

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

STEVE SANSON, AN INDIVIDUAL;  
AND ROB LAUER,  
AN INDIVIDUAL,

Appellants,

v.

LAWRA KASSEE BULEN,

Respondent.

Electronically Filed  
May 28 2021 01:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

SUPREME COURT CASE NO. 82393

Dist. Court Case No. A-18-784807-C

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**APPENDIX TO APPEAL FROM THE  
EIGHTH JUDICIAL DISTRICT COURT**

**VOLUME IV**

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**ADAM J. BREEDEN, ESQ.**

Nevada Bar No. 008768

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<b>DESCRIPTION OF DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE(S)</b>
Complaint	11/20/2018	I	ROA000001 – ROA000077
Affidavit of Service on Rob Lauer	02/26/2019	II	ROA000078
Affidavit of Service on Rob Lauer (duplicate filed)	02/26/2019	II	ROA000079
Affidavit of Service on Steve Sanson	02/26/2019	II	ROA000080
Affidavit of Service on Steve Sanson (duplicate filed)	02/26/2019	II	ROA000081
Order to Show Cause re: Dismissal	02/13/2020	II	ROA000082 – ROA000083
Defendants' Notice of Motion and Motion to Dismiss Plaintiff's Complaint; Memorandum of Points and Authorities in Support, Exhibits, Affidavit of Robert Lauer in Support	04/03/2020	II	ROA000084 – ROA000091
Plaintiff's Opposition to Defendants' Untimely Motion to Dismiss Complaint and Countermotion for Attorneys' Fees and Costs	04/20/2020	III	ROA000092 – ROA000178
Recorder's Transcript of Hearing: All Pending Motions	05/12/2020	IV	ROA000179 – ROA000186
Recorder's Transcript of Video Conference Hearing: All Pending Motions	06/23/2020	IV	ROA000187 – ROA000198
Defendants' Special Motion to Dismiss Complaint Pursuant to NRS 41.660	07/02/2020	IV	ROA000199 - ROA000242
Notice of Entry of Order Granting Defendants' Motion to Set Aside Defaults and Denying Plaintiff's Countermotion for Application for Default Judgment	07/09/2020	IV	ROA000243 – ROA000249
Notice of Non-Opposition to Defendants' Special Motion to Dismiss Complaint Pursuant to NRS 41.660	07/21/2020	IV	ROA000250 – ROA000251
Plaintiff Bulen's Opposition to Defendants' Anti-SLAPP Special Motion to Dismiss Under NRS 41.660	07/21/2020	IV	ROA000252 – ROA000345

<b>DESCRIPTION OF DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE(S)</b>
Defendants' Reply in Support of Special Motion to Dismiss Complaint Pursuant to NRS 41.660	07/28/2020	V	ROA000346 – ROA000349
Recorder's Transcript of Video Conference Hearing: Defendants' Special Motion to Dismiss Pursuant to NRS 41.660	08/04/2020	V	ROA000350 – ROA000368
Order Granting Defendants' Special Motion to Dismiss Complaint Pursuant to NRS 41.660	08/21/2020	V	ROA000369 – ROA000377
Notice of Entry of Order	08/25/2020	V	ROA000378 – ROA000388
Defendants' Motion for Attorney's Fees, Costs, and Additional Relief Pursuant to NRS 41.660 and NRS 41.670	09/01/2020	V	ROA000389 – ROA000410
Plaintiff Bulen's Opposition to Defendants' Motion for Attorney's Fees, Costs, and Additional Relief Pursuant to NRS 41.660 and NRS 41.670	09/15/2020	V	ROA000411 – ROA000420
Notice of Appeal	09/24/2020	V	ROA000421 – ROA000434
Recorder's Transcript of Video Conference Hearing: Defendants' Motion for Attorneys Fees and Costs and Additional Relief Pursuant to NRS 41.660 and NRS 41.670	10/06/2020	V	ROA000435 – ROA000446
Order on Defendants' Motion for Attorneys' Fees	12/18/2020	V	ROA000447 – ROA000452
Notice of Entry of Order	12/21/2020	V	ROA000453 – ROA000461
Case Appeal Statement	01/20/2021	V	ROA000462 – ROA000465
Notice of Appeal	01/20/2021	V	ROA000466 – ROA000467

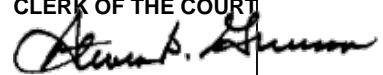
## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Breeden & Associates, PLLC, and on the 28<sup>th</sup> day of May, 2021, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

Additionally, a hard copy of the Appendix with all documents on CD-ROM was served on Respondent by placing a copy in the US Mail, postage pre-paid, on the same date to:

Brandon L. Phillips, Esq.  
BRANDON L. PHILLIPS ATTORNEY AT LAW PLLC  
1455 E. Tropicana Avenue, Suite 750  
Las Vegas, Nevada 89119  
*Attorneys for Respondent*

/s/ Kristy L. Johnson  
Attorney or Employee of  
Breeden & Associates, PLLC



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 LAWRA BULEN,  
9 Plaintiff,

CASE#: A-18-784807-C  
DEPT. VIII

10 vs.

11 ROB LAUER,  
12 Defendant,

13  
14 BEFORE THE HONORABLE TREVOR ATKIN, DISTRICT COURT JUDGE  
15 TUESDAY, MAY 12, 2020

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **ALL PENDING MOTIONS**

18 APPEARANCES: [All appearances via teleconference]

19 For the Plaintiff: BRANDON L. PHILLIPS, ESQ.

20 For Defendant:  
21 Rob Lauer IN PROPER PERSON

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24 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

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Las Vegas, Nevada, Tuesday, May 12, 2020

[Case called at 10:02 a.m.]

THE RECORDER: Page 6, A7840 -- excuse me,  
A784807, Lawra Bulen versus Rob Lauer. And we have Mr. Phillips  
on CourtCall.

THE COURT: Okay, Mr. Phillips, are you there?

MR. PHILLIPS: Good morning, Your Honor, Brandon  
Phillips on behalf of the plaintiff.

THE COURT: All right. Who do we have on behalf of the  
defendants? I see they're both pro se litigants?

THE RECORDER: We do have Rob Lauer.

MR. LAUER: Yes, Your Honor, Robert Lauer, defendant,  
on the phone.

THE COURT: All right. Is Mr. Sanson present?

MR. LAUER: No, he's not. No, he's not.

THE COURT: Okay. All right. This is defendant's  
motion -- well it's -- there's a little bit to unpack here. So, let me just  
speak to it and so this is defendant's motion to dismiss plaintiff's  
complaint along with memorandum of points and authorities and  
request for -- and this is also plaintiff filed an opposition to the  
defendant's untimely motion and a countermotion for attorney's fees  
and costs. Within the reply of defendant's -- on these motions,  
defendants requested leave of the Court or requested the Court to  
set aside the default for good cause. Am I correct, Mr. Lauer?

1 MR. LAUER: Yes, Your Honor, this case, frankly, has  
2 been, to say the least, unusual in its proceedings. The plaintiff filed  
3 a case, served us in January I believe of 2019. And since then --  
4 and I filed a motion to disqualify her attorney, who we had spoken  
5 with and met with at great lengths regarding this matter. And since  
6 then, all the judges have recused themselves. We have not had a  
7 judge in this case up until today, up until Your Honor took the case  
8 and filed a motion compelling the -- why the case should not be  
9 dismissed because nothing had been done for the last year.

10 We have prepared an Anti-SLAPP action back then. But  
11 frankly, until the motion to disqualify her lawyer was heard, I didn't  
12 take any action. We didn't take any action, because no judges had  
13 take -- had been in the case this entire time. So there's just a lot of  
14 unusual things.

15 The -- Ms. Bulen's lawyer did withdraw from the case.  
16 But again, the case -- that motion was never heard. And since --  
17 and then after that, Ms. Bulen was pro se and she attempted to file  
18 her own court default, not a -- and didn't give us notice and in my  
19 opinion, violated NRCP 60(a). And we had already paid our fees,  
20 appeared, a motion for to disqualify the lawyer. We were prepared  
21 to file an answer, were prepared to file an anti-SLAPP.

22 And frankly, since this case has been on hold for over a  
23 year, significant case law has come out of the Supreme Court  
24 including my defendants, co-defendant Steve Sanson, just in, I think  
25 it was December -- I'm sorry, January or February of this year, was

1 -- had prevailed in a similar defamation case before the Supreme  
2 Court. So, there's significant case law now. And so, we believe  
3 that we should be allowed to proceed with the motion for anti-  
4 SLAPP.

5 Her motion for default -- her default -- I'm sorry, Court  
6 default was improper, because we already did answer. There's  
7 been a lot of confusion. I think because to be perfectly honest,  
8 Your Honor, I'm a political reporter. Steve Sanson has notoriously  
9 been an agitator in the court system and a lot of judges withdrew  
10 from the case and they don't want anything to do with it, and so it's  
11 been in limbo this whole time.

12 In addition to that, the plaintiff, herself, has been arrested  
13 multiple times on DUIs and has a continuing drug and alcohol  
14 problem, which is part of our defense --

15 MR. PHILLIPS: Your Honor, all that is ridiculous --

16 MR. LAUER: [Indiscernible].

17 MR. PHILLIPS: -- that he should be even saying that. I  
18 object to all of that. That's not relevant today.

19 MR. LAUER: Well, it is relevant.

20 MR. PHILLIPS: They use this platform to slander her  
21 name again.

22 MR. LAUER: Let me finish, let me finish, because she  
23 filed -- she filed a TPO against me on January 28<sup>th</sup>, 2019 after her  
24 lawyer withdrew, claiming that I was harassing when all I was doing  
25 was calling her to discuss the case. And the judge in that TPO



1 hearing asked her about that and dismissed the -- rejected rather,  
2 the TPO. So, I'm afraid to even contact her because she filed a  
3 TPO from me simply contacting her to address the case and there  
4 was no lawyer on the side. So, this has just been an entire mess.

5 THE COURT: All right. I just want to stick to what the  
6 pleadings are and how we're going to get this case on the right  
7 track. Thank you, Mr. Lauer.

8 Let me hear from you, Mr. Phillips.

9 MR. PHILLIPS: Your Honor, this motion is completely  
10 untimely. First the motion should not be heard in case law as we  
11 stated in our opposition. The default must be set aside first. It's  
12 been over a year since the default's been entered. There was no  
13 answer ever filed, no counterclaims, nothing. They've -- they  
14 appeared in the case. He admits that they were served and a  
15 default was entered. They've not moved to set aside that default.

16 The Court set a hearing on an issue that got continued  
17 because of the Covid-19 issues. And that hearing is upcoming, but  
18 we're in the meantime we're going to be filing the amended default  
19 judgment motion. But regardless, a default is entered. They cannot  
20 file a motion to dismiss at this time.

21 Even if you consider the motion to dismiss, the motion to  
22 dismiss must be denied. It really only attacks one issue, which is  
23 the intentional infliction of emotional distress. That's the only one  
24 that's outlined in the actual body of the motion. And then in their --  
25 and the pleadings for that are well set forth. There's articulated

1 throughout the complaint their reasons for intentional infliction of  
2 emotional distress.

3 We know that they fabricated multiple online posts about  
4 Ms. Bulen. They fabricated claims that she was being investigated.  
5 We've already supported that by letters from GALVAR, who've said  
6 no there's not been any claims against her. This has been a total  
7 harassment. The only reason that they filed the motion to dismiss  
8 was then to go in, and what they did today, which is let's go in and  
9 talk about her DUIs and what a terrible person she is and all this  
10 other, which is not relevant to the case. It doesn't matter if she had  
11 a DUI or not or had multiple DUIs or not, when it comes to whether  
12 or not her causes of action in the case are valid.

13 Defendants have had full opportunity and know this case  
14 was ongoing. This Court cannot procedurally set aside the default  
15 without a proper motion. That was not the motion that they filed.  
16 They filed that in reply -- plaintiff has not had an opportunity to  
17 address the default. We did touch on it in our opposition, which is  
18 why the defendants then came back and said hey Court also by the  
19 way, since plaintiff mentioned the default how about you go ahead  
20 and set that aside. That issue was not brought before this Court  
21 properly. Plaintiff has not had an opportunity to address in detail on  
22 the default. But either -- even if you did, it's beyond a year that the  
23 default's been entered. They cannot set aside the default. There's  
24 substantial case law on that issue. Court's well aware of that.

25 This case is moving forward. The only thing left is

1 whether there should be a default judgment and to prove up the  
2 damages. That motion is going to be filed in the next week. And  
3 there's -- further there's a court hearing for an order to show cause  
4 on why one hasn't been filed. But that's going to be filed long  
5 before the hearing that's going to be upcoming in about 30 days.

6 So, because of the untimeliness of the motion and the  
7 improper request, we're entitled to attorney's fees for having to  
8 oppose it.

9 THE COURT: All right. Here's what I'm going to do. I  
10 am going to -- this is not -- Mr. Phillips is correct. The motion to  
11 dismiss is not properly in front of me because there is a default  
12 hanging out there. The defendants in their reply, address and  
13 request that it be set aside. However, Mr. Phillips has not had the  
14 opportunity to oppose that in this motion practice. So, I am going to  
15 allow -- I don't want to put the cart in front of the horse, Mr. Phillips,  
16 by -- if you go ahead and file an application for entry of default  
17 judgment when you know they intend to oppose and they want to  
18 set aside the default, I'm going to hear that first, the default issue,  
19 before there's any default judgment entered.

20 So, I am instructing the defendants if they want to avoid a  
21 default judgment entered against them, they have to first file a  
22 motion to set aside the default and cite why I should set it aside.  
23 And Mr. Phillips will have ample opportunity to thereafter oppose it.  
24 And that's how we're going to proceed at this point.

25 I'm not awarding any fees or costs at this time. And I'm

1 not going to grant the defendant's motion to dismiss. So that is --  
2 the motion -- the defendant's motion to dismiss is denied without  
3 prejudice. And I'm going to require that the defendants, if they want  
4 to challenge the default, they have to file a motion to set aside that  
5 default on or before -- I'll give them 10 days from today. What is  
6 that date, Mr. Castle?

7 THE CLERK: May 22<sup>nd</sup>.

8 THE COURT: All right. And then -- and it'd be set  
9 accordingly in normal course.

10 MR. LAUER: Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 MR. PHILLIPS: Are going to have them prepare the  
13 order, Your Honor?

14 THE COURT: Yes. I'm going to request that Mr. Lauer  
15 prepare that order and run it by --

16 MR. PHILLIPS: Thank you.

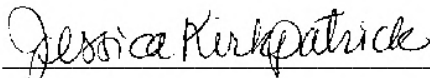
17 THE COURT: -- Mr. Phillips for approval please.

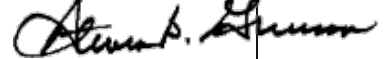
18 MR. LAUER: Thank you, Your Honor.

19 THE COURT: Okay. Thank you.

20 [Hearing concluded at 10:13 a.m.]

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

23   
24 Jessica Kirkpatrick  
25 Court Recorder/Transcriber



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 LAWRA BULEN,  
9 Plaintiff,

CASE#: A-18-784807-C  
DEPT. VIII

10 vs.

11 ROB LAUER, et al,  
12 Defendants.

13  
14 BEFORE THE HONORABLE TREVOR ADKIN, DISTRICT COURT JUDGE  
15 TUESDAY, JUNE 23, 2020

16 **RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE HEARING**  
17 **ALL PENDING MOTIONS**

18 APPEARANCES:

19 For the Plaintiff:

BRANDON L. PHILLIPS, ESQ.  
(via BlueJeans)

21 For the Defendants:

KORY L. KAPLAN, ESQ.  
(via BlueJeans)

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24 RECORDED BY: NANCY MALDONADO, COURT RECORDER  
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**INDEX**

Motion, granted  
Motion, granted

Page  
9  
10

1  
2  
3  
4  
5  
6  
7  
8  
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Las Vegas, Nevada, Tuesday, June 23, 2020

[Case called at 9:26 a.m.]

THE COURT RECORDER: Page 4, A784807, Lawra Bulen versus Rob Lauer. We have Brandon Phillips for the Plaintiff and Kory Kaplan for the Defendant.

MR. PHILLIPS: Good morning, Your Honor, Brandon Phillips.

THE COURT: Okay.

MR. KAPLAN: Good morning, Your Honor, Kory Kaplan on behalf the Defendants. Also present on the sign is Defendant Rob Lauer.

THE COURT: Okay, I want to make sure I've got all my appearances because as of right now, I have Rob Lauer as Pro Se. Is Mr. Lauer on the line?

MR. KAPLAN: Yes, Your Honor, he is.

THE COURT: Okay, Mr. Kaplan, are you representing somebody?

MR. KAPLAN: Yes, I'm representing both Defendants in the action. I filed a notice of appearance on June 19.

THE COURT: Okay. Thank you. So are you going to be the one arguing this then?

MR. KAPLAN: Yes, Your Honor.

THE COURT: Okay. Let's take the first matter first. It's Defendants' Motion To Set Aside Default and Vacate Judgment.

I'm going to start off with my editorial issue and that is, Mr.

1 Kaplan, your client Mr. Lauer and Mr. Sanson move to set aside the --  
2 the motion is entitled Motion to Set Aside Default and Vacate Judgment.

3 And then they argued under Rule 60. I think that -- well, I  
4 know, that's technically incorrect. There is no judgment. In fact, the  
5 Plaintiffs filed a Countermotion for an Application for Default Judgment.

6 They cite rule 60. That's for default judgment setting aside.  
7 They're asking to set aside a default, which is governed by NRCP 55(c).  
8 So with that in mind, please proceed.

9 MR. KAPLAN: Thank you, Your Honor. Yes, my clients filed  
10 that motion pro se. I filed an opposition to -- for a reply in support of that  
11 motion on the 19th, as well as the opposition to the Plaintiff's  
12 Countermotion for Application for Default Judgment.

13 So they are interrelated, obviously, but I will be arguing under  
14 Rule 55(c) --

15 THE COURT: All right.

16 MR. KAPLAN: -- as well as 55(a).

17 Your Honor, just a little background on this case. On  
18 November 20th, 2018, Plaintiff files her complaint against my client. My  
19 clients immediately appeared prior to the entry of a default. They filed a  
20 Motion Disqualify the Attorney for the Plaintiff. Both Defendants filed  
21 that motion.

22 Plaintiff's attorney moved to withdraw, which was granted on  
23 February 13, 2019. Subsequently all parties appeared Pro Se for over a  
24 year.

25 Also on February 13th, 2019, Defendant Rob Lauer filed an



1 Offer of Judgment. Then on February 27th, 2019, two weeks later,  
2 Plaintiff entered her defaults against both Defendants. She provided no  
3 notice of an intent to seek default and she did that on a Pro Se basis.

4 It should be noted that this case was assigned to the vacant  
5 Department 8 at the time. And in April of 2019, was reassigned to the --  
6 or sorry, vacant Department 9 and then was reassigned to the vacant  
7 Department 8. And it was not assigned to Your Honor until September  
8 30th, 2019.

9 On March 10th, 2020, so about six months later, this Court  
10 entered an Order to Show Cause regarding the dismissal for Plaintiff's  
11 failure to prosecute her case. And it was at that time that Plaintiff  
12 engaged counsel.

13 In March and April 2020, Defendant Rob Lauer filed Motions  
14 to Continue to Show Cause hearings, as well as Motions to Dismiss the  
15 Plaintiff's complaint.

16 On April 20th, Plaintiff filed an opposition to Defendants'  
17 Motion to Dismiss and a Countermotion for Attorneys' Fees and Costs  
18 alleging that Defendant Rob Lauer cannot file his Motion to Dismiss  
19 because there were currently defaults entered.

20 Our position is that the defaults were improperly entered  
21 because the Defendants had already appeared prior to the entry of  
22 defaults and no notice of intent to seek default was provided to either  
23 Defendant.

24 And then, on May 1st, 2020, Defendants filed a Reply in  
25 Support of Their Motion to Dismiss or in the Alternative a Motion to Set

1     Aside the Clerk's Default. They filed separate motions to set aside the  
2     defaults on May 22nd.

3             And then, Plaintiff filed an opposition and countermotion,  
4     which are scheduled to be heard today.

5             I obviously have appeared. I appeared four days ago and we  
6     are ready to proceed with this case, but to not do so until the defaults  
7     are set aside.

8             It is our position that, you know, courts in this jurisdiction are  
9     granted broad discretion in considering a request to set aside a default  
10    and that decision won't be overturned absent an abuse of discretion.

11            The Landreth versus Malik case that states that a party is  
12    required to determine its opponents' intent to respond before requesting  
13    a default that's specific to a default and not a default judgment.

14            So before seeking an entry of default in the case, a party must  
15    inquire into the opposing party's intent to proceed. And once the default  
16    is entered and before seeking judgment, they must also serve a  
17    seven-day notice to satisfy rule 55(b)(2).

18            There's good cause under Rule 55(c) to set aside the default.  
19    My clients have appeared in this case. The entries of default were  
20    improperly entered. No notice was given and, you know, everybody was  
21    on a Pro Se basis and it was in a vacant department at the time.

22            So you know, arguably a motion to set aside by my clients at  
23    that time would have been to no avail. We are within, you know, an  
24    early stage in this case as nothing has really occurred.

25            But parties have now engaged counsel. Like I said, Plaintiff

1 just engaged counsel in March. We're ready to proceed with this case.  
2 Defendants have meritorious defenses to the statute and as stated in  
3 part in their attempted motions to dismiss.

4 And they have counterclaims that they wish to assert. So,  
5 therefore, the default should be set aside in furtherance of Nevada's  
6 strong policy of hearing cases on the merits. And, you know, let's get  
7 this case going.

8 THE COURT: All right. Mr. Phillips, please?

9 MR. PHILLIPS: Yes, Your Honor. As you noted, the  
10 Defendants have confused the rules here. The Defendants intentionally  
11 confused the rules to further require additional briefing or argument on  
12 that today.

13 Ms. Bulen was under no requirement to provide Defendants  
14 with three days' notice. They case they cite, Landreth case, the Court is  
15 addressing attorneys and it's not addressing Pro Se parties that are  
16 representing themselves.

17 Even in the motion that they originally filed, they specifically  
18 say the rule that they're quoting, the Nevada Rules of Professional  
19 Conduct is the rule that requires a three-day notice and that is to  
20 attorneys. None of the parties at the time were attorneys. So Ms. Bulen  
21 was in her full right to file the default as she did.

22 So there's then even if she did file the default, this Court just  
23 send an -- make an analysis of whether or not good cause exists. And  
24 they have not addressed the good cause. They've not actually set forth  
25 anything addressing the good cause.

1           The Defendants, they did not dispute that they were served  
2 properly. Further, the Defendants admit to participating in the litigation.  
3 From there, the Defendants failed to satisfy the -- to set aside the  
4 default. The analysis requires Defendants to establish good cause for  
5 their more than 400-day delay in filing the motion.

6           Defendants fail to address the three-prongs set forth in the  
7 Opposition to establish good cause. Further the Reply does not actually  
8 even touch on these matters.

9           The Defendants' conduct is culpable if he has received actual  
10 notice of the filing of the action and intentionally failed to answer.

11           In the Richmore [phonetic] case that we cited, the Court found  
12 Defendants failure to answer complaint was culpable when Defendants  
13 had first filed motions, which is exactly what happened in this case.  
14 They filed a motion to dismiss the attorney. They also filed the offer of  
15 judgment.

16           Defendants actually provide no meritorious defense. There's  
17 nothing in the Motion or the Reply that talks about what defenses they  
18 would actually raise to the allegations.

19           I mean, we've provided evidence of each proof of the  
20 allegations in our Countermotion. They don't even address the  
21 Countermotion. And frankly, I mean, the Reply does very little to rebut  
22 anything that's in the Countermotion.

23           The allegations in the complaint are set forth very specifically,  
24 exactly what they've done. The Defendants' only opposition in this case  
25 is that they may have counterclaims.

1 Well, that does nothing to say that Ms. Bulen's claim that she  
2 had submitted over a year ago are not meritorious. There's nothing -- I  
3 mean, make -- if they have counterclaims, they can bring them in a  
4 separate suit as this point and we can address it then.

5 But to allow the -- this much time to go by, to allow the  
6 Defendants to then come back in without addressing any of the actual  
7 merits and the prongs that are set forth and required is an abuse of  
8 process here.

9 And so, the Defendants must have failed to actually set forth  
10 anything for this Court to understand why they delayed in filing their  
11 Motion to Set Aside the Default. Again, this is 400 days past due.

12 THE COURT: All right.

13 MR. PHILLIPS: If you want to me to address the  
14 countermotion or, yeah, the countermotion we can, but I mean,  
15 obviously, I think the Court needs to rule on the first motion.

16 THE COURT: Right, I'm going to rule on the first motion and  
17 I'm going to grant the motion and here's why. This case has languished.  
18 And it's not all because of the Defendants. The Defendants, once they  
19 were served, they in fact filed an offer of judgment.

20 They served that on the Plaintiff, who was proceeding in Pro  
21 Per Person. The Plaintiff at that point was on notice of an intent to  
22 defend.

23 And the Defendants -- the excusable neglect is the mistake.  
24 That's -- that was their mistake so to speak. They were mistaken that by  
25 filing that Offer of Judgment and their mistake of the impact of

1 Professional Rule 3.5, that they then needed notice of intent to take  
2 default, I think, constitute the excusable neglect or a mistake. That's a  
3 mistake.

4 The only reason this is now active is not because of just the  
5 Defendants' inaction. It's also the Plaintiff's inaction and that was by  
6 way of my Order to Show Cause regarding the dismissal I've had -- I had  
7 issued on February 13. That's when everyone got woken up, all right?

8 So the Defendants haven't delayed justice in this case. It's  
9 equal on both ends. I think that under Rule 55, excusable neglect  
10 mistake exists.

11 And although not perfectly spelled out in the Motion to Set  
12 Aside it -- as to a meretricious [sic] -- meritorious defense, meritorious  
13 defense, that was outlined in the Defendants' Motion to Dismiss filed on  
14 April 3 and as voiced by counsel today.

15 So I'm going to set aside the default that renders moot the  
16 countermotion for entry of default judgment. And even if we were here  
17 on the application for default judgment, the request for a million dollars  
18 certain require a prove-up, but that's a moot point.

19 I'm going to have Mr. Kaplan prepare the order setting aside  
20 then default. The Defendants have 10 days within which from today's  
21 hearing to file an answer on their behalf and then move forward with the  
22 requirements of NRCP 16.

23 MR. KAPLAN: Your Honor, just to clarify, 10 days from today  
24 or the entry of an order?

25 THE COURT: 10 days from today. We've waiting this long.

1 MR. KAPLAN: Okay, and then, Your Honor stated to file an  
2 answer, would that be any responsive pleading?

3 THE COURT: Any responsive pleading, yes.

4 MR. KAPLAN: Okay, thank you, Your Honor.

5 Motion, granted Your Honor, just for clarification --

6 THE COURT: Yes, Mr. Phillips?

7 MR. PHILLIPS: They have -- I just want to be clear on the  
8 record. Your decision today is that they did file a meritorious defense  
9 even though they addressed none of -- I mean, they didn't even mention  
10 the real estate publishing. They didn't mention any of the publishings  
11 that they've made.

12 They haven't even raised any of those in any of their  
13 arguments. They haven't addressed how those are not -- I mean, we  
14 literally have a publishing that says that there was a complaint issued by  
15 or a complaint issued to GALVAR.

16 And GALVAR literally submitting, the president submitting to  
17 Ms. Bulen a letter that says no, that's false, it's not happened, yet they  
18 published an article saying that it did. So, we have clear evidence and  
19 they provided no dispute to that, none, not a single even articulate  
20 argument against that.

21 THE COURT: I would direct you to the April 3rd, 2020 filing of  
22 the Defendants. I think they've set out the inkling of a meritorious --  
23 meritorious defense. I keep saying it wrong. And if you want to move  
24 for summary judgment down the road, that's fine, but I think it meets the  
25 standard, Mr. Phillips.

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MR. PHILLIPS: Okay, Your Honor.

THE COURT: Next --

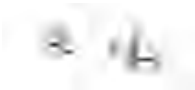
MR. KAPLAN: Thank you, Your Honor, this Kory Kaplan. I'll  
circulate a proposed order to counsel.

THE COURT: Thank you.

[Proceedings concluded at 9:40 a.m.]

\* \* \* \* \*

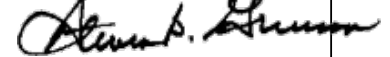
ATTEST: I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.



---

Chris Hwang  
Transcriber





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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAWRA KASSEE BULEN an individual,  
Plaintiff,

vs.

ROB LAUER, an individual, STEVE SANSON,  
an individual, and DOES I through X; and ROE  
CORPORATIONS I through X, Inclusive,  
Defendants.

CASE NO.: A-18-784807-C  
DEPT. NO.: 18  
**HEARING REQUESTED**

**DEFENDANTS' SPECIAL MOTION**  
**TO DISMISS COMPLAINT**  
**PURSUANT TO NRS 41.660**

Come now, Defendants Rob Lauer ("Lauer") and Steve Sanson ("Sanson," collectively with Lauer, "Defendants"), by and through their counsel, Kory L. Kaplan, Esq. and Kyle P. Cottner, Esq., of the law firm of Kaplan Cottner, and hereby move this Honorable Court to dismiss the claims alleged against them in the Complaint filed by Plaintiff Lawra Kassee Bulen on November 20, 2018, pursuant to Nevada's anti-SLAPP statutes and issue an award of attorney's fees and costs therefrom.

...

...

...

...

KAPLAN COTTNER  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 381-8888 Fax: (702) 382-1169

1 This Motion is made and based on the following Memorandum of Points and Authorities,  
2 the papers and pleadings already on file herein, and any oral argument the Court may permit at the  
3 hearing of this matter.

4 Dated this 2nd day of July, 2020.

5 KAPLAN COTTNER

6  
7 /s/ Kory L. Kaplan  
8 KORY L. KAPLAN  
9 Nevada Bar No. 13164  
10 KYLE P. COTTNER  
11 Nevada Bar No. 12722  
12 850 E. Bonneville Ave.  
13 Las Vegas, Nevada 89101  
14 *Attorneys for Defendants*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 Plaintiff filed her Complaint against Defendants relating to three published articles and a  
19 video interview posted online of Plaintiff. Plaintiff, in her Complaint, acknowledges that both  
20 Defendants are journalists. However, Plaintiff disputes the accuracy of their articles and alleges  
21 that Defendants edited the video interview. Because Defendants' conduct is protected free speech,  
22 anti-SLAPP ("Strategic Lawsuit Against Public Participation") laws are designed to provide for  
23 early dismissal of meritless lawsuits filed against people for the exercise of their First Amendment  
rights.

24 Coincidentally, Defendant Sanson was previously sued for almost identical causes of  
25 action related to very similar conduct (articles published on the exact same website) in *Abrams, et.*  
26 *al. v. Sanson, et. al.*, Case No. A-17-749318-C, in and for Clark County, Nevada and *Willick, et.*  
27 *al. v. Veterans in Politics International Inc., et. al*, Case No. A-17-750171-C, in and for Clark  
28 County, Nevada. There, Defendant Sanson also filed Special Motions to Dismiss under Nevada's

1 anti-SLAPP statute. In *Sanson*, the anti-SLAPP motion was granted by the Honorable Michelle  
2 Leavitt. Plaintiffs appealed the dismissal, but the dismissal was affirmed by the Nevada Supreme  
3 Court in a recent advisory opinion filed on March 5, 2020. *See Abrams v. Sanson*, 136 Nev. Adv.  
4 Op. 9, 458 P.3d 1062 (2020). In *Willick*, the Honorable J. Charles Thompson denied the anti-  
5 SLAPP motion, but the Nevada Supreme Court reversed his decision in a recent February 21, 2020  
6 opinion. 457 P.3d 970 (Nev. 2020) (unpublished).

7 Because Defendants are granted broad protections under the First Amendment and Nevada  
8 statutes concerning the journalistic freedoms and privileges as recently upheld by the Nevada  
9 Supreme Court on multiple occasions, their actions qualify as protected speech immune from  
10 liability. As such, Nevada's anti-SLAPP statutes govern. Nevada's anti-SLAPP statutes aim to  
11 protect First Amendment rights by providing defendants with a procedural mechanism to dismiss  
12 meritless lawsuits that a party initiates primarily to chill a defendant's exercise of his or her First  
13 Amendment free speech rights. Because each article and the video are true and made without  
14 Defendants' knowledge of the information therein being false, the burden shifts to Plaintiff to  
15 demonstrate prima facie evidence of a probability of prevailing on her claims. However, as in the  
16 *Sanson* case, because each claim is centered around protected free speech, Plaintiff's Complaint  
17 must be dismissed as a matter of law.

## 18 II.

### 19 STATEMENT OF RELEVANT FACTS

20 Plaintiff alleges 9 causes of action against Defendants for: (1) Defamation; (2) Defamation  
21 Per Se; (3) Invasion of Privacy: False Light; (4) Invasion of Privacy: Unreasonable Publicity Given  
22 to Private Facts; (5) Intentional Interference with Prospective Economic Advantage; (6) Intentional  
23 Infliction of Emotional Distress; (7) Negligence Per Se; (8) Concert of Action; and (9) NRS 42.005  
24 Request for Exemplary and Punitive Damages. *See generally* Complaint. Each of these causes of  
25 action arises from protected speech in the form of several published articles and a video.

