IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRA KASSEE BULEN, an individual, Appellant, vs. ROB LAUER, an individual; and STEVE SANSON, an individual, Respondents.	**Supreme Court Case No. 81854** **APPEAL** District Court Case No. A-18-784807-C

RESPONDENTS' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record hereby certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

The Respondent Rob Lauer is an individual, so there are no parent corporations or publicly held companies to disclose. The Respondent Steve Sanson is an individual, so there are no parent corporations or publicly held companies to disclose.

Respondents Lauer and Sanson were previously represented by Kory L. Kaplan, Esq., of Kaplan Cottner.

Dated this 27th day of May, 2021.

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I. STATEMENT OF THE CASE

This matter comes to the Nevada Supreme Court on an Appeal of a District Court Order granting a Special Motion to Dismiss. Respondents Rob Lauer and Steve Sanson, both journalists with digital presence, published statements about Appellant Lawra Kassee Bulen (hereinafter "Kassee Bulen," or "Bulen") which became the subject of Appellant Bulen's Complaint against Lauer and Sanson for defamation (and related claims). Lauer and Sanson contended the Complaint was a SLAPP suit designed to punish them for exercising their right to free speech. Accordingly, they brought their Special Motion to Dismiss under the anti-SLAPP statute, NRS 41.660, which motion the District Court granted on August 21, 2020. Bulen appealed that ruling.

II. STATEMENT OF FACTS[1]

Appellant's Appendix, comprised of only one volume, is cited herein as "AA:V1-xx." Respondents' Appendix, comprised of only one volume, is cited herein as "RA:V1:xx."

[1] Respondents provide their own Statement of Facts because Appellant's "Statement of Facts" fails to contain even a single citation to the record, in derogation of NRAP 28(e)(1), and omitted key facts necessary for this Court's just determination.

A. The Publications at Issue

There are three publications that are the subject of this Appeal:

(1) "Kassee Bulen, Political Gypsy," (hereinafter the "Gypsy" article) (AA:V1:73-74) (containing five (5) statements at issue, discussed below);

(2) "Kassee Bulen Under Investigation After Being Charged With Ethics Violations In Complaint Filed With GLVAR," (hereinafter the "Ethics" article) (AA:V1:71-072); and

(3) "Kasee Bulen Attacks President Trump" (hereinafter the "Trump" video) (AA:V1:60) (screen shot of the video, prepared by Lauer, and published by Sanson on his Facebook page) (which Appellant did not include in the Appendix).

B. Facts Regarding the "Gypsy" Article

Journalist Sanson wrote about the conduct of Appellant Bulen in his "Gypsy" article, published August 8, 2018. AA:V1:73. Then Journalist Rob Lauer then re-published the "Gypsy" article on Facebook. AA:V1:100.

Business license Statement: The Gypsy article stated that Bulen Strategies was not licensed to do business in the State of Nevada, or in Clark County. AA:V1:74. This was a truthful statement, because Bulen Strategies was merely a fictitious business name that Lawra Bulen was using, and this fictitious name was not separately licensed with the Nevada Secretary of State. AA:V1:42

"Assault" Statement: The Gypsy article stated that Bulen had been convicted of Assault. Bulen does not dispute that fact. AA:V1:74.

"Chased Out" Statement: The Gypsy article presented Respondents' opinion that Bulen has been "chased out" of various Republican groups in several states, as the stereotypical "gypsy." Bulen has herself adopted the name and is proud of being called a "gypsy," as she uses the name for her social media handle. AA:V1:103. Further, Respondents believed this opinion was based on accurate information they had received from unnamed sources. AA:V1:74.

"Extortion" Statement: The Gypsy article stated that Bulen had extorted money from married men. Respondents received this information from an unnamed source, and they had no knowledge that this statement was false, if it was false. AA:V1:74.

"Serious Questions" Statement: Finally, the Gypsy article gave the opinion that people should have "serious questions' whether Bulen was qualified to serve as a campaign manager. AA:V1:74.

