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits
25 Against Public Participation law as of June 8, 2015." NRS 41.665(2). This is not a heavy
26 burden. As in a motion for summary judgment, the court must accept as true the evidence
27 favorable to the non-moving party and evaluate the moving party's evidence only to determine
28 if it has defeated the evidence submitted by the non-moving party as a matter of law. *Flatley v.*

1 *Mauro*, 39 Cal. 4th 299 (2006). “The plaintiff need only establish that his or her claim has
2 ‘minimal merit’ to avoid being stricken as a SLAPP.” *Soukup v. Law Offices of Herbert Hafif*,
3 39 Cal. 4th 260, 291 (Cal. 2006). Here, Plaintiffs’ Complaint alleges facts that suggest
4 Defendant Catherine Khorsandi posted the reviews under fake accounts with knowledge of the
5 falsity of the statements with the intent of harming Dr. Smith’s business and reputation.
6 Further, as plead, preliminary research shows that Dr. Khorsandi was aware of these reviews,
7 and further discovery is necessary in order to determine whether the reviews were posted at the
8 direction of Dr. Khorsandi. As such, Plaintiffs have provided sufficient evidence to withstand
9 the low burden of prevailing on the merits at this stage in litigation, requiring denial of
10 Defendants Special Motion to Dismiss.

11 As stated, Defendants have failed to meet their initial burden of production and
12 persuasion. Due to the false, defamatory nature of the statements, Defendants have failed to
13 make a prima facie case that the plaintiffs’ suit arises from an act in furtherance of the
14 defendant’s rights of petition or free speech. Defendants’ false statements were made purely for
15 personal pecuniary gain so that they could tarnish Plaintiffs’ business reputation. As such,
16 Defendants’ Special Anti-SLAPP Motion to Dismiss fails as a matter of law and must be
17 denied.

18 **C. Defendants’ Motion to Dismiss Pursuant to 12(b)(5) Must be Denied Because**
19 **Plaintiffs Have Stated A Claim Upon Which Relief Can Be Granted.**

20 Nevada is a notice-pleading jurisdiction and liberally construes pleadings to place into
21 issue matters which are fairly noticed to the adverse party. *Chavez v. Robberson Steel Co.*, 94
22 Nev. 597 (1978). When courts consider a motion to dismiss under NRCP 12(b)(5), they are
23 determining “whether [the plaintiff] asserts specific allegations sufficient to constitute the
24 elements of a claim on which [a] court can grant relief.” *Malfabon v. Garcia*, 111 Nev. 793
25 (1995). In making that determination, a court “is bound to accept all of the factual allegations
26 in the complaint as true” and “must construe the pleadings liberally and draw every fair
27 inference in favor of the plaintiff.” *Id.* After all this, the motion to dismiss can be granted “only
28

1 if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would
2 entitle it to relief.” *Buzz Stew, Ltd. Liab. Co. v. City of N. Las Vegas*, 124 Nev. 224 (2008).

3 Here, Plaintiffs have plead facts in the Complaint sufficient to satisfy the elements of
4 the alleged causes of action. Further, discovery has yet to be conducted, and will ultimately
5 confirm the culpability of each Defendant. As such, dismissal of the Complaint at this time
6 would be premature as there are multiple issues of genuine material fact precluding the same.

7
8 **1. Plaintiffs Have Plead Sufficient Facts that, if Accepted as True, Fulfill the**
9 **Elements of Plaintiffs’ Claims for Defamation.**

10 Plaintiffs have adequately plead a claim for defamation. To succeed on a claim or
11 defamation, Plaintiffs must prove: (1) Defendants made a false and defamatory statement; (2)
12 that statement was published to a third person; (3) Defendants demonstrated fault, to at least
13 the degree of negligence; and (4) that Plaintiff has been damaged by such statements. *Pegasus*
14 *v. Reno Newspapers, Inc.*, 118 Nev. 706, (2002). Defamation is an invasion of the interest in
15 reputation. *Smith v. Maldonado*, 72 Cal. App. 4th 637, 645, 85 Cal. Rptr. 2d 397 (1999). A
16 statement is deemed to be defamatory when it would tend to lower the subject in the estimation
17 of the community, excite derogatory opinions about the subject, and hold the subject up to
18 contempt.” *Lubin v. Kunin*, 117 Nev. 107 (2001). While truth is an absolute defense to a
19 defamation claim, a statement can be defamatory even when true if it provides a false and
20 defamatory implication to the reader. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990).

21 Here, Plaintiffs have provided ample evidence to show that Defendants generated and
22 posted false, defamatory reviews about Plaintiffs. Not only were the posts made at times and
23 places where Dr. Khorsandi was located, the fact that Catherine Khorsandi is the author of the
24 reviews is displayed through the common theme that the alleged patient “Cecily S.” had to go
25 to Dr. Khorsandi’s practice in Henderson, Nevada, in order to repair the mistakes that she
26 claims Dr. Smith allegedly made.

27 As alleged within the Complaint, the reviews were posted on websites such as Yelp and
28 VIP Plastic Surgery’s own website and therefore, the statements have clearly been published in

1 the context of defamation. Additionally, Defendants posted the reviews to Yelp with
2 knowledge that the statements contained false information. Catherine Khorsandi and “Cecily
3 S.” are not, nor have ever been, patients of Dr. Smith or Smith Plastic surgery and therefore
4 cannot truthfully criticize characteristics such as Dr. Smith’s surgical ability and bedside
5 manners. Instead, these reviews were posted with the intent to tarnish Dr. Smith’s reputation.
6 At the very least, however, there is a question of material fact as to the falsity of the statements
7 that precludes this Court from granting the Motion.

8 Further, although Plaintiffs’ reputation has undoubtedly been damaged by Defendants’
9 statements, the statements within Defendants’ reviews constitute defamation per se which does
10 not require a showing of damages. The four types of defamation historically designated as
11 defamatory per se are false statements involving (1) the imputation of a crime; (2) the
12 imputation of having a loathsome disease; (3) imputing a person's lack of fitness for trade,
13 business, or profession; and (4) imputing serious sexual misconduct. *Branda v. Sanford*, 97
14 Nev. 643 (1981). “A statement is considered slander per se, and thus actionable without a
15 showing of special damages, if it imputes that the Plaintiff has a lack of fitness for trade,
16 business, or profession. Here, the idea that Dr. Smith placed implants in backwards, botched
17 liposuction and “bbl” procedures, has horrible bedside manners, is rude to patients, has no
18 morals and is a dishonest and horrible surgeon, all suggest and invite readers to believe that Dr.
19 Smith is not fit as a plastic surgeon. Involvement in such actions would be utterly incompatible
20 with the duties and expectations of an individual working within the medical field, particularly
21 as a plastic surgeon. As such, Defendants’ statements fall squarely within a category
22 traditionally recognized as defamation per se. Thus, Dr. Smith does not need to provide any
23 evidence of damages to establish liability or to withstand Defendants’ Motion.

24 Defendants argue that Dr. Khorsandi’s statements are privileged and therefore cannot
25 constitute defamation. However, false statements are not granted protection under the law and
26 as such, Defendants’ privilege claim fails. Further, Defendant’s Motion states that Plaintiffs’
27 Complaint does not allege that Dr. Khorsandi or the Practice made any statements. However,
28 Defendant’s contention is baseless as Plaintiffs suggest throughout the entirety of the

1 Complaint that Dr. Khorsandi was aware of, and possibly directed Catherine Khorsandi to post
2 the defamatory statements. As such, the Complaint sets forth facts sufficient to place
3 Defendants on notice of Plaintiffs' claims for defamation and therefore the Motion to Dismiss
4 must be denied.

5 **2. Plaintiffs Have Plead Sufficient Facts that, if Accepted as True, Fulfill the**
6 **Elements of the Claim for Intentional Infliction of Emotional Distress.**

7 Plaintiffs have adequately plead a claim for Intentional Infliction of Emotional Distress.
8 To succeed on a claim for Intentional Infliction of Emotional Distress, Plaintiffs need to show
9 that (1) Defendants engaged in extreme or outrageous conduct with either the intention of, or
10 reckless disregard for, causing emotional distress; (2) Plaintiffs suffered severe or extreme
11 emotional distress; and (3) actual or proximate causation. *Star v. Rabello*, 97 Nev. 124 (1981).
12

13 In the Complaint, Plaintiffs allege that Defendants spent a week posting false reviews
14 with the sole purpose of destroying Plaintiffs' reputation. Defendants defamatory reviews
15 spanned over a period of time extending from August 7, 2019, through August 14, 2019.
16 Courts across the country have found that this kind of prolonged, targeted attack could rise to
17 the level of extreme or outrageous conduct necessary to support a claim for intentional
18 infliction of emotional distress. *Santrizos v. Evergreen Federal Savings Loan Assoc*, Civil No.
19 06-886-PA (D. Or. Nov. 14, 2007) (acknowledging that false accusations of sexual harassment
20 could support a claim for IIED); *Zulawski v. Stancil*, 2006 Ct. Sup. 12878 (Conn. Super. Ct.
21 2006), (denying a motion for summary judgment on a claim for IIED because there was a
22 genuine issue of material fact as to whether defendant's false claims of sexual harassment was
23 extreme or outrageous).

24 It is clear on the facts alleged within the Complaint that Defendants were acting with
25 the specific purpose of causing Dr. Smith emotional distress, or with a reckless disregard that
26 such actions would cause Dr. Smith emotional distress. Further, Dr. Smith alleges that he did,
27 in fact, suffer severe emotional distress as a result of Defendants actions. This allegation, in
28 and of itself is sufficient to provide Defendants with the notice required under NRCP 8. See

1 NRCP 8(a)(1) (“A pleading with sets for ... a short and plain statement of the claim showing
2 that the pleader is entitled to relief).

3 As such, Plaintiffs have far exceeded the minimal burden of stating a legally sufficient
4 claim for intentional infliction of emotional distress. However, even if the Court disagrees,
5 Plaintiff should be given leave to amend the complaint pursuant to NRCP 15(a).

6 **3. Plaintiffs Have Plead Sufficient Facts that, if Accepted as True, Fulfill the**
7 **Elements of Plaintiffs’ Claim for Concert of Action, Aiding and Abetting, and**
8 **Civil Conspiracy.**

9 Plaintiff has plead facts sufficient to place Defendants on notice of the civil conspiracy
10 claims against them as required by NRCP 8. To state a claim for civil conspiracy, a Plaintiff
11 must plead facts alleging the Defendants acted in concert with the intention of accomplishing
12 an unlawful objective for the purpose of harming the Plaintiff, and the Plaintiff sustained
13 damages as a result of Defendants actions. *Guilfoyle v. Olde Monmouth Stock Transfer Co.*
14 *Inc.*, 130 Nev. 801 (2014).

15 Here, Plaintiffs’ civil conspiracy allegations are set forth within paragraphs 81-91 of
16 the Complaint. The Complaint alleges that “Defendants acted in concert to impeach the
17 honesty...and reputation of Dr. Smith and Smith Plastic Surgery exposing them to public
18 hatred, contempt and ridicule by the above malicious and despicable statements” (Complaint
19 ¶83). Further, the Complaint alleges that “Defendants’ libelous conduct has caused significant
20 damage to Dr. Smith’s and Smith Plastic Surgery’s reputation” (Complaint ¶89). Although
21 Plaintiffs contend that the allegations in the Complaint properly support the civil conspiracy
22 claim, discovery is necessary to flesh out specific details of Defendants’ intentional, harmful
23 conduct. As such, Defendants Motion to Dismiss pursuant to NRCP 12(b)(5) must be denied.
24 However, even if the Court disagrees, Plaintiff should be given leave to amend the complaint
25 pursuant to NRCP 15(a).

