

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,

vs.

EVA KORB, an individual,

Respondents.

Case No. 82189 Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable Joe
Hardy Presiding

JOINT APPENDIX, VOLUME 3
(Nos. 265–405)

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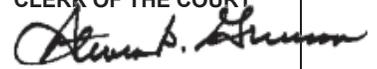
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14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 vs.

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

23 Defendants.

24 _____
25 EVA KORB, an individual,

26 Counterclaimant.

27 vs.

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

Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

**PLAINTIFFS/COUNTERDEFENDANTS’
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

[HEARING REQUESTED]

Plaintiffs/Counterdefendants Frank Stile, M.D. and Frank Stile M.D., P.C. (collectively, “Counterdefendants” or “Dr. Stile”) by and through their attorneys of record, Howard & Howard Attorneys, PLLC, hereby file this Motion to Dismiss, or alternatively, Motion for Summary Judgment (the “Motion”). This Motion is based upon the papers and pleadings herein, the attached memorandum

1 of points and authorities, the exhibits hereto, any and all judicially noticed facts, and any oral argument
2 heard in this matter.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 **I. INTRODUCTION**

5 The parties were recently before this Court under similar circumstances where Eva Korb
6 (“Korb” or “Counterclaimant”) sought dismissal of Dr. Stile’s claim for defamation. At the hearing,
7 this Court made it clear that the communication between the parties on Yelp was proper as this Court
8 held that Korb’s statement was one of opinion, while also stating the Dr. Stile’s response was “fine,
9 and proper, and understandable, and quite candidly, how it should have been left.” (*See* Transcript of
10 Proceedings (the “Transcript”) attached hereto as Exhibit “A” at pg. 19, ln. 3-7.) In maintaining her
11 claims against Dr. Stile, Korb appears to be hoping for the application of a double standard. Luckily,
12 this Court does not apply such standards and must apply its findings equally across the board.

13 As discussed at length below, Korb’s defamation claim must suffer a similar fate of dismissal
14 as Dr. Stile’s claim for defamation because this Court previously stated that Dr. Stile properly
15 responded to Korb’s statement on Yelp. Further, her additional claims fail as a matter of law because
16 no private cause of action exists for an alleged HIPAA violation, while Korb also expressly allowed
17 Dr. Stile to post the subject material through the execution of the HIPAA Release of Information (the
18 “HIPAA Release”). (*See* HIPAA Release attached hereto as Exhibit B).

19 **II. STATEMENT OF FACTS**

20 This Court is familiar with the factual background from the last round of briefing, so in the
21 interest of brevity and respect for the Court and the parties’ time, Dr. Stile will only repeat the facts
22 pertinent to this Motion.

23 In September of 2010, Defendant received a consultation from Dr. Stile regarding a possible
24 breast augmentation. Importantly, because Dr. Stile regularly uses “Before and After” pictures of his
25 patients for various business purposes, Dr. Stile often asks if the patient is willing to sign a HIPAA
26 Release allowing him to disclose certain information and pictures connected with the procedure.
27 Specifically, the HIPAA Release allows Dr. Stile to publish personal health information/story about
28 the procedure, diagnosis, and health care services provided to the patient which identifies the patient’s

1 name and other personally identifiable information to be used on various media platforms, including
2 social media. *See* Exhibit B. Korb signed the HIPAA Release. *Id.*

3 Following a successful consultation and execution of the HIPAA Release, Korb chose to move
4 forward with her procedure, resulting in the augmentation/exchange being completed on October 11,
5 2010 (the “2010 Surgery”). Shortly thereafter, on November 27, 2010, Korb called Dr. Stile’s office
6 informing them she was in Asia until February and having a swelling problem. (*See* Progress Note
7 attached hereto as Exhibit C). After being notified, Dr. Stile contacted Korb stating she should consider
8 having the surgery soon or return to the United States so that he could assess the situation. (*See*
9 Operative Report attached hereto as Exhibit D). Rather than return to the United States, Korb chose to
10 have the procedure in Thailand (the “Thailand Procedure”). *Id.* Following her return to the United
11 States, Korb met with Dr. Stile to discuss the Thailand Procedure where they uncovered an obvious
12 mismatch and hardening of the right breast. *Id.* Korb decided to have a procedure to correct the mistakes
13 from the Thailand Procedure. On February 23, 2011, Dr. Stile performed the procedure to correct the
14 mistakes (the “2011 Surgery”). *Id.*

15 Then, after multiple years of silence, and almost ten years following the 2010 Surgery, Korb
16 posted a Yelp review concerning Dr. Stile’s practice. (*See* Review and Response attached hereto as
17 Exhibit E). In an attempt to set the record straight, Dr. Stile responded with the correct version of the
18 facts, disclosing pictures, reports, and information in support of his contentions. *Id.* Importantly, the
19 pictures, reports, and information were lawfully released due to Korb’s signing of the HIPAA Release.
20 *See* Exhibit B.

21 Thereafter, Korb filed an Anti-SLAPP motion to dismiss Dr. Stile’s claim for defamation. *See*
22 Korb’s Anti-SLAPP Motion on file herein. This Court granted Korb’s motion holding that her
23 statement was protected opinion while also stating that Dr. Stile’s response was “fine...proper...and
24 understandable and, quite candidly, how it should have been left.” *See* Exhibit A at pg. 18, ln. 3-7. The
25 Court was abundantly clear in the Transcript, this matter should not be before this Court.

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27 ///

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1 **III. LEGAL ARGUMENT**

2 **A. LEGAL STANDARD FOR A MOTION TO DISMISS.**

3 A motion brought under NRCP 12(b)(5) tests the legal sufficiency of a complaint. Rule 12 of
4 the Nevada Rules of Civil Procedure authorizes the court to dismiss a complaint for failure “to state a
5 claim upon which relief can be granted.” NRCP 12(b)(5). When considering a motion to dismiss for
6 failure to state a claim, a court is to presume all factual allegations in the complaint as true and is to
7 draw all reasonable inferences in favor of the non-moving party. *Vacation Vi. Inc. v. Hitachi Am., Ltd.*,
8 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).
9 Those factual allegations, however, must be legally sufficient to constitute the elements of the claim
10 asserted. *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. Adv. Op. 3, 293 P.3d 869, 872 (2013).

11 Accordingly, under NRCP 12(b)(5), a complaint should be dismissed if it appears beyond a
12 doubt that the plaintiff can prove no set of facts in support of the claims which would entitle the plaintiff
13 to relief. *DeBoer v. Sr. Bridges of Sparks Fam. Hosp.*, 128 Nev. Adv. Op. 38, 282 P.3d 727, 729 (2012);
14 *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Building further,
15 dismissal is proper where there is no cognizable legal theory, or an absence of sufficient facts alleged
16 to support a cognizable legal theory. *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d
17 1276, 1280 (2009)(See also *Stockmeier v. Nevada Dep't of Corrections*, 124 Nev. 313, 316, 183 P.3d
18 133, 135 (2008)(holding that when the allegations are insufficient to establish the elements of a claim
19 for relief, the court must dismiss the complaint).

20 **B. ALTERNATIVE LEGAL STANDARD FOR SUMMARY JUDGMENT.**

21 When a motion is made pursuant to NRCP 12(b)(5) and matters outside the pleadings are
22 presented to and not excluded by the court, the motion is to be treated as a motion for summary
23 judgment and disposed of as provided in NRCP 56. NRCP 12(d). Pursuant to NRCP 56, the court shall
24 grant summary judgment if the movant shows that there is no genuine dispute as to any material fact
25 and the movant is entitled to judgment as a matter of law. Thus, this Court may, at its discretion, treat
26 this motion to dismiss as a motion for summary judgment, considering additional facts and evidence
27 submitted herein.

28 ///

1 Summary judgment is appropriate and shall be rendered forthwith when the pleadings and other
2 evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving
3 party is entitled to a judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d
4 1026, 1029 (2005). The Nevada Supreme Court has noted that when reviewing a motion for summary
5 judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most
6 favorable to the nonmoving party. *Id.* Additionally, a party may not defeat a motion for summary
7 judgment by relying on the gossamer threads of whimsy, speculation and conjecture. *Id.* at 731, 121
8 P.3d at 1030.

9 **C. KORB'S CLAIM FOR DEFAMATION MUST FAIL AS DR. STILE'S**
10 **STATEMENT WAS TRUTHFUL AND PROPER.**

11 An action for defamation requires the plaintiff to prove four elements: (1) a false and
12 defamatory statement; (2) an unprivileged publication to a third person; (3) fault, amounting to at least
13 negligence; and (4) actual or presumed damages. *Clark County Sch. Dist. v. Virtual Educ. Software,*
14 *Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009)(citations omitted). Importantly however, defamation
15 is a publication of a *false* statement of fact. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57
16 P.3d 82, 87 (2002)(emphasis added).

17 Here, identical to *Pegasus*, Korb's claim for defamation fails as Dr. Stile's statement was
18 truthful and proper, just as this Court previously stated. In his response, Dr. Stile responded with the
19 proper and factual recitation of events leading to this lawsuit. *See* Exhibit E. He described the timeline
20 of the procedures, the Thailand Procedure and subsequent issues, reasons for the contracture, and the
21 type of procedure performed to remedy the botched surgery in Thailand. *Id.* Dr. Stile did nothing but
22 state true facts concerning the dispute between the parties.

23 Importantly, at the hearing on Korb's Anti-SLAPP Motion to Dismiss, this Court, after being
24 apprised of the facts leading up to the instant dispute and reviewing the statements of *both* parties,
25 stated that Dr. Stile's statement was proper. Specifically, this Court stated: "...Dr. Stile,
26 understandably, vehemently disagrees with Ms. Korb's opinion and responds accordingly there on
27 Yelp. And that's fine, and proper, and understandable and, quite candidly, how it should have been
28 left." *See* Exhibit A at pg. 18, ln. 3-7. Dr. Stile agrees with this Court's previous ruling in that his
statements were fine, proper, and understandable. Accordingly, because Dr. Stile's statement was

1 truthful, “fine” and “proper”, Korb’s claim for defamation must suffer the same result as Dr. Stile’s,
2 dismissal.

3 **D. KORB’S REMAINING COUNTERCLAIMS MUST BE DISMISSED AS THERE**
4 **IS NOT A PRIVATE RIGHT OF ACTION UNDER HIPAA.**

5 To whatever extent Korb seeks damages based upon an alleged HIPAA violation, no claim
6 exists because no private right of action exists under HIPAA. *See Webb v. Smart Document Sols.,*
7 *LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007) (stating that HIPAA provides no private right of action); *See*
8 *also Schulz v. Carson Tahoe Hosp.*, No. 73938, 2018 WL 5778876, at *1 (Nev. Ct. App. 2018) (citing
9 *Webb* for the same proposition).

10 In 1996 the Health Insurance Portability Accounting Act (“HIPAA”) was enacted to establish
11 uniform standards to prohibit disclosure of protected health information, which is information relating
12 to the physical or mental health information of an individual. 42 U.S.C.A. § 1320d2(a)(1). Privacy
13 regulations established under HIPAA include: (1) limits on the *non-consensual* use and release of
14 protected health information; (2) rights of patients to access their medical records and to know who has
15 accessed them; (3) restrictions on disclosure of protected health information to the minimum need and
16 intended purpose; and (4) criminal and civil sanctions for improper disclosure. 42 U.S.C.A. §§ 1320d–
17 l(a), 1320d(6), 1320d–2(a)(2). The act mandates the covered entities, which are defined as healthcare
18 providers, health plans, employers and health care clearing houses (e.g., a billing entity) to comply with
19 its privacy measures. 45 CFR §§ 160.103,104. A covered entity may only disclose protected health
20 information pursuant to a specified exception or a *signed individual authorization*.

21 The Ninth Circuit has explicitly recognized the unambiguous lack of a private right of action
22 under HIPAA. *See Webb*, 499 F.3d at 1082 (citing 65 Fed.Reg. 82601); *See also Pacheco v. Soon Kim*,
23 No. 3:14-CV-00124-MMD-VPC, 2014 WL 5460869, at *1 (D. Nev. Oct. 27, 2014) (“The Magistrate
24 Judge recommends dismissal of Plaintiff’s HIPAA claim with prejudice because HIPAA does not
25 provide for a private right of action . . . Plaintiff’s claim under HIPAA is dismissed with prejudice.”).
26 Rather, HIPAA provides a regulatory scheme through which the Department of Health and Human
27 Services (“HHS”) enforces its privacy protections. *See Univ. of Colorado Hosp. v. Denver Pub. Co.*,
28 340 F. Supp. 2d 1142, 1145 (D. Colo. 2004). Enforcement of HIPAA is therefore within the purview
of the HHS; not the courts. *Id.*

1 Here, Korb's counterclaims are not within the purview of this Court because all of her
2 counterclaims, with the exception of her defamation claim, are based on an alleged HIPAA violation.
3 The Ninth Circuit and its sister Courts are abundantly clear in maintaining the rule that HHS is the
4 entity vested with protecting and enforcing HIPAA, not the courts. Additionally, Korb expressly
5 signed the HIPAA Release authorizing Dr. Stile to disseminate, share, and post Korb's information and
6 photographs related to the procedure. Thus, all of Korb's counterclaims must be dismissed as a private
7 right of action does not exist for alleged HIPPA violations, while Korb also expressly authorized the
8 allegedly violating conduct.

9 **E. IN THE EVENT THIS COURT FINDS THAT KORB HAS A PRIVATE RIGHT**
10 **OF ACTION UNDER HIPAA, KORB'S COUNTERCLAIMS MUST STILL**
11 **SUFFER THE FATE OF DISMISSAL.**

- 12 i. *Korb's claim for Invasion of Privacy must fail as she expressly authorized Dr.*
13 *Stile to release the subject information.*

14 To succeed in a false light claim, a plaintiff must show that the defendant's conduct (1) "gives
15 publicity to a matter concerning another that places the other before the public in a false light," (2) "the
16 false light in which the [plaintiff] was placed would be highly offensive to a reasonable person," and
17 (3) "the [defendant] had knowledge of or acted in reckless disregard as to the falsity of the publicized
18 matter and the false light in which the [plaintiff] would be placed. *Fulkerson v. Pub. Utilities Comm'n*
19 *of Nevada*, 320CV00007RCJWGC, 2020 WL 5644879, at *5 (D. Nev. Sept. 22, 2020). Further, false
20 light, like defamation, requires at least an implicit false statement of objective fact. *Flowers v. Carville*,
21 310 F.3d 1118, 1132 (9th Cir. 2002)(*See* Restatement (Second) of Torts § 652E(b) (1977)).

22 Here, nothing included in Dr. Stile's posting of Korb's personal information placed Korb in a
23 false light or implied a false statement of objective fact. Dr. Stile responded with the factual recitation
24 of events and included information/photographs that he was authorized to disclose pursuant to the
25 HIPAA Release. *See* Exhibit B. In fact, just as this Court noted in the previous hearing, Dr. Stile's
26 response to Korb's review was proper and truthful. *See* Exhibit A. Thus, because the actions of Dr.
27 Stile were authorized by Korb, nor did it contain any implicit false statement of objective facts, Korb's
28 claim for Invasion of Privacy/False Light, must be dismissed.

1 ii. *Korb's claim for Breach of Contract must fail as there was no material breach,*
2 *while Korb also authorized disclosure of the information.*

3 To succeed on a breach of contract claim, a plaintiff must show four elements: (1) formation of
4 a valid contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the
5 defendant; and (4) damages. *Laguerre v. Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D.
6 Nev. 2011). Further, breach of contract may be said to be a material failure of performance of a duty
7 arising under or imposed by agreement. *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259,
8 1263 (2000)(overruled on other grounds)(citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734
9 P.2d 1238, 1240 (1987).

10 Here, Korb claims that Dr. Stile breached the contract to provide medical services based on his
11 disclosure of personal information. *See* Korb's Counterclaims on file herein at ¶ 58. However, what
12 Korb fails to recognize is that she ***expressly authorized*** Dr. Stile to disclose her personal information
13 when she signed the HIPAA Release. *See* Exhibit B. This waiver and release inherently destroys her
14 claim for relief as she authorized the actions that are at the root of this claim, as well as every other
15 counterclaim. Korb may again have buyer's remorse following her interaction with Dr. Stile, but Dr.
16 Stile did not breach any contract between he and Korb, he in fact honored each and every one.

17 Accordingly, Korb's claim for breach of contract must be dismissed as no material breach
18 occurred, while Korb also expressly authorized the type of conduct that she claims breached the
19 agreement between the parties.

20 iii. *Korb's claim for Negligence must fail as Dr. Stile did not breach any duty owed*
21 *to Korb.*

22 It is well established that to prevail on a negligence claim, a plaintiff must establish four
23 elements: (1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4)
24 damages. *Clark County Sch. Dist. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1279 (2017).

25 Here, Dr. Stile is not contesting the duty or causation element of Korb's claim for Negligence.
26 Rather, Dr. Stile is challenging the breach element as his conduct did not breach any duty owed to
27 Korb. Similar to her other counterclaims, the sole ground for Dr. Stile's alleged breach is the release
28 of information that Korb ***expressly authorized*** through the signing of the HIPAA Release. *See* Exhibit
B. Through the HIPAA Release, Korb expressly authorized Dr. Stile to release photographs and
personal information on various social media platforms, websites and other publications. *Id.* Again, the

1 release of the personal information is the lone act supporting her negligence claim, the release of which
 2 she authorized. Thus, because Korb expressly authorized Dr. Stile to the release the personal
 3 information through the HIPAA Release, no breach occurred and Korb’s claim for negligence must be
 4 dismissed.

5 *iv. Korb’s claim for Negligence Per Se must fail as Korb gave prior consent to*
 6 *electronically disseminate the subject photographs.*

7 The violation of a statute establishes the duty and breach elements of negligence only if the
 8 injured party belongs to the class of persons that the statute was intended to protect, and the injury is
 9 of the type against which the statute was intended to protect. *Ashwood v. Clark County*, 113 Nev. 80,
 10 86, 930 P.2d 740, 744 (1997). Similar to her claim for negligence, Dr. Stile is not contesting whether
 11 a duty was owed to Korb, whether Korb is the type of person the statute intended to protect, nor whether
 12 the injury (the existence of which is denied) is of the type which the statute is intended to protect.
 13 Rather, Dr. Stile is challenging whether he violated NRS 200.780.

14 In her claim for negligence per ser, Korb cites NRS 200.780, it reads:

15 1. Except as otherwise provided in subsection 3, a person commits the crime
 16 of unlawful dissemination of an intimate image when, with the intent to harass, harm or
 17 terrorize another person, the person electronically disseminates or sells an intimate
 18 image which depicts the other person and the other person:

19 **(a) Did not give prior consent to the electronic dissemination or the**
 20 **sale of the intimate image;**

21 (b) Had a reasonable expectation that the intimate image would be kept
 22 private and would not be made visible to the public; and

23 (c) Was at least 18 years of age when the intimate image was created.

24 2. A person who commits the crime of unlawful dissemination of an intimate
 25 image is guilty of a category D felony and shall be punished as provided in NRS
 26 193.130.

27 3. The provisions of this section do not apply to the electronic dissemination
 28 of an intimate image for the purpose of:

(a) A legitimate public interest;

(b) Reporting unlawful conduct;

(c) Any lawful law enforcement or correctional activity;

(d) Investigation or prosecution of a violation of this section; or

(e) Preparation for or use in any legal proceeding.

4. A person who commits the crime of unlawful dissemination of an intimate
 image is not considered a sex offender and is not subject to registration or community
 notification as a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive.

NRS 200.780(emphasis added).

1 Here, while Dr. Stile agrees that anyone who violates this statute should be held responsible for
2 their actions, Dr. Stile did not violate NRS 200.780 when he released Korb's information and
3 photographs. As previously discussed above, Korb gave prior consent to electronically disseminate the
4 information and photographs through the HIPAA Release. *See* Exhibit B. Thus, pursuant to NRS
5 200.780(1)(a) because Korb gave express consent for Dr. Stile to release the photographs and
6 information in connection with her procedure, Dr. Stile did not violate NRS 200.780. Accordingly,
7 Korb's claim for negligence per se must be dismissed.

8 v. *Korb's claim for Intentional Infliction of Emotional Distress must fail as she*
9 *authorized the alleged outrageous conduct that allegedly caused the distress and*
frequently releases similar pictures.

10 In order to succeed on a claim for intentional infliction of emotional distress, the plaintiff must
11 prove the following elements: (1) extreme and outrageous conduct with either the intention of, or
12 reckless disregard for, causing emotional distress, (2) the plaintiff must suffer severe or extreme
13 emotional distress and (3) actual or proximate causation. *Olivero v. Lowe*, 116 Nev. 395, 398, 995 P.2d
14 1023, 1025 (2000)(citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 92 (1981). Further explaining
15 the elements, extreme and outrageous conduct is that which is "outside all possible bounds of decency"
16 and is regarded as "utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114
17 Nev. 1, 4, 953 P.2d 24, 26 (1998)(citing Cal. Jury Instr.--Civ. 12.74).

18 Here, Korb's claim for intentional infliction of emotional distress must fail as Dr. Stile's
19 conduct was not extreme and outrageous, but rather agreed upon between the parties. Again, similar to
20 her other claims, the grounds for this claim is based on Dr. Stile releasing her personal information.
21 Importantly, as mentioned previously, she expressly authorized this type of conduct when she signed
22 the HIPAA Release. *See* Exhibit B. It is difficult to claim that such conduct is extreme and outrageous
23 while at the same time expressly agreeing to allow that same conduct.

24 Additionally, while Korb claims to be damaged by having certain revealing photographs posted
25 on the internet, a brief search of Korb's social media profiles shows that she regularly posts similarly
26 revealing photographs for her followers and internet browsers alike. There is an old saying that the pot
27 cannot call the kettle black, and that saying rings true here. Korb cannot claim that the posting of
28 revealing pictures (those of which she authorized through the HIPAA Release) constitutes extreme and

1 outrageous conduct as she herself does the same. Thus, Korb's claim for intentional infliction of
 2 emotional distress must be dismissed as the alleged extreme and outrageous conduct was authorized
 3 by Korb.

