

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK STILE, M.D., an Individual; AND
FRANK STILE M.D., P.C., A Nevada
Professional Corporation,

Appellants,

v.

Eva Korb, an Individual,

Respondent.

No. 82189

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Dec 31 2020 10:04 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XV
County Clark Judge Joe Hardy
District Ct. Case No. A-19-807131-C

2. Attorney filing this docketing statement:

Attorney William A. Gonzales Telephone 702-667-4857
Firm Howard & Howard Attorneys PLLC
Address 3800 Howard Hughes Pkwy, Suite 1000, Las Vegas, NV 89169
Client (s) Frank Stile, M.D. and Frank Stile, M.D., P.C.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Christopher S. Connell Telephone 702-266-6355
Firm Connell Law
Address 6671 Las Vegas Blvd., Suite 210
Client (s) Eva Korb

4. Nature of disposition below (check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Dismissal of</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <u>Complaint under NRS 41.635, et seq.</u> |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

There are no appeals or original proceedings presently or previously pending before this Court related to this appeal.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The prior proceeding where the instant appeal arose from is Frank Stile, M.D.; and Frank Stile M.D., P.C. v. Eva Korb, Case Number: A-19-807131-C, in the Eighth Judicial District Court, Clark County, Nevada. That matter was disposed of on November 3, 2020 when the lower Court granted Korb's Special Motion to Dismiss, giving rise to the instant appeal. In granting Korb's

Special Motion to Dismiss, the Court awarded Korb her attorney's fees and costs pursuant to NRS 41.670.

A related case has recently been filed by Eva Korb, based on the same set of facts on the case giving rise to appeal. The related case is Eva Korb v. Frank Stile, M.D.; and Frank Stile, M.D., P.C., Case Number: A-20-825943-C, in the Eighth Judicial District Court, Clark County, Nevada. This matter is yet to be disposed as the Complaint was only recently filed on December 7, 2020.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Dr. Stile and Respondent, Eva Korb, entered into a surgical agreement where Dr. Stile would perform a certain aesthetic procedure for Respondent on October 11, 2010. Following additional surgeries to correct mistakes of a doctor in Thailand, Respondent posted a false and defamatory Yelp! review of Dr. Stile's medical practice. Dr. Stile responded to the review with a factual recitation of events, disclosing certain information that was covered in a HIPPA Release signed by Respondent.

On December 17, 2019, Dr. Stile filed a Complaint asserting a cause of action for defamation against Respondent. After retaining counsel, and setting aside the default entered against her, Respondent filed an Anti-SLAPP Motion to Dismiss under NRS 41.660, arguing that Respondent's review was protected opinion on a public forum warranting protection under the First Amendment. Dr. Stile opposed the motion arguing that the statement was not protected speech as it contained false and factual implications, and at a minimum, was a mixed statement of fact and opinion.

On October 12, 2020, the Court held a hearing on Respondent's Anti-SLAPP motion and heard oral arguments from both parties. At the hearing, the Court granted Respondent's Anti-SLAPP Motion and ordered parties to provide supplemental briefing for the mandatory attorney fee provision in NRS 41.670. On November 3, 2020 the district court entered an Order Granting

Respondent's Anti-SLAPP Motion. In granting Respondent's Anti-SLAPP Motion, the district court held that Respondent's statement was protected opinion under the First Amendment.

While briefing was ordered on the mandatory attorney fee provision in NRS 41.670, the parties resolved the attorney fee issue prior to a hearing. The funds are currently being held in trust pending this appeal.

- 9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether Respondent's statement was protected opinion when the statement included false and defamatory implications regarding Appellants.

- 10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Counsel for Appellant is currently unaware of any pending proceedings raising the same or similar issues as this appeal.

- 11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

- 12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

- 13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:
- 14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A
- Was it a bench or jury trial? N/A
- 15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
- No.

TIMELINESS OF NOTICE OF APPEAL

- 16. Date of entry of written judgment or order appealed from** November 4, 2020
- If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:
- 17. Date written notice of entry of judgment or order was served** November 4, 2020
- Was service by:
- ☐ Delivery
 - ☒ Mail/electronic/fax
- 18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**
- (a) Specify the type of motion, the date and method of service of the motion, and the date of filing.
- ☐ NRCP 50(b) Date of filing _____

- ☐ NRCP 52(b) Date of filing _____
- ☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed December 2, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides that an appeal may be taken from the following judgments and orders of a district in a civil action: (1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. This case appeals a final judgment dismissing Appellants' suit against Respondent, Eva Korb, in the Eighth Judicial District

Court, Case Number: A-19-807131-C. Accordingly, because Appellants' are appealing a final judgment from the court where the action was commenced, NRAP 3A(b)(1) is the proper basis for appeal.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Frank Stile, M.D.

Frank Stile, M.D., P.C.

