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Electronically Filed  
Aug 02 2021 04:30 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

5  
6 **SUPREME COURT OF NEVADA**

7  
8 STEVE SANSON, an Individual; ROB  
LAUER, an Individual

9 Appellants,

10 vs.

11 LAWRA KASSEE BULEN,

12 Respondent(s).  
13

SUPREME COURT CASE

NO. 81854

DISTRICT COURT CASE NO.:

A-18-784807-C

14  
15 **RESPONDENT'S REQUEST TO EXTEND TIME TO FILE OPENING**  
16 **REPLY BRIEF**

17 Now comes Respondent, Lawra Kasse Bulen, through her counsel of  
18 record, Brandon L. Phillips, Esq., of the firm BRANDON L. PHILLIPS,  
19 ATTORNEY AT LAW, PLLC, and hereby respectfully requests that this  
20 honorable Court extend the time for Respondent to file the attached Reply Brief.  
21

22 The Brief should have been filed on July 26. Mr. Phillips previously  
23 requested additional time to file the Reply Brief, but unfortunately the Court  
24 denied such Motion and issued an Order requiring the Brief to be filed on July 26.

1 Mr. Phillips the solo practitioner and counsel for the Respondent had severe  
2 staffing issues and the entire staff parted ways. Unfortunately, the time for filing  
3 was not calendared before the staff left. New staff was immediately hired and they  
4 did their best to review all orders and place things on calendar.  
5

6 Mr. Phillips additionally, had an evidentiary hearing that lasted two days  
7 during this period and was scheduled for a separate evidentiary hearing and trial  
8 with very short notice. (Neither counsel in the case were prepared for the Court to  
9 set such quick hearing dates.)  
10

11 Mr. Phillips fully understands the critical importance in not delaying the  
12 filings with this Court. It is his full intention that this matter be fully briefed and  
13 the Court make a determination on the merits. In that effort, the draft of the Brief is  
14 attached hereto and will be ready to file immediately upon the Court's acceptance  
15 of this Motion.  
16

### 17 **PROCEDURAL HISTORY**

- 18 1. On November 20, 2018, Respondent filed her Complaint.
- 19 2. On February 27, 2019, Respondent filed a Default against each  
20 Appellant.
- 21 3. On April 2, 2020, Appellants filed a Motion to Dismiss, which was  
22 refiled with corrections on April 3, 2020.
- 23 4. On April 20, 2020, Respondent filed an Opposition and Countermotion to  
24 the Motion to Dismiss.

- 1           5. On May 1, 2020, Appellants filed a Reply to the Opposition and  
2           Countermotion.
- 3           6. On May 12, 2020, Appellants' Motion and Respondent's Countermotion  
4           were heard and Appellants' Motion was denied without prejudice,  
5           Respondent's Countermotion was denied.
- 6           7. On May 22, 2020, Appellants filed a Motion to Set Aside the Default  
7           Judgment.
- 8           8. On June 8, 2020, Respondent filed an Opposition and Countermotion for  
9           Application for Default Judgment.
- 10          9. On June 19, 2020, Appellants filed a Reply and Opposition to the  
11          Countermotion for Application for Default Judgment.
- 12          10. On June 23, 2020, the Court heard arguments and Granted to the Motion  
13          to Set Aside the Default and Denied the Respondent's Countermotion as  
14          Moot.
- 15          11. On July 2, 2020, Appellants filed a Motion to Dismiss the Complaint  
16          pursuant to NRS 41.660.
- 17          12. On July 21, 2020, Respondent filed an Opposition to the Motion to  
18          Dismiss.
- 19          13. On July 28, 2020, Appellants filed a Reply in Support of the Motion to  
20          Dismiss.
- 21          Dismiss.
- 22          Dismiss.
- 23          Dismiss.
- 24          Dismiss.

1 14. On August 4, 2020, the Court heard arguments and Granted Appellants'  
2 Special Motion to Dismiss.

3  
4 15. On September 1, 2020, the Appellants filed a Motion for Attorneys' Fees,  
5 Costs, and Additional Relief Pursuant to NRS 41.660 and NRS 41.670.

6 16. On September 15, 2020, the Respondent filed an Opposition to the  
7 Motion for Attorneys' Fees.

