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

3 \* \* \*

4 CAROLYN STARK, AN INDIVIDUAL,  
5 D/B/A NDOW WATCH KEEPING  
6 THEM TRANSPARENT,

7 Appellant,

8 vs.

9 CARL LACKEY,

10 Respondent.

Electronically Filed  
Apr 16 2018 12:52 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court Case No. 2014-0123  
District Court Case No. CV17-00434

11 **JOINT APPENDIX**

12 **VOLUME I**

13 JA 0001 – JA 0123

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1 **\$1425**

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16 Attorneys for Plaintiff

17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

18 IN AND FOR THE COUNTY OF WASHOE

19 CARL LACKEY,

20 Plaintiff,

21 vs.

Case No.:

Dept. No.:

22 BEAR LEAGUE, a California Corporation,  
23 ANNE BRYANT, an individual, MARK E.  
24 SMITH, an individual dba LAKE TAHOE  
25 WALL OF SHAME, and DOES 1-20,  
26 INCLUSIVE,

27 Defendants.

28 **COMPLAINT FOR DAMAGES**

Plaintiff CARL LACKEY, by and through his undersigned counsel, Sean Rose, Esq. of the  
Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., hereby complains and  
alleges against the above-named defendants, and each of them, as follows:

**I. PARTIES**

1. Plaintiff is now and was, at all times relevant to this action, an individual and  
resident of Minden, Douglas County in the State of Nevada.

2. Plaintiff is informed and believes and thereupon alleges that at all times material hereto, Defendant BEAR LEAGUE was and is a California Corporation, doing business as and organized and existing by virtue of the laws of the State of California with its principle place of business in Placer County, State of California.

3. Plaintiff is informed and believes and thereupon alleges that at all times material hereto, Defendant ANNE BRYANT is an individual, residing in Homewood, Placer County, State of California and is a responsible officer of BEAR LEAGUE.

4. Plaintiff is informed and believes and thereupon alleges that at all times material hereto, Defendant MARK E. SMITH, is an individual, residing in Incline Village, Washoe County, State of Nevada and is doing business as LAKE TAHOE WALL OF SHAME.

5. Defendants DOES 1-20, inclusive, are sued herein under fictitious names because their true names, capacities or involvement, whether individual, associate, corporate or governmental, are not known to Plaintiff. Plaintiff is informed and believes and, upon such information and belief, alleges that each of said Defendants is negligently or otherwise legally responsible in some manner for the events and happenings herein referred to, and negligently or otherwise caused injury and damages proximately thereby to Plaintiff, as hereinafter alleged. Without limiting the generality of the foregoing, Plaintiff is informed and believes, and upon such information and belief, alleges that each of the Defendants named herein as DOE engaged in a defamatory, slanderous, and libelous smear campaign targeting Plaintiff by the widespread publicity of highly offensive and erroneous information that placed Plaintiff in a false light and resulted in harm to his reputation.

## II. FACTUAL ALLEGATIONS

6. Plaintiff CARL LACKEY is employed by the Nevada Department of Wildlife (“NDOW”) as a Biologist III.

7. The NDOW Series Concept for a Biologist III, describes that, among many other responsibilities, biologists are to “manipulate fish and wildlife populations and habitats by introducing species into suitable habitats consistent with biological and social constraints; bait and trap, tranquilize, radio collar or band wildlife and transport to selected locations” and “investigate

1 and assess damage caused by wildlife upon private property and public lands; recommend  
2 appropriate courses of action to mitigate or resolve the problem.”

3 8. CARL LACKEY, as a Biologist III, is under the supervision of Biologist IV, who  
4 is responsible to, among other things, “direct the operation of wildlife programs” and “train,  
5 supervise, and evaluate the performance of assigned personnel,” and “assign and review work”  
6 involving game, non-game, fish, botanical, and habitat within a region

7 9. Citizens are encouraged to contact the NDOW when there is a human-bear conflict.

8 10. CARL LACKEY, in the course and scope of performing his employment duties,  
9 has become the victim of continuing online and in person threatening and harassing conduct from  
10 members of activist groups BEAR LEAGUE and the online forum LAKE TAHOE WALL OF  
11 SHAME.

12 11. BEAR LEAGUE volunteers and members of the online forum “LAKE TAHOE  
13 WALL OF SHAME” have made and continue to make false statements regarding CARL  
14 LACKEY’s character in a vicious and calculated effort to damage his reputation and jeopardize  
15 his employment.

16 12. Defendants BEAR LEAGUE and LAKE TAHOE WALL OF SHAME have and  
17 continue to initiate public comment threads on their public Facebook pages and other Facebook  
18 pages slandering CARL LACKEY in his official capacity as a state employee and urging and  
19 encouraging the public at large to shame and harass Plaintiff so that he will lose his job and/or feel  
20 threatened enough to leave the community.

21 13. Plaintiff is informed and believes and, upon such information and belief, alleges  
22 that Defendants BEAR LEAGUE and LAKE TAHOE WALL OF SHAME acted intentionally and  
23 with malice with the primary purpose being to harm, threaten, intimidate, cause fear, anxiety,  
24 embarrassment and damage to Plaintiff’s reputation by publishing false and vicious comments  
25 accusing Plaintiff of criminal conduct (including accepting bribes and conspiracy), designed to  
26 incite public outrage. These comments include, but are not limited to, the following:

- 1 a. "Get a grip NDOW...Leave the Bears Alone! They aren't yours to torture, kill  
2 and/or deliver to your hunting cronies." Commenter BEAR LEAGUE  
3 (CL0013);
- 4 b. We must rid Nevada of this monster who lives and is paid to kill bears. Far too  
5 many innocents have died at his evil hands" Commenter: BEAR LEAGUE,  
6 attaching a petition "Fire Carl Lackey" (CL0016);
- 7 c. "It appears NDOW is short on bears in the hunt zone." Commenter: Bill Morton  
8 in response to BEAR LEAGUE's post (CL0014);
- 9 d. "Another bear trap was brought in yesterday by Carl Lackey in order to capture  
10 bears at Tahoe and deliver them to the hunters elsewhere." Commenter: BEAR  
11 LEAGUE CL0018);
- 12 e. "Definitely corruption at its finest." Commenter: Victoria LeDoux Serpa on  
13 Bear League's Facebook post (CL0018);
- 14 f. "Bear trap set by NDOW's infamous Carl Lackey in the forest near the home  
15 of a long-time bear feeder (according to all neighbors) because she is now older  
16 and fearful of the bears she's invited for dinner over the years. She has lured  
17 these bears to their death with the blessing of NDOW. When is  
18 enough...enough. Oh, wait! The Nevada bear hunt is about to begin...Lackey  
19 needs to bring trophies to his hunting cronies so he can be richly rewarded with  
20 'pocket money' because they do not like to go home empty-handed. Now it all  
21 makes sense...not good sense, but it's business as usual in NDOWLand."  
22 Commenter: BEAR LEAGUE (CL0026)
- 23 g. "How is [Lackey] being 'richly rewarded' with 'pocket money' because they  
24 do not like him going home empt [sic] handed? Are people bribing [Carl  
25 Lackey] or does he get paid more to kill the bear by NDOW? Asking because  
26 it's a confusing statement." Commenter: John Adam on BEAR LEAGUE's  
27 Facebook post (CL0026);
- 28