Eva Korb

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Claim of Frank Stile, M.D. and Frank Stile, M.D., P.C.: Defamation, formally disposed of on November 4, 2020.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Frank Stile, M.D., and Frank Stile, M.D., P.C.
Name of appellant

William A. Gonzales
Name of counsel of record

December 31, 2020
Date

/s/ William A. Gonzales
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Howard & Howard Attorneys PLLC, and that on the 31st day of December, 2020, I caused to be served a copy of foregoing Notice of Appeal in the following manner:

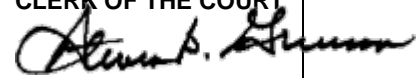
(ELECTRONIC SERVICE). The above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing system:

Christopher S. Connell, Esq.
Connell Law
6671 Las Vegas Boulevard, Suite 210
Las Vegas, Nevada 89119

*Attorney for Defendant,
Eva Korb*

/s/ Susan A. Owens
An Employee of Howard & Howard Attorneys PLLC

4852-7079-2916, v. 1



COMP

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Attorneys for Plaintiffs

CASE NO: A-19-807131-C
Department 15

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE, M.D., P.C.; a Nevada
professional corporation;

Plaintiffs,

vs.

EVA KORB, an individual; DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X

Defendants.

Case No.:

Dept.:

COMPLAINT

**Exempt from Arbitration (Amount in
Controversy Exceeds \$50,000)**

Plaintiffs Frank Stile, M.D., and Frank Stile, M.D. P.C. (collectively "Dr. Stile" or
"Plaintiffs" complain against Defendant Eva Korb ("Korb" or "Defendant") as follows:

Parties and Jurisdiction

1. Korb is a resident of Colorado.
2. Frank Stile, M.D. is a Nevada resident.
3. Frank Stile M.D., P.C. is and has been for all times relevant a Nevada professional corporation

1 4. This Court is Vested with jurisdiction in this matter pursuant to the Constitution of the
2 State of Nevada Article 6 § 6.

3 5. Venue is proper in this Court pursuant to NRS 13.010 because: (i) Dr. Stile's place of
4 business is located in Clark County, Nevada, and (ii) Korb's wrongful conduct towards Dr. Stile
5 was directed at Dr. Stile's business, which is located in Clark County, Nevada.
6

7 6. Doe Individuals I-X and Roe Entities I-X are persons or entities that, at all times material
8 hereto, committed acts, activities, misconduct or omissions which make them jointly and
9 severally liable under the claims for relief set forth herein. The true names and capacities of the
10 Doe Defendants and Roe Corporate Defendants are presently unknown, but when ascertained,
11 Dr. Stile requests leave of Court to amend the Complaint to substitute their true names and
12 identities.
13

14 7. Dr. Stile is informed and believes and on that basis alleges that at all times mentioned in
15 this complaint, defendants were the agents and employees of their codefendants, and in doing the
16 things alleged in this complaint or petition or declaration were acting within the course and scope
17 of that agency and employment.
18

19 **Facts Common to All Causes of Action**

20 8. Dr. Stile is a physician and board-certified plastic and reconstructive surgeon who has
21 been licensed to practice medicine in Nevada since 2004.
22

23 9. Dr. Stile has a busy and successful medical practice through which Dr. Stile has cared for
24 over 8,000 patients.

25 10. On or around February 23, 2011, Dr. Stile performed a breast augmentation procedure on
26 Korb.
27
28

1 11. On or around October 15, 2019, Korb posted a Yelp review (the “Review”) disparaging
2 Dr. Stile and his practice.

3 12. Korb’s Review made the following assertions (“Defamatory Statements”), among others:
4

5 A. “Dr. Stile is a butcher[.]”

6 B. “Dr. Stile is arrogant and has no idea what he’s doing.”

7 C. “[Dr. Stile has] ruined so many women’s bodies.”

8 D. “[Dr. Stile is] clearly either a terrible surgeon or more likely just extremely lazy
9 [due] to his overly confident pompous ego.”
10

11 E. “[Dr. Stile] does not care about his patients or doing the right thing.”

12 F. “[Dr. Stile] only cares about his image and should have his medical license
13 revoked.”
14

15 13. None of the Defamatory Statements are true. Dr. Stile is a skilled, careful, and
16 responsible surgeon.

17 14. On information and belief, the Defamatory Statements are intended to cause injury to Dr.
18 Stile’s professional reputation and to deter others from seeking his services.

19 15. Every potential patient who is deterred from Dr. Stile’s practice by the Defamatory
20 Statements potentially costs Dr. Stile thousands of dollars in lost revenue.
21

22 **First Cause of Action**
23 **(Defamation)**

24 16. Dr. Stile here incorporates all prior Paragraphs as though fully set forth.

25 17. Korb’s statements in the Review concerning Dr. Stile are false and defamatory.

26 18. Korb’s Review was published to a popular and publicly-available internet review site;
27 therefore, the Defamatory Statements have been published to third parties.

28 19. Korb knew or should have known that the Defamatory Statements are false.

1 20. The Defamatory Statements are the type of statements that would tend to injure Dr. Stile
2 in his business or profession; therefore, they constitute defamation per se. *See Chowdhry v.*
3 *NLVH, Inc.*, 109 Nev. 478, 483-84, 851 P.2d 459, 462 (1993), *citing Nevada Ind. Broadcasting*
4 *v. Allen*, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983).
5

6 21. Korb's Defamatory Statements have caused Dr. Stile damages exceeding \$15,000.

