30288
IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 85804

STEVE WYNN,

Appellant,

v.

THE ASSOCIATED PRESS; REGINA GARCIA CANO

Respondent.

STEVE WYNN'S OPENING BRIEF

On appeal from the Eighth Judicial District Court, Clark County
The Honorable Ronald J. Israel, Department XXVIII
District Court Case No. A-18-772715-C

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NRAP 26.1 DISCLOSURE

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

Appellant Steve Wynn is an individual. Pisanelli Bice PLLC is the only law firm whose attorneys are expected to appear for Appellant on appeal. Appellant was represented by the following law firms prior to this appeal: Peterson Baker, PLLC and L. Lin Wood, P.C.

DATED this 1st day of May, 2023.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRS 41.670(4) to review the district court's grant or denial of a special motion to dismiss pursuant to NRS 41.660. Moreover, this Court also has jurisdiction pursuant to NRAP 3A(b)(1) as an order granting an anti-SLAPP motion to dismiss is a final judgment.

ROUTING STATEMENT

The Supreme Court should retain jurisdiction under NRAP 17(a)(11)-(12) because the district court's ruling – that statements regarding a public figure are per se statements related to a public concern – is an issue of statewide public importance.

ISSUES ON APPEAL

Respondents Regina Garcia Cano and The Associated Press published a fantastical and false claim of rape against Steve Wynn that supposedly occurred in the 1970s. Despite doing no investigation, seeking no comment and acknowledging the allegations to be "crazy," they nonetheless hurriedly published, in violation of their own standards, because their reporter was desperate for a headline-grabbing story, and she had been repeatedly scooped by competitors. Thus:

1. Did Respondents fail to satisfy the first prong of Nevada's anti-SLAPP analysis when their defamatory article related to issues of mere curiosity, not public interests, and they published the defamatory article without any investigation?
2. Does prima facie evidence of actual malice exists here, where Respondents deviated from their standard newspaper practices and procedures in their rush to publish a defamatory article without investigating or fact-checking the article, even though the author recognized that the source presented obvious reasons to doubt its veracity?

STATEMENT OF THE CASE

Appellant Steve Wynn ("Wynn") appeals the district court order granting Respondents Regina Garcia Cano ("Garcia Cano") and the Associated Press' ("AP") (collectively, "AP Respondents") anti-SLAPP special motion to dismiss. Garcia Cano, a reporter for the AP, arrived in Las Vegas looking for a lucky break to make her name. After several fruitless months covering Las Vegas' casino industry, Garcia Cano's "scoop" never arrived. Instead, she spent her time watching reporters with competitors like the Wall Street Journal ("WSJ") or the Las Vegas Review Journal ("Review Journal") break stories – stories that Garcia Cano could never catch.

Although Garcia Cano published a handful of stories that rehashed other publications' stories, she never made much headway on a substantive story of her own. Eventually, the Review Journal published a story explaining that two women filed citizens' complaints with the Las Vegas Metropolitan Police Department ("LVMPD") vaguely alleging that Wynn sexually assaulted them in the 1970s, approximately 40 years ago. Still searching for a story, Garcia Cano filed a records request for the citizens' complaints, as did several of AP's competitors.

Soon after filing her records request, Garcia Cano received a call from LVMPD informing her that the copies were available. Aware of her competitors' interest, Garcia Cano abandoned her work and raced to LVMPD's office. After reviewing the citizens' complaints, Garcia Cano rushed back to her office to churn

out an article. Despite telling a colleague that one of the complaints was "crazy," Garcia Cano drafted an article accusing Wynn of rape – with no investigation – that the AP published (the "Article"). Less than an hour elapsed from the time Garcia Cano obtained the citizens' complaints to the AP publishing the first iteration of the Article. The Article included no comment from Wynn as AP Respondents did not reach out to him until hours after they published the false Article. AP Respondents then refused to retract the Article despite it being false.

AP Respondents originally replied with an anti-SLAPP special motion to dismiss contending, among other things, that the fair report privilege applied to their defamatory article. While the district court agreed and dismissed Wynn's claim, this Court disagreed. On appeal, this Court concluded that the fair report privilege did not apply because the complaints upon which AP Respondents based their article were not official police reports but mere citizens' complaints transcribed by police officers. Accordingly, this Court remanded this matter back to the district court to determine whether AP Respondents met their burden under the first prong of Nevada's anti-SLAPP analysis and, if so, whether Wynn met his burden under the second prong.

But on remand, the district court failed to apply controlling case law. Instead of determining whether the Article related to a public interest under the *Shapiro v. Welt*, 133 Nev. 35, 389 P.3d 262 (2017) factors, the district court erroneously

assumed the Article related to a public interest because Wynn was a public figure. As to the merits, the district court summarily concluded that AP Respondents could not have obtained any further information through an investigation and, thus, AP Respondents met their burden under the first prong. Without elaboration, the district court then concluded that Wynn failed to show any evidence of actual malice and granted AP Respondents' anti-SLAPP motion to dismiss.

SUMMARY OF THE ARGUMENTS

The district court's approach contradicted this Court's prior mandate and deviated from established law. At the first prong, the district court did not apply the *Shapiro* factors to determine whether the Article related to an issue of public interest. Instead, the district court concluded the Article necessarily related to a public interest because Wynn is a public figure – an analytical approach this Court expressly rejected in *Smith v. Zilverberg*, 137 Nev. 65, 481 P.3d 1222 (2021).

Applying the proper framework, the Article's subject matter is a mere curiosity – not an issue of public concern – as it relates to allegations of a private matter from more than 40 years ago. Further, the district court's perfunctory analysis of AP Respondents' "good faith" ignores the record: AP Respondents entertained doubts about the veracity of the allegations, yet nonetheless published the Article without an ounce of investigation. Accordingly, AP Respondents failed to meet their burden at the first prong of the anti-SLAPP analysis.