- 1 h. "The hunters give [Carl Lackey] under the table cash for bringing trophy bears  
2 into the hunt zone." Commenter: BEAR LEAGUE in response to John Adam's  
3 comment above (CL0019);
- 4 i. "No. They trap. Then if the bear is lucky it gets released into a hunt zone. If you  
5 want to call that luck." Commenter Randy L. Simar, on Bear League's  
6 Facebook post (CL0020);
- 7 j. "So [Carl Lackey's] been trapping these bears saying they were euthanized and  
8 actually stocking up for the bear hunt/slaughter? Could be!" Commenter: Mary  
9 Morten-Johnson on Bear League's Facebook post (CL0020);
- 10 k. "Bear hunters are simply Trophy Hunters. We need to stop Lackey from setting  
11 Bear Traps in Nevada since it is senseless murder and even NDOW says  
12 relocation doesn't work. So why does NDOW relocate? It's simple to stock the  
13 hunt zone." Commenter: Jane Rothman on BEAR LEAGUE's Facebook post  
14 (CL0021);
- 15 l. "Obviously bears that dine on trash aren't going to be tasty. It is all trophy  
16 killing. And it's not population control, because Lackey is plucking them off as  
17 quick as he can." Commenter: Shanen Ruppel on BEAR LEAGUE's Facebook  
18 post (CL0022);
- 19 m. "Stocking the pond. Did [Lackey's] disgusting self apply for a permit? What a  
20 major conflict of interest. I can't believe Nevada enables such corruption."
- 21 n. "Corruption 100%." Commenter: Kevin McGrew on BEAR LEAGUE's  
22 Facebook post (CL0022);
- 23 o. "This is crazy. Poor bears will get trapped and dropped off and not have a clue  
24 where to run from all those hunters in the hunt zone." Commenter: Deanna  
25 Betker on BEAR LEAGUE's Facebook post CL0020);
- 26 p. "A department with no real interest in wildlife other than to make it available  
27 for hunters and trappers...some might say they are criminals against  
28



1 nature...they are certainly ignorant about it.” Commenter: Sean Sarsfield on  
2 LAKE TAHOE WALL OF SHAME’s Facebook post (CL0042);

3 q. “He and his family directly benefit by him moving bears to a hunting area if  
4 they are issued a license and the killing of them in the name of public safety  
5 must simply be something that excites him-all of it in conflict with NDOW’s  
6 mission. Additionally, if we can establish that he or his family benefits  
7 financially from selling bear parts or selling the location where he recently  
8 released a bear- he should go to jail.” Commenter: Colleen Hemingway on  
9 NDOW WATCH KEEPING THEM TRANSPARENT’s Facebook post  
10 (CL0048);

11 r. “Yes he should go to jail! The treatment of our bears is paramount cruelty.  
12 Moving mothers without their cubs, moving them to hunt zones, moving them  
13 great distances knowing full well there are no food sources or water and that  
14 they will try to return home! Animal cruelty is a felony in all 50 states. Him  
15 and his NDOW murderers need to go to jail and stay there.” Commenter: JoAnn  
16 Hill on NDOW WATCH KEEPING THEM TRANSPARENT’s Facebook post  
17 (CL0048);

18 s. “It’s time for the NV ENGINEERED bear hunt.” Commenter: Mary LoBuono  
19 Bryden on NDOW WATCH KEEPING THEM TRANSPARENT’s Facebook  
20 post (CL0053);

21 t. “NDOW knows their manual says this and Lackey chooses not to follow the  
22 protocol which is extremely concerning. Healy backs him up by releasing  
23 idiotic excuses to the media why a certain bear was relocated to the hunt zone  
24 instead of released on site.” Commenter: Jane Rothman on BEAR LEAGUE’s  
25 Facebook post (CL0048);

26 u. “This page is what’s wrong with Tahoe, you should try another tactic to educate  
27 our community. No one wants to be bullied and threatened to understand a valid  
28 argument. You are creating fear and tearing neighborhoods apart. Perhaps

1 spending so much energy in a negative way should be forwarded to create a  
2 positive change. No one should live in fear! This whole thing is comparable to  
3 the Salem witch trials of 1692!!” Commenter: Kevin Dangers Bouchard on  
4 NDOW WATCH KEEPING THEM TRANSPARENT’ post regarding “trolls”  
5 who support Carl Lackey (CL0078);

6 v. Photo showing Carl Lackey’s home address: Poster: Dianne Gross on BEAR  
7 LEAGUE’S Facebook wall (CL0118);

8 w. “This is the most outrageous editorial from Lackey to date. These two  
9 communities were given ‘awards’ not because they are Bear Aware but because  
10 they invite [Lackey] to set his traps, catch bears, and then kill them or move  
11 them into the hunt zone.” BEAR LEAGUE, posting link to Reno Gazette  
12 Journal opinion piece by Carl Lackey. (CL0119);

13 x. “Lackey must go!! POS!!!!” Commenter: Gerald Palla on BEAR LEAGUE’s  
14 Facebook post (CL0123);

15 y. “Lackey is such an incompetent asshole!! Fire his ass!!” Commenter: Karen  
16 Lietzell-Vick on NDOW WATCH KEEPING THEM TRANSPARENT’s  
17 Facebook post (CL 0050);

18 z. “This is becoming unreal! Out of control, crazy, Hmmm.... maybe time for  
19 an assassination.” Commenter: Victoria LeDoux Serpa on BEAR LEAGUE’s  
20 Facebook post (CL 0063);

### 21 **III. CLAIMS FOR RELIEF**

#### 22 **FIRST CLAIM FOR RELIEF**

##### 23 **(Defamation – Against all Defendants)**

24 14. Plaintiff realleges and reincorporates paragraphs 1-13 set forth hereinabove.

25 15. Plaintiff is either a limited purpose public figure or a private individual thrust into  
26 an area of public concern.

16. Defendants, and each of them, utilized Defendants BEAR LEAGUE and LAKE TAHOE WALL OF SHAME Facebook pages to publish false and defamatory statements of and concerning Plaintiff and threatening his livelihood.

17. A statement is defamatory when it would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.

18. Defendants ANNE BRYANT, MARK E. SMITH, BEAR LEAGUE and LAKE TAHOE WALL OF SHAME published and encouraged the statements despite having actual knowledge that such statements were false, or with reckless disregard for their veracity, to the extent that a reasonable person would likely understand the remarks as statements of existing fact rather than expression of opinions.

19. Defendants, and each of them, in making public posts on Facebook, made and/or condoned the publication of such false and defamatory statements of and concerning Plaintiff.