8 17. On September 24, 2020, Respondent filed the Notice of Appeal to the  
9 dismissal.

10 18. On September 29, 2020, Appellants filed their Reply to the Opposition to  
11 the Motion for Attorneys' Fees.

12  
13 19. On October 6, 2020, the Court heard arguments on the Motion for  
14 Attorneys' fees and Granted the Motion for Attorneys' Fees and Costs,  
15 but Denied the request for Additional Relief.

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18 **STATUTORY AUTHORITY**

19 **RULE 31. FILING AND SERVICE OF BRIEFS.**

20 **(a) Time for Serving and Filing Briefs.** Unless a different briefing schedule  
21 is provided by a court order in a particular case or by these or any other court  
22 rules, parties shall observe the briefing schedule set forth in this Rule.  
23  
24

1       **(3) Motions for Extensions of Time.** A motion for extension of time for  
2 filing a brief may be made no later than the due date for the brief and must comply  
3 with the provisions of this Rule and Rule 27.

4       **(A) Contents of Motion.** A motion for extension of time for filing a  
5 brief shall include the following:

- 6           (i) The date when the brief is due;
- 7           (ii) The number of extensions of time previously granted (including a 5 -  
8 day telephonic extension), and if extensions were granted, the original date when  
9 the brief was due;
- 10          (iii) Whether any previous requests for extensions of time have been  
11 denied or denied in part;
- 12          (iv) The reasons or grounds why an extension is necessary; and
- 13          (v) The length of the extension requested and the date on which the brief  
14 would become due.

15       There has been no harm to the Appellants as all other deadlines have been  
16 satisfied. Further, as there was no substantial delay. And a good faith effort to  
17 correct the missing of the date has been established by the fact that the Brief is  
18 ready to be filed.

19       Respectfully, this Motion is brought in good faith. Appellant deserves to  
20 have her Appeal heard on the merits.  
21  
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1                   **CONCLUSION**

2                   As stated herein, counsel Phillips respectfully requests that this Court extend  
3 the time to file the Opening Reply Brief. The Reply Brief will be immediately filed  
4 upon the Court's granting of the Motion. We are not asking for any additional days  
5 to finish drafting. We will immediately file upon granting of the Motion.  
6

7  
8                   \_\_\_\_\_  
                  /s/   *Brandon L. Phillips*

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**PROOF OF SERVICE**

This is to certify that on the 2<sup>nd</sup> day of August, 2021, I caused to be served  
**RESPONDENT’S MOTION TO EXTEND TIME TO FILE THE OPENING  
REPLY BRIEF**, by the method indicated below, and addressed to the following:

**Document Served: Motion**

**Person(s) Served:**

ADAM J. BREEDEN, ESQ.  
Nevada Bar No. 008768  
BREEDEN & ASSOCIATES, PLLC  
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Attorneys for Respondents

[	]	Via Facsimile:
[	]	Mail
[	]	Personal Delivery
[x	]	Electronic Notice

/s/ Brandon L. Phillips  
An employee of BRANDON L. PHILLIPS,  
ATTORNEY AT LAW, PLLC

# EXHIBIT A

## **I. JURISDICTIONAL STATEMENT**

This is an appeal from an order of the Eighth Judicial District Court in and for the City of Las Vegas of Clark County, issued on December 18, 2020, and Notice of Entry of Order on December 21, 2020. (See ROA Vol. II at 447-452 and ROA Vol. II at 453-461), denying Appellants' Motion for Attorneys' Fees and Request for Sanctions. (See Order granting Appellants' Motion to Dismiss Complaint Pursuant to NRS 41.660. (See Order Granting Mot. ("Order"), Bates No. AA220 – AA228).

## **II. ROUTING STATEMENT**

This matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(7), because this case originated in the District Court.