Beyond those failures, the district court ignored core principles of defamation law when it concluded Wynn failed to present prima facie evidence of actual malice. When determining whether a newspaper published an article with actual malice, courts have recognized that actual malice exists if the defendants omitted details to distort the truth of the article, *Dixon v. Ogden Newspapers, Inc.*, 416 S.E.2d 237, 244 (W. Va. 1992), relied on anonymous sources without attempting to verify the information, *Dodds v. Am. Broad. Co.*, 145 F.3d 1053, 1063 (9th Cir. 1998), or sacrificed accuracy in reporting for sensationalism, *Perez v. Scripps-Howard Broad. Co.*, 520 N.E.2d 198, 204 (Ohio 1988).

Here again, Wynn presented sufficient evidence that AP Respondents omitted key details from the Article that exposed the falsity of the underlying citizens' complaint, relied on anonymous sources without any attempt to verify the information presented, and sacrificed accuracy for sensationalism. Thus, Wynn met his burden under the second prong of the anti-SLAPP analysis by showing the minimal merit of his defamation claim.

I. STATEMENT OF FACTS

A. Background.

1. Garcia Cano failed to break stories in Las Vegas.

Garcia Cano, a long-time reporter with the AP, joined the AP's Las Vegas Bureau in January 2017. (3 JA 427.) Despite having no experience with or expertise

in gaming, AP assigned Garcia Cano to the gaming and tourism beat in Las Vegas. (*Id.* at 427-28.) Garcia Cano carried out her duties by listening to earnings calls, writing about changes to casinos, and covering the World Series of Poker. (*Id.* at 430.)

In January 2018, several of AP's competitors published articles accusing Wynn of sexual misconduct. (4 JA 628-29.) Having missed out on several stories – and now hunting for a scoop – [redacted]. (*Id.* at 628.) As AP reasoned, [redacted] (*Id.*)

But AP's instincts proved wrong, and Garcia Cano made no progress on her story. As her editor, Tom Tait, explained, [redacted] (*Id.* at 632.) Tait suggested [redacted] (*Id.*) Anna Johnson, the AP's then-News Director for the West Region, [redacted] (*Id.*)

As her story on broader issues within the gaming industry went bust, Garcia Cano, with the AP's approval, focused on Wynn. Another local competitor, the Review Journal, published a story on February 12, 2018, stating that the LVMPD had taken two statements from two women who were making accusations against Wynn. (2 JA 262-63.) According to the Review Journal, these accusations stemmed from the 1970s, some 40 years prior to the citizens' complaints. (*See id.* at 316.) Despite no actual information beyond the Review Journal's own story, Garcia Cano published an article about the antiquated allegations and submitted a records request for the documents. (*Id.* at 333-34.) Garcia Cano knew that both the Review Journal and the WSJ had also filed records requests for copies.[1] (3 JA 462-63.)

2. AP Respondents rushed to publish the defamatory Article based on the citizens' complaints' false allegations without investigating any aspect of the complaints.

Shortly before noon on February 27, 2018, LVMPD informed Garcia Cano that copies of the citizens' complaints were available. (2 JA 265.) Garcia Cano

[1] AP Respondents continually refer to the citizens' complaints as "police reports." However, as this Court explained, the complaints are not "police reports" but, rather, are "documentation of a citizens' complaint to the police alleging a crime occurred." *Wynn v. Associated Press*, 136 Nev. 611, 611-12, 475 P.3d 44, 46 (2020). As this Court stressed, the documents are just "citizen's complaint to the police," because the only action taken by law enforcement was the "mere transcription of a complainant's allegations." *Id.* at 612, 475 P.3d at 46. Thus, Wynn refers to the documents as the citizens' complaints that they are, not the police reports AP Respondents style them, as they seek the additional gravitas and protection that such a designation provides.

"dropped everything" and raced over to obtain copies. (3 JA 437.) Unable to wait, she sat in her car and read the citizens' complaints in LVMPD's parking lot. (2 JA 240.) One complaint contained a particularly outlandish and unbelievable story: After alleging that Wynn sexually assaulted the complainant in 1973 or 1974,[2] it continued,

> She ended up pregnant. It was a hot steamy afternoon and she needed to go to the restroom. She saw a gas station and went in to the restroom. She was in pain standing by the wall and gave birth. The baby was laying on her feet inside the water bag. She slid down and said a doll is inside the water bag, the blood falling down, and she wanted to open, but the water bag was thick. She used her teeth to make a small opening then with her finger, opened the water bag and saw that the doll was purple. She started to blow on her and in a short time her cheeks were turning pink and she opened her eyes. She looked so much like her.

(*Id*. at 337-38.)[3] According to the citizen complaint, the child still lives in Las Vegas, and knows Wynn as her father. (*Id*. at 338.)[4]

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[2] While the initial copies of the citizens' complaints redacted the name of the accuser, later versions revealed that Halina Kuta ("Kuta") filed the citizens' complaint alleging she gave birth to Wynn's child in a gas station bathroom. (2 JA 391-92.)

[3] The district court concluded that these allegations were false and defamatory and issued judgment against the complainant, Halina Kuta. (1 JA 211-13.)

[4] Further confirming that Respondents did not believe this ridiculous story, they did no searching for the supposed child that Wynn would have fathered by way of rape. (3 JA 477-78) Even the AP's witnesses admitted that if anyone actually thought that Wynn had fathered a child through rape, that is a news story that they would have pursued. (*Id.* at 476-77). No one actually pursued it, which is just further confirmation that Respondents did not believe it, but published out of a desire for headlines.