4 *vi.. Korb's claim for Negligent Infliction of Emotional Distress must fail as she*
 5 *authorized the conduct that is the basis of the claim.*

6 A claim of negligent infliction of emotional distress requires the plaintiff to show that the
 7 defendant acted negligently (i.e. breached a duty owed to plaintiff) and "either a physical impact ... or,
 8 in the absence of physical impact, proof of 'serious emotional distress' causing physical injury or
 9 illness. *Switzer v. Rivera*, 174 F. Supp. 2d 1097, 1109 (D. Nev. 2001) (citing *Barmettler v. Reno Air.,*
 10 *Inc.*, 114 Nev. 441, 956 P.2d 1382, 1387 (1998)).

11 Here, similar to Korb's claim for Negligence and/or Negligence Per Se, Dr. Stile is not disputing
 12 whether he owed a duty to Korb as his patient. However, Dr. Stile is indeed challenging whether he
 13 acted negligently and breached that duty when he posted the images and personal information of Korb.
 14 Although monotonous at this stage of the briefing, Korb expressly authorized Dr. Stile to release said
 15 information by signing the HIPAA Release. *See* Exhibit B. This fact alone undercuts the allegation that
 16 Dr. Stile breached a duty owed Korb. Simply put, it would be unreasonable and illogical to find the Dr.
 17 Stile's actions breached a duty owed to Korb as she herself authorized Dr. Stile to take those actions.

18 *vii. Korb's request for Declaratory and Injunctive Relief must fail as her*
 19 *counterclaims must be dismissed and Korb authorized the conduct she now*
 20 *wishes to enjoin.*

21 Among other run of the mill claims for declaratory relief, Korb asks this Court to find that Dr.
 22 Stile violated Federal HIPAA laws by publishing her personal information and prevent the **unauthorized**
 23 use of her medical information and history. *See* Korb's Counterclaims on file here in at ¶ 86-87.
 24 However, as fully stated above, it is not within the purview of this Court to determine whether Dr.
 25 Stile's actions violated HIPAA laws, but rather the HHS. (*See* Section "D" above). Further, as shown
 26 and discussed ad-nauseum above, while Dr. Stile agrees that such information should not be disclosed
 27 without authorization, Korb explicitly authorized Dr. Stile to release said images and personal
 28 information regarding the procedure through the HIPAA Release. *See* Exhibit B.

Accordingly, because all of Korb's counterclaims must suffer the fate of dismissal due to their
 being no private right of action under HIPAA and failing to meet the necessary elements of each claim

1 due to the HIPAA Release, Korb’s claim for declaratory and injunctive relief must be dismissed as
 2 well.

3 **IV. CONCLUSION**

4 A double standard is when a rule or principle applies differently to different people. While Korb
 5 may hope that a double standard is applied in this case, this Court applies the same standard to every
 6 person who comes before it.

7 As fully set forth above, considering this Court previously stated that Dr. Stile’s response to
 8 Korb’s statement was truthful and proper, Korb’s claim for defamation must be dismissed.
 9 Additionally, Korb’s remaining counterclaims must fail as there is not a private right of action for an
 10 alleged HIPPA violation, which is the basis for each of her counterclaims. Further, in the event this
 11 this Court finds that Korb has a private right of action under HIPPA (which she does not), Korb’s
 12 claims must be dismissed as she authorized the conduct at the root of each claim.

13 Therefore, based on the foregoing, Dr. Stile respectfully requests that this Court grant the instant
 14 Motion and dismiss, or alternatively, grant summary judgment on all of Korb’s counterclaims.

15 DATED this 6th day of November, 2020.

16 **HOWARD & HOWARD ATTORNEYS PLLC**

17
 18 By: /s/ William A. Gonzales
 19 Martin A. Little, Esq.
 20 William A. Gonzales, Esq.
 21 3800 Howard Hughes Parkway, Suite 1000
 22 Las Vegas, Nevada 89169

23 *Attorneys for Plaintiffs/Counterdefendants*

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **PLAINTIFFS/COUNTERDEFENDANTS’ MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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

*Attorney for Defendant,
Eva Korb*

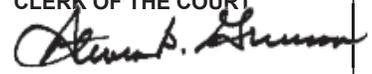
I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on November 6, 2020, at Las Vegas, Nevada.

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

4844-5333-5760, v. 1

EXHIBIT A

EXHIBIT A



1 TRAN

DISTRICT COURT

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CLARK COUNTY, NEVADA

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6 FRANK STILE, M.D.,)

CASE NO. A-19-807131-C

7

Plaintiff,)

8

vs.)

DEPT. NO. XV

9

EVA KORB,)

10

Defendant.)

Transcript of Proceedings

11

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

12

**DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS
41.660 AND COUNTERCLAIMS**

13

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MONDAY, OCTOBER 12, 2020

15

APPEARANCES:

16

For the Plaintiff: MARTIN A. LITTLE, ESQ.
(Via Videoconference/BlueJeans)

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For the Defendant: CHRISTOPHER S. CONNELL, ESQ.
(Via Videoconference/BlueJeans)

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RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT

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TRANSCRIBED BY: KRISTEN LUNKWITZ

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Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

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MONDAY, OCTOBER 12, 2020 AT 9:55 A.M.

THE CLERK: A807131, *Frank Stile, M.D. versus Eva Korb.*

MR. CONNELL: Good morning, Your Honor --

MR. LITTLE: Marty Little from Howard and Howard for Dr. Stile and his surgical practice.

MR. CONNELL: Good morning, Your Honor. Chris Connell for Eva Korb.

THE COURT: Good morning, both.

So, I've reviewed Defendant's Anti-SLAPP Special Motion to Dismiss, Plaintiff's Opposition, and Defendant's Reply and also reviewed quite a bit of law in connection with the briefs. But, on this one, I definitely welcome arguments of counsel, beginning with Mr. Connell.

MR. CONNELL: Thank you, Your Honor.

As I know you're very well aware, the Nevada anti-SLAPP law is designed for specifically these exact type of cases, when somebody avails themselves of a public forum and states protected speech, you know, and gets sued, you know, it's [indiscernible] the anti-SLAPP legislature -- the statute under NRS 41.660 is designed to protect people from, you know, exercising their First Amendment rights.

So, when we're doing the analysis on what this looks like, we say: Was there a good faith communication

1 of public forum here? I don't believe there's any argument
2 that Yelp is not a public forum. There's been back and
3 forth briefing about whether there was good faith
4 communication, but, at the end of the day, what Ms. Korb
5 put out on Yelp was a review of her doctor's -- and her
6 perceived -- her doctor's perceived performance doing a
7 medical procedure for her.

8 Now, as Judge Dorsey said in the *Neumont* case, as
9 I stated earlier, consumer reporting plays a vital role in
10 assuring that the company's desire to maximize profit, if
11 abused, will not go unnoticed. And, so, these are very --
12 you know, it's not maybe the loftiest speech ever, consumer
13 reporting, but it is speech that is protected and necessary
14 for the open marketplace of ideas.

15 And, so, what we have here is a situation where
16 the doctor didn't like what she had to say about his
17 procedures and sued her for defamation. Now, what we have
18 to do here is the two-pronged approach under the statute.
19 Once we show that there was a First -- a protected speech
20 at a public forum, the burden shifts to the -- Dr. Stile to
21 show that there's prima facie evidence that he's successful
22 on the merits of a claim for defamation. Well, here, as
23 all the caselaw has shown and outlined, opinion is not
24 defamatory. There's never such thing as a false idea.
25 That was outlined in that *Gertz* case on page 8 of my

1 Motion.

2 Also, as we've stated quite clearly in the Motion
3 and the Reply, statements of opinion, as stated in the
4 *Pegasus* case: Would a reasonable person see the statements
5 made on the Yelp review and take them to be facts?
6 Hyperbolic language is not defamation either because it's
7 an online forum, people get emotional, they say things.
8 But it's hyperbolic language and that's clearly protected
9 as well, as we see from the plethora of caselaw and from
10 prior rulings from this Court specifically.

11 You know, some of the facts that opposing counsel
12 raises, alleged facts, they say: Well, he's not arrogant.
13 He's not a butcher, because he doesn't take apart small
14 animals, her statement that he's ruined bodies before.
15 These are clearly opinion pieces that, at no point, did Ms.
16 Korb claim to be a medical doctor. She doesn't claim to be
17 the arbiter of truth and she's on Yelp giving her opinion
18 about, you know, a situation that she was unhappy with from
19 a provider.

20 You know, I can't imagine there's any sort of
21 argument to be made that any of these assertions by her
22 that he doesn't know what he's doing, or he's a butcher,
23 he's arrogant, can be anything other than a stated opinion.
24 And, as we know, hyperbolic opinion -- hyperbolic
25 statements aren't defamatory. I've outlined a myriad of

1 cases that show this and a lot of them weren't even
2 addressed.

3 So, it's her personal viewpoint. She went on
4 Yelp, made her statements, and, at the end of the day, that
5 is protected speech in the open marketplace of ideas, and
6 on Yelp, and as -- you know, as has been briefed
7 extensively in this case, Your Honor, I don't see any other
8 option rather than finding this is violative of the anti-
9 SLAPP statute in Nevada, and awarding not only the case be
10 dismissed but also fees and costs for having to file this
11 Motion to defend herself against a doctor that is -- that
12 has, you know, released her private, public information in
13 defense of, you know, her opinion, which we'll take issue
14 up with next.

15 Thank you.

16 THE COURT: No. Thank you.

17 MR. LITTLE: Thank you, Your Honor.

18 I want to start by highlighting two glaring
19 misrepresentations of the defendant's analysis of this
20 SLAPP issue. First, Ms. Korb claims that Dr. Stile has a,
21 quote:

22 Heavy burden to avoid dismissal and payment of her
23 fees under the anti-SLAPP statute.

24 Your Honor, that is not remotely correct. Just
25 the opposite, as we pointed out in our brief, it is this

1 Court's responsibility to accept as true the evidence
2 favorable to my client and we need only establish that our
3 claim has, quote, minimal merit, end quote to avoid being
4 sanctioned or to avoid the action be stricken. Your Honor,
5 minimal merit, that's a far cry from the heavy burden that
6 they tell this Court that we're subject to.

7 Second, they're trying to sell, Your Honor, a
8 simple story of a woman unhappy with her breast
9 augmentation surgery who posts a review about her own
10 experience and they get blasted by Dr. Stile for trying to
11 chill her legitimate First Amendment rights. Your Honor,
12 defendant and her attorney leave out some very critical
13 facts in this presentation. For one, she doesn't -- or
14 didn't post her review contemporaneously with her surgery.
15 She waited nine years after the fact to do so. That's
16 right, Your Honor. Nine years --

17 THE COURT: Let me pause you there because that --
18 that's actually one of the things I noted, you know, in
19 preparation for the hearing was your focus on, you know,
20 Ms. Korb waiting, whether nine years or 10 years, you
21 focused on that in your brief and are emphasizing it now as
22 well. And, I guess, my question is: How is that relevant?
23 Why does that matter at all?

24 MR. LITTLE: Well, it has to be a good faith
25 communication. Right, Your Honor? So, I think it says a

1 lot about her true motives. Remember, we have evidence
2 that we produced in the files where she sent letters to Dr.
3 Stile saying she was happy with the procedure. And, then,
4 she waits eight or nine years and then comes out of nowhere
5 and just starts blasting him. And, then, you'll see at the
6 end of the post, she taunts him by, you know, encouraging -
7 - you know, saying in a very demeaning way that she can't
8 wait to see what, you know, childish response that he has.
9 So, I think it is relevant. It goes to motive, Your Honor.

10 But, aside from that point, I mean, she leaves out
11 some very important facts in her review when she falsely
12 claims that she's had two reconstructive surgeries to undo
13 all the, quote, damage, that Dr. Stile has caused her.
14 What she doesn't say is that she ignored his medical advice
15 and traveled to Thailand right after the procedure. She
16 developed a capsular contracture, Your Honor, which is a
17 hardening of the breast tissue while she was in Thailand.
18 That is a known complication of a breast augmentation
19 surgery and we believe that it was caused by her failure to
20 -- or her ignoring Dr. Stile's medical advice and traveling
21 too soon.

22 But -- and, then, rather than coming home and
23 letting Dr. Stile address the issue, she goes to a Thai
24 doctor for surgery and admittedly he botches it, so much so
25 that she came back to Dr. Stile and asked him for help in

1 suing the Thai doctors, asked him to put together the
2 medical records so that she could sue this guy. You know,
3 and then when she did come back to the United States, she
4 came back to Dr. Stile to fix the Thailand doctor's mistake
5 and we have writings from her expressing her happiness with
6 his performance. Your Honor, these are glaring omissions
7 from her review that cause Dr. Stile and his practice to be
8 completely -- to be cast in a completely false light.

9 But, Your Honor, the defendant's omissions don't
10 end there. She conveniently glosses over the fact that her
11 Yelp post isn't just about her own personal experience and
12 dissatisfaction. In fact, Your Honor, this is a vindictive
13 woman that's deliberately trying to harm Dr. Stile's
14 practice with outrageous lies that reach far beyond her own
15 experience and into things and matters that she has no
16 foundation or basis to be expressing statements about. For
17 example, Your Honor, she says Dr. Stile, quote:

18 Ruined so many women's bodies.

19 Not her body, but so many women's bodies. Who,
20 Mrs. Korb? What evidence does she have of this fact that
21 she is stating as true? This is not opinion, Your Honor.
22 It's stated as a fact and it's designed to harm his
23 practice.

24 Dr. Stile has an impeccable professional
25 reputation and surgical record and more than two decades of

1 practice in Las Vegas. He has no Medical Board decisions
2 against him. He hasn't been sued and paid out for anything
3 that he's done in a surgery.

4 You know, she then calls Dr. Stile a butcher.
5 Calling a doctor a butcher implies that he maims or kills
6 people, particularly, Your Honor, when you read it with the
7 statement that we just talked about that he's ruined so
8 many women's bodies. That is a lie. That never happened
9 and it didn't happen to Ms. Korb. In fact, Your Honor,
10 what you're going to find out in this case is that Mr. --
11 Mrs. Korb is very comfortable posting naked photos of her
12 body on the internet. Would she be so comfortable doing
13 that if she had been butchered by Dr. Stile? We've also
14 attached letters of satisfaction that she wrote to Dr.
15 Stile saying that she was happy with the procedure. All of
16 this, Your Honor, is a far cry from saying that he's a
17 butcher.

18 She also said he's a sociopath. She's not a
19 medical doctor and has no basis to state that false fact.
20 She also baselessly says that he had no idea what he's
21 doing and he has a horrific bedside manner. Both aren't
22 true and imply that she knows other facts or has medical
23 experience to make these statements true, which she
24 doesn't.

25 She, then, as I mentioned, taunts Dr. Stile by

1 saying she can't wait to see what kind of childish response
2 he has. You know, this is a game to her, Your Honor.
3 These statements are defamatory and Dr. Stile has every
4 right to defend his name and his practice.

5 And, as I'm sure you might expect, in the world of
6 plastic surgery, reputation and referral are everything.
7 Dr. Stile isn't the only plastic surgeon in this town being
8 proactive to protect his good name. In fact, Dr. Lane
9 Smith recently sued a patient here in town for defamation
10 for posting a consumer review, just like this. He faced
11 the same anti-SLAPP arguments that we're basing right here
12 and the judge in that case denied the motion under the low,
13 quote, minimal merit standard, and said this is for the
14 jury to decide.

15 And, Your Honor, I think where I miss the boat
16 here is the First Amendment doesn't protect against
17 defamation. In other words, you can't post defamatory
18 statements on a consumer review website and then try to use
19 the First Amendment as a shield. The law doesn't work that
20 way. We outlined the anti-SLAPP standards in detail in our
21 brief, Your Honor, so I'll just be brief in highlighting
22 them.

23 But it's their burden to first show that her Yelp
24 review was a good faith communication made in furtherance
25 of the right of free speech regarding a matter of public

1 concern that is truthful or made without knowledge of its
2 falsity. That's the *Abrams* decision that we cited. Your
3 Honor, she can't meet the standard, particularly when you
4 must today accept as true all evidence favorable to Dr.
5 Stile. Her statements are clearly vindictive and they're
6 designed to harm his practice. You need to look no further
7 than the fact that it was posted nine years after she had
8 the procedure. If it's genuine, Your Honor, it would have
9 been made contemporaneously. She would have only talked
10 about herself and her own experiences and she wouldn't be
11 taunting him to respond.

12 She also can't prove, Your Honor, that it's in
13 good faith because she stepped outside of her own
14 experience and she falsely labeled Dr. Stile a butcher who
15 has harmed so many women's bodies. She has no foundation
16 to make that outrageous statement, a lie, and, therefore,
17 she can't meet her burden. She's not talking about just
18 herself and her own experience. She's implying that she
19 knows the result of many women's bodies who have been
20 destroyed by or ruined by Dr. Stile. That's just not
21 accurate. That's false. And, under the caselaw, that is
22 not opinion.

23 Although the analysis should end there, Your
24 Honor, even if the burden were to shift to us, we've
25 clearly shown through evidence that our defamation case has

1 more than the, quote, minimal merit, end quote, standard to
2 survive this Motion. The United States Supreme Court has
3 said trying to say something as an opinion to get off the
4 hook for defamation doesn't fly if, like here, the alleged
5 opinion implies an assertion of an objective fact or if the
6 facts upon the speaker bases his or her opinion are
7 incorrect or incomplete. And that's what you have here,
8 Your Honor. She clearly left out material facts in her
9 review that make it false. We've talked about her claim.
10 To have two reconstructive surgeries to undo all of Dr.
11 Stile's damage, but she leaves out the whole Thailand
12 debacle, the fact that Dr. Stile fixed the Thailand screw-
13 up as she professed happiness of his work to him. She then
14 elicited his help to try to sue the Thailand doctor. She
15 completely leaves that out of the review.

16 She also filed a Medical Board complaint against
17 Dr. Stile and it was rejected. And she tried to file a
18 lawsuit against him and it went nowhere. These are all
19 critical facts, Your Honor, that made her so-called
20 opinions incomplete and inaccurate.

21 And we've already talked about some of her more
22 egregious statements like butcher, sociopath, harming so
23 many women's bodies. These are all either outright false
24 statements of fact or hybrid opinions that could lead a
25 reasonable person reading them to believe them to be true

1 based upon an unknown objective fact.

2 At a minimum, Your Honor, whether these statements
3 are actionable is a question of fact for the jury to
4 decide. So, I don't think that they've met their burden
5 under the first element, but we've certainly met ours under
6 the minimal standard and this matter should be denied.

7 Thank you, Your Honor.

8 THE COURT: Thank you. Mr. Connell, go ahead.

9 MR. CONNELL: Thank you, Your Honor.

10 To address the [indiscernible], the burden that
11 they have under *Sutter*, Your Honor, is substantial
12 evidence. They can't just say, well, we think that calling
13 him a butcher is not a fact, therefore she can't meet
14 defamation. Absolutely nothing that he just said was
15 anything but an opinion. Clearly an opinion. Calling
16 somebody a sociopath, she doesn't claim to be a
17 psychiatrist. As discussed, these are hyperbolic
18 statements. And hyperbolic language isn't defamation,
19 especially in a public forum.

20 Now, in the 2013 legislative session, this public
21 opinion in forums on the internet was expanded to be a part
22 of the definition. We have a young lady that is clearly
23 stating her opinion, saying that he's ruined so many
24 bodies. That's an opinion. What is to ruin a body, if
25 it's nothing but an opinion? I could say that plastic

1 surgeon ruined her nose. That's my opinion of the
2 appearance. That is mere -- there's multiple other Yelp
3 reviews saying the same things about Dr. Stile. So, under
4 no circumstances is that just an opinion, you know, because
5 there are other people saying this guy's got, you know,
6 behavioral problems. That's all their opinions.

7 But there -- again, the nine years issue, what --
8 I don't even understand how that would come into the
9 conversation. If I had an opinion about something and I go
10 on Yelp and I go, oh, this guy did a terrible job, and I
11 post my opinion, that's her right to do so. It's First
12 Amendment protected speech. So, yes, in the past she has
13 sued him. And it was rejected. So, she's putting her
14 opinion -- if she was so happy with this work or whatever,
15 you know, then why did she sue him right away?

16 So, at the end of the day, none of that really
17 matters. What we have here -- if you read the Yelp review,
18 we have somebody that is putting on a consumer review board
19 an issue that she ostensibly has with this doctor, who then
20 goes and responds to it on Yelp. Everything she says is an
21 opinion and opinions aren't defamatory. Like I said, even
22 if someone were to say: Well, -- oh, she's not in any
23 position to call him a sociopath. Well, that's hyperbolic
24 language. We see that every day on the internet. There's
25 multiple -- if you look at *Wolk* and *Bonds*, if you look at

1 those cases we stated, there's professionals -- when people
2 give their statements, professional opinions, calling
3 lawyers bloated liars and, you know, calling doctors hacks
4 and murderers, that happens all the time. It's been
5 decided by multiple courts that these aren't defamatory.

6 Now, as Your Honor has also had cases like this
7 come before him on Yelp reviews and things of that nature,
8 where, you know, issues of calling something malpractice or
9 whatever, it rises to a different standard. Ms. Korb is
10 not saying she's a medical board examiner. She's not
11 saying she knows or she has objective facts to say that he
12 doesn't know what he's doing. That's her opinion. She's
13 entitled to it. And anti-SLAPP measures are there to
14 protect people from being sued for having opinions.
15 Stating that it's their opinion that, at the time, she
16 thought it was a good job and later changes her mind, she's
17 entitled to do that. She's entitled to have her opinion.
18 As I stated before, there's no such thing as a false idea.