26 **4. Plaintiffs Have Plead Sufficient Facts that, if Accepted as True, Fulfill the**
27 **Elements of the Claim for Negligent Hiring, Supervision and Training.**

28 Plaintiffs’ have substantiated their claim₁ for negligent hiring, training and supervision
and factual allegations in support thereof are contained within paragraphs 116-126 of the

1 Complaint. "The tort of negligent hiring imposes a general duty on the employer to conduct a
2 reasonable background check on a potential employee to ensure that the employee is fit for the
3 position." *Hall v. SSF, Inc.*, 112 Nev. 1384 (1996). An employer breaches this duty when it
4 hires an employee even though the employer knew, or should have known, of that employee's
5 dangerous propensities" *Id.*

7 As alleged within the Complaint, Catherine Khorsandi, acted inappropriately within her
8 position as Office Manager of VIP Plastic Surgery when she knowingly posted defamatory
9 statements in an attempt to damage the reputation of Dr. Smith, a competing plastic surgeon. In
10 any event, this inquiry is inappropriate for a motion to dismiss because discovery is necessary
11 to determine whether Dr. Khorsandi or the Practice failed to use reasonable care in the training
12 and supervision of Mrs. Khorsandi. As such, Defendants Motion to Dismiss pursuant to NRCP
13 12(b)(5) must be denied. However, even if the Court disagrees, Plaintiff should be given leave
14 to amend the complaint pursuant to NRCP 15(a).

16
17 **5. Plaintiffs Have Plead Sufficient Facts that, if Accepted as True, Fulfill the**
18 **Elements of Plaintiffs' Claim for Wrongful Interference With Prospective**
Economic Advantage.

19 Plaintiffs' have placed Defendants on notice of the allegations relating to the claim for
20 wrongful interference with a prospective economic advantage as required by NRCP 8. Under
21 Nevada law, the elements of wrongful interference with a prospective economic advantage
22 include: (i) a prospective contractual relationship between the plaintiff and a third party; (ii) the
23 defendant's knowledge of this prospective relationship; (iii) the intent to harm the plaintiff by
24 preventing the relationship; (iv) the absence of privilege or justification by the defendant; and
25 (v) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v. Leisure Sports*
26 *Inc.*, 103 Nev. 81 (1987).
27
28

1 Here, as alleged within paragraphs 127-133 of the Complaint, Dr. Smith and Smith
2 Plastic Surgery had prospective economic or contractual relationships with customers who
3 viewed Plaintiffs' Yelp page at the time the false, defamatory reviews were displayed.
4 Defendants knew of these prospective economic relationships and wrongfully interfered with
5 Plaintiffs' prospective economic advantage by engaging in a systematic online smear campaign
6 designed to harm Plaintiff Lane Smith's reputation personally and Smith Plastic Surgery's
7 business reputation (Complaint ¶130). As such, Plaintiffs' allegations are sufficient, and
8 Defendants' Motion to Dismiss should be denied. However, even if the Court disagrees,
9 Plaintiff should be given leave to amend the complaint pursuant to NRCP 15(a). In any event,
10 there exist genuine issues of material fact as to whether Defendants' intent and conduct was
11 improper and therefore Defendants Motion to Dismiss must be denied.
12

13
14 **6. Plaintiffs' Claims for Punitive Damages and Injunctive Relief are Properly**
15 **Pled.**

16 Defendants argue that injunctive relief and punitive damages are not independent
17 causes of action and should therefore be dismissed. However, NRS 33.010(2) allows a plaintiff
18 to seek an injunction as an affirmative claim. In this case, Plaintiffs are seeking to enjoin the
19 Defendants from engaging in activity which they may not lawfully do, such as posting
20 defamatory reviews on Yelp. Plaintiffs will continue to suffer irreparable injury and loss
21 resulting from Defendants' actions unless this Court enjoins them from participating in such
22 actions. As such, a separate cause of action alleging injunctive relief may be maintained.
23

24 Additionally, Plaintiffs' Complaint sufficiently alleges facts that would support a clear
25 and convincing inference that they are entitled to punitive damages. Plaintiffs Complaint states
26 that Defendants' wrongful conduct was willful, intentional and illegal, done with the
27 intentional disregard of its possible consequences. (Complaint ¶111). While the allegations
28

1 place Defendants on notice of Plaintiffs' claim for punitive damages, additional discovery is
2 necessary in order to provide supporting factual allegations. Finally, the imposition of punitive
3 damages is generally determined by the trier of fact, and therefore inappropriate for dismissal
4 in a Motion to Dismiss posture.
5

6 **D. Public Policy Requires That Matters Be Decided On The Merits**

7 Pleadings are to be construed liberally and place into issue matters which are fairly
8 noticed to the adverse party. *Langevin v. York* 111 Nev. 1481 (1985). The decision to dismiss
9 an action for any reason must be balanced against the strong public policy in favor of resolving
10 issues on the merits. *Spiegelman v Gold Dust Texaco*. 91 Nev, 542 (1973). The discretion to be
11 exercised under the circumstances of a particular case is a legal discretion, to be exercised in
12 conformity with the spirit of the law and in such a manner as to subserve and not to impede or
13 to defeat the ends of substantial justice. *Id.* The spirit of the law is that matters be heard on
14 their merits. Where a case is being prosecuted with diligence, it serves the interests of justice
15 that the matter be presented to the trier of fact. *Id.* As such, Defendants' Motion fails to satisfy
16 the rigorous standard of review required for their request and must therefore be denied.

17 **E. In the Alternative, This Court Should Grant Plaintiff Leave to Amend**

18 In the event this Court is inclined to grant Defendants' Motion to Dismiss, this Court
19 should allow Plaintiffs leave to amend. NRCP 15(a) makes clear that leave to amend "shall be
20 freely given when justice so requires." The Nevada Supreme Court has likewise long held that
21 leave to amend should be permitted when no prejudice to the other parties will result. *Fisher v.*
22 *Executive Fund Life Ins. Co.*, 88 Nev. 704 (1972). Indeed, absent "any apparent or declared
23 reason, such as undue delay, bad faith or dilatory motive on the part of the movant, leave to
24 amend should be freely given." *Stevens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104
25 (1973). Thus, where justice requires, and where there is no prejudice, leave to amend shall be
26 granted.

27 //

28 //

1 IV.


2 CONCLUSION

3 Defendants' Special Motion to Dismiss should be denied because the defamatory
4 language published by Defendants against Plaintiffs is not protected communication under
5 NRS 41.635 *et seq.* or any other Nevada law. Further, the Complaint clearly states valid causes
6 of action against Defendants and meets Nevada's liberal pleading standards under NRC
7 12(b)(5), thereby requiring denial of Defendants' Motion.

8 DATED this 24th day of January, 2020.

9 Respectfully submitted,

10 SGRO & ROGER

11 
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28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **PLAINTIFFS' OPPOSITION TO**
3 **DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR**
4 **IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**
5 was submitted electronically for filing and/or service with the Eighth Judicial District Court on
6 the 24th day of January, 2020.

7 I further certify that I served a true and correct copy of the foregoing document as
8 follows:
9

10 X Pursuant to EDCR 8.05(a), electronic service of the foregoing document shall be made
11 in accordance with the CM/ECF E-Service List.

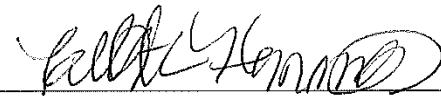
12 By placing a copy of the original in a sealed envelope, first-class postage fully prepaid
13 thereon, and depositing the envelope in the U.S. mail at Las Vegas, Nevada.

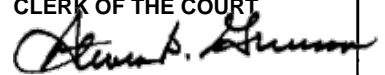
14 Pursuant to a filed Consent for Service by Facsimile in this matter, by sending the
15 document by facsimile transmission.

16 Via hand-delivery to the addresses listed below;

17 By transmitting via email the document listed above to the email address set forth
18 below on this date before 5:00 p.m.

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**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 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. INTRODUCTION

Plaintiffs Dr. Lane F. Smith ("Dr. Smith") and his company, Smith Plastic Surgery, Inc.'s (collectively, "Plaintiffs") opposition confirms Defendants Christopher Khorsandi, M.D. ("Dr. Khorsandi"), Catherine Le Khorsandi ("Mrs. Khorsandi"), and Christopher Khorsandi, M.D., PLLC's (the "Practice" and collectively the "Khorsandi Parties") fears: They were targeted by a vexatious litigant without any basis in an attempt to intimidate and financially damage them. Plaintiffs' opposition makes it clear that the reason they pled no facts in their complaint to support their allegation that Mrs. Khorsandi made the purported posts is *they have*

1 *none*. When challenged to present any evidence to support their claims, Plaintiffs are forced to
2 rely on the argument of counsel and references to "[p]reliminary research [that] shows that the
3 defamatory statements were made at times and locations *around the country* where
4 Dr. Khorsandi and Mrs. Khorsandi were located." (Opp'n at 3.) Of course, Plaintiffs provide no
5 evidence of this "preliminary research," no affidavit of the Plaintiffs nor of counsel identifying
6 what support exists for the statement. These meritless defamation lawsuits are exactly the type
7 that the anti-SLAPP statutes are designed to prevent. The Court should grant the Khorsandi
8 Parties' Special Motion to Dismiss Pursuant to NRS 41.660.

9 Difficult as it may be in light of Plaintiffs admissions, even accepting Plaintiffs'
10 allegations in the complaint as true, the Court should still dismiss the complaint for failure to state
11 a claim under NRCP 12(b)(5). Dr. Khorsandi's statement to his patient (one he denies making)
12 was privileged, and therefore cannot be the basis for Plaintiffs' claim for slander, not to mention
13 the chilling effect it would have on doctors if they are prevented from candidly discussing a
14 patient's medical condition for fear of being subject to a lawsuit. And, Plaintiffs have not
15 identified any statements by Dr. Khorsandi or the Practice that could form the basis for Plaintiffs'
16 claims for libel or false light.

17 Plaintiffs' failure to allege any acts by Dr. Khorsandi or the Practice also undermine the
18 balance of Plaintiffs' claims. Without specific factual allegations about the actions of the
19 Khorsandi Parties in furtherance of an unlawful objection, the civil conspiracy claim fails as a
20 matter of law. The claim for intentional infliction of emotional distress fails to plead facts to
21 show that the alleged acts rose to the level of outrageous or extreme conduct. Plaintiffs admit in
22 their Opposition that they have no facts (as opposed to conclusions of law) to support their claim
23 for negligent hiring, supervision, or training. Similarly, Plaintiffs' claim for interference with
24 prospective advantage is premised on an overly optimistic view that every individual who views
25 the Yelp page would have become a patient, but for the Cecily S. posts. The Court should grant
26 the Khorsandi Parties' motion to dismiss with prejudice, and not allow Plaintiffs to continue to
27 harass the Khorsandi Parties when they admit they have no factual basis to bring their claims.