## **III. STATEMENT OF THE ISSUES**

- I. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE ADDITIONAL AND DISCRETIONARY SANCTIONS OF \$10,000.00 TO EACH DEFENDANT.**
- II. WHETHER APPELLANT WAS AFFORDED AN OPPORTUNITY, WITHOUT DISCOVERY, TO SHOW PRIMA FACIE EVIDENCE OF A PROBABILITY OF PREVAILING ON THE CLAIM.**

### III. STATEMENT OF FACTS

Respondent's Complaint arose after Appellants' published multiple articles of and concerning the Respondent. Respondent alleged that those articles contained factual misrepresentations and that Appellants knew those statements at the time they published them were in fact false. Numerous specific statements made within the articles were entirely false and fabricated, as alleged by the Respondent in the Complaint. Further those statements attacked Respondent's sexual conduct, of which could not have been true and Appellants knew such statements were in fact false at the time of publishing those articles. Respondent specifically alleged, with evidence, that the articles contained false statements and that the articles were not opinion speech. Respondent specifically argued that Appellants' speech was not protected by Anti-SLAPP statutes.

#### A. Time Line of Events

Date	Event
08/08/2018	Appellants published <i>Kassee Bulen, Political Gypsy?</i>
08/13/2018	Appellants published <i>Kasee Bulen Under Investigation After Being Charged With Ethics Violations In Complaint Filed With GLVAR</i>
08/20/2018	Appellants published <i>Kassee Bulen Attacks President Trump</i>
08/22- 24/2018	Respondent alleged Appellants sent harassing text messages, in part claiming Appellant "...would be politically destroyed, Plaintiff [Respondent] would never work for any politically candidate ever again, stating that if she cared about the party she would play nice with [Appellant] Lauer."

08/25/2018	Appellant Lauer wrote and posted a 360 News Las Vegas article demeaning Appellant's character, calling her a liar and questioning her credibility.
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#### **IV. PROCEDURAL HISTORY**

1. On November 20, 2018, Respondent filed her Complaint. (See Complaint, Bates No. AA022 – AA024).
2. On February 27, 2019, Respondent filed a Default against each Appellant.
3. On April 2, 2020, Appellants filed a Motion to Dismiss, which was refiled with corrections on April 3, 2020.
4. On April 20, 2020, Respondent filed an Opposition and Countermotion to the Motion to Dismiss.
5. On May 1, 2020, Appellants filed a Reply to the Opposition and Countermotion.
6. On May 12, 2020, Appellants' Motion and Respondent's Countermotion were heard and Appellants' Motion was denied without prejudice, Respondent's Countermotion was denied.
7. On May 22, 2020, Appellants filed a Motion to Set Aside the Default Judgment.
8. On June 8, 2020, Respondent filed an Opposition and Countermotion for Application for Default Judgment.

9. On June 19, 2020, Appellants filed a Reply and Opposition to the Counter-motion for Application for Default Judgment.
10. On June 23, 2020, the Court heard arguments and Granted to the Motion to Set Aside the Default and Denied the Respondent's Counter-motion as Moot.
11. On July 2, 2020, Appellants filed a Motion to Dismiss the Complaint pursuant to NRS 41.660. (See Motion to Dismiss, Bates No. AA078 – AA121).
12. On July 21, 2020, Respondent filed an Opposition to the Motion to Dismiss. (See Opposition to the Motion to Dismiss, Bates No. AA122 – AA215).
13. On July 28, 2020, Appellants filed a Reply in Support of the Motion to Dismiss. (See Reply to the Motion to Dismiss, Bates No. AA216 – AA219).
14. On August 4, 2020, the Court heard arguments and Granted Appellants' Special Motion to Dismiss. (See Order August 21, 2020, Bates No. AA220 – AA228).
15. On September 1, 2020, the Appellants filed a Motion for Attorneys' Fees, Costs, and Additional Relief Pursuant to NRS 41.660 and NRS 41.670. (See Motion for Attorneys' Fees, Bates No. AA229 – AA250).

16. On September 15, 2020, the Respondent filed an Opposition to the Motion for Attorneys' Fees. (See Opposition Bates No. AA251 – AA260).
17. On September 24, 2020, Respondent filed the Notice of Appeal to the dismissal.
18. On September 29, 2020, Appellants filed their Reply to the Opposition to the Motion for Attorneys' Fees. (See Reply, Bates No. AA261 – AA272).
19. On October 6, 2020, the Court heard arguments on the Motion for Attorneys' fees and Granted the Motion for Attorneys' Fees and Costs, but Denied the request for Additional Relief. (See Order on Attorneys' Fees, Bates No. AA273 – AA278).