But, at the office, Garcia Cano reached out to her supervisor, Brady McComb, asking if he was "available for a phone call." (2 JA 342.) She explained that she obtained the citizens' complaints and that "[o]ne of them is *crazy*." (*Id.* (emphasis added).) While the allegations dated back over forty years, Garcia Cano treated them as if they had happened yesterday. She foisted responsibility for the "Utah digest" on another coworker, explaining that "I *need* to work on [the Wynn story]." (*Id.* (emphasis added).) In her haste to publish *something*, Garcia Cano did not reach out to Wynn or his representatives for comment. (2 JA 267; 3 JA 447.) Thus, within an hour of obtaining the citizens' complaints, AP Respondents published an article accusing Wynn of "Rape" (the "Article") with no fact-checking or reaching out to Wynn for a comment (*see* 2 JA 265-68; 3 JA 447.) Despite later claiming that by "crazy," what she really meant is that the allegations of the birth were "explosive," Garcia Cano tellingly omitted those details from the Article. (2 JA 344; 3 JA 537.)

This rapid publication without investigation and request for comment ran counter to AP's own standards. (3 JA 469.) Despite choosing to publish the Article without seeking Wynn's comment, the initial story, which was published and picked up by the AP's subscribers, did not bother to include Wynn's previous denials of misconduct, although later iterations of the Article did. (*Compare* 2 JA 344, with *id*. at 346.) Garcia Cano admits that she did not even attempt to reach out to any representative of Wynn until at least an hour after publication (2 JA 267-68), despite

that the AP's own publishing standards stress the importance of accurate and thorough reporting in advance of publishing allegations of sexual misconduct: "As with all accusations, these allegations should be well-documented and corroborated in some way, including an effort to get some comment from the accused individuals or their representatives." (3 JA 469.)

AP Respondents attempted to rationalize their misconduct by arguing that the 40-year-old citizens' complaints were somehow "time sensitive," and that the AP regularly publishes breaking news without seeking comment if the event is newsworthy. In fact, the AP attempted to analogize 40-year-old allegations of wrongdoing that resulted in no official action to reports on official actions taken by police, explaining that "[s]ay someone has been arrested for a mugging or has been indicted for a mugging," the AP would publish a story on the official action without first obtaining a comment from the accused. (3 JA 479.) But this is not a breaking news story related to any official action; as this Court recognized, AP Respondents knew that the reports they relied on were simply naked citizens' complaints that did not result in any official action by the police. *Wynn v. Associated Press*, 136 Nev. 611, 620, 475 P.3d 44, 52 (2020). There is a difference between official actions and the mere transcription of a citizen's 40-year-old complaint, which AP Respondents fail to recognize despite this Court's holding. *See id.*

[redacted] (4 JA 639-40.) [redacted] (*Id.*) [redacted] (*Id.*) [redacted] (*Id.*) [redacted] (*Id.* at 661.)

B. Procedural History.

1. Wynn files his defamation suit, and this Court concludes the Article is not privileged.

Despite no legal obligation requiring him to do so, Wynn demanded the AP retract the Article on March 26, 2018. (1 JA 11.) On April 11, 2018, the AP declined. (*Id.*) As such, Wynn filed his defamation suit against AP Respondents and Kuta. (*See id.* at 1.)

AP Respondents moved to dismiss, arguing that the fair report privilege applied because the Article accurately reported on the citizens' complaints' content.[5] (*Id.* at 58-61.) The district court agreed, dismissing Wynn's complaint. (Id. at 201-02.) But this Court reversed, holding that the fair report privilege did not apply because the Article "republished allegations of criminal conduct contained in a citizen's complaint on which law enforcement did not take any official action." *Wynn*, 136 Nev. at 620, 475 P.3d at 52. This Court remanded for two determinations: the district court "shall determine" first, whether AP Respondents satisfied their burden under the first prong of the anti-SLAPP framework, and, second, whether Wynn met his burden under the second prong of the anti-SLAPP framework. *Id.*

2. The district court issued a perfunctory order granting AP Respondents' anti-SLAPP motion to dismiss without applying the proper legal standard.

On remand, after limited discovery, the district court granted AP Respondents' renewed anti-SLAPP motion to dismiss. (3 JA 553.) Despite this Court's mandate, the district court did not apply the requisite factors to determine whether the Article related to an issue of public concern. (*See id.* 552.) Rather, it concluded that the Article necessarily related to an issue of public concern because of Wynn's status as a public figure. (*Id.*) Moreover, even though AP Respondents conducted no

[5] After AP Respondents filed their anti-SLAPP motion to dismiss, the parties stipulated to bifurcate the briefing to first address whether the fair report privilege applied, and, if not, to then address the anti-SLAPP analysis. (1 JA 103-05.)

investigation or fact checking before publication, the district court found that "no additional information could have been obtained through further investigation" because the citizens' complaint redacted the complainant's name. (*Id.*) Thus, the district court concluded AP Respondents satisfied their burden under the first prong of the anti-SLAPP framework. (*Id.*) Finally, the court concluded, without analysis or citation to any applicable law, that Wynn "has not established a likelihood of prevailing on the merits." (*Id.* at 552-53.)

II. LEGAL ARGUMENT

A. Standard of Review.

This Court reviews a decision to grant an anti-SLAPP special motion to dismiss de novo. *Smith v. Zilverberg*, 137 Nev. 65, 67, 481 P.3d 1222, 1226 (2021). A court must grant an anti-SLAPP special motion to dismiss where

> (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a "good faith communication in furtherance of . . . the right to free speech in direct connection with an issue of public concern" and (2) the plaintiff fails to show, with prima facie evidence, a probability of prevailing on the claim.

Id. at 1227 (quoting NRS 41.660(3)(a)-(b). Wynn addresses each prong in turn.

B. The Article is not a Good Faith Communication in Furtherance of the Right to Free Speech.

"To satisfy the first prong, the defendant must show that (1) 'the comments at issue fall into one of the four categories of protected communications enumerated in NRS 41.637' and (2) 'the communication is truthful or is made without knowledge

of its falsehood.'" *Smith*, 137 Nev. at 67, 481 P.3d at 1227 (quoting *Stark v. Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020)).

1. AP Respondents failed to show by a preponderance of the evidence that the Article was made in direct connection with an issue of public interest because the Article's subject – Wynn's personal life – is not a public interest.