28

1 II. ARGUMENT

2 A. The Conduct Complained of by Plaintiffs is Protected Under Nevada's
3 Anti-SLAPP Statutes.

4 Plaintiffs' inability to provide *any* evidence to support their wide-ranging claims against
5 the Khorsandi Parties only highlights that this is a strategic litigation against public participation,
6 or SLAPP, lawsuit. "The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial
7 advantage over one's adversary by increasing litigation costs until the adversary's case is
8 weakened or abandoned." *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276,
9 1280 (2009) (superseded by amended statute). A defendant can file a special motion to dismiss,
10 asserting immunity from claims related to protected communications. NRS 41.650, NRS 41.660.
11 These early motions to dismiss "provide[] a procedure for weeding out, at an early stage,
12 *meritless* claims arising from activity that is protected by the law." *Abir Cohen Treyzon*
13 *Salo, LLP v. Lahiji*, 254 Cal. Rptr. 3d 1, 4-5 (2d Dist. 2019) (emphasis in original). Nevada
14 courts regularly look to California law for guidance on issues related to anti-SLAPP because
15 California and Nevada's statutes are similar in purpose and language. *Shapiro v. Welt*,
16 133 Nev. 35, 39, 389 P.3d 262, 268 (2017).

17 In evaluating a special motion to dismiss, the court must undertake a two-prong analysis to
18 determine whether a communication is protected under the anti-SLAPP statute. NRS 41.660(3).
19 The moving party must first show, by a preponderance of the evidence, "that the claim is based
20 upon a good faith communication in furtherance of . . . the right to free speech in direct
21 connection with an issue of public concern." NRS 41.660(3)(a). Once the moving party has
22 made the necessary showing, the burden shifts to the plaintiff to present *prima facie* evidence that
23 they have a probability of prevailing on all of their claims. NRS 41.660(3)(b).

24 1. *The Khorsandi Parties have shown by a preponderance of the evidence*
25 *that Plaintiffs brought a meritless SLAPP lawsuit.*

26 The Khorsandi Parties find themselves as the latest target of Plaintiffs' ire, and the subject
27 of a meritless lawsuit. Without any citations to a statute or case law, Plaintiffs argue that
28 "Defendants fail to acknowledge that Nevada's Anti-SLAPP statute does not protect individuals

1 when they knowingly make false statements." (Opp'n at 10.) However, neither Dr. Khorsandi
2 nor Mrs. Khorsandi made false statements; they certainly did not do so "knowingly." In fact, the
3 *only* evidence presented to the Court on the issue is the unchallenged sworn testimony that the
4 Khorsandi Parties had nothing to do with the posts or the complained of conduct. Dr. Khorsandi
5 submitted a declaration stating that he never told his patient that her breast implant was placed in
6 backwards, and never attributed any mistake to Dr. Smith. (Ex. D to Mot., ¶¶ 3-4.) Similarly, the
7 motion to dismiss attaches the declaration of Mrs. Khorsandi, stating that she was not the author
8 of the posts attributed to "Cecily S" or "YouTuber." (Ex. E to Mot., ¶¶ 3-4.)

9 Courts in California, which Nevada courts look to, have addressed a similar situation
10 where the defendant denies making the statement in question. *Bel Air Internet, LLC v. Morales*,
11 230 Cal. Rptr. 3d 71, 75 (2018). The California court found that if the defendant denies making
12 the allegations, the defendant can rely on the plaintiff's allegations to determine whether the
13 statements that form the basis of the complaint are of the type that are protected by the
14 anti-SLAPP statute. *Id.* "Otherwise, a defendant who disputes the plaintiff's allegations [] might
15 be precluded from bringing an anti-SLAPP motion. That would have the perverse effect of
16 making anti-SLAPP relief unavailable when a plaintiff makes a baseless claim," the exact
17 situation the anti-SLAPP statute was designed to address. *Id.*

18 The posts that form the basis of Plaintiffs' complaint are communications "made in direct
19 connection with an issue of public interest in a place open to the public or in a public forum" and
20 therefore are the type protected by the anti-SLAPP statute. NRS 41.637(4). For example,
21 California courts have held that a patient's crucial comments about a dentist's practice on Yelp
22 were "part of a public discussion and dissemination of information on issues of public concern"
23 for purposes of an anti-SLAPP motion. *Wong v. Jing*, 117 Cal. Rptr. 3d 747, 760 (2010). Here,
24 the posts relate to the quality of the Plaintiffs' patient care, and are posted on a public forum on
25 the Internet. As such, they are entitled to protection under the anti-SLAPP statute.

26 Plaintiffs fail to address the evidence submitted by the Khorsandi Parties or the process set
27 forth in *Bel Air Internet* for instances, as here, where the Defendants deny making the statements.
28 Instead, Plaintiffs continue to argue with no evidentiary showing whatsoever that these statements

1 are false and therefore not protected under the anti-SLAPP statute. (Opp'n at 9-10.) But, as
2 discussed below, Plaintiffs' failure to provide evidence to support their claim is fatal. As such, the
3 Khorsandi Parties have met their burden under the first-prong of the anti-SLAPP analysis, and the
4 burden shifts to the Plaintiffs.

5 **2. Plaintiffs failed to present any evidence to demonstrate a probability of**
6 **success on the merits.**

7 Absent from Plaintiffs' opposition is any evidence to support their claims. The burden to
8 present prima facie evidence of a probability of prevailing on their claims is similar to a motion
9 for summary judgment. *John v. Douglas County Sch. Dist.*, 125 Nev. 746, 754, 219 P.3d 1276,
10 1281-82 (2009). "[T]he nonmoving party cannot overcome the special motion to dismiss 'on the
11 gossamer threads of whimsy, speculation and conjecture.' Instead, the nonmoving party must
12 provide more than general allegations and conclusions; it must submit specific factual evidence
13 'demonstrating the existence of a genuine factual issue.'" *Id.* (quoting *Wood v. Safeway, Inc.*
14 121 Nev. 724, 729, 131 P.3d 1026, 1029 (2005)). "A defendant's anti-SLAPP motion should be
15 granted when a plaintiff presents an insufficient legal basis for the claims or when no evidence of
16 sufficient substantiality exists to support a judgment for the plaintiff." *Piping Rock Partners, Inc.*
17 *v. David Lerner Associates, Inc.*, 946 F. Supp. 2d 957, 967 (N.D. Cal. 2013), *aff'd*.
18 609 Fed. Appx. 497 (9th Cir. 2015).

19 Instead of presenting evidence in the form of an affidavit or authenticated documents,
20 Plaintiffs rely solely on the unsupported argument of counsel to identify the basis of their claim
21 that these posts were made by Mrs. Khorsandi with the knowledge of Dr. Khorsandi.
22 "Preliminary research shows that the defamatory statements were made at times and locations
23 *around the country* where Dr. Khorsandi and Mrs. Khorsandi were located." (Opp'n at 3
24 (emphasis added).) Plaintiffs further claim that their "Complaint alleges facts *that suggest* [sic]
25 Defendant Catherine posted the reviews under fake business accounts" (*Id.* at 11 (emphasis
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1 added).) This flimsy argument of counsel and general citations to an unverified complaint do not
2 rise to the level of sufficient substantiality to support a judgment for the Plaintiffs.¹

3 Plaintiffs' arguments focus solely on whether Mrs. Khorsandi made the purportedly
4 defamatory statement, but their burden under the second prong is broader than that.
5 NRS 41.660(3)(b). Instead, Plaintiffs must present *prima facie evidence demonstrating a*
6 *probability of success on the merits of each of the claims in order to sustain a favorable*
7 *judgment.* *Baral v. Schitt*, 376 P.3d 604, 608 (Cal. 2016). For example, on their claim for
8 intentional infliction of emotional distress, in addition to offering substantiated evidence that
9 Mrs. Khorsandi made the statements in question (a burden Plaintiffs certainly did not meet),
10 Plaintiffs would also have to present prima facie evidence sufficient to show that the
11 Khorsandi Parties' conduct was extreme or outrageous, that there was intent to cause emotional
12 distress, that Plaintiffs had suffered severe or extreme emotional distress, and that this distress
13 was caused by the Khorsandi Parties. Plaintiffs' opposition fails to even acknowledge this
14 obligation.

15 With their failure to submit admissible evidence, and with no attempt to address the
16 likelihood of prevailing on the merits of each claim for relief, Plaintiffs have not met their burden
17 under the second prong to demonstrate a probability of success on the merits of any of their
18 claims. As the Khorsandi Parties have met their burden under the first prong of the anti-SLAPP
19 analysis by submitting admissible evidence showing that they did not make the purported
20 statements, the Court should grant the special motion to dismiss pursuant to NRS 41.660.

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24 ¹ That posts were made at certain locations in the United States is the only basis for
25 Plaintiffs bringing claims against the Khorsandi Parties, and in light of Plaintiffs' pattern of
26 retaliating against those who speak out critically about the quality of Plaintiffs' care, it raises the
27 question of whether Plaintiffs and their counsel had an adequate basis for the complaint under
28 NRCP 11(b). ("By presenting to the court a pleading, . . . an attorney or unrepresented party
certifies that to the best of the person's knowledge, information, and belief, formed after an
inquiry reasonable under the circumstances: (1) it is not being presented for any improper
purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
. . . (3) the factual contentions have evidentiary support . . .")

1 B. **The Court Should Also Grant the Motion to Dismiss Pursuant to**
2 **NRCP 12(b)(5).**

3 Setting the anti-SLAPP protections aside, the Khorsandi Parties are also entitled to
4 dismissal pursuant to NRCP 12(b)(5). As this Court knows, a court may grant a motion to
5 dismiss under NRCP 12(b)(5) when the plaintiff fails "to state a claim upon which relief can be
6 granted." In considering a motion to dismiss, the court must accept the non-moving parties'
7 factual allegations as true and construe them in their favor. *Buzz Stew, LLC v. City of*
8 *N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 671-73 (2008). When, like here, plaintiffs
9 cannot prove any set of facts that would entitle them to relief, dismissal for failure to state a claim
10 is appropriate. *Id.* Plaintiffs cannot simply plead the elements of a claim in lieu of factual
11 allegations. *Id.*; *see also, Bailey v. Gates*, 52 Nev. 432, 437, 290 P.411, 412 (1930) ("Good
12 pleading requires that . . . the facts relating to the matter be averred, leaving the court to draw the
13 legal conclusion . . .").

14 In arguing against the Khorsandi Parties' Rule 12 motion, Plaintiffs merely state that
15 "dismissal of the Complaint at this time would be premature as there are multiple issues of
16 genuine material fact precluding the same." (Opp'n at 12.) This conflation of the standards for
17 motion to dismiss and motion for summary judgment runs throughout Plaintiffs' opposition, with
18 repeated statements that discovery is necessary to identify the necessary factual basis for the
19 claims. (See Opp'n at 15, 16, 17, and 18.) Plaintiffs' repeated confession that they do not have the
20 necessary information to plead the claims for relief under even the liberal pleading standards of
21 NRCP 8 means that the complaint should be dismissed.

22 1. ***Plaintiffs failed to state a claim for slander or libel.***

23 Plaintiffs' complaint brings a claim of slander per se against Dr. Khorsandi for statements
24 he purportedly made in the course of treating a patient, and another six claims for libel per se
25 based on what Plaintiffs claim were reviews posted by Mrs. Khorsandi. To state a claim from
26 slander or libel, a plaintiff must allege: (1) a false and defamatory statement of fact by a
27 defendant about the plaintiff; (2) the unprivileged publication of this statement to a third person;
28 (3) the defendant was at least negligent in making the statement; and (4) the plaintiff sustained

1 damages as a result of the statement. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718,
2 57 P.3d 82, 90 (2002). Plaintiffs' complaint fails to adequately state claims for slander or libel,
3 even accepting the factual allegations as true.