## **V. LEGAL ARGUMENT**

### **I. NRS 41.660 Special Motion to Dismiss is Specific to Statements of Opinion.**

#### **A. Respondent Has Appealed the Granting of Appellants' Motion to Dismiss.**

Strategic Lawsuits Against Public Participate ("SLAPP" suits) are an affront to freedom of expression. In the absence of an Anti-SLAPP law, plaintiffs file SLAPP units with impunity – knowing that the punishing expense of litigation is a given, and that even if they lose, they "win" by inflicting this punishment up on the

defendant, and by showing others that they are litigious enough that one should not speak ill of them.<sup>1</sup> Such suits have the intent and effect of chilling free speech. Seeking to prevent such abuses, the Nevada legislature passed the Anti-SLAPP law, NRS 41.635 *et. seq.* in 2013, and despite ignoble efforts to repeal it, our legislature re-committed to it in 2015.<sup>2</sup>

Under Nevada's Anti-SLAPP statute, NRS. 41.635 *et. seq.* if a lawsuit is brought against a defendant based upon the exercise of one's First Amendment rights, the defendant may file a special motion to dismiss. Evaluating the Anti-SLAPP motion is a two-step process. The Movant bears the burden on the first step, and the Non-Moving party bears the burden on the second step. *John v. Doughals County Sch. Dist.*, 125 Nev. 746, 754 (Nev. 2009).

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<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 journalist organization defamation defendant after two years of litigation and \$2.5 million in defense costs, but declining to award any attorneys' fees or sanctions); see also 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 April 11, 2018).

<sup>2</sup> An Anti-SLAPP motion is a special creature, both substantively and procedurally, created by the Nevada 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).

First, the defendant must show, by a preponderance of the evidence, that the plaintiff's claim is "based upon 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." NRS 41.660(3)(a). One of the specific statutory categories of protected speech is "communications 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." NRS 41.637(4).

Second, once the defendant meets the burden on the first prong, the burden then shifts to plaintiff, which must make a sufficient evidentiary showing that it has a probability of prevailing on the claim. NRS 41.660(3)(b); *see also John*, 125 Nev. at 754.

Nevada treats an Anti-SLAPP motion as a species of a motion for summary judgment. *See Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013). However, it has some additional procedures to avoid the abusive use of discovery, and if the court grants the motion to dismiss, the defendant is entitled to an award of reasonable costs and attorney's fees, as well as an award of up to \$10,000. NRS 41.670(1)(a)-(b).

Due to a relative dearth of case law applying Nevada's Anti-SLAPP statute, Nevada courts look to case law applying California's Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, which shares many similarities with Nevada's law. *See John*,

125 Nev. 746 at 756 (stating that “we consider California case law because California’s anti-SLAPP statute is similar in purpose and language to Nevada’s anti-SLAPP statute is similar in purpose and language to Nevada’s anti-SLAPP statute”).

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

Plaintiff must make “a sufficient *prima facie* showing of facts to sustain [its] burden of demonstrating a **high probability** that [Lauer and Sanson] published defamatory statements with knowledge of their falsity or while entertaining serious doubts as to their truth.” *Burrill v. Nair*, 217 Cal. App. 4<sup>th</sup> 357, 390 (2013) (emphasis added).

To establish a cause of action for defamation, a plaintiff must allege: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *See Wynn v. Smith*, 117 Nev. 6, 10 (Nev. 2001); *see also Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718 (2002). A statement is only defamatory if it contains a factual assertion that can be proven false. *See Pope v. Motel 6*, 114 P.3d 277, 282 (Nev. 2005).

At present, the Respondent argued that there was no good faith communication in the publication of the statements that were in fact false. Respondent supported this argument through allegations in the Complaint and the supporting exhibits to the Complaint. Specifically, Respondent claimed in the Complaint that Appellants had no proof or belief that certain statements presented in their articles were opinion statements or that there was a good faith belief that those statements were true.