A "good faith communication" includes, among other things, "[c]ommunication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum." NRS 41.637(4). When a party relies on NRS 41.637(4) to satisfy the first-prong of the anti-SLAPP analysis, as AP Respondents do here, this Court applies the *Shapiro* factors to determine whether the statements relate to a genuine public interest. *Smith*, 137 Nev. at 68, 481 P.3d at 1227.

Under *Shapiro*, this Court considers

> (1) 'public interest' does not equate with mere curiosity;
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

133 Nev. at 39, 389 P.3d at 268 (quoting *Piping Rock Partners, Inc. v. David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 967 (N.D. Cal. 2013)). Because "statements about a public figure may still concern matters that are private under the *Shapiro* factors," courts "must apply the *Shapiro* factors to determine whether statements related to a public interest *even if the statements concern a public figure*."[6] *Smith*, 137 Nev. at 68, 481 P.3d at 1227 (emphasis added) ("[W]e reject the notion that statements regarding public figures necessarily relate to a public interest."); *see also Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 48 (1971) (plurality opinion) ("Conversely, some aspects of the lives of even the most public men fall outside the area of matters of public or general concern."), *abrogated on other grounds by Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

2. The interest in the allegations against Wynn constitutes a mere curiosity because the allegations involve personal affairs that did not implicate his business.

Not all "news" is of public interest: newspaper stories often include matters that are mere curiosities to the public. *See Firestone v. Time, Inc.*, 271 So. 2d 745, 748 (Fla. 1972) ("[I]t is implicit in these decisions . . . that not [a]ll news items or feature articles are constitutionally protected."). As courts have long recognized,

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[6] The district court, mislead by AP Respondents, erroneously relied solely on Wynn's status as a public figure to conclude that the Article relates to a matter of public interest. (3 JA 552.) It did not apply the *Shapiro* factors or otherwise consider them. (*See generally id.*)

there is a "clear distinction between mere curiosity, or *the undeniably prevalent morbid or prurient intrigue with scandal* or with the potentially humorous misfortune of others, on the one hand and [r]eal public or general concern on the other." *Id.* (emphasis added). In other words, "[p]ublic or general interest does not mean mere curiosity, *and newsworthiness is not necessarily the test*." *Hawkins v. Multimedia, Inc.*, 344 S.E.2d 145, 146 (S.C. 1986) (emphasis added).

This Court has long applied that premise, often concluding that private matters become public interests only when they involve an individual's professional actions. For example, in *Abrams v. Sanson*, 136 Nev. 83, 87, 45 P.3d 1062, 1066 (2020), this Court concluded that the public "has an interest *in an attorney's courtroom conduct* that is not a mere curiosity" because "it serves as a warning to both potential and current clients looking to hire or retain the lawyer." (emphasis added). Similarly, in *Smith*, this Court concluded that the public's interest in allegations that a public figure famous for his thrifting business bullied competitors rose beyond a mere curiosity because his behavior "*occurred in connection with his thrifting business* and related activities." 137 Nev. at 68-69, 481 P.3d at 1227-28 (emphasis added).

Other courts similarly recognize that private actions move beyond a mere curiosity only when they either arise out of or heavily relate to the individual's professional actions. *See, e.g., Choyce v. SF Bay Area Indep. Media Ctr.*, No. 13-CV-01842-JST, 2013 WL 6234628, at *8 (N.D. Cal. Dec. 2, 2013) (holding

that statements that an attorney embezzled funds from clients would concern potential clients for reasons "beyond mere curiosity"); *Piping Rock*, 946 F. Supp. 2d at 966, 969 (finding statements alleging "dishonest, fraudulent, and potentially criminal business practices" addressed matters of public interest because they served to warn consumers to not do business with the plaintiffs); *Sipple v. Found. for Nat'l Progress*, 83 Cal. Rptr. 2d 677, 685 (Ct. App. 1999) ("[I]ssues of spousal abuse generated in the custody proceedings are of public interest when the person accused of the abuse is a nationally known figure identified with morality campaigns for national leaders and candidates for the office of President of the United States."). In fact, courts often hold that private, domestic actions are not matters of public interest regardless of the status of the plaintiffs. *See, e.g.*, *Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) ("Dissolution of a marriage through judicial proceedings is not the sort of 'public controversy' referred to in *Gertz*, even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public.").

Here, the Article alleges that Wynn sexually assaulted a woman in Chicago in the 1970s, which resulted in the woman's pregnancy. (3 JA 344.) While AP Respondents considered the Article to be "newsworthy," the Article focuses solely on the "prurient intrigue with scandal" that characterizes mere curiosities. To wit, the Article does not involve Wynn's professional life. Unlike *Abrams* and *Smith*,

Wynn's alleged misbehavior – which did not occur – did not involve his work, colleagues, or any employees. Unlike *Choyce* and *Pipping Rock*, Wynn's behavior did not impact any employees or clients. Rather, the story involves a purely private issue, which, while the public may be curious in, does not rise to the level of a public interest. *See Time, Inc.*, 424 U.S. at 454. "Public figure" does not equal public concern under the *Shapiro* factors. Accordingly, AP Respondents have not established that the Article is entitled to anti-SLAPP protections.[7]

C. The Article was not Published in Good Faith Because AP Respondents Expressed Doubt About the Truthfulness of the Underlying Allegations.

Besides that, Respondents did not publish the outlandish story in good faith. A statement is a good faith communication if it is made "without knowledge of its falsehood." NRS 41.637. A statement is made without knowledge of its falsehood if "[t]he declarant [is] unaware that the communication is false at the time it was

[7] Moreover, AP Respondents failed to assert (and the district court failed to find) a public interest that the Article related to. (3 JA 552-53; 2 JA 385-87.) Because they asserted no public interest, they cannot establish the requisite nexus between the Article and the public's interest. *See Coker v. Sassone*, 135 Nev. 8, 14, 432 P.3d 746, 751 (2019) ("Applying these factors, we find that the sufficient degree of closeness between the challenged statements and the asserted public interest is lacking, as Coker fails to demonstrate how false advertising and the sale of counterfeit artwork, the challenged activity, is sufficiently related to the dissemination of creative works."). As such, the Article is not related to a public interest under the *Shapiro* factors, and thus, is not protected by Nevada's anti-SLAPP statutes.

made." *Shapiro*, 133 Nev. at 38, 389 P.3d at 267. A party's affidavit attesting that they believed the statements to be truthful when made is sufficient to show good faith "absent contradictory evidence in the record." *Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342, 347 (2020); *see also Smith*, 137 Nev. at 69, 481 P.3d at 1228 (weighing defendant's evidence against plaintiff's evidence to determine whether defendant made the statement in good faith).