- 4 i. Dr. Khorsandi's statements to his patients are privileged, and cannot
5 be the basis for a claim of slander.

6 Again, a statement must be unprivileged in order to form the basis for a claim for libel. *Id.*
7 (emphasis added). Plaintiffs' opposition fails to substantively address the argument that the
8 statements Dr. Khorsandi purportedly made in the course of treating his patient are privileged,
9 instead summarily stating that "false statements are not granted protection under the law and, as
10 such, Defendants' privilege claim fails." (Opp'n at 13.) But the ultimate accuracy of the medical
11 opinion is irrelevant. Under Nevada law, a physician must be permitted to have full and frank
12 discussions with his or her patient, and provide advice and analysis as to the patient's medical
13 condition and treatment; it is the basis for the doctor-patient privilege. *Rogers v. State*,
14 127 Nev. 323, 327, 255 P.3d 1264, 1266 (2011). While Dr. Khorsandi disputes that he made any
15 statements about the quality of Dr. Smith's practices, statements in the context of fulfilling his
16 duties as a physician to his patient about the patient's medical needs are privileged. *Cuciotta v.*
17 *Deloitte & Touche, L.L.P.*, 129 Nev. 322, 325-26, 302 P.3d 1099, 1101 (2013). Because the
18 purported conduct that forms the basis for Plaintiffs' claim of slander against the
19 Khorsandi Parties is privileged and therefore not actionable, the Court should dismiss the claim.

- 20 ii. The Complaint fails to allege that Dr. Khorsandi or the Company
21 made defamatory statements.

22 To state an actionable claim for libel, a plaintiff must allege that the defendant published a
23 defamatory statement about the plaintiff. *Pegasus*, 118 Nev. at 718, 57 P.3d at 90. As the
24 Khorsandi Parties argued in their motion, an allegation that a defendant was aware of a
25 defamatory statement is simply not enough. (Mot. at 11.) A complaint must specifically include
26 an allegation that the defendant "actually made a defamatory statement." *Flowers v. Carville*,
27 266 F. Supp. 2d 1245, 1252 (D. Nev. 2003) (applying *Pegasus*, 118 Nev. at 718, 57 P.3d at 90).

1 Allegations that a defendant *directed* others is insufficient to form the basis of an actionable
2 defamation claim. *Id.*

3 Plaintiffs' complaint fails to identify any defamatory statements by Dr. Khorsandi or the
4 Practice. At most, Plaintiffs' complaint states that they potentially directed the publication of the
5 defamatory statements made by Cecily S. (Compl. ¶¶ 46, 52, 58, 64, 70, 76.) Plaintiffs'
6 opposition fares no better, instead arguing that "Defendant's [sic] contention is baseless as
7 Plaintiffs suggest throughout the entirety of the Complaint that Dr. Khorsandi was aware of, and
8 possibly directed Catherine Khorsandi to post the defamatory statements," and does not even
9 attempt to identify what statements were made by the Practice. (See Opp'n at 12-13.) That is not
10 enough; an actionable claim must identify a statement by the defendant. Because Plaintiffs'
11 complaint is bereft of allegations to support claims for libel or false light against Dr. Khorsandi or
12 the Practice, the claims must be dismissed.

13 **3. *Plaintiffs' conclusory statements are not a substitute for factual***
14 ***allegations supporting a claim for concert of action, aiding and abetting,***
and civil conspiracy.

15 Plaintiffs' opposition also fails to identify any factual allegations in their complaint to
16 support their claim for Concert of Action, Aiding and Abetting, Civil Conspiracy. Plaintiffs'
17 complaint must include factual allegations that the Khorsandi Parties took actions in concert with
18 the intention of accomplishing an unlawful objective for the purpose of harming Plaintiffs, and
19 Plaintiffs sustained damages as a result of the Khorsandi Parties' actions. *Guilfoyle v.*
20 *Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 198 (2014). Mere
21 recitation of the elements of a claim is insufficient to place defendants on notice of the claims
22 against them. *Buzz Stew*, 124 Nev. at 227, 181 P.3d at 672.

23 Plaintiffs concede that "discovery is necessary to flesh out specific details of Defendants'
24 intentional, harmful conduct," but the deficiencies in Plaintiffs' complaint go beyond an absence
25 of specific details. (Opp'n at 15.) Just as Plaintiffs have failed to plead any facts that show
26 Dr. Khorsandi or the Practice made the purported statements, Plaintiffs do not plead any factual
27 allegations to identify the actions that each of the Khorsandi Parties took in furtherance of an
28 unlawful objective. (See Compl. ¶¶ 81-91.) The Complaint's recitation of the elements of the

1 claim for civil conspiracy, without any facts that identify what actions each (or any) of the
2 Khorsandi Parties took, fails to state a claim under NRCP 12(b)(5), and should be dismissed.

3 **4. The alleged conduct does not rise to the level of intentional infliction of**
4 **emotional distress.**

5 To state a claim for intentional infliction of emotional distress, Dr. Smith must allege facts
6 that show: "(1) extreme and outrageous conduct on the part of the defendant; (2) intent to cause
7 emotional distress or reckless disregard for causing emotional distress; (3) that the plaintiff
8 actually suffered extreme or severe emotional distress; and (4) causation." *Miller v. Jones*,
9 114 Nev. 1291, 1299-1300, 970 P.2d 571, 577 (1998). Extreme or outrageous conduct is more
10 than just being critical of a plaintiff; a person "must necessarily be expected and required to be
11 hardened . . . to occasional acts that are definitely inconsiderate and unkind." *Maduike v. Agency*
12 *Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal citations omitted). Instead, "extreme
13 and outrageous conduct is that which is outside all possible bounds of decency and is regarded as
14 utterly intolerable in a civilized community." *Id.* The publication of a defamatory statement,
15 without more, does not constitute extreme and outrageous conduct. *Soto-Lebron v.*
16 *Fed. Express Corp.*, 538 F.3d 45, 58-59 (1st Cir. 2008).

17 As the with the rest of Plaintiffs' complaint, their claim for intentional infliction of
18 emotional distress does not allege any conduct by Dr. Khorsandi or the Practice that could form
19 the basis for that claim. That omission alone requires the Court to grant the Khorsandi Parties'
20 motion to dismiss this claim against Plaintiffs. But even the conduct attributed to Cecily S. does
21 not rise to the level of extreme or outrageous conduct. Instead, critical comments about the
22 quality of Dr. Smith's care must be expected on a public review site like Yelp, and are not limited
23 to those posted by Cecily S. While Dr. Smith may consider Cecily S.'s comments inconsiderate
24 or unkind, they are hardly outside all possible bounds of decency.

25 Plaintiffs' opposition identifies two unpublished cases they believe support the sufficiency
26 of the pleading, but neither is applicable here. First, Plaintiffs cite *Santrizos v. Evergreen Federal*
27 *Savings and Loan Association*, Civil No. 06-886-PA, 2007 WL 3544211 (D. Or. Nov. 14, 2007),
28 for the proposition that "false accusations of sexual harassment could support a claim for IIED."

1 (Opp'n at 14.) But, in that case, the court actually found that the conduct complained of was not
2 "extremely outrageous" and rejected the plaintiffs' claim for intentional infliction of emotional
3 distress. *Id.* Likewise, the court's decision to deny summary judgment on a claim for intentional
4 infliction of emotional distress in *Zulawski v. Stancil* hinged on the power imbalance between the
5 defendant, a principal of a high school, and the plaintiff, his student. 41 Conn. L. Rptr. 646,
6 2006 WL 2089470 (2006) (unpublished). As there is no such power imbalance here, this case can
7 provide no guidance on how to determine whether the acts rise to the level of extreme and
8 outrageous conduct.

9 *Zeran v. Diamond Broadcasting* is far more illustrative of just how extreme the conduct
10 must be to form the basis for intentional infliction of emotional distress. 19 F. Supp. 2d 1249,
11 1254 (W.D. Okla. 1997), *aff'd*, 203 F.3d 714 (10th Cir. 2000). There, just days after the bombing
12 of the Oklahoma City Federal Building, plaintiff was the victim of a hoax that accused him of
13 attempting to profit from and make light of the bombing. Local disc jockeys read his personal
14 phone number on the air, urging listeners to let him know "what they thought of him." *Id.* at 1251.
15 On that day, the plaintiff received numerous angry calls, including death threats. *Id.* The plaintiff
16 brought a claim against the radio station for intentional infliction of emotional distress, but the
17 court found that the disc jockey's conduct did not rise to the level of extreme or outrageous
18 conduct. "Nothing short of extraordinary transgressions of the bounds of civility will give rise to
19 liability for intentional infliction of emotional distress." *Id.* at 1254 (quoting *Starr v. Pearle*
20 *Vision, Inc.*, 54 F.3d 1548, 1558 (10th Cir. 1995)).

21 Here, even accepting Plaintiffs' allegations as true, critical reviews of Dr. Smith's patient
22 care are not nearly as egregious as falsely accusing someone of attempting to profit off of a
23 national tragedy. The Court should grant the Khorsandi Parties' motion to dismiss the claim for
24 intentional infliction of emotional distress because the purported acts do not constitute extreme or
25 outrageous conduct.

1 **5. *Dr. Khorsandi and the Practice were not negligent in hiring, supervising,***
2 ***or training Mrs. Khorsandi.***

3 Plaintiffs seek to impose absolute liability on Dr. Khorsandi and the Practice based on an
4 employee's purported conduct. But, as the Khorsandi Parties argued in their motion, employers
5 are not liable simply because their employees acted wrongfully. The mere "fact that an employee
6 acts wrongfully does not in and of itself give rise to a claim for negligent hiring, training, or
7 supervision." *Colquhoun v. BHC Montevista Hosp., Inc.*, No. 2:10-CV00144-RPH-PAL,
8 2010 WL 2346607, at *3 (D. Nev. June 9, 2010) (citing *Burnett v. C.B.A. Sec. Serv., Inc.*,
9 107 Nev. 787, 789, 820 P.2d 750, 752 (1991)). Although an employer has a general duty to use
10 reasonable care in the training and supervision of his or her employees, a plaintiff must allege
11 facts specifically indicating how the employer violated this duty. *Burnett*, 107 Nev. at 789,
12 820 P.2d at 752.

13 Plaintiffs' opposition acknowledges that their complaint does not include the necessary
14 factual allegations to support a claim for Negligent Hiring, Training, and Supervision.
15 (Opp'n at 16.) As with so much of their complaint, Plaintiffs instead substitute the recitation of
16 the elements. But the opposition goes farther, claiming that "this inquiry is inappropriate for a
17 motion to dismiss because discovery is necessary to determine whether Dr. Khorsandi or the
18 Practice failed to use reasonable care in the training and supervision of Mrs. Khorsandi." (*Id.*)
19 This idea that plaintiffs can plead claims without any factual basis only to engage in intensive
20 discovery flips even the notice pleading standard of NRCP 8 on its head. Because Plaintiffs have
21 failed to state a claim for Negligent Hiring, Training, and Supervision under NRCP 12(b)(5), it
22 must be dismissed.