C. Facts Regarding the "Ethics" Article

Journalist Steve Sanson wrote about the conduct of Appellant Bulen in his "Ethics" article, published August 13, 2018 (AA:V1:061;117) and shared by Lauer on Facebook. (AA:V1:101). In this "Ethics" article, Sanson stated that an ethics complaint had been filed against Bulen with the GLVAR. Sanson included a

redacted copy of the ethics complaint in his "ethics" article. AA:V1:61. Further, in his Special Motion to Dismiss, he gave an Affidavit stating that his "ethics" article was truthful, or made without knowledge of its falsity, or mere opinion. From these facts it is apparent that Sanson received the ethics complaint from an unknown source.

Bulen's counsel acknowledged that the ethics complaint existed because he admitted that Bulen had been investigated ("interviewed") by GLVAR regarding this ethics complaint. RA:V1:10 (Tr. of hearing on October 6, 2020 (Lauer's and Sanson's motion for attorneys' fees, before the District Court – admittedly a statement that was made after the Order granting the Special Motion to Dismiss) ("She was interviewed and talked with GALVAR" [sic]).

D. <u>Facts Regarding the "Trump" Article</u>

Reporter Lauer interviewed Appellant Bulen on video with her consent, (AA:V1:-101) which video was edited by Lauer and published by Sanson. AA:V1:-60. (App. Brief at 16). Bulen does not dispute that she made derogatory statements about Trump in the video. (App. Brief at 16). As any reporter would do, Lauer edited the video; he presented portions dealing with Bulen's views on Trump. (App. Brief at 16). Lauer provided his Affidavit with the Special Motion to Dismiss attesting that the information and statements in the video were truthful, or made without knowledge of their falsity, or opinions. (AA:V1:-101).

E. The Complaint and Special Motion To Dismiss

Appellant Bulen filed her Complaint against Respondents on November 20, 2018, on the overall theory that Respondents' articles contained false statements. AA:V1:-001.

Respondents filed their Special Motion to Dismiss on July 20, 2020, seeking to dismiss the entire Complaint. (AA:V1:-78).

F. District Judges' Order Granting Special Motion To Dismiss

By Order dated August 21, 2020, the District Court found that Respondents met their burden of proof, by a preponderance of the evidence, on the first prong of the anti-SLAPP test, holding:

> All of Plaintiff's causes of action in the Complaint are based upon **protected speech** by Defendants as the underlying conduct central to each of the causes of action are **good-faith communications**. . . . Defendants have satisfied their burden under the first prong of the anti-SLAPP analysis as they have demonstrated that their statements were either truthful or made without knowledge of their falsity, the statements concern matters of **public concern**, and the statements were made in a public forum.

Bulen v. Lauer, Nev. Dist. Ct., Case no. A-18-784807-C; 2020 Nev. Dist. LEXIS 583 at *4-5 (August 21, 2020) (Emphasis added).

The District Court then held that:

> [T]he burden shifts to Plaintiff to show 'with prima facie evidence a probability of prevailing on the claim." . . . . The District Court further held: "In reviewing Plaintiff's probability of prevailing on each of her claims arising from protected good-faith communications, **Plaintiff has not shown minimal merit.**

Id at *5. (Emphasis added).

The District Court granted the Special Motion to Dismiss. *Id.*

III. STANDARD OF REVIEW

The Nevada Supreme Court reviews a District Court's grant of an anti-SLAPP motion to dismiss *de novo*. *Abrams v. Sanson*, 136 Nev. Adv. Rep. 9, 458 P.3d 1062, 1065 (2020).

IV. SUMMARY OF ARGUMENT

Lauer and Sanson should prevail and the District Court should be affirmed because they engaged in good faith communications in furtherance of the right to free speech in direct connection with issues of public concern; and Bulen failed to meet her burden of showing a probability of prevailing on her claims. NRS 41.660(3)(b).

Appellant Bulen does not challenge that Lauer and Sanson's public statements were made in direct connection with an issue of public concern made in a public forum.

All of Lauer and Sanson' statements were good faith communications because they were either truthful, or made without knowledge of falsity, or mere opinion speech. Lauer's and Sanson's opinion speech cannot be classified as false, and retains its character as a good faith communication. *See Pegasus v. Reno Newspapers,* 118 Nev. 706, 714 (Nev. 2002).