7 22. Korb's Defamatory Statements were malicious, oppressive, fraudulent, and made for the
8 purpose of harming Dr. Stile's practice.

9 23. Dr. Stile is entitled to punitive damages exceeding \$15,000.
10

11 24. Korb's Defamatory Statements have required Dr. Stile to retain the services of an attorney
12 to defend his reputation and his practice.

13
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Prayer

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

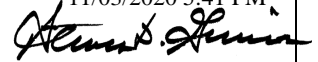
1. For compensatory, incidental and consequential damages in excess of \$15,000;
2. For punitive damages in excess of \$15,000;
3. For reasonable attorney's fees;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court deems just and proper.

Dated this 17th day of December, 2019.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ Ryan T. O'Malley

Martin A. Little (#7067)
Ryan T. O'Malley (#12461)
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3800 Howard Hughes Parkway, Suite 1000
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CLERK OF THE COURT

ORD

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Attorney for Eva Korb

DISTRICT COURT

CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Plaintiffs,
vs.

EVA KORB, an individual;, DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X,

Defendants.

Case No.: A-19-807131-C

Dept. No.: XV

**ORDER GRANTING DEFENDANT EVA
KORB'S SPECIAL MOTION TO
DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Eva Korb's Special Motion to Dismiss Under NRS 41.660, and it appearing, upon argument of counsel and for good cause shown, the motion is granted.

NRS 41.635 et seq., Nevada's Anti-SLAPP statute, creates a procedure for early dismissal of cases targeting speech and conduct protected by the First Amendment when they lack merit. As provided for in *John v. Douglas Cnty. School District.*, 125 Nev. 746 (Nev. 2009), the statute creates a two-step analysis for courts to follow in deciding whether to dismiss a case under its provisions. First, under NRS 41.660(3)(a), the moving defendant has the burden of showing, by a preponderance of the evidence, that the plaintiff's suit 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." If the moving defendant meets this burden, the burden of proof then shifts to the plaintiff to establish by prima facie evidence a probability of prevailing on the claim." NRS

1 41.660(3)(b), the Plaintiff must introduce evidence establishing his claims to satisfy this burden.
2 Anti-SLAPP motions have traditionally been treated as a motion for summary judgment, and so
3 the plaintiff can survive a special motion to dismiss by establishing a genuine issue of material
4 fact. If the plaintiff fails to do this, his case must be dismissed.

5 **I. FACTUAL BACKGROUD**

6 In October 2010, Eva Korb retained the services of the Plaintiffs in this action, Dr. Frank
7 Stile and Frank Stile, M.D., P.C. for a certain medical procedure. Based on the procedure, the
8 results of the procedure, and the customer service that Ms. Korb received from Dr. Stile, she wrote
9 a Yelp!® review on or about October 15, 2019. Dr. Stile responded publicly and vindictively to
10 Ms. Korb's review on or about 10/21/2019 (the "Response"). In his Response, which was posted
11 on his public Yelp!® business page, he repeatedly published Ms. Korb's full name, intimate
12 details/dates of her medical procedure, Google Drive links to personal email exchanges between
13 Dr. Stile and Ms. Korb during the time of the procedure, her email address, pages from her medial
14 files including multiple nude photographs of her bare breasts, medical notes, and documents
15 containing extremely personal and private information such as her date of birth, contact
16 information, and social security number. *Id.* Upon information and belief, Dr. Stile's first response
17 was live on Yelp!® for anyone to see for forty-two (42) days before Ms. Korb knew it was there.
18 When Ms. Korb discovered what Dr. Stile had done, she immediately reported it to Yelp!® as it
19 violated their community guidelines. Unfortunately, Yelp!® took more than three days to remove
20 the response (on or about 12/11/2019). Shortly after Yelp!® removed the first response Dr. Stile
21 proceeded to repost a nearly identical response again with the same personal info and links to the
22 Google Drive documents and photos. Ms. Korb again reported Dr. Stile's second response
23 immediately and it took more than three days for Yelp!® to remove it again, on or about
24 12/17/2019. Undeterred, Dr. Stile again publicly posted a nearly identical response on Yelp!®,
25 only this time without the Google Drive links as, upon information and belief, Yelp!® was no
26 longer permitting Dr. Stile to do so. Ms. Korb reported this response as well and it was removed a
27 few days later by Yelp!® on or about 01/02/2020.

28 Upon information and belief, it was on December 17, 2019 that Dr. Stile filed the

1 immediate Complaint alleging Defamation based on Ms. Korb's Yelp!® review, which was on
2 the same day that Yelp!® had removed the post for the second time.