26 The first article is entitled *Kassee Bulen, Political Gypsy?* ("Political Gypsy Article").  
27 Complaint, ¶ 14. The Political Gypsy Article was published by Defendant Sanson and posted on  
28 the Veterans in Politics website (<http://veteransinpolitics.org/2018/08/kassee-bulen-political->

1 [gypsy](#)). *Id.* The Political Gypsy Article was allegedly then shared by Defendants on Facebook.  
2 *Id.* Plaintiff alleges that the Political Gypsy Article is false in that it states that Plaintiff was  
3 convicted of assault and that several married men accused Plaintiff of trying to extort money out  
4 of them. *Id.* at ¶ 16. Plaintiff asserts that these allegations are false because her record was sealed  
5 with respect to the assault charge and that she has never been charged with extortion. *Id.*

6 The second article is entitled *Kassee Bulen Under Investigation After Being Charged With*  
7 *Ethics Violations in Complaint Filed With GLVAR* (“Ethics Article”). *Id.* at ¶ 17. The Ethics  
8 Article was written by Defendant Sanson and posted on the Veterans in Politics website  
9 ([http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)  
10 [with-ethics-violations-in-complaint-filed-with-glvar](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)). *Id.* The Ethics Article was then allegedly  
11 shared by Defendants on Facebook and posted in a Facebook group called Vegas Real Estate  
12 Magazine. *Id.* Plaintiff alleged that the Ethics Article is false in that it was an attack on her career  
13 and called into question her suitability as a real estate agent. *Id.* at ¶ 18. Further, the Ethics Article  
14 alleges that an ethics complaint was filed against Plaintiff and that Plaintiff represented herself as  
15 an expert in a separate article. *Id.*

16 The third instance was in the form of a video entitled *Kassee Bulen Attacks President*  
17 *Trump* (“Video”). *Id.* at ¶ 20. The Video was posted in the Facebook group entitled “Trump  
18 Victory Team.” *Id.* Plaintiff alleges that Defendant Lauer edited the Video to make it appear as  
19 though Plaintiff is unfit to run political campaigns and hurt her reputation with the Republican  
20 Party. *Id.* at ¶ 21.

21 The fourth instance was another article posted in 360 News Las Vegas (“360 Article”). *Id.*  
22 at ¶ 23. Plaintiff alleges that Defendant Lauer invented a fictitious “campaign source” so that he  
23 could attack Plaintiff’s character. *Id.*

24 . . .

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28 . . .

III.

**LEGAL ARGUMENT**

**A. Nevada’s Anti-SLAPP Statute Affords Absolute Civil Immunity for Good Faith Communications in Furtherance of the Right to Petition.**

Nevada’s anti-SLAPP statutes aim to protect First Amendment rights by providing defendants with a procedural mechanism to dismiss “meritless lawsuit[s] that a party initiates primarily to chill a defendant’s exercise of his or her First Amendment free speech rights” before incurring the costs of litigation. *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). Nevada’s anti-SLAPP statute is codified in NRS 41.635 thru NRS 41.670, inclusive. Nevada’s anti-SLAPP statutes “create a procedural mechanism to prevent wasteful and abusive litigation by requiring the plaintiff to make an initial showing of merit.” *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 757-58, 219 P.3d 1276, 1284 (2009); *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 970-71 (9th Cir. 1999) (“The hallmark of a SLAPP suit is that it lacks merit, and is brought with the goals of obtaining an economic advantage over a citizen party by increasing the cost of litigation to the point that the citizen party’s case will be weakened or abandoned, and of deterring future litigation.”). The Nevada Legislature has further “explained that SLAPP lawsuits abuse the judicial process by chilling, intimidating and punishing individuals for their involvement in public affairs.” *John*, 125 Nev. at 752, 29 P.3d 1281.

Under Nevada’s anti-SLAPP statutes, a moving party may file a special motion to dismiss if an action is filed in retaliation to the exercise of free speech. A district court considering a special motion to dismiss must undertake a two-prong analysis. First, it must “[d]etermine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of ... the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a). If successful, the district court advances to the second prong, whereby “the burden shifts to the plaintiff to show ‘with prima facie evidence a probability of prevailing on the claim.’” *Shapiro v. Welt*, 133 Nev. 35, 38, 389 P.3d 262, 267 (2017) (quoting NRS 41.660(3)(b)). Otherwise, the inquiry ends at the first prong, and the case advances to discovery.

We recently affirmed that a moving party seeking protection under NRS 41.660 need only demonstrate that his or her conduct falls within one of four statutorily defined categories of speech, rather than address difficult questions of First Amendment law. *See Delucchi v. Songer*, 133 Nev. 290, 299, 396 P.3d 826, 833 (2017). NRS 41.637(4) defines one such category as: “[c]ommunication 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.”

*Coker v. Sassone*, 135 Nev. 8, 11–12, 432 P.3d 746, 749–50 (2019).

Indeed, Defendant Sanson recently prevailed on an anti-SLAPP special motion to dismiss that was affirmed by the Nevada Supreme Court in an advisory opinion filed on March 5, 2020 in *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062 (2020). In *Sanson*, attorneys Jennifer Abrams, Esq. and Louis Schneider, Esq. were opposing counsel in a family law case. *Id.* at 1064. Attorney Schneider allegedly gave video of a closed-court hearing in that case to Sanson, president of Veterans in Politics International, Inc. (“VIPI”). *Id.* Sanson then published a series of articles on VIPI’s website (the same website at issue relevant to this Motion) concerning the judiciary and Abrams’ courtroom conduct and practices. *Id.* The articles were also sent to VIPI’s email subscribers and published through various social media outlets. *Id.* The articles are summarized as follows:

The first article, “Nevada Attorney attacks a Clark County Family Court Judge in Open Court,” included the full video of the court hearing that involved an exchange between Abrams and Judge Jennifer L. Elliott. The article also included quotations from the hearing, such as Judge Elliott noting “undue influence” and “[t]here are enough ethical problems[,] don’t add to the problem.” Sanson stated that “[i]f there is an ethical problem or the law has been broken by an attorney the judge is mandated by law to report it to the Nevada State Bar,” that there are “no boundaries in our courtroom,” and that Abrams “crosse[d] the line.”

The second article, “District Court Judge Bullied by Family Attorney Jennifer Abrams,” republished the video of the hearing after Sanson temporarily removed it following an order issued by Judge Elliott. The article reported on what had taken place and stated that Abrams “bullied” Judge Elliott, that her behavior was “disrespectful and obstructionist” as well as “embarrassing,” and that obtaining Judge Elliott’s order appeared to be an “attempt by Abrams to hide her behavior from the rest of the legal community and the public.”

In the third article, “Law Frowns on Nevada Attorney Jennifer Abrams’ ‘Seal-Happy Practices,” Sanson criticized Abrams’ practice of moving to seal records in her cases. Sanson stated that Abrams “appears” to be “seal happy”; seals her cases in contravention to “openness and transparency”; “appears” to have “sealed [cases] to protect her own reputation, rather than to serve a compelling client privacy or safety interest”; engages in “judicial browbeating”; is an “over-zealous, disrespectful lawyer[ ] who obstruct[s] the judicial process”; and has obtained an “overbroad, unsubstantiated order” that is “specifically disallowed by law.”

The fourth article, “Lawyers acting badly in a Clark County Family Court,” included a link to a similarly titled video on YouTube of a court hearing involving Abrams. Sanson stated that Abrams was “acting badly.”

1 The fifth article, “Clark County Family Court Judge willfully deceives a young  
2 child from the bench and it is on the record,” included a link to the “Seal-Happy”  
3 article about Abrams as an “unrelated story” of “how Judges and Lawyers seal cases  
4 to cover their own bad behaviors.” The article in general criticized Judge Rena  
Hughes for misleading an unrepresented child in family court. Sanson later posted  
three videos on YouTube depicting the Abrams & Mayo Law Firm’s representation  
of a client in another divorce action.

5 *Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1064-65.

6 Abrams and her law firm subsequently filed a complaint against Sanson and VIPI based on  
7 these articles and statements, alleging defamation, intentional infliction of emotional distress,  
8 negligent infliction of emotional distress, false light, business disparagement, civil conspiracy, and  
9 concert of action. *Id.* at 1065. The district court granted Sanson’s special motion to dismiss,  
10 finding that he met his initial burden because (1) the statements concerned issues of public concern  
11 relating to an attorney or professional’s performance of a job or the public’s interests in observing  
12 justice; (2) the statements were made in a public forum on a publicly accessible website, and  
13 republishing them by email did not remove them from a public forum; and (3) the statements were  
14 either true or statements of opinion incapable of being false. *Id.* The district court further found  
15 that Abrams failed to meet her burden to provide prima facie evidence of a probability of prevailing  
16 on her claims. *Id.*

17 The Nevada Supreme Court affirmed the district court’s granting of Sanson’s special  
18 motion to dismiss:

19 Abrams’ argument that some statements are false assertions of fact that impute  
20 malfeasance, such as calling Abrams an “obstructionist,” does not show that the  
21 statements lose anti-SLAPP protection, because our analysis does not single out  
22 individual words in Sanson’s statements. In *Rosen v. Tarkanian*, we held that “in  
23 determining whether the communications were made in good faith, the court must  
24 consider the ‘gist or sting’ of the communications as a whole, rather than parsing  
25 individual words in the communications.” 135 Nev. Adv. Op. 59, 453 P.3d 1220,  
26 1222 (2019). In other words, the relevant inquiry is “whether a preponderance of  
27 the evidence demonstrates that the gist of the story, or the portion of the story that  
28 carries the sting of the [statement], is true,” and not on the “literal truth of each  
word or detail used in a statement.” *Id.* at 1224 (alteration in original) (internal  
quotation marks omitted). Furthermore, in determining good faith, we consider “all  
of the evidence submitted by the defendant in support of his or her anti-SLAPP  
motion.” *Id.* at 1223. Here, the “gist and sting” of the communications—as  
demonstrated by Sanson’s declaration, emails to Judge Elliott and Abrams, and  
articles—are that Sanson believes Abrams misbehaves in court and employs tactics  
that hinder public access to courts. These constitute Sanson’s opinions that, as

mentioned above, are not knowingly false and thus satisfy the third element of protected good-faith communications.

We therefore determine that Sanson showed that his statements were either truthful or made without knowledge of their falsity. As Sanson also showed that his statements concerned matters of public concern and were made in a public forum, we conclude that he met his burden under the first prong of the anti-SLAPP analysis.

*Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d at 1068–69.

Concluding that Sanson satisfied the first prong of the anti-SLAPP analysis, the burden shifted to Abrams under prong two to demonstrate that her claims had minimal merit. *See* NRS 41.665(2) (stating that a plaintiff’s burden under prong two is the same as a plaintiff’s burden under California’s anti-SLAPP law); *Navellier v. Sletten*, 29 Cal.4th 82, 124 Cal.Rptr.2d 530, 52 P.3d 703, 712-13 (2002) (establishing the “minimal merit” burden for a plaintiff).

Reviewing Abrams’ probability of prevailing on each of her claims arising from protected good-faith communications, we conclude that she has not shown minimal merit. Abrams’ defamation claim lacked minimal merit because Sanson’s statements were opinions that therefore could not be defamatory. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (excluding statements of opinion from defamation). Abrams did not show that her intentional infliction of emotional distress (IIED) claim had minimal merit because she did not show extreme and outrageous conduct beyond the bounds of decency. *See Olivero v. Lowe*, 116 Nev. 395, 398, 995 P.2d 1023, 1025 (2000) (stating IIED claim elements); *Maduik v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (considering “extreme and outrageous conduct” as that which is beyond the bounds of decency). Sanson’s use of a vitriolic tone was insufficient to support such a claim. *See Candelore v. Clark Cty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992) (considering claim for IIED under Nevada law and observing that “[l]iability for emotional distress will not extend to ‘mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities’” (quoting *Restatement (Second) of Torts* § 46 cmt. d (1965))). As Abrams’ IIED claim lacked minimal merit and she did not demonstrate negligence, her claim for negligent infliction of emotional distress also lacked minimal merit. *See Shoen v. Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995) (allowing for negligent infliction of emotional distress if the acts arising under intentional infliction of emotional distress were committed negligently). Abrams did not show minimal merit supporting her claim for false light invasion of privacy because she failed to show that she was placed in a false light that was highly offensive or that Sanson’s statements were made with knowledge or disregard to their falsity. *See Restatement (Second) of Torts* § 652E (1977). Abrams did not show minimal merit supporting her business disparagement claim because she did not show that Sanson’s statements were false or provide evidence of economic loss that was attributable to the disparaging remarks. *See Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385-87, 213 P.3d 496, 504-05 (2009) (stating the elements for business



disparagement and explaining that the claim requires economic loss caused by injurious falsehoods targeting the plaintiff's business). Abrams did not show minimal merit supporting her claim for civil conspiracy because she did not show an intent to commit an unlawful objective. *See Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d 190, 198 (2014) (defining civil conspiracy). Lastly, Abrams did not show minimal merit supporting her claim for concert of action because she did not show any tortious act or that Sanson and Schneider agreed to conduct an inherently dangerous activity or an activity that poses a substantial risk of harm to others. *See GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P.3d. 11, 15 (2001). We therefore hold that Abrams failed to meet her burden under the second prong of the anti-SLAPP analysis.

*Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d at 1069–70.

In another recent case entitled *Veterans in Politics Int'l, Inc. v. Willick*, 457 P.3d 970 (Nev. 2020) (unpublished), Defendant Sanson was sued for, *inter alia*, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, false light, and business disparagement. In *Willick*, the plaintiff had appeared by invitation on a radio show hosted by Veterans in Politics. *Id.* at \* 1. Willick participated in the radio interview in order to discuss his views regarding Assembly Bill 140, 78th Leg. (Nev. 2015), legislation pertaining to disallowing the inclusion of veterans' disability benefits when calculating spousal support, and other topics related to veterans and family law. *Id.*

Between December of 2016 and January of 2017, Veterans in Politics published, on its website and on various social media platforms, five statements at issue in this appeal, each critical of Willick. *Id.* The five statements appeared online as follows:

[Statement 1] “This is the type of hypocrisy we have in our community. People that claim to be for veterans but yet they screw us for profit and power.” [Statement 1 included a link that redirected to audio content of Willick’s November 2015 radio interview.]

[Statement 2] “Attorney Marshall [sic] Willick and his pal convicted of sexually [sic] coercion of a minor Richard Crane was found guilty of defaming a law student in a United States District Court Western District of Virginia signed by US District Judge Norman K. Moon.” [Statement 2 included a link to news articles regarding Crane’s conviction of sexually motivated coercion of a minor, this court’s order suspending Crane from the practice of law, and an order from the United States District Court for the Western District of Virginia granting summary judgment against Willick and Crane, in part, as defendants in a defamation action.]

[Statement 3] “Would you have a Family Attorney handle your child custody case if you knew a sex offender works in the same office? Welcome to The Willick Law Group.” [Statement 3 included a link to an online review site discussing Crane’s

1 legal services, this court's order denying Crane's request for reinstatement to the  
2 practice of law, and an article authored by Willick and Crane stating that Crane  
was, at the time the article was published, an attorney in Willick's firm.]

3 [Statement 4] "Nevada Attorney Marshall [sic] Willick gets the Nevada Supreme  
4 Court [d]ecision .... From looking at all these papers it's obvious that Willick  
5 scammed his client, and later scammed the court by misrepresenting that he was  
6 entitled to recover property under his lien and reduce it to judgement [sic] .... He  
7 did not recover anything. The property was distributed in the Decree of Divorce.  
8 Willick tried to get his client to start getting retirement benefits faster. It was not  
with [sic] 100,000 [sic] in legal bills. Then he pressured his client into allowing him  
to continue with the appeal." [Statement 4 included a link redirecting to this court's  
opinion in *Leventhal v. Black & Lobelia*, 129 Nev. 472, 305 P.3d 907 (2013),  
discussing the adjudication of an attorney's charging lien.]

9 [Statement 5] "Attorney Marshall [sic] Willick loses his appeal to the Nevada  
10 Supreme Court." [Statement 5 included a link to this court's disposition of *Holyoak*  
11 *v. Holyoak*, Docket No. 67490 (Order of Affirmance, May 12, 2016), a case in  
which Willick represented the respondent, for whom this court affirmed a  
distribution of community property.]

12 *Id.* at \*1-2.

13 Veterans in Politics filed a special motion to dismiss Willick's claims pursuant to Nevada's  
14 anti-SLAPP. *Id.* at \*1. The district court denied the anti-SLAPP motion, concluding that Veterans  
15 in Politics failed to establish by a preponderance of the evidence that the statements it published  
16 (1) concerned an issue of public interest, and (2) were truthful or made without knowledge of their  
17 falsehood. *Id.* Veterans in Politics timely appealed. *Id.*

18 The Nevada Supreme Court reversed the district court's order, holding that Veterans in  
19 Politics "showed, by a preponderance of evidence, that each statement was a communication made  
20 in direct connection with an issue of public interest, and met the initial threshold required to invoke  
21 anti-SLAPP protection." *Id.* at \*8.

22 Similarly, Plaintiff here alleges causes of action against Defendants for similar conduct on  
23 similar public forums. *See generally* Complaint. Plaintiff has alleged the following causes of  
24 action: (1) Defamation; (2) Defamation Per Se; (3) Invasion of Privacy: False Light; (4) Invasion  
25 of Privacy: Unreasonable Publicity Given to Private Facts; (5) Intentional Interference with  
26 Prospective Economic Advantage; (6) Intentional Infliction of Emotional Distress; (7) Negligence  
27 Per Se; (8) Concert of Action; and (9) NRS 42.005 Request for Exemplary and Punitive Damages.  
28 *Id.* Each of these causes of action arises from protected speech in a protected forum regarding a

1 person of public interest.

2 For the reasons set forth in this Motion and the similarity of allegations alleged against  
3 Defendants Lauer and Sanson as the allegations against Sanson in his most recent anti-SLAPP  
4 motions affirmed by the Nevada Supreme Court, the Complaint must be dismissed as a matter of  
5 law.

6 **1. The communications were made in a public forum.**

7 Cases construing the term “public forum” have noted that the term “is traditionally defined  
8 as a place that is open to the public where information is freely exchanged.” *Damon v. Ocean*  
9 *Hills Journalism Club*, 85 Cal.App.4th 468, 475, 102 Cal.Rptr.2d 205) (2000).<sup>1</sup> “Under its plain  
10 meaning, a public forum is not limited to a physical setting, but also includes other forms of public  
11 communication.” *Id.* at 476. Thus, the court in *Damon* held that a homeowners' association  
12 newsletter was a public forum because it was “a vehicle for open discussion of public issues and  
13 was widely distributed to all interested parties....” *Id.* at 478.

14 Further, as to the video, a widely disseminated television broadcast was “undoubtedly a  
15 public forum.” *Metabolife Internat., Inc. v. Wornick*, 72 F.Supp.2d 1160, 1165 (S.D.Cal.1999).  
16 Internet communications have also been described as “classical forum communications.”  
17 *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006, 113 Cal. Rptr. 2d 625, 638 (2001)  
18 (quoting *Hatch v. Superior Court*, 80 Cal.App.4th 170, 94 Cal.Rptr.2d 453 (2000). Postings on  
19 Facebook or websites accessible to the public are public forums for the purposes of an anti-SLAPP  
20 statute:

21 Mayweather’s postings on his Facebook page and Instagram account and his  
22 comments about Jackson during a radio broadcast were all made “in a place open  
23 to the public or a public forum” within the meaning of section 425.16, subdivision  
24 (e)(3). “Web sites accessible to the public ... are ‘public forums’ for purposes of the  
anti-SLAPP statute.” (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4, 51  
Cal.Rptr.3d 55, 146 P.3d 510; accord, *Summit Bank v. Rogers* (2012) 206  
Cal.App.4th 669, 693, 142 Cal.Rptr.3d 40; *Wong v. Jing* (2010) 189 Cal.App.4th

25  
26 <sup>1</sup> The Nevada Supreme Court considers California case law when determining whether Nevada's  
27 anti-SLAPP statute applies to a claim because California's anti-SLAPP statute is similar in purpose  
28 and language to Nevada's anti-SLAPP statute. *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746,  
756, 219 P.3d 1276, 1283 (2009); see NRS 41.660; Cal.Civ.Proc.Code § 425.16 (West 2004 &  
Supp. 2009).

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1 1354, 1366, 117 Cal.Rptr.3d 747; *see Wilbanks v. Wolk* (2004) 121 Cal.App.4th  
2 883, 895, 17 Cal.Rptr.3d 497 [statements published on defendant’s website “hardly  
3 could be more public”].) Similarly, statements during a radio interview meet  
4 subdivision (e)(3)’s public forum requirement. (*Seelig v. Infinity Broadcasting*  
5 *Corp.* (2002) 97 Cal.App.4th 798, 807, 119 Cal.Rptr.2d 108 [public forum  
6 requirement satisfied where “[t]he offending comments arose in the context of an  
7 on-air discussion between the talk-radio cohosts and their on-air producer”]; *see*  
8 *Ingels v. Westwood One Broadcasting Services, Inc.* (2005) 129 Cal.App.4th 1050,  
9 1063, 28 Cal.Rptr.3d 933 [radio call-in talk show].)

10 *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252, 217 Cal. Rptr. 3d 234, 245–46 (2017), as  
11 modified (Apr. 19, 2017)

12 Plaintiff cannot dispute that Facebook is a public forum, as her counsel has recently  
13 admitted that in an anti-SLAPP motion filed by him in another case:

14 In fact, Plaintiff properly alleges that Google and Facebook is a public forum. (*See*  
15 *Complaint*). Google and Facebook are widely known, publicly accessible websites  
16 that host consumer information and reviews based on their experiences with  
17 businesses. *See* “About Us,” Google and Facebook, attached as Exhibit 3. Such  
18 websites are public fora for Anti-SLAPP purposes. *See e.g., Barrett v. Rosenthal*,  
19 40 Cal 4th 33, 41, n.4 (2006) (finding that [w]eb sites accessible to the public ...  
20 are ‘public forums’ for purposes of the anti-SLAPP statute’); *see also Kronemyer*  
21 *v. Internet Movie Data Base, Inc.*, 150 Cal App. 4th 941, 950 (2007) (same);  
22 *Hungtington Life Sciences, Inc. v. Stop Hungtington Animal Cruelly USA, Inc.*, 129  
23 Cal Ap. 4th 468, 475 (2000) (defining public forum “as a place that is open to the  
24 public where information is freely exchanged”).

25 *Animal Care Clinic, Inc., et al., v. Michaela Gama, et al.*, Case No. A-18-771232-C, 2018 WL  
26 10111480 (Nev.Dist.Ct.).

27 Further, the Nevada Supreme Court in *Sanson* and *Willick* recently determined that  
28 *Sanson*’s website for Veterans in Politics International, Inc. was a “public forum on a publicly  
accessible website, and republishing them by email did not remove them from a public forum.”  
*Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1064-65; *Willick*, 457 P.3d 970 at \*2. The Nevada  
Supreme Court went on to state that the statements were either true or statements of opinion  
incapable of being false. *Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1064-65; *Willick*, 457 P.3d  
970 at \*7.

Thus, Plaintiff cannot dispute that the statements were made in a public forum.

...

...

**2. The communications concern an issue of public interest.**

An “issue of public interest” is defined broadly in Nevada. *Id.* at 14, 432 P.3d 751. “A person who engages in 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 is immune from any civil action for claims based upon the communication.” NRS 41.650. “The definition of ‘public interest’ within the meaning of the anti-SLAPP statute has been broadly construed to include not only governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity.” *Du Charme v. Int'l Bhd. of Elec. Workers*, 110 Cal. App. 4th 107, 115, 1 Cal. Rptr. 3d 501, 507 (2003) (internal citations omitted). “Although matters of public interest include legislative and governmental activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals.” *Id.*

In *Shapiro v. Welt*, the Nevada Supreme Court adopted California’s guiding principles in determining whether an issue is of public interest:

- (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.

133 Nev. at 39-40, 389 P.3d at 268 (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013)).

Plaintiff is clearly a person of public interest as she admits that she is a campaign manager for Republican candidates. Complaint, ¶ 5. See *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223, 109 S.Ct. 1013, 1020, 103 L.Ed.2d 271 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971)) (“The First

1 Amendment ‘has its fullest and most urgent application’ to speech uttered during a campaign for  
2 political office.”). *See Rosen v. Tarkanian*, 135 Nev. 436, 439, 453 P.3d 1220, 1223 (2019) (“The  
3 character and qualifications of a candidate for public office constitutes a public issue or public  
4 interest for purposes of the anti-SLAPP statute”) (internal citations omitted). Plaintiff further  
5 asserts that she is well-known in the community and with the Republican party, including the Clark  
6 County Republican Party. Complaint, ¶¶ 5, 9. The Political Gypsy Article, for instance, discusses  
7 Republican Candidate for Clark County Public Administrator Thomas Fougere who retained  
8 Plaintiff to manage his campaign. *See* Political Gypsy Article, a true and correct copy of which is  
9 attached hereto as **Exhibit B-1**. Therefore, there is no dispute that the communications concern  
10 public interest.

11 Plaintiff is alternatively a person of public interest as she admits that she is a real estate  
12 agent. Complaint, ¶ 5. *See Kruger v. Daniel*, 176 Wash. App. 1028 (2013); *Nuttall v. Dowell*, 31  
13 Wn.App. 98, 108, 639 P.2d 832 (1982) (“The public has a significant interest in the conduct of  
14 real estate professionals, who often conduct their business in the capacity of a fiduciary.”).

15 **3. All of Plaintiff’s Causes of Action are Based on Protected Speech.**

16 “It is the *principal thrust* or *gravamen* of the plaintiff’s cause of action that determines  
17 whether the anti-SLAPP statute applies.” *USA Waste of California, Inc. v. City of Irwindale*, 184  
18 Cal. App. 4th 53, 63, 108 Cal. Rptr. 3d 466, 473 (2010) (internal citations omitted) (emphasis in  
19 original). The anti-SLAPP statute’s focus is not the type of claim brought but rather whether “the  
20 defendant’s *activity* that gives rise to his or her asserted liability—and whether that activity  
21 constitutes protected speech or petitioning.” *Navellier v. Sletten*, 29 Cal. 4th 82, 90, 52 P.3d 703,  
22 709 (Cal. 2002).

23 Plaintiff concedes that Defendant Lauer is a political journalist and Defendant Sanson is  
24 the president of Veterans in Politics International, Inc. Complaint, ¶¶ 6 – 7. *See Toll v. Wilson*,  
25 135 Nev. 430, 433, 453 P.3d 1215, 1218 (2019) (a reporter as “one that reports; one who reports  
26 news events; a commentator”). Reporters are granted broad protections under the First  
27 Amendment and Nevada Revised Statutes in the exercise of their freedom of speech and press.  
28 *See, e.g.*, U.S. Const. amend. I; *see also* NRS 49.275. In addition to Defendants’ statements being

1 protected under the anti-SLAPP statute as communications made in furtherance of a right to  
2 petition, they are also absolutely privileged. *Id.*

3 Although the moving party is not required to file an affidavit in support of an anti-SLAPP  
4 motion to dismiss under the anti-SLAPP statute, it is necessary to do so when material facts are in  
5 dispute and to authenticate exhibits. *Rosen v. Tarkanian*, 135 Nev. 436, 444, 453 P.3d 1220, 1226  
6 (2019).

7 Despite this change in evidentiary burden, we now hold that even under the  
8 preponderance standard, an affidavit stating that the defendant believed the  
9 communications to be truthful or made them without knowledge of their falsehood  
10 is sufficient to meet the defendant's burden absent contradictory evidence in the  
11 record. *Cf. Davis v. Cox*, 183 Wash.2d 269, 351 P.3d 862, 867 (2015) (contrasting  
12 the more exacting summary judgment standard, which requires “a legal certainty”  
13 that can be defeated by a dispute of a material fact, with a preponderance of the  
14 evidence burden, which examines “whether the evidence crosses a certain threshold  
15 of proving a likelihood of prevailing on the claim”), *abrogated on other grounds*  
16 *by Maytown Sand & Gravel, LLC v. Thurston Cty.*, 191 Wash.2d 392, 423 P.3d  
17 223, 248 n.15 (2018), *abrogated in part by Yim v. City of Seattle*, 194 Wash.2d 682,  
18 451 P.3d 694, 704-05 (2019). Because Stark's affidavit made it more likely than  
19 not that the communications were truthful or made without knowledge of their  
20 falsehood, and there is no evidence in the record to the contrary, we conclude that  
21 she met her burden of showing that the third-party comments were made in good  
22 faith, so as to satisfy prong one.

23 *Stark v. Lackey*, 136 Nev. 38, 43–44, 458 P.3d 342, 347 (2020).

24 As such, the attached declarations of Defendant Lauer and Defendant Sanson evidence that  
25 that the statements in each article and video were truthful or made without their knowledge of  
26 falsehood and/or were their opinions, which is sufficient to meet their burden under the first prong  
27 of the anti-SLAPP analysis. *Id.* See Lauer Declaration at ¶¶ 7-10 and Sanson Declaration at ¶¶ 4-  
28 5, true and correct copies of which are attached hereto as **Exhibits A & B**, respectively.

The Court need only look to Plaintiff's factual basis for her causes of action to plainly see  
that the alleged wrongful conduct falls plainly within the ambit of the anti-SLAPP statute.  
Defendants need only make a prima facie showing that the plaintiffs lawsuit “arises from” the  
defendant's conduct “in furtherance of” the defendant's exercise of free speech. *Williams v. Stitt*,  
No. C 14-00760 LB, 2014 WL 3421122, \*4 (N.D. Cal. July 14, 2014) (unpublished). Because the  
burden then switches to Plaintiff for the second part of the test, Plaintiff must first prove, as a

1 matter of law, that no protection exists which could classify the defendant's conduct as protected  
2 or otherwise privileged speech. *Id.* at \*4 (“The plaintiff also must present evidence to overcome  
3 any privilege or defense to the claim that has been raised.”).

4 As detailed in *Sanson*, because the underlying conduct central to all claims is protected  
5 good-faith communications, the remaining claims lack merit and must be dismissed as a matter of  
6 law. *Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d at 1069–70; *Willick*, 457 P.3d 970. Because almost  
7 the exact same claims were alleged and dismissed in *Sanson*, the Court should dismiss the  
8 Complaint in its entirety here as the Nevada Supreme Court affirmed in *Sanson* and *Willick*.  
9 *Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d at 1069–70; *Willick*, 457 P.3d 970.

10 **a. Political Gypsy Article**

11 Plaintiff alleges that the Political Gypsy Article was written by Defendant Sanson and  
12 posted on the Veterans in Politics website ([http://veteransinpolitics.org/2018/08/kassee-bulen-](http://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy)  
13 [political-gypsy](http://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy)). Complaint, ¶ 14. The Political Gypsy Article was allegedly then shared by  
14 Defendants on Facebook. *Id.* Plaintiff alleges that the Political Gypsy Article is false in that it  
15 states that Plaintiff was convicted of assault and that several married men accused Plaintiff of  
16 trying to extort money out of them. *Id.* at ¶ 16. Plaintiff asserts that these allegations are false  
17 because her record was sealed with respect to the assault charge and that she has never been  
18 charged with extortion. *Id.*

19 The Political Gypsy Article<sup>2</sup> was published by Defendant Sanson on August 8, 2018. *See*  
20 Exhibit B-1. The Court can determine as a matter of law that the content within the Political Gypsy  
21 Article is protected speech. *See, e.g., Paterno v. Superior Court*, 163 Cal. App. 4th 1342, 1355,  
22 78 Cal. Rptr. 3d 244, 255 (2008) (“As the case law amply demonstrates, journalists may simply  
23 report the facts of proceedings without providing an explanation of those facts.”). Simply because  
24 Plaintiff’s record was sealed does not contradict the fact that she was convicted. The Political  
25 Gypsy Article even shows a copy of Plaintiff’s case and the disposition. Exhibit B-1. Moreover,  
26

27 <sup>2</sup> It should be noted that Plaintiff’s Twitter handle is @PoliticalGypsy1. *See* Twitter Screenshot,  
28 a true and correct copy of which is attached hereto as **Exhibit A-1**.



1 the Political Gypsy Article discuss Republican Candidate for Clark County Public Administrator  
2 Thomas Fougere and his choice in Plaintiff as his campaign manager. *Id.*

3 **b. Ethics Article**

4 The Ethics Article was published by Defendant Sanson and posted on the Veterans in  
5 Politics website ([http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)  
6 [being-charged-with-ethics-violations-in-complaint-filed-with-glvar](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)). *See* Ethics Article, a true  
7 and correct copy of which is attached hereto as **Exhibit B-2**. The Ethics Article was then allegedly  
8 shared by Defendants on Facebook and posted in a Facebook group called Vegas Real Estate  
9 Magazine. *Id.* Plaintiff alleged that the Ethics Article is false in that it was an attack on her career  
10 and called into question her suitability as a real estate agent. *Id.* at ¶ 18. Further, it alleges that an  
11 ethics complaint was filed against Plaintiff and that Plaintiff represented herself as an expert in a  
12 separate article. *Id.*

13 The Court can again determine as a matter of law that the content within the Ethics Article  
14 is protected speech. Plaintiff alleges that the article is false, but the Ethics Article contains a copy  
15 of the Ethics Complaint in question, which is protected speech. *Id.* Because Defendant Sanson  
16 published the Ethics Article and believed the statements to be truthful or made without his  
17 knowledge of falsehood and/or are opinions, it is protected speech. *See* Exhibit B at ¶ 5.

18 **c. Video**

19 The third instance was the Video. Complaint, ¶ 20; *see also* Video, a true and correct copy  
20 of which is attached hereto as **Exhibit A-2**. The Video was posted in the Facebook group entitled  
21 “Trump Victory Team.” *Id.* Plaintiff alleges that Defendant Lauer edited the Video to make it  
22 appear as though Plaintiff is unfit to run political campaigns and hurt her reputation with the  
23 Republican Party. *Id.* at ¶ 21.

24 Defendant Sanson previously posted similar videos and recorded interviews, which were  
25 held to be protected speech and subject to an affirmed anti-SLAPP motion to dismiss. *Sanson*,  
26 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1064-65; to *Willick*, 457 P.3d 970 at \*1. Again, the Court  
27 can view the Video in question and make its own determination as a matter of law, but the Video  
28

1 is truthful or made without Defendant Lauer's knowledge of falsehood and/or is his opinion. *See*  
2 Exhibit A at ¶ 9.

3 **d. 360 Article**

4 The fourth instance in question was the 360 Article. Complaint, ¶ 23; *see also* 360 Article,  
5 a true and correct copy of which is attached hereto as **Exhibit A-3**. Plaintiff alleges that Defendant  
6 Lauer invented a fictitious "campaign source" so that he could attack Plaintiff's character. *Id.*

7 NRS 49.275 discusses the news media privilege, and states:

8 No reporter, former reporter or editorial employee of any newspaper, periodical or  
9 press association or employee of any radio or television station may be required to  
10 disclose any published or unpublished information obtained or prepared by such  
11 person in such person's professional capacity in gathering, receiving or processing  
information for communication to the public, or the source of any information  
procured or obtained by such person, in any legal proceedings, trial or investigation:

- 12 1. Before any court, grand jury, coroner's inquest, jury or any officer thereof.
- 13 2. Before the Legislature or any committee thereof.
- 14 3. Before any department, agency or commission of the State.
- 15 4. Before any local governing body or committee thereof, or any officer of a  
local government.