19 So, from her personal viewpoint, she wrote what
20 she felt and she's entitled to do so. Saying she knows
21 other people who have used them and it's her opinion that
22 their bodies are ruined, that's her opinion to make. Okay.
23 Yelp isn't a standard. It's not a medical review board.
24 Yelp is a place where people air their opinions. And they
25 stated in the prior case, Craigslist Rants and Raves are

1 considered just that. You know, they're rants and raves.
2 And that *Milkovich* case that we cited, you know, opinions
3 are something that can be determined by you as well. So,
4 it's not -- it doesn't need to be decided by a jury. It
5 can be decided by the Court. Clearly, something that is
6 presented as opinion is just that, it's protected under the
7 First Amendment.

8 So, the briefing covers all these arguments, Your
9 Honor. I do believe that, you know, the case has been
10 clearly made that any speech that she had in there that
11 was, you know, calling him a butcher, well, of course she's
12 saying he doesn't take apart small animals. That's an
13 absurdity. It's completely disingenuous and it's not
14 something that, you know, can be considered anything other
15 than opinions.

16 So, for those reasons, and for the reasons
17 outlined in the briefing, I would say that, yes, we are
18 certainly entitled to have the defamation case dismissed,
19 that they don't just get to state, well, I think those are
20 facts, therefore it survives a defamation. They have to
21 show prima facie case that those were all actually made.
22 And, as they said in *Sutter*, they have to present
23 substantial evidence of it. All that we have here is
24 conjecture about what some people -- about what they want
25 to consider facts, as opposed to opinions. You know, a

1 very simple reading of all of these, clearly those are
2 opinion-based language. And, the other cases, like I
3 said, dealing with hyperbole as well.

4 So, for that, Your Honor, I would say that the
5 Motion to Dismiss the Defamation Suit should be granted and
6 reasonable fees and costs should be awarded. Thank you.

7 THE COURT: Thank you. Thank you, both.

8 The Court, having reviewed the briefs, including
9 the evidence attached thereto, which includes the exhibits
10 submitted with the Anti-SLAPP Special Motion to Dismiss, as
11 well as the exhibits attached to Plaintiff's Opposition,
12 the Court is going to grant the Anti-SLAPP Special Motion
13 to Dismiss under NRS 41.660 for the reasons set forth in
14 the Motion and the Reply. And I'll touch on some of them,
15 but, Mr. Connell, you'll prepare the Order, submit it to
16 Mr. Little for review and approval, and make it thorough.
17 So, I'm not going to read verbatim your Motion and Reply,
18 but incorporate the facts and arguments into that.

19 And to touch on some of the points, the Court
20 looks at the relevant statutes first and foremost and those
21 are the ones contained in NRS 41.637, and .650, .660, .670.
22 I may be -- let's see. Bear with me a moment.

23 Basically 41.635 through .670. And the statutory
24 scheme here in Nevada under the anti-SLAPP, looking in
25 particular, .637, defines good faith communication. And,

1 here, we're talking about a good faith communication under
2 subsection 4 of that statute, which is a communication made
3 in direct connection with an issue of public interest in a
4 place open to the public or in a public forum. There is no
5 dispute, or at least no genuine dispute, that Yelp
6 qualifies thereunder as a public forum, that the review
7 posted by Ms. Korb is a communication made in direct
8 connection with an issue of public interest in a place --
9 in a public forum. That is crystal clear. There is no
10 genuine dispute there.

11 The evidence that is most significant, by far, is
12 the actual review that she posted and that is -- the review
13 is Exhibit 3 to the Motion or, at least, the first page of
14 Exhibit 3. She posted her opinions as to the treatment, as
15 to Dr. Stile, as to his work. They are opinions and
16 cannot, therefore, be subject to a defamation claim.

17 The Court has to read, which it does, reads the
18 review in total, taking into account the statements set
19 forth in the review, but you don't read one phrase out of
20 the entire review in a vacuum. You take into account the
21 totality of the review and the phrases therein. The
22 plaintiff focuses on a few of the phrases in the review,
23 but even those phrases are clearly Ms. Korb's opinions.
24 Plaintiff did, in fact, rebut those opinions when he posted
25 a response on Yelp. And that's what -- you know, what the

1 anti-SLAPP statutes are designed -- what, you know, First
2 Amendment freedom of speech is designed to protect.
3 Somebody posts an opinion, in this case Ms. Korb as to Dr.
4 Stile, and Dr. Stile, understandably, vehemently disagrees
5 with Ms. Korb's opinion and responds accordingly there on
6 Yelp. And that's fine, and proper, and understandable and,
7 quite candidly, how it should have been left.

8 You know, people can go onto Yelp and see the
9 opinion, and see the rebuttal to that opinion, and make up
10 their minds as to, you know, whose opinion they side with,
11 if anyone. But Dr. Stile chose to file the Complaint for
12 defamation in this case and, for better or worse,
13 essentially sue Ms. Korb for her opinions, which the anti-
14 SLAPP statutory scheme is designed to protect. You can't
15 sue somebody for defamation for opinions, which is what has
16 happened here. The review is a good faith communication,
17 which is truthful or, more appropriately in this case, is
18 made without knowledge of its falsehood. It's an opinion,
19 so there cannot be a falsehood, nor can there be knowledge
20 of that falsehood.

21 The Court would note as well plaintiff's various
22 citations to pre-anti-SLAPP statute cases are not
23 particularly persuasive in opposition. Now, having said
24 that, clearly, the cases, such as the *Abrams* and *Rosen*
25 *versus Tarkanian* case, are post-anti-SLAPP statute and the

1 Court does apply those and the standards set forth therein.
2 But, at the end of the day, we're talking about an opinion
3 posted in a review. Yes, it contains hyperbolic language
4 that, you know, the plaintiff is understandably, you know,
5 in disagreement with, unhappy with, upset with, etcetera,
6 but it goes back to it's still Ms. Korb's opinions, even,
7 you know, the statements such as he's a butcher, has a
8 horrific bedside manner, botched breast implants
9 [indiscernible], is clearly a terrible surgeon, ruined so
10 many women's bodies, more likely to be lazy, has a pompous
11 ego. Taking everything into account, those are clearly Ms.
12 Korb's opinions, which Dr. Stile rebutted in his response
13 to her review on Yelp and should have left it at that
14 rather than sue her.

15 For better or worse, again, the defamation
16 Complaint is subject to the anti-SLAPP statute. The Motion
17 to Dismiss is appropriate based on the evidence, which,
18 again, in particular is the review. The fact that the
19 review came years after may very well indeed go to motive
20 by Ms. Korb, but that -- even motive is really irrelevant
21 under the statute when we're dealing with opinions. And,
22 therefore, the timing of it is largely irrelevant, although
23 the Court does take that into account as well.

24 The Motion to Dismiss being granted, under NRS
25 41.670 then, the Court has granted now a Special Motion to

1 Dismiss that was filed pursuant to NRS 41.660 and
2 subsection 1(a), the Court shall reward reasonable costs
3 and attorneys' fees. And then goes through some other
4 things, but, at this point in time, I lack evidence
5 regarding the reasonable costs and attorneys' fees
6 incurred. I lack that, as does Mr. Little lacks the
7 ability to respond to what's being claimed.

8 So, Mr. Connell, would you like two weeks to file
9 a supplemental brief showing the reasonable costs and
10 attorneys' fees that you're claiming?

11 MR. CONNELL: Yes, Your Honor. That works for me.
12 Thanks so much.

13 THE COURT: And, Mr. Little, how much time do you
14 want to respond to that? I'm fine with two, three, four
15 weeks.

16 MR. LITTLE: Two weeks is fine, Your Honor.

17 THE COURT: Okay. So, Ms. Duncan, what's two
18 weeks from today?

19 THE CLERK: That date is October 26th of 2020.

20 THE COURT: So, Mr. Connell, file your
21 supplemental brief on fees and cost on or before October
22 26th.

23 And what's two weeks after that?

24 THE CLERK: That date is November 9th of 2020.

25 THE COURT: Mr. Little, file your response to that

1 supplemental brief on -- and what was that date, again, Ms.
2 Duncan? I'm sorry.

3 THE CLERK: November 9th of 2020.

4 THE COURT: So, file that response on or before
5 November 9. Mr. Connell, a week after that you'll have for
6 a Reply, which what's a week after that, Ms. Duncan?

7 THE CLERK: That date is November 16th of 2020.

8 THE COURT: November 16. And are we available on
9 November -- and by we, I mean me and both counsels, are we
10 all available November 23rd for the follow-up hearing?

11 THE CLERK: Yes, Judge. We're available.

12 MR. CONNELL: Yes, Your Honor.

13 MR. LITTLE: Yes, Your Honor.

14 THE COURT: Okay. Yeah, so, November 23rd, 9 a.m.
15 hearing on the requested costs and fees pursuant to 41.670.

16 THE CLERK: And that will be November 23rd at 9
17 a.m.

18 THE COURT: Thank you.

19 THE CLERK: And that's it, Judge. We're done.

20 THE COURT: Thank you.

21 MR. CONNELL: Thank you, Your Honor. I will
22 circulate an Order -- a Proposed Order to opposing counsel.

23 THE COURT: Thank you, both.

24 MR. CONNELL: Have a great week. Thank you,
25 gentlemen.

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MR. LITTLE: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 10:29 A.M.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT B

EXHIBIT B

Frank L. Stile, MD, PC

HIPAA Release of Information Media Release Authorization Form

I, Eva Korb hereby authorize Frank L. Stile, MD, PC/ Frank Stile, MD., its duly authorized employees or agents, to publish the following personal health information / story: BREAST AUGMENTATION (e.g., information relating to the diagnosis, treatment, and health care services provided or to be provided to me and which identifies my name and other personally identifiable information) to be used in print media, on the radio, TV, the OSC website, blog and on the following social media platforms: Facebook, Twitter, Pinterest, and YouTube.

The following information about me will not be disclosed:

I understand that any personal health information or other information released via the social media platform(s) above may be subject to re-disclosure by such social media platform(s) and may no longer be protected by applicable Federal and State privacy laws.

I understand that I have a right to revoke this authorization by providing written notice to Frank L. Stile, MD, PC/ Frank Stile, MD.. However, this authorization may not be revoked if Frank L. Stile, MD, PC/ Frank Stile, MD., its employees or agents have taken action on this authorization prior to receiving my written notice. I also understand that I have a right to have a copy of this authorization. I further understand that this authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my eligibility for benefits or enrollment or payment for or coverage of services.

Name of Patient: Eva G. Korb

Signature of Patient: Eva Gabrielle Korb

Date: 9/14/10

EXHIBIT C

EXHIBIT C

PROGRESS NOTE

DATE 1/27/10 NAME Eva Korb

2:00 AM.

The Answering service called me with Eva Korb on the line. Eva states she is in Asia and will not be back in Las Vegas until February. She said she woke up 2 nights ago and noticed her right breast was swollen and sore. She went to a Dr. in Asia and he told her that she has a hematoma and is planning on having her come in for an ultrasound and I & D/surgery tomorrow. I advised her that since she is in Asia she should get this taken care of there and to call us when she is out of surgery. Dr. Stile was notified.

JK.

EXHIBIT D

EXHIBIT D

Operative Report

**Premium Surgical Services Center
8954 Spanish Ridge Avenue, Suite 2
Las Vegas, NV 89148**

**SURGEON:
ANESTHESIA:
PREOPERATIVE DIAGNOSIS:**

FRANK L. STILE, M.D.
General.

1. S/P Exchange from saline to silicone
2. S/P right breast hematoma in Thailand
3. Right Capsular Contracture
4. Right volume asymmetry, Right breast larger than left breast

POSTOPERATIVE DIAGNOSIS:

SAME

PROCEDURE:

1. Removal and replacement of the right implant
2. Capsulotomy/capsulectomy

ESTIMATED BLOOD LOSS:

Minimal

COMPLICATIONS:

none

SPECIMENS:

450cc textured Mentor implant

PROCEDURE IN DETAIL: The patient, well known to me, returns after vacation in Thailand. During her trip, her right breast became swollen and hard. Via email communication, this patient was advised to either seek expeditious treatment there, or return to the US and be treated by me. She opted to seek care in Thailand. She had an incision and drainage of the right breast with removal and replacement of the right implant. On returning to America, she followed up with me and was found to have an obvious size mis-match and hardened right breast.

Name: Korb, Eva

Operative Date: February 23, 2011

EXHIBIT E

EXHIBIT E

Read more



Eva K.
Denver, CO
37 friends
81 reviews
32 photos

★ ★ ★ ★ ★ 10/15/2019

DO NOT GO HERE!! Dr. Stile is a butcher and has horrific bedside manner. He botched a simple breast implant swap and has caused me YEARS of pain, money and issues with my implants.

The procedure was to swap out my saline implants with silicone. Simple. I had had the saline implants for 6 years from a surgeon in Colorado with no issues at all I just wanted a softer less rippled implant. One month after surgery with Dr. Stile my right breast became rock hard literally over night do to internal bleeding. I woke up one morning with bruising and what felt like grade 4 capsular contracture but it happened within a few hours. This led to two other corrective surgeries, discounted but I still paid, only to have the exact same result. Dr Stile advised me for over a year to just massage the incredibly painful rock hard scar tissue. This was him stalling so the statute of limitations would run out for malpractice. Which it did. Shortly after that his office just stopped returning my calls all together. The office never offered a refund or further help of any kind.

I returned to my original surgeon in Colorado, Dr. Wolfe, who fixed the issue perfectly but obviously at a much higher cost as I had to have two reconstructive surgeries to undo all of the damage Dr. Stile caused. What a nightmare!

Dr. Stile is arrogant and has no idea what he's doing. Do not be fooled by his "As seen on TV" BS... This exact same issue also happened to another friend of mine in vegas who went to him for breast augmentation. Such a simple procedure yet he's ruined so many women's bodies. He's clearly either a terrible surgeon or more likely just extremely lazy do to his overly confident pompous ego. He does not care about his patients or doing the right thing. He only cares about his image and should have his medical license revoked.

Just read his responses to negative reviews to see what kind of person he is and think, if something goes wrong with your surgery this is how you will be treated. Unprofessional doesn't even touch on the depravity of his behavior. He denies denies denies, acts like the victim and is accusatory towards patients who have been through the ringer because of him. You realize they didn't f up their surgeries right? YOU did. Never apologizes, never assumes any responsibility what so ever. Claims they are not his patients, ha! Dr. Stile is a class act sociopath. I cant wait to see what kind of childish irrational response this review gets. I welcome it and it's so funny he doesn't realize his responses only make him look worse! lol



Useful 20



Funny 10



Cool 4



Comment from Dr. Frank S. of Dr Stile
Business Owner

1/2/2020 • Eva K!

OMG! It's so nice to hear from you! It's been over 9 years since you've been in my office. As a matter of fact, so long that I had to get your chart out of storage to remember who you are. And yes, It's been 9 years since I last saw you!!!!

Eva K, what on earth motivated you to write this review now? - after all this time? Is it because you're an "elite level" yelper (lol) and that is what nice folks like you do to increase your yelper ranking?

Eva K, First let me begin by calling you basically dishonest in your representation of your experience in my practice. The difference between your review and my response is that I will publish evidence here to support my version of our experience. As I recall you are a "PROFESSIONAL", and that you travel a lot as part of your "job". You had an uneventful removal and replacement of breast implants, changing from saline to silicone implants. You chose to travel to Thailand shortly after your surgery against medical advice/instructions. While you were there you developed a left breast hematoma. A hematoma is a bleed most likely from early over-activity - once again from not following your post op care instructions.

Eva K, You also further delayed your treatment and your return to the USA with an excursion to Cambodia. We corresponded via E-mails during which you sent me photos and updates.

I encouraged you to return to the US for your care. Instead you opted to be treated at the Yankee Hospital.

For some reason you left out this entire part of your story.

Why?

You developed a significant and painful contracture of your left breast shortly after this procedure. Upon your return to the USA, several months later, I treated you. You were taken to the operating room on 2/23/2011 and were found you to have a different size implant, different style textured implant and from an unfamiliar brand put back as a replacement. A capsulotomy and capsulectomy was performed and a new implant was placed. However, this time it was the exact implant with respect to size and style. You state in your e-mails how happy you were initially and how soft your breasts were!!

Shortly after you developed another contracture in the same breast, which unfortunately is not uncommon after a first contracture has occurred. Contractures happen in 1-5% of all patients. Because of this recurrence, you wanted a second revision and up-size in implant for no additional surgical fees. It was my position, that since I was not the cause of any of this and since I did not "set this ball in motion"...you were responsible because you were a non-compliant. Shortly after, I received a chart request letter from an attorney. - I guess you were considering some sort of legal action. This went nowhere, and was dropped by your attorney, because upon reviewing the chart your attorney agreed that NONE of this was caused by me.

Eva K, Do you honestly think I will let you trash the great reputation that I've worked tirelessly to earn? I am putting you on notice for intentionally trying to damage my reputation and brand, by intentionally misrepresenting me and recklessly using words like "butcher" to describe me.

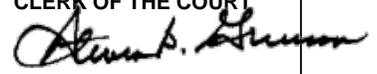
My reputation is beyond reproach. Last year alone, I performed over 720 procedures. Over the course of my 16 year career in Las Vegas, I have operated on over 12,000 happy patients. I have NO lawsuits in which I have directly been named or paid out on relating to my medical practice. I have NO Medical - Board actions. And, I have NEVER given a refund in the history of my practice - hardly consistent with the person you're describing. I think I've done a good job at presenting my version of these events with evidence to support my version. Where is your proof of any of your claims? Do you take responsibility for any of the events that transpired TEN years ago?

Wishing you all the best,
Frank L. Stile, MD, FACS



[Read less](#)





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13 *Frank Stile, M.D. and Frank Stile M.D., P.C.*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 vs.

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

23 Defendants.

24 _____
25 EVA KORB, an individual,

26 Counterclaimant.

27 vs.

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

Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

**OPPOSITION TO EVA KORB'S MOTION
FOR COSTS, FEES AND SANCTIONS
UNDER NRS 41.670**

Plaintiffs/Counterdefendants Frank Stile, M.D. and Frank Stile M.D., P.C. (collectively,
"Counterdefendants" or "Dr. Stile") by and through their attorneys of record, Howard & Howard
Attorneys, PLLC, hereby file this Opposition to Eva Korb's Motion for Costs, Fees and Sanctions

1 Under NRS 41.670 (the “Opposition”). This Opposition is based upon the papers and pleadings herein,
2 the attached memorandum of points and authorities, the exhibits hereto, any and all judicially noticed
3 facts and any oral argument heard in this matter.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 **I. INTRODUCTION**

6 This Court recently granted Defendant/Counterclaimant Eva Korb’s (“Korb”) anti-SLAPP
7 Motion to Dismiss under NRS 41.635-670. In line with this Court’s Order, Korb is entitled to an award
8 of attorney’s fees and a *possible discretionary* award of up to \$10,000 in statutory damages. Rather
9 than focus on the statements made by parties, Dr. Stile will focus on the facts and law as it relates to
10 the request for fees and costs. In Korb’s Motion for Costs, Fees and Sanctions (the “Motion”), Korb
11 claims that she is entitled to all fees associated with this lawsuit, even those fees and costs not associated
12 with the anti-SLAPP Motion. Additionally, Korb references a method of calculating a reasonable fee
13 amount that bears no relation to Nevada, California, or any state in the 9th Circuit.

14 As fully discussed below, Dr. Stile will show that Korb is only entitled to attorney’s fees and
15 costs as it relates to the anti-SLAPP Motion, not the proceedings prior, nor is the amount requested
16 reasonable under the circumstances.

17 **II. STATEMENT OF FACTS**

18 As the Court is familiar with the factual background and statements between the parties, nor
19 are they relevant to the Motion and Opposition, Dr. Stile will focus on the factual background as it
20 relates to the amount of work performed in this matter by establishing a procedural timeline of how the
21 parties have come to this point in the case.

22 *A. The Default.*

23 Dr. Stile filed the Complaint in this matter on December 17, 2019. *See* Complaint on file herein.
24 Upon filing, Dr. Stile attempted to serve Korb at two addresses associated with her name, one in Las
25 Vegas and one in Colorado. *See* Opposition to Motion to Set Aside Default on file herein. After Dr.
26 Stile was unable to effectuate service, due to what Dr. Stile later learned was attributed to Korb being
27 out of the country, Dr. Stile served Korb via publication. *Id.* Thereafter, after failing to receive a
28 response, the Clerk of the Court entered a Default against Korb. *Id.* However, on July 24, 2020, Mr.

1 Connell contacted Dr. Stile's counsel communicating he was taking Korb's case. *Id.* After discussions
2 with Mr. Connell regarding voluntarily setting aside the Default, Dr. Stile rightfully denied Korb's
3 request and preferred that this Court decide the issue. After briefing from both sides and a hearing on
4 the Default, this Court set aside the Default, allowing this matter to proceed in the normal course. *See*
5 Order Granting Motion to Set Aside Default on file herein.

6 *B. The anti-SLAPP Motion.*

7 Following the Order setting aside the Default, Korb responded with her anti-SLAPP Motion to
8 Dismiss which this Court ultimately granted. *See* Order Granting anti-SLAPP Motion on file herein.
9 Following the hearing, this Court ordered additional briefing on the attorney fee provision in NRS
10 41.670 to determine what fees and costs Korb is owed under the statute.

11 In the Motion, Korb requests that Dr. Stile compensate her for 49.3 hours of attorney's fees and
12 1.7 hours of paralegal fees amounting to \$24,862.50, \$250.69 in costs, and \$10,000 in statutory
13 damages, for a total of \$35,113.19. *See* Korb's Motion on file herein. It is important to note however,
14 that the Motion and corresponding billing entries fail to separate the fees and entries **unrelated** to the
15 anti-SLAPP motion. For example, the fees attributable to the Default, initial client intake and other fees
16 that would have been incurred regardless of whether the anti-SLAPP motion was filed. *See* Exhibit 8
17 to Korb's Motion on file herein.