23 **6. *Plaintiffs fail to identify any prospective relationships that were actually***
24 ***interfered with or any damages suffered.***

25 Plaintiffs' complaint also fails to state a claim for interference with prospective economic
26 advantage. "To state a claim for interference with prospective economic advantage, a plaintiff
27 must plead: "(a) a prospective contractual relationship between the plaintiff and a third party;
28 (2) the defendant's knowledge of this prospective relationship; (3) the intent to harm the plaintiff

1 by preventing the relationship; (4) the absence of privilege or justification by the defendant; and
2 (5) actual harm to the plaintiff as a result of the defendant's conduct."

3 To hear Plaintiffs tell it, every person who viewed their Yelp page would have entered
4 into a contractual relationship with Plaintiffs to receive plastic surgery but for the negative
5 reviews purportedly left by Cecily S. (Compl. ¶¶ 129-30; Opp'n at 17.) Plaintiffs "had
6 prospective economic or contractual relationships with customers who viewed Plaintiffs'
7 Yelp page at the time of the false, defamatory reviews were displayed. Defendants knew of these
8 prospective economic relationships and wrongly interfered with Plaintiffs' prospective economic
9 advantage by engaging in a systematic online smear campaign" (Opp'n at 17.) But the mere
10 possibility of entering into a contractual relationship is not enough to support a claim for
11 interference with prospective economic advantage. "The tort requires a reasonable expectation of
12 entering into a valid business relationship, and not speculation or mere wishful thinking."
13 86 C.J.S. Torts § 37. Plaintiffs' overly-optimistic certainty that individuals who viewed their
14 Yelp page would have entered into a contractual relationship with them *but for* these specific
15 negative comments is insufficient to form a basis for a claim for interference with prospective
16 economic advantage.² In addition, Plaintiffs' complaint does not identify any damages suffered
17 because of a specific prospective contractual relationship, instead averring generally that they
18 were harmed by the Khorsandi Parties "preventing them from continuing to operate their business
19 without wrongful interference."

20 Plaintiffs did not, and cannot, allege facts that support their claim that any prospective
21 economic relationship was jeopardized by the posts purportedly left by Mrs. Khorsandi. All
22 Plaintiffs can do is recite the elements of the claim. Plaintiffs' claim for relief for wrongful
23 interference with prospective economic advantage must be dismissed because, once again, they
24 fail to allege the necessary facts to support their claim.

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27 ² Plaintiffs' belief that the Cecily S. posts impaired any prospective relationship is further
28 called into doubt in light of the numerous other reviews critical of Plaintiffs' care that are still
posted on their Yelp page. (*See, e.g.*, Ex. F-I to Mot.)

1 7. ***Plaintiffs' claims for preliminary injunction and punitive damages are***
2 ***inappropriately pled.***

3 While Plaintiffs bring separate causes of action for punitive damages (Compl. ¶¶ 109-15)
4 and preliminary injunction (*id.* ¶¶ 134-42), neither of these constitute independent causes of
5 action. In order to seek punitive damages, "a plaintiff must still plead the facts to support an
6 award of punitive damages to maintain a prayer for them in his complaint and pursue them at
7 trial." *Bonavito v. Nev. Prop. 1 LLC*, No. 2:13-CV-417-JAD-CWH, 2014 WL 1347051, at *1
8 (D. Nev. Apr. 2, 2014). Simply reciting the standard for punitive damages is insufficient,
9 especially when Plaintiffs admit that "additional discovery is necessary to provide supporting
10 factual allegations." (*See* Opp'n at 17.) The Court should dismiss Plaintiffs' request for punitive
11 damages.

12 Similarly, Plaintiffs' inclusion of a preliminary injunction as an independent cause of
13 action is an attempted end-run around the heavy burden to show they are entitled in preliminary
14 injunctive relief under NRCP 65(a). Plaintiffs' opposition argues that "NRS 33.010(2) allows a
15 plaintiff to seek an injunction as an affirmative claim." (Opp'n at 17.) But relief under
16 NRS 33.010(2) is distinct, necessitating a final adjudication on the merits and included in the
17 prayer for relief. As plead, Plaintiffs' cause of action for preliminary injunction is insufficient,
18 and should be dismissed.

19 8. ***The Court should deny Plaintiffs' request to amend.***

20 Throughout their opposition, Plaintiffs seek leave to amend if the Court finds that the
21 complaint fails to state a claim upon which relief may be granted. While leave to amend shall be
22 freely given under NRCP 15(a), it is inappropriate in circumstances where there is "undue delay,
23 bad faith, or dilatory motive on the part of the movant" *Stevens v. Southern Nev.*
24 *Music Co., Inc.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973).

25 Here, Plaintiffs' request for leave to amend should be denied. The Court cannot give
26 Plaintiffs leave to amend their complaint if the Court grants the Khorsandi Parties' special motion
27 to dismiss because a dismissal under the anti-SLAPP statute "operates as an adjudication upon the
28 merits." NRS 41.660(5). But, even under the Rule 12 motion, leave is inappropriate. To meet

1 their burden and avoid dismissal under the anti-SLAPP statutes, Plaintiffs were tasked with
2 presenting evidence to show that they were likely to prevail on the merits. Not only did they fail
3 to present any evidence, their arguments showed just how specious their basis for bringing these
4 claims are. Plaintiffs' entire basis for believing the posts were authored by Catherine Khorsandi
5 are that the posts "were made at times and locations *around the country* where Dr. Khorsandi and
6 Mrs. Khorsandi were located" (Opp'n at 3 (emphasis added)) and said positive things about
7 Dr. Khorsandi. (Opp'n at 12.) When coupled with Plaintiffs' vexatious history, it is apparent that
8 Plaintiffs' complaint and the request for leave to amend was brought in bad faith. Accordingly,
9 the Court should dismiss Plaintiffs' complaint with prejudice.

10 **III. CONCLUSION**

11 Based on the foregoing, the Khorsandi Parties respectfully request that the Court dismiss
12 Plaintiffs' counterclaims with prejudice.

13 DATED this 12th day of February, 2020.

14 PISANELLI BICE PLLC

15 By: 

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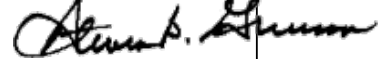
20 *Attorneys for Defendants Christopher Khorsandi, M.D.,*
21 *Christopher Khorsandi, M.D., PLLC, and Catherine Le*
22 *Khorsandi*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 12th day of February, 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 REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660, OR IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO NRCP 12(b)(6)** 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


An employee of Pisanelli Bice PLLC



1 **TRAN**

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 SMITH PLASTIC SURGERY,
5 INCORPORATED,

CASE NO. A-19-804819-C

DEPT. XX

6 Plaintiff,

7 vs.

8 CHRISTOPHER KHORSANDI,
9 M.D.,

10 Defendant.

11 BEFORE THE HONORABLE ERIC JOHNSON,
12 DISTRICT COURT JUDGE

13 WEDNESDAY, FEBRUARY 19, 2020

14 ***TRANSCRIPT OF HEARING***

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

20 **APPEARANCES:**

21 For the Plaintiff: JENNIFER WILLIS ARLEDGE, ESQ.

22 For the Defendant: JAMES J. PISANELLI, ESQ.
23 EMILY A. BUCHWALD, ESQ.

24 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

25 TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 Las Vegas, Nevada, Wednesday, February 19, 2020

2

3 [Case called at 10:44 a.m.]

4 THE COURT: Smith Plastic Surgery, Inc. versus
5 Christopher Khorsandi, M.D. Case Number A804819. Counsel,
6 please note your appearances for the record.

7 MS. ARLEDGE: Good morning, Your Honor. Jennifer
8 Arledge on behalf of Plaintiffs.

9 MR. PISANELLI: Good morning, Your Honor. James
10 Pisanelli on behalf of Defendants.

11 MS. BUCHWALD: Emily Buchwald on behalf of
12 Defendants.

13 THE COURT: Okay. We're here on Defendant's Motion to
14 Dismiss Pursuant to NRS 41.660, or in the Alternative, Motion to
15 Dismiss Pursuant to NRCP 12(b)(5).

16 Mr. Pisanelli, let me -- on the SLAPP suit --

17 MR. PISANELLI: Yes, sir.

18 THE COURT: -- here's sort of the thing I'm looking at. I
19 mean, the statute protects a good faith statement in a public forum,
20 but your clients are claiming they didn't make the statement.

21 MR. PISANELLI: Right.

22 THE COURT: So I'm not 100 percent sure if the statute
23 applies to them. That's sort of I mean --

24 MR. PISANELLI: Sure.

25 THE COURT: And then if -- assuming they did make the

1 statement, I'm not sure that it would be a good faith statement
2 since they've never been, you know, clients of the Plaintiff. So --

3 MR. PISANELLI: Right.

4 THE COURT: I'm not -- if you represented a client of
5 Defendant who was dissatisfied with their work and went on Yelp
6 and made these statements, I'd tend to think you'd probably -- do
7 have a SLAPP action, but I'm just not sure you do here. So I'd like
8 your guidance or thoughts on that.

9 MR. PISANELLI: Sure. May I?

10 THE COURT: Sure.

11 MR. PISANELLI: So, Your Honor, interesting opening
12 question because I'll tell that's the question we wrestled with in our
13 group. And, you know, what we found ourselves dealing with is
14 this scenario that on the one hand we have an Anti-SLAPP statute
15 that would protect somebody who said something that is
16 potentially, if not privileged or protected, defamatory about another
17 person.

18 But because it's in the public interest or another category
19 if it were, you know, petitioning the government for redress they
20 would have protection and so now we compare that to someone
21 here that the type of statement at issue is clearly one that would fall
22 within the statute because it's a public interest, these skills, the type
23 of service provided by a doctor.

24 THE COURT: I agree that if it was a --

25 MR. PISANELLI: Yeah.

1 THE COURT: -- client of the doctor -- the Defendant doctor
2 that it would probably --

3 MR. PISANELLI: Sure.

4 THE COURT: -- fall within the statute and I mean --

5 MR. PISANELLI: And so --

6 THE COURT: -- you know --

7 MR. PISANELLI: And so doing that side-by-side analysis,
8 it seemed to us to be an absurd result that somebody who actually
9 did something harmful would have protection against the lawsuit,
10 but somebody who is wrongly accused in what clearly is a
11 vexatious litigation wouldn't have that same protection.

12 So we looked of course the first place anybody here
13 standing before you would look and see what our Supreme Court
14 said about the point and it's not the first time we've come up with
15 no specific opinion on the point but -- so we did do as our Supreme
16 Court tells us to do on Anti-SLAPP matters in particular and looked
17 to California for what they've done in similar circumstances and
18 found the *Morales* decision, we've cited before you, to be on point.

19 And if I could quote it, the Court there said -- and this
20 comparison that I've just described to you -- otherwise, the Court
21 said: A Defendant who disputes the Plaintiff's allegation might be
22 precluded from bringing an Anti-SLAPP motion that would have the
23 perverse effect, the Court said, of making Anti-SLAPP relief
24 unavailable when a plaintiff makes a baseless claim.

25 I think the point being from that decision is the

1 baselessness that should carry the day and not the element of good
2 faith because the good faith on the one hand for someone who
3 actually did cause harm, did you know that it was untrue when you
4 made the statement for example and if they give sworn testimony
5 or other evidence that says I didn't intentionally intend to harm
6 good faith then they get the protection.