20. Defendants, and each of them, knew that the inflammatory false information they were posting was malicious, false, and accusatory of criminal conduct and had the purpose of harming, threatening, intimidating and/or harassing Plaintiff and his livelihood.

21. That as a further direct and proximate result of Defendants' willful conduct and/or negligence, as aforesaid, Plaintiff have been required to retain the services of an attorney to prosecute this matter and are entitled to reasonable attorney's fees and costs of suit.

22. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

## SECOND CLAIM FOR RELIEF

**(Intentional Infliction of Emotional Distress - Against all Defendants)**

23. Plaintiff realleges and reincorporates paragraphs 1-22 set forth hereinabove.

24. Defendants engaged in willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing emotional distress.

25. Plaintiff has suffered severe and extreme emotional distress as a result of Defendants' conduct and remain fearful of physical harm or violence directed at them.

26. Defendants' conduct caused Plaintiffs' severe and extreme emotional distress.

27. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

### THIRD CLAIM FOR RELIEF

**(Intentional Infliction of Emotional Distress - Against all Defendants)**

28. Plaintiff realleges and reincorporates paragraphs 1-27 set forth hereinabove.

29. Defendants acted negligently in causing Plaintiff severe emotional distress.

30. As a result of Defendants' negligence, Plaintiff has suffered severe and extreme emotional distress.

31. Defendants' negligence caused Plaintiff severe and extreme emotional distress.

32. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

#### FOURTH CLAIM FOR RELIEF

**(Civil Conspiracy)**

33. Plaintiffs reallege and reincorporate paragraphs 1-32 set forth hereinabove.

34. Defendants, and each of them, continuously over the past several years have acted in concert with one another to accomplish the goals of harassing and threatening Plaintiff and causing him fear, anxiety, embarrassment and damaging to his reputation.

35. As a result of these concerted actions by the Defendants and each of them, Plaintiff feels harassed and intimidated, and feels that ANNE BRYANT, MARK E. SMITH, BEAR LEAGUE and LAKE TAHOE WALL OF SHAME officers, members and supporters pose a threat to Plaintiff's safety and as a result, he suffered damages in excess of this Court's jurisdictional limits.

36. Plaintiffs have been required to retain the services of an attorney to prosecute this matter and are entitled to reasonable attorney's fees and costs of suit.

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For past and future special damages in an amount in excess of this Court's jurisdictional limits;

2. For past and future general damages in an amount in excess of this Court's jurisdictional limits;

3. For punitive damages;

4. For reasonable attorneys' fees incurred herein;

5. For costs of suit incurred; and

6. For such other and further relief as the Court may deem just and proper under the circumstances.

## AFFIRMATION

The undersigned hereby affirms that the preceding document does not contain the social security number of any person.

**DATED** this 1 day of March, 2017.

~~ROSE LAW OFFICE~~

~~SEAN P. ROSE, ESQ.~~

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10 Attorneys for Plaintiff

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12 IN AND FOR THE COUNTY OF WASHOE

13 CARL LACKEY,  
14 Plaintiff,

15 vs.

Case No.: CV17-00434

Dept. No.: 4

16 BEAR LEAGUE, a California Corporation,  
17 ANNE BRYANT, an individual, MARK E.  
SMITH, an individual dba LAKE TAHOE  
18 WALL OF SHAME, CAROLYN STARK, an  
individual dba NDOW WATCH KEEPING  
19 THEM TRANSPARENT and DOES 1-20,  
20 INCLUSIVE,

21 Defendants.

22  
23 **FIRST AMENDED COMPLAINT FOR DAMAGES**

24 Plaintiff CARL LACKEY, by and through his undersigned counsel, Sean Rose, Esq. of the  
25 Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., hereby complains and  
26 alleges against the above-named defendants, and each of them, as follows:

27 **I. PARTIES**  
28

1           1.       Plaintiff is now and was, at all times relevant to this action, an individual and  
2 resident of Minden, Douglas County in the State of Nevada.

3           2.       Plaintiff is informed and believes and thereupon alleges that at all times material  
4 hereto, Defendant BEAR LEAGUE was and is a California Corporation, doing business as and  
5 organized and existing by virtue of the laws of the State of California with its principle place of  
6 business in Placer County, State of California.

7           3.       Plaintiff is informed and believes and thereupon alleges that at all times material  
8 hereto, Defendant ANNE BRYANT is an individual, residing in Homewood, Placer County, State  
9 of California and is a responsible officer of BEAR LEAGUE.

10          4.       Plaintiff is informed and believes and thereupon alleges that at all times material  
11 hereto, Defendant MARK E. SMITH, is an individual, residing in Incline Village, Washoe County,  
12 State of Nevada and is doing business as LAKE TAHOE WALL OF SHAME.

13          5.       Plaintiff is informed and believes and thereupon alleges that at all times material  
14 hereto, Defendant CAROLYN STARK, is an individual, residing in Incline Village, Washoe  
15 County, State of Nevada and is doing business as NDOW WATCH KEEPING THEM  
16 TRANSPARENT.

17          6.       Defendants DOES 1-20, inclusive, are sued herein under fictitious names because  
18 their true names, capacities or involvement, whether individual, associate, corporate or  
19 governmental, are not known to Plaintiff. Plaintiff is informed and believes and, upon such  
20 information and belief, alleges that each of said Defendants is negligently or otherwise legally  
21 responsible in some manner for the events and happenings herein referred to, and negligently or  
22 otherwise caused injury and damages proximately thereby to Plaintiff, as hereinafter alleged.  
23 Without limiting the generality of the foregoing, Plaintiff is informed and believes, and upon such  
24 information and belief, alleges that each of the Defendants named herein as DOE engaged in a  
25 defamatory, slanderous, and libelous smear campaign targeting Plaintiff by the widespread  
26 publicity of highly offensive and erroneous information that placed Plaintiff in a false light and  
27 resulted in harm to his reputation.

28                               **II.     FACTUAL ALLEGATIONS**

1           7.       Plaintiff CARL LACKEY is employed by the Nevada Department of Wildlife  
2 (“NDOW”) as a Biologist III.

3           8.       The NDOW Series Concept for a Biologist III, describes that, among many other  
4 responsibilities, biologists are to “manipulate fish and wildlife populations and habitats by  
5 introducing species into suitable habitats consistent with biological and social constraints; bait and  
6 trap, tranquilize, radio collar or band wildlife and transport to selected locations” and “investigate  
7 and assess damage caused by wildlife upon private property and public lands; recommend  
8 appropriate courses of action to mitigate or resolve the problem.”

9           9.       CARL LACKEY, as a Biologist III, is under the supervision of Biologist IV, who  
10 is responsible to, among other things, “direct the operation of wildlife programs” and “train,  
11 supervise, and evaluate the performance of assigned personnel,” and “assign and review work”  
12 involving game, non-game, fish, botanical, and habitat within a region

13           10.      Citizens are encouraged to contact the NDOW when there is a human-bear conflict.