18 Additionally, Mr. Connell asserts that his \$500 per hour rate is reasonable based on his 8 years
19 of experience and successful track record. *See* Korb's Motion at pg. 6, ln. 8-18; *See also* Exhibit 4 & 8
20 to Korb's Motion;. In comparison, Martin Little, lead counsel for Dr. Stile, only charges \$525 per hour
21 for all litigation matters, while having 23 years of experience and impeccable track record of success
22 in this State. *See* Declaration of Martin A. Little attached hereto as Exhibit A.

23 **III. LEGAL ARGUMENT**

24 **A. KORB IS ONLY ENTITLED TO FEES AND COSTS RELATING TO THE**
25 **ANTI-SLAPP MOTION, NOT FEES AND COSTS FOR THE ENTIRE CASE.**

26 While Korb may assert that there is a level of public interest in awarding the full amount of
27 attorney's fees in this matter, she fails to cite any applicable case law. Interestingly enough, courts in
28 the 9th Circuit, California, and Nevada's Federal District Court are clear that the award of attorney's

1 fees under NRS 41.670 is limited to the fees incurred as it relates to the anti-SLAPP motion, nothing
2 more.

3 Following the decision of Korb’s cited authority of *Graham-Suit v. Clainos*, 756 F.3d 724,752
4 (9th Cir.2014), the 9th Circuit clarified that a fee award under the anti-SLAPP statute may not include
5 matters unrelated to the anti-SLAPP motion itself because such matters are not incurred in connection
6 with the anti-SLAPP motion. *Century Sur. Co. v. Prince*, 782 Fed. Appx. 553, 558 (9th Cir.
7 2019)(where the Court held that the district court erred in awarding an additional \$9,784 in fees to a
8 defendant under NRS 41.670(1)(a) for work done on a separate motion to dismiss)((citing *569 E. Cty.
9 Blvd. LLC v. Backcountry Against The Dump, Inc.*, 6 Cal.App.5th 426, 212 Cal. Rptr. 3d 304, 310–11
10 (2016).

11 Building upon the limitations of recovery under the anti-SLAPP statute, a fee award may not
12 include matters unrelated to the anti-SLAPP motion, such as “attacking service of process, preparing
13 and revising an answer to the complaint, [or] summary judgment research. *569 E. County Boulevard
14 LLC v. Backcountry Against the Dump, Inc.*, 212 Cal. Rptr. 3d 304, 311 (2016). Additionally, the fee
15 award should not include fees for unrelated tasks such as obtaining the docket at the inception of the
16 case or attending the trial court's mandatory case management conference because such fees *would
17 have been incurred whether or not [the defendant] filed the motion to strike. Id.* (emphasis added).
18 Importantly, the Court may reduce the hours if it concludes the attorney performed work unrelated to
19 the anti-SLAPP motion, or represented work that was unnecessary or duplicative or excessive in light
20 of the issues fairly presented. *Id.* at 317.

21 It is significant to mention that the 9th Circuit and California Courts are not alone in placing this
22 limitation on recoverable fees and costs following an anti-SLAPP motion to dismiss, Nevada’s own
23 Federal District Court has utilized the same limitation. If the Court grants a special motion to dismiss
24 under the [s]tatute [NRS 41.635-670], it must award “reasonable costs and attorney's fees to the person
25 against whom the action was brought.” *Walker v. Intelli-heart Services, Inc.*, 318CV00132MMDCLB,
26 2020 WL 1694771, at *2 (D. Nev. Apr. 7, 2020)(citing NRS 41.670(1)(a)). However, *only attorneys’
27 fees and costs directly attributable to the anti-SLAPP motion(s) are recoverable. Id.* (emphasis added).
28 Further, the Court “*may award, in addition to reasonable costs and attorney's fees awarded pursuant to*

1 paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought. *Id.*
2 (emphasis added).

3 In *Walker*, one of the defendants submitted billing entries that were not related to the
4 preparation or work connected to the anti-SLAPP motion, including entries referring to a previous
5 motion for partial summary judgment. *Id.* at *3. The Court held that such entries were not to be
6 considered and ordered the defendant to submit a revised declaration seeking a reduced amount of fees
7 and costs attributable to the anti-SLAPP motion. *Id.* A different defendant however, submitted their
8 request for fees and costs with billing entries related to their anti-SLAPP motion, a request which was
9 accepted. *Id.*

10 Here, the authority from Nevada’s Federal District Court, the 9th Circuit and decisions from
11 California make one thing abundantly clear; Korb is entitled to recover the fees expressly related,
12 connected, and tied to the anti-SLAPP motion, **not** the fees for the entire case. A review of Mr.
13 Connell’s billing entries show that multiple hours of work were performed on this matter that were
14 **unrelated** to the anti-SLAPP motion. *See* Exhibit 8 of Korb’s Motion. Specifically, fees related to the
15 initial meeting and case review with Korb, all fees in connection with setting aside the default, Korb’s
16 medical board complaint, as well as other entries that Dr. Stile should not be responsible for, such as
17 Mr. Connell updating his resume. *Id.* Although these fees were expectedly incurred due to the issues
18 surrounding setting aside the Default, as well as other routine tasks performed in **any** case, Dr. Stile is
19 not required to pay for those fees as they “would have been incurred whether or not [the defendant]
20 filed the motion to strike.” (*See 569 E. County Boulevard LLC v. Backcountry Against the Dump, Inc.*,
21 212 Cal. Rptr. 3d 304, 311 (2016)).

22 Similar to *Walker*, while this Court has the authority to require Korb to submit updated billing
23 entries in order for Mr. Connell to remove time unrelated to the anti-SLAPP motion, Dr. Stile has taken
24 the liberty of auditing Mr. Connell’s submitted entries. After removing all attorney/paralegal fees that
25 were unrelated to the anti-SLAPP motion (a total of 16.5 hours) the amount of hours spent on this
26 matter, as it relates to the anti-SLAPP motion, is 34.2 hours in attorney’s fees, with .9 hours in paralegal
27 fees. To further support the fact that 34.2 hours is a reasonable amount of time spent on tasks related
28 to the anti-SLAPP motion, counsel for Dr. Stile spent roughly 32.8 hours on tasks relating to the anti-

1 SLAPP motion. *See* Invoices attached hereto as Exhibit B. Accordingly, this Court should hold that
2 Dr. Stile is required to pay for the attorney’s fees and costs exclusively related to the anti-SLAPP
3 motion, not fees unrelated to the anti-SLAPP motion, which is 34.2 hours in attorney’s fees and .9
4 hours in paralegal fees.

5 **B. MR. CONNELL’S HOURLY RATE IS UNREASONABLY HIGH FOR THE**
6 **LAS VEGAS MARKET.**

7 Korb correctly cites *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349 (1969) for the factors
8 this Court must consider in determining whether the fees are reasonable, while also correctly explaining
9 that the “lodestar” method is the appropriate method for fee calculations in Nevada. (*See Cuzze v. Univ.*
10 *& Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 606, 172 P.3d 131, 137 (2007)). However, Korb also
11 makes reference to the “Laffey Matrix” for the proposition that Mr. Connell, with 8 years of experience,
12 is reasonable in charging \$500 per hour rather than the \$672 per hour under the Laffey Matrix. *See*
13 Korb’s Motion at p.6, ln. 16-18; *See also* Exhibit 9 of Korb’s Motion.

14 Simply put, the Laffey Matrix is completely inapplicable to this case and all other cases in
15 Nevada. *See Voggenthaler v. Maryland Square, LLC*, 2:08-CV-1618-RCJ-GWF, 2010 WL 4316883,
16 at *3 (D. Nev. Oct. 20, 2010)(citing *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th
17 Cir. 2010)(stating that just because the Laffey Matrix has been accepted in the *District of Columbia*
18 does not mean that it is a sound basis for determining rates elsewhere, let alone a legal market 3,000
19 miles away.)(emphasis added). The inclusion of the Laffey Matrix serves no other purpose but to
20 gaslight this Court into thinking that Mr. Connell’s fees are reasonable based on a calculation used in
21 a legal market over 3,000 miles away from this city. Any reference or inference that can be drawn from
22 the Laffey Matrix must be completely disregarded and ignored by this Court.

23 Putting the Laffey Matrix aside, Mr. Connell’s \$500 hourly fee for this matter is simply
24 unreasonable. For reference, lead counsel for Dr. Stile, Martin Little, a partner at Howard & Howard
25 Attorneys PLLC, who has 23 years of experience practicing in the State of Nevada and an impeccable
26 track record of success, charges \$525 per hour for all litigation matters. *See* Exhibit A. While opposing
27 counsel is a talented attorney with a successful track record and 8 years of experience, claiming that
28 his \$500 fee is reasonable with *less than half* of the years of experience of Martin Little is demonstrably

1 unreasonable. Realistically, a reasonable fee for an attorney of Mr. Connell’s experience and caliber is
 2 around \$385 per hour. *Id.*

3 Thus, while Korb may claim her counsel’s fees were reasonable, a comparison between the
 4 parties shows that Mr. Connell’s \$500 per hour charge is unreasonably inflated for the Las Vegas
 5 market. Realistically, Mr. Connell should be charging Korb in the amount \$385 per hour.

6 **C. AN AWARD OF STATUTORY DAMAGES IS NOT APPROPRIATE IN THIS**
 7 **CASE.**

8 While Dr. Stile understands that it is within this Court’s discretion to award up to \$10,000 in
 9 statutory damages, such an award is not appropriate in this case. The anti-SLAPP motion was expertly
 10 litigated by both parties with facts, legal authority and argument favoring both parties. Dr. Stile’s
 11 complaint was brought in good faith with no intent to harass. Dr. Stile felt wrongfully attacked and
 12 defamed following Korb’s Review and was only trying to protect his business, reputation, and good
 13 will. While his attempt may have failed, such an attempt does not warrant a \$10,000 statutory award,
 14 which would be approximately 80% of the fees and costs owed to Korb as calculated below.
 15 Accordingly, while this Court has the *discretion* to award up to \$10,000 in statutory damages, this is
 16 not the appropriate case to award such an exorbitant amount.

17 **IV. CONCLUSION**

18 As fully explained above, although Korb is entitled to her attorney’s fees and costs under NRS
 19 41.670, the fees awarded **must** be related to the anti-SLAPP motion, not the fees that would have been
 20 incurred in the normal course of litigation. As a result, Dr. Stile should be responsible for paying 34.2
 21 hours in attorney fees and .9 hours in paralegal fees. Additionally, Mr. Connell’s \$500 hourly rate is
 22 unreasonably for the Las Vegas Market, and should be reduced to \$385 per hour.

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Based on the reasonable amounts and lodestar method explained above, Dr. Stile should pay \$13,167 in attorney fees, \$112.50 in paralegal fees and \$250.69 in costs, for a total of **\$13,530.19**, nothing more.

DATED this 9th day of November, 2020.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ William A. Gonzales
Martin A. Little, Esq.
William A. Gonzales, Esq.
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Attorneys for Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **OPPOSITION TO EVA KORB’S MOTION FOR COSTS, FEES AND SANCTIONS UNDER NRS 41.670** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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

*Attorney for Defendant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on November 9, 2020, at Las Vegas, Nevada.

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

4814-0838-9841, v. 1

EXHIBIT A

EXHIBIT A

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DECLARATION OF MARTIN A. LITTLE

I, Martin A. Little, declare and state as follows:

1. I am a partner with Howard & Howard Attorneys, PLLC, I am licensed to practice in the State of Nevada, and am one of the attorneys representing Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile M.D., P.C. (“Dr. Stile”) in this matter.

2. I have personal knowledge of the facts set forth herein and am competent to testify to the same.

3. I make this declaration in support of Dr. Stile’s Opposition to Eva Korb’s Motion for Fees, Costs and Sanctions under NRS 41.670 (the “Motion”).

4. I am the lead attorney on this matter and a member (partner) of Howard & Howard Attorneys, PLLC, and received my Juris Doctorate from the University of Louisville, Brandeis School of Law in 1997. I was admitted to the State Bar of Nevada in 1999 and have been practicing in Nevada since then. I have approximately 23 years of experience of the practice of law and my hourly rate for all litigation matters is \$525.00.

5. In the Motion, counsel for Ms. Korb asserts that his \$500 per hour rate is reasonable based on his 8 years of experience and successful track record in various cases. This rate is patently unreasonable as an attorney of his experience and caliber should be charging approximately \$385 per hour, not \$500.

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

Dated this 9th day of November, 2020

/s/ Martin A. Little
Martin A. Little

4847-9811-2977, v. 1

IN ACCOUNT WITH

Howard & Howard

law for business

Howard & Howard Attorneys PLLC
P.O. Box 95234 | Chicago, IL 60694-5234

TEL 248.645.1483
FAX 248.645.1568

October 5, 2020

Frank L. Stile, M.D.
8954 Spanish Ridge Avenue
Las Vegas, NV 89148

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Stile v Korb

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FOR PROFESSIONAL SERVICES RENDERED

Date	Attorney	Description of Services	Hours	Fee
09/02/20	WAG	Review Korbs Anti-Slapp Motion to Dismiss and counterclaim; Phone call with Martin Little discussing motion and plan for opposition.	1.60 hrs	[REDACTED]
09/03/20	WAG	Conduct legal research on Korb's cited authority in order to distinguish citations and theories from our case and to determine if citations stand for their cited propositions.	2.90 hrs	[REDACTED]

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Frank L. Stile, M.D.
8954 Spanish Ridge Avenue

09/09/20	WAG	Email exchange with opposing counsel regarding his request for a new hearing date; our request for an extension of the briefing deadlines; Review and sign stipulation and order extending hearing date and briefing deadlines.	0.30 hrs
			
			
			
			
			
			
Dismiss.			
09/14/20	WAG	Conduct legal research to determine whether Defendant's hyperbole argument holds any merit and how to undercut said argument; Draft email to Martin Little with suggestions on the direction of our opposition	2.60 hrs
09/18/20	WAG	Draft Opposition to Defendant's Special Anti-Slapp Motion to Dismiss; Transmit draft to Martin Little for review.	10.80 hrs
09/22/20	WAG	Review email from Martin Little containing suggested revisions and suggestions; Draft Declaration of Frank L. Stile for inclusion in Opposition; Conduct Legal research to determine if whether the question of defendant statement was made in good faith is a question of fact or law in a defamation case; Supplement Opposition with additional section challenging the good faith communication requirement.	7.10 hrs

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Frank L. Stile, M.D.
8954 Spanish Ridge Avenue

09/28/20 WAG Review Korb's Reply in support of her anti-Slapp motion to dismiss; conduct legal research on newly included case law to determine whether the additional citations are relevant to our arguments; draft email to Martin Little including thoughts on Korb's Reply. 1.30 hrs

[REDACTED]



1 **OPPN**
2 CONNELL LAW
3 Christopher S. Connell, Esq.
4 Nevada Bar No. 12720
5 6671 Las Vegas Blvd., Suite 210
6 Las Vegas, NV 89119
7 (702) 266-6355; Fax: (702) 829-5930
8 cconnell@connelllaw.com
9 *Attorney for Defendant/Counterclaimant Eva Korb*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

Case No.: A-19-807131-C

Dept. No.: XV

11 Plaintiffs,
12 vs.

**OPPOSITION TO
PLAINTIFF/COUNTER-DEFENDANTS'
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

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

16 EVA KORB, an individual,
17 Counterclaimant,
18 vs.

19 FRANK STILE, M.D., an individual; and
20 FRANK STILE M.D., P.C.; a Nevada
professional corporation,
21 Counter-Defendants.

22
23 Defendant/Counterclaimant EVA KORB, by and through her undersigned counsel of
24 record, hereby submits this Opposition to Plaintiffs/Counter-Defendants' Motion to Dismiss, Or
25 Alternatively, Motion for Summary Judgment ("Motion"). This Opposition is based on the
26 attached Memorandum of Points and Authorities, all pleadings and papers on file herein and any
27 oral argument the Court may entertain at the time of hearing.
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In October 2010, Eva Korb retained the services of Dr. Frank Stile and Frank Stile, M.D.,
4 P.C. (collectively, “Dr. Stile” or “Counter-Defendants”) for a breast augmentation procedure.
5 Based on the procedure, the results of the same, and the customer service that Ms. Korb received
6 from Dr. Stile, she wrote a Yelp!® review on or about October 15, 2019. Dr. Stile responded
7 publicly and vindictively to Ms. Korb’s review on or about October 21, 2019. In his response,
8 which was posted on his public Yelp!® business page, Dr. Stile repeatedly published Ms. Korb’s
9 full name, intimate details/dates of her medical procedure, Google Drive links to personal email
10 exchanges between himself and Ms. Korb during the time of the procedure, her e-mail address,
11 pages from her medical files including multiple nude photographs of her bare breasts, medical
12 notes, and documents containing extremely personal and private information such as her date of
13 birth, contact information, and last four digits of her social security number.

14 Dr. Stile's first response appears to have been live on Yelp!® for anyone to see for forty-
15 two (42) days before Ms. Korb became aware of it. When Ms. Korb discovered the contents of
16 Dr. Stile’s Response, she immediately reported it to Yelp!® as being in violation of the
17 platform’s community guidelines. Unfortunately, Yelp!® took more than three days to remove
18 the response (on or about December 11, 2019). Shortly after Yelp!® removed the first response,
19 Dr. Stile proceeded to repost a nearly identical response again *with the same personal info and*
20 *links to the Google Drive documents and photos.*

21 Ms. Korb reported Dr. Stile’s second response immediately and it took more than three
22 days for Yelp!® to remove it again, on or about December 17, 2019. Undeterred, Dr. Stile again
23 publicly posted a nearly identical response on Yelp!®, only this time without the Google Drive
24 links as, upon information and belief, Yelp!® was no longer permitting Dr. Stile to do so. Ms.
25 Korb reported this response as well and it was removed a few days later by Yelp!® on or about
26 January 2, 2020.

27 Not to be outdone, Dr. Stile then proceeded to file a defamation suit against Ms. Korb in
28 December 2019. On September 2, 2020, Ms. Korb filed a special motion to dismiss the

1 complaint, along with counterclaims including: (1) Defamation; (2) Invasion of Privacy; (3)
2 Breach of Contract; (4) Negligence; (5) Negligence Per Se; (6) Intentional Infliction of
3 Emotional Distress; (7) Negligent Infliction of Emotional Distress, and; (7) Declaratory and
4 Injunctive Relief.

5 Predictably, Dr. Stile’s claims were dismissed by this Court pursuant to Nevada’s Anti-
6 SLAPP laws on November 3, 2020, leaving Ms. Korb’s counterclaims as the sole remaining
7 claims for this Court to consider. On November 6, 2020, Dr. Stile filed the instant Motion to
8 Dismiss under NRCP 12(b)(5). Dr. Stile’s primary argument in favor of an outright dismissal of
9 Ms. Korb’s complaint is that this Court recently stated that Dr. Stile’s Yelp!® response was
10 “fine, and proper, and understandable, and quite candidly, how it should have been left.” *See*,
11 Motion at p.2, lines 7-8. Dr. Stile further contends that Ms. Korb consented to the release of her
12 private medical information by executing a HIPAA release, and therefore her remaining claims
13 should be dismissed as well. Nothing could be further from the truth, and Dr. Stile’s motion fails
14 to identify any deficiencies in Ms. Korb’s counterclaims and warrant dismissal, particularly
15 under the standard set forth in NRCP 12(b)(5).

16 As set forth below, viewing the allegations contained in the counterclaims as true – and
17 drawing all inferences in favor of Ms. Korb – Dr. Stile’s motion must be denied. Alternatively, if
18 the Court is inclined to grant Dr. Stile’s Motion in any part, Ms. Korb respectfully requests leave
19 to file amended counterclaims.

20 II. LEGAL ARGUMENT

21 1.0 Legal Standard.

22 1.1 Legal Standard for a Motion to Dismiss

23 Pursuant to N.R.C.P. Rule 12(b)(5), “failure to state a claim upon which relief can be
24 granted,” is a basis to dismiss a Complaint where the moving party can demonstrate beyond
25 doubt that the Petitioner cannot provide a set of facts in support of his claim which would entitle
26 them to relief, such that this Motion to Dismiss should be granted. *Edgar v. Wagner*, 101 Nev.
27 226, 227, 699 P.2d 110, 111 (1985) (emphasis added). In making a determination, the allegations
28 made in the Complaint are generally taken as true and viewed in the light most favorable to the

1 non-moving party. *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670, 672 (2008) (emphasis
2 added). A complaint will not be dismissed for failure to state a claim unless it appears beyond a
3 doubt that plaintiff could prove no set of facts which, if accepted by the trier of fact, would
4 entitle him or her to relief. *Vacation Vill. v. Hitachi Am.*, 110 Nev. 481, 482, 874 P.2d 744, 745
5 (1994). Dismissal is therefore improper if the pleadings set forth a prima facie case supporting
6 the relief sought. *Lubin v. Kunin*, 117 Nev. 107, 113-14, 17 P.3d 422, 427 (2001).

7 To make its determination, a court must accept all the well-pleaded allegations of the
8 complaint as true and draw all inferences in favor of the non-moving party. *Hay v. Hay*, 100
9 Nev. 196, 198, 678 P.2d 672, 674 (1984) (pleadings must fairly notice the adverse party of the
10 claims at issue). Consequently, this Court may only dismiss a claim where it “appears to a
11 certainty that a [claimant] can prove no set of facts which would entitle him to relief.” *Bergman*
12 *v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993); *Simpson v. Mars Inc.*, 113 Nev. 188,
13 190, 929 P.2d 966, 967 (1997).