7 Here, we go much further from an evidentiary perspective
8 by saying not only did I not intentionally or knowingly say
9 something false about you, I didn't say it at all.

10 And so from that *Morales* decision we think, Your Honor,
11 that if presented to the Supreme Court, our high court would agree
12 as well that this type of circumstance where all other elements of
13 the Anti-SLAPP statute apply, the good faith element shouldn't be
14 the disqualifying factor because the parties came forward and
15 showed what is ultimately their good faith on the analysis of
16 potential harm to the Plaintiff because we didn't do it in the first
17 place.

18 And so to fall back then, once the good faith element has
19 been established by that sworn testimony to see, you know, even
20 assuming it was true, almost analogous to a 12(b) analysis. But
21 even if it was true, having established good faith, let's go through
22 the two-prong test and you would see here, in particular that the
23 Plaintiff hasn't established -- or carried their burden under the
24 second prong of the test; that is our Supreme Court says when
25 evidence is presented, which was done here through sworn

1 testimony, to establish the good faith element and that it's an issue
2 of public concern, your doctor's care is clearly an element of public
3 concern, the burden would have then shifted to the Plaintiff. And
4 what does the Plaintiff have to say to carry their burden that they're
5 likely to succeed?

6 Our Supreme Court is crystal clear on this point that this is
7 not a 12(b) analysis. You can't just say assume what I alleged
8 against you is true. Now you have an evidentiary burden and the
9 Courts -- or our Court and California Courts specifically say under
10 these circumstances if you don't come forward with the evidence to
11 carry your burden to show that you're likely to succeed, then the
12 motion should be granted.

13 Here this plaintiff conceded through their silence a
14 number of things. They don't have any evidence for these
15 allegations that we were the authors, that there was a bad faith, that
16 there was defamatory conduct, et cetera. If they're silent, they
17 didn't give you any evidence whatsoever but instead conflated the
18 Rule 12 standard with the Anti-SLAPP standard.

19 Anti-SLAPP standard, of course, is a summary judgment
20 type of analysis so what we're talking about, I think as the sole
21 issue, Your Honor, for whether the Anti-SLAPP statute or the Anti-
22 SLAPP motion is -- should be granted, is the question you raised.
23 Everything else about it, including that is a meritless bad faith,
24 vexatious litigation has been established.

25 And, you know, you saw I'm sure, you know, Exhibit D,

1 Mister -- Dr. Khorsandi's Declaration where he shows this
2 threatening letter he gets, this newspaper written on it, you know,
3 prepare for bankruptcy, get your checkbook out. And that's exactly
4 what Anti-SLAPP statute is intended to prevent is someone who
5 says I'm going to use this process to harm you because you had the
6 audacity to speak out against me.

7 He sued his own patients. Now he's upped his game of
8 suing his competitors, his words, to drive them into bankruptcy
9 through the fees associated with the case and even to ruin their
10 own reputation. What is behind the negative publicity if this case
11 goes forward I think we're going to find some fingerprints all over it
12 but I will note silence in Dr. Smith's Opposition to this point about
13 this threatening letter and writing over the I think it's the RJ Article,
14 prepare for bankruptcy, get your checkbook out. Silence. Didn't
15 even bother to deny that he's the one that sent that threatening
16 letter.

17 So long way of answering this question, our statute, our
18 court is silent on the issue of what do we do where good faith is
19 established by a denial? Are you left out in the cold where you
20 have to go through what Dr. Smith is intending to do, the pain of
21 litigation and discovery, et cetera? Or is -- would our high court do
22 what California has done and say under those circumstances, that's
23 California's words, it would be a perverse effect to say that the
24 ultimate good faith actor gets less protection than someone who
25 actually caused harm, albeit privileged, in an analogous scenario?

1 So we would ask Your Honor understanding that you have
2 to predict what our Supreme Court would do on this, to say that our
3 court would expand that language to a point where they -- well,
4 because they perhaps didn't expect or anticipate -- just like
5 California didn't because they've had to address the issue through
6 its courts as well.

7 Now I would also make a point, Your Honor, that while the
8 Anti-SLAPP statute has a two-pronged approach, so too does our
9 motion, right? If we go through every element under Rule 12 itself,
10 what we find here is allegations that are nothing more but -- and I
11 mean, the best read of them it's a recital of the elements, that's it.
12 and that's certainly not good on a context of the defamation claims,
13 we have a claim at best against Dr. Khorsandi about what he was
14 saying to a patient, clearly a privileged communication. Six other
15 claims suing Dr. Khorsandi and the practice for -- and these all
16 these Doe defendants for what they claim one person, Dr.
17 Khorsandi's wife said, the law doesn't allow that either. That's a
18 huge overreach.

19 The concept of intentional interference with economic
20 expectancy or advantage, that's probably the furthest leap of all
21 where they say that these Yelp reviews that were taken down in one
22 day would have resulted in every person who ever read it would
23 have come to him as a patient, notwithstanding that there's a whole
24 slew of other negative reviews on Yelp about him that didn't come
25 down on that day. So there's no even factual allegation to connect

1 those types of harms.

2 And we've gone through -- in our Complaint there's a flaw
3 in every single one of these claims under Rule 12 analysis and it's
4 not a surprise. When you think about what the purpose of this
5 Complaint was it was to harass, it was to cause pain to Dr.
6 Khorsandi, it wasn't really for the litigation of aggrievance. It was
7 to cause pain. We know that from the article that he sent him. So
8 whether it be under the Anti-SLAPP statute or Rule 12, we'd ask
9 Your Honor not to allow this to go any further.

10 THE COURT: I got to -- on the Rule 12, I'll be honest with
11 you, I mean, I agree with you that the Complaint's pretty general --

12 MR. PISANELLI: Yeah.

13 THE COURT: -- I mean, but I'm not sure I necessarily
14 agree that for purposes of a Motion to Dismiss that that's
15 appropriate here. I mean, in large part, you know, this looks more --
16 what you're arguing as a summary judgment and that they have no
17 evidence that your client's made this -- state these -- these
18 statements. I'm just not sure that that's -- that, you know, at this
19 point with a Motion to Dismiss that that on a Rule 12 basis that
20 applies.

21 I'm more interested on the idea that this falls within the
22 SLAPP because --

23 MR. PISANELLI: Sure.

24 THE COURT: -- I tend to agree, you know, if you look at it
25 and then the -- if you establish by a preponderance of the evidence

1 that the claim is based on a good faith communication in
2 furtherance to right to petition or right to free speech, you know, I
3 don't know if there's truly a preponderance of the evidence there
4 yet to establish -- that the defense has established between the -- I
5 mean, I'm -- I'll be frank I'm really -- I'm anxious to hear what I
6 missed because I -- other than the posts show they came from Las
7 Vegas and reference your client, I'm not sure what evidence is out
8 there that they made this.

9 MR. PISANELLI: Yeah and I think, Your Honor,
10 respectfully you gave them a little more benefit of the doubt than
11 even their Complaint said. I mean, they said that the posts came
12 from a place in the United States where the Khorsandis are located
13 so that's a big geographical spot on the planet that they say you're
14 somewhere in this country and we think these posts came from this
15 country. That's the totality of the allegations in there, you know?

16 Setting aside the flawed analysis and missing allegations
17 by holding one party, Dr. Khorsandi, trying to hold him liable for a
18 statement they alleged made by [indiscernible], the law doesn't
19 allow that. They don't have the necessary allegations there.

20 I would -- you know, I understand it's probably a largely
21 an academic analysis because under Rule 12 I have a very thin
22 argument to say that they shouldn't get a chance to replead first
23 time out of the gate. And if they're willing to plead without any
24 knowledge, just saying we need discovery to find it, I have no doubt
25 then they'll put in some baseless claim that Dr. Khorsandi, you

1 know, helped co-author it or something just to get over this Rule 12
2 motion and I get that.

3 But the flaws associated with the other claims, the
4 missing elements that are just not there, I just question, you know,
5 how far can they go when we know -- I'm asking Your Honor to
6 filter what they're doing through this threatening letter that's
7 attached to Dr. Khorsandi's Declaration. That's really -- I mean, it's
8 shocking bad faith if that's what Dr. Smith is up to here. And I'd
9 hate to see him succeed by being able to inflict that harm
10 associated with the discovery in a drawn-out process because he's
11 not looking to win this case, that's clear. He's just looking to hurt
12 somebody through the process.

13 And so, you know, you're right, I think you hit the nail on
14 the head from your very first question, it's an issue of what would
15 the Supreme Court do and we follow California law and say that it
16 would be perverse to allow the ultimate good faith actor no
17 protection but somebody who actually did, they get the protection
18 and I think, you know, that probably comes down to the dual
19 purpose of the Anti-SLAPP statute.

20 On the one hand it is to, like we're asking, do away with
21 meritless vexatious litigation. On the other hand it's to promote
22 people's ability to make speech, right? Free speech, protected
23 speech. And if the Supreme Court says the purpose of the statute is
24 solely the latter issue, your point's well-taken, right? We didn't
25 make that speech and so there's nothing to be promoted when we

1 didn't say it in the first place.

2 But if there's a dual purpose here, and we think there is,
3 then that vexatious litigation on matters like this should be -- should
4 encapsulate everybody who is a victim of this type of litigation and
5 we think the Supreme Court would be interested in it.

6 THE COURT: Okay.

7 MR. PISANELLI: Okay.

8 THE COURT: Thank you.

9 MR. PISANELLI: Thank you.

10 THE COURT: All right. Let me hear from the Plaintiff. I'd
11 sort of like you to deal with that initial -- I -- does the SLAPP statute
12 apply because if it applies, then I think you've got some trouble
13 with what you've alleged so far in terms of a factual basis, so --

14 MS. ARLEDGE: Yeah. Right. And it's Plaintiff's position,
15 Your Honor, that the Anti-SLAPP statute does not apply. Thankfully
16 we have a statute that gives us the step-by-step analysis that has to
17 be undertaken by the Court and the consequences depending on
18 the findings of the Court. And that's NRS 41.660.

19 And the Court really seemed to hit on our point in our
20 Opposition that these circumstances don't apply because one, the
21 only evidence we have in this case from the Defendants are the two
22 declarations of Dr. Khorsandi and his wife and those declarations
23 each say I didn't say it, I didn't write it, I'm not responsible for the
24 communication.

25 And as a threshold matter, there has to be a

1 communication that was made in good faith in furtherance of the
2 right to free speech or with an issue of public concern. That is
3 number one under 41.660.

4 Now if you have that situation subsection (a) says: The
5 person against whom the action is brought may file a special
6 Motion to Dismiss.

7 And that's what the Defendants did.

8 Our position, Your Honor, is that they are not entitled to
9 file a special Motion to Dismiss pursuant to this statute because
10 they deny making a communication at all. But let's assume for
11 purposes of discussion today that they claimed they made the
12 statement, all right? So other -- if they don't make the statement
13 we're done with the analysis. But let's assume they made the
14 statement.

15 The sec -- the next analysis it has to be undertaken is
16 subsection (3): If a special Motion to Dismiss is filed the Court shall,
17 (A), determine whether the moving party, the Defendants have
18 established by a preponderance of the evidence that the claim is
19 based on a good faith communication -- again no communication --
20 in furtherance of the right to free speech or in connection with an
21 issue of public concern.

22 So even if the Court entertains the Motion to Dismiss, they
23 have not met the first prong of the analysis that Your Honor has to
24 undertake.