3 **II. DISCUSSION**

4 **A. Nevada's Anti-SLAPP Statute**

5 The purpose of Nevada's Anti-SLAPP statute is to ensure that lawsuits are not brought
6 lightly against defendants for exercising their First Amendment rights. To do this, the statute
7 establishes a two-prong analysis in determining whether a Special Motion to Dismiss should be
8 granted. NRS 41.660(3)(a), an Anti-SLAPP movant has the initial burden of establishing, by a
9 preponderance of the evidence, that the plaintiff's claims are "based upon a good faith
10 communication in furtherance of the right to petition or the right to free speech in direct connection
11 with an issue of public concern." This burden may be met by showing that the statement at issue
12 is a "[c]ommunication made in direct connection with an issue of public interest in a place open
13 to the public or in a public forum, which is truthful or is made without knowledge of its falsehood." NRS
14 41.637(4). The 2013 revisions to the Anti-SLAPP statute, particularly the inclusion of NRS
15 41.637(4), were meant to broaden the scope of the statute to include statements in furtherance of
16 the right to free speech, instead of focusing solely on the right to petition.

17 Under NRS 41.660(3)(b), once the Court finds that the Anti-SLAPP movant has met its
18 burden on the first prong, the burden then shifts to the plaintiff to show, by prima facie evidence
19 as defined by California case law, that it has a probability of prevailing of its claims. S.B. 444,
20 2015 Leg., 78th Sess., § 12.5(2) (Nev. 2015).

21 An Anti-SLAPP motion must be brought within 60 days of a defendant being served with
22 the complaint. See NRS 41.660(2). There is no dispute that Defendant's motion was timely filed.
23 Additionally, an order granting a Special Motion to Dismiss acts as an adjudication on the merits.
24 See NRS 41.660(5).

25 ///

26 ///

27 **B. Prong One: Good-faith Communication in Direct Connection with an Issue of** 28 **Public Concern**

1 The Court finds that Defendant has met her burden of proof under the first prong of
2 Nevada's Anti-SLAPP statute. Plaintiff's claims are primarily based on the October 2010 Yelp!®
3 Review. Complaints of non-criminal conduct by a business constitute matters of public concern,
4 particularly concerning reviews on web sites such as Yelp. See *Mt. Hood Polaris, Inc. v. Martino*
5 (*In re Gardner*), 563 F.3d 981, 989 (9th Cir. 2009). The Court agrees with the statement in
6 *Neumont Univ., LLC v. Little Bizzy, LLC*, 2014 U.S. Dist. LEXIS 69168, *33 {D. Nev. May 2014}
7 that "consumers play a vital role" in spreading awareness of companies' products and services, and
8 that "online fora for the exchange of those ideas play an increasingly large role in informing
9 consumers about the choices that make sense for them." California courts have also recognized the
10 importance of such statements, finding that:

11 "The growth of consumerism in the United States is a matter of common
12 knowledge. Members of the public have recognized their roles as consumers and
13 through concerted activities, both private and public, have attempted to improve
14 their ... positions vis-a-vis the supplies [sic] and manufacturers of consumer goods.
15 They clearly have an interest in matters which affect their roles as consumers, and
16 peaceful activities, such as plaintiffs', which inform them about such matters are
17 protected by the First Amendment."

18 *Willbanks v. Wolk*, 121 Cal. App. 4th 883, 899 (2004) (quoting *Paradise Hills Associates*
19 *v. Procel*, 235 Cal. App. 3d 1528, 1544 (1991)).

20 Defendant's statements are statements by a consumer of Plaintiff's services regarding the
21 quality of Plaintiff's services. The statements contained in Defendant's November 3, 2015 updated
22 review are also statements regarding the quality of Plaintiff's services. The authorities cited by
23 Defendant, such as *Wolk*, 121 Cal. App. 4th at 899, establish that Defendant's statements in both
24 the September 11, 2015 and November 3, 2015 review are statements on matters of public interest.

25 There is no dispute that Yelp is a well-known public forum, and Defendant has provided
26 evidence that her allegedly defamatory statements were not made with knowledge of their falsity.
27 Plaintiff failed to provide evidence tending to show that Defendant knew her statements were false
28 when she made them. Defendant thus made the statements at issue in good faith under NRS
41.637(4). Defendant proved by a preponderance of the evidence that her statements were on a
matter of public interest, in a public forum, and were made without knowledge of their falsity. She

1 thus satisfied her burden under prong one of the Anti-SLAPP statute, and the burden shifts to
2 Plaintiff to show a probability of prevailing on the merits of its claims.

3 **C. Prong Two: Probability of Prevailing on the Merits**

4 Plaintiff has failed to meet its burden under NRS 41.660(3) (b). Statements of opinion and
5 rhetorical hyperbole are not actionable, as Supreme Court precedent establishes that "there is no
6 such thing as a false idea. However pernicious an opinion may seem, we depend for its correction
7 not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert*
8 *Welch*, 418 U.S. 323, 339-340 (1974). If a reasonable person would not interpret a statement as an
9 assertion of fact, then the statement is protected under the First Amendment. See *Milkovich v.*
10 *Lorain Journal Co.*, 497 U.S. 1 (1990). To determine whether a statement is actionable, the Court
11 must ask whether a reasonable person would be likely to understand the statement as an expression
12 of the source's opinion or a statement of existing fact. See *Pegasus v. Reno Newspapers, Inc.*, 118
13 Nev. 706 (Nev. 2002). A Nevada federal court, applying Nevada law, established a three-factor
14 test in determining whether an allegedly defamatory statement includes a factual assertion: (1)
15 whether the general tenor of the entire work negates the impression that the defendant was
16 asserting an objective fact; (2) whether the defendant used figurative or hyperbolic language that
17 negates that impression; and (3) whether the statement in question is susceptible to being proved
18 true or false. *Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000).