14 **1.2 Legal Standard for a Motion for Summary Judgment**

15 Summary judgment is appropriate where, after review of the record viewed in the light
16 most favorable to the non-moving party, there remains no issue of material fact. *Butler v.*
17 *Bogdanovich*, 101 Nev. 449, 451 (1985). “In determining whether summary judgment is proper,
18 the non-moving party is entitled to have the evidence and all reasonable inferences accepted as
19 true.” *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 291 (1989). Summary judgment may not be
20 used to deprive litigants of trials on the merits where material factual doubts exist. *Albatross*
21 *Shipping Corp. v. Stewart*, 326 F.2d 208, 211 (5th Cir. 1964); accord *McDonald v. D.P.*
22 *Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005).

23 The plain language of NRC 56(c) “mandates the entry of summary judgment, after
24 adequate time for discovery and upon motion, against a party who fails to make a showing
25 sufficient to establish the existence of an element essential to that party’s case, and on which that
26 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106
27 S.Ct. 2548, 2552 (1986) (adopted by *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026,
28 1031 (2005)) (emphasis added).

1 The Counter-Defendants Motion fails to meet either of these standards and must be denied
2 accordingly.

3 **2.0 HIPAA and its Relationship with the Counterclaims of Plaintiff Eva Korb.**

4 In the Counter-Defendants' Motion to Dismiss, several references are made to the
5 purported "HIPAA Release" proffered as Exhibit B of the Motion (hereinafter the "Release").
6 HIPAA, or the Health Insurance Portability and Accountability Act of 1996 is a federal statute
7 enacted by the 104th United States Congress that outlines how personally identifiable health
8 information ("PHI") needs to be handled, maintained, and/or disseminated by healthcare
9 workers, insurance plans, and employers. In order for a medical doctor to share a patient's PHI,
10 for the purpose of medical diagnosis or other intended purposes, patients must first give their
11 informed consent about what information is being shared, and that information must be handled
12 with the utmost security, confidentiality, and must only be used for its intended purpose. ¹

13 In recent years, and specifically in the world of cosmetic surgery, several physicians have
14 begun using social media platforms to promote their work.² Plastic surgeons are in the business
15 of "image" and that can create an incentive to utilize "before and after" photographs of their
16 patients to promote their work. However, "using patient images and interacting with patients on
17 social media requires complete adherence to the Health Insurance Portability and Accountability
18 Act (HIPAA), maintenance of separate private and personal social media accounts, minimal
19 online interactions with patients, and familiarity with hospital policies on social media. Patient
20 confidentiality must be protected at all times, as HIPAA's security rule protecting identifiable
21 health information that a provider creates, receives, maintains, or transmits electronically applies
22 to social media as well."³

23 Clearly, when a medical professional is working with a patient's PHI, HIPAA creates an
24 affirmative duty to keep that information confidential and used only for its intended purposes in

25 ¹ See, Summary of the HIPAA Security Rule, available at <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>, (last checked November 19, 2020 at 4:14 p.m.).

26 ² See, American Medical Association Journal of Ethics "When Is Posting about Patients on Social Media Unethical 'Medutainment'?", available at <https://journalofethics.ama-assn.org/article/when-posting-about-patients-social-media-unethical-medutainment/2018-04>, last viewed on Nov. 6, 2020 at 11:49 a.m.).

27 ³ Citing the US Department of Health and Human Services. Summary of the HIPAA Security Rule, available
28 at <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>; see also, Lifchez, McKee, Raven, Shafritz, Tueting. Guidelines For Ethical And Professional Use Of Social Media In A Hand Surgery Practice, *J Hand Surg Am.* 2012;37(12):2636-2641.

1 the event of a release. This is because the doctor-patient privilege is “intended to inspire
2 confidence in the patient” and encourage candor in making a full disclosure so the best possible
3 medical care can be given. *See, Hetter v. District Court*, 110 Nev. 513, 516, 874 P.2d 762, 763
4 (1994).

5 Therefore, HIPAA acts as a baseline for the handling of PHI. Recently, several states
6 have recognized that HIPAA is just that – a minimum statutory requirement in the absence of a
7 stricter state standard, and that state statutes are not superseded by HIPAA. For example, a
8 Michigan court in *Holman v. Rasak* stated the following:

9 Under HIPAA, “[a] standard, requirement, or implementation specification” of
10 HIPAA “that is *contrary* to a *441 provision of State law preempts the provision
11 of State law” unless, among other exceptions, “[t]he provision of State law relates
12 to the privacy of individually identifiable health information and is more stringent
13 than a standard, requirement, or implementation specification adopted under”
14 HIPAA. 45 CFR 160.203

15 (*Holman v. Rasak*, 486 Mich. 429, 440–41, 785 N.W.2d 98, 105 (2010)).⁴ Therefore, HIPAA
16 does not create a conflict with state laws; it merely supplements and provides individuals certain
17 protections where state laws are silent, or when state laws are contradictory. *See*, 42 U.S.C. §
18 1320d–7(a)(1) (2000); *see also Giangiulio v. Ingalls Mem'l Hosp.*, 365 Ill. App. 3d 823, 840, 850
19 N.E.2d 249, 264 (2006).

20 ⁴ Likewise, courts in other states have found that “HIPAA does not preempt state-law causes of action for the
21 wrongful disclosure of health information.” *R.K. v. St. Mary's Med. Ctr., Inc.*, 229 W.Va. 712, 718-720, 735 S.E.2d
22 715 (2012), citing *Yath v. Fairview Clinics, N.P.*, 767 N.W.2d 34, 49-50 (Minn.App.2009) (finding state statute
23 providing private cause of action for wrongful disclosure of an individual's medical records is not a contrary state
24 law preempted by HIPAA); *Barber v. Camden Clark Mem. Hosp. Corp.*, 240 W.Va. 663, 672-673, 815 S.E.2d 474
25 (2018) (finding a hospital's compliance with HIPAA when responding to a subpoena for patient records did not
26 preclude an action based on the wrongful disclosure of confidential information). The *R.K.* decision noted a number
27 of other cases, including *Biddle*, that have allowed common-law claims alleging wrongful disclosure of medical
28 information to go forward in state court. *R.K.* at 720, 735 S.E.2d 715, citing *Baum v. Keystone Mercy Health Plan*,
826 F.Supp.2d 718 (E.D.Pa.2011) (remanding to state court a case asserting claims including negligence and
negligence per se based upon improper handling of personal health information, and commenting “[i]n spite of the
fact that the personal data at the heart of this case is protected by HIPAA, this is a fairly straightforward state-law
tort case”); *Doe v. Southwest Community Health Ctr.*, Conn. Super.Ct. No. FSTCV085008345S, 2010 WL 3672342
(Aug. 25, 2010) (denying summary judgment on negligence claim alleging failure to safeguard adequately the
confidentiality of the plaintiff's protected health care information pursuant to duty imposed by common law and by
HIPAA); *Biddle*, 86 Ohio St.3d at 401, 715 N.E.2d 518 (holding that, “in Ohio, an independent tort exists for the
unauthorized, unprivileged disclosure to a third party of non-public medical information that a physician or hospital
has learned within a physician-patient relationship”). *See also Byrne v. Avery Ctr. for Obstetrics & Gynecology*,
P.C., 314 Conn. 433, 102 A.3d 32 (2014) (holding that HIPAA did not preempt state common-law claims where the
plaintiff sued the defendant health care provider for allegedly breaching the confidentiality of her medical records in
responding to a subpoena). *See, Menorah Park Ctr. for Senior Living v. Rolston*, 2019-Ohio-2114, ¶ 21, 137 N.E.3d
682, 688, appeal allowed, 2019-Ohio-4003, ¶ 21, 157 Ohio St. 3d 1427, 131 N.E.3d 977.

1 **2.1 The Counterclaims do not Assert a Private Right of Action Under HIPAA.**

2 Next, in the Motion to Dismiss, Dr. Stile argues that there is not a private right of action
3 for “an alleged HIPAA violation.” *See*, Counter-Defendants’ Motion to Dismiss, pg. 2, ln. 16.
4 Here, Ms. Korb has not asserted a private right of action “under” HIPAA; HIPAA is merely a
5 baseline standard of care for the handling of PHI as outlined in Section 2.1, *supra* that she is
6 alleging created Nevada state law causes of action in tort.

7 Myriad courts have examined the relationship between HIPAA and state law causes of
8 action. *See, Shepherd v. Costco Wholesale Corp.*, 246 Ariz. 470, 478, 441 P.3d 989, 997 (Ct.
9 App. 2019), *review granted* (Jan. 7, 2020); *see also* FN 4. In *Shepherd v. Costco Wholesale*
10 *Corp.*, the court stated:

11 HIPAA does not prohibit a private right of action for tortious disclosure of
12 healthcare information, it merely declines to create an independent federal
13 statutory private right of action. *See Webb*, 499 F.3d at 1082; *see also* 65 Fed.Reg.
14 82462-01, 82566, 82641 (Dec. 28, 2000) (noting that the penalty provisions of
15 HIPAA do not include a private right of action). A state-law negligence claim for
16 wrongful disclosure of protected information, even when based on failure to abide
17 by standard practices mandated by HIPAA, does not interfere with government
18 enforcement actions authorized by HIPAA. Instead, additional state remedies
19 encourage compliance with HIPAA by providing further means for patients to
20 recover for harm suffered due to non-compliance. *Accord Sheldon*, 40 N.E.3d at
21 672, ¶¶ 24–25 (holding that HIPAA does not preempt state-law claims for
22 unauthorized disclosure of medical information so long as the disclosure is not
23 specifically allowed by HIPAA, but deferring to an Ohio statute setting forth a
24 standard of care)(emphasis added).

19 *Id.*, at 478.⁵

20 In Nevada, patients have specific rights as they relate to the confidentiality of their PHI
21 and identity. For example, NRS 449A.112 states that “[e]very patient of a medical facility or
22

23 ⁵ *See also, Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W. Va. 663, 672, 815 S.E.2d 474, 483 (2018) (“Rather
24 than creating an “obstacle” to HIPAA, Minnesota Statutes section 144.335 supports at least one of HIPAA’s goals
25 by establishing another disincentive to wrongfully disclose a patient’s health care record. We hold that Minnesota
26 Statutes section 144.335 is not a contrary state law preempted by HIPAA. *R.K.*, 229 W.Va. at 718-19, 735 S.E.2d at
27 721-22 (quoting *Yath*, 767 N.W.2d at 49-50); *see also WV Dep’t of Health & Human Res. v. E.H.*, 236 W.Va. 279,
28 290, 778 S.E.2d 728, 739 (2015) (“Because the HIPAA Privacy Rule is viewed as a floor of privacy protections for
individuals, state laws may provide greater or more stringent protections. In those instances where state law is
determined to be more stringent because it imposes enhanced or more detailed protections, the state law is not
preempted by HIPAA.”). Thus, “HIPAA does not preempt state-law causes of action for the wrongful disclosure of
health care information.” *R.K.*, 229 W.Va. at 718, 735 S.E.2d at 721.

1 facility for the dependent has the right to... [r]etain his or her privacy concerning the patient's
2 program of medical care." NRS 449A.112(d). Here, there is nothing about HIPAA laws that
3 preclude Ms. Korb from pursuing her well pleaded state law causes of action. In fact, HIPAA
4 stands as an evidentiary baseline for the negligence and breach of confidentiality committed by
5 Dr. Stile in this matter.

6 **2.2 The Purported HIPAA Release was not Informed or Utilized for its Intended
7 Purpose.**

8 With Ms. Korb clearly establishing that HIPAA laws do not preclude a private right of
9 action under state tort laws, we next turn to the purported HIPAA Release provided by Dr. Stile
10 as Exhibit B to his Motion to Dismiss. Much like the Amorite Wall of ancient Sumer, some
11 defenses are so weak that they can be merely walked around.

12 **2.2.1 The Release Fails on its Face as it Does Not Include Yelp!®.**

13 In the Motion to Dismiss, Dr. Stile argues that the Release somehow absolves him from
14 liability under state tort law for the improper use of, *inter alia*, PHI because he "had permission"
15 to do so. However, and notwithstanding the clearly horrific policy issues involved in ever
16 allowing a doctor to "DOX"⁶ a patient over a conflict of opinions, the release states as follows:

17 "I, Eva Korb, hereby authorize Frank L. Stile, MD, PC/Frank Stile, MD, its duly
18 authorized employees or agents, to publish the following personal health
19 information/story: Breast Augmentation (e.g., information relating to the
20 diagnosis, treatment, and health care services provided or to be provided to me
21 and which identifies my name and other personally identifiable information) to be
22 used in print media, on the radio, TV, the OSC website blog and on the following
23 social media platforms: Facebook, Twitter, Pinterest, and YouTube."

24 *See*, Counter-Defendants' Motion to Dismiss, Exhibit B, dated September 14,
25 2010.

26 What is clearly absent from this Release is any mention of Yelp!®. Clearly, the Release
27 was intended to cover promotional use of "before and after" work performed by Dr. Stile, not to
28 harass, embarrass, or threaten his patient when confronted with an unfavorable opinion. The

26 ⁶ "[D]oxing" (sometimes spelled "doxing") is short for "dropping documents." *See* Mat Honan, Wired, *What is
27 Doxing?*, <https://www.wired.com/2014/03/doxing/> (Mar. 6, 2014). The practice involves "using the Internet to
28 source out and collect someone's personal and private information and then publicly releasing that information
online." *Vangheluwe v. Got News, LLC*, 365 F. Supp. 3d 850, 858 (E.D. Mich. 2019).

1 scope and informed nature of the Release is a matter for a jury to decide, and here, Yelp!® was
2 specifically excluded by the Counter-Defendants which drafted the Release. Therefore, the
3 actions of the Counter-Defendants were not authorized and any reliance on the Release is belied
4 by the plain words in the Release itself.

5 **2.2.2 The Release Does Not Include the PHI Provided by the Counterclaimant or**
6 **Her Other Confidential Communications with the Counter-Defendants.**

7 Next, the Counter-Defendants' reliance on the language contained in the Release is
8 further misplaced as the Release did not include the other damaging information released by the
9 Counter-Defendants. More specifically, the Counter-Defendants included the following in their
10 response to Ms. Korb's Yelp! ® review:

- 11 1) Eva Korb's personal email address;
- 12 2) Eva Korb's highly confidential medical e-mail correspondence with the Counter-
13 Defendants with graphic depictions of her medical condition;
- 14 3) Nude medical photos of the Counterclaimant that were not taken by the Counter-
15 Defendants and that the Counter-Defendants had no ostensible intellectual property
rights in;
- 16 4) Eva Korb's last 4 digits of her social security number⁷;
- 17 5) Eva Korb's date of birth.

18 None of the information above was contemplated by Ms. Korb to be released by her
19 doctor into the dark corners of the internet. Due to the actions of the Counter-Defendants, Ms.
20 Korb has recently petitioned for a name change and a new social security number as she has been
21 living in fear for her safety and security after this sensitive information about her was released to
22 an untold number of people.

23 In all circumstances, there is an over-arching "duty of confidentiality [that] arises from
24 the physician-patient relationship, and unauthorized disclosure of confidential information
25 obtained in the course of that relationship for the purpose of treatment gives rise to a cause of
26 action sounding in tort against the health care provider, unless the disclosure is otherwise
27 allowed by law." *Byrne v. Avery Center for Obstetrics and Gynecology, P.C.*, 327 Conn. 540,

28 ⁷ The last 4 digits of a Social Security Number are the most important ones as the other numbers are not random;
only the last 4 are unique to the individual. See, e.g., <https://teipencpa.com/did-you-know-the-last-four-digits-of-your-social-security-number-are-especially-important/#:~:text=Although%20the%20last%20four%20digits%20of%20your%20Social.Social%20Security%20number%20are%20truly%20random%20and%20unique.>

1 175 A.3d 1 (2018). Ultimately, the Counter-Defendants acted with intent and malice towards Ms.
2 Korb, they had no basis in fact or law to do so, and for these reasons her state law claims are
3 entirely actionable in spite of the purported Release. Even if the Release was well-fashioned or
4 contemplated Yelp!®, it would still be an egregious violation of HIPAA and the doctor patient
5 relationship to release this information out of spite or for any reason that did not involve that
6 patient’s future health outcomes. For those reasons and the reasons stated above in Section 2, the
7 Release does not preclude Ms. Korb’s state law causes of action from being heard by a trier of
8 fact and the Motion to Dismiss must be denied in its entirety.

9 **3.0 Specific Causes of Action Defenses in Opposition to the Motion to Dismiss.**

10 **3.1 Ms. Korb’s Defamation Claim is Plead Sufficiently to Survive an NRCP 12(b)(5)**
11 **Motion to Dismiss.**

12 In order to establish a *prima facie* case of defamation, Plaintiff must demonstrate: (1) a
13 false and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged
14 publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or
15 presumed damages. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993);
16 *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503
17 (2009).

18 In his motion to dismiss, the Counter-Defendants argue that their Yelp!® response was
19 “truthful and proper, just as this Court previously stated.” *See*, Motion at p. 5, lines 16-17. That
20 is not true. During the October 19, 2020 hearing, this Court simply noted that a response from
21 Dr. Stile was proper. The Court made no ruling on whether this specific response was “truthful
22 and proper.” Rather, the Court simply stated that a response to the Yelp!® review was
23 understandable, while the Court was explaining that the Counter-Defendants’ conduct in filing a
24 defamation lawsuit against Ms. Korb was wrong. *See*, Motion at Exhibit A, p. 19, lines 5-7. In
25 short, this Court made no ruling whatsoever pertaining to the legality of the contents of Dr.
26 Stile’s response. The sole issue before the Court on October 19, 2020 was whether dismissal of
27 the Counter-Defendants’ complaint was appropriate, and the Court correctly answered that
28 question in the affirmative.

1 What the Counter-Defendants fail to do is conduct any analysis whatsoever as to why
2 they believe the allegations contained in Ms. Korb’s counterclaims are insufficient under NRC
3 12(b)(5). Ms. Korb has alleged that Dr. Stile made a false and defamatory statement in labeling
4 her as a “PROFESSIONAL” (ie., that she is involved in crimes of moral turpitude), which is
5 simply not true, and particularly injurious to her reputation. Ms. Korb also alleges that Dr. Stile’s
6 statements were published to third persons, which is necessarily true because his review was
7 posted to Yelp!®. Ms. Korb has also alleged that the response contained intimate pictures of her
8 body, which Dr. Stile was not authorized to publish. These allegations establish a *prima facie*
9 case of defamation which Ms. Korb is entitled to pursue, and Dr. Stile’s motion must be denied.

10 **3.2 Ms. Korb’s Invasion of Privacy Claim is Properly Plead and Actionable.**

11 In Nevada, a claim for invasion of privacy involves the following elements: 1) Defendant
12 uses the name or likeness of a non-famous person; 2) Without the permission of the person; 3)
13 The misappropriation of the person’s likeness or identity is a personal injury; 4) Or gives
14 publicity to a matter concerning the private life of another where the matter is of the kind that
15 would be highly offensive to a reasonable person and is not of legitimate concern to the public,
16 and; 5) Plaintiff is entitled to compensation for damages for mental anguish and embarrassment
17 for the unwanted use of the private person’s name or image. *Kuhn v. Account Control tech., Inc.*
18 865 F.Supp. 1443, 1448 (D. Nev. 1994); *Montesano v. Donrey Media Grp.*, 99 Nev. 644, 668
19 P.2d 1081, 1084 (1983), cert. denied, 466 U.S. 959, 104 S. Ct. 2172, 80 L.Ed.2d 555 (1984)
20 (citing *Forsher v. Bugliosi*, 26 Cal.3d 792, 163 Cal.Rptr. 628, 608 P.2d 716 (1980).

21 As discussed in Section 2.0, the Counter-Defendants try to frame Ms. Korb’s claims for
22 relief as a private right of action under HIPAA, which the Counter-Defendants argue does not
23 exist. *See*, Motion at p. 6, lines 4-8. Whether or not that is true is meaningless, however, because
24 Ms. Korb did not file the present action under HIPAA. Simply put, and as alleged in her
25 counterclaims, Ms. Korb asserts that Dr. Stile impermissibly used her name and likeness,
26 including nude photographs, in his Yelp!® response. Ms. Korb did not authorize Dr. Stile to use
27 her likeness in his Yelp! ® response, and Dr. Stile’s publishing of the offending photographs
28 three separate times caused injury to Ms. Korb. Moreover, publication of Ms. Korb’s nude,

1 unauthorized photographs on Yelp!® is certainly the type of conduct that would be highly
2 offensive to a reasonable person, as evidenced by the response being found to violate Yelp!®’s
3 community guidelines on two previous occasions of the same post. In spite of being taken down
4 by Yelp!® twice, Dr. Stile continued to re-post the private, unauthorized, embarrassing
5 photographs of Ms. Korb (including the photographs that she sent to Dr. Stile herself) as well as
6 her contact information, her partial social security number, her HIPAA protected medical
7 information, confidential medical discussions, and then had the audacity to sue Ms. Korb for
8 defamation. The Counter-Defendants are not entitled to re-frame this cause of action in any
9 manner they choose.

10 Dr. Stile next asserts that he was entitled to disclose the offending information pursuant
11 to the “HIPAA release” signed by Ms. Korb. *See*, Motion at p. 7, lines 20-24. Clearly, the
12 HIPAA release is not nearly as expansive in scope as Dr. Stile contends. The HIPAA release
13 states, in explicit language, that it includes “(e.g., information relating to the diagnosis,
14 treatment, and health care services provided or to be provided to me and which identifies my
15 name and other personally identifiable information)” *See*, Motion at Exhibit B. Nowhere does
16 the HIPAA release authorize Dr. Stile to publish intimate pictures of Ms. Korb, along with
17 information linking her personally to those pictures. As discussed in Section 2.2.1, *supra*, the
18 HIPAA release limits the social media platforms where any released information may be
19 published. Those platforms, which do not include Yelp!®, are expressly limited to Facebook,
20 Twitter, Pinterest, and YouTube. By publishing this information on Yelp!®, Dr. Stile has
21 unequivocally breached the terms of the release and authorization and is liable to Ms. Korb for
22 damages.