16 Plaintiff alleges that Defendant Lauer invented a fictitious campaign source to attack  
17 Plaintiff's character, but Plaintiff does not get to pierce the privilege through such a baseless  
18 assertion. Defendant Lauer has stated that his campaign source is truthful and that is all that is  
19 required. *See* Exhibit A at ¶ 10.

20 Because each of the communications in question is protected speech governed by Nevada's  
21 anti-SLAPP statutes, they are not subject to legal causes of action. As a result, the Complaint must  
22 be dismissed in its entirety as a matter of law.

23 **B. Defendants Are Entitled to Attorney's Fees, Costs, and an Additional Award under 41.670.**

24 Nevada's Anti-SLAPP statute further provides that the Court shall award fees and costs to  
25 Defendants when their anti-SLAPP motion is granted:

- 26 1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:
  - 27 a) The court **shall** award reasonable costs and attorney's fees to the person against  
28 whom the action was brought [...];

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought.

NRS 41.670(1)(a)-(b) (emphasis added).

All of Plaintiff's claims for relief are abusive and brought with the goal of (1) increasing the cost of litigation to Defendants; and (2) chilling, intimidating, and punishing Defendants for engaging in activities protected by the anti-SLAPP statute. The very purpose of Nevada's anti-SLAPP statute and its remedial provisions are to obviate Defendants' improper purpose in bringing their counterclaims. *John v. Douglas Cnty Sch. Dist.*, 125 Nev. 746, 757-58, 219 P.3d at 1284; *U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 970-71 (9th Cir. 1999). As such, the Court should award to Defendants their reasonable cost and attorneys' fees, and an additional award under NRS 41.670(b) that it sees fit.

**C. Plaintiff is Not Permitted to Amend the Complaint.**

Plaintiff may seek the opportunity to amend her Complaint in an attempt to avoid the consequences of Defendants' well-pled anti-SLAPP motion.

Indeed, California courts, which interpret an anti-SLAPP statute nearly identical in scope to Nevada's revised statute, have held that a plaintiff may not amend its pleading after an anti-SLAPP motion has been filed. *See, e.g., City of Colton v. Singletary*, 206 Cal. App. 4th 751, 775 (2012) (stating that "there is a history of case law setting forth the rule that a party cannot amend around a[n anti-] SLAPP motion"). These courts have reasoned that permitting amended pleadings will defeat the purpose of the statute, which is to bring a speedy end to SLAPP suits. *See Salma v. Capon*, 161 Cal. App. 4th 1275, 1294 (2008) (stating that allowing a plaintiff to amend "would undermine the legislative policy of early evaluation and expeditious resolution of claims arising from protected activity").

Accordingly, Defendants respectfully request this Court disallow any request for amendment asserted by Plaintiff.

...

...

...

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IV.

CONCLUSION

Based upon the foregoing, Defendants respectfully request the Court dismiss the Complaint in its entirety pursuant to NRS 41.660, and award Defendants their reasonable attorney's fees and costs in bringing this special motion to dismiss pursuant to NRS 41.670.

Dated this 2nd day of July, 2020.

KAPLAN COTTNER

/s/ Kory L. Kaplan  
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**CERTIFICATE OF SERVICE**

I hereby certify that the *DEFENDANTS' SPECIAL MOTION TO DISMISS COMPLAINT PURSUANT TO NRS 41.660* submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of July, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows<sup>3</sup>:

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Brandon L. Phillips, Esq.  
1455 E. Tropicana Ave., Suite 750  
Las Vegas, NV 89119  
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Attorney for Plaintiff

/s/ Carey Shurtliff  
Carey Shurtliff, An employee of  
Kaplan Cottner

<sup>3</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

# **EXHIBIT A**

1                                    **DECLARATION OF ROB LAUER IN SUPPORT OF DEFENDANTS' SPECIAL**  
2                                    **MOTION TO DISMISS COMPLAINT PURSUANT TO NRS 41.660**

3                    I, Rob Lauer, make this declaration in support of Defendants' Special Motion to Dismiss  
4                    Complaint pursuant to NRS 41.660, and hereby declare as follows:

5                    1.        I am a Defendant in the matter entitled *Bulen v. Lauer, et. al.*, Case No. A-18-  
6                    784807-C, filed in the Eighth Judicial District Court in and for Clark County, Nevada.

7                    2.        I am competent to testify regarding the following facts, as I have personal  
8                    knowledge and/or have been provided information such that I believe the facts to be true.

9                    3.        I am a journalist and focus my reporting on local government and public policy  
10                   issues. I write for 360 News Las Vegas, a self-described conservative news site that has  
11                   approximately 500,000 monthly views across various platforms.

12                   4.        I met Plaintiff in or about March 2018 at a political event.

13                   5.        Plaintiff represented herself to be a self-described political consultant and activist.  
14                   She told me that she was a member of the Las Vegas Metro Police Civilian Review Board, ran  
15                   for office in the Clark County Republican Party, and was a spokesperson for two political  
16                   campaigns and for the Clark County Republican Party. Plaintiff also claimed to be a successful  
17                   real estate agent even though she had never sold a home at that time.

18                   6.        The article entitled *Kassee Bulen, Political Gypsy?* ("Political Gypsy Article") was  
19                   published on the Veterans in Politics website ([http://veteransinpolitics.org/2018/08/kassee-bulen-](http://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy)  
20                   [political-gypsy](http://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy)). I shared the Political Gypsy Article on Facebook. To the best of my  
21                   knowledge, the information and statements within the Political Gypsy Article are entirely  
22                   truthful or made without my knowledge of any falsehood and/or are my opinions.

23                   7.        Plaintiff's Twitter handle is @PoliticalGypsy1. Plaintiff changed her Twitter  
24                   handle to adopt the "Political Gypsy" handle after the Political Gypsy Article was published. *See*  
25                   Twitter Screenshot, a true and correct copy of which is attached hereto as **Exhibit A-1**.

26                   8.        The article entitled *Kassee Bulen Under Investigation After Being Charged With*  
27                   *Ethics Violations in Complaint Filed With GLVAR* ("Ethics Article") was published on the  
28                   Veterans in Politics website (<http://veteransinpolitics.org/2018/08/kassee-bulen-under->

1 investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar). I shared  
2 the Ethics Article on Facebook. To the best of my knowledge, the information and statements  
3 within the Ethics Article are entirely truthful or made without my knowledge of any falsehood  
4 and/or are my opinions.

5 9. The video entitled *Kaxee Bulez Attacks President Trump* ("Video") was shared  
6 by me on Facebook and posted by me in the Facebook group entitled "Trump Victory Team."  
7 See Video, a true and correct copy of which is attached hereto as **Exhibit A-2**. Plaintiff  
8 voluntarily appeared and sat for an interview in my TV Studio for a video recorded interview and  
9 made statements attacking President Trump. To the best of my knowledge, the information and  
10 statements within the Video are entirely truthful or made without my knowledge of any  
11 falsehood as they were made directly by Plaintiff and/or are my opinions.

12 10. The article written by me regarding Plaintiff was posted on 360 News Las Vegas  
13 ("360 Article"). The article was in regard to her representation of Jimmy Vega, a candidate for  
14 constable of North Las Vegas. Plaintiff stated that she never worked for Jimmy Vega even  
15 though she was paid multiple times by Jimmy Vega's campaign. See Monetary Expenses of  
16 Jimmy Vega, a true and correct copy of which is attached hereto as **Exhibit A-3**. Plaintiff  
17 requested that I remove the 360 Article and I did out of compassion due to her mother's illness.  
18 To the best of my knowledge, the information and statements within the 360 Article are entirely  
19 truthful or made without my knowledge of any falsehood and/or are my opinions.

20 11. Defendants' Special Motion to Dismiss Complaint pursuant to NRS 41.660 is  
21 made in good faith and not for purposes of delay.

22 I declare under penalty of perjury under the laws of the United States and the State of  
23 Nevada that the foregoing is true and correct.

24 Executed this 1 day of July, 2020.

25  
26   
27 \_\_\_\_\_  
28 ROB LAUDER, DECLARANT



# EXHIBIT A-1

# Grand Met

## 2020

### JUST END IT ALREADY



Tweets 3,700  
Following 1,886  
Followers 1,055  
Likes 1,490

Follow

**Kassee Bulen**

@PoliticalGypsy1

Republican by Birth & Conviction-  
Moderate-Heeler Real Estate  
Accountant, Esthetician, Nutritionist,  
Fundraiser, Mediator, Never apologise 4  
being #Right!

Las Vegas, NV

politicalgypsy1.wordpress.com/2018/12/13/et...

View broadcasts

Joined June 2009

Tweets Tweets & replies Media



**Kassee Bulen** @PoliticalGypsy1 · 55m

#NationalHousingStats #RealEstate #LasVegas #HomeInNevada #Realtor

**Local Housing Video**

A monthly video email that gives housing statistics by geographical area.

usheerpa.com



**Kassee Bulen** @PoliticalGypsy1 · 17m

The 10 Surprising Housing Markets Poised to Rule in 2019

Have an account?

Phone, email, or username

Password

☒ Remember me · Forgot password?

Log in

New to Twitter?

Sign up

**New to Twitter?**

Sign up now to get your own personalized timeline!

Sign up

You may also like · Refresh



**Brian Murray**  
@BrianMurrayAZ



**Jon C Altmann**  
@JCAltmann

# **EXHIBIT A-2**

## **Video**

# **EXHIBIT A-3**

1 MRS 294A.362 requires "In Kind" contributions and expenses to be reported on a separate form, which is attached hereto.

**MONETARY EXPENSES** Report Period # 3

**JAMES E VEGA** Constable, North Las Vegas Township  
 Name (print) District (if applicable)  
 Office (if applicable)

**MONETARY EXPENSES IN EXCESS OF \$100**  
 (Transfer Total Amount of All Campaign Expenses to Line 9 of Expenses Summary)

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE PAYMENT FOR THE EXPENSE	CATEGORY (MRS 294A.362)	DATE OF EXPENSE	AMOUNT OF EXPENSE
Facebook 1 Hacker Way Menlo, CA 94025	D	06/09/2018	\$35.00
	D	06/10/2018	\$35.00
Amazon 410 Terry Ave North Seattle, WA 98109	O	05/05/2018	\$27.99
Jordan Hernandez REQUESTED Las Vegas, NV 89111	B	06/12/2018	\$400.00
Laura Kasseas Eulen REQUESTED Las Vegas, NV 89111	F	06/14/2018	\$1,000.00
	F	06/14/2018	\$1,000.00
ARMED FORCES & Military Veterans Association Inc. 417 Horse Points Avenue Las Vegas, NV 89084	H	08/25/2018	\$250.00
Alive Inside Productions 7035 W Sahara Ste 401 Las Vegas, NV 89117	D	06/26/2018	\$790.77
Alchemy Associates 438 E Sahara Avenue Las Vegas, NV 89104	F	03/06/2018	\$4,000.00
PDQ Printing 3820 S Valley View Blvd Las Vegas, NV 89103	D	09/06/2018	\$1,961.90
	D	09/06/2018	\$1,509.01
Signs of Nevada PO Box 50790 Henderson, NV 89016	D	09/06/2018	\$400.00
	D	09/21/2018	\$3,500.00
Steve Pacas 6544 Garrett Stone Court Las Vegas, NV 89149	D	09/21/2018	\$1,000.00
Quincy Williams PO Box 271526 Las Vegas, NV 89106	F	09/21/2018	\$1,000.00
CACA LV Lodge REQUESTED Requested, NV requested Las Vegas Review Journal 1111 W Bonanza Road Las Vegas, NV 89125	H	09/26/2018	\$750.00
	D	10/10/2018	\$2,600.00

# **EXHIBIT B**

1                   **DECLARATION OF STEVE SANSON IN SUPPORT OF DEFENDANTS' SPECIAL**  
2                   **MOTION TO DISMISS COMPLAINT PURSUANT TO NRS 41.660**

3                   I, Steve Sanson, make this declaration in support of Defendants' Special Motion to  
4 Dismiss Complaint pursuant to NRS 41.660, and hereby declare as follows:

5                   1.       I am a Defendant in the matter entitled *Bulen v. Lauer, et. al.*, Case No. A-18-  
6 784807-C, filed in the Eighth Judicial District Court in and for Clark County, Nevada.

7                   2.       I am competent to testify regarding the following facts, as I have personal  
8 knowledge and/or have been provided information such that I believe the facts to be true.

9                   3.       I am a journalist and am the president of Veterans in Politics International, Inc.  
10 (“Veterans in Politics”), a Nevada non-profit veterans' advocacy organization with a stated  
11 purpose of providing information regarding political candidates and issues to military veterans  
12 and their families.

13                  4.       The article entitled *Kassee Bulen, Political Gypsy?* (“Political Gypsy Article) was  
14 published by me on the Veterans in Politics website  
15 (<http://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy>). See Political Gypsy Article,  
16 a true and correct copy of which is attached hereto as **Exhibit B-1**. I shared the Political Gypsy  
17 Article on Facebook. To the best of my knowledge, the information and statements within the  
18 Political Gypsy Article are entirely truthful or made without my knowledge of any falsehood  
19 and/or are my opinions.

20                  5.       The article entitled *Kassee Bulen Under Investigation After Being Charged With*  
21 *Ethics Violations in Complaint Filed With GLVAR* (“Ethics Article”) was published by me on the  
22 Veterans in Politics website ([http://veteransinpolitics.org/2018/08/kassee-bulen-under-](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)  
23 [investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar](http://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar)). See  
24 Political Gypsy Article, a true and correct copy of which is attached hereto as **Exhibit B-2**. I  
25 shared the Ethics Article on Facebook. To the best of my knowledge, the information and  
26 statements within the Ethics Article are entirely truthful or made without my knowledge of any  
27 falsehood and/or are my opinions.

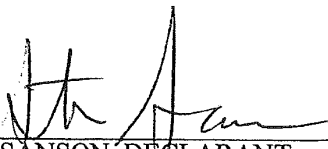
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6. Defendants' Special Motion to Dismiss Complaint pursuant to NRS 41.660 is made in good faith and not for purposes of delay.

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

Executed this 1 day of July, 2020.

  
\_\_\_\_\_  
STEVE SANSON, DECLARANT



# EXHIBIT B-1

**VETERANS  
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### Kassee Bulen, Political Gypsy?

Republican Candidate for Clark County Public Administrator Thomas Fougere defeated Aaron Manfredi in the re-vote on June 12, 2018, by more than 20%. Fougere savaged Manfredi throughout the bitterly fought campaign over his criminal conviction, which consisted of a gross misdemeanor.

[ATI](#)

Fougere now faces Robert Telles in the general election this fall.

The Public Administrator oversees the assets of people in Clark County if they pass away without a will. So after Manfredi's defeat over his criminal conviction attention turned to Fougere. Fougere retained Bulen Strategies owned and operated by Kassee Bulen to manage his campaign. But according to the Nevada Secretary of State's official website and Clark County business records Kassee Bulen's company, Bulen Strategies, is not a licensed lawful business in the state of Nevada.

[CC](#)

 <b>Lawra &amp; Butler</b> COURT REPORTERS & VIDEO 10000 13th Avenue, Suite 100, Denver, CO 80231			
Invoice Name:		Invoice Period/Date:	
Case Number: 0452967			
Case Status	Discovery Cutoff Date	Document Type	Document
Not Set		Agree	
Judge/Arbitrator		Court ID	763
Judge	Enter ID	Judge Name	John Doe
Case Office		Witness Type	Witness Type 1
Witness Date	Set ID Code	Schedule Off Meeting Date	
Witness Date	Set	Exhibit Date	
Document Status Date		Document Date	Set ID Code
Documentary Date			
Mileage Compensation			
Hours	Set Date	Set Date	Set Date
Mileage Compensation			

Furthermore, according to public databases, Kasee Bulen or “Lawra Kasee Bulen” was charged and sentenced for Assault Causing Bodily Injury in Dallas Texas. Bulen has lived in at least 6 states in the past 10 years filing bankruptcy and chased out of Republican Party groups in Arizona and St. George according to sources.

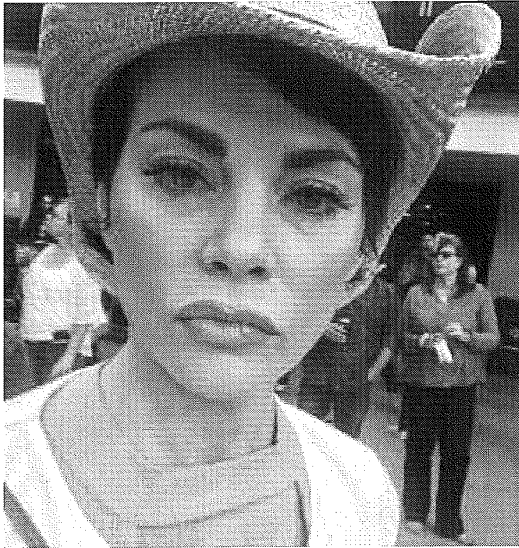
[illegible]

Additionally, according to people we spoke with directly, several married men in other states have accused Kasee Bulen of trying to extort money out of them after she had an affair with them.

Kassee 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.

We reached out to Mr. Fougere for comment. He never responded back. But according to a recent Review-Journal article, Kassee Bulen still works for Fougere's as his campaign manager.

Kasee Bulen's background also calls into question Las Vegas Metro's screening process. Ms. Bulen recently became a member of the LVMPD Use of Force Review Board.



BY STEVE SANSON IN HOME - FEATURED, NEWS TAGS BITTERLY FOUGHT CAMPAIGN, CRIMINAL CONVICTION, KASSEE BULEN, POLITICAL GYPSY?, REPUBLICAN CANDIDATE FOR CLARK COUNTY PUBLIC ADMINISTRATOR THOMAS FOUGERE DEFEATED AARON MANFREDI, WHICH CONSISTED OF A GROSS MISDEMEANOR.

August 8, 2018

5

RODNEY SMITH & LYNN MARIE GOYA TO APPEAR ON THE VETERANS IN POLITICS VIDEO TALK-SHOW

HARRY VICKERS & WARREN MARKOWITZ TO APPEAR ON THE VETERANS IN POLITICS VIDEO TALK-SHOW

ATI

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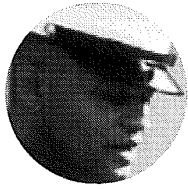
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Like 66

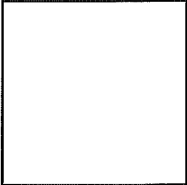

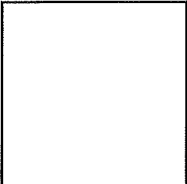
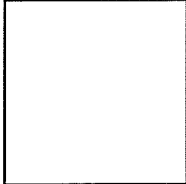
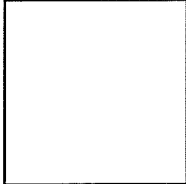
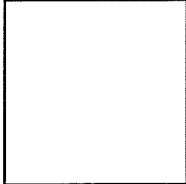
About author

CC

Steve Sanson (Steve Sanson)



## More posts

POPULAR	LATEST
	 <u><a href="#">Deplorable actions by Family Court Judge Rena Hughes against a minor child</a></u>
	 <u><a href="#">An officer on the LVMPD Foundation and Board Member of the Las Vegas Justice Court Partnership charged with Domestic Violence!</a></u>
	 <u><a href="#">Clark County Family Court Judge Guilty of violating State Law!</a></u>
	 <u><a href="#">Judge holds children hostage maintains court order giving Mother zero contact with her children until she pays overpriced Court Appointed Marriage &amp; Family Therapist!</a></u>

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Probation Date:

Not Available



Offense:  
ASSLT CAUSES BODILY INJ  
Case Type:  
MIDMEANOR

Case Number:  
07185045BULLAW19731116

Offense Date:  
Not Available

#### Court Records

##### Subject Identification

Name: LAWRA KASSEE BULEN  
AKA: Not Available  
DOB: 11/16/1973  
Age: Not Available  
Birth State: IN

##### Subject Description

Race: CAUCASIAN  
Skin Tone: Not Available  
Sex: FEMALE  
Height: Not Available  
Weight: Not Available  
Hair: Not Available  
Eyes: Not Available  
Scar Marks: Not Available

##### Case Information

Case #: 07185045BULLAW19731116  
Case Type: MIDMEANOR  
Category: Criminal  
NCIC Code: 13990001  
Court Type: Not Available  
Court: DALLAS  
Court County: Not Available  
Source: TXDOCPRO  
Fees: Not Available  
Fines: Not Available

##### Offense Information

Offence Code: 13990001  
Offence Date: 4/27/2001  
Offence Description: ASSLT CAUSES BODILY INJ  
Charges Filed: Not Available  
County: DALLAS  
State: Not Available  
Conviction Date: Not Available  
Conviction Place: Not Available  
Disposition: SENTENCED  
Disposition Date: 9/23/2003  
Sentenced: Not Available  
Probation Date: Not Available

ROA000236

# EXHIBIT B-2

ROA000237

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## KASSEE BULEN UNDER INVESTIGATION AFTER BEING CHARGED WITH ETHICS VIOLATIONS IN COMPLAINT FILED WITH GLVAR

August 13, 2018

Clark County Nevada

An ethics complaint was filed this week with the Great Las Vegas Association of Realtors against Lawra Kassee Bulen, who recently appeared on a local Las Vegas News on Channel 3 NBC representing herself as a Real Estate "Expert" when in fact she never sold a single house in Nevada since obtaining her Real Estate License less than a year ago.



Kassee Bulen is charged in the ethics complaint with violating:

### Article 12

"REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations."

Kassee Bulen was also cited for the following ethics violations:

### Standard of Practice 12-5



REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner.

### Standard of Practice 12-5

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner.

The basis of the Bulen ethics complaint:

1340 East Sahara Ave., Las Vegas, NV 89104  
(702) 784-8005

ETHICS COMPLAINT FORM

PAGES 2, 3 AND 4 MUST BE COMPLETED, SIGNED AND SUBMITTED WITH A SWORN AND SUPPORTING DOCUMENTS. YOUR COMPLAINT WILL BE RETURNED TO YOU.

Section 1: Complainant Information

Name: [Redacted]  
Address: [Redacted]  
City: [Redacted]  
State: [Redacted]  
Zip: [Redacted]  
Phone: [Redacted]  
Email: [Redacted]

Section 2: Respondent Information

Name: [Redacted]  
Address: [Redacted]  
City: [Redacted]  
State: [Redacted]  
Zip: [Redacted]  
Phone: [Redacted]  
Email: [Redacted]

Section 3: Description of Complaint

1. [Redacted]  
2. [Redacted]  
3. [Redacted]

Section 4: Signature of Complainant

Name: [Redacted]  
Signature: [Redacted]

Section 5: Signature of Respondent

Name: [Redacted]  
Signature: [Redacted]

Section 6: Signature of Arbitrator

Name: [Redacted]  
Signature: [Redacted]

Section 7: Signature of Mediator

Name: [Redacted]  
Signature: [Redacted]

Section 8: Signature of Hearing Officer

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Section 100: Signature of Hearing Officer

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Signature: [Redacted]

“Lawra Kassee Bulen appeared on Las Vegas News on Channel 3 NBC pretending to show a house to a prospective buyer which she neither was the listing agent for nor the buyer’s agent for. Kassee Bulen put herself out as a real estate “expert” on TV. Kassee Bulen’s action was meant to defraud and mislead the public including prospective real estate clients into believing she had actual experience in the residential real estate in Nevada when in fact Bulen never sold any such homes ever.”

### HOME SWEET HOME: Top 5 hottest zip codes for buying & selling in Las Vegas

<https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-and-selling-in-las-vegas>

Republican Candidate for Clark County Public Administrator Thomas Fougere retained Bulen Strategies owned and operated by Kassee Bulen to manage his campaign. But according to the Nevada Secretary of State’s official website and Clark County business records Kassee Bulen’s company, Bulen Strategies, is not a licensed lawful business in the state of Nevada.

This calls for Fougere decision making into question.

BY STEVE SANSON IN HOME - FEATURED, NEWS, PRESS  
RELEASE TAGS AN ETHICS COMPLAINT WAS FILED THIS WEEK  
WITH THE GREAT LAS VEGAS ASSOCIATION OF REALTORS  
AGAINST LAWRA KASSEE BULEN

August 13, 2018 1

[ENDORSEMENTS OF NEVADA ASSEMBLY DISTRICT'S 26 AND 39](#) >  
< [ENDORSEMENT OF KEVIN L. CHILD](#)

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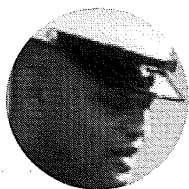
Tweet

Save

1

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About author

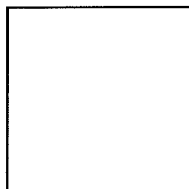


Steve Sanson (Steve Sanson)

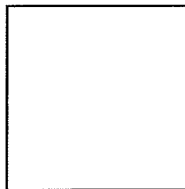
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7/2/2020

KASSEE BULEN UNDER INVESTIGATION AFTER BEING CHARGED WITH ETHICS VIOLATIONS IN COMPLAINT FILED WITH GLVA...



Partnership charged with Domestic Violence!



Mother zero contact with her  
children until she pays  
overpriced Court Appointed  
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1750 East Sahara Ave., Las Vegas, NV 89104  
(702) 784-5052

ETHICS COMPLAINT FORM

**PAGES 1, 2 AND 3 MUST BE COMPLETED, SIGNED AND SUBMITTED  
WITH A SUMMARY AND SUPPORTING DOCUMENTS  
OR YOUR COMPLAINT WILL BE RETURNED TO YOU.**

DATE: Aug 10, 2018

CASE NO: \_\_\_\_\_ (to be assigned by GLVAR® Staff)

COMPLAINANT(S):

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

RESPONDENT(S):

Name: Larva Kestee Butler

Company: Nice Realty Group

Address: 1771 East Flamingo Road  
Suite #200A

Phone: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

Charges below are supported by the attached statement or chronology of events, signed and dated by the Complainant, and supported by enclosed documents. Complainant charges: The above-named individual licensee(s) with an alleged violation of the following Article(s) of the Code of Ethics (use additional sheets in format below if needed): See attached

1. Article # 12 violated by the following specific action: \_\_\_\_\_

2. Article # 12 violated by the following specific action: \_\_\_\_\_

3. Article # 12 violated by the following specific action: \_\_\_\_\_

Legible copies of the following documents (if available) should be enclosed (Mark with an "X" if enclosed, or explain why not available). None of the documents should be stapled (because staples hamper our ability to make duplicate copies). Please do not include duplicates or redundant or irrelevant documents. However be advised that the Hearing Panel may decline to consider any documents not included you're your packet.

Listing Contract Lease Agreement  
Offer & Acceptance  
Agency Disclosure

Property Information Statement (SRPD)  
Counter Offers (if any)  
Other

Are the circumstances giving rise to this ethics complaint involved in any proceeding before the Nevada Real Estate Division or any other State or Federal regulatory or administrative agency? X No Yes OR  
In civil or criminal litigation? X No Yes (if yes, please enclose a copy of the complaint filed in court)

I/we have read and understand the jurisdiction of the Greater Las Vegas Association of REALTORS® as stated hereon, including confidentiality. I/we declare that to the best of my/our knowledge and belief, my/our allegations herein are true. By submission of this complaint and/or response, I consent to receive communications sent from the Greater Las Vegas Association of REALTORS® via U.S. Mail, e-mail, telephone or facsimile at the numbers and locations noted by you on this form. This permission includes all future U.S. mailing and e-mail addresses and telephone or facsimile numbers which I might supply to the Greater Las Vegas Association of REALTORS®. Permission continues until/unless specifically revoked, in writing, to the Greater Las Vegas Association of REALTORS®.

Name (print): \_\_\_\_\_

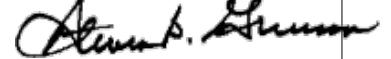
Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Signature: \_\_\_\_\_

• **Witness(es):** Please list witnesses you intend to call if there is a hearing (you are responsible for notifying and arranging for your witnesses to appear): \_\_\_\_\_

ROA000242



1 **NEO**  
2 KAPLAN COTTNER  
3 KORY L. KAPLAN  
4 Nevada Bar No. 13164  
5 Email: [kory@kaplancottner.com](mailto:kory@kaplancottner.com)  
6 KYLE P. COTTNER  
7 Nevada Bar No. 12722  
8 Email: [kyle@kaplancottner.com](mailto:kyle@kaplancottner.com)  
9 850 E. Bonneville Ave.  
10 Las Vegas, Nevada 89101  
11 Telephone: (702) 381-8888  
12 Facsimile: (702) 382-1169  
13 *Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

10 LAWRA KASSEE BULEN an individual,  
11 Plaintiff,

12 vs.

13 ROB LAUER, an individual, STEVE SANSON,  
14 an individual, and DOES I through X; and ROE  
CORPORATIONS I through X, Inclusive,

15 Defendants.

CASE NO.: A-18-784807-C  
DEPT. NO.: 8

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANTS' MOTION  
TO SET ASIDE DEFAULTS AND  
DENYING PLAINTIFF'S  
COUNTERMOTION FOR  
APPLICATION FOR DEFAULT  
JUDGMENT**

Date of Hearing: June 23, 2020  
Time of Hearing: 9:00 a.m.

18 NOTICE IS HEREBY GIVEN that on the 9th day of July, 2020 an *Order Granting*  
19 *Defendants' Motion to Set Aside Default and Denying Plaintiff's Countermotion for Application*  
20 *for Default Judgment* ("Order") was entered in the above-entitled matter, and a copy of said Order  
21 is attached hereto.

22 DATED: July 9, 2020.

23 KAPLAN COTTNER

24  
25 /s/ Kory L. Kaplan  
26 KORY L. KAPLAN  
27 Nevada Bar No. 13164  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
*Attorneys for Defendants*

KAPLAN COTTNER  
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KAPLAN COTTNER  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 381-8888 Fax: (702) 382-1169

**CERTIFICATE OF SERVICE**

I hereby certify that the *Notice of Entry of Order Granting Defendants' Motion to Set Aside Default and Denying Plaintiff's Countermotion for Application for Default Judgment* submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of July, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows<sup>1</sup>:

Plaintiff:

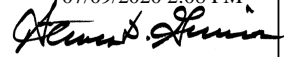
Brandon Phillips ([blp@abetterlegalpractice.com](mailto:blp@abetterlegalpractice.com))

Robin Tucker ([rtucker@abetterlegalpractice.com](mailto:rtucker@abetterlegalpractice.com))

/s/ Carey Shurtliff

An Employee of Kaplan Cottner

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

  
CLERK OF THE COURT

1 **ORDG**  
2 KAPLAN COTTNER  
3 KORY L. KAPLAN  
4 Nevada Bar No. 13164  
5 Email: [kory@kaplancottner.com](mailto:kory@kaplancottner.com)  
6 KYLE P. COTTNER  
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Facsimile: (702) 382-1169  
*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAWRA KASSEE BULEN an individual,  
Plaintiff,

vs.

ROB LAUER, an individual, STEVE SANSON,  
an individual, and DOES I through X; and ROE  
CORPORATIONS I through X, Inclusive,  
Defendants.

CASE NO.: A-18-784807-C  
DEPT. NO.: 8

**ORDER GRANTING DEFENDANTS'**  
**MOTION TO SET ASIDE DEFAULTS**  
**AND DENYING PLAINTIFF'S**  
**COUNTERMOTION FOR**  
**APPLICATION FOR DEFAULT**  
**JUDGMENT**

Date of Hearing: June 23, 2020  
Time of Hearing: 9:00 a.m.

THIS MATTER having come before the Court with respect to *Defendants' Motion to Set Aside Defaults* ("Motion") and *Plaintiff's Countermotion for Application for Default Judgment* ("Countermotion") commencing on June 23, 2020 at the hour of 9:00 a.m.; Kory L. Kaplan, Esq. of the law firm of Kaplan Cottner, appearing on behalf of Defendants Rob Lauer and Steve Sanson (collectively, "Defendants"); and Brandon L. Phillips, Esq., appearing on behalf of Plaintiff Lawra Kassee Bulen ("Plaintiff"); the Court having read and considered Defendants' Motion and Plaintiff's Countermotion, the Opposition and Replies on file, and the exhibits attached thereto; and the Court having heard and considered the arguments of counsel, and good cause appearing therefor, the Court finds the following:

KAPLAN COTTNER  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 381-8888 Fax: (702) 382-1169

**ORDER**

**IT IS HEREBY ORDERED** that Defendants Motion is **GRANTED** in its entirety as there is good cause to set aside the Defaults against Defendants.

**IT IS FURTHER ORDERED** that Plaintiff's Countermotion is **DENIED** in its entirety as moot.

**IT IS FURTHER ORDERED** that Defendants shall file a responsive pleading to the Complaint within ten (10) days from the date of the hearing.

Dated this 9th day of July, 2020

**IT IS SO ORDERED** this \_\_\_\_ day of July, 2020.



HONORABLE TREVOR L. ATKIN  
EIGHTH JUDICIAL DISTRICT COURT JUDGE  
61A 836 3AA5 6969  
Trevor Atkin

Respectfully Submitted By:

Approved as to form and content:

Dated: July 1, 2020

Dated: July 1, 2020

KAPLAN COTTNER

BRANDON L. PHILLIPS, ATTORNEY  
AT LAW, PLLC

By: /s/ Kory L. Kaplan

By: /s/ Brandon L. Phillips

KORY L. KAPLAN

BRANDON L. PHILLIPS

Nevada Bar No. 13164

Nevada Bar No. 12264

KYLE P. COTTNER

1455 E. Tropicana Ave., Suite 750

Nevada Bar No. 12722

Las Vegas, NV 89119

850 E. Bonneville Ave.

*Attorney for Plaintiff*

Las Vegas, NV 89101

*Attorneys for Defendants*



**From:** [Brandon Phillips](#)  
**To:** [Kory Kaplan](#)  
**Cc:** [Carey Shurtliff](#)  
**Subject:** RE: Bulen v. Lauer - Proposed Order  
**Date:** Wednesday, July 1, 2020 8:12:51 AM  
**Attachments:** [image001.png](#)

---

Mr. Kaplan,

I'm agreeable, please add my e-signature.