14           11.      CARL LACKEY, in the course and scope of performing his employment duties,  
15 has become the victim of continuing online and in person threatening and harassing conduct from  
16 members of activist groups BEAR LEAGUE and the online forums LAKE TAHOE WALL OF  
17 SHAME and NDOW WATCH KEEPING THEM TRANSPARENT.

18           12.      BEAR LEAGUE volunteers and members of the online forums “LAKE TAHOE  
19 WALL OF SHAME” and “LAKE TAHOE WALL OF SHAME and NDOW WATCH KEEPING  
20 THEM TRANSPARENT” have made and continue to make false statements regarding CARL  
21 LACKEY’s character in a vicious and calculated effort to damage his reputation and jeopardize  
22 his employment.

23           13.      Defendants BEAR LEAGUE, LAKE TAHOE WALL OF SHAME and LAKE  
24 TAHOE WALL OF SHAME and NDOW WATCH KEEPING THEM TRANSPARENT have  
25 and continue to initiate public comment threads on their public Facebook pages and other  
26 Facebook pages slandering CARL LACKEY in his official capacity as a state employee and urging  
27 and encouraging the public at large to shame and harass Plaintiff so that he will lose his job and/or  
28 feel threatened enough to leave the community.



1           14. Plaintiff is informed and believes and, upon such information and belief, alleges  
2 that Defendants BEAR LEAGUE, LAKE TAHOE WALL OF SHAME and LAKE TAHOE  
3 WALL OF SHAME and NDOW WATCH KEEPING THEM TRANSPARENT acted  
4 intentionally and with malice with the primary purpose being to harm, threaten, intimidate, cause  
5 fear, anxiety, embarrassment and damage to Plaintiff's reputation by publishing false and vicious  
6 comments accusing Plaintiff of criminal conduct (including accepting bribes and conspiracy),  
7 designed to incite public outrage. These comments include, but are not limited to, the following:

- 8           a. "Get a grip NDOW...Leave the Bears Alone! They aren't yours to torture, kill  
9 and/or deliver to your hunting cronies." Commenter BEAR LEAGUE  
10 (CL0013);
- 11           b. We must rid Nevada of this monster who lives and is paid to kill bears. Far too  
12 many innocents have died at his evil hands" Commenter: BEAR LEAGUE,  
13 attaching a petition "Fire Carl Lackey" (CL0016);
- 14           c. "It appears NDOW is short on bears in the hunt zone." Commenter: Bill Morton  
15 in response to BEAR LEAGUE's post (CL0014);
- 16           d. "Another bear trap was brought in yesterday by Carl Lackey in order to capture  
17 bears at Tahoe and deliver them to the hunters elsewhere." Commenter: BEAR  
18 LEAGUE CL0018);
- 19           e. "Definitely corruption at its finest." Commenter: Victoria LeDoux Serpa on  
20 Bear League's Facebook post (CL0018);
- 21           f. "Bear trap set by NDOW's infamous Carl Lackey in the forest near the home  
22 of a long-time bear feeder (according to all neighbors) because she is now older  
23 and fearful of the bears she's invited for dinner over the years. She has lured  
24 these bears to their death with the blessing of NDOW. When is  
25 enough...enough. Oh, wait! The Nevada bear hunt is about to begin...Lackey  
26 needs to bring trophies to his hunting cronies so he can be richly rewarded with  
27 'pocket money' because they do not like to go home empty-handed. Now it all  
28

1 makes sense...not good sense, but it's business as usual in NDOWLand."

2 Commenter: BEAR LEAGUE (CL0026)

3 g. "How is [Lackey] being 'richly rewarded' with 'pocket money' because they  
4 do not like him going home empty [sic] handed? Are people bribing [Carl  
5 Lackey] or does he get paid more to kill the bear by NDOW? Asking because  
6 it's a confusing statement." Commenter: John Adam on BEAR LEAGUE's  
7 Facebook post (CL0026);

8 h. "The hunters give [Carl Lackey] under the table cash for bringing trophy bears  
9 into the hunt zone." Commenter: BEAR LEAGUE in response to John Adam's  
10 comment above (CL0019);

11 i. "No. They trap. Then if the bear is lucky it gets released into a hunt zone. If you  
12 want to call that luck." Commenter Randy L. Simar, on Bear League's  
13 Facebook post (CL0020);

14 j. "So [Carl Lackey's] been trapping these bears saying they were euthanized and  
15 actually stocking up for the bear hunt/slaughter? Could be!" Commenter: Mary  
16 Morten-Johnson on Bear League's Facebook post (CL0020);

17 k. "Bear hunters are simply Trophy Hunters. We need to stop Lackey from setting  
18 Bear Traps in Nevada since it is senseless murder and even NDOW says  
19 relocation doesn't work. So why does NDOW relocate? It's simple to stock the  
20 hunt zone." Commenter: Jane Rothman on BEAR LEAGUE's Facebook post  
21 (CL0021);

22 l. "Obviously bears that dine on trash aren't going to be tasty. It is all trophy  
23 killing. And it's not population control, because Lackey is plucking them off as  
24 quick as he can." Commenter: Shanen Ruppel on BEAR LEAGUE's Facebook  
25 post (CL0022);

26 m. "Stocking the pond. Did [Lackey's] disgusting self apply for a permit? What a  
27 major conflict of interest. I can't believe Nevada enables such corruption."  
28

- 1 n. "Corruption 100%." Commenter: Kevin McGrew on BEAR LEAGUE's  
2 Facebook post (CL0022);
- 3 o. "This is crazy. Poor bears will get trapped and dropped off and not have a clue  
4 where to run from all those hunters in the hunt zone." Commenter: Deanna  
5 Betker on BEAR LEAGUE's Facebook post CL0020);
- 6 p. "A department with no real interest in wildlife other than to make it available  
7 for hunters and trappers...some might say they are criminals against  
8 nature...they are certainly ignorant about it." Commenter: Sean Sarsfield on  
9 LAKE TAHOE WALL OF SHAME's Facebook post (CL0042);
- 10 q. "He and his family directly benefit by him moving bears to a hunting area if  
11 they are issued a license and the killing of them in the name of public safety  
12 must simply be something that excites him-all of it in conflict with NDOW's  
13 mission. Additionally, if we can establish that he or his family benefits  
14 financially from selling bear parts or selling the location where he recently  
15 released a bear- he should go to jail." Commenter: Colleen Hemingway on  
16 NDOW WATCH KEEPING THEM TRANSPARENT's Facebook post  
17 (CL0048);
- 18 r. "Yes he should go to jail! The treatment of our bears is paramount cruelty.  
19 Moving mothers without their cubs, moving them to hunt zones, moving them  
20 great distances knowing full well there are no food sources or water and that  
21 they will try to return home! Animal cruelty is a felony in all 50 states. Him  
22 and his NDOW murderers need to go to jail and stay there." Commenter: JoAnn  
23 Hill on NDOW WATCH KEEPING THEM TRANSPARENT's Facebook post  
24 (CL0048);
- 25 s. "It's time for the NV ENGINEERED bear hunt." Commenter: Mary LoBuono  
26 Bryden on NDOW WATCH KEEPING THEM TRANSPARENT's Facebook  
27 post (CL0053);
- 28