Here, the record establishes that AP Respondents did not publish the Article in good faith. While AP Respondents claim they were not aware of any reason to doubt the truth of the accusations, the record is replete with both reasons for such doubt and evidence that AP Respondents harbored such doubt. For example, the citizens' complaint contains a fantastic story of the delivery of a child in a gas station bathroom with the amniotic sac still intact. (2 JA 337-38.) Garcia Cano recognized the absurdity of the allegations, referring to them as "crazy" to her coworkers. (*Id.* at 342.)

While Garcia Cano's declaration dissembles, claiming that by "crazy" what she really meant was that the allegations were "particularly explosive and impactful" (*id.* at 266-67 & 266 n.2), her own actions dispel any such rewrite: Garcia Cano omitted these supposedly "explosive and impactful" allegations from the Article itself. (*See id.* at 344). Further, Garcia Cano never shared the citizens' complaints with her colleagues. She intentionally did not send the citizens' complaints to her

colleagues, such as Ken Ritter, who had years of experience as the police and courts reporter and could have provided much needed context. (3 JA 434-36.) Garcia Cano also did not provide the citizens' complaints to her supervisors or her editors. (*Id*. at 481.) Thus, her editors revised her article without any knowledge of the absurdity of the underlying incident, and without checking the accuracy of the citizen's complaint. (*Id.*) And, as previously noted, if the AP actually believed these allegations, it concedes it would have investigated and sought out the alleged child. (*Id*. at 476-78.) Yet, the AP Respondents acknowledge they did not do so, further confirming that they did not believe this nonsense. Accordingly, AP Respondents failed in their burden to establish that they published in good faith.

D. Wynn Established His Minimal Burden of Prima Facie Evidence.

Even assuming AP Respondents met their burden under the first prong of the anti-SLAPP analysis, Wynn produced sufficient evidence to satisfy his low burden at the second prong. For that, all the plaintiff must show is "that his claims had at least *minimal merit*."[8] *Williams v. Lazer*, 137 Nev., Adv. Op. 44, 495 P.3d 93, 98

[8] The AP Respondents continually assert that Wynn must show actual malice by clear-and-convincing evidence. (2 JA 389; 3 JA 499-500.) But the clear-and-convincing-evidence standard is inapplicable here. *Taylor v. Colon*, 136 Nev., Adv. Op. 50, 482 P.3d 1212, 1215 (2020) (explaining that the clear-and-convincing-evidence standard does not apply at the second prong of the anti-SLAPP analysis). In fact, applying the clear-and-convincing-evidence standard to the second prong would violate Wynn's right to a jury trial. *See Leiendecker v. Asian Woman United of Minn.*, 895 N.W.2d 623, 635-36 (Minn. 2017). Thus, as both this Court's and California precedent make clear, Wynn need only make a prima facie showing of

(2021) (emphasis added). Because courts must "independently determine each of the two prongs of the anti-SLAPP analysis," *Teamsters Local 2010 v. Regents of Univ. of Cali.*, 253 Cal. Rptr. 3d 394, 398 (Ct. App. 2019), courts cannot use findings from the first prong to defeat a plaintiff's claims at the second prong, *Taylor*, 136 Nev., Adv. Op. 50, 482 P.3d at 1215-16.

Instead, courts must give the plaintiff's evidence all reasonable inferences and ask whether there is minimal merit to the plaintiff's claims. *Bikkina v. Mahadevan*, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015); *Rosen v. Tarkanian*, 135 Nev. 436, 446, 453 P.3d 1220, 1228 (2019) (Gibbons, C.J., dissenting) ("California courts, therefore, treat this [second] prong as they do a motion for summary judgment: the courts accept as true all evidence that is favorable to the nonmoving party and evaluate the moving party's evidence only to determine if it defeats the defamation claim 'as a matter of law.'" (quoting *Hecimovich v. Encinal Sch. Parent Tchr. Org.*, 137 Cal. Rptr. 3d 455, 469-70 (Ct. App. 2012)).)

Minimal merit exists when the plaintiff makes "a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the

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the minimal merits of his claim. *See Abrams*, 136 Nev. at 91, 458 P.3d at 1069 (2020); *see also Monster Energy Co. v. Schechter*, 444 P.3d 97, 105 (Cal. 2019) ("It bears emphasis that a plaintiff's burden at the second anti-SLAPP step is a low one, requiring only a showing that a cause of action has at least 'minimal merit within the meaning of the anti-SLAPP statute.'" (quoting *Oasis West Realty, LLC v. Goldman*, 250 P.3d 1115, 1124 (Cal. 2011)).)

plaintiff is credited," *Wilson v. Parker, Covert & Chidester*, 50 P.3d 733, 739 (Cal. 2002) (quoting *Matson v. Dvorak*, 46 Cal. Rptr. 2d 880, 886 (Ct. App. 1995)), and no privilege or other legal bar precludes liability, *Williams*, 495 P.3d at 99 & 99 n.4. "The burden of establishing a probability of prevailing is not high . . . ." *Issa v. Applegate*, 242 Cal. Rptr. 3d 809, 819-20 (Ct. App. 2019) (internal citations omitted). Indeed, not only does the court "accept as true all evidence favorable to the plaintiff," but "[e]vidence supporting a reasonable inference may establish a prima facie case" of minimal merit. *Jenni Rivera Enters., LLC v. Latin World Ent. Holdings, Inc.*, 249 Cal. Rptr. 3d 122, 135 (Ct. App. 2019).