Thank you,

**BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC**

Brandon L. Phillips, Esq.  
1455 E. Tropicana Ave., Suite 750  
Las Vegas, Nevada 89119  
Phone: 702-795-0097  
Facsimile: 702-795-0098  
Email: [blp@abetterlegalpractice.com](mailto:blp@abetterlegalpractice.com)

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**From:** Kory Kaplan <kory@kaplancottner.com>  
**Sent:** Tuesday, June 30, 2020 2:29 PM  
**To:** Brandon Phillips <blp@abetterlegalpractice.com>  
**Cc:** Carey Shurtliff <Carey@LZKCLAW.COM>  
**Subject:** RE: Bulen v. Lauer - Proposed Order

Brandon,

Just following up on this.

Thanks,  
Kory



Kory L. Kaplan, Esq.  
850 E. Bonneville Ave.

ROA000247

Las Vegas, NV 89101  
Tel (702) 381-8888  
Fax (702) 382-1169  
[www.kaplancottner.com](http://www.kaplancottner.com)

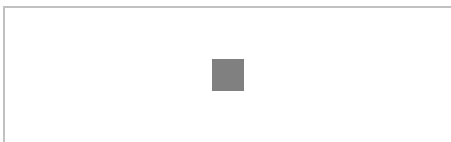
---

**From:** Kory Kaplan  
**Sent:** Tuesday, June 23, 2020 4:14 PM  
**To:** [blp@abetterlegalpractice.com](mailto:blp@abetterlegalpractice.com)  
**Cc:** Carey Shurtliff <[Carey@LZKCLAW.COM](mailto:Carey@LZKCLAW.COM)>  
**Subject:** Bulen v. Lauer - Proposed Order

Brandon,

Attached is the proposed order from today's hearing. Let me know if you have any edits.

Thanks,  
Kory



Kory L. Kaplan, Esq.  
850 E. Bonneville Ave.  
Las Vegas, NV 89101  
Tel (702) 381-8888  
Fax (702) 382-1169  
[www.kaplancottner.com](http://www.kaplancottner.com)

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Lawra Bulen, Plaintiff(s)

CASE NO: A-18-784807-C

7 vs.

DEPT. NO. Department 8

8 Rob Lauer, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Granting was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/9/2020

15 Brandon Phillips

blp@abetterlegalpractice.com

16 Paul Padda

psp@paulpaddalaw.com

17 Steve Sanson

devildog1285@cs.com

18 Rob Lauer

news360daily@hotmail.com

19 Rob Lauer

centurywest1@hotmail.com

20 Robin Tucker

rtucker@abetterlegalpractice.com

21 Kory Kaplan

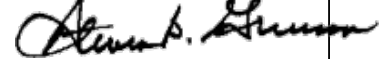
kory@kaplancottner.com

22 Sara Savage

sara@lzkclaw.com

23 Carey Shurtliff

carey@lzkclaw.com



1 **NNOP**  
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3 KORY L. KAPLAN  
4 Nevada Bar No. 13164  
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6 KYLE P. COTTNER  
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8 Email: [kyle@kaplancottner.com](mailto:kyle@kaplancottner.com)  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Telephone: (702) 381-8888  
Facsimile: (702) 382-1169  
*Attorneys for Defendants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAWRA KASSEE BULEN an individual,  
Plaintiff,

vs.

ROB LAUER, an individual, STEVE SANSON,  
an individual, and DOES I through X; and ROE  
CORPORATIONS I through X, Inclusive,  
Defendants.

CASE NO.: A-18-784807-C  
DEPT. NO.: 18

**NOTICE OF NON-OPPOSITION TO**  
**DEFENDANTS' SPECIAL MOTION**  
**TO DISMISS COMPLAINT**  
**PURSUANT TO NRS 41.660**

Date of Hearing: August 4, 2020  
Time of Hearing: 9:30 a.m.

PLEASE TAKE NOTICE THAT no opposition was filed to Defendants' Special Motion to Dismiss Complaint pursuant to NRS 41.660 (the "Motion"), filed on July 2, 2020. Pursuant to EDCR 2.20(e), Defendants respectfully request that this Court construe Plaintiff's failure to oppose the Motion as an admission that the Motion is meritorious and that the Plaintiff therefore consents to the granting of the same.

Dated this 21st day of July, 2020.

KAPLAN COTTNER  
/s/ Kory L. Kaplan  
KORY L. KAPLAN  
Nevada Bar No. 13164  
KYLE P. COTTNER  
Nevada Bar No. 12722  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
*Attorneys for Defendants*

KAPLAN COTTNER  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
Tel: (702) 381-8888 Fax: (702) 382-1169

**CERTIFICATE OF SERVICE**

I hereby certify that the *NOTICE OF NON-OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS COMPLAINT PURSUANT TO NRS 41.660* submitted electronically for filing and/or service with the Eighth Judicial District Court on the 21st day of July, 2020. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows<sup>1</sup>:

Attorneys for Plaintiff

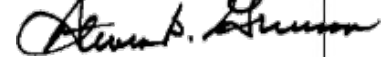
Brandon Phillips ([blp@abetterlegalpractice.com](mailto:blp@abetterlegalpractice.com))

Robin Tucker ([rtucker@abetterlegalpractice.com](mailto:rtucker@abetterlegalpractice.com))

/s/ Carey Shurtliff

Carey Shurtliff, An employee of  
Kaplan Cottner

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



**OPP**

BRANDON L. PHILLIPS, ESQ  
Nevada Bar No. 12264  
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC  
1455 E. Tropicana Ave., Suite 750  
Las Vegas, NV 89119  
Tel: (702) 795-0097  
Fax: (702) 795-0098  
blp@abetterlegalpractice.com  
*Attorney for Plaintiff, L. Bulen*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAWRA KASSEE BULEN,

CASE NO. A-18-784807-C

Plaintiff,

DEPT. NO. 8

vs.

STEVE SANSON, an Individual; ROB  
LAUER, an Individual,

Defendant.

**PLAINTIFF BULEN'S OPPOSITION TO DEFENDANTS' ANTI-SLAPP SPECIAL  
MOTION TO DISMISS UNDER NRS 41.660**

Plaintiff by and through her attorney, Brandon L. Phillips, of the legal firm, BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC, hereby files her Opposition to Defendants' Special Motion to Dismiss under NRS 41.660.

...

...

...

...

...

...

1 This Opposition is based on the papers and pleadings on file, the Points and Authorities  
2 attached and any arguments made by counsel at hearing.

3 DATED this 20<sup>th</sup> day of July, 2020.

4  
5 **BRANDON L. PHILLIPS,**  
6 **ATTORNEY AT LAW, PLLC**

7 /s/ Brandon L. Phillips, Esq.  
8 BRANDON L. PHILLIPS, ESQ.  
9 Nevada Bar No. 12264  
10 1455 E. Tropicana Ave., Suite 750  
11 Las Vegas, Nevada 89119  
12 *Attorney for Plaintiff, L. Bulen*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I.**

15 **INTRODUCTION**

16 Plaintiff's Complaint is entirely focused on the false and fabricated statements of the  
17 Defendants, who used their political and media ties to post defamatory statements of and  
18 concerning the Plaintiff. Third Parties have confirmed that the Defendants' statements were false  
19 and relevant case law on the matter confirm that false statements are not protected speech and  
20 such false accusers can be held legally liable for their false statements. Defendants Special Motion  
21 to Dismiss is entirely focused on the fact that Defendants were able to prevail on an entirely  
22 separate Anti-SLAPP Motion in an unrelated case therefore there is no legal possibility that they  
23 could be liable in the instant litigation.

24 As case law well confirms, Strategic Lawsuits Against Public Participate ("SLAPP" suits)  
25 are an affront to freedom of expression. In the absence of an Anti-SLAPP law, plaintiffs file  
26 SLAPP units with impunity – knowing that the punishing expense of litigation is a given, and that  
27 even if they lose, they "win" by inflicting this punishment upon the defendant, and by showing  
28 others that they are litigious enough that one should not speak ill of them.<sup>1</sup> Such suits have the

<sup>1</sup> As a prime example of a SLAPP defendant's pyrrhic victory, see *Vandersloot v. The Foundation for National Progress*, 7<sup>th</sup> District Court for Bonneville County, Idaho. Case No. CV-2013-532 (granting summary judgment for

1 intent and effect of chilling free speech. Seeking to prevent such abuses, the Nevada legislature  
2 passed the Anti-SLAPP law, NRS 41.635 *et. seq.* in 2013, and despite efforts to repeal it, our  
3 legislature re-committed to it in 2015.<sup>2</sup>

4 The true purpose of the Anti-SLAPP law is to ensure that lawsuits are not brought lightly  
5 against defendants for exercising their First Amendment rights. Where such rights are at stake, a  
6 plaintiff must either meet the burden imposed under the Anti-SLAPP act, or have judgment  
7 entered against him and pay the defendant's attorneys' fees. The current lawsuit against the  
8 Defendants fails to satisfy the prongs of Anti-SLAPP and as a matter of law must be denied.

9 Defendants' Motion fails to address all of the allegations in the Complaint and merely  
10 focuses on the issues it believes are disputable. The fact that Defendants ignore the numerous  
11 false statements listed in the Complaint concerning each article is clear evidence that the  
12 Defendants Motion is not brought in good faith.

### 14 FACTUAL BACKGROUND

15 This matter arises out Defendants' multiple publication of false articles of and concerning  
16 the Plaintiff. Numerous specific statements made within the articles were entirely false and  
17 fabricated.

#### 18 A. Time Line of Events

19 Date	Event
20 08/08/2018	Defendants published <i>Kassee Bulen, Political Gypsy?</i>
21 08/13/2018	Defendants published <i>Kasee Bulen Under Investigation After Being Charged With Ethics Violations In Complaint Filed With GLVAR</i>

23  
24 journalist organization defamation defendant after two years of litigation and \$2.5 million in defense costs, but  
25 declining to award any attorneys' fees or sanctions); see also Exhibit 1, Monika Bauerlein and Clara Jeffrey, *We*  
*Were Sued by a Billionaire Political Donor, We Won. Here's What Happened*, MOTHER JONES (Oct. 8, 2015),  
available at: <http://www.motherjones.com/media/2015/10/mother-jones-vandersloot-melaleuca-lawsuit> (last visited  
26 April 11, 2018).

27 <sup>2</sup> An Anti-SLAPP motion is a special creature, both substantively and procedurally, created by the Nevada  
28 legislature in 1993, *See* S.B. 405, 1993 Leg. Sess., 67<sup>th</sup> Sess. (Nev. 1993). The legislature then amended it in 1997,  
*See* A.B. 485, 1997 Leg. Sess., 69<sup>th</sup> Sess. (Nev. 1997). The legislature then gave the Nevada Anti-SLAPP law real  
teeth in 2013 when it passed Senate Bill 286, *See* S.B. 286, 2013 Leg., 77<sup>th</sup> Sess. (Nev. 2013). In 2015, there was an  
initial effort to attempt to repeal it, and instead further strengthened the law in 2015. *See* S.B. 444, 2015 Leg. Sess.,  
78<sup>th</sup> Sess., (Nev. 2015).



08/20/2018	Defendants published <i>Kassee Bulen Attacks President Trump</i>
08/22- 24/2018	Plaintiff alleges Defendants sent harassing text messages, in part claiming Plaintiff “... would be politically destroyed, Plaintiff would never work for any politically candidate ever again, stating that if she cared about the party she would play nice with Defendant Lauer.”
08/25/2018	Defendant Lauer wrote and posted a 360 News Las Vegas article demeaning Plaintiff’s character, calling her a liar and questioning her credibility.

### III.

#### LEGAL ARGUMENT

##### **I. DEFAMATORY STATEMENTS ARE NOT PROTECTED BY ANTI-SLAPP STATUTES.**

###### **1. Allegations of Criminal Conduct are Defamatory Per Se**

In *Anderson*, Hon. Richard F. Scotti, analyzed relevant case law surrounding defamation per se, and what would constitute liability under relevant case law. The *Anderson* Order outlines the relevant case law regarding defamation per se and each of its elements. The *Anderson* Order further analyzes case law regarding defamation per se when the alleged defamatory speech includes an accusation of involvement in criminal conduct. (Exhibit 1).

A statement is defamatory if it “would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (quoting *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281-82 (1993)). “A statement that directly imputes to the plaintiff ‘dishonesty, lack of fair dealing, want of fidelity, integrity, or business ability; even in general terms and without supporting details, is considered defamation per se.” *Cohen v. Hansen*, 2015 WL 3609689 at \*4 (D. Nev. 26 June 9, 2015) (quoting *Talbot v. Mack*, 41 Nev. 245 (1917)) (holding that plaintiff’s claim – that defendant published accusations on multiple websites that plaintiff had been guilty of crimes, frauds, and scams, with intent to smear the plaintiff was a claim for defamation per se).

Under Nevada law, if a defendant makes a false derogatory statement that a plaintiff has committed a crim, then that constitutes defamation per se, and the plaintiff is entitled to recovery

1 presumed general damages. *Nevada Independent Broadcasting v. Allen*, 99 Nev. 404, 409, 664  
2 P.2d 337, 341 (1983). The Restatement (Second) of Torts § 571 (1977) provides that the requisite  
3 crime must be one punishable by “imprisonment,” or involving “moral turpitude.” *Pollard v.*  
4 *Lyon*, 91 U.S. 225, 234, 237 (1875); *Yakavicke v. Valentukevicius*, 80 A. 94, 95 (Conn. 1911);  
5 *Fleming v. Moore*, 275 S.E.2d 632, 635 (Va. 1981) (“At common law defamatory words are  
6 actionable per se are ... [t]hose which impute to a person the commission of some criminal offense  
7 involving moral turpitude, for which the party, if the charge is true may be indicted and  
8 punished.”); *Thorsen v. Sons of Norway*, 996 F. Supp. 2d 143 (E.D.N.Y. 2014) (requiring a  
9 “serious” crime, such as “theft”). Some examples of crimes of moreal turpitude include “treason,  
10 espionage, murder, burglay, larceny, arson, rape, criminal assault, perjury, selling mortgaged  
11 chattels or diseased meat, kidnapping, wife beating, malicious mischief, indecent exposure,  
12 bootlegging, operating a bawdy house, and uttering a bad check.” *Id.* Restatement (Second) of  
13 Torts § 571 (1977).

14 Courts have routinely followed the Common Law, Restatement of Law, and the modern  
15 trend that only the imputation of a “serous crime” would qualify for defamation per se. In *K-Mart*,  
16 the Court recognized that “[c]ertain classes of defamatory statements are considered so likely to  
17 cause serous injury to reputation and pecuniary loss that these statements are actionable without  
18 proof of damages.” *K-Mart Corp v. Washington*, 866 P.2d 274, 292 (Nev. 1993), overruled on  
19 other grounds by *Pope v. Motel 6*, 114 P.3d 277, 283 (Nev. 2005)). The Nevada Supreme Court  
20 recognized that “historically,” “the imputation of a crime” was treated as defamatory per se. *K-*  
21 *Mart* involved an accusation of “shoplifting,” (a crime of moral turpitude), which the Court found  
22 was “unquestionably slander per se.” *Id.*

23 The *Anderson* Order found, “. . . in Nevada, consistent with public policy, the Common  
24 Law, and the prevailing view, to invoke ‘defamation per se’ based on the accusation of a crime,  
25 the crime must be a ‘serious’ crime – which means it is either a crime punishable by imprisonment  
26 [...], or it is known to be a crime of moral turpitude.” *Id.* At 47:25-28. Notably, the *Anderson*  
27 Order points out, the common law dictates that crimes of theft are considered crimes of moral  
28 turpitude. *Id.* at 46-47.

1 Additionally, the Plaintiff must establish that the defamatory statement must tend or to  
2 be reasonably calculated to injure the victim's reputation. *Bongiovi v. Sullivan*, 122 Nev. 556,  
3 138 P.3d 433, 448 (2006). Therefore, to be actionable, the matter alleged to be defamatory  
4 must tend to lower the plaintiff in the opinion of respectable members of the community. 50  
5 Am. Jur.2d, *Libel and Slander* § 1.  
6

7 NRS 41.660 defines this burden as "the same burden of proof that a plaintiff has been  
8 required to meet pursuant to California's anti-Strategic Lawsuit Against Public Participation law  
9 as of the effective date of this act." at §12.5(2). Plaintiff cannot simply make vague accusations  
10 or provide a mere scintilla of evidence to defeat Gama's motion. Rather, to satisfy its evidentiary  
11 burden under the second prong of the Anti-SLAPP statute. Plaintiff must present "substantial  
12 evidence that would support a judgment of relief made in the plaintiff's favor." *S. Sutter, LLC v.*  
13 *LJ Sutter Partners, L.P.*, 193 Cal. App. 4<sup>th</sup> 634, 670 (2011); *see also Mendoza v. Wichmann*, 194  
14 Cal. App. 4<sup>th</sup> 1430, 1449 (2011) (holding that "substantial evidence" of lack of probable cause  
15 was required to withstand Anti-SLAPP motion on malicious prosecution claim.)

16 A plaintiff must meet this burden as to all elements of its claims, and at the Anti-SLAPP  
17 stage, Plaintiff must make "a sufficient *prima facie* showing of facts to sustain [its] burden of  
18 demonstrating a **high probability** that [Defendants] published defamatory statements with  
19 knowledge of their falsity or while entertaining serious doubts as to their truth." *Burrill v. Nair*,  
20 217 Cal. App. 4<sup>th</sup> 357, 390 (2013) (emphasis added). As is alleged in the Complaint, the Plaintiff  
21 has satisfied these elements at this stage in the litigation. The Plaintiff has supplied proof that the  
22 Defendants claims are false, fabricated, and without any factual support. The Plaintiff has  
23 provided this Court with proof of the GLVAR emails that prove there was no investigation or  
24 complaint ever filed against her. Further, it is Plaintiff's testimony that the statements made were  
25 false as it relates to her past history and sexual conduct. Defendants have made unsupported  
26 claims of moral turpitude without any factual support. Therefore, constituting defamation.

27 In *Milkovich v. Lorain Journal Co.*, the Supreme Court declined to create a blanket  
28 exemption for defamation liability when the author simply calls it "opinion." 497 U.S. 1, 18

1 (1990). However, the First Amendment does protect pure opinion. The question after *Milkovich*  
2 in a defamation claim is “whether a reasonable factfinder could conclude that the contested  
3 statement implies an assertion of **objective** fact.” *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053  
4 (9<sup>th</sup> Cir. 1990) (emphasis added). If the answer is “no” the First Amendment protects the  
5 statement, and there is no defamation. *See Gardner*, 563 F.3d at 987. The statements presented  
6 in Defendants multiple articles are presented as fact, not an opinion. Defendants make multiple  
7 claims regarding Plaintiff’s conduct, behavior, past legal history, business licenses, investigations,  
8 and complaints against her. The statements are presented as fact. The reader of Defendants’  
9 articles would reasonable conclude that the statements presented by the Defendants were in fact  
10 true. Plaintiff has set forth pleadings and evidence that the statements made against her were in  
11 fact false.

12 Plaintiff has satisfied the elements of defamation and has established that Defendants  
13 published multiple defamatory statements/articles against the Plaintiff. Those defamatory  
14 statements are as follows:

- 15 1. <https://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy/> within  
16 the article, the Defendants in concert published the false statement that, “But  
17 according to the Nevada Secretary of State’s official website and Clark  
18 County business records Kassee Bulen’s company, Bulen Strategies, is not a  
19 licensed lawful business in the state of Nevada.” This statement is false as  
20 Plaintiff did have a lawful business license. This factually false statement  
21 could have been easily verified had the Defendants performed any  
22 reasonable search on the NVSOS. The allegation that Plaintiff is conducting  
23 business without a proper license is both an allegation of wrongdoing,  
24 possibly fraud, and clearly an action that would cast doubt on Plaintiff’s  
25 business conduct and business reputation.  
26  
27  
28

1 a. In the same article the Defendant stated, "Furthermore, according to  
2 public databases, Kasee Bulen or "Lawra Kasee Bulen" was  
3 charged and sentenced for Assault Causing Bodily Injury in Dallas  
4 Texas." This information had been sealed by the Court and was not  
5 available for publication. The case was dismissed and sealed by the  
6 Court. Even if the statement is true, it shows the length that  
7 Defendants have went to destroy Plaintiff's reputation and cast her in  
8 false light.  
9

10 b. In the same article the Defendant stated, "Bulen has lived in at least 6  
11 states in the past 10 years filing bankruptcy and chased out of  
12 Republican Party groups in Arizona and St. George according to  
13 sources." Again, this statement is false and completely unsupported.  
14 Plaintiff disputes that the Defendants had any "sources" that  
15 supported this entirely false allegation. Plaintiff had not been chased  
16 out of any Republican Party groups in Arizona and/or St. George. In  
17 fact, Plaintiff had only lived in three (3) states at the time of the  
18 release of this article. This claim again tends to more likely than not  
19 lower the reputation of the Plaintiff. The statement implies that  
20 Plaintiff is committing some form of misconduct and that she has a  
21 history of misconduct and therefore needs to relocate.  
22  
23

24 c. In the same article, Defendants then attack Plaintiff's  
25 sexual conduct with no source to confirm such information when he  
26 stated, "Additionally, according to people we spoke with directly,  
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several married men in other states have accused Kassee Bulen of trying to extort money out of them after she had an affair with them.” Such a statement against her sexual conduct constitutes Per Se Defamation. The Plaintiff specifically disputes that claim by Defendants that they either had sources or had discussed Plaintiff’s sexual conduct with any person at all. The allegation in the article claims that Plaintiff was guilty of a crime of moral turpitude. The Complaint clearly outlines the false statement and Plaintiff has the legal right to prove to this Court, through the discovery process that the statement was false and importantly was made without any third party source confirming the allegation.

d. Finally, in the same article, Defendant falsely claims that, “Kassee 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.” Again, this claim is false. Defendant fabricated the claim and had no actual proof that anyone was concerned about the Plaintiff and/or her conduct associated with the Fougere campaign. Frankly put, Plaintiff was not a hired staff member of Fougere’s campaign. Plaintiff was a volunteer on his campaign. Her role while important, was not significant enough to raise concern among voters. Therefore, it is confirmed that in the first article the Defendants knowingly made no less than four false statements.

1 Defendants' Motion only attacks the single claim in the article that Defendants  
2 published a statement concerning a sealed litigation case involving the Plaintiff. Therefore,  
3 since that single statement in the article was true, the Plaintiff cannot have a claim of  
4 defamation and/or defamation per se. Defendants' claim is unsupported by any relevant case  
5 law. The rest of the published article contains numerous false statements and as alleged in the  
6 Complaint are fabricated and were not verified by any source. As the claims in the Defendants'  
7 article falsely claim Plaintiff has committed crimes of moral turpitude, Plaintiff has the legal  
8 right to prove that the claims are false and thus constitute defamation.  
9

10 2. Alleged GLVAR Complaint and Investigation article.  
11

12 As stated in the Complaint, on August 13, 2018, Defendants in concert  
13 published a second defamatory article titled *KASSEE BULEN UNDER*  
14 *INVESTIGATION AFTER BEING CHARGED WITH ETHICS VIOLATIONS IN*  
15 *COMPLAINT FILED WITH GLVAR.*  
16 [https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-](https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/)  
17 [being-charged-with-ethics-violations-in-complaint-filed-with-glvar/](https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/). (hereinafter  
18 "GLVAR Article"). Specifically, the article made the following false and  
19 defamatory claims against the Plaintiff:  
20

21 "An ethics complaint was filed this week with the Great Las Vegas  
22 Association of Realtors against Lawra Kassee Bulen." This statement is, was,  
23 and was confirmed to be false. This publication was seen by thousands of  
24 viewers on Defendants' social media. Importantly, the publication was so  
25 widely seen that the Greater Las Vegas Association of Relators (GLVAR) the  
26 governing authority of the Realtors, became aware of the publication.  
27  
28

1 Defendants' Motion to Dismiss claims that Defendants obtained a copy of the  
2 complaint and therefore relied on that information when they published the  
3 article. However, as was confirmed by GLVAR through multiple emails, that  
4 alleged complaint was never filed or submitted to GLVAR. Therefore, as  
5 Plaintiff alleges in the Complaint, Defendants fabricated the GLVAR Complaint  
6 and therefore had no basis to rely on the Complaint because the Defendants  
7 knew the Complaint was false.  
8

9 The publication failed to contained a scintilla of truth, GLVAR  
10 confirmed that it had not received any complaint against the Plaintiff. GLVAR's  
11 confirmation establishes the blatant disregard the Defendants maintain for the  
12 truth. They have and are willing to create total fabrications, publish them, and  
13 present them as truth to their thousands of followers on social media. Once the  
14 post is published, the irreparable harm is done. The personal harm to the  
15 Plaintiff is impossible to measure. The harm to her reputation, her career, her  
16 ability to maintain employment, her ability to maintain any normal lifestyle. The  
17 Defendants are relentless in their pursuit of the Plaintiff. The Defendants  
18 continue to post new articles against the Plaintiff.  
19  
20

21 Within the GLVAR Article Defendants reference several "Standard of  
22 Practice" rules thereby presenting the image that Plaintiff has violated ethical  
23 standards set for Realtors. Even more troubling, the Defendants fabricate an  
24 Ethics Complaint Form that appears to be a redacted copy of the filed the  
25 Complaint.  
26  
27  
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1 Violating the rules of Ethics clearly supports Plaintiff's claims against  
2 the Defendants for defamation and defamation per se. If, as Plaintiff alleges,  
3 Defendants fabricated the GLVAR Complaint themselves or through a third  
4 party then clearly Plaintiff has a valid cause of action for Defamation. As the  
5 Court should notice through the Complaint it is heavily redacted and does not  
6 actually prove that such a Complaint was ever submitted. Further, the title of the  
7 article falsely claims that Plaintiff was under investigation. Again, this statement  
8 is false, as confirmed by GLVAR Presidents' email that says no such complaint  
9 had even been filed against the Plaintiff. Therefore, there was no basis of which  
10 to investigate the Plaintiff for alleged ethics violations. (Exhibit 2 – GLVAR  
11 Email).

12  
13  
14 Defendants are not protected by Anti-SLAPP statutes when Defendants  
15 statements are false and actual defamation. Anti-SLAPP protects opinion  
16 speech, not false speech. Defendants are asking this Court to dismiss the  
17 Complaint because Anti-SLAPP statutes protect their speech. However, such a  
18 claim is not supported when the Defendants statements are clearly false and/or  
19 fabricated. Plaintiff is entitled to discovery on the claims and allegations set  
20 forth in the Complaint. As evidence of the falsity of the statements would  
21 constitute defamation and defamation per se.

### 22 3. Defendants Video of Plaintiff – Alleged “Never Trumper”

23  
24 The “Never Trumper” allegation by the Defendants was based on video that  
25 Plaintiff never agreed to have to be produced. The video was shot in front of a  
26 green screen and was edited by the Defendants without Plaintiff's input,  
27  
28

1 direction or approval. The Complaint alleges the video was falsely edited by the  
2 Defendants to again shed false light on the Plaintiff. (Complaint Pg. 5, Ln. 15-  
3 28). The allegations in the Complaint state that the heavily edited video was  
4 intended to make Plaintiff appear to be unfit to participate in political campaigns  
5 and lower Plaintiff's reputation. In fact, the article and publicity received did in  
6 fact damage Plaintiff's reputation and caused her to lose political involvement.  
7

### 8 CONCLUSION

9  
10 Defendants' Anti-SLAPP Motion to Dismiss must be denied as the speech presented in  
11 Defendants articles are presented as fact and are in false. Further, the Complaint alleges that  
12 Defendants' statements and alleged evidence is false or entirely fabricated by the Defendants.  
13 Therefore, Plaintiff has submitted sufficient evidence to support her claims for Defamation.  
14 Plaintiff submitted an verification of the Complaint with the original Complaint. (Exhibit 3).  
15 Based on the evidence supported and presented to this Court, the Defendants' Motion must be  
16 denied.  
17

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1 Finally, on July 20, Plaintiff's counsel sent Defendants' an email, stating that an  
2 emergency matter had arisen and that Plaintiff respectively requested one additional day to file  
3 the Opposition. However, Defendants refused to extend the professional courtesy and before  
4 9:00am on July 21, 2020, filed a Notice of Non-Opposition. Such a filing constitutes continued  
5 bad faith conduct by the Defendants. Plaintiff respectively requests that the Court strike the Non-  
6 Opposition and determine the matter on the merits.  
7

8 DATED this 21<sup>st</sup> day of July, 2020..  
9

10 **BRANDON L. PHILLIPS,**  
11 **ATTORNEY AT LAW, PLLC**

12 /s/ Brandon L. Phillips  
13 BRANDON L. PHILLIPS, ESQ.  
14 Nevada Bar No. 12264  
15 1455 E. Tropicana Ave., Suite 750  
16 Las Vegas, Nevada 89169  
17 (702) 795-0097, (702) 795-0098 fax  
18 *Attorney for Defendants*  
19 *Goldy LLC, CMJ-OP LLC, Martin Goldstein and*  
20 *Christophe Jorcin*

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that I am an employee of BRANDON L. PHILLIPS, ATTORNEY AT  
23 LAW, PLLC., and that on the 23<sup>rd</sup> day of March, 2018, I served a true and correct copy of the  
24 foregoing DEFENDANTS, GOLDY LLC, CMJ-OP LLC, MARTIN GOLDSTEIN, AND  
25 CHRISTOPHE JORCIN MOTION TO DISMISS PLAINTIFFS ELIAS GHANEM II AND  
26 KRYSTAL'S DINING, LLC'S COMPLAINT PURSUANT TO NRCP 16.1(e) (2) through the  
27 Eighth Judicial District Court's electronic filing system to the following:  
28

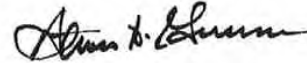
1 Aaron Dean ([service@deanlegalgroup.com](mailto:service@deanlegalgroup.com))  
2 Cami Perkins ([cperkins@nevadafirm.com](mailto:cperkins@nevadafirm.com))  
3 Kandy Halsey ([khalsey@nevadafirm.com](mailto:khalsey@nevadafirm.com))  
4 Brian Boschee ([bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com))  
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14 Nikki Kotler . ([nikki@njbltd.com](mailto:nikki@njbltd.com))  
15 Patricia Farina . ([pfarina@njbltd.com](mailto:pfarina@njbltd.com))  
16 Zach Swarts . ([zswarts@cpa-lv.com](mailto:zswarts@cpa-lv.com))  
17 Wendy Cosby ([wcosby@bhfs.com](mailto:wcosby@bhfs.com))  
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25 /s/ Sarah Holmes  
26 An employee of BRANDON L. PHILLIPS,  
27 ATTORNEY AT LAW, PLLC  
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## **EXHIBIT 1**

## **EXHIBIT 1**



CLERK OF THE COURT

FFCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

TERRI ANDERSEN,

Plaintiff,

vs.

PAUL HAZELL,

Defendant.

Case No.: A-13-682815-C  
Dept. No.: II

Date: May 20, 2016  
Time: 9:00 a.m.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
JUDGMENT IN FAVOR OF  
DEFENDANT**

Richard F. Scotti  
District Judge

Department Two  
Las Vegas, NV 89155

ROA000269

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PROCEDURAL HISTORY	2
III. FINDINGS OF FACT	4
A. THE HOA	4
B. HAZELL'S WEBSITE BLOG	4
C. ALLEGED DEFAMATORY STATEMENTS	6
D. ALLEGED SELECTIVE, ABUSIVE, HARASSING, ILLEGAL AND RETALIATORY ENFORCEMENT OF THE HOA RULES	7
1. Basketball Hoop Issues	8
2. Parking Issues	8
3. Landscaping Issues	8
4. Structural Aesthetic Issues	9
5. Obstruction Issues	10
6. Noise Issues	10
7. Photographic Conduct	11
8. Verbal Harassment	11
E. ALLEGED FRAUD AND CRIMINAL CONDUCT	13
1. Extension of Management Contract	13
2. Hiring of Unlicensed Contractors	14
3. Change of Bank Account	15
4. Misuse of HOA Funds	16
5. Misuse of "Reserve Account" Funds	16
F. ALLEGED "LUNACY" AND TAKING "MENTAL ILLNESS MEDS"	19
G. ALLEGED "SMOKING POT"	20
H. THE GENERAL CONTENT OF THE ALLEGEDLY DEFAMATORY SPEECH	21

Richard F. Scotti  
District Judge

Department Two  
Las Vegas, NV 89155

ROA000270



1	I.	THE FORM OF THE ALLEGEDLY DEFAMATORY SPEECH	22
2			
3	J.	THE CONTEXT OF THE ALLEGEDLY DEFAMATORY SPEECH	22
4	K.	EXTENT OF PUBLIC CONCERN	22
5	L.	EXTENT OF ACTUAL DISSEMINATION OF THE SPEECH	22
6			
7	M.	NEXUS BETWEEN THE SPEECH AND THE PUBLIC INTEREST	23
8	N.	HAZELL'S MOTIVATION IN MAKING HIS STATEMENTS	23
9	O.	PLAINTIFF'S DAMAGES	24
10	IV.	CONCLUSIONS OF LAW	24
11	A.	CLAIM FOR DEFAMATION	24
12			
13	1.	The Elements In General	24
14	2.	Defamatory Statements	26
15	3.	Fact Versus Opinions	26
16	4.	Truth Or Falsity	28
17	5.	The Level Of Fault	28
18	6.	Defamation Damages	44
19	B.	CLAIM FOR INVASION OF PRIVACY: FALSE LIGHT	48
20	C.	CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	50
21	D.	CLAIM FOR CONSPIRACY	50
22	E.	CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF	51
23			
24	V.	JUDGMENT	51
25			
26			
27			
28			

1 **I. INTRODUCTION**

2 This is primarily an action alleging defamation and invasion of privacy involving an  
3 Internet website and blog maintained by homeowner Defendant Paul Hazell concerning the  
4 Quail Summit Property Owner's Association (hereinafter the "HOA"), and its former  
5 President, Plaintiff Terri Andersen. Ms. Andersen alleges that Mr. Hazell made false and  
6 derogatory statements about her, including (a) accusations of selective, abusive, harassing,  
7 illegal, and retaliatory enforcement of the HOA rules, (b) accusations of fraud, and criminal  
8 conduct towards some of the members; (c) accusations of "lunacy" and taking "mental illness  
9 meds"; and (d) and accusations of "smoking pot."

