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Elizabeth A. Brown
Clerk of Supreme Court

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8 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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10 LANCE GILMAN, an individual,
11 Appellant,

12 v.

13 SAM TOLL, an individual,
14 Respondent.
15

Supreme Court Case No.: 81583

Supreme Court Case No.: 81726

Supreme Court Case No.: 81874

District Court Case No.: 18TRT00001E
16

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18 **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**

19 COMES NOW the Appellant, LANCE GILMAN (hereinafter "Plaintiff"),
20 by and through his attorney, GUS W. FLANGAS, ESQ. of the FLANGAS LAW
21 GROUP, and hereby files his Response to the Court's Order to Show Cause
22 regarding Jurisdiction.

23 This Response is based upon the Pleadings and Papers on file herein, the

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1 attached Points and Authorities, and any oral argument to be made any Hearing of
2 his matter.

3 Dated this 2nd day of December, 2020.

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15 POINTS AND AUTHORITIES

16 I. 17 INTRODUCTION

18 On November 2, 2020, this Court issued an Order to Show Cause, requiring
19 the Appellant to show cause why the appeal in Docket No. 81583 should not be
20 dismissed for lack of jurisdiction. As will shown below, the Court should not
21 dismiss Docket No. 81583.

22 There are presently three Appeals pertaining to this matter. The Appeal in
23 Docket No. 81583 is from the District Court's Order granting the Respondent's
24 Anti-SLAPP Special Motion to Dismiss (hereinafter the "Dismiss Order").
25 Docket No. 81726 is an Appeal of the District Court's award of statutory damages
26 under NRS 41.670(1)(b). Docket No. 81874 is an Appeal of the District Court's
27 award of Attorney's fees.

28 As pointed out by the Court in its Order to Show Cause, the District Court
in the Dismiss Order required the Appellant to show cause by a certain date why
he should not be ordered to pay Respondent \$10,000 in statutory damages under
NRS 41.670(1)(b). In addition, the District Court in the Dismiss Order allowed

1 the Respondent to make an application to the District Court for reasonable
2 attorney's fees and costs within ten days of the date of entry of the order.

3 The issue before the Court is whether the Appeal from the Dismiss Order,
4 Docket No. 81583 is a final order for purposes of Appeal given that the District
5 Court left open the issue of statutory damages. As noted by the Court, the District
6 Court awarded these statutory damages in a subsequent Order, which is presently
7 on Appeal, Docket No. 81726.

8 As will be shown below, the Court has jurisdiction to entertain the Appeal
9 under Docket 81583. Specifically, the award of \$10,000 under NRS 41.670(b) is a
10 post-judgment issue such as attorney's fees and costs, and therefore, the Dismiss
11 Order is a final order for purposes of this Appeal.

12 Even if the Court were to dismiss Docket No. 81583, the Dismiss Order can
13 still be considered under Docket No. 81726. See Matter of Colby Gormley Irish
14 Irrevocable Tr., 461 P.3d 880 (Nev. 2020) (The appeal in Docket No. 80155 is
15 dismissed, but the challenged order may be considered in the context of the appeal
16 from the final judgment) referencing Consol. Generator-Nev., Inc. v. Cummins
17 Engine Co., 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

18 **II.** 19 **ARGUMENT**

20 [The] Court has appellate jurisdiction to review decisions of the district
21 courts. Brown v. MHC Stagecoach, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013)
22 citing Nev. Const. art. 6, § 4. But [the] Court's appellate jurisdiction is limited,
23 Valley Bank of Nev. v. Ginsburg, 110 Nev. 440, 444, 874 P.2d 729, 732 (1994),
24 and [it] may only consider appeals authorized by statute or court rule. Brown, 129
25 Nev. at 345, 301 P.3d at 851 citing Taylor Constr. Co. v. Hilton Hotels Corp., 100
26 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). If the order constitutes a final
27 judgment, then it is substantively appealable under NRAP 3A(b)(1) (permitting an
28 appeal from a final judgment in a civil action). Id.

1 The finality of an order or judgment depends on “what the order or
2 judgment actually does, not what it is called.” Valley Bank of Nev., 110 Nev. at
3 445, 874 P.2d at 733. To be final, an order or judgment must “dispose [] of all the
4 issues presented in the case, and leave[] nothing for the future consideration of
5 the court, except for post-judgment issues such as attorney's fees and costs.”
6 Brown, 129 Nev. at 345, 301 P.3d at 851 citing Lee v. GNLV Corp., 116 Nev.
7 424, 426, 996 P.2d 416, 417 (2000). In Lee, the Court stated:

8 We thus found labels to be inconclusive when determining finality;
9 instead, we recognized that this court has consistently determined the
10 finality of an order or judgment by what it substantively
11 accomplished. (Citations Omitted); see also Bally's Grand Hotel v.
12 Reeves, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996) (“ ‘This
13 court has consistently looked past labels in interpreting NRAP
3A(b)(1), and has instead taken a functional view of finality, which
seeks to further the rule's main objective: promoting judicial economy
by avoiding the specter of piecemeal appellate review.’ ”) (Citation
omitted).