23 In summary, per Nevada law Ms. Korb’s invasion of privacy claim is sufficiently plead
24 for purposes of an NRCP 12(b)(5) analysis and the Counter-Defendants’ Motion must be denied.

25 **3.3. Ms. Korb’s Breach of Contract Claim is Sufficiently Plead Under NRCP**
26 **12(b)(5).**

27 To state a claim for breach of contract under Nevada law, a Plaintiff must demonstrate a
28 valid contract exists. *Butcher v. Mortg. Elec. Registration Sys., Inc.*, No. 3:11-cv-00886-ECR,
2012 WL 3779060, at *3 (D. Nev. Aug. 31, 2012) (citing *Richard v. Jones*, 1 Nev. 405, 405

1 (1865) (holding the elements of a breach of contract action include proof a valid contract exists).
2 “Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting
3 of the minds, and consideration.” *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257
4 (2005).

5 Here, Ms. Korb’s counterclaims include the requisite allegations to defeat a challenge
6 under NRCP 12(b)(5). First, Ms. Korb alleges the existence of a valid contract between herself
7 and the Counter-Defendants for the provision of medical services. Ms. Korb next contends that a
8 material term of this contract required the Counter-Defendants to protect her personal
9 information and to follow all privacy laws, including HIPAA. Finally, Ms. Korb alleges that Dr.
10 Stile published her personal, protected, private information on a public forum, constituting a
11 breach of the contract and causing her damages as a result. The Counter-Defendants’ Motion is
12 limited to their misinterpretation and expanded reading of the above-detailed HIPAA Release.
13 Ms. Korb did not authorize the dissemination or publishing of her personal, private information
14 in the manner in which Dr. Stile released it. Since Dr. Stile breached the terms of the HIPAA
15 Release and the retainer agreement with the Counter-Defendants, Ms. Korb is entitled to pursue
16 her claim for breach of contract.

17 Additionally, a “medical corporation may be liable in tort for failing to establish adequate
18 policies and procedures to safeguard the confidentiality of patient information or to train their
19 employees to properly discharge their duties under those policies and procedures.” *Doe v.*
20 *Guthrie Clinic, Ltd.*, 22 N.Y.3d 480, 982 N.Y.S.2d 431, 5 N.E.3d 578 (2014). Therefore, both of
21 the Counter-Defendants are liable to the Counterclaimant for damages and the claims are
22 sufficiently plead as against all Counter-Defendants.

23 **3.4. Ms. Korb’s Negligence Claims Are Sufficiently Plead Under NRCP 12(b)(5).**

24 The elements for a claim of negligence are: 1) Defendant owed a duty of care to plaintiff;
25 2) Defendant breached that duty; 3) The breach was the legal cause of plaintiff’s injuries, and; 4)
26 Plaintiff suffered damages. *Turner v. Mandalay Sports Entm’t, LLC*, 124 Nev. 213, 180 P.3d
27 1172 (2008); *Scialabba v. Brandise Construction Co.*, 112 Nev. 965, 921 P.2d 928 (1996); *Perez*
28 *v. Las Vegas Med. Ctr.*, 107 Nev. 1, 4, 805 P.2d 589 (1991). Generally speaking, negligence is
the failure to exercise that degree of care which an ordinarily careful and prudent person would

1 exercise under the same or similar circumstances. Nevada Jury Instructions 4.02; Nevada Jury
2 Instructions 4.03.

3 Ms. Korb’s claim for negligence rests on a simple principle, namely that as her physician,
4 Dr. Stile owed her a duty “to protect her private information pursuant to the Health Insurance
5 Portability and Accountability Act.” *See*, Counterclaim at ¶ 62. As stated in *Byrne*, “[a] duty of
6 confidentiality arises from the physician-patient relationship, and unauthorized disclosure of
7 confidential information obtained in the course of that relationship for the purpose of treatment
8 gives rise to a cause of action sounding in tort against the health care provider, unless the
9 disclosure is otherwise allowed by law. *Byrne v. Avery Center for Obstetrics and Gynecology*,
10 P.C., 327 Conn. 540, 175 A.3d 1 (2018). Dr. Stile clearly breached that duty by launching an
11 attack campaign against Ms. Korb, and admittedly posting photographs of her bare breasts on
12 Yelp!®. Dr. Stile’s conduct is alleged to have caused Ms. Korb damages, and the negligence
13 claim is therefore properly plead and actionable.

14 With respect to Ms. Korb’s claim for negligence per se, the sufficiency of the pleading is
15 even more clear. Ms. Korb’s claim is premised upon, *inter alia*, NRS 200.780, which states in
16 pertinent part as follows:

17 **NRS 200.780 Unlawful dissemination of intimate image; exceptions;
18 penalty.**

19 1. Except as otherwise provided in subsection 3, a person commits the crime of
20 unlawful dissemination of an intimate image when, with the intent to harass, harm
21 or terrorize another person, the person electronically disseminates or sells an
22 intimate image which depicts the other person and the other person:

- 23 (a) Did not give prior consent to the electronic dissemination or the sale of the
24 intimate image;
- 25 (b) Had a reasonable expectation that the intimate image would be kept private
26 and would not be made visible to the public; and
- 27 (c) Was at least 18 years of age when the intimate image was created.

28 ...

29 Ms. Korb’s counterclaim alleges that Dr. Stile released her private health information and
30 intimate photos, and that she did not give prior consent for him to do so. Ms. Korb alleges this
31 was done with the intent to harass, because Dr. Stile continued to post the intimate pictures even
32 after his response was rightfully removed by Yelp!® and after he was informed that the posts
33 violated community guidelines.

34 As with Ms. Korb’s negligence claim, the Counter-Defendants’ Motion rests entirely

1 upon the purported HIPAA release, which cannot be interpreted to allow for the vindictive,
2 malicious, spiteful publishing of nude pictures of Ms. Korb's body, linked to her by her name
3 and associated with her by her Yelp!® profile. The Counter-Defendants should not be permitted
4 to use the HIPAA Release form as a defense to Ms. Korb's claims, particularly when the release
5 doesn't say what Dr. Stile asserts it does.

6 Ms. Korb has properly plead this cause of action, including damages as a result and Dr.
7 Stile's motion must be denied.

8 **3.5. Ms. Korb's Claim for Intentional Infliction of Emotional Distress Is**
9 **Sufficiently Plead Under NRCP 12(b)(5).**

10 In Nevada, the elements for a claim of intentional infliction of emotional distress are: 1)
11 Defendant acts with "extreme and outrageous conduct with either the intention of, or reckless
12 disregard for, causing emotional distress"; 2) Plaintiff suffered severe or extreme emotional
13 distress, and; 3) Defendant's conduct is the actual or proximate cause of plaintiff's emotional
14 distress. *Switzer v. Rivera*, 174 F. Supp.2d 1097, 1109 (D. Nev. 2001); *Hirschhorn v. Sizzler*
15 *Rest. Int'l, Inc.*, 913 F. Supp. 1393, 1401 (D. Nev. 1995); *Candelore v. Clark Cty. Sanitation*
16 *Dist.*, 752 F. Supp. 956, 962 (D. Nev. 1990); *Luckett v. Doumani*, 121 Nev. 44, 110 P.3d 30
17 (2005); *State v. Eighth Judicial Dist. Court*, 18 Nev. 140, 42 P.3d 233 (Nev. 2002). In evaluating
18 "outrageous conduct," courts have held that it must rise to the level of behavior which is
19 "outside all possible bounds of decency" and is regarded as 'utterly intolerable in a civilized
20 community.'" *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

21 Here, Ms. Korb's counterclaim rests on the Counter-Defendants' outrageous conduct by
22 publishing her private, personal, confidential information and images on Yelp!® in clear
23 retaliation for Ms. Korb lawfully expressing her opinions about his services. This behavior was
24 outside the bounds of decency, as recognized by Yelp!® in deleting Dr. Stile's response. Rather
25 than accept the egregious and wrongful nature of his response, *Dr. Stile made a conscious*
26 *decision to repeat his behavior and re-post Google drive links to images of Ms. Korb's bare*
*breasts.*⁸ In his motion, Dr. Stile falls back again on the HIPAA Release to argue that his conduct

27
28 ⁸ "What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men,
which on no account one must spread abroad, I will keep to myself, holding such things shameful to be spoken
about. If I fulfil this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame

1 was somehow permissible. It was not.⁹

2 Dr. Stile next tries to smear Ms. Korb's reputation further, by arguing that "a brief search
3 of Korb's social media profiles shows that she regularly posts similarly revealing photographs
4 for her followers and internet browsers alike." *See*, Motion at p. 10, lines 24-26. This argument
5 misses the mark completely. First, Ms. Korb is entitled to post whatever information and
6 photographs she chooses about *herself*, within the community standards for the applicable social
7 media platform. This does not give Dr. Stile the inherent right to post nude pictures of Ms. Korb
8 on the internet, particularly those he obtained by way of their doctor-patient relationship. Dr.
9 Stile's argument is unspeakably numb in light of the emotional damage he has inflicted upon Ms.
10 Korb.

11 As plead, Ms. Korb's allegations, along with her suffering of damages at the hands and
12 keyboard of Dr. Stiles, provide a basis for her to pursue this claim under the NRCP 12(b)(5)
13 standard.

14 **3.6. Ms. Korb's Claim for Negligent Infliction of Emotional Distress Is
15 Sufficiently Plead Under NRCP 12(b)(5).**

16 In order to prevail on a claim for negligent infliction of emotional distress, a plaintiff
17 must establish that the: 1) defendant acted in a negligent manner, causing an accident or injury of
18 another; 2) plaintiff witnesses the accident, or is the direct victim of the wrongful act; 3) plaintiff
19 is closely related to the victim of the accident; 4) plaintiff suffered emotional or physical distress
20 by witnessing the accident while it happened; and 5) proximate cause and damages. *Boorman v.*
21 *Nevada Mem'l Cremation Soc'y*, 236 P.3d 4, 8 (Nev. 2010); *Lockett v. Doumani*, 121 Nev. 44,
22 110 P.3d 30 (2005); *Grotts v. Zahner*, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999); *Shoen v.*
23 *Amerco, Inc.*, 111 Nev. 735, 748, 896 P.2d 469, 477 (1995); *Chowdhry v. NLVH, Inc.*, 109 Nev.
24 478, 851 P.2d 459 (1993).

25 Ms. Korb's allegations with respect to this claim are closely related to her allegations in
26 support of her claim for intentional infliction of emotional distress, and are plead with sufficient
27 specificity to provide Dr. Stile with notice of the nature of the dispute. Ms. Korb alleges that Dr.

28 _____ (continued)

among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.
Hippocratic Oath, available at https://www.medicinenet.com/hippocratic_oath/definition.htm.

⁹ "In my mind, the doctor-patient relationship is sacrosanct. There is no relationship where the bond of trust should
be so strong, outside of matrimony." <https://www.physiciansweekly.com/doctors-losing-publics-trust/>

1 Stile owed her a duty as her physician, that he breached that duty by releasing intimate images of
2 her on Yelp!®, that she has suffered intense emotional distress as a result, and has been caused
3 damages in excess of \$15,000.00. *See*, Counterclaim at p. 20. In opposition, Dr. Stile freely
4 admits that he owed Ms. Korb a duty under their doctor-patient relationship. However, as with
5 Ms. Korb’s other claims, Dr. Stile contends the HIPAA release authorized him to post nude
6 images and personal information to Yelp!®. On its face, the HIPAA release does not authorize
7 Dr Stile to publish nude photographs of Ms. Korb to any social media platform, much less
8 Yelp!®.

9 Since Ms. Korb’s allegations fall squarely within each of the above-listed elements for a
10 negligent infliction of emotional distress claim, and Dr. Stile’s motion must be denied
11 accordingly.

12 **3.7. Ms. Korb is Entitled to Declaratory Relief and an Injunction to Restrict the
13 Unauthorized Use of her Medical Information and History.**

14 In Nevada, the elements for an equitable claim of declaratory relief are: 1) A justifiable
15 controversy exists between two or more parties; 2) Regarding their respective rights pursuant to a
16 contract; 3) Such that the plaintiff asserts a claim of a legally protected right; 4) The issue is ripe
17 for judicial determination, and; 5) Plaintiff asks the court to determine the parties’ relative rights
18 under the contract. *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948).

19 Here, Ms. Korb’s concern is clear. Dr. Stile has demonstrated on repeat occasions that he
20 is willing to publish her personal, private information and intimate images to an online forum
21 without her permission. Dr. Stile has done this, despite having been duty-bound as Ms. Korb’s
22 physician to protect the information. Ms. Korb is fearful that Dr. Stile will continue this behavior
23 and she has every reason to believe he will, in light of his past pattern of violating Yelp!®’s
24 community standards. For these reasons, Ms. Korb is entitled to a declaration from this Court
25 that her personal information and images are private, confidential, and not to be disseminated to
26 the general public by Dr. Stile.

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III. CONCLUSION

Based upon the foregoing, Defendant/Counterclaimant Eva Korb respectfully requests that this Court deny Dr. Stile’s Motion in its entirety. To the extent this Court is inclined to grant Dr. Stile’s Motion either in whole or in part, Ms. Korb respectfully requests leave to file amended counterclaims.

DATED this 20th day of November, 2020.

CONNELL LAW
/s/ Christopher S. Connell
Christopher S. Connell, Esq.
Nevada Bar No. 12720
6671 Las Vegas Blvd., Suite 210
Las Vegas, NV 89119
Attorney for Defendant/Counterclaimant Eva Korb

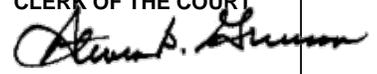
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an employee of CONNELL LAW; that service of the foregoing **OPPOSITION TO PLAINTIFF/COUNTER-DEFENDANTS' MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** was e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 to the following parties on the 20th day of November, 2020:

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/s/ Mary Rodriguez
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12 *Attorneys for Plaintiffs/Counterdefendants,*
13 *Frank Stile, M.D. and Frank Stile M.D., P.C.*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 vs.

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

23 Defendants.

24 _____
25 EVA KORB, an individual,

26 Counterclaimant.

27 vs.

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

Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

**PLAINTIFFS/COUNTERDEFENDANTS’
REPLY IN SUPPORT OF MOTION TO
DISMISS, OR ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs/Counterdefendants Frank Stile, M.D. and Frank Stile M.D., P.C. (collectively,
“Counterdefendants” or “Dr. Stile”) by and through their attorneys of record, Howard & Howard
Attorneys, PLLC, hereby submit this Reply In Support of the Motion to Dismiss, or alternatively,
Motion for Summary Judgment (the “Reply”). This Reply is based upon the papers and pleadings

1 herein, the attached memorandum of points and authorities, the exhibits hereto, any and all judicially
2 noticed facts, and any oral argument heard in this matter.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Regret is a feeling that everyone must endure at some point in their lives, but it is not an excuse.
6 Importantly, regret does not circumvent a legally binding contract entered into with another individual.
7 Although Korb may regret the procedure and signing the HIPAA Release, regret is simply not enough
8 to circumvent the legally binding effect of it.

9 In her opposition, Korb argues that either there is a private right of action under HIPAA, where
10 there most certainly is not, or that her claims were not brought under HIPAA, when they most certainly
11 were. Importantly, all of Korb's counterclaims are based on an alleged HIPAA violation due to Dr.
12 Stile's alleged unlawful disclosure of her personal information, even though she authorized such
13 disclosure through the execution of the HIPAA Release. (*See* HIPAA Release Attached as Exhibit B
14 to Dr. Stile's Motion to Dismiss on file herein). Importantly, Korb's only defense to the lawfully agreed
15 upon HIPAA Release is the fact that it leaves out Yelp!, although Yelp! was not even a public company
16 at the time the HIPAA Release was executed.

17 Additionally, in a last-ditch effort to survive dismissal of her claim for defamation, Korb
18 attempts to imply a certain tone or context to this Court's own words when they were clear in the
19 Transcript. As this Court stated, Dr. Stile's response to Korb was "fine, and proper, and understandable,
20 and quite candidly, how it should have been left." (*See* Transcript of Proceedings (the "Transcript")
21 attached as Exhibit "A" to Dr. Stile's Motion to Dismiss on file herein at pg. 19, ln. 3-7). As is proper
22 practice when reading a statute or rule, the plain language is telling.

23 As discussed in Dr. Stile's Motion and reiterated below, the standard for dismissal or
24 alternatively, summary judgment, has been satisfied. All of Korb's claims must be dismissed with
25 prejudice as Dr. Stile's statement was "fine, and proper, and understandable", not false and defamatory,
26 while the remaining claims were brought under HIPAA where no private cause of action exists and
27 Korb effectively waived said claims by signing the HIPAA Release allowing the disclosure of personal
28 her information.

1
2 **II. CLARIFICATION OF FACTS**

3 Rather than repeating the factual background of this case, Dr. Stile will clarify various factual
4 assertions made in Korb's Opposition. Specifically, facts surrounding the HIPAA Release and the
5 Transcript.

6 The HIPAA Release was executed on September 14, 2010 approximately two years before
7 Yelp! rose to prominence and became a publicly traded company.¹ See HIPAA Release. Significantly,
8 the HIPAA Release states the following:

9
10 "I, Eva Korb, hereby authorize Frank L. Stile, MD, PC/ Frank Stile, MD., its
11 duly authorized employees or agents, to publish the following personal health
12 information/story: Breast Augmentation (e.g. information relating to the diagnosis,
13 treatment, and health care services provided or to be provided to me and which identifies
14 my name and other personally identifiable information) to be used in print media, on
15 the radio, TV, the OSC website, blog and on the following social media platforms:
16 Facebook, Twitter, Pinterest, and YouTube." *Id.*

17 The section addressing what information could *not* be disclosed was left glaringly blank. *Id.*
18 Additionally, the HIPAA Release also stated that Korb has the right to revoke the authorization by
19 providing written notice to Frank L. Stile MD, PC/ Frank Stile, MD, but that it may not be revoked if
20 Frank L. Stile, MD, PC/Frank Stile, MD., its employees or agents took action on the authorization prior
21 to receiving her written notice. *Id.* The HIPAA Release was broad in nature allowing Dr. Stile to
22 disclose personally identifiable information without carve-outs, exceptions, or exclusions.

23 As to the Transcript, it speaks for itself. The portion of the Transcript relating to Dr. Stile's
24 "fine, proper, and understandable" statement is as follows:

25 "The plaintiff focuses on a few of the phrases in the review, but even those
26 phrases are clearly Ms. Korb's opinions. Plaintiff did, in fact, rebut those opinions when
27 he posted a response on Yelp. And that's what -- you know, what the anti-SLAPP
28 statutes are designed -- what, you know, First Amendment freedom of speech is
designed to protect. Somebody posts an opinion, in this case Ms. Korb as to Dr. Stile,
and Dr. Stile, understandably, vehemently disagrees with Ms. Korb's opinion and
responds accordingly there on Yelp. And that's fine, and proper, and understandable
and, quite candidly, how it should have been left."

¹ <https://www.yelp-press.com/company/fast-facts/default.aspx>

1 See Transcript at pg. 18 ln. 21 - 25; pg. 19, ln. 1-7.

2 Additionally, in-line with authority in this State, the Court stated that a phrase included in a
 3 statement cannot be the sole grounds on a claim for defamation: "...you don't read one phrase out of
 4 the entire [statement] in a vacuum. You take into account the totality of the [statement] and the phrases
 5 therein." See Transcript at p. 18, ln. 18-21.

6 **III. LEGAL ARGUMENT**

7 **A. KORB'S CLAIM FOR DEFAMATION FAILS AS DR. STILE'S STATEMENT**
 8 **WAS TRUTHFUL AND PROPER, NOT FALSE AND DEFAMATORY.**

9 Korb attempts to save her failing claim for defamation by misreading this Court's own language
 10 at the previous hearing. Korb is advised to read the transcript of the proceeding to truly discern what
 11 this Court meant by reading the plain language rather than implying her own meaning.

12 This Court previously held that Korb's statement was one of opinion. See Transcript Generally.
 13 Importantly, in making that determination, this Court reviewed the statements made by both parties
 14 and stated, on the record, that Dr Stile's statement was fine and proper.

15 "The plaintiff focuses on a few of the phrases in the review, but even those
 16 phrases are clearly Ms. Korb's opinions. Plaintiff did, in fact, rebut those opinions when
 17 he posted a response on Yelp. And that's what -- you know, what the anti-SLAPP
 18 statutes are designed -- what, you know, First Amendment freedom of speech is
 19 designed to protect. Somebody posts an opinion, in this case Ms. Korb as to Dr. Stile,
 20 and Dr. Stile, understandably, vehemently disagrees with Ms. Korb's opinion and
 21 responds accordingly there on Yelp. And that's fine, and proper, and understandable
 22 and, quite candidly, how it should have been left."

23 See Transcript at pg. 18 ln. 21- 25; pg. 19, ln. 1-7.

24 Although this Court did not make a specific ruling on Dr. Stile's statement, the plain language
 25 of the Transcript shows this Court believes Dr. Stile's statement was fine, proper, and understandable,
 26 not false and defamatory.

27 Additionally, Korb's sole argument supporting for her claim for defamation is that Dr. Stile
 28 called her a "PROFESSIONAL". See Korb's Opposition at pg. 11, ln. 4. Importantly, and as this Court
 previously stated as well, "...you don't read one phrase out of the entire [statement] in a vacuum. You
 take into account the totality of the [statement] and the phrases therein." See Transcript at p. 18, ln. 18-
 21; See also *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001)(stating that the statement

1 must be read in its entirety to determine whether it is susceptible to a defamatory meaning). The entirety
2 of the statement is not susceptible to a defamatory meaning. Dr. Stile did nothing but provide the factual
3 recitation of the events surrounding the procedure, her trip to Thailand, delay of treatment and eventual
4 development of her contractures and the type of procedure to remedy the botched surgery in Thailand.
5 See Exhibit E of Dr. Stile’s Motion to Dismiss on file herein.