Respondent reasonably believed that she satisfied the elements of defamation and has established that Appellants published multiple defamatory statements/articles against the Respondent. Those defamatory statements are as follows:

1. <https://veteransinpolitics.org/2018/08/kassee-bulen-political->

gypsy/ within the article, the Appellants in concert published the false statement that, “But according to the Nevada Secretary of State’s official website and Clark County business records Kasee Bulen’s company, Bulen Strategies, is not a licensed lawful business in the state of Nevada.” This statement is false as Respondent did have a lawful business license. This factually false statement could have been easily verified had the Appellants performed any reasonable search on the NVSOS. The allegation that Respondent was conducting business without a proper license is both an allegation of wrongdoing, possibly fraud, and clearly an action that would cast doubt on Appellant’s business conduct and business reputation.

a. In the same article the Appellants stated, “Furthermore, according to public databases, Kasee Bulen or “Lawra Kasee Bulen” was charged and sentenced for Assault Causing Bodily Injury in Dallas Texas.” This information had been sealed by the Court and was not available for publication. The case was dismissed and sealed by the Court. Even if the statement is true, it shows the length that Appellants have went to destroy Respondent’s reputation and cast her in a false light.

b. In the same article the Appellants stated, “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.”

Again, this statement is false and completely unsupported. Respondent disputed that the Appellants had any “sources” that supported this entirely false allegation. Respondent had not been chased out of any Republican Party groups in Arizona and/or St. George. In fact, Appellant had only lived in three (3) states at the time of the release of the article. It is factually impossible that Appellants had sources that Respondent had lived in six states, as that had never occurred. The claim again tends to more likely than not lower the reputation of the Respondent. The statement implies that Respondent is committing some form of misconduct/possibly criminal and that she has a history of misconduct and therefore needs to relocate.

a. In the same article, Appellants then attack Respondent’s sexual conduct with no source to confirm such information when he stated, “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.” Such a statement against her sexual conduct constitutes *Per Se* Defamation. The Respondent specifically disputes that claim by Appellants that they either had sources or had discussed Respondent’s sexual conduct with any person at

all. The allegation in the article claims that Respondent 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.

b. Finally, in the same article, Appellants falsely claim 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. Appellants fabricated the claim and had no actual proof that anyone was concerned about the Respondent and/or her conduct associated with the Fougere campaign. Frankly put, Respondent was not a hired staff member of Fougere’s campaign. Respondent 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 Appellants knowingly made no less than four false statements. All of which, Respondent

properly alleged and could have presented evidence following the discovery process where she could have deposed witnesses and subpoenaed records supporting her claims.

Based on the facts above, the Respondent had a good faith belief with evidentiary support that her claims were valid. The District Court found that the Appellants were justified in their alleged reliance on the authorities, though the Court made an incredible error in accepting that “fact” as true over Respondent’s opposition to such claim.

Second, the Appellants published an Article detailing a GLVAR Complaint and Investigation. As stated in the Complaint, on August 13, 2018, Appellants in concert published a second defamatory article titled *KASSEE BULEN UNDER INVESTIGATION AFTER 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 “GLVAR Article”). Specifically, the article made the following false and defamatory claims against the Respondent:

“An ethics complaint was filed this week with the Great Las Vegas Association of Realtors against Lawra Kassee Bulen.” This statement is, was, and

was confirmed to be false. This publication was seen by thousands of viewers on Appellants' social media. Importantly, the publication was so widely seen that the Greater Las Vegas Association of Realtors (GLVAR) the governing authority of the Realtors, became aware of the publication. Appellants' Motion to Dismiss claimed that Appellants obtained a copy of the complaint and therefore relied on that information when they published the article. However, as was confirmed by GLVAR, through multiple emails, that alleged complaint was never filed or submitted to GLVAR. Therefore, as Respondent alleged in the Complaint, she reasonably believed that Appellants fabricated the GLVAR Complaint and therefore had no basis to rely on the complaint because the Respondents knew the complaint was false.

The publication failed to contain a scintilla of truth, GLVAR confirmed that it had not received any complaint against the Appellant. GLVAR's confirmation establishes the blatant disregard that the Appellants held for the truth. Appellants have and are willing to create total fabrications, publish them, and present them as truth to their thousands of followers on social media. Once the post is published, the irreparable harm is done. The personal harm to the Respondent is impossible to measure. The harm to her reputation, her career, her ability to maintain employment, her ability to maintain any normal lifestyle.