Under Nevada law, a defamation claim arises when a plaintiff shows "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence . . . (4) actual or presumed damages," and, where the plaintiff is a public figure, (5) actual malice. *Rosen*, 135 Nev. at 442, 453 P.3d at 1225. Here, the district court concluded only that Wynn failed to show actual malice, and thus, that his defamation claim failed as a matter of law – it did not address the other elements of a defamation claim. (*See* 3 JA 541-42.) However, because this Court's independent review of anti-SLAPP decisions allows it to nonetheless address the merits of Wynn's defamation claim, *see Schwarzburd v. Kensington Police Prot. & Cmty. Servs. Dist. Bd.*, 170 Cal. Rptr. 3d 899, 908 (Ct. App. 2014), Wynn briefly discusses

the remaining elements of his defamation claim after addressing the actual malice analysis.[9]

1. AP Respondents acted with actual malice when they published the Article.

Actual malice arises when the defendant publishes a statement "with knowledge that it was false or with reckless disregard of whether it was false or not."[10] *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 90, (2002) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)). "'Reckless disregard,' it is true, cannot be fully encompassed in one infallible definition." *St. Amant v. Thompson*, 390 U.S. 737, 730 (1968). Rather, "its outer limits will be marked out through case-by-case adjudication." *Id.*

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[9] Before the district court, AP Respondents argued only that Wynn failed to show actual malice—they did not address Wynn's arguments as to the other elements of defamation. (1 JA 55-62, 181-93; 2 JA 387-93; 3 JA 499-510.) Thus, AP Respondents waived their ability to argue that Wynn cannot satisfy the other elements of a defamation claim. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that an argument not raised in the district court is "waived and will not be considered on appeal").

[10] The actual malice standard subsumes the fault determination in cases involving public figures as a finding of actual malice shows that the defendant intentionally, or with reckless disregard, published defamatory statements. *See* Restatement (Second) of Torts 580B cmt. J (Am. L. Inst. 1977) ("Since the constitutional requirement of negligence or a higher degree of fault is now applicable to defamation actions in general, it is clearly a restriction on the cause of action for defamation.").

Because actual malice requires determining a defendant's subjective mental state, *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (1993), a defendant "cannot . . . automatically insure a favorable verdict by testifying that he published with a belief that statements were true," *St. Amant*, 390 U.S. at 732. Instead, "a plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 668 (1989). Accordingly, "[e]vidence of negligence, motive, and intent may be used, cumulatively, to establish the necessary recklessness" for actual malice. *Nev. Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 415, 664 P.2d 337, 344 (1983).

While, generally, "failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard," *Harte-Hanks Commc'ns, Inc.*, 491 U.S. at 688, in cases involving the reporting of a third party's allegations, "recklessness may be found where there are obvious reasons to doubt the veracity of the information or the accuracy of the reports," *id.* (quoting *St. Amant*, 390 U.S. at 732). In other words, "a journalist does not act with reckless disregard for the truth when he relies on a source whose trustworthiness is unknown, so long as the journalist *makes at least some attempt to verify the source's story*." *Dodds v. Am. Broad. Co.*, 145 F.3d 1053, 1063 (9th Cir. 1998) (emphasis added).

Moreover, "[e]vidence that a media defendant intentionally 'avoided' the truth in its investigatory techniques or omitted facts in order to distort the truth may support a finding of actual malice necessary to sustain an action for libel." *Dixon v. Ogden Newspapers, Inc.*, 416 S.E.2d 237, 244 (W. Va. 1992); *see also Harte-Hanks Commc'ns, Inc.*, 491 U.S. at 692 ("Although failure to investigate will not alone support a finding of actual malice, the purposeful avoidance of the truth is in a different category."). Thus, "[f]acts such as a failure to investigate, or reliance on a questionable source, are relevant to that [actual malice] determination: they may tend to show that a publisher did not care whether an article was true or not, or perhaps the publisher did not want to discover facts which would have contradicted his source." *Pep v. Newsweek, Inc.*, 553 F. Supp. 1000, 1002-03 (S.D.N.Y. 1983).

Here, the record contains abundant "obvious reasons" to doubt the veracity of the citizen's complaint that was the basis for the AP Respondents' allegation of rape. First, taking the citizen's complaint at face value, it details an over forty-year-old sexual assault allegation occurring between 1973 and 1974. (2 JA 337.) As alleged in the citizen's complaint, the assault resulted in a birth: thus, the complainant would have been able to determine the date of any alleged incident. Second, the citizen's complaint contained an age discrepancy: while it listed the age of the accuser as 27, it listed Wynn's age as his then-current age of 76. (*Id.*) As such, the allegations were suspect as the allegations were older than the accuser – someone who was 27-years-

old in 2018 could not be assaulted in the 1970s. By publishing the Article despite knowledge of the internal inconsistencies within the underlying citizen's complaint, Wynn presented evidence from which the jury can find actual malice.[11] *See Schiavone Const. Co. v. Time, Inc.*, 847 F.2d 1069, 1090 (3d Cir. 1988) ("Where the defendant finds internal inconsistencies or apparently reliable information that contradicts its libelous assertions, but nevertheless publishes those statements anyway, the *New York Times* actual malice test can be met.").

Moreover, such internal inconsistencies further create "obvious reasons to doubt the veracity of the information" when the citizen's complaint itself is based on an anonymous source.[12] *See St. Amant*, 390 U.S. at 732 (indicating that a defendant's profession of a good-faith belief that the disputed statements were true when "based wholly on an unverified telephone call" is "unlikely to prove persuasive."). As the citizen's complaint was internally inconsistent and based on an anonymous accuser, obvious reasons to doubt its veracity exist. *See id.*

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[11] Since the accuser's date of birth was redacted, and Wynn's age was listed as his then-current age, reasonable inferences suggest that the current age of the accuser was 27. (2 JA 337.) Moreover, such an inference is strengthened when compared to the other citizen's complaint Garcia Cano obtained from LVMPD. That report listed the accuser as 67 and Wynn as 76, (*id.* at 336), further suggesting that the citizens' complaints listed the current age of the accusers.