10 Plaintiff asserted the following claims for relief: (1) Defamation; (2) Intentional  
11 Infliction of Emotional Distress; (3) Declaratory Relief, (4) Injunctive Relief, (5) Civil  
12 Conspiracy, and (6) Invasion of Privacy: False Light.

13 As a defense to each of the claims, Defendant Hazell denied the claims, asserted  
14 affirmative defenses, and contended that his statements were truthful, that his statements  
15 involved non-actionable expressions of opinion, and that he made his statements with neither  
16 negligence nor actual malice.

17 This action came on for trial before the Court, the Honorable Richard Scotti, District  
18 Judge, presiding, and the issues having been duly heard, and a decision having been duly  
19 rendered, as set forth below.

20 The Plaintiff proved one thing in this case – that Mr. Hazell acted, at times, like a  
21 bully; he was throwing temper tantrums, speaking to his neighbors in an unprofessional  
22 manner; name-calling, and seeking out confrontation rather than cooperation. But his un-  
23 neighborly speech did not constitute any tort or subject him to liability on any claim for relief.

24 It Is Ordered and Adjudged that Defendant prevail on each of the Plaintiff's claims,  
25 including Defamation; Invasion of Privacy: False Light; Intentional Infliction of Emotional  
26 Distress; Declaratory Relief, Injunctive Relief, and Civil Conspiracy, and that Plaintiff shall  
27 take nothing on any claims of its Complaint.

28 ...

1 **II. PROCEDURAL HISTORY**

2 This was a bench trial, tried to the Court without a jury, over the following several  
3 days: January 25, 27-29, 2016, and March 14, 16, and 18, 2016. Closing arguments were  
4 presented on May 20, 2016.

5 The Plaintiff called the following witnesses to testify: Paul Hazell; Dorothy "Jackie"  
6 Nithman (f.k.a. Jackie Goodset); Dan Denuccio; Terri Andersen; Eileen Martinelli; Marlene  
7 Tardiff; William Humphrey; Natalaie Dawn Manwill; and Kurt Faux.

8 The defendant called the following witnesses to testify: Paul Stoshak; Veronica Chew,  
9 and Paul Hazell.

10 The Court admitted into evidence the following exhibits of the Plaintiff and/or  
11 Defendant from the proposed Joint Exhibit List: Exhibits 1-38; 39(a); 40; and 42-87.

12 The Court has read and considered the pre- and post-trial briefs of the parties as  
13 follows: Plaintiff's Pre-Trial Memorandum (10/25/15) Defendant Paul Hazell's Pre-Trial  
14 Memorandum (filed 10/26/15); Plaintiff's Supplemental Pre-Trial Memorandum (10/27/15);  
15 Defendant Paul Hazell's Supplemental Pre-Trial Memorandum (filed 12/14/15); Defendant  
16 Paul Hazell's Trial Brief (filed 4/11/2016); Plaintiff's Post-Trial Brief (4/12/16); Plaintiff's  
17 Reply Brief To Defendant Hazell's Trial Brief (filed 4/29/16); and Defendant Paul Hazell's  
18 Response To Plaintiff's Brief (filed 4/29/16).

19 At the start of trial, Defendant Hazell brought a motion in limine to preclude Plaintiff  
20 Andersen from introducing evidence of "ill will" (including alleged spite, bad character, and  
21 motives to harm or seek retribution) of Hazell towards Andersen. Defendant Hazell argued  
22 that evidence of such "ill will" of the Defendant was not relevant in a defamation action where  
23 the plaintiff had the burden of proving falsity on the level of "actual malice." Such motion  
24 required this Court to determine preliminarily whether the Plaintiff had the burden of proving  
25 fault based upon mere negligence or "actual malice." The Court preliminarily found that  
26 Defendant Hazell's allegedly defamatory statements involved matters of public concern and  
27 the Plaintiff is only seeking presumed damages. This preliminary finding lead to the next  
28 preliminary finding of the Court that the plaintiff had the burden of proving that Defendant

1 Hazell made the statements with "actual malice" - in the constitutional sense. "Actual malice"  
2 in the constitutional sense is much different than "malice" as used in the Common Law --  
3 generally to refer to evil intent.

4 As explained below, the "actual malice" standard requires a Plaintiff to prove, by clear  
5 and convincing evidence, that the Defendant made his statements with knowledge they were  
6 false, or with reckless disregard of the truth or falsity of the statements. Generally "ill will"  
7 (or an evil intent) of the Defendant is not relevant, by itself, to prove "actual malice."  
8 However, under applicable Nevada law, and federal constitutional standards, the Court has  
9 discretion to admit evidence of the defendant's ill-will if there is other evidence tending to  
10 prove "actual malice," the Court finds that the "ill will" evidence is probative of the issue, and  
11 such evidence is not out-weighed by the risk of unfair prejudice or confusion of the issues.  
12 NRS 48.035(1). A plaintiff is not permitted to present a case of "actual malice" based solely  
13 on evidence of false statements made with ill-will.

14 The Court exercised its discretion in this case, at the start of the trial, to bar  
15 introduction of the Plaintiff's "ill will" evidence until and unless the Plaintiff presented a  
16 prima facie case of "actual malice." During trial the Court made a preliminary finding of  
17 "actual malice" by Defendant Hazell in making the statements about Ms. Andersen "smoking  
18 pot." The Court then opened the door for the Plaintiff to introduce its "ill will" evidence, and  
19 the Plaintiff presented such evidence.

20 Despite the court's preliminary finding of "actual malice" for the "smoking pot"  
21 statements, the Court reserved the right to revisit this preliminary finding after all the evidence  
22 was in, and the Court had a further opportunity to weigh all of the evidence, and assess the  
23 credibility of all of the witnesses.

24 As explained below, the Court reverses its preliminary finding that Defendant Hazell's  
25 allegedly defamatory statements involved matters of public concern. The Court further  
26 concludes that Plaintiff was not required to prove fault to the level of "actual malice." The  
27 Court further concludes that the Plaintiff was properly permitted, under the negligence level of  
28 fault, to introduce evidence of Defendant Hazell's alleged "ill will" towards Andersen.

1 **III. FINDINGS OF FACT**

2 **A. THE HOA**

3 The Plaintiff, Terri Andersen, was a Board Member of the Quail Summit Board of  
4 Directors from about 2009 through 2015. She was named President of the Board on or about  
5 January 23, 2012, and served until sometime in 2015.

6 Defendant Hazell was a resident and member of the HOA from May 2004 until  
7 December 2014.

8 The Quail Summit Board of Directors manages the Quail Summit Property Owner's  
9 Association ("HOA").

10 Nevada law empowers the HOA, acting through its Board of Directors, to exercise  
11 quasi-governmental authority. See NRS 116.3012 – 116.31175.

12 The HOA provided some basic amenities and simple services to its paying members,  
13 all of whom are co-owners of property, and all within the geographic confines of the HOA.

14 **B. HAZELL'S WEBSITE BLOG**

15 Defendant Hazell created and maintained a website blog at the web address of  
16 www.QuailSummitHarassmentAssociation.com (hereinafter the "blog" or the "website").  
17 Defendant Hazell started this website around February 2012, and maintained it and kept it  
18 freely accessible by the public until around February 2015. Although the parties characterized  
19 this website as a blog, it appears that from the evidence at trial the only person who ever wrote  
20 anything on the blog was Mr. Hazell. Mr. Hazell added, deleted, and changed writings and  
21 pictures on the website over time. There was no evidence at trial indicating or suggesting that  
22 any member of the public had the ability to write anything on the blog.

23 Various different versions of the website were admitted into evidence showing  
24 publication dates of March 7, 2013, April 30, 2013, and February 20, 2014.

25 At trial Mr. Hazell admitted that he was solely responsible for the content of the blog.  
26 Mr. Hazell did obtain some of the information on the website from his wife, Veronica Chew.

27 Plaintiff Andersen contended, but did not prove, that Defendant Hazell's wife,  
28 Veronica Chew, also created and/or maintained the website. Plaintiff Andersen did not prove,

1 by a preponderance of the evidence, that Ms. Chew expressly or implicitly agreed with  
2 Defendant Hazell to create, contribute to, or maintain the website and/or the allegedly  
3 defamatory statements therein. Plaintiff Andersen failed to prove, by a preponderance of the  
4 evidence, that Ms. Chew acted in concert with Mr. Hazell, or engaged in any activities with  
5 Mr. Hazell, in furtherance of creating, maintaining, or publishing the website or its contents.

6 The website stated its "Mission Statement" as follows:

7 This website is gladly dedicated to the powers of the incessantly  
8 toxic Quail Summit Board of Directors and exposing repeated and  
9 habitual and constant abuses to homeowners; harassment, selective  
enforcement & retaliatory acts from Board Members, MGMT  
Companies and their predatory attorneys past and present!

10 As a further statement of the supposed purpose of the website, Defendant Hazell  
11 included the following statement therein:

12 This website is DEDICATED to restoring Civil and Constitutional  
13 rights to individuals living in Quail Summit, to stop intrusive and  
14 punitive actions, stop misuse of an to protect homeowners funds,  
limit the powers of the abusive Board of Directors, and most  
importantly expose repeated abuses to homeowners within Quail  
15 Summit!

16 The blog referenced its substance as "facts": "The following facts are demonstrative  
17 of the Quail Summit Property Owners Association that has been continually plagued by a  
18 toxic HOA and Mgmt Company (FCCMI owned by Thomas R. Kelly)."

19 Defendant Hazell admitted that his blog "clearly sets forth his negative opinions about  
20 the Quail Summit HOA as well as various Board Members."

21 Defendant Hazell's website made the following accusations against Plaintiff Andersen:  
22 (a) selective, abusive, harassing, and retaliatory enforcement of the HOA rules, (b) fraud, and  
23 criminal conduct towards some of the members; (c) "lunacy" and taking "mental illness  
24 meds"; and (d) "smoking pot".

25 Hazell reported that a named former employee of the HOA management company  
26 (FCCMI), plead guilty to fraud committed as an employee of FCCMI from 2006 until 2009.

27 The blog presented photos of alleged violations of the governing documents by the  
28 directors of the HOA, and their friends.

1 Mr. Hazell also gave his opinion in his blog about his perceived problems with  
2 homeowners associations in general, and their structure.

3 Mr. Hazell further gave his opinion that homeowner association laws in general  
4 incentivize directors to abuse fellow homeowners.

5 Defendant Hazell's website presented academic journalism by others reporting that  
6 there is an alleged incentive for association board members to unnecessarily abuse fellow  
7 homeowners.

8 On or about March 4, 2013, Defendant Hazell mailed a letter to the residents of the  
9 HOA expressly directing homeowners to the website.

10 Despite the accusations in the website against Ms. Andersen, Defendant Hazell never  
11 filed a criminal complaint against Ms. Andersen, and never complained to any law  
12 enforcement entity that she had engaged in any criminal fraud, criminal harassment, criminal  
13 conspiracy, or any other crime.

14 Defendant Hazell used a photo of Ms. Andersen on his website. He obtained this  
15 photo legally from a photo that Ms. Andersen had posted on social media. It is undisputed  
16 that Mr. Hazell did not seek or obtain any express permission from Ms. Andersen to use the  
17 photograph. Mr. Hazell did not use the photograph of Plaintiff Andersen for any commercial  
18 purpose.

19 Defendant Hazell clearly wanted Andersen to cease serving as president of the HOA,  
20 but he never called for a removal election, and never sought to implement the established  
21 procedure of circulating a written petition to remove a Board Officer.

22 There was no evidence that Mr. Hazell's website received any attention from any  
23 traditional media outlet. There was no evidence that the HOA events discussed by Hazell  
24 were covered by any news reporter. There was no evidence that Mr. Hazell sought any such  
25 media attention.

### 26 **C. ALLEGED DEFAMATORY STATEMENTS**

27 Plaintiff Andersen alleged that defendant Hazell made the following defamatory  
28 statements:

1 "Quail Summit HOA President Teri Andersen admittedly and  
2 ILLEGALLY targeted some homeowners IN RETALIATION  
AND HAD FCCMI ISSUE violations!"

3 "We will continually expose her prevarications, VERBAL  
4 ABUSE, deceit, HARASSMENT, conspiracy, FRAUD,  
dereliction, foul mouth, LUNACY and much more!"

5 [Caption below Ms. Andersen's photo]: "SMOKING POT,  
6 TAKING MENTAL ILLNESS MEDS AND DRINKING CAN  
IMPAIR JUDGMENT AND NORMAL LOGICAL  
THINKING!"

7 [Caption below Ms. Andersen's photo]: "This woman needs to  
8 be removed and PROSECUTED FOR HER EGREGIOUS  
ACTIONS."

9 "Andersen was witnessed smoking marijuana in her backyard at  
10 her Halloween Costume party. She did this on the side of her  
house several times while consuming alcohol!"

11 Plaintiff Andersen's complaints about Hazell's alleged defamatory comments can be  
12 summarized into these four groups: (a) accusations of selective, abusive, harassing, illegal,  
13 and retaliatory enforcement of the HOA rules, (b) accusations of fraud, and criminal conduct  
14 towards some of the members; (c) accusations of "lunacy" and taking "mental illness meds";  
15 and (d) and accusations of "smoking pot."

16 **D. ALLEGED SELECTIVE, ABUSIVE, HARASSING, ILLEGAL**  
17 **AND RETALIATORY ENFORCEMENT OF THE HOA**  
18 **RULES**

19 Defendant Hazell formed his opinions regarding the Board's alleged selective  
20 enforcement of the HOA rules from several sources, including, but not limited to personal  
21 observations, information from his wife, information provided from third persons (hearsay),  
22 information from his own legal and factual research on the Internet, and having received and  
23 become familiar with the Quail Summit Property Owners Association Rules and Regulations  
24 and possibly the Quail Summit Guidelines, which Mr. Hazell said he may have seen.

25 Defendant Hazell argued that selective enforcement of HOA rules constituted abusive,  
26 harassment, retaliation, and/or illegal conduct. The Court notes that NRS 116.31184 makes it  
27 illegal for an HOA Board to harass a member.

28 Defendant Hazell presented the following evidence:



1                   **1. Basketball Hoop Issues**

2                   Homeowner (and former HOA President) Chatwin reportedly had two illegal hoops  
3 and a satellite dish clearly visible in front of his house, which the Board allowed to remain for  
4 a long time.

5                   The Board gave a "variance" to homeowner Meeks for their illegal basketball hoops in  
6 2007, and then later (some unspecified time before April 2013) finally ordered it removed.

7                   **2. Parking Issues**

8                   Homeowner Chatwin reportedly parked his trailer overnight and visible from the  
9 street, in violation of HOA rules, for over two (2) years.

10                  The Board failed to take action against homeowner Babic for parking his boat on the  
11 street overnight several times in violation of HOA rules.

12                  Plaintiff Andersen parked her car on the street in front of Hazell's house for five (5)  
13 days in a spot where Hazell had previously parked his truck -- even though Andersen had  
14 complained about Hazell parking his truck there. Andersen supposedly parked her car there at  
15 the time because her new concrete driveway was curing. The evidence was inconclusive  
16 whether parking was available on Andersen's side of the street at the time she parked on  
17 Hazell's side of the street.

18                  **3. Landscaping Issues**

19                  Mr. Hazell reported that the HOA Board failed to take action against homeowner  
20 Babic who allowed his lawn to sprout weeds, and for failing to properly maintain his lawn, in  
21 violation of the HOA rules.

22                  The undisputed evidence was that the HOA Board never imposed any fines against Mr.  
23 Hazell for landscaping issues. Nevertheless, he did receive several notices that he was in  
24 violation of the HOA rules because his lawn was deficient. Hazell presented credible  
25 evidence that Babic's lawn was in worse shape, which tends to demonstrate possible selective  
26 enforcement of the HOA rules.

27                  Mr. Hazell testified that he received a memo from the HOA entitled "Spring Repairs"  
28 that he interpreted as imposing a "moratorium" on violation letters until the end of the Spring

1 2013. Mr. Hazell testified that, despite this "moratorium," he received a violation letter  
2 probably in the Spring of 2013 regarding stains on his front door. His wife, Ms. Chew,  
3 testified that she recalled receiving a letter probably during the moratorium period for an  
4 exposed pipe. Both such witnesses also recalled receiving another violation letter for black  
5 marks on their chimney, sometime in 2013, but possibly outside the moratorium period.

6 Both Mr. Hazell and Ms. Chew testified that the HOA had selectively enforced its  
7 rules against them in 2013 as evidenced by the fact that problems persisted throughout 2013 to  
8 other homes.

9 The HOA did produce credible evidence that homeowners other than Mr. Hazell did  
10 receive violation letters during 2013; but Mr. Hazell had no reason to know about these.

#### 11 **4. Structural Aesthetic Issues**

12 Homeowner Pam Ghertner reportedly maintained structures in her backyard in  
13 violation of HOA rules, and without complaint by the HOA.

14 Hazell reported on his website that homeowner Jackie Goodset placed planters on her  
15 block wall to cover the view to her shed in violation of architectural standards of the HOA,  
16 and the HOA failed to take action. Andersen did not present any evidence to oppose this  
17 allegation.

18 Hazell reported that Andersen herself failed to timely repair a large broken section of  
19 her brick driveway; yet she cited homeowner Martinelli for having a gap between his wall and  
20 gate.

21 Regarding the Martinelli wall, Board representative had noticed the deficiency, and  
22 issued a notice to repair to Mr. Martinelli. While Ms. Chew may have noticed the issue and  
23 mentioned it to others, the Board had decided to take action before, and independent of Ms.  
24 Chew. Nevertheless, Mr. Martinelli then sent a threatening and caustic letter back to the  
25 Board – with a statement that implicitly threatened Ms. Chew. Mr. Hazel received a copy of  
26 this Martinelli letter from the Board. Mr. Hazel then published a copy of this letter on his  
27 website, which further inflamed Mr. Martinelli. The Board then decided not to stand up for  
28 the rights of Ms. Chew. The Board refused to inform Mr. Martinelli that Ms. Chew was not

1 the person responsible for his violation letter. Instead the Board, through its President  
2 Meatovich at the time, placated Martinelli to the detriment of Hazell and Chew, by stating in  
3 an email dated April 21, 2010, as follows:

4           **As board President I apologize** for your letter, which was  
5 confidential, being shared with anyone other than management or  
6 board members. **All homeowners have the right to speak out as**  
7 **they wish** about the affairs of the neighborhood we live in and  
8 should be guaranteed the right of privacy doing so. . . . **In the**  
9 **matter of your wall being a violation, consider the issue closed.**  
10 . . . once again you and your wife have my sincerest apologies for  
11 what transpired . . . .

12 (Emphasis added.)

13 From these facts, Mr. Hazell actually believed that the Board had engaged in selective  
14 enforcement of the HOA rules, and that the Board had shown disparate treatment in favor of  
15 Mr. Martinelli and against Mr. Hazel and his wife.

#### 16 5. Obstruction Issues

17 Homeowner and HOA Board member Babic allowed his tree to obstruct an HOA  
18 streetlight and encroach a neighbor's property, for some time without a violation notice. In  
19 fact, Board member Leopold approved of the tree's condition despite being put on notice that  
20 it was violating the HOA rules by obstructing the streetlight. Eventually the HOA President  
21 Andersen told Babic that it was his responsibility to trim the tree, and directed him to do so.  
22 Thereafter, the Board voted to reimburse Babic for his cost of trimming the tree.

23 Hazell received a notice of violation for his tree supposedly blocking a street sign even  
24 though his tree was much less of a blockage than the Babic tree problem.

#### 25 6. Noise Issues

26 Hazell received a notice of violation for playing loud music in the afternoon – even  
27 though his neighbor Goodset said she couldn't even hear the music. Apparently a neighbor  
28 farther away, Gary Leopold, had complained. Andersen wrongly complained that Goodset did  
not complain because he was not home; although Andersen did not know that Hazell had  
actually spoken to Goodset and knew that she had been home. The Court believes that  
Andersen did have a good faith belief that the music was too loud, and that she was protecting

1 the rights of the neighbors to the peaceful and quiet enjoyment of their property. However,  
2 the un rebutted facts also demonstrate that Hazell had a good faith belief he was being unfairly  
3 targeted for loud music. The evidence was insufficient for the Court to reach any conclusion  
4 whether Hazell's music was actually too loud, or actually bothered anybody in the  
5 neighborhood.

#### 6 **7. Photographic Conduct**

7 Hazell's website blog accused Andersen of harassment by taking photographs of  
8 Hazell's conduct or property conditions.

9 Andersen testified that she took pictures of Hazell's activities to provide evidence to  
10 use in connection with Board business. The Court believed this testimony. The Plaintiff  
11 introduced credible evidence that Andersen did not take any pictures surreptitiously. She did  
12 not take any pictures at night. She did not trespass on any of Hazell's property to take  
13 pictures. She did not take the pictures in any manner causing fear or surprise to Hazell.  
14 Moreover, she did not take any pictures of Hazell doing anything confidential, or privileged  
15 from disclosure. Nor did she take any pictures of Hazell or his wife inside their home.

16 Hazell admitted at trial that even HE took pictures of Andersen's property conditions --  
17 the very same activity that he accused Andersen of doing.

#### 18 **8. Verbal Harassment**

19 According to Mr. Hazell, at one time Ms. Andersen told him: "You harass everyone."  
20 Mr. Hazell also accused her of telling him, during HOA meetings: "How many people have  
21 you sued;" "You don't want to piss me off;" and "you don't want to go there." Mr. Hazell  
22 viewed these accusations as harassment, and relied on such accusations in making his own  
23 accusation against Ms. Andersen in his blog. It is probably true that Ms. Andersen accused  
24 Mr. Hazell of harassing everybody; and the Court can certainly see her being pushed, goaded,  
25 or frustrated by Mr. Hazell into making these remarks. Nevertheless, Mr. Hazell's return  
26 accusation of harassment by Andersen seems to be pure opinion, thus making this exchange of  
27 unfriendly banter a matter that should not have wasted this Court's time.

28 ...

1           Then there was the infamous “rose bush affair.” Apparently Ms. Andersen and a  
2 friend walked past Ms. Chew while she was trimming her rose bushes in front of her house.  
3 Ms. Chew must have given a troubling stare, because it prompted Ms. Andersen to exclaim:  
4 “What are you looking at?” In apparent shock at being addressed by neighbors walking by,  
5 Ms. Chew retorted: ‘What are you looking at?’ While the public was not explicitly alerted of  
6 this rose-side verbal exchange, Mr. Hazell did testify he relied upon it to express his opinion  
7 that Mr. Andersen was harassing both him and his wife. Again, the Court accepts the account  
8 of this event as factually true, and the website characterization of harassment therefor as  
9 nothing more than pure opinion.

10           Next, there was the “Babic Tree Cutting” issue. HOA member Babic, a next door  
11 neighbor to Defendant Hazell, apparently decided to cut his tree, which was overgrown into  
12 Defendant Hazell’s yard. Mr. Babic had somebody trim his tree without first obtaining  
13 approval from the HOA Architectural Review Committee (“ARC”). It seems that Ms.  
14 Andersen thought Ms. Chew had trimmed the tree, because Ms. Andersen accused Ms. Chew  
15 of failing to obtain ARC approval. Ms. Chew reported this false accusation to her husband,  
16 who relied on that to report harassment by Andersen in his blog. Once again, the Court  
17 accepts the account of this event as true, but finds the website accusation of harassment  
18 therefor to be pure opinion.

19           Mr. Hazell also recounted the story in his website of homeowner Babic bothering the  
20 community by revving his helicopter engine at 6:58 a.m. on February 3, 2012. Mr. Hazell  
21 viewed it as abuse for Ms. Andersen to seem to always take Mr. Babic’s side on issues. These  
22 were Mr. Hazell’s opinions.

23           Finally, at trial the parties gave various different accounts of other alleged verbal  
24 exchanges in the neighborhood that one or the other viewed as harassment. Apparently Hazell  
25 on one or more occasions performed work on his boat in plain view, and was criticized for  
26 doing so; apparently on one or more occasions Mr. Hazell played his music too loud while  
27 doing work in his front yard, and he was criticized for doing so; apparently Mr. Hazell got  
28 loud and animated on occasion at HOA meetings, and on a rare occasion he may have not had

1 the full amount of time that he wanted to speak; and apparently there was on occasions name  
2 calling by a few different people (including alleged abusive, and offensive remarks and  
3 conduct by homeowner Babic) in person, in emails, and in other writings, which agitated  
4 Hazell and further led Mr. Hazell to feel harassed, which he then reported in his blog. To the  
5 extent there was any such un-neighborly conduct, Mr. Hazell's writings thereof was pure  
6 opinion.

7 In sum, as to the alleged verbal harassment, Mr. Hazell seems to have been way too  
8 thin-skinned, uncivilized, and childish in dealing with Ms. Andersen. The Court can see from  
9 all of the evidence introduced at trial that Homeowner Babic was, perhaps intentionally,  
10 aggravating Mr. Hazell, and Mr. Babic was somewhat of a nuisance either in the  
11 neighborhood, or to Mr. Hazell. Mr. Hazell seems to have taken his frustration out on Ms.  
12 Andersen for not taking stronger control over other disruptive people in the neighborhood.  
13 Nevertheless, Mr. Hazell's exercise of his First Amendment Rights in speaking like a bully  
14 and accusing Ms. Andersen of verbal harassment, was not itself defamation. It was non-  
15 actionable opinion speech.

#### 16 **E. ALLEGED FRAUD AND CRIMINAL CONDUCT**

17 Defendant Hazell alleged in his blog that the Board members, including Andersen,  
18 engaged in illegal conduct such as (a) approving an extension of the management contract  
19 without Board vote and Minutes reflecting any Board vote; (b) the hiring of unlicensed  
20 contractors; (c) attempts to change a bank account without Board approval (discussed above);  
21 (d) misuse of HOA funds by improper reimbursements; and (e) misuse of "Reserve Account"  
22 funds. These items are discussed below:

##### 23 **1. Extension of Management Contract**

24 One or more Board members signed a new management contract with FCCMI on or  
25 about January 25, 2010 – in which the management fee was increased from \$600 to \$650 per  
26 month. The new management contract was discussed at the Annual Meeting of the HOA on  
27 January 25, 2010. However, nobody made any motion at this meeting to approve the new  
28 contract. The Minutes of the Annual Meeting do not mention the new contract, or any

1 approval of the new contract. The Board took the position that no motion was needed because  
2 the HOA Budget included monies to pay the increased management fee.

3 Hazell's wife, Veronica Chew, presented this issue to the Office of The Ombudsman  
4 for Owners In Common-Interest Communities, in the Real Estate Division of the State of  
5 Nevada (hereinafter the "Nevada Real Estate Ombudsman" or "Ombudsman"). The  
6 Ombudsman responded with a "Letter of Instruction" on October 13, 2013, validating Ms.  
7 Chew's concerns, and issuing an "admonishment" to the Board. The Ombudsman held:  
8 "[T]he minutes did not accurately reflect action taken by the Board regarding the contract.  
9 The agenda did not either. . . . The same admonition listed in allegation seven is true of this  
10 allegation as well. The Board must cause minutes to be recorded that meet statutory  
11 requirements."

12 The Ombudsman then cited to the specific Nevada statute that the Board had violated.  
13 Thus, the Board, as found by the Ombudsman, did violate the law. The Ombudsman further  
14 warned the Board that if the Board continued to violate the law, then it may be subject to  
15 "disciplinary action."

## 16 **2. Hiring of Unlicensed Contractors**

17 Hazell complained on his website that the Board engaged in illegal conduct by hiring  
18 unlicensed contractors.

19 Hazell's wife, Veronica Chew presented this issue to the Ombudsman. The  
20 Ombudsman responded with a "Letter of Instruction" dated October 13, 2013, validating Ms.  
21 Chew's and Mr. Hazell's concerns. The Ombudsman held:

22 Concerning Alumicast being awarded a contract by the Board  
23 while not being licensed to perform electrical work is a violation of  
24 NAC 116.405(8)(e). . . . Additionally, Reliable Janitorial &  
Maintenance Inc. (RJM) was not licensed in the City of Henderson  
at the time the contract was awarded by the Board of Directors.

25 Thus, as with the issue of the management contract, the Board did violate the law. The  
26 Ombudsman further warned the Board that if the Board continued to violate the law, then it  
27 may be subject to "disciplinary action."

28 . . .

1                   **3. Change of Bank Account**

2                   Hazell's website complained that Andersen, as President of the Board, engaged in  
3 illegal conduct by trying to force Ms. Chew to sign a new Bank Signature Card without Board  
4 approval.

5                   Sometime in November 2011, FCCMI decided to open a new bank account for HOA  
6 business purposes. FCCMI first provided the Card to Andersen to sign. The Card contained  
7 the following certification for the Secretary to sign: "I certify . . . resolutions adopted at a  
8 meeting of the Association duly and properly called and held on [date] that the management  
9 company of this Association is authorized to open Association accounts." At this time, Ms.  
10 Chew was the elected Secretary of the HOA. Ms. Chew actually continued to serve as  
11 Secretary of the Board until she was replaced by Jackie Goodset on January 23, 2012.

12                  Andersen signed the Card, despite there having been no Board resolution, and tendered  
13 it to Ms. Chew to sign.

14                  Ms. Chew notified Ms. Andersen that no Board meeting had been conducted to obtain  
15 a resolution adopting the opening of the new account, so she refused to sign the Card unless  
16 and until a board resolution was duly adopted. Another Board member, lawyer Kurt Faux  
17 agreed with Ms. Chew, stating in an email on or about December 12, 2011: "I can't sign a  
18 document requiring a board resolution if there is no such board resolution."

19                  Speaking of the rationality of Ms. Chew's position, attorney Kurt Faux said in an email  
20 dated December 23, 2011: "In my experience on the Board and the Rules Committee,  
21 Veronica has proven to be prepared, diligent, and thorough. Those are good attributes to have  
22 particularly when dealing with financial and fiduciary issues."

23                  Andersen argued, to Ms. Chew at the time, and at trial, that a Board resolution was not  
24 needed because the management contract with FCCMI already authorized FCCMI to open all  
25 necessary bank accounts. But the opening of an account is a different matter than the  
26 execution of a Bank Signature Card, as noted by Board member Mr. Faux in his December 12,  
27 2011 email: "I appreciate that the FCCMI contract authorizes bank accounts to be opened . . .  
28 but I view that differently than signing a document that requires a board resolution."



1 When Ms. Chew refused to sign, even after she proposed the language for the Board  
2 resolution, Andersen complained to Ms. Chew that she had tried three times to get her to sign,  
3 and then she left the Card on Ms. Chew's front door on December 6, 2011.

4 Eventually, a Board resolution was passed, and the Card got signed.

#### 5 **4. Misuse of HOA Funds**

6 Hazell presented evidence that the Board decided to reimburse Board Member  
7 Meatovich for his automotive accident in hitting an HOA gate. The HOA insurance company  
8 had investigated the incident, and concluded that the HOA was not at fault, and the insurer had  
9 no liability to pay for the damages to Meatovich's car. Nevertheless, the Board voted to  
10 reimburse Mr. Meatovich for his car damages. Defendant Hazell viewed this Board conduct  
11 as an illegal action, fraudulent, conspiratorial, and an overall misuse of funds.

12 The Court finds that Mr. Hazell's statements about the factual nature of this incident to  
13 be primarily truthful. The statements about the implications of the incident – whether it  
14 involves illegal, fraudulent, or conspiratorial conduct) appear to be primarily statements of  
15 pure opinion.

#### 16 **5. Misuse of "Reserve Account" Funds**

17 To support his website allegations of fraud and illegal conduct, Defendant Hazell  
18 further presented evidence that the Board failed to adequately fund the HOA's "Reserve  
19 Account," and misused "Reserve Funds." The problems with the Reserve Account were not  
20 explicitly referenced in any version of the website discussed at trial. Nevertheless, Hazell  
21 insisted that such problems did, in part, form the basis of his accusations of fraud and illegality  
22 against the HOA Board and Ms. Andersen in 2013.

23 According to Mr. Hazell, he relied in part on the knowledge and experience of his wife  
24 in financial accounting to form his opinions of Board mismanagement of the HOA's money.

25 As early as 2013 the Board had represented to its members that the HOA was  
26 financially solvent, and that it was "ahead of the Reserve Study." Veronica Chew was  
27 suspicious. So she personally reviewed the financial statements of the HOA. Mr. Hazell did  
28 his own research. He researched the requirements that NRS 116 impose upon the Board of

1 Directors of an HOA, particularly the requirements pertaining to a "Reserve Study" and  
2 "Reserve Funds."

3 Mr. Hazell testified that he learned that an HOA is supposed to conduct a study every  
4 few years to determine an amount of money to cover anticipated repairs and maintenance. *See*  
5 NRS 116.3115 ("The association shall establish adequate reserves, funded on a reasonable  
6 basis, for the repair, replacement and restoration of the major components of the common  
7 elements and any other portions of the common-interest community that the association is  
8 obligated to maintain, repair, replace or restore. . . . The association may comply with the  
9 provisions of this paragraph through a funding plan").

10 The HOA did perform a Reserve Study in 2009, which led to HOA plan to make  
11 regular monthly contributions to a Reserve Fund to cover anticipated ongoing and future  
12 repairs and maintenance expense to common areas.

13 According to Mr. Hazell and Ms. Chew, the Board represented several times,  
14 beginning as early as 2010, that it was solvent, and there was no deficit. Mr. Hazell  
15 introduced into evidence a letter from the HOA management company dated April 11, 2012  
16 that represented that the HOA was in "good financial health."

17 Mr. Hazell's and Ms. Chew's suspicions of the financial health of the HOA began  
18 around 2011. They had seen an Income Statement and Balance Sheet for 2011 that showed a  
19 financial loss and deficit, and showed money taken from the Reserve Fund to cover the deficit.

20 At the end of 2013, Defendant Hazell and his wife Ms. Chew received a newsletter  
21 from the HOA Board that stated:

22 Budget controls again mean no increase in HOA dues, and this is  
23 always appreciated! **We are slightly ahead of our Reserve Study**  
24 **requirements.** This is good for Quail Summit because it allows  
additional time to build these funds for future requirements.