In the "Gypsy" article, Lauer and Sanson correctly stated as a matter of both fact and opinion that Bulen Strategies did not have a license to do business in Nevada or Clark County (AA:V1:073)– because Bulen Strategies was a fictitious business name used by Lawra Bulen. (AA:V1:42). If a Fictitious Business Name filing is the equivalent as a license, then Lauer and Sanson were simply mistaken as to this legal interpretation, and such mistake is not defamation.

In the "Gypsy" article Lauer and Sanson correctly stated that Bulen had been convicted and sentenced for assault (AA:V1:73) – which fact Bulen did not dispute.

In the "Gypsy" article Lauer and Sanson gave their opinions that Bulen had been "chased out" of Republican groups in more than one state, and moved around like a stereotypical "gypsy." (AA:V1:73). Bulen embraced the term "gypsy" and used it as her social media name. (AA:V1:103). Further Bulen did not present any evidence from any Republican groups to dispute the opinions that she was chased out of Republican groups or states.

In the "Gypsy" article Lauer and Sanson made a statement that Bulen has extorted money from married men (AA:V1:74), based upon "people [they] spoke with directly." Id. There was no evidence that Lauer and Sanson believed this to be false, as they apparently had received the information from a protected source. NRS 49.275.

In the "Gypsy" article Lauer and Sanson gave their opinions that there are "serious questions" about Bulen's competence as a campaign manager. (AA:V1:74). The opinion speech is protected under the law.

In the "Ethics" article, Lauer and Sanson stated that some person brought an ethics complaint against Bulen with the Greater Las Vegas Association of Relators ("GLVAR"), and the GLVAR interviewed (meaning investigated) Bulen about the complaint. AA:V1:61. Bulen took issue with the statement because she was exonerated; but the fact remains there was a complaint by a member of the public, and the complaint was investigated. RA:V1:10 (Tr. of post-Order hearing where Bulen's counsel admitted an investigation). Lauer and Sanson never said and never even implied that the GLVAR found her guilty of any wrongdoing -only that there was the charge and investigation.

In the "Trump" article, Lauer and Sanson made the truthful statement that Bulen disliked Trump. AA:V1:61. To this day she has not denied that. In her Brief she makes some vague statement about how the video was edited, but does not explain how it was edited, and whether the editing gave the wrong impression on her view of Trump. App. Opening Brief at 16.

In sum, each of the statements made by Lauer and Sanson were truthful, or made without knowledge of falsity, or mere opinions.

V. ARGUMENT

A. The Anti-SLAPP Standard

Pursuant to *NRS 41.660(1)*, Nevada's anti-SLAPP statute, a defendant may file a special motion to dismiss if an action is filed in retaliation to the exercise of free speech. A Court considering a special motion to dismiss must conduct a two-prong analysis.

Under the first-prong, the defendant must prove, by a preponderance of the evidence, that the complaint is based on the defendant's "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." *NRS 41.637* identifies four types of communication that constitute a "[g]ood faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern," one of which includes a "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum." *NRS 41.637(4)*. Pursuant to *Shapiro v. Welt, 133 Nev. 35, 39-40, 389 P.3d 262, 268 (2017)*, to determine whether an issue is one of public interest pursuant to NRS 41.637(4), the district court must evaluate the issue using the following guiding principles:

> (1) 'public interest' does not equate with mere curiosity;
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;

> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people."

Id. (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc., 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)*, *aff'd*, *609 Fed. Appx. 497 (9th Cir. 2015)).*

"[A] moving party seeking protection under *NRS 41.660* need only demonstrate [by a preponderance of evidence] that his or her conduct falls within one of [these] defined categories of speech," *Coker*, 135 Nev., Adv. Op. 2, *432 P.3d at 749* (citation omitted), and that the statement is made truthfully or without knowledge of its falsehood. "If a defendant makes this initial showing, the burden shifts to the plaintiff to show with *prima facie* evidence a probability of prevailing on the claim. NRS 41.660(3)(b).

Opinion speech made on a matter of public interest in a public forum cannot be characterized as false, and is considered to be a good faith communication for purposes of this first prong of the analysis. *See Pegasus v. Reno Newspapers,* 118 Nev. 706, 714 Nev 2002.