[12] AP Respondents argued below that they could not verify the details of the citizen's complaint because the version obtained by Garcia Cano redacted the accuser's name. (2 JA 390-91.) Thus, AP Respondents' Article is based on an anonymous (to them) source.

The citizen's complaint also contains a fantastical narrative, further illustrating the obvious reasons to doubt its veracity. Beyond alleging that Wynn sexually assaulted her, the citizen's complaint detailed that the complainant gave birth to Wynn's child in a gas station bathroom. (2 JA 338.) The baby was born "inside the water bag." (*Id.*) The complainant said "a doll is inside the water bag." (*Id.*) She "used her teeth" to open "the water bag" when she realized "the doll was purple." (*Id.*) "She started to blow on [the "doll"] and in a short time her cheeks were turning pink and she opened her eyes." (*Id.*) The citizen's complaint also states that the child lives in Las Vegas. (*Id.*)

Garcia Cano recognized the absurdity of this story, telling her colleagues that it was "crazy." (*Id.* at 379.) While Garcia Cano, who remained employed by the AP, later attempted to redefine "crazy" to mean "explosive and impactful," (3 JA 537; 2 JA 265 n.2), her attempts to redefine "crazy" are entitled to no deference and the jury can find that she is only now trying to rewrite history. *See Chesapeake & Ohio Ry. v. Martin*, 283 U.S. 209, 218 (1931) ("If the evidence is possible of contradiction in the circumstances; if its truthfulness, or accuracy, is open to a reasonable doubt upon the facts of the case, *and the interest of the witness furnishes a proper ground for hesitating to accept his statements, it is a necessary and just rule that the jury should pass on it*." (emphasis added).)

Moreover, even if one accepts Garcia Cano's newly-minted definition of "crazy," it is clear that she did not consider the citizen's complaint's allegations to be "explosive and impactful" as she omitted these details from the Article. (*See* 2 JA 344.) When AP Respondents published what Garcia Cano described as the "first full version," (*Id.* at 267), the revised article include descriptions of the alleged sexual assault, (*id.* at 346.) Thus, AP Respondents' proffered explanation for the omission of the birth details – that they were too "lurid, perhaps a little too graphic for our news report," (*id.* at 251-52) – rings hollow as the Article contains details of an alleged sexual assault (*see id.* at 346).

Indeed, the jury can easily and reasonably conclude that AP Respondents omitted the details of the birth because they were so "crazy" that their inclusion would have discredited the entire Article. By omitting these "crazy" details, AP Respondents distorted the truth of the allegations by making them seem plausible rather than exposing them for the delusions they are. *Cf. Schiavone Const. Co.*, 847 F.2d at 1092 ("Smith's decision to simply delete language that cast a very different and more benign light on the facts he reported, could itself serve as a basis for a jury's findings by clear and convincing evidence that Time acted with knowledge of probable falsity.").

Despite such obvious reasons to doubt the veracity of the citizen's complaint, AP Respondents made no attempt to verify its allegations. As Garcia Cano admits,

she wrote and the AP published the Article before she bothered to reach out to Wynn to obtain a comment. (2 JA 267-68.) Nor did she reach out to the police officers who took the citizens' complaints for additional information. (*Id.* at 232, 234.) Rather, she hastily drafted a story and published it without any investigation based on a desire to "scoop" her competition, (3 JA 443-44), which further shows actual malice. *See Perez v. Scripps-Howard Broad. Co.*, 520 N.E.2d 198, 204 (Ohio 1998) ("Where sensationalism is sought at the expense of the truth, actual malice could be inferred.").

Worse, Garcia Cano admits that she "did not have a time constraint" to finish the Article. (3 JA 162.) Thus, as Garcia Cano had no deadline, the lack of investigation in light of the obvious reasons to doubt the citizens' complaint's veracity shows that AP Respondents acted with actual malice. *See Stokes v. CBS Inc.*, 25 F. Supp. 2d 992, 1004 (D. Minn. 1998) ("[N]either media defendant was operating under the kind of time-sensitive deadline that might explain the failure to verify the factual basis of its report."); *Goldwater v. Ginzburg*, 414 F.2d 324, 339 (2d Cir. 1969) (explaining that the lack of a deadline is relevant to negate defendant's excuse for inadequate investigation of their stories).

That AP Respondents failed to comply with its own standards regarding seeking comments when publishing allegations regarding sexual assault further shows actual malice. As required by the AP's Stylebook, the AP was obligated to

take care when publishing accusations of sexual misconduct: "As with all accusations, these allegations should be well-documented and corroborated in some way, including an effort to get comment from the accused individuals or their representatives." (3 JA 469.) The allegation of rape against Wynn was certainly not well-documented or corroborated: as the district court recognized, it was the figment of a deluded woman's mind. (1 JA 211-13.) While a departure from the professional standards alone may be insufficient to show actual malice, whether the publisher deviated from its standards is still part of the analysis.[13] *Harte-Hanks Commc'ns, Inc.*, 491 U.S. at 665 ("Petitioner is plainly correct in recognizing that a public figure plaintiff must ***prove more*** than an extreme departure from professional standards . . . ." (emphasis added).) AP Respondents' deviation from the AP Stylebook's clear directive, when coupled with the other evidence, is more than sufficient to show the

[13] The AP tries to excuse its disregard of its own policies by relying on the supposed newsworthiness of the 40-year-old allegations. (3 JA 479-80.) As AP explained, it would report that "someone has been arrested for a mugging or has been indicted for a mugging" without first attempting to obtain a comment from the accused. (*Id.*) But such an explanation is inadequate here. First, allegations of sexual assault are distinct from, and far more ruinous to an individual's reputation, than allegations that an individual was arrested or indicted for mugging someone. *See K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993), *receded from on other grounds by Pope v. Motel 6*, 121 Nev. 307, 316-17, 114 P.3d 277, 283 (2005). Second, AP's hypothetical involves a report on official actions – the police arrested an individual for a crime or a prosecutor indicted an individual for a crime – which is not applicable here as the citizens' complaints are not official records and the police took no official action on the citizens' complaints, as this Court already explained. *Wynn*, 136 Nev. at 620, 475 P.3d at 52.

minimal merit of actual malice for purposes of the second prong of the anti-SLAPP motion to dismiss.