25 At some unspecified Board meeting in 2014, Mr. Hazell heard the Board state that the  
26 HOA was solvent.

27 Being suspicious of the Board representations, Mr. Hazell and Ms. Chew hired the  
28 accounting firm of McGovern & Green to study the financial statements of the HOA. Mr.

1 Hazell and Ms. Chew obtained hundreds of pages of financial documents, including the  
2 following documents which they shared with the accountants: Balance Sheets as of  
3 September 30, 2013 and November 30, 2013; an Income Statement for the nine months ending  
4 September 30, 2013; Unpaid Invoices Report as of September 30 and November 30, 2013; a  
5 copy of the 2014 Draft Budget rev. 2; the Final Budget 2013; the Annual Expenditures Detail  
6 p. 11 and Replacement Fund Projections p. 15 (prepared by Advanced Reserve Solutions,  
7 Inc.); and the Check Distribution Report for November 30, 2013.

8 CPA Craig Green of McGovern & Green prepared a study that the parties have  
9 collectively called "The Green Report."

10 In The Green Report, Mr. Green concluded that "deficits as discussed below have  
11 resulted in the Association being insolvent on September 30, 2013, and continuing into  
12 November 2013."

13 The HOA performed another Reserve Study in 2014. This Reserve Study confirmed  
14 the suspicions of Mr. Hazell and Ms. Chew that the financial problems of the HOA had  
15 existed as early as 2009. The 2014 Reserve Study found that the HOA had significantly failed  
16 to achieve its goals of funding the Reserve Fund from 2009-2013, but that significant  
17 improvements have been made over time. Specifically, the 2014 Reserve Study stated:

18 **Financial** – Based upon the data provided by the client and  
19 observations during the ARS site survey, the report shows a 69%  
20 funding level. While 69% is usually considered below an  
21 acceptable level, it is a vast improvement from the 2009 level of  
22 34%. If the association continues to grow its reserve fund, it will  
23 reach acceptable levels within 3-4 years.

24 To the extent Mr. Hazell's accusations of fraud and illegality were based on  
25 misrepresentations of the Reserve Funding – the Court cannot find by a preponderance of the  
26 evidence that his statements were false. The HOA Board clearly represented that the HOA  
27 was financially healthy and the Board was "ahead of our Reserve Study Requirements." But  
28 the 2014 Reserve Study shows that the HOA was failing to achieve acceptable reserve funding  
levels from 2009 through 2014.

1           Given the financial difficulties of the HOA, and as admitted by Ms. Andersen and her  
2 witness Ms. Goodset, the Board did use revenue to pay for operating expenses on some  
3 occasions rather than contributing such revenue to the Reserve Fund. Ms. Andersen and Ms.  
4 Goodset both had good faith beliefs that this was legal conduct. They testified that it was the  
5 management company, FCCMI, that decided how much money to contribute to the Reserve  
6 Fund.

7           The Court finds that the HOA did, in fact, divert revenue that should have been  
8 contributed to the Reserve Funds, and used such diverted revenue for expenses other than  
9 permissible repairs and maintenance. For example, diverted revenue was used to pay legal  
10 fees of Mr. Leech in August 2013. Diverted revenue was used to cover HOA regular  
11 operating expenses.

12           In sum, the HOA did not achieve the revenue that it expected from 2009 through 2014  
13 to cover both the recommended contributions to the Reserve Fund, and operational expenses.  
14 But the conduct of diverting revenue does not necessarily mean that the HOA Board did  
15 anything fraudulent or illegal. The parties presented the Court with insufficient evidence to  
16 form any opinions on the adequacy of the business judgment exercised by the HOA Board  
17 members during the relevant time periods in handling the finances of the HOA.

18           Nothing contained herein should be interpreted as a finding of the Court that the HOA  
19 Board engaged in illegal, fraudulent, conspiratorial, and/or criminal conduct in connection  
20 with the Reserve Funds of the HOA. The Court simply finds that the Plaintiff failed to prove  
21 by a preponderance of the evidence that Mr. Hazell's statements were untrue, because the  
22 evidence was inconclusive. It is not necessary for the Court to reach those issues to resolve  
23 this case.

#### 24           **F. ALLEGED "LUNACY" AND TAKING "MENTAL ILLNESS MEDS"**

25           Defendant Hazell never stated in his blog that Andersen had been diagnosed as a  
26 "lunatic," or with any mental or psychiatric disease. The blog never even stated that Andersen  
27 was a "lunatic." Instead, the blog stated that she had engaged in "lunacy." At trial Mr. Hazell  
28 testified that he used the term to convey that Ms. Andersen had acted "foolishly." He also

1 took the position that her use of alcohol, mental illness medications, and "smoking pot" could  
2 have contributed to her poor judgment. Mr. Hazell referred to Ms. Andersen's actions as  
3 "lunacy" to convey his strong opinion that she was exercising poor judgment.

4 Defendant Hazell presented credible evidence that convinced this Court that Andersen  
5 had, in fact, been prescribed and was taking "Prozac" and "Zoloft" at or shortly before the  
6 times when Mr. Hazell first published that Andersen had taken "mental illness meds." The  
7 Court found credible the testimony of both Mr. Hazell and Veronica Chew that Andersen  
8 admitted to taking Prozac and/or Zoloft. In fact, at some point in time before Mr. Hazell  
9 published his blog, Andersen admitted to both Hazell and Ms. Chew that she had been taking  
10 medication for depression.

11 The Court finds that a reasonable person would consider medication such as Prozac,  
12 and/or Zoloft, having been prescribed for depression, to be a "mental illness medication."  
13 Prozac and Zoloft are both certainly medications. Depression is an "illness." The only  
14 difficult issue is whether depression is a "mental" illness. It is certainly at least an emotional  
15 condition. And emotions originate from the brain. The brain is associated with the "mental"  
16 functions of the human body. A reasonable person could conclude that a medication  
17 prescribed to treat depression is a mental illness drug. In any event, the burden was upon  
18 Plaintiff Andersen to prove by a preponderance of the evidence that Prozac and/or Zoloft were  
19 not "mental illness drugs," and she failed to meet that burden.

#### 20 **G. ALLEGED "SMOKING POT"**

21 Hazell supposedly witnessed Andersen smoking pot about three (3) years before he  
22 started his website attacks on Ms. Andersen.

23 The parties have presented conflicting evidence whether Plaintiff Andersen was  
24 "smoking pot" at a Halloween party. Defendant Hazell testified that he saw Plaintiff  
25 Andersen "smoking pot" at a Halloween party at Ms. Andersen's house in October 2009. This  
26 testimony was corroborated by Mr. Hazell's cousin, Paul Stoshak. Mr. Stoshak testified that  
27 he was sitting at a home-made bar area outside, and he personally saw Ms. Andersen smoking  
28 marijuana just ten (10) feet away from him at the 2008 Halloween Party. He further stated:

1 "It looked like they were passing it around." Mr. Hazell's wife, Veronica Chew testified that  
2 she did not directly see anybody smoking marijuana, but knew from the smell that it was being  
3 smoked at the side of the house, and Ms. Andersen was going back and forth to the side of the  
4 house with her sisters.

5 Ms. Andersen denied that she was smoking marijuana at the party, and contended that  
6 the party occurred in October 2008. Additionally, Ms. Andersen presented the following  
7 persons who testified that they did not see Ms. Andersen smoking marijuana at the party:  
8 Dorothy Nithman (aka Jackie Goodset) (Quail Summit resident and Board Member, and friend  
9 to Ms. Andersen), Dan Denuccio (real estate agent who has known Ms. Andersen for 20  
10 years), and Marlene Tardiff (Ms. Andersen's daughter).

11 The Court found the testimony of Ms. Andersen to be much more credible than  
12 Defendant Hazell. The Court believes that Hazell never saw Andersen smoking pot at the  
13 Party, and had no reason to form the conclusion that she had smoked pot at the Party.  
14 Andersen defiantly testified that she did not smoke pot at the subject Halloween Party. She  
15 then presented several witnesses, whose testimony the court believed, that confirmed they had  
16 personal knowledge that they did not see Andersen smoke pot at that Halloween Party. The  
17 two witnesses presented by Hazell on the issue, his cousin and his wife, were inconsistent and  
18 not credible.

#### 19 **H. THE GENERAL CONTENT OF THE ALLEGEDLY DEFAMATORY** 20 **SPEECH**

21 The statements related to the actions of the HOA Board members, individually and  
22 collectively, and thus related to the overall management of the HOA community.

23 The statements concerned the qualifications of Ms. Andersen to serve as president of  
24 the HOA. *See* NRS 116.31034(1) (providing the property owners with the right to elect an  
25 executive board; and NRS 116.3106(2) (right to participate in "removal election").

26 The HOA had quasi-governmental functions, and a corresponding capability of affecting  
27 the lives of many property owners, together with their family members and friends. NRS 116.  
28

1       However, the great majority of the website complained about Hazell and his wife being  
2 treated differently than other members of the community. The complaints were indeed  
3 interspersed with an occasional reference to the general evils of HOA Boards.

4           **I. THE FORM OF THE ALLEGEDLY DEFAMATORY SPEECH**

5       The form of the speech in this case was an internet website -- capable of conveying  
6 either public or private information.

7           **J. THE CONTEXT OF THE ALLEGEDLY DEFAMATORY SPEECH**

8       The context of the dispute arises out of a series of private disputes between Hazell and  
9 the Board concerning Board allegations that he violated HOA rules, and/or Hazell's  
10 displeasure that the Board ignored his pleas that favoritism was shown to Board members or  
11 persons friendly with the Board. As stated above, the great majority of the website  
12 complained about Hazell and his wife being treated differently than other members of the  
13 community. Occasional reference to the general evils of HOA Boards is obviously protected  
14 public speech. But this did not alter the general character of the website as a reaction to a  
15 personal private dispute.

16           **K. EXTENT OF PUBLIC CONCERN**

17       Hazell's speech did not seem to express matters of concern to a substantial number of  
18 people. Plaintiff presented evidence that various Board members, and perhaps a couple non-  
19 Board member homeowners, participated in conversations about the various issues raised by  
20 the website. But the number of people to whom the speech concerned was only about a  
21 handful. Mr. Hazell's speech did not receive any attention from traditional or institutional  
22 media. Nor was there any media attention given to issues of the HOA governance before  
23 Hazell's website blog.

24           **L. EXTENT OF ACTUAL DISSEMINATION OF THE SPEECH**

25       Plaintiff and Defendant both presented evidence that Hazell made his website available  
26 to the general public. But there was no evidence that any member of the general public  
27 actually viewed the website. At most, the website was disclosed to the members of this  
28 particular HOA -- comprising about 41 members. There was no evidence regarding the

1 number of people who actually viewed it. The Defendant did not even present evidence to  
2 enable the Court to determine the number of HOA Board members who actually viewed the  
3 website. In sum, there is no evidence from which the Court could conclude that the website  
4 speech was actually disseminated to either a large group of people or any group of people over  
5 any wide geographic area.

#### 6 **M. NEXUS BETWEEN THE SPEECH AND THE PUBLIC INTEREST**

7 Hazell wants this Court to assign a broad amorphous public interest to his speech,  
8 characterizing his speech as relating to the general behavior of HOA Boards around the nation.  
9 Viewed in that manner, there is not much nexus between the speech and the challenged  
10 defamatory statements. The statements overwhelmingly relate to the alleged disparate  
11 treatment of Mr. Hazell at the HOA in which he resided, and the allegedly improper conduct  
12 of Ms. Andersen at that particular HOA.

#### 13 **N. HAZELL'S MOTIVATION IN MAKING HIS STATEMENTS**

14 Defendant Hazell's speech was not seemingly motivated by some lofty goal of  
15 protecting the public good, or advancing the efficient administration of HOA Boards, or  
16 educating the members of his community on how a good HOA Board should be run. Rather,  
17 Hazell's obvious motives were to advance his private interest of chilling Andersen and the  
18 Board from challenging his conduct in the community.

19 Defendant Hazell did not write to politicians regarding the issues at his HOA; he did  
20 not hire lobbyists to seek to change any laws; he did not hire any public relations agent to  
21 promote a policy agenda, or change consumer views; he did not author articles in national  
22 magazines or any established HOA publications; he did not appear on national television  
23 shows; he did not testify or seek to testify before any government bodies; and he did not write  
24 letters to newspapers, professional journals, or government officials regarding the issues  
25 addressed in his blog. In sum, Defendant Hazell's private conduct on a private matter  
26 indicates he did not seek any public attention outside of the very narrow reach of his small  
27 HOA.

28 ...



1 The Court finds that Defendant Hazell did not make any of his allegedly defamatory  
2 statements with the intent to obtain any commercial advantage.

3 The Court further finds that Defendant Hazell did not in fact make any commercial use  
4 of his website, and/or any of the statements therein.

#### 5 **O. PLAINTIFF'S DAMAGES**

6 The Plaintiff did not introduce any evidence of harm to her reputation, as she was  
7 relying upon the theory of "defamation *per se*" to recover presumed damages on her  
8 defamation claim.

9 The Court believes as true the testimony of Plaintiff Andersen that, as a foreseeable  
10 consequence of the various derogatory statements of fact by Defendant Hazell, she suffered  
11 some stress, anxiety, humiliation, and that she was influenced to become introverted, isolated,  
12 and much more unsocial in her community and with her family.

13 Despite the emotional distress that Defendant Hazell caused to Plaintiff Andersen,  
14 Plaintiff Andersen did not seek any diagnosis, prognosis, treatment, care, or advice from any  
15 medical or psychological professional. She did not seek or need any hospitalization. She did  
16 not seek or obtain any new prescription medications. Although she took Zoloft to treat  
17 symptoms of anxiety, she had a pre-existing condition for which she was being treated before  
18 Defendant Hazell commenced his derogatory publications. Plaintiff Andersen did not present  
19 any clear testimony to prove that her use of Zoloft increased to any significant extent due to  
20 Hazell's conduct.

21 Plaintiff Andersen did not provide any evidence of any physical manifestations of the  
22 emotional distress that she suffered due to Hazell's conduct.

### 23 **IV. CONCLUSIONS OF LAW**

#### 24 **A. CLAIM FOR DEFAMATION**

##### 25 **1. The Elements In General**

26 "The general elements of a defamation claim require a plaintiff to prove '(1) a false  
27 and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged  
28 publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or

1 presumed damages.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 718  
2 (2002). “A statement is defamatory when, ‘[u]nder any reasonable definition[,] such charges  
3 would tend to lower the subject in the estimation of the community and to excite derogatory  
4 opinions against him and to hold him up to contempt.” *Id.* (quoting *Las Vegas Sun v.*  
5 *Franklin*, 74 Nev. 282, 287, 329 P.2d 867, 869 (1958)).

6 A private plaintiff must prove only negligence to recover against a private defendant  
7 for a defamatory statement not involving a matter of public concern. The original rule was  
8 that a private plaintiff must prove only negligence to recover against an institutional media  
9 defendant. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974). With the advent of the  
10 internet, the decline of traditional print and broadcast media, and the expansion of alternative  
11 means of reporting on political and social issues, many courts have expanded the use of the  
12 negligence standard. The Ninth Circuit Court of Appeals explained that “the *Gertz*  
13 negligence requirement for private defamation actions is not limited to cases with institutional  
14 media defendants.” *Obsidian Finance Group, LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir.  
15 2014). As explained below, the Court finds that Defendant Hazell’s communications as a  
16 quasi-journalistic blogger do not trigger a burden on the Plaintiff to prove fault to a higher  
17 level than negligence.

18 If the Plaintiff in this case had been either a public official, general public figure, or  
19 limited-purpose public figure, she would not be entitled to recover damages for defamation  
20 absent proof, by “clear and convincing evidence,” that the Defendant acted with “actual  
21 malice.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (public officials);  
22 *Curtis Publishing Corp. v. Butts*, 388 U.S. 130 (1967) (general public figures); *Gertz*, 418  
23 U.S. at 342-43 (limited-purpose public figures). However, as explained below, the Court finds  
24 that Plaintiff Andersen was not a public official, general public figure, or limited-purpose  
25 public figure, at any relevant times when Defendant Hazell made the allegedly defamatory  
26 statements.

27 . . .

28 . . .

## 2. Defamatory Statements

A statement is defamatory if it “would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.” *Pegasus*, 118 Nev. at 714, 57 P.3d at 87 (quoting *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281-82 (1993)).

The Court finds that each of the statements made by Hazell that are the subject of this action would tend to lower Plaintiff Andersen in the estimation of the community, excite derogatory opinions about her, and hold her up to contempt. The Court agrees with the statement of Plaintiff’s counsel that Mr. Hazell’s blog “was quite simply the rants and raves of a bully.”

## 3. Fact Versus Opinions

“Statements of opinion cannot be defamatory because ‘there is no such thing as a false idea.’” *Pegasus*, 118 Nev. at 714, 57 P.3d at 87. “Statements of opinion as opposed to statements of fact are not actionable.” *Id.* “The societal value of robust debate militates against a restriction of the expression of ideas and opinions.” *Nevada Independent Broadcasting Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341-42 (1983).

“Pure opinions are those that ‘do not imply facts capable of being proved true or false.’” *Partington v. Bugliosi*, 56 F.3d 1147, 1153 n. 10 (quoting *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053 (9th Cir. 1990), *cert. denied*, 499 U.S. 961 (1991)).

“A statement may be a ‘mixed-type,’ that is, an opinion which gives rise to the inference that the source has based the opinion on underlying, undisclosed defamatory facts.” *Nevada Independent Broadcasting Corp.*, 99 Nev. 404 at 411, 664 P.2d at 342. “However, expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false.” *Id.*

“In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask “whether a reasonable person would be likely to understand the remark as an expression of the source’s opinion or as a statement of existing fact.” *Pegasus*, 118 Nev. at 715, 57 P.3d at 88.

1 The Nevada Federal District Court has applied three factors in determining whether a  
2 statement is one of fact or opinion: "(1) whether the general tenor of the entire work negates  
3 the impression that defendant was asserting an objective fact; (2) whether the defendant used  
4 figurative or hyperbolic language that negates the impression; and (3) whether the statement in  
5 question is susceptible of being proved true or false." *Flowers v. Carville*, 112 F. Supp. 2d  
6 1202, 1211 (D. Nev. 2000); see *Partington*, 56 F.3d at 1153. "Nevada law considers the  
7 statement in context, including medium and audience." *Id.*

8 "The law provides no redress for harsh name-calling." *Flowers v. Carville*, 310 F.3d  
9 1118, 1127 (2002).

10 "Mere rhetorical hyperbole is not actionable." *Flowers*, 310 F.3d at 1127 (quoting  
11 *Wellman v. Fox*, 108 Nev. 83, 825 P.2d 208 (1992)).

12 Applying the applicable standards discussed above, the Court finds that each of the  
13 statements made by Hazell that are the subject of this action are either statements of fact,  
14 and/or opinions which gives rise to the inference that Mr. Hazell has based the opinion on  
15 underlying, undisclosed defamatory facts, except the statements regarding alleged verbal  
16 abuse, and the statements regarding "lunacy," as explained below.

17 The Court finds that Defendant Hazell's statements, that Ms. Andersen was verbally  
18 abusive or verbally harassing, were mere "rhetorical hyperbole." Mr. Hazell was name-  
19 calling, and using "figurative or hyperbolic language." His accusations of the various  
20 humiliating, and disparaging comments made by Ms. Andersen were not susceptible of being  
21 proved true or false by objective fact. There is no objective standard after the fact that the  
22 Court can apply to determine whether Ms. Andersen's comments, in light of the circumstances  
23 and tone in which they were made, would be viewed by a reasonable objective person to  
24 constitute harassment.

25 Additionally, the Court finds that Mr. Hazell's statements that Ms. Andersen's conduct  
26 was "lunacy," were all statements of pure opinion, and are not actionable. Mr. Hazell was  
27 expressing his colorful opinion that he strongly disagreed with Ms. Andersen's actions. He  
28 ...

1 was not stating or implying an objective fact that she had been declared, or diagnosed, as a  
2 lunatic, or that she really had some mental defect making her a lunatic in the psychiatric sense.

#### 3 **4. Truth Or Falsity**

4 "The plaintiff must [ ] bear the burden of proof regarding the falsity of statements."  
5 *Nevada Independent Broadcasting Corp.*, 99 Nev. at 412, 664 P.2d at 343.

6 "A factual statement need only be substantially true in order to be protected from a suit  
7 for defamation." *Unelko*, 912 F.2d at 1057.

8 When the evidence of falsity is ambiguous and/or inconclusive, the United States  
9 Supreme Court has cautioned against imposing liability for defamation: "Where the scales are  
10 in such an uncertain balance, we believe that the Constitution requires us to tip them in favor  
11 of protecting true speech." *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776  
12 (1986).

13 Defendant Hazell's website made several statements accusing Andersen of selective  
14 enforcement, retaliation, harassment, illegal conduct, and/or taking mental illness medications.  
15 Based on the evidence discussed above, the Court finds that Plaintiff Andersen failed to prove,  
16 by a preponderance of the evidence, that Defendant Hazell's statements were false. This does  
17 not mean the statements were true. Rather, this simply means that the evidence was disputed,  
18 and inconclusive, and the Court did not believe the preponderance of the evidence tipped in  
19 favor of the Plaintiff.

20 With respect to Mr. Hazell's website allegations that Ms. Andersen was "smoking  
21 pot," the Court finds that such allegations were and are completely FALSE.

#### 22 **5. The Level Of Fault**

##### 23 **a. Negligence Versus "Actual Malice"**

24 The level of fault that a plaintiff must prove depends on the status of the plaintiff as a  
25 private or public official/figure, and whether the statement involves a matter of public  
26 concern. As explained below, in a case such as this, where the plaintiff is seeking presumed  
27 damages, if the plaintiff is a limited purpose public figure, or if the defendant communicated  
28 on an issue of public concern, then the plaintiff must prove "actual malice"

1 "Actual malice" is also known as "constitutional malice" because this standard of fault  
2 was established as a procedural prerequisite required by the United States Constitution as  
3 interpreted by *New York Times Corp. v. Sullivan* and its progeny to protect First Amendment  
4 principles. 376 U.S. 254.

5 "Actual malice is defined as knowledge of the falsity of a statement or a reckless  
6 disregard for its truth." *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438 (1993).  
7 "Reckless disregard for the truth may be defined as a high degree of awareness of the probable  
8 falsity of a statement." *Id.* "It may be found where the defendant entertained serious doubts  
9 as to the truth of the statement, but published it anyway." *Id.* "As such, it is a subjective test,  
10 focusing on what the defendant believed and intended to convey, and not what a reasonable  
11 person would have understood the message to be." *Id.* "Evidence of negligence, motive, and  
12 intent may cumulatively establish necessary recklessness to prove actual malice in a  
13 defamation action." *Id.* "Actual malice" must be based on "clear and convincing evidence."  
14 *Nevada Independent Broadcasting Corp.*, 99 Nev. at 414, 664 P.2d at 344.

15 **b. Plaintiff Is Seeking Presumed Damages**

16 Plaintiff is pursuing a claim for defamation *per se*. Defamation *per se* involves a  
17 defamatory statement that "falls into one of four categories: (1) that the plaintiff committed a  
18 crime; (2) that the plaintiff has contracted a loathsome disease; (3) that a woman is unchaste;  
19 or (4) the allegation must be one which would tend to injure the plaintiff in his or her trade,  
20 business, profession or office." *Nevada Independent Broadcasting Corp.*, 99 Nev. at 409, 664  
21 P.2d at 341; *Accord Maison de France, Ltd. v. Mais Oui!, Inc.*, 108 P.3d 787, 795 (Wash. Ct.  
22 App. 2005) (holding defamation *per se* includes an accusation of criminal conduct).

23 "A statement that directly imputes to the plaintiff 'dishonesty, lack of fair dealing,  
24 want of fidelity, integrity, or business ability,' even in general terms and without supporting  
25 details, is considered defamation *per se*." *Cohen v. Hansen*, 2015 WL 3609689 at \*4 (D. Nev.  
26 June 9, 2015) (quoting *Talbot v. Mack*, 41 Nev. 245 (1917)) (holding that plaintiff's claim -  
27 that defendant published accusations on multiple websites that plaintiff had been guilty of

28 . . .

1 crimes, frauds, and scams, with intent to smear the plaintiff - was a claim for defamation  
2 *per se*).

3 A plaintiff pursuing a claim of defamation *per se* is entitled to recover presumed  
4 general damages, in the absence of proof of any actual or special damages. *Nevada*  
5 *Independent Broadcasting Corp.*, 99 Nev. at 409, 664 P.2d at 341. "General damages are  
6 those that are awarded for loss of reputation, shame, mortification and hurt feelings." *Bongiovi*  
7 *v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006). "General damages are presumed  
8 upon proof of the defamation alone because that proof establishes that there was an injury that  
9 damaged plaintiff's reputation and 'because of the impossibility of affixing an exact monetary  
10 amount for the present and future injury to the plaintiff's reputation, wounded feelings and  
11 humiliation, loss of business, and any consequential physical illness or pain.'" *Id.* quoting  
12 *Guaranty Nat'l Ins. Corp. v. Potter*, 112 Nev. 199, 206 (1996).

13 In this case, it is undisputed that the Plaintiff is seeking only presumed damages on the  
14 defamation claim. At trial the Plaintiff did not introduce any evidence of actual harm to her  
15 reputation, or any other evidence of actual or special damages on the Defamation Claim.  
16 Since the Plaintiff sought only presumed damages, the Court is required to determine whether  
17 the Plaintiff was a "limited purpose public figure," or whether the alleged defamatory speech  
18 concerned a matter of "public concern," in which case the "actual malice" level of fault  
19 applies.

20 **c. Plaintiff Andersen Was Not A Limited Purpose Public Figure**

21 The Defendant contends that the "actual malice" standard applies because the Plaintiff  
22 is a so-called limited-purpose public figure.

23 If the Plaintiff is a public official or public figure, she must prove actual malice to  
24 recover any damages. *See, e.g., Gertz*, 418 U.S. at 349; *Curtis Publishing Corp.*, 388  
25 U.S. 130.

26 The United States Supreme Court created two categories of public figures. General  
27 public figures are those who "achieve such pervasive fame or notoriety that [they] become[] a  
28 public figure for all purposes in all contexts. *Pegasus*, 118 Nev. at 719, 57 P.3d at 91 quoting

1 *Gertz*, 418 U.S. at 351. "Limited public figures are individuals who have only achieved fame  
2 or notoriety based on their role in a particular issue." *Pegasus*, 118 Nev. at 719, 57 P.3d at 91  
3 quoting *Gertz*, 418 U.S. at 351. "A limited-purpose public figure is a person who voluntarily  
4 injects himself or is thrust into a particular public controversy or public concern, and thereby  
5 becomes a public figure for a limited range of issues." *Pegasus*, 118 Nev. at 720, 57 P.3d  
6 at 91. "The test for determining whether someone is a limited public figure includes  
7 examining whether a person's role in a matter of public concern is wholly voluntary and  
8 prominent." *Id.*

9 "If a plaintiff is a public figure, whether general or limited, he or she bears also bears  
10 the burden of proving by clear and convincing evidence that the defendant acted with actual  
11 malice." *Cohen*, 2015 WL 3609689 at \*6.

12 The United States Supreme Court, in *Gertz v. Robert Welch, Incorporated*, created two  
13 categories of public figures: general public figures, and limited purpose public figures. 418  
14 U.S. 323. "General public figures" are those individuals who "achieve such pervasive fame or  
15 notoriety that [they] become[ ] a public figure for all purposes and in all contexts." *Gertz*, 418  
16 U.S. at 351. "Limited-purpose public figures" are individuals who have achieved fame or  
17 notoriety "for a limited range of issues." *Id.*

18 "'A limited-purpose public figure is a person who voluntarily injects himself or is  
19 thrust into a particular public controversy or public concern, and thereby becomes a public  
20 figure for a limited range of issues.' [Citation omitted]. Whether a person becomes a public  
21 figure depends on whether the person's role in a matter of public concern is voluntary and  
22 prominent. This is determined by examining the 'nature and extent of an individual's  
23 participation in the particular controversy giving rise to the defamation.'" *Bongiovi*, 122 Nev.  
24 at 572, 138 P.3d at 445.

25 "Once the plaintiff is deemed a limited-purpose public figure, the plaintiff bears the  
26 burden of proving that the defamatory statement was made with actual malice, rather than  
27 mere negligence." *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445.

28 . . .



1            "[T]hose charged with defamation cannot, by their own conduct, create their own  
2 defense by making the claimant a public figure." *Weinberg v. Feisel*, 2 Cal. Rptr. 3d 385, 392  
3 (Cal. Ct. App. 2003) (quoting *Hutchison v. Proxmire*, 443 U.S. 111, 135 (1979)).

4            The Court concludes that Plaintiff Andersen was NOT a limited purpose public figure  
5 for the following reasons: (1) First and foremost, as discussed in a subsequent section below,  
6 the alleged defamatory communications did not involve issues of public concern; (2) Ms.  
7 Andersen did not voluntarily inject herself into any existing public controversy or matter of  
8 public concern; (2) Ms. Andersen's involvement and activities in the matters at issue in this  
9 case at all times were merely to exercise her duties as an officer of the HOA; (3) Ms.  
10 Andersen did not seek out any press or publicity; (4) Ms. Andersen did not invite any public  
11 scrutiny; (5) Ms. Andersen did not engage in any public discussion on the issues presented by  
12 the website; (6) Ms. Andersen did not use her persuasive powers or influence to seek to  
13 resolve or influence any public issue; (7) Ms. Andersen did not seek to draw attention to  
14 herself in connection with the website issues; (8) Ms. Andersen did not seek out or achieve  
15 any pervasive fame or notoriety as a result of her involvement in the matters at issue in this  
16 case; (9) Defendant did not present evidence that anybody outside of the 41-member HOA had  
17 any interest in the matters that were the subject of this case; and (10) any statements made by  
18 Ms. Andersen that were publicly available were merely responses and defenses to Hazell's  
19 own inquiries, accusations, and actions.

20            **d. Defendant Hazell's Speech Did Not Involve Matters Of Public**  
21            **Concern**

22            Defendant Hazell argued that the "actual malice" standard applies because this case  
23 involves matters of public concern. If a defamation involves a matter of public concern, a  
24 public or private plaintiff cannot recover presumed damages absent proof of actual malice -  
25 whether the statement was made by a media or a non-media defendant. *Dun & Bradstreet,*  
26 *Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985); *Philadelphia Newspapers, Inc.*, 475  
27 U.S. at 768-69.

1 “[S]peech that involves matters of public concern enjoys appropriate constitutional  
2 protection.” *Bongiovi*, 122 Nev. at 573, 138 P.3d at 446. That protection is provided in the  
3 application of the “actual malice standard.” *Id.* “In contrast, speech not involving matters of  
4 public concern holds reduced constitutional value and damages can be awarded absent a  
5 showing of actual malice.” *Id.*

6 “Whether . . . speech addresses a matter of public concern must be determined by [the  
7 expression’s] content, form, and context . . . as revealed by the whole record.” *Connick v.*  
8 *Myers*, 461 U.S. 138, 147-148 (1983); *Dun & Bradstreet, Inc.*, 472 U.S. at 761. “[S]peech on  
9 public issues occupies the highest rung of the hierarchy of First Amendment values, and is  
10 entitled to special protection,” while protections afforded to speech on “matters of purely  
11 private concern . . . are less stringent.” *Dun & Bradstreet, Inc.*, 472 U.S. at 760. “There is no  
12 public issue when the speech is ‘solely in the individual interest of the speaker and [the  
13 speaker’s] specific . . . audience.’” *Bongiovi*, 122 Nev. at 572, 138 P.3d at 445.

14 The relevant factors in determining whether Hazell’s speech involved matters of public  
15 concern are as follows: (1) the content of the speech; (2) the form of the speech; (3) the  
16 context in which the speech was made; (4) the number of people concerned by the speech; (5)  
17 the actual dissemination of the speech; (6) the nexus between the speech and the supposed  
18 public interest; and (7) the speaker’s motivations. *See cases cited infra*, pp. 33-37.

#### 19 (1) The Content of the Speech

20 With respect to content of the speech, the Court considers: whether the speech  
21 involves questions of general public policy; whether the speech involves political participation  
22 or elections; whether the speech concerned private matters between Mr. Hazell and the HOA  
23 directors to which the HOA members would have no concern; and whether the statement  
24 involves the free flow of commercial information. *Connick*, 461 U.S. at 147-48; *Dun &*  
25 *Bradstreet, Inc.*, 472 U.S. at 762. Another relevant question is whether the speech involves  
26 allegations of criminal conduct. *See Obsidian Finance Group, LLC*, 740 F.3d at 1284  
27 (“Public allegations that someone is involved in crime generally are speech on a matter of  
28 public concern.”).

1 Speech involving a Home Owners Association may involve a public concern, where  
2 the speech addressed: (1) the manner in which a large residential community would be  
3 governed; (2) the HOA directors/managers competency to manage the association; (3)  
4 statements concerning elections and recall campaigns; and (4) statements concerning how the  
5 community would be governed in the future. See *Damon v. Ocean Hills Journalism Club*, 102  
6 Cal. Rptr. 2d 205 (Cal. Ct. App. 2000) (involving an HOA on 3000 individual in 1633 homes).

7 A statement regarding the governance of a home owners association may be a  
8 statement of public concern, even though the statement is not published by the traditional  
9 media, on radio, on television, or in a newspaper of community-wide circulation. See e.g.,  
10 *Damon*, 102 Cal. Rptr. 2d 205; *Ruiz v. Harbor View Community*, 37 Cal. Rptr. 3d 133 (Cal.  
11 Ct. App. 2005).

12 In *Damon*, 102 Cal. Rptr. 2d 205, the Court held that a homeowner's defamatory  
13 statements about a manager of a homeowner association, comprised of 1633 homes, were  
14 matters of "public interest" because the statements involved "the manner in which the large  
15 residential community would be governed." The Court viewed the statements relevant to the  
16 public debate whether the manager was "competent" to continue to manage the association,  
17 and "how the community would be governed in the future." Similarly, in *Macias v. Hartwell*,  
18 64 Cal. Rptr. 2d 222 (1997), the Court held that defamatory statements in a political flyer  
19 against a candidate for a union position constituted a "public" issue because the flyer was  
20 circulated among 10,000 union members, and concerned the qualifications of the candidate to  
21 serve in the position.