19 Additionally, an "evaluative opinion" cannot be defamatory. See *People for the Ethical*
20 *Treatment of Animals v. Bobby Berosini, Ltd.*, 11 Nev. 615, 624-25 (Nev. 1995) (finding that
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22 protected as an opinion) (modified on unrelated grounds in *City of Las Vegas Downtown*
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1 Context is vitally important in determining whether a reasonable person is likely to view a
2 statement as one of fact, or one of protected opinion or rhetorical hyperbole. The context of
3 Defendant's statements is Yelp, a well-known online forum for consumer reviews. The Internet is
4 the modern equivalent of the soapbox on the sidewalk, and web sites such as Yelp are the type of
5 public forum that is protected under the First Amendment. The public has become accustomed to
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16 catharsis than a forum for the rapid exchange of information and ideas").

17 The Plaintiff asserted at oral argument on October 12, 2020 that Defendant Korb's
18 statements about the Plaintiff, including calling him a "butcher" and a "sociopath" were
19 defamatory. These statements were all protected under the first amendment as rhetorical hyperbole
20 that cannot support a claim for defamation. Applying the three-factor test enumerated in *Flowers*
21 *v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000), Defendant's statements are protected
22 statements of emotional hyperbolic opinion. The average Yelp user would not read the statement
23 that Dr. Stile is a "butcher" or that he is a "sociopath" and take them at their literal meanings,
24 respectively. The review is much closer to the sort of online "rant" found in cases like *Roger* and
25 *Krinsky*. See *Krinsky*, 159 Cal. App. 4th at 1173, 1178 (finding that in a chat room setting,
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3 accusation of basketball player committing "attempted murder" on basketball court was rhetorical
4 hyperbole).

5 No reasonable person would disagree that the statement at issue is a statement of opinion
6 of Defendant, and a trial to determine whether Plaintiff is actually a butcher or a sociopath would
7 not change this conclusion. As explained in *Gertz*, the purpose of forums like Yelp is for some
8 negative reviews and some positive reviews to co-exist; this is how the First Amendment is
9 supposed to work.

10 Plaintiff has failed to provide *prima facie* evidence, as defined in the statute, of a
11 probability of prevailing on its claims. To the extent that a Special Motion to Dismiss under NRS
12 41.660 is treated as a motion for Summary Judgment, there is no genuine dispute as to any material
13 fact that the statements made by Defendant Korb in the Yelp!® review are protected opinions or
14 rhetorical hyperbole.

15 **D. Damages, Costs, and Attorney's Fees**

16 Pursuant to NRS 41.670(1)(a), a defendant that prevails on a Special Motion to Dismiss
17 under NRS 41.660 shall received a mandatory award of costs and reasonable attorney fees. NRS
18 41.670(1)(b) also provides for an award of statutory damages against a plaintiff of up to \$10,000.00
19 in order to deter Plaintiff and other similar plaintiffs from filing SLAPP suits in the future. These
20 costs, fees, and damages shall be determined by this court upon separate Memorandum of Fees,
21 Costs, and Damages which is due before the Court on or before October 26, 2020.

22 **III. CONCLUSION**

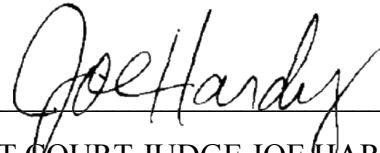
23 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED. It is
24 ORDERED and ADJUDGED that all of Plaintiff's claims against Defendant Eva Korb are hereby
25 DISMISSED with prejudice.

26 It is FURTHER ORDERED that Defendant shall be awarded an amount of Statutory
27 Damages to be determined by this Court upon separate filing of a Memorandum of Fees, Costs,
28 and Damages pursuant to NRS 41.670(1)(b).

1 It is FURTHER ORDERED that Defendant is entitled to recover her costs and reasonable
2 attorney fees, and shall file a separate Memorandum of Fees, Costs, and Damages on or before
3 October 26, 2020 pursuant to NRS 41.670(1)(a).