Once the movants in a purported SLAPP suit the first prong, the burden shifts to the plaintiff to prove "with prima facie evidence a probability of prevailing on the claim." NRS 41.660(3)(b). In discussing this second prong of the analysis, Appellant Bulen recognized her high burden:

> Plaintiff must make "a sufficient prima facie showing of facts to sustain [its] **burden of demonstrating a high probability that [Lauer and Sanson] published defamatory statements** with knowledge of their falsity or while entertaining serious doubts as to their truth." [Citation omitted].

Appellant Opening Brief, at 8 (Emphasis added).

B. Appellant Does Not Dispute That Respondents' Speech Was A Matter of Public Interest In A Public Forum

Appellant has apparently conceded that Respondents' statements involve matters of public interest expressed in a public forum. Nowhere in their Opening Brief do they attack the District Court's holdings that "[t]he published articles and video were made in a public forum," and "[t]he published articles and video concern an issue of public interest as Plaintiff states in her Complaint that she is a campaign manager for Republican candidates and a professional real estate agent."

Bulen v. Lauer, Nev. Dist. Ct., Case no. A-18-784807-C; 2020 Nev. Dist. LEXIS 583 at *4 (August 21, 2020).

C. The "Gypsy" Article Was A Good Faith Communication

The District Court did not commit error under prong one in finding that Lauer and Sanson proved, by a preponderance of the evidence that their statements were either truthful, or made without knowledge of falsity, or mere opinion.

1. The "Business License" Statement

Bulen complains that the following statement is false: "But according to the Nevada Secretary of state's official website and Clark County business records Karsee Bulen's company, Bulen Strategies, is not a licensed lawful business in the State of Nevada." App. Opening Brief at 9. This is a technically truthful statement, because Bulen Strategies was merely a fictitious business name that Lawra Bulen was using (AA:V1:21), and this fictitious name was not separately licensed with the Nevada Secretary of State. AA:V1:20 (record reflecting that Lawra Kassee Bulen was individually licensed - but there is no record that her business was licensed).

Through the "Gypsy" article, Lauer and Sanson implicitly gave their opinion that Bulen Strategies should have obtained a license, and that a fictitious business name statement is not a license. Bulen did not even address these issues.

Bulen attempts a "bait and switch" to try to confuse this Court. She argues that "**Appellant** did have a lawful business license." App. Opening Brief at 9 (Emphasis added). But Appellant is "Lawra Kassee Bulen" – not "Bulen Stategies."

Accordingly, the "license" statement by Lauer and Sanson was either truthful, or made without knowledge of falsity, or mere opinion.

2. The "Assault" Statement

Bulen does not deny that she was convicted of assault and sentenced. She just didn't want anybody to know. Apparently she was able to get her conviction dismissed, and the conviction sealed. Sealed or not, a fact is a fact. There are some facts showing that Bulen had been charged and sentenced. *See* AA:V1:115 *(*a printout purporting to be a "Court Record" stating that Bulen had been "sentenced" for a "misdemeanor").

Accordingly, the District Court did not err in finding that Lauer and Sanson met their burden of proof by a preponderance of the evidence that their Assault" statement was whether truthful or made without knowledge of falsity.

3. The "Chased Out" Statement

Lauer and Sanson met their burden of proof by a preponderance of the evidence that their statements about Bulen being chased out of Republican groups in several states was either truthful, or made without knowledge of falsity, or mere opinions.

In his article "Kassee Bulen, Political Gypsy," Lauer gave the impression that Bulen travels around a lot like the stereotypical traveling "Gypsie." Appellant Bulen actually embraced that characterization, and even adopted the name "gypsy" for her

on-line presence. AA:V1:103. Her own Twitter handle is "@PoliticalGypsy1." AA:V1:103.

Lauer and Sanson stated that "Bulen has lived in at least 6 states in the past 10 years" (AA:V1:073) and was "chased out of Republican Party groups in Arizona and St. George." Appellant's Brief at 10. Lauer and Sanson each gave Affidavits attesting that their statements in the "Gypsy" article are "truthful or made without my knowledge of any falsehood." AA:V1:100. Further, Lauer and Sanson stated they relied upon "sources" for their facts. In contrast, Bulen did not cite to anything in the Appendix to rebut such statements.