22 In *Ruiz v. Harbor View Community*, 37 Cal. Rptr. 3d 133 (Cal. Ct. App. 2005), the  
23 architectural committee of a homeowners' association denied a home owner's application for  
24 a permit to rebuilt his home. The home owner sued the association for allegedly defamatory  
25 statements in two letters sent to him by the association's attorney. The Court held that the  
26 letters concerned matters of "public interest" because the association letters related to an  
27 ongoing dispute relating to HOA governance, "of interest to community members," and the  
28

1 association size of 523 lots was “a large enough group” to meet the “broad segment of society  
2 test.” *Id.* at 141-142.

3 “Public interest” in the context of the California “anti-Slapp statute” “had been broadly  
4 construed to include not only governmental matters, but also private conduct that impacts a  
5 broad segment of society and/or that affects a community in a manner similar to that of a  
6 governmental entity. *Du Charme v. International Brotherhood of Electrical Workers, Local*  
7 *45*, 1 Cal. Rptr. 3d. 501, 507 (Cal. Ct. App. 2003). “Although matters of public interest  
8 include legislative and governmental activities, they may also include activities that involve  
9 private persons and entities, especially when a large, powerful organization may impact the  
10 lives of many individuals.” *Id.* (quoting *Church of Scientology v. Wollersheim*, 49 Cal. Rptr.  
11 2d 620).

12 A homeowners association usually exercises extensive quasi-governmental powers that  
13 impacts the lives of many individuals, as exhibited by these rights and duties:

- 14 a. right to adopt bylaws, rules, and regulations (NRS 116.3102(1)(a));
- 15 b. right to “hire and discharge managing agents” (NRS 116.3102(1)(b));
- 16 c. right to “make contracts and incur liabilities” (NRS 116.3102(1)(e));
- 17 d. right to “regulate the use, maintenance, repair, replacement and modification of  
18 common elements” (NRS 116.3102(1)(f));
- 19 e. right to “cause additional improvements to be made as part of the common  
20 elements” (NRS 116.3102(1)(g));
- 21 f. right to “impose and receive any payments, fees or charges for the use, rental or  
22 operation of the common elements” (NRS 116.3102(1)(j));
- 23 g. right to “impose charges for late payment of assessments” (NRS 116.3102(1)(k));
- 24 h. right to impose reasonable fines for violations of the governing documents (NRS  
25 116.3102(1)(m));
- 26 i. right to determine “whether to take enforcement action” against any member  
27 (NRS 116.3102(3));
- 28 j. right to lien units for unpaid assessments (NRS 116.3116(1)); and

1 k. the duty to provide financial statements, budgets, and reserve studies. (NRS  
2 116.31175(1)).

3 However, these quasi-governmental powers are not sufficient, by themselves, to  
4 transform any speech about the HOA into a matter of public concern. A homeowner speaking  
5 out on such issues could do so in his own self-interest as part of a private dispute, with no  
6 intent to benefit or educate the public, with no intent to influence public policy, and with no  
7 actual effect on the publicity of the issue or the development of the issue. Accordingly,  
8 beyond the content of the speech, even if such content implicates the HOA's quasi-  
9 governmental powers, several other factors are relevant in this analysis, and discussed below.

10 **(2) The form of the statement**

11 The form of the statement can give a clue as to whether it involves a matter of public  
12 concern. *See Connick*, 461 U.S. at 147-48. But mere publication of a statement on a website  
13 does not turn otherwise private information into a matter of public interest. *See, e.g., Rivero v.*  
14 *American Federation of State, County, and Municipal Employees*, 130 Cal. Rptr. 2d 81 (2003)  
15 (holding union's defamatory statement against supervisor, in a matter that had not received  
16 any public attention, and affected only the eight people, was not a matter of public interest).

17 **(3) The context in which the speech was made**

18 The context in which the speech is made is a further clue on whether it involves a  
19 matter of public concern. *See Connick*, 461 U.S. at 147-48. In this case, a relevant inquiry is  
20 whether the issues raised by Mr. Hazell's speech were the topic of prior communications or  
21 dialogue in the HOA, or were the issues raised for the first time in connection with the  
22 allegedly defamatory speech.

23 **(4) The number of people concerned by the speech**

24 A statement that was "solely in the individual interest of the speaker and its specific  
25 business audience" may not be a matter of public concern. *Dunn & Bradstreet, Inc.*, 472 U.S.  
26 at 762. "[A] matter of public interest should be something of concern to a substantial number  
27 of people." *Weinberg*, 2 Cal. Rptr. 3d at 392. "Public interest" does not equate with mere  
28 curiosity." *Id.*

1 (5) The actual dissemination of the speech

2 Dissemination of the speech to a large segment of the public could reflect a matter of  
3 public concern. See *Dun & Bradstreet, Inc.*, 472 U.S. at 762. So, in this case, the relevant  
4 question is whether the Defendant's speech was transmitted to a large number of HOA  
5 members. However, "[a] person cannot turn otherwise private information into a matter of  
6 public interest simply by communicating it to a large number of people." *Weinberg*, 2 Cal.  
7 Rptr. 3d at 392 (citing *Hutchison*, 443 U.S. at 135). The geographic size, boundaries, and  
8 location of the HOA.

9 The number of homeowners within the HOA seems to be an important factor, albeit  
10 not dispositive. In the following cases involving 500 homeowner units or more, the Court  
11 found the alleged defamation on HOA activities involved a matter of public concern: *Smith v.*  
12 *A Pocono Country Place Property Owners Ass'n, Inc.*, 686 F. Supp. 1053 (M.D. Pa. 1987)  
13 (2050 units); *Martin v. Committee for Honesty & Justice at Star Valley Ranch*, 101 P.3d 123  
14 (Wyo. 2004) (2000 units); *Damon*, 102 Cal. Rptr. 2d 205; *Gulrajaney v. Petricha*, 885 A.2d  
15 496 (N.J. Ct. App. 2005) (1000 units); *Ruiz*, 37 Cal. Rptr. 3d 133 (523 units). However, in the  
16 following cases involving 600 units or less, the Courts found NO matter of public concern:  
17 *Sewell v. Euhanks*, 352 S.E.2d 802 (1987) (600 units); *McIntyre v. Jones*, 194 P.3d 519 (Colo.  
18 Ct. App. 2008) (25 units); and *Darnell & Scrivner Architecture Inc. v. Meadows Del Mar*  
19 *Homeowners Ass'n*, 2008 WL 2133190 (Cal. Ct. App. May 22, 2008) (22 units). In sum, a  
20 communication by a member of a homeowners association with only 41 Members (as is the  
21 case at bar) is going to have a higher bar to convince the Court that the speech involves a  
22 matter of public concern than a much larger association with much greater public reach.

23 (6) The nexus between the statement and the supposed  
24 public interest

25 There should be some degree of closeness between the challenged statements and the  
26 asserted public interest. *Connick*, 461 U.S. at 148-149.

27 ...

28 ...

1 (7) The speaker's motivation

2 A statement made for public concern should not be "motivated by the desire for  
3 profit." *Id.* The focus of the speaker's conduct should be the public interest rather than a  
4 mere effort "to gather ammunition for another round of [private] controversy." *Connick*, 461  
5 U.S. at 148.

6 (8) Conclusion Re: "Public Concern" Factors

7 Having considered the facts as applied to each of these above-referenced factors, the  
8 Court concludes that Defendant Hazell's website statements at issue did not involve matters of  
9 public concern. The evidence introduced at trial requires this Court to reverse the preliminary  
10 ruling that it made before the start of trial.

11 The form and mode of Defendant Hazell's speech suggests he was engaged in the  
12 handling of a private dispute - not seeking to change public policy, public opinion, or  
13 influence elections. There was no evidence that anybody in the HOA community was even  
14 talking about any of the issues in Mr. Hazell's website before the origination of his private  
15 dispute with the Board.

16 Mr. Hazell's accusations of criminal conduct by Ms. Andersen implicate a matter on  
17 which the public would have an interest ordinarily. However, in this case, Defendant Hazell  
18 was not spreading information about alleged criminal activity to promote the general safety or  
19 welfare of the community, but to advance his private personal agenda of stopping perceived  
20 retaliatory HOA actions against him.

21 While it is true the speech involving HOA activities could, in the appropriate case,  
22 implicate matters of public concern, in this case the limited size of the HOA (in number of  
23 homes and geographic reach), the limited common areas covered by the HOA, the limited  
24 reach of the website, combined with Hazell's content and seemingly private (as opposed to  
25 public) motivation, Hazell's HOA speech in this case did not materially or significantly  
26 involve matters of public concern.

27 ...

28 ...

**e. Defendant Hazell Did Not Publish In The Capacity Of A Media Defendant**

The Defendant also argues that the Plaintiff has the initial burden of “proof of fault” because Defendant, as an internet blogger, is considered a “media defendant.” See Defendant Paul Hazell’s Supplemental Pre-Trial Memorandum at p. 2 (12/14/15). In the context in which the Defendant made such argument, the Court believes the Defendant was suggesting the “actual malice” level of fault is required based on his supposed status as a media defendant.

In *Gertz*, the United States Supreme Court held that a media defendant (referring to a publisher of a magazine, a broadcaster, or the traditional media) cannot be held liable without fault for allegedly defamatory statements against a private person. 418 U.S. at 347. But the Court left it to the States to determine whether the requisite level of fault was negligence or actual malice: “[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster for defamatory falsehood injurious to a private individual.” *Id.*

“This approach provides a more equitable boundary between the competing concerns [because] it recognizes the strength of the legitimate state interest in compensating private individuals for wrongful injury to reputation, yet shields the press and broadcast media from the rigors of strict liability for defamation.” *Id.*

This Court concludes that Mr. Hazell, as a blogger on the internet, with a very limited audience, and a private motivation must not be deemed a media defendant sufficient to trigger greater First Amendment protections than would otherwise apply to a private defendant speaking on a wholly private matter of interest to no other persons than the declarant and the plaintiff.

**f. Plaintiff’s Claim For Presumed Damages Did Not Trigger The “Actual Malice” Standard Of Fault**

The United States Supreme Court did hold that: “States may not permit recovery of presumed or punitive damages, at least when the liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.” *Gertz*, 418 U.S. at 349. However,



1 the Supreme Court made such statement in the context of a media defendant communicating  
2 on an issue of public concern.

3 The later decision of the United States Supreme Court in *Dun & Bradstreet*, 472  
4 U.S. 749, suggests that *Gertz* did not affect the Common law rule applicable to a private  
5 person suing a non-media defendant on a matter of purely private concern: the plaintiff may  
6 recover presumed and punitive damages absent any proof of actual malice.

7 It is undisputed that the only defamation claim that Plaintiff Andersen is pursuing is a  
8 defamation *per se* claim, and in connection therewith she is only seeking presumed general  
9 damages. The Court finds that in this case, the *Dun & Bradstreet* and Common Law rule  
10 applies, and the Plaintiff need not prove actual malice.

11 **g. Assuming Arguendo That the "Actual Malice" Standard Applies,**  
12 **The Court Properly Permitted Plaintiff To Introduce Evidence**  
**Of Defendant's "Ill-Will" Towards Plaintiff To Establish Fault**

13 To the extent the "actual malice" level of fault applies in this case, the Court properly  
14 permitted Plaintiff Andersen to introduce evidence of Defendant Hazell's ill-will towards  
15 Andersen to prove actual malice.

16 "In contrast to common law malice, the inquiry in 'actual malice' focuses largely on  
17 the defendant's belief regarding the truthfulness of the published material rather than on the  
18 defendant's attitude toward the plaintiff." *Nevada Broadcasting*, 99 Nev. at 414. "The test is  
19 subjective, with the focus on what the defendant believed and intended to convey, not what a  
20 reasonable person would have understood the message to be." *Id.* (Emphasis in original).

21 "Actual malice" refers to the state of mind of the declarant to communicate a fact with  
22 knowledge that the fact is wrong, or with reckless disregard for the truth. The state of mind of  
23 "ill will" is relevant to prove whether the declarant had the state of mind of "reckless  
24 disregard." While "actual malice" cannot be proven simply from evidence of past or existing  
25 "ill-will," such "ill-will" is part of the evidence that the plaintiff may present to the trier of fact  
26 in making the ultimate decision whether the defendant acted with "actual malice."

27 Given this requirement to examine the subjective intent of the defendant, the Nevada  
28 Supreme Court grants broad discretion to the trial court to admit evidence of bearing on the

1 motive and state of mind of the defendant towards the plaintiff at the time of the allegedly  
2 defamatory statements. "Evidence of negligence, motive, and intent may be used  
3 cumulatively, to establish the necessary recklessness." *Id.*; see also *Pegasus*, 118 Nev. at 722,  
4 77 P.3d 93 (stating identical point); *Miller v. Jones*, 114 Nev. 1291, 1299, 970 P.2d 571  
5 (1998) ("Recklessness may be established through evidence of negligence, motive, and  
6 intent." "It is clear that in most instances one factor alone will not establish actual malice by  
7 convincing clarity. *Nevada Broadcasting*, 99 Nev. at 414.

8         The Nevada Supreme Court has specifically permitted the admission of evidence of  
9 prior ill will between the defendant and the plaintiff to help prove "actual malice." In  
10 *Posadas*, a police officer sued the City of Reno, Police Chief Bradshaw, and Investigator  
11 Robinson, among others, for defamation for publishing a press release accusing the police  
12 officer of lying under oath during an investigation into the officer's conduct. The police  
13 officer's evidence of "actual malice" included (1) evidence that he was "in disfavor with the  
14 [Reno Police Department] administration; (2) evidence that the defendant Bradshaw "would  
15 not speak with him on a social or professional level, and (3) evidence that Investigator  
16 Robinson "disliked him." *Posadas*, 109 Nev. at 455, 851 P.2d at 443. The trial court entered  
17 summary judgment for the defendants. *Id.*

18         The Nevada Supreme Court in *Posadas* reversed, holding the ill will between the  
19 plaintiffs and defendants established a genuine issue of material fact whether the defendants  
20 acted with "actual malice." *Id.* ("when the press release is combined with the evidence  
21 suggesting ill will toward *Posadas* on the part of Bradshaw and the RPD, we conclude . . . that  
22 there is sufficient evidence for a jury question on the issue of actual malice." *Accord Dealer*  
23 *Computer Services, Inc. v. Fuller's White Mountain Motors, Inc.*, 2008 WL 4628448 at \*5 (D.  
24 Ari. Oct. 17, 2008) (The Federal District Court held, evidence that the declarant was "still  
25 mad" at the plaintiff about a prior lawsuit, created a material issue of fact whether the  
26 defendant had acted with "actual malice.").

27         In a recent Federal Court decision in the District of Nevada, the Court held that an  
28 allegation of "ill will" together with other conclusory allegations of "reckless disregard" were

1 sufficient to plead "actual malice." See *Pacquiao v. Mayweather*, 803 F. Supp. 2d 1208 (D.  
2 Nev. 2011). In *Pacquiao*, a boxer sued other boxers for defamation because they published  
3 statement that he had used performance-enhancing drugs. The Court held that the "actual  
4 malice" standard applied because *Pacquiao* was a public figure. *Id.* at 1213. The court  
5 understood that "actual malice" was defined as "knowledge of the falsity or a statement or a  
6 reckless disregard for its truth." *Id.* at 1214. The Court explained that the plaintiff was  
7 required the facts supporting "actual malice." The Federal District Court then seemingly  
8 relied on several averments relating to the ill-will of the defendants to conclude "actual  
9 malice" had been sufficiently pled, including these averments: "[Defendants are] motivated by  
10 ill-will, spite, malice, revenge, and envy;" "de la Hoya made these statements out of malice  
11 and spite;" and "defendants issued these statements intending to harm Pacquiao." *Id.*

12 Defendant Hazell read too much into the case *Old Dominion Branch v. Austin*, 418  
13 U.S. 264 (1974), in arguing that "ill will" has no place in an "actual malice" analysis. See  
14 Defendant Paul Hazell's Supplemental Pre-Trial memorandum, p. 4, lines 1-2 (12/14/15). In  
15 *Old Dominion* the Supreme Court corrected trial court error in giving jury instructions that  
16 defined "malice" in the common-law sense as requiring "ill will." The Supreme Court held:  
17 "Instructions which permit a jury to impose liability on the basis of the defendant's hatred,  
18 spite, ill will, or desire to injure are 'clearly impermissible.'" 418 U.S. at 281. The Court  
19 further held: "Ill will toward the plaintiff, or bad motives, are not elements of the *New York*  
20 *Times* standard." *Id.* While it is certainly true that the standard for liability is "actual malice -  
21 not 'ill-will,'" the Supreme Court did not prohibit the introduction of evidence of ill-will to  
22 help prove actual malice.

23 Prior to *Old Dominion*, the United States Supreme Court in *Greenbelt Co-op*  
24 *Publishing Assoc. v. Bressler*, 398 U.S. 6 (1970), had explained that the trier of fact in a  
25 defamation case must not find "actual malice" merely because the defendant spoke out of  
26 hatred:

27 Even where the utterance is false, the great principles of the  
28 Constitution which secure freedom of expression in this area  
preclude attaching adverse consequences to any except the  
knowing or reckless falsehood. Debate on public issues will not be

1 uninhibited if the speaker must run the risk that it will be proved in  
2 Court that he spoke out of hatred . . .

3 But even *Greenbelt* left room for the admission of "ill-will" evidence. In *Greenbelt*  
4 the Supreme Court reversed a jury verdict for the plaintiff in a defamation action because "the  
5 jury was permitted to find liability merely on the basis of a combination of falsehood and  
6 general hostility." 398 U.S. at 10 (emphasis added). In sum, the Court properly permitted the  
7 Plaintiff to introduce evidence of Hazell's "ill-will" to combine with evidence of falsity plus  
8 reckless disregard for falsity, in an effort to prove "actual malice."

9 **h. Defendant Hazell Did Not Publish Any Statement With Actual  
10 Malice – Except The Statements Of "Smoking Pot"**

11 As stated, the Court finds that Plaintiff Andersen had the burden of satisfying the  
12 "negligence", as opposed to the "actual malice," level of fault, in proving her claim of  
13 Defamation. Nevertheless, to the extent the "actual malice" level applies, the Court concludes  
14 that Defendant Hazell did not publish any statement with actual malice -- except the statements  
15 of "smoking pot." Defendant Hazell did not publish any other statements that expressed or  
16 implied derogatory facts about Andersen with knowledge of falsity, or reckless disregard of  
17 truth or falsity.

18 The Court finds that Hazell either knew that Andersen did not smoke pot at the subject  
19 Halloween Party, or he made his statements with reckless disregard for the truth or falsity of  
20 the statements. Thus he engaged in actual malice. The Court assessed the credibility of Mr.  
21 Hazell and concluded that he was not honest in his testimony that he actually witnessed Ms.  
22 Andersen "smoking pot." Moreover, Mr. Hazell's wife testified that she did not actually see  
23 Ms. Andersen "smoking pot." Ms. Chew simply drew the unreasonable inference that she had  
24 been "smoking pot" because she saw Ms. Andersen go to the side of her own house where Ms.  
25 Chew believed others were "smoking pot." There was no evidence presented that Ms. Chew  
26 told Mr. Hazell that she actually saw Ms. Andersen "smoking pot." Mr. Hazell's cousin said  
27 he saw Ms. Andersen "smoking pot" at the bar area -- the same area where Ms. Chew did NOT  
28 see Ms. Andersen smoking pot -- and Mr. Hazell's cousin had been sitting right next to Ms.  
Chew. Moreover, Mr. Hazell's cousin changed his testimony during trial. The Court assessed

1 his credibility and determined that he was NOT credible in testifying that he actually saw Ms.  
2 Andersen "smoking pot." The testimony at trial was that Mr. Hazell and his cousin met and  
3 conferred to discuss the trial, and the Court believes they collaborated to align their testimony  
4 to say that they both saw Ms. Andersen "smoking pot." The Court did not believe such  
5 testimony.

6 More to the point, the Court finds, from the totality of the evidence presented, that Mr.  
7 Hazell knew neither he nor his wife, nor his cousin actually saw Ms. Andersen "smoking pot"  
8 at the subject Halloween party, and that there was no reasonable basis to conclude that she was  
9 "smoking pot" at the party. At the very least, when Mr. Hazell published his statements in his  
10 website that Ms. Andersen had been "smoking pot," he had serious doubts about the accuracy  
11 of his statements that she had been "smoking pot," and knew for a fact that he did not have  
12 any witnesses who had actually seen her "smoking pot." Mr. Hazell made his false derogatory  
13 statements with actual malice.

14 **i. Defendant Hazell Negligently Published the Statements That**  
15 **Andersen Was "Smoking Pot" But Did Not Negligently Publish**  
16 **Any Other Statement**

17 For the reasons discussed in the above section on "actual malice," the Court also finds  
18 that Defendant Hazell's false derogatory statements about Ms. Andersen "smoking pot" were  
19 made with a level of fault higher than mere negligence. To the extent the "negligence" level  
20 of fault applied, that level was satisfied here.

21 **6. Defamation Damages**

22 The Court has concluded that Mr. Hazell made false, derogatory statements of fact that  
23 he saw Ms. Andersen "smoking pot" in 2009, and he published such statements in reckless  
24 disregard for the truth or falsity of such statements. Hazell's publication that he saw Ms.  
25 Andersen "smoking pot" in 2009 was an accusation that Ms. Andersen had committed a  
26 crime. In 2009, marijuana was illegal for all purposes -- as not even medical marijuana had  
27 been approved for use in the state.

28 Under Nevada law, if a defendant makes a false derogatory statement with actual  
malice that a plaintiff has committed a crime, then that constitutes defamation *per se*, and the

1 plaintiff is entitled to recover presumed general damages. *Nevada Independent Broadcasting*  
2 *Corp.*, 99 Nev. at 409, 664 P.2d at 341. The Court has the responsibility to award those  
3 damages to account for the loss of reputation, shame, mortification, and hurt feelings.  
4 *Bongiovi*, 122 Nev. at 577, 138 P.3d at 448.

5 The Nevada Supreme Court has not had the opportunity to decide whether an  
6 accusation of ANY crime may qualify for "defamation per se" treatment, or, whether only an  
7 accusation of a "serious" crime may qualify.

8 The Restatement (Second) of Torts, § 571 (1977) provides that the requisite crime  
9 must be one punishable by "imprisonment," or involving "moral turpitude":

10 One who publishes a slander that imputes to another conduct  
11 constituting a criminal offense is subject to liability to the other  
12 without proof of special harm if the offense imputed is of a type  
13 which, if committed in the place of publication, would be (a)  
punishable by imprisonment in a state or federal institution, or (b)  
regarded by public opinion as involving moral turpitude.

14 Explaining "moral turpitude," the Restatement (Second) of Torts, § 571, at comment g  
15 states:

16 Moral turpitude has been defined as inherent baseness or vileness  
of principle in the human heart. It means, in general, shameful  
17 wickedness, so extreme a departure from ordinary standards of  
honesty, good morals, justice or ethics as to be shocking to the  
moral senses of the community. . . . Among these crimes are  
18 treason, espionage, murder, burglary, larceny, arson, rape, criminal  
assault, perjury, selling mortgaged chattels or diseased meat,  
19 kidnapping, wife beating, malicious mischief, indecent exposure,  
bootlegging, operating a bawdy house, and uttering a bad check.  
20 This is by no means a complete catalogue of offenses.

21 The modern Restatement view is consistent with the Common Law. Under the  
22 Common Law, damages for defamation were presumed if the defendant had falsely accused  
23 the plaintiff of a serious crime - which generally meant a crime punishable by imprisonment,  
24 and/or a crime involving moral turpitude. *See, e.g., Pollard v. Lyon*, 91 U.S. 225, 234, 237  
25 (1875) (Studying "English decisions upon the [subject]" and concluding that: "Where the  
26 words are not in themselves actionable, because the offense imputed involves neither moral  
27 turpitude nor subjects the offender to an infamous punishment, special damage must be  
28 alleged and proved in order to maintain the action."); *Yakavick v. Valentukevicius*, 80 A. 94,

1 95 (Conn. 1911) (“Words which charge a crime are only actionable in themselves when they  
2 charge a crime which involves moral turpitude, or subjects the offender to infamous  
3 punishment.”); *McDavitt v. Bower*, 48 N.E. 317, 319 (Ill. 1897) (Referencing the “general rule  
4 of law,” “laid down in the authorities,” that “spoken words, imputing a crime punishable with  
5 imprisonment, are actionable without proof of special damage.”); *Amick v. Montross*, 220  
6 N.W. 51, 54 (Iowa 1928) (articulating the “general rule” that “in order for language charging  
7 one with commission of a crime to be slanderous per se, the crime charged must be indictable,  
8 and that it must be one involving moral turpitude, or one at least may subject the party to a jail  
9 sentence”); *Haines v. Campbell*, 21 A. 702, 704 (Md. Ct. App. 1891) (finding defamation per  
10 se for an accusation of a crime of arson that would subject the plaintiff to an “infamous  
11 punishment”); *Brooker v. Coffin*, 5 Johns 188, 191, 4 Am. Dec. 337 (N.Y. 1809) (“In case the  
12 charge, if true, will subject the party charged to an indictment for a crime involving moral  
13 turpitude, or subject him to an infamous punishment, then the words will be in themselves  
14 actionable.”); *Fleming v. Moore*, 275 S.E.2d 632, 635 (Va. 1981) (“At common law  
15 defamatory words are actionable per se are . . . [t]hose which impute to a person the  
16 commission of some criminal offense involving moral turpitude, for which the party, if the  
17 charge is true, may be indicted and punished.”).

18         Several recent decisions by courts around the country considering the issue have held  
19 that the requisite crime for “defamation *per se*” treatment must be serious enough to warrant  
20 imprisonment, or to be deemed a crime of moral turpitude. *See, e.g., Kennedy v. City of New*  
21 *York*, 2015 WL 6442237 at \*13 (S.D.N.Y. Oct. 23, 2015) (requiring a “serious” crime, as  
22 distinguished from “relatively minor offenses,” and further explaining that a some  
23 misdemeanors “may” qualify if it is a “serious” misdemeanor, such as a crime that “puts  
24 another in fear of physical harm.”); *Skakel v. Grace*, 5 F. Supp. 3d 199 (D. Conn. 2014)  
25 (requiring a crime of “moral turpitude” or a crime to which an “infamous penalty” is attached  
26 – meaning “a chargeable offense which is punishable by imprisonment.”); *Klayman v. Judicial*  
27 *Watch, Inc.*, 22 F. Supp. 3d 1240, 1247, and n.3 (S.D. Fla. 2014) (holding only an “infamous”  
28 crime qualifies, and explaining that an “infamous crime” means “murder, perjury, piracy,

1 forgery, larceny, robbery, arson, sodomy, or burglary,” or another “felony.”); *Thorsen v. Sons*  
2 *of Norway*, 996 F. Supp. 2d 143 (E.D.N.Y. 2014) (requiring a “serious” crime, such as  
3 “theft”); *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 700 (D. Md. 2011)  
4 (explaining that one of the four categories which constitute defamation per se includes  
5 “charging plaintiff with a serious crime”); *Kruger v. Grauer*, 2015 WL 5134601 at \*9 (Ct.  
6 Super. Ct., July 28, 2015) (“To fall within the category of libels that are actionable per se  
7 because they charge crime, the libel must be one which charges a crime which involves moral  
8 turpitude or to which an infamous penalty is attached.”); *Doe v. Catholic Diocese of Rockford*,  
9 38 N.E.3d 1239 (Ill. Ct. App. 2015) (“For a statement to constitute defamation per se as  
10 imputing the commission of a crime, the crime must be an indictable one, involving moral  
11 turpitude and punishable by death or imprisonment rather than by a fine.”), and *Warren v.*  
12 *Birmingham Bd. of Educ.*, 739 So. 2d 1125, 1132 (Ala. Ct. App. 1999) (“Spoken words that  
13 impute to the person of whom they are spoken the commission of an indictable criminal  
14 offense involving infamy or moral turpitude constitute slander actionable per se.”).

15         This Court believes the Nevada Supreme Court would follow the Common Law, the  
16 Restatement of Law, and the modern trend that only the imputation of a “serious crime” would  
17 qualify for defamation *per se*. In *K-Mart*, 109 Nev. at 1192, the Court recognized that  
18 “[c]ertain classes of defamatory statements are considered so likely to cause serious injury to  
19 reputation and pecuniary loss that these statements are actionable without proof of damages.”  
20 The Nevada Supreme Court recognized that “historically,” “the imputation of a crime” was  
21 treated as defamatory *per se*. *K-Mart* involved an accusation of “shoplifting,” (a crime of  
22 moral turpitude), which the Court found was “unquestionably slander per se.” This Court  
23 assumes the Nevada Supreme Court recognized the obvious fact that only the accusation of a  
24 “serious” crime would be “so likely to cause serious injury.”

25         This Court concludes that, in Nevada, consistent with public policy, the Common Law,  
26 and the prevailing view, to invoke “defamation per se” based on the accusation of a crime, the  
27 crime must be a “serious” crime – which means it is either a crime punishable by  
28 imprisonment in a state or federal prison, or it is known to be a crime of moral turpitude.



1 In this case, Defendant Hazell wrongly accused Plaintiff Andersen of "smoking pot,"  
2 which implicates the crime of possession of marijuana, under an ounce - - a violation of NRS  
3 453.336(2) and (4). This crime is a misdemeanor and is punishable, for the first offense, by a  
4 fine of not more than \$600 - no incarceration. *Id.*

5 Since the crime of possession of marijuana is only a misdemeanor, punishable by a  
6 fine and not imprisonment, and obviously not a crime of moral turpitude, a false accusation of  
7 such crime DOES NOT qualify for "defamation *per se*" treatment. Thus, the Plaintiff is NOT  
8 entitled to recover any presumed damages.

9 **B. CLAIM FOR INVASION OF PRIVACY: FALSE LIGHT**

10 To prevail on her claim of Invasion of Privacy: False Light, Plaintiff Andersen had the  
11 burden to prove, by a preponderance of the evidence the following elements: (1) The  
12 Defendant caused publicity to a matter concerning another (Rest. (2d) Torts § 652E (1977));  
13 (2) that places the other before the public in a false light - meaning the false light requires "at  
14 least an implicit statement of objective fact" (*Flowers*, 310 F.2d at 1132 (applying Nevada  
15 law)); (3) the Defendant acted with "actual malice," - meaning "knowing or reckless disregard  
16 of the truth" (*id.*); (4) the Plaintiff suffered "mental distress from having been exposed to  
17 public view (*id.*); and (5) the false light in which the other was placed would be highly  
18 offensive to a reasonable person; (Rest. (2d) Torts § 652E (1977)). *See also PETA v. Bobby*  
19 *Berosini, Ltd.*, 111 Nev. 615, 629, 895 P.2d 1269, 1278 (1995) (overruled on other grounds)  
20 (citing Restatement (2d) of Torts, sec. 652(A) with approval)).

21 The Court finds that Plaintiff has proved, by a preponderance of the evidence, that the  
22 only publicity that Defendant Hazell caused that placed the Plaintiff in a "false light" as to an  
23 "objective fact" involved the accusation that she was "smoking pot." Plaintiff has failed to  
24 meet her burden of proving "false light" in any other respects. Defendant Hazell did publicize  
25 statements that Plaintiff Andersen "smoked pot," which placed Ms. Andersen in a false light.

26 Nonetheless, the Plaintiff failed to satisfy the last element of the claim: the Plaintiff  
27 failed to prove by a preponderance of the evidence that the "false light" in which Ms.  
28 Andersen was placed would be "highly offensive" to a reasonable person.

1           The Court believed the testimony of Ms. Andersen that SHE was highly offended to  
2           having been falsely accused of “smoking pot.” The Court considered the testimony of Ms.  
3           Andersen and her witnesses regarding the shock and humiliation that Ms. Andersen felt upon  
4           being accused of “smoking pot,” and found her testimony to be credible. Yet these facts are  
5           not relevant to the precise issue. The “highly offensive” standard is not based on what the  
6           Plaintiff felt, it is based on what a “reasonable person” would feel. As explained below, the  
7           Court finds that a reasonable person might be “offended” upon being accused in public of  
8           “smoking pot,” but a reasonable person, under the circumstances of this case, would not be  
9           “highly offended.”

10           Despite Ms. Andersen being highly offended, a reasonable person under the same  
11           circumstances of this case would not be “highly offended” for the following reasons: (1)  
12           “smoking pot” as a first offense is only a misdemeanor, punishable by only a fine; (2)  
13           “smoking pot” is not a crime of moral turpitude; (3) there was no evidence that any neighbors  
14           actually thought less of Ms. Andersen due to the website allegations; (4) the accusations of  
15           “smoking pot” were not highly publicized; in fact there was no evidence that the accusations  
16           were seen by anybody outside the small HOA community; and (5) there was a lack of any  
17           evidence that anybody in the HOA neighborhood (other than Mr. Hazell and his wife)  
18           believed or suspected that Ms. Andersen had engaged in “smoking pot.”

19           For all these reasons, the Court concludes that no reasonable person would have been  
20           highly offended upon being placed publicly in a false light for “smoking pot.” Accordingly,  
21           the Court concludes that Plaintiff Andersen has failed to prove her claim of Invasion of  
22           Privacy: False Light.

23           Moreover, Plaintiff Andersen failed to prove, by a preponderance of the evidence, that  
24           the mental distress or other harm that she suffered was caused by having been placed in a false  
25           light of “smoking pot.” The Court heard and believed the testimony at trial about how the  
26           website, as a whole, harmed Ms. Andersen - from the changes to her behavior, and demeanor,  
27           and her general loss of enjoyment of life. However, some of the change to Ms. Andersen’s  
28           behavior, demeanor, and enjoyment of life was detrimentally caused by two deaths in the

1 family that occurred around the time the website was being published. To further complicate  
2 matters, the Court is not able to differentiate between the harm caused by the "smoking pot"  
3 statements, and the harm caused by the other allegedly derogatory statements on the website.  
4 Thus Plaintiff failed to satisfy the element of the claim that she suffered "mental distress from  
5 having been exposed to public view" as to the accusation of "smoking pot."