4 Dated this _____ day of _____, 2020.

5 Dated this 3rd day of November, 2020

6 

7
8 DISTRICT COURT JUDGE JOE HARDY

9 Submitted by:

10 CONNELL LAW

11
12 C7B 75F 9C65 2B0C
13 Joe Hardy
14 District Court Judge

15 /s/ Christopher S. Connell

16 Christopher S. Connell, Esq.
17 Nevada Bar No. 12720
18 6671 Las Vegas Blvd., Suite 210
19 Las Vegas, NV 89119
20 *Attorney for Defendant Eva Korb*

21 Approved as to form and content:

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23 HOWARD & HOWARD
24 Martin A. Little, Esq.
25 William A. Gonzalez, Esq.
26 3800 Howard Hughes Parkway, Suite 1000
27 Las Vegas, NV 89169
28 *Attorney for Plaintiffs*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Frank Stile, M.D., Plaintiff(s) CASE NO: A-19-807131-C
7 vs. DEPT. NO. Department 15
8 Eva Korb, Defendant(s)
9

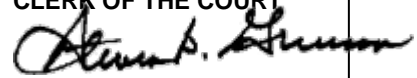
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order 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: 11/3/2020

15 Christopher Connell	cconnell@connelllawlv.com
16 Martin Little	mal@h2law.com
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18 Anya Ruiz	ar@h2law.com
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2 CONNELL LAW
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6 Las Vegas, NV 89119
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8 cconnell@connelllawlv.com
9 *Attorney for Eva Korb*

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 FRANK STILE, M.D., an individual; and
9 FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Case No.: A-19-807131-C

10 Plaintiffs,

Dept. No.: XV

11 vs.

12 EVA KORB, an individual;, DOE
13 INDIVIDUALS I-X; and ROE ENTITIES I-
14 X,

15 Defendants.

16 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT EVA KORB'S SPECIAL**
17 **MOTION TO DISMISS UNDER NRS 41.660**

18 PLEASE TAKE NOTICE that an Order Granting Defendant Eva Korb's Special Motion
19 to Dismiss under NRS41.660 was entered in the above captioned matter on the 3rd day of
20 November, 2020, a copy of which is attached hereto.

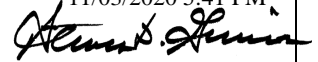
21 CONNELL LAW

22
23 /s/ Christopher S. Connell
24 CHRISTOPHER S. CONNELL, ESQ.
25 Nevada Bar No.12720
26 6671 Las Vegas Blvd., Suite 210
27 Las Vegas, NV 89119
28 *Attorney for Eva Korb*

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Page 2 of 2


CLERK OF THE COURT

ORD

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DISTRICT COURT

CLARK COUNTY, NEVADA

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Plaintiffs,
vs.

EVA KORB, an individual; DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X,

Defendants.

Case No.: A-19-807131-C

Dept. No.: XV

**ORDER GRANTING DEFENDANT EVA
KORB'S SPECIAL MOTION TO
DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Eva Korb's Special Motion to Dismiss Under NRS 41.660, and it appearing, upon argument of counsel and for good cause shown, the motion is granted.

NRS 41.635 et seq., Nevada's Anti-SLAPP statute, creates a procedure for early dismissal of cases targeting speech and conduct protected by the First Amendment when they lack merit. As provided for in *John v. Douglas Cnty. School District.*, 125 Nev. 746 (Nev. 2009), the statute creates a two-step analysis for courts to follow in deciding whether to dismiss a case under its provisions. First, under NRS 41.660(3)(a), the moving defendant has the burden of showing, by a preponderance of the evidence, that the plaintiff's suit 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." If the moving defendant meets this burden, the burden of proof then shifts to the plaintiff to establish by prima facie evidence a probability of prevailing on the claim." NRS

1 41.660(3)(b), the Plaintiff must introduce evidence establishing his claims to satisfy this burden.
2 Anti-SLAPP motions have traditionally been treated as a motion for summary judgment, and so
3 the plaintiff can survive a special motion to dismiss by establishing a genuine issue of material
4 fact. If the plaintiff fails to do this, his case must be dismissed.

5 **I. FACTUAL BACKGROUD**

6 In October 2010, Eva Korb retained the services of the Plaintiffs in this action, Dr. Frank
7 Stile and Frank Stile, M.D., P.C. for a certain medical procedure. Based on the procedure, the
8 results of the procedure, and the customer service that Ms. Korb received from Dr. Stile, she wrote
9 a Yelp!® review on or about October 15, 2019. Dr. Stile responded publicly and vindictively to
10 Ms. Korb's review on or about 10/21/2019 (the "Response"). In his Response, which was posted
11 on his public Yelp!® business page, he repeatedly published Ms. Korb's full name, intimate
12 details/dates of her medical procedure, Google Drive links to personal email exchanges between
13 Dr. Stile and Ms. Korb during the time of the procedure, her email address, pages from her medial
14 files including multiple nude photographs of her bare breasts, medical notes, and documents
15 containing extremely personal and private information such as her date of birth, contact
16 information, and social security number. *Id.* Upon information and belief, Dr. Stile's first response
17 was live on Yelp!® for anyone to see for forty-two (42) days before Ms. Korb knew it was there.
18 When Ms. Korb discovered what Dr. Stile had done, she immediately reported it to Yelp!® as it
19 violated their community guidelines. Unfortunately, Yelp!® took more than three days to remove
20 the response (on or about 12/11/2019). Shortly after Yelp!® removed the first response Dr. Stile
21 proceeded to repost a nearly identical response again with the same personal info and links to the
22 Google Drive documents and photos. Ms. Korb again reported Dr. Stile's second response
23 immediately and it took more than three days for Yelp!® to remove it again, on or about
24 12/17/2019. Undeterred, Dr. Stile again publicly posted a nearly identical response on Yelp!®,
25 only this time without the Google Drive links as, upon information and belief, Yelp!® was no
26 longer permitting Dr. Stile to do so. Ms. Korb reported this response as well and it was removed a
27 few days later by Yelp!® on or about 01/02/2020.