25 THE COURT: Well you're saying they haven't met the first

1 prong because they're denying making --

2 MS. ARLEDGE: That's correct.

3 THE COURT: -- the communication.

4 MS. ARLEDGE: That's correct.

5 THE COURT: Okay.

6 MS. ARLEDGE: All right.

7 THE COURT: All right.

8 MS. ARLEDGE: So let's assume --

9 THE COURT: I agree if you make a assumption that they
10 did make the communication that I -- you know, since they never
11 was a client and these are representations theoretically made by a
12 client as to the incompetence of your client that they'd probably be
13 in bad faith. But they're saying they never made the
14 communications at all and so I guess the ultimate issue here is does
15 that fall within the statute. You're saying it's not -- they're pointing
16 me to California case -- I mean, do you have any thoughts on that
17 case and why that case isn't --

18 MS. ARLEDGE: Well I do have --

19 THE COURT: -- perfectly --

20 MS. ARLEDGE: -- thoughts and I -- we don't have to
21 adopt --

22 THE COURT: Because I agree with you if your clients
23 made the statement -- or not your clients, their clients made the
24 statements, or we assume their clients made the statements then
25 this isn't probably a good faith communication because they

1 weren't clients and they -- it makes a representation that they were
2 clients and received bad service.

3 So that's -- so ultimately the issue is does them denying it
4 play a -- turn on the Anti-SLAPP statute, which then would require
5 that you establish, you know, a basis belief that -- a prima facie case
6 that you have it to prevail.

7 MS. ARLEDGE: Well sure.

8 THE COURT: And at this point in time, you know, just
9 saying, you know, Yelp shows that this occurred here and it makes
10 reference to, you know, having to go to Defendant -- I'm not sure
11 rises to a level of prima facie case.

12 MS. ARLEDGE: And I would submit that they haven't
13 even gotten past the preponderance of the evidence standard to
14 even get to whether Plaintiff has -- have presented a prima facie
15 case.

16 THE COURT: I mean, they're making the statement that
17 they didn't do it. I mean, you're not giving me anything in
18 contradict --

19 MS. ARLEDGE: Trying to get there.

20 THE COURT: -- contradictory to it other -- you know, so I --
21 okay, so that -- let's cut to that.

22 MS. ARLEDGE: Sure.

23 THE COURT: What do you got in contradiction to this
24 because --

25 MS. ARLEDGE: Sure, Your Honor.

1 THE COURT: -- I mean, I --

2 MS. ARLEDGE: Okay. So -- well let's go -- so if --

3 THE COURT: Well no, wait. Before we do, what's your
4 thoughts on the -- I think it was *Morales*, the California case that
5 was cited.

6 MS. ARLEDGE: Well it's obviously a California case, it's
7 not a Nevada Supreme Court case. We don't know what the
8 Supreme Court would do. It's certainly not binding authority under
9 that circumstance.

10 But if we go on further in the statute, I think *Morales*
11 doesn't even apply and we don't even --

12 THE COURT: All right.

13 MS. ARLEDGE: -- have to discuss --

14 THE COURT: I'll let you go on.

15 MS. ARLEDGE: -- it -- and that's why --

16 THE COURT: I'm sorry.

17 MS. ARLEDGE: That's -- no, Your Honor. I'm happy to
18 answer your questions.

19 So let's assume they made the statement they have
20 established by a preponderance of the evidence the claim was
21 based on a good faith communication and then the burden
22 switches to the Plaintiff as the non-moving party to demonstrate a
23 prima facie case.

24 So, Your Honor, if we could jump ahead to subsection (4)
25 of --

1 THE COURT: Okay.

2 MS. ARLEDGE: -- the same statute which says: Upon a
3 showing by a party that information is necessary to meet or oppose
4 the burden.

5 This is much like NRCP 56 where if the opposing party
6 says they need more time to do some discovery, discovery will be
7 had prior to the granting of a summary judgment. And remember
8 this was a summary judgment standard because if this motion is
9 granted with prejudice --

10 THE COURT: I don't think --

11 MS. ARLEDGE: -- the claim is over.

12 THE COURT: I don't think it is a summary judgment
13 standard but I think the legislature changed that in 2013 when it put
14 in, you know, that moving party only has to establish by a
15 preponderance of the evidence the claim is based on good faith
16 communication.

17 At that point the burden shifts to you to demonstrate
18 prima facie evidence. I don't think it's a summary judgment
19 standard of where there is an issue of fact for the jury.

20 MS. ARLEDGE: What I meant by a summary judgment
21 standard, Your Honor, is under Rule 56, if a party asserts that they
22 need to conduct additional discovery --

23 THE COURT: Now that -- and that has crossed my mind. I
24 hadn't thought about subsection (4), but -- okay, let's go that way.

25 MS. ARLEDGE: Okay.

1 THE COURT: What discovery do you think you can do
2 which is going to raise a prima facie case that -- these comments
3 were made by the Defendant and the Defendant's wife -- or I guess
4 she's a Defendant too but I --

5 MS. ARLEDGE: Your Honor --

6 THE COURT: Defendants, plural.

7 MS. ARLEDGE: -- Plaintiffs would have not filed a
8 Complaint if they didn't have a good faith basis to believe that Mrs.
9 Khorsandi was responsible for these Yelp posts. So --

10 THE COURT: I would hope not.

11 MS. ARLEDGE: -- the discovery that would be had would
12 be with respect to some of these posts.

13 So I have three examples just to provide Your Honor. I
14 know the Complaint said within the United States, but one example
15 is going to be Toronto, Canada. We have a post from Dr.
16 Khorsandi's Instagram page dated September 8th -- excuse me,
17 September 7th, 2018 that he's in Toronto as a guest speaker at a
18 symposium. The --

19 THE COURT: September what? September 8th?

20 MS. ARLEDGE: I don't want to misspeak, I want to
21 doublecheck. September 7th.

22 THE COURT: 7th.

23 MS. ARLEDGE: 2018.

24 THE COURT: And he's in Toronto speaking?

25 MS. ARLEDGE: Yes, at the Aesthetic Experts Symposium.

1 THE COURT: That's -- all right.

2 MS. ARLEDGE: Okay.

3 MR. PISANELLI: Your Honor, for point of references this
4 actual evidence we can't read along with Counsel because I didn't
5 see any of this in the record.

6 MS. ARLEDGE: Your Honor, this is -- how -- I'm
7 explaining --

8 THE COURT: All right. I'm --

9 MS. ARLEDGE: -- the basis.

10 THE COURT: Well let me just hear what their theoretical
11 discovery plan -- if I was to go with --

12 MS. ARLEDGE: Sure.

13 THE COURT: -- subsection (4) would be.

14 MS. ARLEDGE: So --

15 THE COURT: Let me just hear that first.

16 MS. ARLEDGE: -- Cecily S. [phonetic], who we allege is
17 the alias of Mrs. Khorsandi posted a review on Yelp dated
18 September 8th, 2018 of Alo, A-L-O, Restaurant which is located in
19 Toronto, Ontario. So on the same day that Dr. Khorsandi -- within a
20 day of when Dr. Khorsandi is going to be in Toronto speaking,
21 Cecily S. is in Toronto doing a Yelp review.

22 Dr. Khorsandi posted on Instagram that he was in New
23 York, May 2nd, 2018. Cecily S. has an April 30th post where she is
24 at Dry Bar in New York, New York.

25 THE COURT: May 2nd?

1 MS. ARLEDGE: The Yelp review by Cecily S. is April 30th.
2 The date of the Instagram post that he was in New York is May 2nd.
3 So within two days.

4 THE COURT: So she does a restaurant review on May
5 30th, 2018 --

6 MS. ARLEDGE: April 30th, Your Honor, I apologize.

7 THE COURT: Oh, April 30th?

8 MS. ARLEDGE: April 30th.

9 THE COURT: Okay.

10 MS. ARLEDGE: And then on May 2nd Dr. Khorsandi is
11 posting in New York at the Regis. New York is --

12 THE COURT: Okay.

13 MS. ARLEDGE: -- the location.

14 And just the third example -- and this is not an exhaustive
15 list, I just wanted to use it to demonstrate why we need discovery.

16 The third example, on January 17th, 2018 --

17 THE COURT: January what?

18 MS. ARLEDGE: 17th.

19 THE COURT: Okay.

20 MS. ARLEDGE: 2018. Sorry strike that, 12th. January
21 12th.

22 THE COURT: Okay.

23 MS. ARLEDGE: Okay. On Dr. Khorsandi's Instagram page
24 there's a post, hashtag Dallas. We have an answer to your skincare
25 needs. Cecily S.'s Yelp page has a review -- actually three. January

1 18th, 2018, Cecily S posts about Bistro 31, which is a restaurant in
2 Dallas, Texas. She posts about the Mansion Restaurant, which is
3 another restaurant in Dallas, Texas. And the next day, January
4 19th, 2018, she posts about Uchi, U-C-H-I, which is a Japanese
5 restaurant located in Dallas, Texas.

6 And Your Honor, those are just three circumstances where
7 the person posting as Cecily S. is in the same city as Dr. Khorsandi,
8 as posted on his social media. So how do we know that Cecily S. is
9 Dr. Khorsandi's wife? We have to do discovery.

10 THE COURT: All right. So what --

11 MS. ARLEDGE: We need to know --

12 THE COURT: -- gets back -- what's -- I'm -- if I find -- I
13 mean, my reading of the statute, if I find this falls within the SLAPP
14 statute, I do have the authority under (4) to allow a limited
15 discovery for the purpose of ascertaining such information. So this
16 isn't one where we get to -- once I find it, isn't one where we get to
17 do, you know, months and months of discovery work, you know?
18 Limited discovery for a plan. So tell me what limited discovery in a
19 short period of time do you want to do in order to show that Cecily
20 S. is either doc -- the doctor or the wife?

21 MS. ARLEDGE: We need to subpoena records to
22 determine the IP address and the email account that created the
23 Cecily S. Yelp review. That will likely require a subpoena to Yelp,
24 probably a Motion for a Protective Order, and some follow-up with
25 respect to that.

1 We would like to take depositions and we're willing to
2 limit the depositions, initially, of Dr. Khorsandi and Mrs. Khorsandi
3 with respect to this issue. We would also like to investigate their
4 records, their travel records, their spending records to prove that
5 they were both in the city that Dr. Khorsandi posted he was in,
6 pursuant to his own Instagram page.

7 Finally, Your Honor, we would like to retain an expert to
8 do a statistical analysis on what the chances are that Cecily S. is or
9 is not Dr. Khorsandi's wife based on the fact they're in the same
10 cities at the same time on multiple occasions.

11 THE COURT: I'm -- is there -- I assume you have some
12 basis -- I haven't thought of a basis that that would be admissible;
13 that kind of statistical analysis --

14 MS. ARLEDGE: We have the opportunity to lay a
15 foundation for that, Your Honor, yes.

16 THE COURT: All right. Well what you're talking about, if
17 you're talking doing a detailed breakdown in terms of IP addresses
18 and information, it would take an extended period of time to have
19 to be -- I don't see anything in here telling me -- I mean, whether
20 Yelp, that kind of information that you wanted to get from Yelp in
21 terms of, you know, something that would be able to be identified
22 back to them, I'm not just going to allow a fishing expedition .