14 Lee, 116 Nev. at 427, 996 P.2d at 418.

15 The question then becomes whether the award of up to \$10,000 as provided
16 in NRS 41.670(1)(b) is a post-judgment issue such as attorney's fees and costs.¹
17 To answer this question requires an analysis of NRS 41.670. NRS 41.670 states in
18 pertinent part as follows:

19 1. If the court grants a special motion to dismiss filed pursuant to
20 NRS 41.660:

21 (a) The court shall award reasonable costs and attorney's fees to
22 the person against whom the action was brought, except that the court
23 shall award reasonable costs and attorney's fees to this State or to the
24 appropriate political subdivision of this State if the Attorney General,
the chief legal officer or attorney of the political subdivision or
special counsel provided the defense for the person pursuant to NRS
41.660.

25 (b) The court may award, in addition to reasonable costs and
26 attorney's fees awarded pursuant to paragraph (a), an amount of up to

27 ¹ The undersigned counsel has been unable to find any case law on point pertaining to the
28 award of \$10,000 under NRS 41.660(b).

1 \$10,000 to the person against whom the action was brought.

2 (c) The person against whom the action is brought may bring a
3 separate action to recover:

4 (1) Compensatory damages;

5 (2) Punitive damages; and

6 (3) Attorney's fees and costs of bringing the separate
7 action.

8 At the outset, it is important to note that the award of up to \$10,000
9 pursuant NRS 41.670(1)(b) is not identified as any specific type of award. The
10 statute is silent on the matter. Just like an award of any attorney's fees and costs,
11 the award of \$10,000 can only be addressed after a court grants a special motion to
12 dismiss filed pursuant to NRS 41.660. See NRS 41.670(1). It is clearly a
13 post-judgment issue.² As stated above, the Dismiss Order also gave the
14 Respondent a certain time frame to file a motion for attorney's fees and costs.

15 The question then becomes how you classify the \$10,000 award. The
16 answer is that it is similar to an award of attorney's fees and costs, and therefore,
17 makes the Dismiss Order a final order for purposes of this Appeal.

18 This conclusion is based upon further analysis of NRS 41.670. Of
19 particular import, NRS 41.670(1)(c) provides for a separate action for
20 compensatory damages and punitive damages. It then follows that the \$10,000
21 award cannot be for compensatory damages and punitive damage. See Harvey v.
22 State, 136 Nev. Adv. Op. 61, 473 P.3d 1015, 1019 (2020) ([The Court] follows
23 "the maxim 'expressio unius est exclusio alterius,' the expression of one thing is
24 the exclusion of another." Additionally, [the Court] construes the words in a
25 statute as a whole, such that no words or phrases become superfluous or nugatory.

26 ² A special motion to dismiss brought pursuant to SLAPP functions like summary judgments
27 motions procedurally. Coker v. Sassone, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). The granting
28 of a Motion for Summary Judgment is a final appealable order, which is directly appealable pursuant
to NRAP(3)(b)(1).

1 Harvey, 136 Nev. Adv. Op. 61, 473 P.3d at 1019.

2 Even taking the functional view of finality as enunciated above in Lee, it is
3 apparent that the award of up to \$10,000 provided for under NRS 41.67)(1)(b) is
4 an additional post judgment issue similar in scope to attorney's fees and costs.
5 Because it is similar in scope to attorney's fees and costs, the Dismiss Order is a
6 final order that disposes of all the issues presented in the case, and leaves nothing
7 for the future consideration of the court. Therefore, the Court should not dismiss
8 Docket No. 81583 because it has jurisdiction to hear it.

9
10 **I.**
CONCLUSION

11 Based upon the foregoing, the Court should not dismiss Docket No. 81583
12 because it has jurisdiction to hear it. The award of up to \$10,000 as provided for
13 in NRS 41.670(1)(b) is a post-judgment issue much like an award of attorney's
14 fees and costs and therefore, the Dismiss Order is a final appealable order for
15 purposes of this Appeal.

16 Should the Court decide to dismiss Docket No. 81583 for lack of
17 jurisdiction, then the Order entered on July 29, 2020, awarding the statutory
18 damages would be the final appealable order. As stated by the Court in its Order
19 to Show Cause, the Dismiss Order would and should be challenged as an
20 interlocutory order within the Appeal from the order awarding the statutory
21 damages.

22 Respectfully submitted this 2nd day of December 2020.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the FLANGAS LAW GROUP, and
3 that on the 2nd day of December, 2020, I served a true and correct copy of the foregoing

4 **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** as indicated below:

5 X By depositing the same in the United States mail, first-class, postage prepaid, in a
6 sealed envelope, at Las Vegas, Nevada pursuant to NRCP 5(b) addressed as
7 follows below

8 By facsimile, pursuant to EDCR 7.26 (as amended)


9 By receipt of copy as indicated below

10 By submitting electronically for filing and/or service with the Eighth Judicial
11 District Court's e-filing system and served electronically in accordance with the e-
12 service list to the following email addresses to the following party(ies):

13 John L. Marshall
14 570 Marsh Avenue
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