The term "chased out" is obviously a statement of opinion. Bulen was not literally running done the street with Republicans on her heels. This is an opinion that she was not welcome and needed to leave the groups. This is protected opinion speech under the First Amendment.

Bulen complains that Lauer and Sanson did not have any sources, and apparently wants Lauer and Sanson to reveal their sources. But the First Amendment and NRS 49.275 protect Lauer and Sanson from having to reveal their sources to back up their opinions.

4. **The "Extortion" Statement**

Lauer and Sanson met their burden of proof by a preponderance of the evidence that their "extortion" statement was truthful, or made without knowledge of falsity, or mere opinion.

Bulen takes issue with Respondents' statement that: "according to people we spoke with directly, several married men in other states have accused Kassee Bulen of trying to extort money out of them after having an affair with them." App. Opening Brief at 11. Bulen says there were no such sources. Respondents' opinion about the accusations is protected speech under the news media privilege. *Id.* ("No reporter . . . may be required to disclose . . . the source of any information . . . in any legal proceedings."). Lauer and Sanson affirmed under penalty of perjury that their statements were either truthful, or made without knowledge of falsity, or opinions. and that covers the issue of sources for the "extort money" comment. AA:V1:100, 108. This attestation applied to the "extortion" statement in the "Gypsy" article. As such, this speech was a good faith communication.

Bulen wants to conduct discovery to try to prove that Lauer did not have any sources. But Bullen never asked the District Court for leave to conduct discovery. The District Court did not commit error by not granting relief that Bulen never asked for.

5. The "Serious Questions" Statement

Lauer and Sanson met their burden by a preponderance of the evidence that their "serious questions" statement was truthful, or made without knowledge of its falsity, or mere opinion.

Bulen takes issue with Lauer's and Sanson's statement that: Kasee Bulen's issues are raising serious questions with voters regarding Fougere's failure to vet his staff and ultimately his judgment to run such an important public office." App. Opening Brief at pp 11-12. Fougere was a political candidate for office, and Bulen was a "volunteer on his campaign." App. Opening Brief at 12. Any reasonable person would interpret Lauer's statement this way: voters should wonder whether Fougere did the right thing in letting Bulen work as a volunteer on his campaign. This is not a statement of fact. This is just an invitation for people to look into a matter for themselves. It is a statement of opinion that there might be something there.

Bulen's only defense to the "serious questions" comment is that "her role while important, was not significant enough to raise concern among voters." App. Opening Brief at 12. Whether a volunteer's role on a campaign is significant to a voter or not significant to a voter is a matter of opinion. If Bulen did have a sealed conviction, and if she had been chased out of Republican Party groups, and if she

had tried to extort money from married men, then it is obvious that at least a few voters in the public would have questions.

D. <u>The "Ethics" Article Was A Good Faith Communication</u>

Lauer and Sanson met their burden by a preponderance of the evidence that their "ethics" statement was truthful or made without knowledge of falsity.

Lauer and Sanson made the statement that "an ethics complaint was filed . . . with the Great[er] Las Vegas Association of Realtors" (App. Opening Brief at 14) and that Bulen had been under investigation for the Complaint. App. Opening Brief at 14-15. This statement was either true, or made by Lauer and Sanson without knowledge of it falsity.

Bulen's counsel admitted to the District Court that Bulen had indeed been under investigation for an ethics complaint. At a the Hearing before the District Court on Respondents' Motion for Attorney's Fees, Bulen's counsel Brandon Phillips, Esq., agreed that: "She was interviewed and talked with GLVAR." RA:V1:10 (Transcript at 10) (October 6, 2020). An interview is a subset to an investigation. If there was an investigation, then there must have been a trigger for the investigation – which could be an ethics charge by a member of the public.

E. <u>The "Never Trumper" Video Was A Good Faith Communication</u>

Lauer and Sanson met their burden by a preponderance of evidence that their "Never Trumper" video was truthful, or made without knowledge of falsity, or mere opinion.