28 Upon information and belief, it was on December 17, 2019 that Dr. Stile filed the

1 immediate Complaint alleging Defamation based on Ms. Korb's Yelp!® review, which was on
2 the same day that Yelp!® had removed the post for the second time.

3 **II. DISCUSSION**

4 **A. Nevada's Anti-SLAPP Statute**

5 The purpose of Nevada's Anti-SLAPP statute is to ensure that lawsuits are not brought
6 lightly against defendants for exercising their First Amendment rights. To do this, the statute
7 establishes a two-prong analysis in determining whether a Special Motion to Dismiss should be
8 granted. NRS 41.660(3)(a), an Anti-SLAPP movant has the initial burden of establishing, by a
9 preponderance of the evidence, that the plaintiff's claims are "based upon a good faith
10 communication in furtherance of the right to petition or the right to free speech in direct connection
11 with an issue of public concern." This burden may be met by showing that the statement at issue
12 is a "[c]ommunication made in direct connection with an issue of public interest in a place open
13 to the public or in a public forum, which is truthful or is made without knowledge of its falsehood." NRS
14 41.637(4). The 2013 revisions to the Anti-SLAPP statute, particularly the inclusion of NRS
15 41.637(4), were meant to broaden the scope of the statute to include statements in furtherance of
16 the right to free speech, instead of focusing solely on the right to petition.

17 Under NRS 41.660(3)(b), once the Court finds that the Anti-SLAPP movant has met its
18 burden on the first prong, the burden then shifts to the plaintiff to show, by prima facie evidence
19 as defined by California case law, that it has a probability of prevailing of its claims. S.B. 444,
20 2015 Leg., 78th Sess., § 12.5(2) (Nev. 2015).

21 An Anti-SLAPP motion must be brought within 60 days of a defendant being served with
22 the complaint. See NRS 41.660(2). There is no dispute that Defendant's motion was timely filed.
23 Additionally, an order granting a Special Motion to Dismiss acts as an adjudication on the merits.
24 See NRS 41.660(5).

25 ///

26 ///

27 **B. Prong One: Good-faith Communication in Direct Connection with an Issue of** 28 **Public Concern**

1 The Court finds that Defendant has met her burden of proof under the first prong of
2 Nevada's Anti-SLAPP statute. Plaintiff's claims are primarily based on the October 2010 Yelp!®
3 Review. Complaints of non-criminal conduct by a business constitute matters of public concern,
4 particularly concerning reviews on web sites such as Yelp. See *Mt. Hood Polaris, Inc. v. Martino*
5 (*In re Gardner*), 563 F.3d 981, 989 (9th Cir. 2009). The Court agrees with the statement in
6 *Neumont Univ., LLC v. Little Bizzy, LLC*, 2014 U.S. Dist. LEXIS 69168, *33 {D. Nev. May 2014}
7 that "consumers play a vital role" in spreading awareness of companies' products and services, and
8 that "online fora for the exchange of those ideas play an increasingly large role in informing
9 consumers about the choices that make sense for them." California courts have also recognized the
10 importance of such statements, finding that:

11 "The growth of consumerism in the United States is a matter of common
12 knowledge. Members of the public have recognized their roles as consumers and
13 through concerted activities, both private and public, have attempted to improve
14 their ... positions vis-a-vis the supplies [sic] and manufacturers of consumer goods.
They clearly have an interest in matters which affect their roles as consumers, and
peaceful activities, such as plaintiffs', which inform them about such matters are
protected by the First Amendment."

15 *Willbanks v. Wolk*, 121 Cal. App. 4th 883, 899 (2004) (quoting *Paradise Hills Associates*
16 *v. Procel*, 235 Cal. App. 3d 1528, 1544 (1991)).

17 Defendant's statements are statements by a consumer of Plaintiff's services regarding the
18 quality of Plaintiff's services. The statements contained in Defendant's November 3, 2015 updated
19 review are also statements regarding the quality of Plaintiff's services. The authorities cited by
20 Defendant, such as *Wolk*, 121 Cal. App. 4th at 899, establish that Defendant's statements in both
21 the September 11, 2015 and November 3, 2015 review are statements on matters of public interest.

22 There is no dispute that Yelp is a well-known public forum, and Defendant has provided
23 evidence that her allegedly defamatory statements were not made with knowledge of their falsity.
24 Plaintiff failed to provide evidence tending to show that Defendant knew her statements were false
25 when she made them. Defendant thus made the statements at issue in good faith under NRS
26 41.637(4). Defendant proved by a preponderance of the evidence that her statements were on a
27 matter of public interest, in a public forum, and were made without knowledge of their falsity. She
28

1 thus satisfied her burden under prong one of the Anti-SLAPP statute, and the burden shifts to
2 Plaintiff to show a probability of prevailing on the merits of its claims.