23 If I did anything I might allow you to do the depositions of
24 the doctor and his wife and unless something came up there which
25 floated a greater red herring than what I'm seeing, I would tend to

1 think that we would need to -- you wouldn't have met the burden. I
2 mean, it's very clear by the statute we're talking limited discovery.
3 At this point all I can see, unless you show me something more, it's
4 allowing the deposti -- and I'll let you talk, I'm sure you want to
5 answer that. But I mean, allowing the deposition of the doctor and
6 his wife and -- but -- all right, anyway, what about the -- anything
7 you want to add in terms of -- you are winning on the general Rule
8 12 Motion to Dismiss. I am tending to think that you have probably
9 pled them with sufficiency here, but I mean, I am troubled with the
10 SLAPP. So --

11 MS. ARLEDGE: Okay. If --

12 THE COURT: -- you want to -- if you --

13 MS. ARLEDGE: If I can just --

14 THE COURT: You want to stop while you're ahead on
15 those?

16 MS. ARLEDGE: Probably but --

17 THE COURT: Okay.

18 MS. ARLEDGE: -- to circle back to some of your
19 comments regarding the Anti-SLAPP motion --

20 THE COURT: Okay.

21 MS. ARLEDGE: -- if we are potentially going to be able to
22 depose Dr. Khorsandi and his wife, limited written discovery would
23 be appropriate to allow us to gather records that we could then
24 examine those two witnesses on with respect to these issues. So I
25 just wanted to add that.

1 And again, just not to beat a dead horse but Your Honor,
2 it's our position that the Anti-SLAPP statute doesn't even apply. We
3 don't even get --

4 THE COURT: Well I'm not --

5 MS. ARLEDGE: -- to this analysis --

6 THE COURT: -- I haven't made a decision. I am --

7 MS. ARLEDGE: All right.

8 THE COURT: -- going to end up taking this under
9 advisement and going back and taking a look at the California case
10 a little bit more closely and this -- and the statute. But I'm just
11 asking -- like I said, the statute seems pretty clear. I can allow
12 limited discovery but an emphasis on limited means that we're --
13 you know, you need to have something that you feel is going to,
14 you know, pinpoint it and at this moment I'm sort of getting --
15 hearing that it's a guess that you're going to do it.

16 I mean, I -- like I said, I can see maybe allowing the depos
17 of the doctor and his wife but the rest of it seems like sort of a shot
18 in the dark to see if something pops up and so I'm hesitant on that.

19 MS. ARLEDGE: I understand your position, Your Honor,
20 but the electronic evidence, the IP address information doesn't lie
21 and that's why we're looking for something that can be unrefuted
22 and it supports our position based on those three very brief
23 examples that I gave you.

24 I hear you with respect to 12(b) motion. I would just add
25 that in looking at the Complaint as a whole, there are four, almost

1 five pages of nothing but facts that are incorporated into each cause
2 of action so I believe the Complaint as a whole is pled properly, all
3 of the causes of action satisfy the Nevada pleading requirements.
4 Thank you.

5 THE COURT: I think it's -- I tend to think it satisfies
6 Nevada's liberal pleading requirements. So -- but -- and your -- like
7 I said, if you can get past the SLAPP then I obviously would have
8 more room for discovery. All right.

9 MS. ARLEDGE: All right. Thank you, Your Honor.

10 THE COURT: Thank you.

11 All right. I need it to be relatively quick.

12 MR. PISANELLI: Sure. I won't argue the Rule 12 stuff.
13 Even though by liberal we sound like we're talking Bernie Sanders
14 liberal on this type of pleading standard, but that --

15 THE COURT: He's leading --

16 MR. PISANELLI: I hear you.

17 THE COURT: -- in the polls mostly so --

18 MR. PISANELLI: I hear you.

19 THE COURT: Yeah.

20 MR. PISANELLI: So on the discovery issue, Your Honor, I
21 would say this. The -- Plaintiffs had an obligation to come forward
22 with evidence in order to support their need and what it is that was
23 the foundation, even under Rule 11, forget an Anti-SLAPP statute,
24 and they came forward with absolutely nothing. We all, and Your
25 Honor included, sat here and listening to this connect the dots

1 exercise here for the very first time, the Anti-SLAPP statute rejects
2 that type of approach.

3 But even if we did, what was the unremarkable
4 proposition that she offered? That there are Yelp reviews about a
5 plastic surgeon that occurred in the same locale one or two times in
6 relation to Dr. Khorsandi who was at plastic surgery convention or
7 speaking engagement and therefore it was his wife. I mean, that's
8 the guessing game that they just connected for you of why they
9 should get discovery and I agree with you, that's a fishing
10 expedition and it didn't come close.

11 You know, I want to argue vigorously to Your Honor that
12 they shouldn't get the deposition because we gave sworn
13 testimony and we've already denied it and they didn't give anything
14 to rebut it. But I understand, you know, declarations can and
15 many -- oftentimes need to be challenged. So if the ruling is that
16 they get a limited deposition to challenge the denials that are
17 contained in the declarations and that's it, you know, I'm hard
18 pressed to say that that's inequitable because that does limit what
19 we think the purpose of this lawsuit was in the first place, the
20 paying of expensive discovery.

21 So, you know, I don't think they've earned it. I don't think
22 they followed the rules that entitle them to it. But as I said, I hear
23 Your Honor looking for the equitable spot to land here on the
24 discovery. And if it's just those two depositions for a limited
25 amount of time, on limited subjects, the sky is not going to fall.

1 THE COURT: All right. Thank you.

2 Well like I said I'm going to take it under advisement. At
3 this point in time I'll finalize it, but I tend not to see the dismissal
4 under Rule 12, but I do have some real concerns about the
5 application of the Anti-SLAPP statute. So I'm going to go back, take
6 a look at that case again, the arguments -- and the arguments I
7 heard to make a decision whether the SLAPP statute applies.

8 If I do, I probably will lean to allow a limited discovery in
9 terms of the depositions to challenge the declarations of the doctor
10 and his wife.

11 MR. PISANELLI: Very good.

12 THE COURT: So just so you know what I'm leaning, if I
13 decide that it's equitable in that regard.

14 MR. PISANELLI: Okay. Thank you.

15 THE COURT: All right. Anything else from your side?

16 MS. ARLEDGE: No, Your Honor.

17 THE COURT: Anything else from yours?

18 MR. PISANELLI: No, Your Honor. Thank you.

19 THE COURT: All right. Both of you seemed like you're --

20 MS. ARLEDGE: Defense prepare --

21 THE COURT: -- about to say --

22 MS. ARLEDGE: -- the order --

23 THE COURT: -- something.

24 MS. ARLEDGE: Well -- oh no, you're doing a --

25 THE COURT: Yeah, I'm going to --

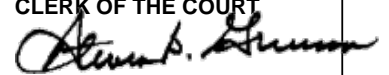
1 MS. ARLEDGE: Under advisement, so.
2 THE COURT: -- doublecheck and go back and take a look
3 at it.
4 MS. ARLEDGE: Do you anticipate an order or a minute
5 order or --
6 THE COURT: I'll do a minute order and then probably ask
7 one or the other side to prepare an order.
8 MS. ARLEDGE: All right. Very good.
9 MR. PISANELLI: Very good.
10 MS. ARLEDGE: Thank you, Your Honor.
11 THE COURT: All right.
12 MS. BUCHWALD: Thank you, Your Honor.
13 THE COURT: Thank you.
14 MR. PISANELLI: Thank you.

15 [Proceeding concluded at 11:20 a.m.]

16 * * * * *

17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability.

24
25 
Brittany Mangelson
Independent Transcriber



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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 I-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.

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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
James J. Pisanelli, Esq., #4027
Emily A. Buchwald, Esq., #13442
10 400 South 7th Street, Suite 300
11 Las Vegas, Nevada 89101

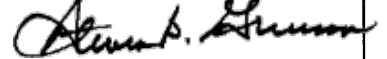
12 *Attorneys for Defendants Christopher Khorsandi,*
13 *M.D., Christopher Khorsandi, M.D., PLLC, and*
14 *Catherine Le Khorsandi*
15
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CERTIFICATE OF SERVICE

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 ORDER

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 statute 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

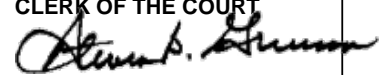
1 Cecily S. on Yelp were made at times and in locations where Defendants were
2 traveling. Consequently, the evidence Plaintiff currently possesses is arguably insufficient in the
3 Court's view to raise even a prima facie case against Defendants. NRCP 12 (d) provides that if on a
4 motion to dismiss 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 ERIC JOHNSON
22 DISTRICT COURT JUDGE
23
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 I-X,

Defendants.

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

CASE APPEAL STATEMENT

- 1 **1. Name of appellants filing this case appeal statement:**
2 Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and Catherine Le
3 Khorsandi.
- 4 **2. The judge issuing the decision, judgment, or order appealed from:**
5 The Honorable Eric Johnson, Dept. No. XX
- 6 **3. Parties to the district court proceedings:**
7 Plaintiffs: Smith Plastic Surgery, Inc. and Lane F. Smith, M.D.
8 Defendants: Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and
9 Catherine Le Khorsandi.
- 10 **4. Parties involved in this appeal:**
11 Appellants: Christopher Khorsandi, M.D., Christopher Khorsandi, M.D., PLLC, and
12 Catherine Le Khorsandi.
13 Respondents: Smith Plastic Surgery, Inc. and Lane F. Smith, M.D.
- 14 **5. Name, law firm, address and telephone number of all counsel on appeal:**
15 Counsel for Plaintiffs/Appellants:
16 James J. Pisanelli, Esq., Bar No. 4027
17 Emily A. Buchwald, Esq., Bar No. 13442
18 PISANELLI BICE PLLC
19 400 South 7th Street, Suite 300
20 Las Vegas, Nevada 89101
21 Telephone: 702.214.2100
22 Facsimile: 702.214.21012
23 Counsel for Defendants/Respondents:
24 Anthony P. Sgro, Esq., Bar No. 3811
25 Jennifer Willis Arledge, Esq., Bar No. 8729
26 Colleen N. Savage, Esq., Bar No. 14947
27 SGRO & ROGER
28 720 South 7th Street, Third Floor
 Las Vegas, Nevada 89101
 Telephone: 702.384.9800
 Facsimile: 702.665-4120
- 26 **6. Whether appellant is represented by appointed or retained counsel in the district
27 court:**
28 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

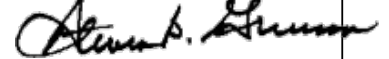
*Attorneys for Defendants Christopher Khorsandi,
M.D., Christopher Khorsandi, M.D., PLLC, and
Catherine Le Khorsandi*

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



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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 I-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**

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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

16
17 *Attorneys for Defendants Christopher Khorsandi,*
18 *M.D., Christopher Khorsandi, M.D., PLLC, and*
19 *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

CLARK COUNTY, NEVADA

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

Case No. A-19-804819-C

Dept. No. XX

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 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)**

Defendants.

INTRODUCTION

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

DISCUSSION

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


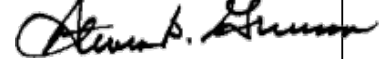
20 
21 ERIC JOHNSON
22 DISTRICT COURT JUDGE
23
24

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
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 I-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.

PISANELLI BICE
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

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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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

CLARK COUNTY, NEVADA

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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 ERIC JOHNSON
22 DISTRICT COURT JUDGE
23
24