It is undisputed that Lauer prepared a video titled: "Kassee Bulen Attacks President Trump" which was re-published by Sanson. The truth of the matter is that Bulen did indeed criticize Trump. Bulen did not deny that in the Appellant's Brief. The statement by Lauer in the title was truthful; therefor, Lauer and Sanson's speech was good faith.

In her Brief, Bulen makes some vague argument that she "never agreed' to have the video produced. App. Opening Brief at 16. But the video does exist; Bulen is indeed in the video; and Bulen is speaking in the video. Bullen does not allege that she was secretly taped or tricked. So the recording itself was not wrongful.

The video, as edited, contains Bulen's own words being spoken by her. Bulen has not identified a single statement from the video that is inaccurate. Bulen has not identified a single statement in the video that presents her in a false light. A "false light" claim requires a statement that is "highly offensive to a reasonable person." *See* Rest. (second) of Torts sec 652E (1977).

Apparently Bulen does not like that she is characterized as a "Never Trumper." But such statement might not be viewed as derogatory. Second, it is

obviously an opinion. It is merely stating the writer's opinion that he thinks Bulen either would never vote for Trump, or would never support his policies, or would never like him as a person – or something – something unknown about her feeling other than she has some kind of negative feeling about Trump. Lauer and Sanson did not convey actual facts.

Overall, the video is merely opinion speech. It was Lauer and Sanson's opinion that Bulen was critical of Trump form a few things she said, and they thought it was important for the public to have this information. This type of opinion speech cannot be false (*Pegasus v. Reno Newspapers,* 118 Nev. 706, 714 Nev 2002)) so Lauer and Sanson's communication was made in good faith.

F. <u>Bulen Failed To Prove Probability of Prevailing On Her Claims</u>

Appellant Bulen presented to this Court no analysis as to second prong of the anti-SLAPP analysis. She merely argues: "Even should the District Court, which it failed to do, found that Lauer and Sanson had satisfied their burden on Prong 1, and shifted the burden to Appellant, she set forth clear and specific evidence that would have allowed the Court to find that Appellant satisfied her burden at least to the allegations of false statements, defamation, in Article 1." App. Opening Brief at 12. Bulen's problem with this argument is that she does not tell this Court what that evidence might be.

If the evidence upon which Bulen relies on prong 2 is the same evidence she presented on prong 1, then that does not help her because Respondents' statements in Article 1 were all truthful, or made without knowledge of falsity, or mere opinions.

Further, Bulen does not even advise this Court of the application of the evidence to the elements of the various claims for relief.

1. The Defamation Claim Lacked Minimal Merit

Bulen's defamation claim lacks minimal merit because Lauer's statements of fact were true, or made without knowledge of falsity. Further, Bulen's defamation claim lacks minimal merit because Lauer's opinions are excluded from a defamation claim. *See Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1069 (2020); *Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 715 (2002).

As to any statement upon which Lauer had no knowledge of falsity, Bulen did not explain how any such statement would support any element of the claim of defamation.

2. The "Invasion of Privacy Claim: False Light" Lacked Minimal Merit

Bulen's claim of invasion of privacy/false light lacks minimal merit because Lauer and Sanson' statements were either true, or made without knowledge of the falsity, or mere opinions; and she did not show that Respondents' statements would be "highly offensive to a reasonable person" (which is what she alleged in her Complaint). AA:V1:012.

3. The Invasion of Privacy/Unreasonable Publicity Claim Lacked Minimal Merit

Bulen contends that it was an invasion of privacy for Lauer and Sanson to publish information about the Assault conviction because the conviction had been sealed. AA:V1:13. Appellant's Brief at She alleged in her Complaint: "Disclosure of these sealed records would be highly offensive and objectionable to a reasonable person of ordinary sensibilities." AA:V1:013. But Bulen did not present any evidence that the Lauer and Sanson obtained the information in any unlawful manner; and she did not provide any authority that disclosure of truthful confidential information is actionable where it is obtained lawfully.

4. The "Intentional Interference With Prospective Business Advantage" Lacked Minimal Merit

Bulen's claims of intentional interference with prospective business advantage lacks minimal merit because she did not present any evidence that Lauer intended to interfere with her business. Further, Bulen did not present any evidence that she lost business as a result of any of Lauer's statements.