- 1 t. "NDOW knows their manual says this and Lackey chooses not to follow the  
2 protocol which is extremely concerning. Healy backs him up by releasing  
3 idiotic excuses to the media why a certain bear was relocated to the hunt zone  
4 instead of released on site." Commenter: Jane Rothman on BEAR LEAGUE's  
5 Facebook post (CL0048);
- 6 u. "This page is what's wrong with Tahoe, you should try another tactic to educate  
7 our community. No one wants to be bullied and threatened to understand a valid  
8 argument. You are creating fear and tearing neighborhoods apart. Perhaps  
9 spending so much energy in a negative way should be forwarded to create a  
10 positive change. No one should live in fear! This whole thing is comparable to  
11 the Salem witch trials of 1692!!" Commenter: Kevin Dangers Bouchard on  
12 NDOW WATCH KEEPING THEM TRANSPARENT' post regarding "trolls"  
13 who support Carl Lackey (CL0078);
- 14 v. Photo showing Carl Lackey's home address: Poster: Dianne Gross on BEAR  
15 LEAGUE'S Facebook wall (CL0118);
- 16 w. "This is the most outrageous editorial from Lackey to date. These two  
17 communities were given 'awards' not because they are Bear Aware but because  
18 they invite [Lackey] to set his traps, catch bears, and then kill them or move  
19 them into the hunt zone." BEAR LEAGUE, posting link to Reno Gazette  
20 Journal opinion piece by Carl Lackey. (CL0119);
- 21 x. "Lackey must go!! POS!!!!" Commenter: Gerald Palla on BEAR LEAGUE's  
22 Facebook post (CL0123);
- 23 y. "Lackey is such an incompetent asshole!! Fire his ass!!" Commenter: Karen  
24 Lietzell-Vick on NDOW WATCH KEEPING THEM TRANSPARENT's  
25 Facebook post (CL 0050);
- 26 z. "This is becoming unreal! Out of control, crazy, Hmmm.... maybe time for  
27 an assassination." Commenter: Victoria LeDoux Serpa on BEAR LEAGUE's  
28 Facebook post (CL 0063);



23. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as set forth below.

## SECOND CLAIM FOR RELIEF

**(Intentional Infliction of Emotional Distress - Against all Defendants)**

24. Plaintiff realleges and reincorporates paragraphs 1-22 set forth hereinabove.

25. Defendants engaged in willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing emotional distress.

26. Plaintiff has suffered severe and extreme emotional distress as a result of Defendants' conduct and remain fearful of physical harm or violence directed at them.

27. Defendants' conduct caused Plaintiffs' severe and extreme emotional distress.

28. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as set forth below.

### THIRD CLAIM FOR RELIEF

**(Intentional Infliction of Emotional Distress - Against all Defendants)**

29. Plaintiff realleges and reincorporates paragraphs 1-27 set forth hereinabove.

30. Defendants acted negligently in causing Plaintiff severe emotional distress.

31. As a result of Defendants' negligence, Plaintiff has suffered severe and extreme emotional distress.

32. Defendants' negligence caused Plaintiff severe and extreme emotional distress.

33. Plaintiff suffered damages in an amount in excess of this Court's jurisdictional limits.

**WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as set forth below.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Civil Conspiracy)**

3 34. Plaintiffs reallege and reincorporate paragraphs 1-32 set forth hereinabove.

4 35. Defendants, and each of them, continuously over the past several years have acted  
5 in concert with one another to accomplish the goals of harassing and threatening Plaintiff and  
6 causing him fear, anxiety, embarrassment and damaging to his reputation.

7 36. As a result of these concerted actions by the Defendants and each of them, Plaintiff  
8 feels harassed and intimidated, and feels that ANNE BRYANT, MARK E. SMITH, CAROLYN  
9 STARK, BEAR LEAGUE, LAKE TAHOE WALL OF SHAME and NDOW WATCH  
10 KEEPING THEM TRANSPARENT and LAKE TAHOE WALL OF SHAME officers, members  
11 and supporters pose a threat to Plaintiff's safety and as a result, he suffered damages in excess of  
12 this Court's jurisdictional limits.

13 37. Plaintiff has been required to retain the services of an attorney to prosecute this  
14 matter and are entitled to reasonable attorney's fees and costs of suit.

15 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as  
16 follows:

17 1. For past and future special damages in an amount in excess of this Court's  
18 jurisdictional limits;

19 2. For past and future general damages in an amount in excess of this Court's  
20 jurisdictional limits;

21 3. For punitive damages;

22 4. For reasonable attorneys' fees incurred herein;

23 5. For costs of suit incurred; and

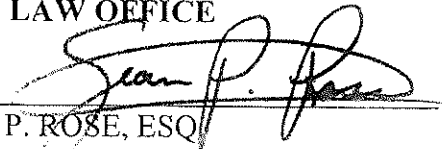
24 6. For such other and further relief as the Court may deem just and proper under the  
25 circumstances.

26 **AFFIRMATION**

27 The undersigned hereby affirms that the preceding document does not contain the social  
28 security number of any person.

1 DATED this 31<sup>st</sup> day of March, 2017.

2 ROSE LAW OFFICE

3   
4 SEAN P. ROSE, ESQ.  
5 State Bar No. 5472  
6 150 W. Huffaker Lane, Suite 101  
7 Reno, NV 89511  
8 (775) 824-8200

9 In association with:

10 THOMAS R. BRENNAN  
11 State Bar No. 481  
12 6900 S. McCarran Blvd., Suite 2060  
13 Reno, NV 89509

14 Attorneys for Plaintiff  
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ORIGINAL

FILED  
Electronically  
CV17-00434  
2017-04-17 10:00:53 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6053906 : csulezic

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,  
Plaintiff / Petitioner / Joint Petitioner,

Case. No. CV17-00434

vs. AnneBryant/Bear League/Mark E. Smith/  
Lake Tahoe Wall of Shame/Carolyn Dept. No. 4  
Stark/NDOW Watch Keeping them Transparent  
Defendant / Respondent / Joint Petitioner.

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: \_\_\_\_\_

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

APR 4 2017

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Issued on behalf of Plaintiff(s):

Name: Sean P. Rose, Esq.  
Address: 150 W Huffaker Lane #101  
Reno, NV 89511  
Phone Number: (775) 824-8200

JACQUELINE BRYANT  
CLERK OF THE COURT

By: \_\_\_\_\_  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

AFFIDAVIT OF SERVICE

(Title of Document)

filed in case number: CV17-00434



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 4/17/17

Colletta Zahniser  
(Signature)

Colletta Zahniser / Sean P. Rose, Esq.  
(Print Name)

Plaintiff  
(Attorney for)

CODE 1067

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,

Plaintiff(s),

VS.