6 Thus, Korb’s claim for defamation must be dismissed as Dr. Stile’s statement was not false and
7 defamatory under the law but was rather “fine, proper, and understandable” as he merely stated the
8 facts surrounding the disagreement between the parties while “PROFESSIONAL” cannot be read in a
9 vacuum without taking into account the totality of the statement which was otherwise a factual
10 recitation of the events between the parties.

11 **B. KORB’S REMAINING COUNTERCLAIMS MUST BE DISMISSED AS THERE**
12 **IS NOT A PRIVATE RIGHT OF ACTION UNDER HIPAA.**

13 In her opposition, Korb attempts to throw anything at the figurative wall with the hope that
14 something sticks. Korb asserts that a private right of action exists under HIPAA, that her claims were
15 not brought under HIPAA, while also arguing that HIPAA serves as a baseline for negligence and
16 confidentiality claims without citing any truly relevant or persuasive authority in support. Aside from
17 the fact that the cited authority of *Holman v. Rasak*, 486 Mich. 429, 440–41 (2010) comes from
18 Michigan, it is easily distinguishable from the case at hand as *Holman* addressed whether HIPAA
19 permitted ex parte interviews by defense counsel with treating physicians under a qualified protective
20 order. *Id.* at 432. Simply put, the case has no applicability to the instant matter, yet Korb attempts to
21 use a one-off sentence in support of her entire argument.

22 By contrast, Dr. Stile has provided (and will provide again) relevant authority out of this State’s
23 Federal District Court and the Ninth Circuit evidencing that a private right of action does not exist
24 under HIPAA. See *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007) (stating
25 that HIPAA provides no private right of action); See also *Howard v. NaphCare*, 217CV02345JADNJK,
26 2018 WL 6028693, at *2 (D. Nev. Nov. 16, 2018)(“To the extent that Howard seeks to state a claim
27 against defendants for HIPAA violations, that claim fails as a matter of law. It is well settled in the
28 Ninth Circuit that HIPAA does not provide a private right of action for enforcement of the rights it
guarantees. Only the government may bring a claim for a HIPAA violation.”); *Seaton v. Mayberg*, 610

1 F.3d 530, 533 (9th Cir. 2010)(citing *Webb* for the same proposition); *Pacheco v. Soon Kim*, 3:14-CV-
2 00124-MMD, 2014 WL 5460869, at *1 (D. Nev. Oct. 27, 2014)(“The Magistrate Judge recommends
3 dismissal of Plaintiff’s HIPAA claim without prejudice because HIPAA does not provide for a private
4 right of action.”) *Garmon v. County of Los Angeles*, 828 F.3d 837, 847 (9th Cir. 2016)(“The operative
5 complaint also mentions violations of HIPAA. However, HIPAA itself provides no private right of
6 action”); *Morrison v. Quest Diagnostics Inc.*, 139 F. Supp. 3d 1182, 1189 (D. Nev. 2015)(“Amendment
7 of this claim would be futile because HIPAA itself does not provide for a private right of
8 action...because private citizens are not entitled to sue in court for violation of the HIPAA statute, this
9 claim is dismissed with prejudice.”).

10 Additionally, while Korb asserts her claims were not brought under HIPAA, a quick review of
11 her counterclaims shows otherwise. Besides her claim for defamation, each claim is based on the
12 alleged wrongful disclosure of information protected by HIPAA. *See* ¶ 48, 57, 62, 75, 81 of Korb’s
13 Counterclaims on file herein. Each and every claim was brought under an alleged HIPAA violation for
14 the alleged disclosure of personal information.

15 As fully explained in Dr. Stile’s Motion to Dismiss and above, the relevant and applicable
16 authority this Court should consider makes one thing evident, a private right of action does not exist
17 for an alleged HIPAA violation and any claims brought under an alleged HIPAA violation should be
18 dismissed with prejudice. Thus, because all of Korb’s counterclaims, with the exception of her
19 defamation claim, are based on an alleged HIPAA violation, all of her claims must be dismissed.

20 **C. THE HIPAA RELEASE IS EFFECTIVE AND UNDERCUTS EACH OF**
21 **KORB’S COUNTERCLAIMS.**

22 Even if this Court finds that a private right of action exists for Korb, the HIPAA Release
23 undercuts each and every counterclaim as the HIPAA Release was effective and covered all disclosures
24 made by Dr. Stile.

25 The reason Yelp! was not included in the HIPAA Release is simply due to the fact that Yelp!
26 was not a relevant company at the time the HIPAA Release was signed as Yelp! was not a publicly
27 traded company until 2012, two years after the HIPAA Release was executed.² Regardless, although

28 _____
² <https://www.yelp-press.com/company/fast-facts/default.aspx>

1 Yelp! is not specifically listed as a social media platform, it is reasonable to conclude that Yelp! falls
2 into other categories in the HIPAA Release such as a blog.

3 Further, the HIPAA Release is broad and overarching and any attempt to undercut the Release
4 by explaining what it does not cover can be addressed by referring to the Release itself. As stated above,
5 the section pertaining what information could *not* be disclosed was left glaringly blank. *See* HIPAA
6 Release. Any attempt to imply, insert, or construct a different meaning to the HIPAA Release is not
7 based in reality. Importantly, although some of the information is public and can be easily ascertained
8 in an internet search, Korb's email address, e-mail correspondence, medical photos, date of birth, and
9 last four digits of her social security number is covered by the HIPAA Release as each piece of
10 information is encompassed in the HIPAA Release as "information relating to the diagnosis, treatment,
11 and health care services provided or to be provided to me and which identifies my name and other
12 personally identifiable information." *Id.*

13 *i. Korb's claim for Invasion of Privacy must fail.*

14 In reciting the elements for her claim and aside from essentially ignoring the argument in Dr.
15 Stile's Motion, Korb's argument has one fatal flaw, the elements require that the disclosure be without
16 the permission of the other person. *See* Korb's Opposition at pg. 11, ln. 12. To remind Korb, she
17 specifically gave Dr. Stile permission to publish her information pursuant to the HIPAA Release. *See*
18 HIPAA Release.

19 While Korb may attempt to argue that certain information was or was not covered under the
20 HIPAA Release, such an argument holds no water as the HIPAA Release was general and sweeping in
21 nature, allowing Dr. Stile to release any and all information in connection with the procedure without
22 any limitations or exclusions. *See* HIPAA Release. Additionally, although Yelp may not have been
23 included on the Release (due to the fact it was not a public company at the time of signing), the HIPAA
24 Release includes "blogs" a category that Yelp! reasonably falls in. *Id.*

25 Thus, for the reasons stated in Dr. Stile's Motion and above, Korb's claim for invasion of
26 privacy must fail as she specifically gave Dr. Stile permission to publish the information pursuant to
27 the HIPAA Release.

28

1 ii. *Korb's claim for Breach of Contract must fail.*

2 To succeed on a breach of contract claim, a plaintiff must show four elements: (1) formation of
3 a valid contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the
4 defendant; and (4) damages. *Laguerre v. Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D.
5 Nev. 2011). Further, a breach of contract may be said to be a material failure of performance of a duty
6 arising under or imposed by agreement. *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259,
7 1263 (2000)(overruled on other grounds)(citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734
8 P.2d 1238, 1240 (1987).

9 Similar to her other counterclaims, Korb's breach of contract claim is based on the alleged
10 disclosure of personal information that she authorized through the HIPAA Release. To clarify and
11 repeat, the HIPAA Release was general and sweeping in nature, allowing Dr. Stile to release any and
12 all information in connection with the procedure without any limitation or exclusions. Dr. Stile did not
13 breach any contract between the parties, he performed the medical procedure as agreed upon and
14 released the personal information as agreed upon. Korb cannot attempt to turn back the clock and
15 invalidate an otherwise agreed upon release because she is no longer pleased with the services that Dr.
16 Stile performed.

17 Thus, for the reasons previously stated in Dr. Stile's Motion to Dismiss and above, Korb's claim
18 for breach of contract must fail as no material breach occurred, while Korb expressly authorized the
19 type of conduct she claims breached the agreement between the parties.

20 iii. *Korb's claim for Negligence must fail as Dr. Stile did not breach any duty owed*
21 *to Korb.*

22 While attempting to claim that an alleged HIPAA violation sets a baseline for the standard of
23 care in this case, Korb fails to realize that even if that were the applicable (which it is not), a breach
24 did not occur because Korb expressly authorized the conduct that is the basis for her claim.

25 This Court must put aside the hyperbolic language used in Korb's opposition and make its
26 decision based on the law and the facts, the analysis of which is fairly straightforward. Korb's assertion
27 is that Dr. Stile breached the duty owed to her when he released her personal information. It begs the
28 question of how one can be liable for a breach when the one claiming the breach specifically authorized

1 that conduct? Simply stated, Dr. Stile did exactly what he was authorized to do under the HIPAA
2 Release and cannot be held liable for authorized actions.

3 For the reasons stated previously and again above, the HIPAA Release undercuts her own claim
4 as a breach does not occur when the alleged breach is authorized by the plaintiff, requiring dismissal
5 of Korb's claim for Negligence.

6 *iv. Korb's claim for Negligence Per Se must fail.*

7 Again, similar to Korb's other counterclaims, Korb's claim for negligence per se based on the
8 violation of NRS 200.780 fails as she expressly authorized and gave prior consent to the electronic
9 dissemination of the image through the HIPAA Release. While Korb attempts to infer certain
10 exclusions as to what the HIPAA Release, the language of the HIPAA Release says otherwise. For
11 clarity, the HIPAA Release allows Dr. Stile to publish information relating to the diagnosis, treatment,
12 and health care services provided to Korb that identifies her name and other personally identifiable
13 information without any exclusions or restrictions. *See* HIPAA Release. The photographs Dr. Stile
14 released were undoubtedly covered in the HIPAA Release, evidencing Korb's express prior consent to
15 electronically disseminate the image.

16 The HIPAA Release speaks for itself and allows Dr. Stile to release the information of Korb in
17 connection with the procedure, just as she agreed. Thus, because Korb gave prior consent to Dr. Stile
18 to disseminate the image, her claim for negligence per se must fail as a matter of law.

19 *v. Korb's claim for Intentional Infliction of Emotional Distress must fail as she*
20 *authorized the alleged outrageous conduct that allegedly caused the distress.*

21 Like every other counterclaim, Korb's sole grounds for her claim of intentional infliction of
22 emotional distress is the release of information that was expressly authorized pursuant to the HIPAA
23 Release. Although repetitive at this stage of the briefing, the HIPAA Release speaks for itself. It
24 expressly allowed Dr. Stile to share the personal information of Korb, it did not have any qualifications,
25 restrictions, exceptions, or limitations. Korb signed the agreement knowing full well that her
26 information could be released by Dr. Stile. Again, it is difficult to argue that such conduct is extreme
27 and outrageous while at the same time expressly agreeing to allow that same conduct.
28

1 Korb's claim for intentional infliction of emotional distress must suffer the same fate as her
2 other claims due to the sole fact that she authorized the type of conduct she is now claiming caused her
3 harm.

4 *vi. Korb's claim for Negligent Infliction of Emotional Distress must fail.*

5 While Korb states her claim for negligent infliction of emotional distress is closely related to
6 her claim for intentional infliction of emotional distress, the reason this claim must be dismissed is
7 identical to the reason that the other be dismissed, the HIPAA Release.

8 The HIPAA Release expressly authorized Dr. Stile to release information and photographs
9 connected to the procedure and that is exactly what he did. While it may not have explicitly included
10 the language of "nude photographs", the HIPAA Release was sweeping in nature and allowed Dr. Stile
11 to publish pictures taken in connection with the procedure. Dr. Stile did not act negligently by releasing
12 the photographs, he acted in a way that was agreed upon by the parties. For the reasons stated previously
13 and above, Korb's claim for negligent infliction of emotional distress must suffer the same fate of
14 dismissal as her other claims.

15 *vii. Korb's request for Declaratory and Injunctive Relief must fail as she authorized*
16 *the conduct she now wishes to enjoin.*

17 In her opposition, Korb again asserts that Dr. Stile released this information without her
18 permission but fails to account for the fact she signed the HIPAA Release authorizing Dr. Stile to
19 release and share said information. Notwithstanding the fact that Korb's other counterclaims fail due
20 to the HIPAA Release, she cannot unilaterally and retroactively rescind the HIPAA Release under the
21 agreed upon language.

22 As stated above, the HIPAA Release includes certain language that allows Korb to revoke the
23 authorization by providing written notice to Dr. Stile, but that it may not be revoked if Dr. Stile, or his
24 employees or agents took action on the authorization prior to receiving her written notice. *Id.* Thus,
25 absent any decision or ruling nullifying the HIPAA Release, the authorization cannot now be revoked
26 as Dr. Stile has taken action on the HIPAA Release prior to receiving any sort of notice from Korb.

27 ///

28 ///

1 **IV. CONCLUSION**

2 While Korb may regret her decision to have Dr. Stile perform her procedure and executing the
3 HIPAA Release, regret is not enough in the eyes of the Court. For the reasons previously stated in Dr.
4 Stile’s Motion and above, all of Korb’s counterclaims must by dismissed, or alternatively summary
5 judgment must be granted in favor of Dr. Stile.

6 DATED this 2nd day of December, 2020.

7 **HOWARD & HOWARD ATTORNEYS PLLC**

8

9 By: /s/ William A. Gonzales
10 Martin A. Little, Esq.
11 William A. Gonzales, Esq.
12 3800 Howard Hughes Parkway, Suite 1000
13 Las Vegas, Nevada 89169

14 *Attorneys for Plaintiffs/Counterdefendants*

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **PLAINTIFFS/COUNTERDEFENDANTS’ REPLY IN SUPPORT OF MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

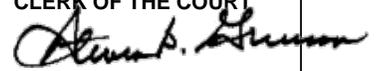
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*Attorney for Defendant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 2, 2020, at Las Vegas, Nevada.

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

4847-2395-3107, v. 1



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7 *Attorneys for Plaintiffs/Counterdefendants,*
8 *Frank Stile, M.D. and Frank Stile M.D., P.C.*

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

18 _____
19 EVA KORB, an individual,

20 Counterclaimant.

21 vs.

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

24 Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

NOTICE OF APPEAL

25 Notice is hereby given the Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile
26 M.D., P.C. (collectively referred to as "Dr. Stile"), by and through their attorneys of Howard & Howard
27 PLLC, hereby appeals to the Supreme Court of Nevada from the November 3, 2020 Order Granting
28

1 Defendants/Counterclaimant Eva Korb’s Special Anti-SLAPP Motion to Dismiss under NRS 41.670
2 and all ruling and interlocutory orders made appealable by the foregoing.

3 The Notice of Entry of the November 3, 2020 Order Granting the Special Anti-SLAPP Motion
4 to Dismiss under NRS 41.670 was filed on November 4, 2020.

5 DATED this 2nd day of December, 2020.

6 **HOWARD & HOWARD ATTORNEYS PLLC**

7
8 By: /s/ William A. Gonzales
9 Martin A. Little, Esq.
10 William A. Gonzales, Esq.
11 3800 Howard Hughes Parkway, Suite 1000
12 Las Vegas, Nevada 89169

13 *Attorneys for Plaintiffs/Counterdefendants*

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **NOTICE OF APPEAL** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

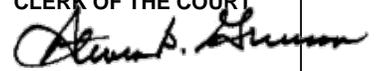
Christopher S. Connell, Esq.
Connell Law
6671 Las Vegas Boulevard, Suite 210
Las Vegas, Nevada 89119

*Attorney for Defendant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 2, 2020, at Las Vegas, Nevada.

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

4832-8781-7424, v. 1



1 **ASTA**
2 Martin A. Little, Esq.
3 Nevada Bar No. 7067
4 William A. Gonzales, Esq.
5 Nevada Bar No. 15230
6 **HOWARD & HOWARD ATTORNEYS PLLC**
7 3800 Howard Hughes Parkway, Suite 1000
8 Las Vegas, Nevada 89169
9 Telephone: (702) 257-1483
10 Email: mal@h2law.com
11 Email: wag@h2law.com

12 *Attorneys for Plaintiffs/Counterdefendants,*
13 *Frank Stile, M.D. and Frank Stile M.D., P.C.*

14 **EIGHTH JUDICIAL DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 vs.

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

23 Defendants.

24 _____
25 EVA KORB, an individual,

26 Counterclaimant.

27 vs.

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

Counterdefendants.

Case No. A-19-807131-C

Dept. No. XV

CASE APPEAL STATEMENT

Honorable Joe Hardy

INTRODUCTION

Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile, M.D., P.C. (collectively referred to as "Dr. Stile"), by and through their attorneys of Howard & Howard Attorneys PLLC, hereby submit this Case Appeal Statement as follows:

- 1 **1. Name of Appellant filing this case appeal statement:**
2 Frank Stile, M.D., an individual and Frank Stile M.D., P.C., a Nevada professional
3 corporation.
- 4 **2. Name of judge who entered the order or judgment being appealed**
5 District Court Judge Joe Hardy, Department 15.
- 6 **3. Counsel for Appellants:**
7 Martin A. Little, Esq.
8 Nevada Bar No. 7067
9 Email: mal@h2law.com
10 William A. Gonzales, Esq.
11 Nevada Bar No. 15230
12 Email: wag@h2law.com
13 3800 Howard Hughes Parkway, Suite 1000
14 Las Vegas, Nevada 89169
15 Telephone: (702) 257-1483
- 16 **4. Respondent and Counsel for Respondent:**
17 Respondent, Eva Korb
18 Christopher S. Connell, Esq.
19 Nevada Bar No. 12720
20 Email: cconnell@connelllaw.com
21 6671 Las Vegas Boulevard, Suite 210
22 Las Vegas, Nevada 89119
- 23 **5. Is any attorney identified in response to paragraph 3 or 4 not licensed to practice law in**
24 **Nevada?**
25 All counsel are licensed to practice law in Nevada.
- 26 **6. Were Appellants represented by appointed or retained counsel in the District Court?**
27 Appellants were represented by retained counsel.
- 28 **7. Are Appellants represented by appointed or retained counsel on appeal?**
Appellants are represented by retained counsel.
- 8. Were Appellants granted leave to proceed in forma pauperis?**
N/A
- 9. The date the proceedings commenced in the district court:**
Plaintiffs/Counterdefendants filed their Complaint on December 17, 2019.

1 **10. A brief description of the nature of the action and result in the district court, including**
 2 **the type of judgment or order being appealed and the relief granted by the district**
 3 **court.**

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

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

15 On October 12, 2020, the Court held a hearing on Respondent’s Anti-SLAPP motion and heard
 16 oral arguments from both parties. At the hearing, the Court granted Respondent’s Anti-SLAPP Motion
 17 and ordered parties to provide supplemental briefing for the mandatory attorney fee provision in NRS
 18 41.670. On November 3, 2020 the district court entered an Order Granting Respondent’s Anti-SLAPP
 19 Motion. In granting Respondent’s Anti-SLAPP Motion, the district court held that Respondent’s
 20 statement was protected opinion under the First Amendment.

21 **11. Has this case previously been the subject of an appeal to or original writ proceedings in**
 22 **the Supreme Court?**

23 No.

24 **12. Does this case involve child custody or visitation?**

25 No.

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13. Does this appeal involve the possibility of settlement?

Yes.

DATED this 2nd day of December, 2020.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ William A. Gonzales

Martin A. Little, Esq.
William A. Gonzales, Esq.
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

Attorneys for Plaintiffs/Counterdefendants

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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada 89169.

On this day I served the **CASE APPEAL STATEMENT** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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

*Attorney for Defendant/Counterclaimant,
Eva Korb*

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on December 2, 2020, at Las Vegas, Nevada.

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

4828-7487-5856, v. 1

A-19-807131-C Frank Stile, M.D., Plaintiff(s)
vs.
Eva Korb, Defendant(s)

December 07, 2020 09:00 AM Plaintiffs/Counterdefendants' Motion to Dismiss, Or Alternatively,
Motion for Summary Judgment

HEARD BY: Hardy, Joe COURTROOM: RJC Courtroom 11D

COURT CLERK: Duncan, Kristin

RECORDER: Yarbrough, Matt

REPORTER:

PARTIES PRESENT:

Christopher S. Connell Attorney for Defendant

William Antonio Gonzales, II Attorney for Plaintiff

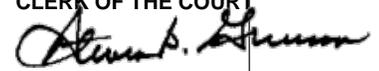
JOURNAL ENTRIES

All parties present via Blue Jeans.

The Court noted that it reviewed the Motion, Opposition, and Reply. Additionally, the Court stated that the briefs made reference to Counterclaims, and the only Counterclaims the Court could locate, were included in the Anti-SLAPP Motion to Dismiss; the Court requested that the parties address the existence of the Counterclaims in their arguments, given that NRCP 7 and NRCP 13 seemed to apply. Mr. Gonzales argued in support of the instant Motion, stating that Eva Korb's defamation claim stemmed solely from Dr. Stile calling her a professional; however, one phrase could not be taken out of a statement, and then read in a vacuum. Additionally, Mr. Gonzales argued that Dr. Stile's statement was not defamatory in nature, case law indicated that a private right of action did not exist under HIPAA, and Eva Korb provided releases allowing Dr. Stile to disclose her personal information without limitations or exclusions. Regarding the Counterclaims, Mr. Gonzales advised that the Counterclaims were included in the Anti-SLAPP Motion, and would be addressed after the Anti-SLAPP Motion was addressed. Mr. Connell argued in opposition, stating that it was not conceivable that a Court to not deliver justice if a doctor went outside the bounds of HIPAA, as HIPAA existed to protect patients, not to shield doctors. Additionally, Mr. Connell argued that Eva Korb provided consent to Dr. Stile to use her pictures as samples; however, after Ms. Korb posted a bad review on Yelp, Dr. Stile posted her pictures on Yelp. Upon Court's inquiry, Mr. Gonzales confirmed that Plaintiffs filed an appeal on the Court's Order granting Eva Korb's Anti-SLAPP Motion to Dismiss. COURT ORDERED Plaintiffs / CounterDefendants' Motion to Dismiss, or Alternatively, Motion for Summary Judgment, was hereby DENIED, FINDING the following: (1) there were no pending counterclaims or claims to speak of; (2) pursuant to NRCP Rule 7 and NRCP Rule 13, counterclaims needed to be filed with a pleading, and pleadings were defined in NRCP 7(a); (3) an Anti-SLAPP Motion to Dismiss was not a pleading, under NRCP 7(a); (4) the Rules of Civil Procedure for the filing of counterclaims as part of a Motion to Dismiss; (5) the Anti-SLAPP Motion to Dismiss was not a fugitive document; however, the portion of said Motion styled as the counterclaims, was a fugitive documents, as it was not accompanied by a pleading; (6) Plaintiffs having already appealed the Court's granting of Eva Korb's Anti-SLAPP Motion to Dismiss, the Court considered the Order granting the Anti-SLAPP Motion to Dismiss as a FINAL JUDGMENT, as there were no other pending claims or counterclaims; and (7)

there being no claims or counterclaims to consider, the Court did not reach the substantive arguments raised in the Motion or Opposition, nor did it need to.