3 **C. Prong Two: Probability of Prevailing on the Merits**

4 Plaintiff has failed to meet its burden under NRS 41.660(3) (b). Statements of opinion and
5 rhetorical hyperbole are not actionable, as Supreme Court precedent establishes that "there is no
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10 Plaintiff has failed to provide *prima facie* evidence, as defined in the statute, of a
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15 **D. Damages, Costs, and Attorney's Fees**

16 Pursuant to NRS 41.670(1)(a), a defendant that prevails on a Special Motion to Dismiss
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22 **III. CONCLUSION**

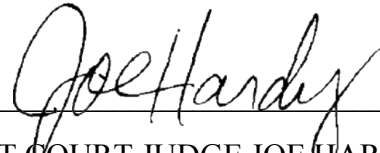
23 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED. It is
24 ORDERED and ADJUDGED that all of Plaintiff's claims against Defendant Eva Korb are hereby
25 DISMISSED with prejudice.

26 It is FURTHER ORDERED that Defendant shall be awarded an amount of Statutory
27 Damages to be determined by this Court upon separate filing of a Memorandum of Fees, Costs,
28 and Damages pursuant to NRS 41.670(1)(b).

1 It is FURTHER ORDERED that Defendant is entitled to recover her costs and reasonable
2 attorney fees, and shall file a separate Memorandum of Fees, Costs, and Damages on or before
3 October 26, 2020 pursuant to NRS 41.670(1)(a).

4 Dated this _____ day of _____, 2020.

5 Dated this 3rd day of November, 2020

6 

7
8 DISTRICT COURT JUDGE JOE HARDY

9 Submitted by:

10 CONNELL LAW

11
12 **C7B 75F 9C65 2B0C**
13 **Joe Hardy**
14 **District Court Judge**

15 /s/ Christopher S. Connell

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20 *Attorney for Defendant Eva Korb*

21 Approved as to form and content:

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1 **CSERV**

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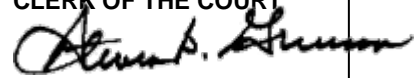
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order 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: 11/3/2020

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Attorney for Eva Korb

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FRANK STILE, M.D., an individual; and
FRANK STILE M.D., P.C.; a Nevada
professional corporation,

Plaintiffs,
vs.

EVA KORB, an individual;, DOE
INDIVIDUALS I-X; and ROE ENTITIES I-X,

Defendants,

Defendants.

Case No.: A-19-807131-C

Dept. No.: XV

**STIPULATION FOR SETTLEMENT OF
ATTORNEY'S FEES AND COSTS**

Defendant, EVA KORB, by and through her attorney of record Christopher S. Connell, Esq. of CONNELL LAW and Plaintiffs, FRANK STILE, M.D. and FRANK STILE M.D., P.C., by and through their attorney of record, William A. Gonzales, Esq. of HOWARD & HOWARD ATTORNEYS PLLC, hereby enter into this stipulation and agreement to resolve the attorney fees, costs and expenses, to which Defendant believes she is entitled to be reimbursed pursuant to NRS 41.670 for litigating this matter to and including this date.

WHEREAS the parties wish to settle issues relating to attorney's fees, costs and expenses without incurring further litigation expenses and the parties desire to settle the substantive issues pending at this date, the parties and all counsel hereby stipulate and agree that all attorney's fees, costs and expenses which have been claimed or accrued, or could have been claimed or accrued to and including this date by counsel for Defendant in this action and which may or may not have been settled by prior agreement, and any other issues which may or may not have been the subject of prior agreement, are settled in full on the following terms and conditions:

1 1. All claims by Defendant's counsel for reasonable attorney's fees, costs and expenses
2 which have been or could have been made on or before this date in this action are settled in full
3 for the sum of TWENTY FOUR THOUSAND DOLLARS (\$24,000.00). It is understood that
4 this settlement includes all attorney's fees, costs, expenses and possible discretionary award
5 pursuant to NRS 41.640 incurred in any litigation in this action to this date and any time spent in
6 seeking to collect or preparing to collect such fees, costs and expenses to this date.

7 2. The undersigned attorney for Defendant certifies that he has the authority from
8 Defendant to enter into this settlement stipulation.

9 3. It is understood and agreed by the parties that the payment of these attorney's fees and
10 costs be made by Plaintiffs and deposited in Plaintiffs' counsel's trust account until such time
11 that either the decision is not appealed or if the decision is upheld on appeal.

12 4. In the event of an appeal, any additional fees and costs incurred by Defendant would
13 be subject to a new motion for fees and costs that can be addressed at a later date.

14 5. It is understood and agreed that this agreement or any judgment or act pursuant thereto
15 shall not be construed as, nor constitute, an admission of any liability on the part of Plaintiffs.

16 IT IS SO STIPULATED AND AGREED.

17
18 DATED this 24TH day of November, 2020.

 DATED this 24TH day of November, 2020.

19 **CONNELL LAW**

**HOWARD & HOWARD ATTORNEYS
 PLLC**

20 /s/ Christopher S. Connell

/s/ William A. Gonzales

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 Attorney for Defendant

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