CASE NO: CV17-00434

Bear league, a California Corporation; et al,

Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:

SHEILA MARTINEZ-CARRERA, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUMMONS; FIRST AMENDED COMPLAINT FOR DAMAGES; COMPLAINT FOR DAMAGES On 4/4/2017 and served the same on 4/10/2017 at 12:41 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with Carolyn Stark at 185 Martin St Reno, NV 895092827

A description of Carolyn Stark is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White - Non Hispanic	Blond	36 - 40	5'6 - 6'0	140-160 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 4/12/2017

by SHEILA MARTINEZ-CARRERA

Registration: R-088481

No notary is required per NRS 53.045

SHEILA MARTINEZ-CARRERA

Registration: R-088481

Reno Carson Messenger Service, Inc #322

185 Martin St.

Reno, NV 89509

(775) 322-2424

www.renocarson.com



Order#: R8980 NVPRF411

JA 0024

CODE 1067

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,

Plaintiff(s),

VS.

CASE NO: CV17-00434

Bear League, a California Corporation,  
Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:

SHEILA MARTINEZ-CARRERA, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUMMONS; FIRST AMENDED COMPLAINT; COMPLAINT FOR DAMAGES On 4/4/2017 and served the same on 4/10/2017 at 12:41 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with CAROLYN STARK AN INDIVIDUAL DBA NDOW WATCH KEEPING THEM TRANSPARENT at 185 Martin St Reno, NV 895092827

A description of Carolyn Stark is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White - Non Hispanic	Blond	36 - 40	5'6 - 6'0	140-160 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 4/12/2017  
by SHEILA MARTINEZ-CARRERA  
Registration: R-088481

No notary is required per NRS 53.045

X   
SHEILA MARTINEZ-CARRERA

Registration: R-088481

Reno Carson Messenger Service, Inc #322

185 Martin St.

Reno, NV 89509

(775) 322-2424

www.renocarson.com



Order#: R8982 NVPRF411

JA 0025

1 **CODE: 2315**

2 DEL HARDY, ESQ.(SBN 1172)  
3 STEPHANIE RICE, ESQ. (SBN 11627)  
4 WINTER STREET LAW GROUP  
5 96 & 98 Winter Street  
6 Reno, Nevada 89503  
7 Telephone: (775) 786-5800  
8 Fax: (775) 329-8282

9 *Attorneys for Defendant Carolyn Stark*

10  
11  
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
13 **IN AND FOR THE COUNTY OF WASHOE**

14 CARL LACKEY,  
15 Plaintiff,  
16 vs.

CASE NO.: CV17-00434

DEPT. NO.: 4

17 BEAR LEAGUE, a California Corporation,  
18 ANNE BRYANT, an individual, MARK E.  
19 SMITH, an individual dba LAKE TAHOE WALL  
20 OF SHAME, CAROLYN STARK, an individual  
21 dba NDOW WATCH KEEPING THEM  
22 TRANSPARENT, and DOES 1-20, INCLUSIVE.

23 Defendants.

24 **SPECIAL MOTION TO DISMISS/ANTI-SLAPP**

25 COMES NOW, Defendant Carolyn Stark, by and through her counsel, Del Hardy, Esq. and  
26 Stephanie Rice, Esq., of Winter Street Law Group, and hereby moves the Court to dismiss  
27 Plaintiff's Complaint pursuant to NRS 41.635 et seq and NRCP Rule 12. This Motion is made  
28 and based upon the Memorandum of Points and Authorities and the pleadings and paperwork  
on file herein.

**STATEMENT OF FACTS**

This is a case about Carl Lackey, an employee of the Nevada Department of Wildlife  
(NDOW). Mr. Lackey is basically in charge of the bear population in Northern Nevada for the  
Nevada Department of Wildlife (NDOW), and is trying to shut up the Defendants from their

1 communications about NDOW and his actions. This Motion is to address one of those  
2 Defendants, Carolyn Stark, who is only named in the Amended Complaint, not the original  
3 Complaint of the Plaintiff. Carolyn Stark has a Facebook page known as "NDOW Watch Keeping  
4 Them Transparent". She is an animal rights advocate, and as such, a bear advocate and as the  
5 court will learn, there has been much public interest in the Nevada Department of Wildlife's  
6 and their employee Mr. Lackey's handling of the bears that are captured in the Lake Tahoe area,  
7 and then releasing the bears into a strange territory, which also happens to be areas where the  
8 Nevada Department of Wildlife issues bear hunting licenses. The timing of the capture and  
9 release of those bears into that hunting area has raised concerns among many citizens. All of  
10 Carolyn Stark's comments on the Facebook page are of true facts. Any other statement she has  
11 ever made on this Facebook page are opinion, and are clearly stated as opinion. This is not  
12 refuted by Plaintiff in the Amended Complaint. Carolyn Stark herself has committed no  
13 defamation.

14 As the Court will also learn, as to the Amended Complaint, which will be investigated by  
15 this Motion, Mr. Lackey has not sued for defamation of what Carolyn Stark said, but rather, but  
16 what other people on her Facebook site posted. In other words, if someone comes onto  
17 someone's Facebook page and posts a comment, Mr. Lackey and his counsels think that the  
18 person who has the Facebook page is responsible for the comments made on that site by  
19 others. By filing this lawsuit claiming defamation and significant damages, Mr. Lackey  
20 apparently feels that he can shut these Defendants up and stop their free speech, as well as shut  
21 up all the people on Facebook that make and made comments as well.

22 The Court is asked to take judicial notice of the case of Richard and Adrienne Evans v.  
23 Bear League filed in the Second Judicial District Court, Case No. CV14-02523, another case that  
24 Plaintiff's counsel filed against one of the Defendants in this case. In that case, there was a  
25 confidential settlement reached. NDOW not only learned of that confidential settlement, but  
26 substantially disclosed it in an open, public forum.

27 Mr. Lackey of course doesn't wish to claim himself to be a public figure, but he has thrust  
28 himself into the public figure spotlight. He has made numerous public appearances on behalf of

1 NDOW and now cannot retreat back into the shadows. He is a public figure and he has  
2 participated in making himself one. Carl Lackey has been referred to as the "Bear Warrior." He  
3 has in fact been featured on the National Geographic Channel known as "animal extractors."  
4 Attached hereto marked **Exhibit 1** is the Tahoe Daily Tribune, April 5, 2007 article about Carl  
5 Lackey. Mr. Lackey and his wife also have been in the news. See **Exhibit 2**. And photos of  
6 Lackey and friends with NDOW bears. See **Exhibit 3**.<sup>1</sup> **Exhibit 4** is an advertisement by Carl  
7 Lackey for a dart tranquilizing company supported by NDOW.