Mr. Connell to prepare the written Order, and forward it to Mr. Gonzales for approval as to form and content.



1 **NEOJ**
2 Micah S. Echols, Esq.
3 Nevada Bar No. 8437
4 **CLAGGETT & SYKES LAW FIRM**
5 4101 Meadows Lane, Ste. 100
6 Las Vegas, Nevada 89107
7 (702) 655-2346 – Telephone
8 (702) 655-3763 – Facsimile
9 micah@claggettlaw.com
10 *Attorneys for Plaintiff*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

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

11 Plaintiffs,

12 v.

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

15 Defendant.

16
17 EVA KORB, an individual; DOE
18 INDIVIDUALS I-X; and ROE
19 ENTITIES I-X,

18 Counterclaimant,

19 v.

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

22 Counterdefendants.

Case No. A-19-807131-C

Dept. No. 15

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFFS/
COUNTERDEFENDANTS'
MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION
FOR SUMMARY JUDGMENT**

CLAGGETT & SYKES
LAW FIRM

1 PLEASE TAKE NOTICE that an ORDER DENYING
2 PLAINTIFFS/COUNTERDEFENDANTS' MOTION TO DISMISS, OR
3 ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT was entered in
4 the above-entitled matter on April 26, 2021, a copy of which is attached hereto
5 as **Exhibit 1**.

6 Dated this 26th day of April 2021.

7 CLAGGETT & SYKES LAW FIRM

8 /s/ Micah S. Echols

9 _____
10 Micah S. Echols, Esq.
11 Nevada Bar No. 8437
12 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS/ COUNTERDEFENDANTS' MOTION TO DISMISS, OR ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial Court on the 26th day of April 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

- Christopher Connell cconnell@connelllawlv.com
- Martin Little mal@h2law.com
- Alexander Villamar av@h2law.com
- Anya Ruiz ar@h2law.com
- Jill Berghammer jmb@h2law.com
- Susan Owens sao@h2law.com
- Mary Rodriguez mary@connelllaw.com
- Brandy Sanderson bsanderson@howardandhoward.com

/s/ Anna Gresl

Anna Gresl, an employee of
Claggett & Sykes Law Firm

EXHIBIT 1

EXHIBIT 1

CLAGGETT & SYKES
LAW FIRM

1 **ODM**
Micah S. Echols, Esq.
2 Nevada Bar No. 8437
4101 Meadows Lane, Ste. 100
3 Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
4 (702) 655-3763 – Facsimile
micah@claggettlaw.com
5 *Attorneys for Plaintiff*

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

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

10 Plaintiffs,

11 v.

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

14 Defendant.

Case No. A-19-807131-C

Dept. No. 15

**ORDER DENYING PLAINTIFFS
/COUNTERDEFENDANTS'
MOTION TO DISMISS, OR
ALTERNATIVELY MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: December 7, 2020

Time of Hearing: 9:00 a.m.

15 EVA KORB, an individual,

16 Counterclaimant,

17 v.

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

20 Counterdefendants.

21 On December 7, 2020, this Court held a hearing on
22 Plaintiffs/Counterdefendants' motion to dismiss, or alternatively motion for
23 summary judgment, having considered the motion, opposition, and reply, as

1 well as the argument of counsel at the time of the hearing, and hereby orders as
2 follows:

3 1. Plaintiffs/Counterdefendants' motion to dismiss, or alternatively
4 motion for summary judgment is hereby DENIED.

5 2. The Court has considered the factors under the Nevada Rules of
6 Civil Procedure and finds that: (1) there were no pending counterclaims or
7 claims to speak of; (2) pursuant to NRCP 7 and NRCP 13, counterclaims needed
8 to be filed with a pleading, and pleadings were defined in NRCP 7(a); (3) an
9 Anti-SLAPP motion to dismiss is not a pleading, under NRCP 7(a); (4) the Rules
10 of Civil Procedure for the filing of counterclaims as part of a motion to dismiss;
11 (5) the Anti-SLAPP motion to dismiss was not a fugitive document; however, the
12 portion of said Motion styled as the counterclaims, was a fugitive documents, as
13 it was not accompanied by a pleading; (6) Plaintiffs/Counterdefendants having
14 already appealed the Court's granting of Eva Korb's Anti-SLAPP motion to
15 dismiss, the Court considered the Order granting the Anti-SLAPP motion to
16 dismiss as a FINAL JUDGMENT, as there were no other pending claims or
17 counterclaims; and (7) there being no claims or counterclaims to consider, the
18 Court did not reach the substantive arguments raised in the motion or
19 opposition, nor did it need to.

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3. Accordingly, IT IS HEREBY ORDERED that
Plaintiffs/Counterdefendants' motion to dismiss, or alternatively motion for
summary judgment is DENIED.

IT IS SO ORDERED.

Dated this 26th day of April, 2021



9F9 DA3 93EC ABF4
Joe Hardy
District Court Judge

Submitted by:

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

Micah S. Echols, Esq.
Nevada Bar No. 8407
Attorneys for Plaintiffs

Approved as to form and content:

CONNELL LAW

/s/ Christopher S. Connell

Christopher S. Connell, Esq.
Nevada Bar No. 12720
6671 Las Vegas Blvd., Suite 210
Las Vegas, Nevada 89119
(702) 266-6355—Telephone
cconnell@connelllaw.com
Attorneys for Defendant, Eva Korb

Anna Gresl

From: Chris Connell <cconnell@connelllaw.com>
Sent: Friday, April 23, 2021 9:30 AM
To: Anna Gresl
Cc: Micah Echols
Subject: Re: A-19-807131-C - Stile, M.D. v. Korb

Good morning, please add my electronic signature.

Christopher S. Connell, Esq.
Attorney
Licensed in Nevada



CONNELL LAW
6671 Las Vegas Blvd. Suite 210
Las Vegas, Nevada 89119
Phone: (702) CONNELL ([266-6355](tel:266-6355))
Fax: [\(702\) 829-5930](tel:702-829-5930)
cconnell@connelllawlv.com
www.connelllawlv.com

On Apr 23, 2021, at 9:00 AM, Anna Gresl <Anna@claggettlaw.com> wrote:

Good morning,

Here is our draft of the order denying Plaintiffs/Counterdefendants' motion to dismiss, or alternatively motion for summary judgment. We essentially took the Court's minute order and made it into an order. Please provide us with your comments or your authorization to use your electronic signature on the draft of the order. Thank you.

Anna Gresl
Paralegal, Appellate Division

Claggett & Sykes Law Firm
4101 Meadows Lane, Ste. 100
Las Vegas, NV 89107
Tel. 702-655-2346 | Fax. 702-655-3763

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

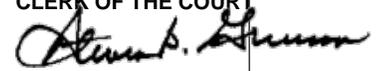
Frank Stile, M.D., Plaintiff(s)	CASE NO: A-19-807131-C
vs.	DEPT. NO. Department 15
Eva Korb, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/26/2021

- | | |
|---------------------|--------------------------------|
| Christopher Connell | cconnell@connelllawlv.com |
| Martin Little | mal@h2law.com |
| Alexander Villamar | av@h2law.com |
| Anya Ruiz | ar@h2law.com |
| Jill Berghammer | jmb@h2law.com |
| Susan Owens | sao@h2law.com |
| Mary Rodriguez | mary@connelllaw.com |
| Brandy Sanderson | bsanderson@howardandhoward.com |



1 ANOA
2 Micah S. Echols, Esq.
3 Nevada Bar No. 8437
4 CLAGGETT & SYKES LAW FIRM
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7 (702) 655-2346 – Telephone
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9 micah@claggettlaw.com
10 *Attorneys for Plaintiff*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

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

11 Plaintiffs/Counterdefendants,

12 v.

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

15 Defendant/Counterclaimant.

Case No. A-19-807131-C

Dept. No. 15

AMENDED NOTICE OF APPEAL

17 Plaintiffs/Counterdefendants, Frank Stile, M.D. and Frank Stile M.D.,
18 P.C., (collectively referred to as “Dr. Stile”), by and through his attorneys of record
19 Claggett & Sykes Law Firm, hereby files this amended notice of appeal to the
20 Supreme Court of Nevada to add the *ORDER ON STIPULATION FOR*
21 *SETTLEMENT OF ATTORNEY’S FEES AND COSTS* entered on May 12, 2021
22 and is attached hereto as **Exhibit 1**. Dr. Stile appeals from the order on
23 stipulation for settlement of attorney’s fees and costs because it is the final,
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appealable order. By appealing this final, appealable order, Dr. Stile is providing the Supreme Court with jurisdiction to review the interlocutory order which is the subject of his appeal.

Dated this 12th day of May 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

Micah S. Echols, Esq.
Nevada Bar No. 8437
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AMENDED NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial Court on the 12th day of May 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

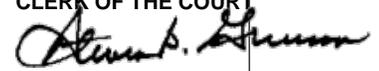
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- Jill Berghammer jmb@h2law.com
- Susan Owens sao@h2law.com
- Mary Rodriguez mary@connelllaw.com
- Brandy Sanderson bsanderson@howardandhoward.com

/s/ Anna Gresl

Anna Gresl, an employee of
Claggett & Sykes Law Firm

EXHIBIT 1

EXHIBIT 1



1 **NEOJ**
2 Micah S. Echols, Esq.
3 Nevada Bar No. 8437
4 **CLAGGETT & SYKES LAW FIRM**
5 4101 Meadows Lane, Ste. 100
6 Las Vegas, Nevada 89107
7 (702) 655-2346 – Telephone
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9 micah@claggettlaw.com
10 *Attorneys for Plaintiff*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

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

11 Plaintiffs,

12 v.

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

15 Defendant.

Case No. A-19-807131-C

Dept. No. 15

**NOTICE OF ENTRY OF ORDER
ON STIPULATION FOR
SETTLEMENT OF ATTORNEY'S
FEES AND COSTS**

16
17 PLEASE TAKE NOTICE that an ORDER ON STIPULATION FOR
18 SETTLEMENT OF ATTORNEY'S FEES AND COSTS was entered in the
19 above-entitled matter on May 12, 2021, a copy of which is attached hereto as

20 **Exhibit 1.**

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Dated this 12th day of May 2021.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

Micah S. Echols, Esq.
Nevada Bar No. 8437
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER ON STIPULATION FOR SETTLEMENT OF ATTORNEY'S FEES AND COSTS** was submitted electronically for filing and/or service with the Eighth Judicial Court on the 12th day of May 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

- Christopher Connell cconnell@connelllawlv.com
- Martin Little mal@h2law.com
- Alexander Villamar av@h2law.com
- Anya Ruiz ar@h2law.com
- Jill Berghammer jmb@h2law.com
- Susan Owens sao@h2law.com
- Mary Rodriguez mary@connelllaw.com
- Brandy Sanderson bsanderson@howardandhoward.com

/s/ Anna Gresl

Anna Gresl, an employee of
Claggett & Sykes Law Firm

EXHIBIT 1

EXHIBIT 1

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CLAGGETT & SYKES
LAW FIRM

ORDER
Micah S. Echols, Esq.
Nevada Bar No. 8437
4101 Meadows Lane, Ste. 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
(702) 655-3763 – Facsimile
micah@claggettlaw.com
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendant.

Case No. A-19-807131-C

Dept. No. 15

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

On November 24, 2020, the parties in the above-entitled action filed a
STIPULATION FOR SETTLEMENT OF ATTORNEY'S FEES AND COSTS,
attached hereto. Pursuant to the parties' submission, and good cause appearing,
the Court hereby orders as follows:

1. IT IS HEREBY ORDERED that the parties STIPULATION FOR
SETTLEMENT OF ATTORNEY'S FEES AND COSTS filed on November 24,
2020 is hereby GRANTED in its entirety.

From: [Chris Connell](#)
To: [Anna Gresl](#)
Cc: [Micah Echols](#)
Subject: Re: A-19-807131-C - Stile, M.D. v. Korb
Date: Tuesday, May 11, 2021 5:20:24 PM

Hi Anna,

If you can just change that collection costs to date to November 24, 2020, that should take care of it. Please add my signature if that change works. Thank you.

Christopher S. Connell, Esq.
Attorney
Licensed in Nevada



CONNELL LAW
6671 Las Vegas Blvd. Suite 210
Las Vegas, Nevada 89119
Phone: (702) CONNELL ([266-6355](tel:266-6355))
Fax: [\(702\) 829-5930](tel:702-829-5930)
cconnell@connelllawlv.com
www.connelllawlv.com

On May 11, 2021, at 4:38 PM, Anna Gresl <Anna@claggettlaw.com> wrote:

Mr. Connell:

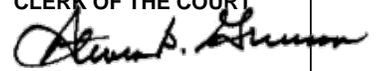
We notice that and Order was not entered on stipulation for settlement of attorney's fees and cost, so we have prepared an Order, which is attached for your review/approval. We took the stipulation and made it into an order.

Please provide us with your comments or your authorization to use your electronic signature on the attached draft Order on Stipulation for Settlement of Attorney's Fees and Costs.

Sincerely,

Anna Gresl
Paralegal, Appellate Division

[<image001.png>](#)



1 CONNELL LAW
2 Christopher S. Connell, Esq.
3 Nevada Bar No. 12720
4 6671 Las Vegas Blvd., Suite 210
5 Las Vegas, NV 89119
6 (702) 266-6355; Fax: (702) 829-5930
7 cconnell@connelllawlv.com
8 *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
10 professional corporation,

11 Plaintiffs,

12 vs.

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

15 Defendants,

16 Defendants.

Case No.: A-19-807131-C

Dept. No.: XV

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

17 Defendant, EVA KORB, by and through her attorney of record Christopher S. Connell,
18 Esq. of CONNELL LAW and Plaintiffs, FRANK STILE, M.D. and FRANK STILE M.D., P.C.,
19 by and through their attorney of record, William A. Gonzales, Esq. of HOWARD & HOWARD
20 ATTORNEYS PLLC, hereby enter into this stipulation and agreement to resolve the attorney fees,
21 costs and expenses, to which Defendant believes she is entitled to be reimbursed pursuant to NRS
22 41.670 for litigating this matter to and including this date.

23 WHEREAS the parties wish to settle issues relating to attorney's fees, costs and expenses
24 without incurring further litigation expenses and the parties desire to settle the substantive issues
25 pending at this date, the parties and all counsel hereby stipulate and agree that all attorney's fees,
26 costs and expenses which have been claimed or accrued, or could have been claimed or accrued to
27 and including this date by counsel for Defendant in this action and which may or may not have
28 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
21 /s/ Christopher S. Connell

/s/ William A. Gonzales

22 Christopher S. Connell, Esq.
23 Nevada Bar No. 12720
24 6671 Las Vegas Blvd., Suite 210
 Las Vegas, Nevada 89119
 Attorney for Defendant

 William A. Gonzales, Esq.
 Nevada Bar No. 15230
 3800 Howard Hughes Parkway, Suite 1000
 Las Vegas, Nevada 89169
 Attorney for Plaintiffs

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 5/12/2021

- | | |
|---------------------|--------------------------------|
| Christopher Connell | cconnell@connelllawlv.com |
| Martin Little | mal@h2law.com |
| Alexander Villamar | av@h2law.com |
| Anya Ruiz | ar@h2law.com |
| Jill Berghammer | jmb@h2law.com |
| Susan Owens | sao@h2law.com |
| Mary Rodriguez | mary@connelllaw.com |
| Brandy Sanderson | bsanderson@howardandhoward.com |

09/02/2020 **Result: Motion Granted**

09/02/2020 **Order**
Order On Motion to Set Aside Default

09/02/2020 **Notice of Entry**
Notice of Entry-Order on Motion to Set Aside Default

09/02/2020 **Motion to Dismiss**
Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims

09/02/2020 **Clerk's Notice of Hearing**
Notice of Hearing

09/09/2020 **Stipulation and Order**
Stipulation and Order to Continue Hearing on Defendants Anti-Slapp Special Motion to Dismiss Under NRS41.660 and Counterclaims

09/09/2020 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Continue Hearing on Defendants Anti-Slapp Special Motion to Dismiss Under NRS41.660 and Counterclaims

09/23/2020 **Opposition**
Plaintiffs' Opposition to Defendants' Anti-Slapp Special Motion to Dismiss

09/28/2020 **Reply in Support**
Reply in Support of Anti-Slapp Special Motion to Dismiss Under NRS41.660

10/12/2020 **Motion to Dismiss** (9:00 AM) (Judicial Officer Hardy, Joe)
Defendant's Anti-Slapp Special Motion to Dismiss Under NRS 41.660 and Counterclaims
[Parties Present](#)
[Minutes](#)
10/05/2020 Reset by Court to 10/12/2020

10/19/2020 **Result: Motion Granted**

10/19/2020 **Recorders Transcript of Hearing**
Recorders Transcript of Hearing Re:

10/26/2020 **Motion**
Defendant Eva Korb's Motion for Costs, Fees, and Sanctions under NRS 41.670

10/27/2020 **Clerk's Notice of Hearing**
Notice of Hearing

11/03/2020 **Order Granting Motion**
Order Granting Defendant's Special Motion to Dismiss Under NRS 41.660

11/04/2020 **Notice of Entry**
Notice of Entry of Order Granting Eva Korb's Special Motion to Dismiss Under NRS 41.660

11/06/2020 **Demand for Jury Trial**
Demand for Jury Trial

11/06/2020 **Motion to Dismiss**
Plaintiffs/Counterdefendants' Motion to Dismiss, Or Alternatively, Motion for Summary Judgment

11/06/2020 **Clerk's Notice of Hearing**
Clerks Notice of Hearing

11/09/2020 **Opposition to Motion**
Opposition to Eva Korb's Motion for Costs, Fees and Sanctions Under NRS 41.670

11/20/2020 **Stipulation and Order**
Stipulation and Order to Vacate Hearing

11/20/2020 **Opposition to Motion**
Opposition to Plaintiff/Counter-Defendants' Motion to Dismiss, or Alternatively, Motion for Summary Judgment

11/20/2020 **Notice of Entry**
Notice of Entry-Stipulation and Order to Vacate Hearing

11/23/2020 **CANCELED Hearing** (9:00 AM) (Judicial Officer Hardy, Joe)
Vacated - per Stipulation and Order
Hearing: Attorney's Fees and Costs

11/24/2020 **Stipulation**
Stipulation for Settlement of Attorney's Fees and Costs

11/30/2020 **CANCELED Motion** (9:00 AM) (Judicial Officer Hardy, Joe)
Vacated - On in Error
Defendant Eva Korb's Motion for Costs, Fees, and Sanctions under NRS 41.670

12/02/2020 **Reply**
Plaintiffs/Counterdefendants' Reply in Support of Motion to Dismiss, or Alternatively, Motion for Summary Judgment

12/02/2020 **Notice of Appeal**
Notice of Appeal

12/02/2020 **Case Appeal Statement**
Case Appeal Statement

12/07/2020 **Motion** (9:00 AM) (Judicial Officer Hardy, Joe)
Plaintiffs/Counterdefendants' Motion to Dismiss, Or Alternatively, Motion for Summary Judgment
[Parties Present](#)
[Minutes](#)

12/15/2020 **Result: Motion Denied**

12/15/2020 **Notice of Posting of Cost Bond**
Notice of Posting Cost Bond Upon Appeal

04/26/2021 **Order Denying Motion**
Order Denying Plaintiffs' Motion to Dismiss, or Alternatively Motion for Summary Judgment

04/26/2021 **Notice of Entry of Order**
Notice of Entry of Order Denying Plaintiffs/Counterdefendants Motion to Dismiss, Or Alternatively, Motion for Summary Judgment

05/12/2021 **Order**
Order on Stipulation for Settlement of Attorney's Fees and Costs

05/12/2021 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

05/12/2021 **Notice of Entry of Order**
Notice of Entry of Order on Stipulation for Settlement of Attorney's Fees and Costs

05/12/2021 **Amended Notice of Appeal**
Amended Notice of Appeal

FINANCIAL INFORMATION

	Defendant Korb, Eva			
	Total Financial Assessment			223.00
	Total Payments and Credits			223.00
	Balance Due as of 06/28/2021			0.00
07/30/2020	Transaction Assessment			223.00
07/30/2020	Efile Payment	Receipt # 2020-41809-CCCLK	Korb, Eva	(223.00)
	Plaintiff Stile, Frank, M.D.			
	Total Financial Assessment			324.00
	Total Payments and Credits			324.00
	Balance Due as of 06/28/2021			0.00
12/18/2019	Transaction Assessment			300.00
12/18/2019	Efile Payment	Receipt # 2019-75580-CCCLK	Stile, Frank	(300.00)
12/02/2020	Transaction Assessment			24.00
12/02/2020	Efile Payment	Receipt # 2020-67865-CCCLK	Stile, Frank	(24.00)