AP Respondents' actions following the publication further show that they sacrificed truth in pursuit of sensationalism. [redacted] (4 JA 639-40.) As someone who had not published a meaningful story in her time with the AP in Las Vegas, Garcia Cano would not – indeed, she could not – miss this opportunity. In her rush to publish a salacious headline-grabbing story, she ignored obvious reasons to doubt the veracity of the citizen's complaint and failed to investigate the claims once she became aware of the reasons to doubt the complaint. She further omitted key details of the allegations to distort the truth and make the allegations in the Article more plausible. As such, Wynn presented prima facie evidence of the minimal merit of AP Respondents' actual malice.

2. AP Respondents made false and defamatory statements concerning Wynn as the underlying citizens' complaint was based on a false accusation.

A claim for defamation arises when a defendant makes "a false and defamatory statement" regarding the plaintiff. *Smith*, 137 Nev. at 71, 481 P.3d at 1229. "A defamatory statement is one that tends to harm a person's reputation, usually by subjecting the person to public contempt, disgrace, or ridicule, or by

adversely affecting the person's business." *Siercke v. Siercke*, 476 P.3d 376, 386 (Idaho 2020); *see also Yeatts v. Zimmer Biomet Holdings, Inc.*, 940 F.3d 354, 359-60 (7th Cir. 2019) ("A statement is defamatory if it 'tends to harm a person's reputation by lowering the person in the community's estimation or deterring third persons from dealing or associating with the person.'" (quoting *Baker v. Tremco Inc.*, 917 N.E.2d 650, 657 (Ind. 2009)).) As to falsity, "[t]he fundamental inquiry, as one court has stated it, is 'Did the defendant lie?'" *Nev. Indep. Broad. Corp.*, 99 Nev. at 415, 664 P.2d at 344. Unlike actual malice, which focuses on the defendant's subjective mental state, "[f]alsity . . . focuses on the objective truth of the defendant's assertions." *Montgomery v. Risen*, 197 F. Supp. 3d 219, 239 (D.D.C. 2016).

Here, Wynn presented sufficient evidence that the Article was false and defamatory to clear the low bar of minimal merit. As to the falsity of the Article, the district court concluded that Kuta, who made the allegations contained within the Article, "intentionally and knowingly made the false accusations of rape concerning Mr. Wynn to the LVMPD." (1 JA 211.) The allegations were "clearly fanciful or delusional, and therefore, clearly false and defamatory accusations concerning Mr. Wynn." (*Id.*)

Moreover, the Article is defamatory. It falsely accused Wynn of "rape." *See Rosen*, 135 Nev. at 473, 453 P.3d at 1222 (explaining that the court considers the "gist" of the statement "rather than parsing individual words in the

communications"). Because the statements allege that Wynn committed both a crime and serious sexual misconduct, the statements are defamatory per se. *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282.

3. Wynn provided sufficient evidence of AP Respondents' unprivileged publication to show the minimal merit of his claims, as this Court already recognized.

Next, Wynn showed an "unprivileged publication to a third person." *See Smith*, 137 Nev. at 71, 481 P.3d at 1229. "'Publication' is a term of art in defamation law, referring to one person's intentional or negligent communication of a defamatory statement about another to a third party." *Chandler v. Berlin*, 998 F.3d 965, 971 (D.C. Cir. 2021). "To constitute a publication it is necessary that the defamatory matter be communication to some one other than the person defamed." Restatement (Second) of Torts § 577 cmt. B.

Here, AP Respondents cannot deny publication. They published the story on their newswire, [redacted]. (4 JA 639-40.)

And, this Court already held that the Article is not privileged. *Wynn*, 136 Nev. at 620, 475 P.3d at 52 (holding that the Article "is not within the scope of the fair report privilege"). Thus, Wynn presented sufficient evidence of an unprivileged publication to meet his minimal burden under the second prong of the anti-SLAPP analysis. *See Desai v. Charter Commc'ns, LLC*, 381 F. Supp. 3d 774, 790

(W.D. Ky. 2019) ("In an action for defamation the defendant has the burden of proving, when the issue is properly raised, the presence of the circumstances necessary for the existence of a privilege to publish the defamatory communication.").

4. Because the Article is defamatory per se, Wynn presented sufficient evidence of damages.

Finally, courts presume damages where the at-issue statements are defamatory per se. *See K-Mart Corp.*, 109 Nev. at 1192, 866 P.3d at 282; *see also Carey v. Pophus*, 435 U.S. 247, 262 n.18 (1978). "No proof of any actual harm to reputation or any other damage is required for the recovery of damages." *Id.* Here, as discussed above, the Article falsely accuses Wynn of serious sexual misconduct and criminal behavior. Thus, damages are presumed. *See id.*

Even if AP Respondents met their burden under the first prong of the anti-SLAPP analysis, Wynn provided prima facie evidence of the minimal merit of his defamation claim. Accordingly, Wynn satisfied his burden under the second prong of the anti-SLAPP analysis. As such, this Court must reverse the district court's order.

III. CONCLUSION

The district court's order is erroneous and should be reversed.

DATED this 1st day of May, 2023.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in Times New Roman.

I further certify that I have read this brief and it complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains approximately 8,763 words.

Finally, I hereby certify that to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

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

DATED this 1st day of May, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 1st day of May, 2023, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **STEVE WYNN'S OPENING BRIEF** properly addressed to the following:

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