8 For years, Carl Lackey has acted on behalf of the Department of Wildlife as the NDOW  
9 spokesperson about bears, so he's clearly a public official. Attached hereto, marked **Exhibit 5**,  
10 are the press releases by NDOW naming Carl Lackey as their "bear biologist." See attached  
11 hereto, news releases all naming Carl Lackey. (**Exhibit 5**)

12 So Carl Lackey has passed the threshold definition of public figure, which will be in the  
13 Points and Authorities. This "bear biologist", "Bear Warrior", one that has been on the National  
14 Geographic channel as one of the "animal extractors", one that gives interviews to the local  
15 daily paper, speaks on behalf NDOW when he does so, talking about how "WE haven't relocated  
16 as a general practice since 1996 when I took over the position. WE have chosen instead to use  
17 on-site releases." "WE had several that were 600 pounds," speaking of bears in the Tahoe  
18 Basin. When asked, "Do people recognize you as the bear guy in public and ask for your  
19 autograph?" He answered, "No. No autographs. Yeah, I'm called the bear guy or the bear man  
20 or other things depending on whether they're happy with me or not, but I have never been  
21 asked for my autograph. They recognize me or they recognize the dogs. A lot of people see the  
22

---

23 <sup>1</sup> As to Exhibit 3, photos 1 and 2, why would an NDOW official, Mr. Lackey, allow his unauthorized  
24 friend on NDOW time to get photos of his handling cubs after Lackey tranquilized the mother bear?  
25 The nine photos are (1) Carl and friend, (2) Carl and friend, (3) Carl's friend in bear cylinder with  
26 bear Carl Lackey tranquilized, (4) Carl Lackey's children with cubs on NDOW time, (5) Carl's son  
27 in NDOW bear cylinder with tranquilized bear, care of Carl Lackey, (6) Carl Lackey's older son in  
28 bear cylinder with tranquilized bear, (7) Carl Lackey and wife with their baby releasing a wild bear  
on NDOW time, (8) Carl Lackey's friend's personal vehicle towing an NDOW bear cylinder with a  
bear in it. And this is ok? The governor-appointed Director Tony Wasley and Deputy Director Jack  
Robb are aware of Lackey's actions. All in the name of wildlife and NDOW's mission statement?  
"To protect, preserve, manage and restore wildlife and public safety." Balance these photos with the  
NDOW press releases about bears and their dangers.



1 dogs and make the connection that way." Is this the person his counsel claims is not a public  
2 figure? One that is recognized in public and called the "bear man" or the "bear guy" is not a  
3 public figure? (See **Exhibit 1**, last page, last two paragraphs.) Can it least be admitted that Mr.  
4 Lackey is a public official?

5 In fact, Mr. Lackey thinks that because there was a prior lawsuit by his now Plaintiff's  
6 counsel, in which that case was settled for a confidential amount (one which NDOW disclosed  
7 in a community forum) that Mr. Lackey feels he has hit the proverbial lotto, and at the same  
8 time, can shut up the defendants and other members of the public who complain about what he  
9 is doing and how NDOW is handling the bear population in the Tahoe basin.

10 This is exactly the type of case that the Anti-SLAPP (Strategic Lawsuits Against Public  
11 Participation) Motion is to do is stop this strategic lawsuit by Mr. Lackey to shut up the  
12 defendants, to stop their free speech and other members of the public who have posted on  
13 these defendants Facebook pages. As Mr. Lackey even admits in his interview with the local  
14 paper (**Exhibit 1**, last page, last two paragraphs), certain people aren't happy with him for the  
15 way he handles the bear population. Apparently, that's the way "WE", that being NDOW and  
16 Mr. Lackey, handle the bear population in the Tahoe basin by tranquilizing them and remove  
17 them to an area which is sometimes a hunting area for bears. Apparently NDOW and Mr.  
18 Lackey thinks that's ok. Other members of the public don't. This would be commonly called  
19 something of a "public interest." No matter who's right or wrong, the public has a right to  
20 comment about this. And it has. Mr. Lackey has sued because of that. One could only guess  
21 because he believes he's going to extract money from the defendants because that is what he is  
22 suing for - money. Not a retraction, not an injunction, but for money.

### 23 **POINTS AND AUTHORITIES**

24 Plaintiff's complaint should be dismissed pursuant to Nevada's Anti-SLAPP legislation.

25 NRS 41.637 provides "good faith communication in furtherance or a right to petition or  
26 right to free speech in direct connection with an issue of public concern", means any  
27 communication made in direct connection with an issue of public interest in a place open to the  
28 public or in a public forum, which is truthful or is made without knowledge of its falsehood,



1 NRS 41.637(1)(4). The communication occurred on Facebook, a public forum. Plaintiff claims  
2 that he has been damaged by this Defendant's "publishing false and vicious comments accusing  
3 Plaintiff of criminal conduct." (See ¶14, page 4, line 5-6 of the Amended Complaint). The  
4 comments that Plaintiff **ATTEMPTS** to blame this defendant for are: § Q, R, S, U and Y of ¶14.  
5 Plaintiff admits in the First Amended Complaint that the §Q is a comment made by  
6 commentator Colleen Hemingway, not Carolyn Stark. ¶R, is by Jo Ann Hill, not Carolyn Stark, § S  
7 is by Mary Lo Buono Bryden, § U is by Kevin Dangers Bouchard and § Y by Karen Lietzill-Vick.  
8 None of those comments are attributed to Carolyn Stark making them, only that they were put  
9 on Carolyn Stark's Facebook page by these third parties.

10 The threshold questions the court must ask is does the Plaintiff's claim interfere as to  
11 Carolyn Stark, right of a good faith communication of right to petition or right of free speech in  
12 direct connection with the public policy issue. The public policy issue and public concern is in  
13 trapping and euthanizing of bears by Nevada Department of Wildlife. It cannot be argued that  
14 the treatment of wildlife in the Lake Tahoe is not an issue of public concern. In fact, the court  
15 has been provided a newspaper article about that (**Exhibit 1**). One of the most recent cases in  
16 Nevada involving SLAPP is *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, wherein the court  
17 found that the Defendants had met their burden under the statute is a lawsuit concerning the  
18 rights of an elderly individual was a matter of public concern under NRS 41.637(4). The  
19 Nevada Supreme Court also found that the Anti-SLAPP statute in Nevada was constitutional.  
20 Once the Defendant, as here, has shown that it has a right of free speech in direct connection  
21 with the issue of public concern, the burden shifts to the Plaintiff to show with prima facie  
22 evidence, a probability of prevailing on the claim. NRS 41.665(2)

23 The Court in *Shapiro* (supra) went on to explore the issue of what constitutes a public  
24 interest in an Anti-SLAPP context is. In doing so, the court looked to the California courts to see  
25 how it addressed this issue, and the court in *Shapiro* adopted California's "guiding principles"  
26 enunciated in *Piping Rock Partners, Inc. v. Lerner*, 946 F. Supp 2d 957,  
27 968 (N.D. Cal. 2013). In that case, plaintiff, who was a single shareholder corporation  
28 specializing in real estate investment. The defendants did negative blog postings about the

1 Plaintiff. Plaintiff retaliated with similar postings, as the defendants did. Defendant's  
2 counterclaim alleged the statements of other visitors to the site were authorized by plaintiff or  
3 "encouraged or sanctioned" by him.