Within the GLVAR Article Respondents referenced several “Standard of Practice” rules thereby presenting the image that Respondent had violated ethical standards set for Realtors. Even more troubling, is the reasonable belief for the allegation that Appellants fabricated an Ethics Complaint Form that appears to be a redacted copy of the filed the Complaint, which was almost wholly redacted and actually showed no evidence that a Complaint was actually filed.

Violating the Rules of Ethics clearly supports Respondent’s claims against the Appellants for defamation and defamation *per se*. If, as Respondent alleged, Appellants fabricated the GLVAR Complaint themselves or through a third party then clearly Respondent had a valid cause of action for Defamation. Further, the title of the article falsely claimed that Respondent was under investigation. Again, this statement is false, as confirmed by GLVAR President’s email that specifically stated no such complaint had even been filed against the Plaintiff. Therefore, there was no basis of which to investigate the Plaintiff for alleged ethics violations. (Opposition to the Motion to Dismiss -Exhibit 2 – GLVAR Email).

Appellants are not protected by Anti-SLAPP statutes when Appellants’ statements are false and constitute defamation. Anti-SLAPP protects opinion speech, not false speech. The District Court denied the Appellants Motion for additional sanctions based on the fact that there was a reasonable basis for Respondent’s Complaint. While the Court ultimately found that the Appellants’

speech was protected, Respondent had a good faith belief that such claims were valid. Further, the Appellants were not harmed in any many whatsoever. The Appellants were able to write additional articles regarding the Respondent and Respondent's counsel. In essence, the Appellants profited off the publicity they have received from this case.

## **II. The District Court Did Not Err In Denying the Additional Sanctions.**

The Appellants Appeal asks this Court to make new precedent and essentially change case law from the current standard, which allows judges to have discretion when issuing the additional sanctions. Appellants quote statutes and non-binding case law from other jurisdictions. However, Respondent contends that cases such as the instant case is the reason why discretion is needed. Respondent was harmed by Appellants actions and had compelling evidence, as set forth herein, for the basis of her claims.

As stated above, the Nevada Legislature in seeking to prevent abuses against the Nevada legislature passed the Anti-SLAPP law, NRS 41.635 *et. seq.* in 2013, and despite efforts to repeal it, our legislature re-committed to it in 2015.<sup>3</sup>

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<sup>3</sup> An Anti-SLAPP motion is a special creature, both substantively and procedurally, created by the Nevada 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

The true purpose of the Anti-SLAPP law is to ensure that lawsuits are not brought lightly against defendants for exercising their First Amendment rights. Where such rights are at stake, a plaintiff must either meet the burden imposed under the Anti-SLAPP act, or have judgment entered against him and pay the defendant's attorneys' fees. The additional discretionary sanctions are just that, discretionary. Simply because a suit fails, does not necessarily mean that the claim was brought in bad faith or that the plaintiff intended to chill the free speech. While Respondent fully believes this Court will overturn the District Court's decision on the granting of the Motion to Dismiss, Respondent acted in good faith in attempt to protect her reputation, and at the original time her attempts to substantiate work in Nevada. Appellants' conduct all but destroyed those efforts. The fact that Appellants appealed the denial of the additional sanctions and want Nevada law changed to support their agendas is the breadth at which they will go to prevent anyone from every questioning their ethics, speech, or claims.

For the reasons set forth herein, judges should continue to hold discretion on the additional sanctions. Nevada judges are well equipped to determine whether there was good faith in bringing the action and that discretion should not be taken away.

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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).

### **Conclusion**

The issues on Appeal all stem from the dismissal of Appellant's Complaint. Based on the foregoing, the District Court was given authority to determine whether there was good faith and such a decision should not be overturned at this time. Appellants appeal must be denied.

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*Attorney for Appellant, L. Bulen*

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Opening Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this brief complies with the page -or- type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and contains 4,172 words; and Does not exceed 30 pages.

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3. Finally, I hereby certify that I have read the brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompany brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2nd day of August, 2021.

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

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## **CERTIFICATE OF SERVICE**

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

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

DATED this \_\_\_\_\_ day of August, 2021.

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