5. The "Intentional Infliction of Emotional Distress" Claim Lacked Minimal Merit

Bulen's claim of intentional infliction of emotional distress lacks minimal merit because she did not show extreme and outrageous conduct beyond the bounds of decency. *See Olivero v. Lowe,* 116 Nev. 395, 398 (2000).

The same result was reached in this Court's recent decision involving the same defendant here, Steve Sanson. *See Abams, supr*a, 136 Nev. Adv. Rep. 9, 458 P.3d 1062, 1069 (2020). In Abrams this Court held that Sanson's published opinions did not demonstrate extreme and outrageous conduct beyond the bounds of decency. "Liability for emotional distress will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Abrams, supra*, 458 P.3d at 1070 (quoting *Candelore v. Clark Cty. Sanitation Dist*., 975 F.2d 588, 591 (9th Cir. 1992).

6. The "Concert of Action" Claim Lacked Minimal Merit

Bulen's claim of concert of action lacks minimal merit, just as it did in *Abrams v. Sanson, supra,* 459 P.3d at 1070, because she did not identify any agreement between Lauer and Sanson to engage in any tortious act.

G. <u>The District Court Did Not Commit Discovery Error</u>

The District Court did not err in any discovery decision because there is nothing in the record on appeal that demonstrated Bulen ever asked for discovery prior to the Order. In fact, Bulen asserts "discovery" as an issue on appeal, but then neglects to argue any standard for entitlement to discovery. For these reasons, Lauer and Sanson request this Court to strike "discover" as an issue on appeal.

There is no absolute right to conduct discovery to oppose a special motion to dismiss. This Court explained in *Abrams, supra,* 459 P. 3d at 1070 n.7: "NRS

41.660(4) also conditions discovery 'upon a showing by a party that information necessary to meet' the plaintiffs burden 'in in the possession of another party or third party.'" The burden was on Bulen to ask the District Court for the opportunity to conduct discovery, and tell the Court what was needed and why. Bulen never did this, and never asked the district court an opportunity to find out Lauer's and Sansons's sources of information. Any issue regarding discovery was waived.

Further, Bulen provided no analysis of the exception, if any, to the news shield privilege codified in NRS 49.275 – protecting the sources of journalists. This statute "confers upon journalists an absolute privilege from disclosure of their sources and information in any proceeding in order to enhance the news gathering process and to foster the free flow of information encouraged by the First Amendment to the U.S. Constitution." (Citations omitted). *Aspen Fin. Servs. V. Eighth Jud. Dist. Ct.*, 129 Nev. 878, 883 (2013).

H. Lauer and Sanson Request and Award of Attorneys Fees

Lauer and Sanson request an award of reasonable attorneys fees because Bulen violated NRAP 28e. Bule fails to cite to the record on appeal in the Appendix even once. This made it difficult to follow and analyze her argument, difficult to locate the facts that she contended to be false, and generally just extra work. Lauer and Bulen did the work for the benefit of the Court that Bulen should have done.

This took a lot of extra time and effort. Lauer and Sanson request that they be compensated by Bulen.

Lauer and Sanson further request an award of attorneys fees because Bulen made a huge misstatement of fact. Bulen contended in her Verified Complaint that she was never investigated for any ethics complaint. AA:V1:04. But her own attorney told the District Court that she was. RA:V1:10. Only one of them can be right. This discrepancy has caused Lauer and Sanson to spend extra time on this "ethics" issue, and this Appeal.

A. CONCLUSION

Lauer and Sanson respectfully request this Honorable Court to AFFIRM the Order and Judgment of the District Court on August 21, 2020, Granting Respondents' Special Motion to Dismiss.

Dated this 27th day of May, 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Respondents' Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: this Respondents' Answering Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size.

1. I further certify that this Respondents' Answering Brief complies with the page – or – type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionally spaced, has a typeface of 14 points or more and contains 5995 words; and does not exceed 30 pages.
2. Finally, I hereby certify that I have read this Respondents' Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate procedure, in particular NRAP 28e(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 27th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on May 27, 2021.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that I am not aware of any of the participants in the case that are not registered CM/ECF users.

DATED this 27th day of May, 2021.

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