6 **C. CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

7 To prevail on her claim for Intentional Infliction of Emotional Distress, Plaintiff  
8 Andersen had the burden to prove, by a preponderance of the evidence, as follows: "(1)  
9 extreme and outrageous conduct with either the intention of, or reckless disregard for, causing  
10 emotional distress; (2) the Plaintiff[] having suffered severe or extreme emotional distress and  
11 (3) actual or proximate causation." *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91 (1981).  
12 "Extreme and outrageous conduct is that which is outside all possible bounds of decency and  
13 is regarded as utterly intolerable in civilized society." *Maduiki v. Agency Rent-A-Car*, 114  
14 Nev. 1, 3, 953 P.3d 24 (1998). The Nevada Supreme Court has held that "[t]he less extreme  
15 the outrage, the more appropriate it is to require evidence of physical injury or illness from the  
16 emotional distress." *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 462 (1993).

17 The Court finds that Plaintiff Andersen failed to prove, by a preponderance of the  
18 evidence, that she suffered severe or extreme emotional distress.

19 Accordingly, the Court concludes that Plaintiff Andersen has failed to prove her claim  
20 for Intentional Infliction of Emotional Distress.

21 **D. CLAIM FOR CONSPIRACY**

22 To prevail on her claim for Civil Conspiracy, Plaintiff Andersen had the burden to  
23 prove, by a preponderance of the evidence, as follows: "[A] combination two or more persons  
24 who, by some concerted action, intend to accomplish an unlawful objective for the purpose of  
25 harming another, and damage results from the act or acts." *Consolidated Generator-Nevada*  
26 *v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

27 Plaintiff Andersen failed to prove, by a preponderance of the evidence, that Veronica  
28 Chew expressly or implicitly agreed with Defendant Hazell to create, contribute to, or

1 maintain the website and/or the allegedly defamatory statements therein. Accordingly, the  
2 Court concludes that Plaintiff Andersen has failed to prove her claim for Civil Conspiracy.

3 **E. CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

4 To the extent the Plaintiff's claims for Declaratory and Injunctive Relief seek redress  
5 for any alleged Defamation and/or Invasion of Privacy: False Light -- such claims are  
6 adjudged in favor of Defendant and against Plaintiff. Plaintiff did not prevail on the claims for  
7 Defamation and Invasion of Privacy: False Light and, therefore, is not entitled to any  
8 Declaratory and/or Injunctive Relief for such alleged wrongs.

9 Plaintiff Andersen seems to have expanded on her claims for Declaratory and/or  
10 Injunctive Relief by contending in various pre-trial briefs that Defendant Hazell's use of her  
11 name and likeness on his website violated NRS 597.810. Under NRS 597.810(1), "[a]ny  
12 commercial use of the name, voice, signature, photograph or likeness" of another by a person  
13 without first having obtained written consent for the use is subject to either injunctive relief of  
14 monetary damages not less than \$750.00.

15 The Court finds that Defendant Hazell did not undertake any "commercial use" of Ms.  
16 Andersen's name or likeness.

17 Accordingly, the Court finds that Plaintiff Andersen has failed to prove her claims for  
18 Declaratory or Injunctive Relief.

19 **V. JUDGMENT**

20 **JUDGMENT IS HEREBY ENTERED** in favor of Defendant Hazell, and against  
21 Plaintiff Andersen, on all claims, including Andersen's claims of Defamation, Invasion of  
22 Privacy: False Light, Intentional Infliction of Emotional Distress, Declaratory Relief,  
23 Injunctive Relief, and Civil Conspiracy, and that Plaintiff shall take nothing on any claims of  
24 its Complaint.

25 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

26 DATED this 20<sup>th</sup> day of September, 2016.

27  
28   
RICHARD F. SCOTTI  
DISTRICT COURT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT IN FAVOR OF DEFENDANT was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

Michael R. Mushkin, Esq.

Allen Lichtenstein, Esq.

Michael B. Lee, Esq.

Barney C. Ales, Esq.

*/s/ Melody Howard*

\_\_\_\_\_  
Melody Howard  
Judicial Executive Assistant

## **EXHIBIT 2**

## **EXHIBIT 2**

Gmail - Alleged Ethics Complaint at GLVAR

9/18/2018

Kassee Bulen <kasseeb@gmail.com>



**Alleged Ethics Complaint at GLVAR**

Mon, Aug 13, 2018 at 1:50 PM

David Sanders <dsanders@glvar.org>  
To: "KasseeB@gmail.com" <KasseeB@gmail.com>  
Cc: Wendy DiVecchio <Wendy@glvar.org>

Ms. Bulen:

GLVAR has recently become aware of the publication of an alleged ethics case against you being used as a part of a political campaign, the article in question can be found at <https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/>

As of the date of this email, GLVAR has not received such a complaint. If such a complaint is received, it will be reviewed by the Grievance Committee pursuant to the *National Association of REALTORS Code of Ethics and Arbitration Manual*. If the case proceeds to an Ethics Hearing, you be notified at that time.

The ethics proceeding process is confidential and GLVAR had no part in the publication of this alleged complaint. GLVAR is looking into this matter and will act accordingly.

GLVAR recommends that you discuss your legal options related to the publication of this alleged complaint with a Nevada licensed attorney.

Sincerely,

David B. Sanders, Esq.  
General Counsel  
Greater Las Vegas Association of REALTORS®  
6360 South Rainbow Boulevard  
Las Vegas, NV 89118  
(702) 784-5054 (702) 784-5060 FAX  
dsanders@GLVAR.org  
www.LasVegasRealtor.com

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9/18/2018

Kassee Bulen <kasseeb@gmail.com>



**Alleged Ethics Complaint at GLVAR**

Tue, Sep 4, 2018 at 8:23 AM

David Sanders <dsanders@glvar.org>  
To: Kassee Bulen <kasseeb@gmail.com>  
Cc: Wendy DiVecchio <Wendy@glvar.org>

GLVAR has not received an ethics complaint as alleged in the article.

D

David B. Sanders, Esq.  
General Counsel  
Greater Las Vegas Association of REALTORS®  
6380 South Rainbow Boulevard  
Las Vegas, NV 89118  
(702) 784-5054 (702) 784-5060 FAX  
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From: Kassee Bulen <kasseeb@gmail.com>  
Sent: Monday, September 3, 2018 9:16 AM  
To: David Sanders <dsanders@glvar.org>  
Cc: Wendy DiVecchio <Wendy@glvar.org>  
Subject: Re: Alleged Ethics Complaint at GLVAR

(Quoted text hidden)



## **EXHIBIT 3**

## **EXHIBIT 3**

MCDONALD LAW GROUP, LLC  
203 S. Water Street, Suite 300  
Henderson, NV 89015  
Phone (702)448-4962 Fax (702)448-5011

Electronically Filed  
11/20/2018 11:23 AM  
Steven D. Grierson  
CLERK OF THE COURT



COM

RENA MCDONALD, ESQ.  
Nevada Bar No. 8852  
**MCDONALD LAW GROUP, LLC**  
203 S. Water Street, Suite 300  
Henderson, NV 89015  
(702)448-4962  
Fax (702)448-5011  
rena@mcdonaldlawgroup.com  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

A-18-784807-C

LAWRA KASSEE BULEN an individual,  
  
Plaintiff,  
  
vs.

CASE NO. :  
DEPT. NO. : Department 18

ROB LAUER, an individual, STEVE SANSON, and  
individual, and DOES, I through X; and ROE  
CORPORATIONS I through X, inclusive.  
  
Defendant.

COMPLAINT

COMES NOW, Plaintiff, Lawra Kassee Bulen, (hereinafter referred to as "Plaintiff") by  
and through her attorney of record Rena McDonald, Esq. of the McDonald Law Group, LLC,  
and hereby complains against Defendant, Rob Lauer, an individual (hereinafter referred to as  
"Defendant") and alleges and avers as follows:

1. At all times relevant herein, Plaintiff, Lawra Kassee Bulen was an individual  
residing in Clark County, Nevada.

2. At all relevant times herein Defendant Rob Lauer was an individual residing in  
Clark County, Nevada.

3. At all relevant times herein Defendant Steve Sanson was an individual residing  
in Clark County, Nevada.

1           4.       The true names and capacities of Defendants named herein as DOES I through  
2 X, inclusive, and ROE CORPORATIONS I through X inclusive, whether individual, corporate,  
3 associate or otherwise, are presently unknown to Plaintiff, who therefore sues said Defendants  
4 by such fictitious names; and when the true names and capacities of DOES I through X,  
5 inclusive and ROE CORPORATIONS I through X, inclusive are discovered, , Plaintiff will ask  
6 leave to amend this Complaint to substitute the true names of said Defendants. Plaintiff is  
7 informed believes and therefore alleges that Defendants so designated herein are responsible in  
8 some manner for the events and occurrences contained in this action.  
9

10           5.       Plaintiff is a campaign manager for Republican candidates and a real estate  
11 agent. Plaintiff's career is dependent upon her reputation in the community and with the  
12 Republican party.

13           6.       Defendant Lauer is a political writer.

14           7.       Defendant Sanson is the President of Veterans in Politics International, Inc. and  
15 the author of multiple defamatory articles written about Plaintiff and posted on the website for  
16 Veterans in Politics.  
17

18           8.       Plaintiff has never met Defendant Sanson.

19           9.       Plaintiff met Defendant Lauer on or about March 20, 2018 at the Clark County  
20 Republican Party ("CCRP") meeting at Elks Lodge. Defendant was not a member of the CCRP.  
21 At the event the Defendant asked the Plaintiff to participate in and screen test for a show. On or  
22 about March 22, 2018 Defendant requested that Plaintiff meet to discuss the show. Plaintiff met  
23 with the Defendant but declined to participate in the show. During the parties' meeting the  
24 Defendant made sexual passes at the Plaintiff and Plaintiff explained to Defendant that she did  
25 not want to be in a relationship.  
26

27           10.      On or about April 9, 2018 Defendant Lauer called Plaintiff four or five times  
28 during the course of the day. On that same day, Defendant then showed up at the Clark County

1 Platform meeting-knowing that Plaintiff would be in attendance. Plaintiff and Defendant spoke  
2 that night and during their conversation Defendant asked Plaintiff out to dinner several times.  
3 Plaintiff declined each of the Defendant's requests.

4 11. Defendant Lauer published a derogatory article online about Plaintiff's  
5 committee. Upon discovering the article, Plaintiff immediately contacted the Defendant and  
6 expressed her disapproval of the article and its posting. Defendant then removed the article but  
7 shortly thereafter published an article with false and defamatory information personally  
8 attacking the Plaintiff.  
9

10 12. Plaintiff attempted to maintain a friendship with Defendant Lauer; however, his  
11 behavior became erratic and made the Plaintiff feel threatened which resulted in Plaintiff  
12 applying for a protective order.

13 13. On or about July 10, 2018 Plaintiff and Defendant Lauer appeared at the hearing  
14 for the temporary protective order and through their respective counsels agreed to attempt to  
15 resolve their issues without having a protective order issued.  
16

17 14. On or about August 8th, 2018 Defendant Lauer instructed his friend and client  
18 Steve Sanson to publish a defamatory article Defendant had written about the Plaintiff, titled,  
19 *Kassee Bulen, Political Gypsy?*. This article (hereafter "Political Gypsy Article") was  
20 originally written by Steve Sanson and posted as an article on Veterans in Politics website  
21 <https://veteransinpolitics.org/2018/08/kassec-bulen-political-gypsy/>. Mr. Sanson and Mr. Lauer  
22 then shared the article with the public, on several social media websites, 26 Facebook  
23 Republican and military groups and many of Plaintiff's friends on Facebook.  
24

25 15. The Political Gypsy Article was an attack on Plaintiff's suitability to act a  
26 member of the CCRP and act as a campaign manager for candidates. This Article clearly was  
27 drafted in an attempt to defame Ms. Bulen and make it appear as though she is unsuitable to  
28 represent political candidates.

1           16.     The Political Gypsy Article contained several false facts, including but not  
2 limited to: Bulen Strategies is not a licensed lawful business in the State of Nevada. Attached  
3 as Exhibit 1 please find the Nevada State Business License for Lawra Kasee Bulen along with  
4 the Fictitious Firm Name Certificate of Business; Plaintiff was convicted of assault- the charges  
5 referenced in the Article were dismissed against Plaintiff and her record was sealed and the  
6 Order sealing this record was deemed confidential by the Court as was Plaintiff's record;  
7 Plaintiff was chased out of Republican Party groups in Arizona and St. George and that several  
8 married men accused Ms. Bulen of trying to extort money out of them-Plaintiff has never been  
9 charged with extortion.

11           17.     On or about August 13th, 2018 Defendant instructed his friend and client Steve  
12 Sanson to publish a second defamatory article titled, *KASSEE BULEN UNDER*  
13 *INVESTIGATION AFTER BEING CHARGED WITH ETHICS VIOLATIONS IN COMPLAINT*  
14 *FILED WITH GLVAR*. This Article (hereafter "Ethics Article") was originally written by Steve  
15 Sanson and posted as an article on Veterans in Politics website  
16 [https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-](https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/)  
17 [with-ethics-violations-in-complaint-filed-with-glvar/](https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/). Mr. Sanson and Mr. Lauer then shared the  
18 article with the public, on several social media websites, 24 Facebook Republican and military  
19 groups and many of Plaintiff's friends on Facebook. The Ethics Article was also posted in  
20 Defendant Lauer's Facebook group Vegas Real Estate Magazine.

23           18.     The Ethics Article article was an attack on Plaintiff's real estate career and called  
24 into question her suitability for her position as a real estate agent- the name of the Ethics Article  
25 itself contains false and defamatory information about Plaintiff.

26           19.     Again, the Ethics Article contains several defamatory and false facts, including  
27 but not limited to: "An ethics complaint was filed this week with the Great Las Vegas  
28 Association of Realtors against Lawra Kasee Bulen." (Ms. Bulen has never been investigated

1 by the GLVAR or the State of Nevada Real Estate Division). Attached as Exhibit 2 please find  
2 a record search conducted by the Administration Section Manager of NVRED evidencing that  
3 no complaints have been filed against Plaintiff's license. Further, attached as Exhibit 3 you will  
4 find an email from GLVAR's general counsel evidencing that not only have no complaints been  
5 received against Plaintiff but that GLVAR is also investigating the Article. Defendants went so  
6 far as to post a copy of a fake complaint in the Article; the Article moves on to state that  
7 "according to the Nevada Secretary of State's official website and Clark County business  
8 records Kasee Bulen's company, Bulen Strategies, is not a licensed lawful business in the state  
9 of Nevada." Again please see Exhibit 1; Defendants claim Plaintiff represented herself as an  
10 expert in the article by NBC titled *HOME SWEET HOME: Top 5 hottest zip codes for buying &*  
11 *selling in Las Vegas* located at <https://news3lv.com/news/local/home-sweet-home-top-5-hottest->  
12 [zip-codes-for-buying-and-selling-in-las-vegas](https://news3lv.com/news/local/home-sweet-home-top-5-hottest-). At no time in the video does Plaintiff state or  
13 represent that she is an expert.  
14

15  
16 20. On or about August 20, 2018 Defendant Lauer posted in his Facebook group,  
17 Trump Victory Team, a video he made from the audition screen test footage. The video was  
18 titled *KASSEE BULEN ATTACKS PRESIDENT TRUMP* (hereafter "Video"). In the Video  
19 Defendant Lauer attempted to have Plaintiff speak about the Stormy Daniels affair. Mr. Lauer  
20 heavily edited the video to make it sound like Plaintiff made derogatory statements about  
21 President Trump.  
22

23 21. The Video was not only posted by Mr. Lauer's Trump Victory Team page but  
24 was also shared with several other individuals and Facebook groups. The sharing of the Video  
25 caused several people to share the Video with others and with defamatory statements such as  
26 "Republican Never-Trumper attacks President Trump over Stormy Daniels alleged affair" It is  
27 clear that Defendant Lauer chose to author, edit and share this Video in an attempt to make it  
28 appear as though Plaintiff is unfit to run political campaigns, lower Plaintiff's reputation in the

1 community and call others to make defamatory statements against her in an attempt to prevent  
2 Plaintiff from working in the Republican Party.

3 22. Defendant Lauer has continued to send Plaintiff harassing text messages from  
4 different numbers pretending to be different people. On or about August 22, 2018 through  
5 August 24, 2018 Plaintiff received harassing text messages from a person who she believes to be  
6 Defendant Lauer bating her for information that could be used to defame her and stating, among  
7 other things, that Plaintiff would be politically destroyed, Plaintiff would never work for any  
8 political candidate ever again, stating that if she cared about the party she would play nice with  
9 Defendant Lauer. Please see the text messages attached hereto as Exhibit 4.

11 23. The day after sending these threatening text messages, Defendant Lauer wrote and  
12 posted an article for 360 News Las Vegas (hereafter "360 Article") wherein Defendant invented  
13 a fictitious "campaign source" so that he could yet again the Plaintiff's character; essentially  
14 calling Plaintiff a liar and questioning her credibility. This was obviously done so that others  
15 reading the 360 Article would believe Plaintiff to be a liar.

17 24. On or about August 27, 2018 Defendant Lauer called Plaintiff from a blocked  
18 number making vague threats about "kicking someone's ass" Plaintiff hung up on Defendant  
19 Lauer and he attempted to call her back.

21 25. On or about October 2, 2018 Plaintiff's counsel sent correspondence to the  
22 Defendants demanding that they remove the Political Gypsy Article, Ethics Article, 360 Article  
23 and Video and providing evidence to the Defendants that their statements were false; however,  
24 Defendants have yet to remove the articles and video from their websites and social media  
25 pages. Please see the demand letters attached hereto as Exhibit 5. Also attached as Exhibit 6  
26 please see evidence that the articles and video have not been removed.

27 ///

28 ///

1           26.     Despite repeated requests to leave Plaintiff alone Defendant Lauer continues to  
2 threaten and harass the Plaintiff. Attached as Exhibit 7 is a text exchange between Defendant  
3 Lauer and Cheryl Prater wherein Defendant Lauer implies he will continue to harass Plaintiff.

4                                   **FIRST CAUSE OF ACTION**

5                                   **(Defamation as to all Defendants)**

6           27.     Plaintiff re-alleges and incorporates by this reference each and every allegation  
7 contained in paragraphs 1 through 26 of this Complaint as though fully set forth herein.

8           28.     Defendants made several false and defamatory statements concerning Plaintiff by  
9 authoring, posting and sharing the Political Gypsy Article, Ethics Article and Video.

10           29.     The Political Gypsy Article contained several false facts, including but not limited  
11 to: Bulen Strategies is not a licensed lawful business in the State of Nevada, attached as Exhibit 1  
12 please find the Nevada State Business License for Lawra Kasee Bulen along with the Fictitious  
13 Firm Name Certificate of Business; Plaintiff was convicted of assault- the charges referenced in  
14 the Article were dismissed against Plaintiff and her record was sealed and the Order sealing this  
15 record was deemed confidential by Court as was Plaintiff's record; Plaintiff was chased out of  
16 Republican Party groups in Arizona and St. George and that several married men accused Ms.  
17 Bulen of trying to extort money out of them-Plaintiff has never been charged with extortion.

18           30.     The Ethics Article contains several defamatory and false facts, including but not  
19 limited to: "An ethics complaint was filed this week with the Great Las Vegas Association of  
20 Realtors against Lawra Kasee Bulen." (Ms. Bulen has never been investigated by the GLVAR  
21 or the State of Nevada Real Estate Division). Attached as Exhibit 2 please find a record search  
22 conducted by the Administration Section Manager of NVRED evidencing that no complaints  
23 have been filed against Plaintiff's license. Further, attached as Exhibit 3 you will find an email  
24 from GLVAR's general counsel evidencing that not only have no complaints been received  
25 against Plaintiff but that GLVAR is also investigating the Article. Defendants went so far as to  
26  
27  
28



1 post a copy of a fake complaint in the Article; the Article moves on to state that "according to the  
2 Nevada Secretary of State's official website and Clark County business records Kassee Bulen's  
3 company, Bulen Strategies, is not a licensed lawful business in the state of Nevada." Again  
4 please see Exhibit 1; Defendants claim Plaintiff represented herself as an expert in the article by  
5 NBC titled HOME SWEET HOME: Top 5 hottest zip codes for buying & selling in Las Vegas  
6 located at [https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-](https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-and-selling-in-las-vegas)  
7 [and-selling-in-las-vegas](https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-and-selling-in-las-vegas). At no time in the video does Plaintiff state or represent that she is an  
8 expert.  
9

10 31. In the Video Defendant Lauer attempted to have Plaintiff speak about the Stormy  
11 Daniels affair. Mr. Lauer heavily edited the video to make it sound like Plaintiff was make  
12 derogatory statements about President Trump. Defendant Lauer then posted the Video to  
13 Defendant Lauer's Trump Victory Team page but was also shared with several other individuals  
14 and Facebook groups. The sharing of the Video caused several people to share the Video with  
15 others and with defamatory statements such as "Republican Never-Trumper attacks President  
16 Trump over Stormy Daniels alleged affair" It is clear that Defendant Lauer chose to author, edit  
17 and share this Video in an attempt to make it appear as though Plaintiff is unfit to run political  
18 campaigns, lower Plaintiff's reputation in the community and call others to make defamatory  
19 statements against her in an attempt to prevent Plaintiff from working in the Republican Party.  
20

21 32. Defendant Lauer has continued to send Plaintiff harassing text messages from  
22 different numbers pretending to be different people. On or about August 22, 2018 through  
23 August 24, 2018 Plaintiff received harassing text messages from a person who she believes to  
24 be Defendant Lauer bating her for information that could be used to defame her and stating,  
25 among other things, that Plaintiff would be politically destroyed, Plaintiff would never work for  
26 any political candidate ever again, stating that if she cared about the party she would play nice  
27 with Defendant Lauer. Please see the text messages attached hereto as Exhibit 4.  
28

1           33. Defendant Lauer wrote the 360 Article citing a fictitious "campaign source" so  
2 that he could yet again diminish the Plaintiff's character; essentially calling Plaintiff a liar and  
3 questioning her credibility. This was obviously done so that others reading the 360 Article  
4 would believe Plaintiff to be a liar.

5           34. Defendant Lauer through text messages to a third party states that he will continue  
6 to harass the Plaintiff.

7           35. These Articles and Video were unprivileged publications and were made to  
8 several third parties.

9           36. Defendants were at least negligent in making these statements.

10          37. Plaintiff has incurred damages as a result of the Defendants actions.

11          38. By reason of the forgoing facts, Plaintiff has been damaged in a sum excess of  
12 Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into evidence  
13 at the time of trial.

14          39. Plaintiff has been required to retain the services of an attorney to defend this  
15 action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and  
16 costs.

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19                           **SECOND CAUSE OF ACTION**

20                           **(Defamation Per Se-As to all Defendants)**

21          40. Plaintiff re-alleges and incorporates by this reference each and every allegation  
22 contained in paragraphs 1 through 39 of this Complaint as though fully set forth herein.

23          41. Defendants made several false and defamatory statements concerning Plaintiff by  
24 authoring, posting and sharing the Political Gypsy Article, Ethics Article and Video.

25          42. The Political Gypsy Article contained several false facts, including but not limited  
26 to: Bulen Strategies is not a licensed lawful business in the State of Nevada, attached as Exhibit 1  
27 please find the Nevada State Business License for Lawra Kasee Bulen along with the Fictitious  
28

1 Firm Name Certificate of Business; Plaintiff was convicted of assault- the charges referenced in  
2 the Article were dismissed against Plaintiff and her record was sealed and the Order sealing this  
3 record was deemed confidential by Court as was Plaintiff's record; Plaintiff was chased out of  
4 Republican Party groups in Arizona and St. George and that several married men accused Ms.  
5 Bulen of trying to extort money out of them-Plaintiff has never been charged with extortion.

6  
7 43. The Ethics Article contains several defamatory and false facts, including but not  
8 limited to: "An ethics complaint was filed this week with the Great Las Vegas Association of  
9 Realtors against Lawra Kasse Bulen." (Ms. Bulen has never been investigated by the GLVAR  
10 or the State of Nevada Real Estate Division). Attached as Exhibit 2 please find a record search  
11 conducted by the Administration Section Manager of NVRED evidencing that no complaints  
12 have been filed against Plaintiff's license. Further, attached as Exhibit 3 you will find an email  
13 from GLVAR's general counsel evidencing that not only have no complaints been received  
14 against Plaintiff but that GLVAR is also investigating the Article. Defendants went so far as to  
15 post a copy of a fake complaint in the Article; the Article moves on to state that "according to the  
16 Nevada Secretary of State's official website and Clark County business records Kasse Bulen's  
17 company, Bulen Strategies, is not a licensed lawful business in the state of Nevada." Again  
18 please see Exhibit 1; Defendants claim Plaintiff represented herself as an expert in the article by  
19 NBC titled HOME SWEET HOME: Top 5 hottest zip codes for buying & selling in Las Vegas  
20 located at [https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-](https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-and-selling-in-las-vegas)  
21 [and-selling-in-las-vegas.](https://news3lv.com/news/local/home-sweet-home-top-5-hottest-zip-codes-for-buying-and-selling-in-las-vegas) At no time in the video does Plaintiff state or represent that she is an  
22 expert.  
23

24  
25 44. In the Video Defendant Lauer attempted to have Plaintiff speak about the Stormy  
26 Daniels affair. Mr. Lauer heavily edited the video to make it sound like Plaintiff made  
27 derogatory statements about President Trump. Defendant Lauer then posted the Video to  
28 Defendant Lauer's Trump Victory Team page but was also shared with several other individuals

1 and Facebook groups. The sharing of the Video caused several people to share the Video with  
2 others and with defamatory statements such as "Republican Never-Trumper attacks President  
3 Trump over Stormy Daniels alleged affair" It is clear that Defendant Lauer chose to author, edit  
4 and share this Video in an attempt to make it appear as though Plaintiff is unfit to run political  
5 campaigns, lower Plaintiff's reputation in the community and call others to make defamatory  
6 statements against her in an attempt to prevent Plaintiff from working in the Republican Party.  
7

8 45. Defendant Lauer has continued to send Plaintiff harassing text messages from  
9 different numbers pretending to be different people. On or about August 22, 2018 through  
10 August 24, 2018 Plaintiff received harassing text messages from a person who she believes to  
11 be Defendant Lauer bating her for information that could be used to defame her and stating,  
12 among other things, that Plaintiff would be politically destroyed, Plaintiff would never work for  
13 any political candidate ever again, stating that if she cared about the party she would play nice  
14 with Defendant Lauer. Please see the text messages attached hereto as Exhibit 4.  
15

16 46. On or about August 27, 2018 Defendant Lauer called Plaintiff from a blocked  
17 number making vague threats about "kicking someone's ass" Plaintiff hung up on Defendant  
18 Lauer and he attempted to call her back.

19 47. Defendant Lauer wrote the 360 Article citing a fictitious "campaign source" so  
20 that he could yet again diminish the Plaintiff's character; essentially calling Plaintiff a liar and  
21 questioning her credibility. This was obviously done so that others reading the 360 Article  
22 would believe Plaintiff to be a liar.  
23

24 48. Defendant Lauer through text messages to a third party states that he will continue  
25 to harass the Plaintiff.

26 49. These Articles and Video were unprivileged publications and were made to  
27 several third parties.  
28

50. Defendants were negligent in making these statements.

1           51.     Plaintiff trade, business and professions have been damaged as a result of the  
2 Defendants actions and their habitual defamation of the Plaintiff.

3           52.     By reason of the forgoing facts, Plaintiff has been damaged in a sum excess of  
4 Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into evidence  
5 at the time of trial.

6           53.     Plaintiff has been required to retain the services of an attorney to defend this  
7 action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and  
8 costs.  
9

10                               **THIRD CAUSE OF ACTION**

11                               **(Invasion of Privacy: False Light-as to all Defendants)**

12           54.     Plaintiff re-alleges and incorporates by this reference each and every allegation  
13 contained in paragraphs 1 through 53 of this Complaint as though fully set forth herein.

14           55.     Defendants made several false statements concerning Plaintiff by authoring,  
15 posting and sharing the Political Gypsy Article, Ethics Article and Video.  
16

17           56.     The statements published by the Defendants placed Plaintiff before the public in a  
18 false light as the Defendants made several false statements that made it appear to the public that  
19 the Plaintiff is corrupt, deceptive, a criminal, unfit to be a campaign manager, unethical and a  
20 liar.  
21

22           57.     The false light under which Plaintiff was placed would be highly offensive to a  
23 reasonable person.

24           58.     Defendants had knowledge that their statements were false and acted in reckless  
25 disregard as to the falsity of the publicized statements and the false light in which Plaintiff was  
26 placed.  
27

28           59.     Plaintiff has been injured and received mental distress from having been exposed  
to public view.

60. By reason of the forgoing facts, Plaintiff has been damaged in a sum excess of Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into evidence at the time of trial.

61. Plaintiff has been required to retain the services of an attorney to defend this action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and costs.

#### FOURTH CAUSE OF ACTION

**(Invasion of Privacy: Unreasonable Publicity Given to Private Facts-as to all**

Defendants)

62. Plaintiff re-alleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. Defendant Sanson authored and shared the Political Gypsy Article wherein he states that Plaintiff "was charged and sentenced for Assault Causing Bodily Injury in Dallas Texas." The assault charges referenced in the Political Gypsy Article were dismissed against Plaintiff and her record was sealed. The Order sealing this record was deemed confidential by Court as was Plaintiff's record. Defendant Lauer also shared the Political Gypsy Article with several people and Facebook groups.

64. Disclosure of these sealed records would be offensive and objectionable to a reasonable person of ordinary sensibilities.

65. By reason of the forgoing facts, Plaintiff has been damaged in a sum excess of Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into evidence at the time of trial.

66. Plaintiff has been required to retain the services of an attorney to defend this action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and costs.

1 **FIFTH CAUSE OF ACTION**

2 **(Intentional Interference with Prospective Economic Advantage-as to all Defendants)**

3 67. Plaintiff re-alleges and incorporates by this reference each and every allegation  
4 contained in paragraphs 1 through 66 of this Complaint as though fully set forth herein.

5 68. There are several prospective relationships that exist between Plaintiff and third  
6 parties, both as a campaign manager and a real estate agent.

7 69. Defendants were aware of Plaintiff's prospective contractual relationships with  
8 political candidates and real estate clients.

9 70. Defendants specifically authored published and shared the Articles and Video  
10 attacking Plaintiff's credibility and suitability to act as a campaign manager and real estate agent.  
11 Defendant accused Plaintiff of ethical violations under real estate license, called Plaintiff a  
12 criminal, called Plaintiff a liar, falsely stated that Plaintiff does not have a business license, and  
13 among several other accusations accused Plaintiff of extortion.

14 71. Defendants knew their statements were false and after being shown proof of the  
15 falsity of the statements refused to remove them from the public's view.

16 72. Defendants had no purpose to authoring, posting and sharing these Articles and  
17 Video other than to harm Plaintiff by preventing her relationships with third parties.

18 73. Defendants had no privilege or justification to publish these false statements.

19 74. As a result of Defendant's actions Plaintiffs has been harmed.

20 75. By reason of the forgoing facts, Plaintiff has been damaged in a sum excess of  
21 Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into evidence  
22 at the time of trial.

23 76. Plaintiff has been required to retain the services of an attorney to defend this  
24 action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and  
25 costs.  
26  
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1 88. As a result of the Defendants breaches of the statutes, Plaintiff has been damaged  
2 in a sum excess of Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof  
3 introduced into evidence at the time of trial.

4 89. Plaintiff has been required to retain the services of an attorney to defend this  
5 action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and  
6 costs.

7  
8 **EIGHTH CAUSE OF ACTION**

9 **(Concert of Action-as to all Defendants)**

10 90. Plaintiff re-alleges and incorporates by this reference each and every allegation  
11 contained in paragraphs 1 through 89 of this Complaint as though fully set forth herein.

12 91. Defendants acted together, in concert, to commit each and every one of the  
13 causes of action contained herein this Complaint.

14 92. As a result of the Defendants actions, Plaintiff has been damaged in a sum excess  
15 of Fifteen Thousand Dollars (\$15,000.00) as will be determined by proof introduced into  
16 evidence at the time of trial.

17 93. Plaintiff has been required to retain the services of an attorney to defend this  
18 action on her behalf and, as such, is entitled to an award of a reasonable attorney's fees and  
19 costs.  
20

21  
22 **NINTH CAUSE OF ACTION**

23 **(NRS 42.005 Request for Exemplary and Punitive Damages )**

24 94. Plaintiff re-alleges and incorporates by this reference each and every allegation  
25 contained in paragraphs 1 through 93 of this Complaint as though fully set forth herein.

26 95. It is proven by clear and convincing evidence that the Defendants are guilty of  
27 oppression, fraud or malice.  
28

96. The Plaintiff, in addition to the compensatory damages, are entitled to recover damages for the sake of example and by way of punishing the Defendants for three times the amount of compensatory damages awarded to the Plaintiff if the amount of compensatory damages is \$100,000 or more; or three hundred thousand dollars if the amount of compensatory damages awarded to the plaintiff is less than \$100,000.00.

WHEREFORE, the Plaintiff prays for each and every aforementioned cause of action, the following relief against the Defendants:

1. For General Damages in excess of Fifteen Thousand Dollars (\$10,000.00),
2. For Punitive Damages in excess of Fifteen Thousand Dollars (\$10,000.00),
3. For an award of attorney's fees and costs,
4. Such other and further relief as the Court may deem just and proper.

DATED this 18 day of November, 2018.

**MCDONALD LAW GROUP, LLC**

By

Rena McDonald, Esq.  
Nevada Bar No. 8852  
203 S. Water Street, Suite 300  
Henderson, NV 89015  
(702)448-4962  
Fax (702)448-5011  
Attorney for Plaintiff

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**VERIFICATION**

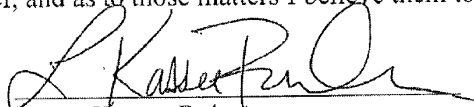
STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

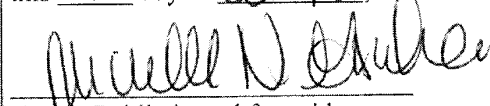
Lawra Kasee Bulen, being first duly sworn, deposes and says:

1. That I am the Plaintiff in the above entitled action.
2. That I have read the foregoing Complaint and know the contents hereof.
3. That the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.

  
Lawra Kasee Bulen

Subscribed and sworn to before me

this 14 day of November, 2018.

  
Notary Public in and for said  
County and State