4 Just like in this case, as in the Piping Rock case, other third parties participated and  
5 posted statements, which were unbecoming and attacking, whether truthful or not. The court  
6 determined that other users' statements on a public forum site does not make the person that  
7 has that public forum site liable, in fact they are immune to liability for the posts that they did  
8 not author under the Communications Decency Act. 47 USC § 230, also see *Gentry v. Ebay Inc.*  
9 99 Ca App 4<sup>th</sup> 816, 828-831, 121 Cal Rep 2<sup>nd</sup> 703 (2002), cited in *Piping Rock Partners, Inc. v.*  
10 *Lerner*, 946 Fed Supp 2<sup>nd</sup> 957, 968 (N.D. Cal. 2013). Subsection (c)(1) of section 47 U.S.C. 230  
11 immunizes providers of interactive computer services (service providers) and their users from  
12 causes of action asserted by persons alleging harm caused by content provided by a third party.  
13 This form of immunity requires (1) the defendant be a provider or user of an interactive  
14 computer service; (2) the cause of action treat the defendant as a publisher or speaker of  
15 information; and (3) the information at issue be provided by another information content  
16 provider. (47 U.S.C. § 230(c)(1).)

17 Plaintiff states three causes of action: (1) Defamation. ¶19-20 of the Amended  
18 Complaint state as to Defendant Stark, that she and her Facebook page "published and  
19 encouraged statements despite "having actual knowledge that such statements were false, or  
20 with reckless disregard for their veracity." Carolyn Stark did not make any of these statements  
21 alleged as being defamatory. Thus, the cause of action must be dismissed against her and her  
22 Facebook page, based upon the above citations. Same is true in regards to ¶20 of the Amended  
23 Complaint, where it is claimed that the defendants, as to Defendant Carolyn Stark, that she was  
24 making "public posts on Facebook that were false." There is nothing in the Complaint to  
25 indicate that Carolyn Stark made any false statements. More to the point, ¶20 also talks about  
26 the condoning of allowing any false statements. This must be explored a little bit more than  
27 just simply saying she's not liable for third party statements.

28 One need simply look at this general hypothetical...let's say a court judge running for

1 office starts a Facebook page for his political campaign. On that Facebook page, certain third  
2 parties who are also Facebook users, went on his page and maligned his campaign opponent,  
3 even, let's assume, makes false statements. Is that Judge liable? Is the argument that the Judge  
4 in his campaign Facebook that he could have deleted or restricted the use of that Facebook  
5 page sufficient? Well, if anybody is aware of how Facebook works, the Judge's opponent could  
6 have lodged a complaint on Facebook and she herself could have flagged the statement(s). She  
7 could have contacted Facebook and reported it. In fact, there are websites that assist one in  
8 doing so. Such examples are attached hereto as **Exhibit 6**. So simply because the Plaintiff in  
9 this case doesn't know how to use Facebook or has ignored that opportunity to handle the  
10 matter in such a fashion to flag a statement(s) in order to hit the lotto and somehow create a  
11 legal obligation for the Defendant Carolyn Stark is not what the law allows. The Facebook  
12 postings of others is not the liability of this Defendant or our hypothetical person.

13 In the abundance of caution, this Defendant will analyze each statement attributed  
14 against her. Let's start at the last one first where it is alleged that Ms. Stark is somehow liable  
15 for. That would be §Y of ¶14. That states "Lackey is such an incompetent asshole!!! Fire his  
16 ass!!!", posted by commenter Karen Lietzell-Vick. That's clearly an opinion and one no doubt  
17 that Mr. Lackey disagrees with. Others however, may agree with it. That's what happens with  
18 opinions. Some people agree with them and some people don't. This brings to mind the Vogel  
19 v. Felice case, 26 Cal Rptr 3d 350, 127 Cal App 4th 1006 (2005). "Incompetent asshole" is like  
20 calling him a "dumbass" like the Vogel case. As pointed out in that case, "The challenged  
21 statement must be found to convey a probable false fact or assertion. "Dumbass"  
22 communicates no factual preposition susceptible of proof of refutation". The same would be  
23 true of Lackey being called an "incompetent asshole".

24 ¶ 14, § U is unclear if it supports Carl Lackey or not, stating "This page is what's wrong  
25 with Tahoe, you should try another tactic to educate our community..." Could it be this is a  
26 person who supports Carl Lackey? It appears to be. Is Mr. Lackey responsible for what they  
27 post about the Defendants? Could it be that there are strong opinions on each side? Should our  
28 First Amendment say that if there are strong opinions on each side, that the First Amendment

1 should not protect that speech? If these questions are beginning to border on the obvious of  
2 absurdity, then the point has been made.

3 ¶14, § S of the Amended Complaint states, "It's time for the NV Engineered bear hunt."  
4 This appears to be one move that is directed against Nevada Department of Wildlife. Mr.  
5 Lackey apparently considers himself a "WE" making sure that no one questions this  
6 governmental authority in his public official capacity. What is the defamatory context here? It  
7 would be interesting to see what Mr. Lackey's response to this Motion in regards to ¶14, § S of  
8 the Amended Complaint is.

9 ¶14, § R states, "Yes he should go to jail. The treatment of our bears is paramount  
10 cruelty..." It ends by saying, "him and his NDOW murderers need to go to jail and stay there."  
11 Is Mr. Lackey suggesting that this is something more of an opinion? If it is not opinion, then it  
12 must be true or false. Is moving a mother bear without her cubs and moving that mother bear  
13 into a hunt zone a great distance from where her known food and water resources are a form of  
14 animal cruelty? Some may say that it is. Is it more true to say that this is cruelty rather than  
15 not cruelty?

16 Finally in regards to ¶14, § Q, again a statement not made by Carolyn Stark on that  
17 Facebook page must be viewed with the "ifs" in that paragraph which state "IF we can establish  
18 that he or his family benefits financially from selling bear parts or selling the location....he  
19 should go to jail." It also talks "IF" they issued a license in the killing of them in the name of  
20 public safety must be something that excites him, all in conflict with NDOW's mission." But  
21 these are "ifs". If Mr. Lackey really wants to challenge that statement, the commenter is Colleen  
22 Hemingway. It may be Colleen Hemingway that has been a California attorney since 1992. Mr.  
23 Lackey can challenge her on whether her opinion is defamatory or not.

24 So, do we have defamation? The general elements of defamation are if the Plaintiff has  
25 proven (1) a false and defamatory statement made by a Defendant concerning the Plaintiff; (2)  
26 and unprivileged publication to a third person; (3) false, amounting to at least negligence; and  
27 (4) actual or presumed damages. See *Pegasus v. Reno Newspaper* 118 Nev. 706, 718, 57 P.3d 82,  
28 90 (2002). In those instances where a public figure or limited public figure is involved, it must

1 meet a higher standard of proving actual malice, as opposed to negligence. *Id.* Public figures  
2 are those individuals who “achieve such a pervasive fame or notoriety that [they] become a  
3 public figure for all purposes and in all contexts.” *Id.* (citing *Gertz v. Robert Welch, Inc.*, 418 U.S.  
4 323,351 (1974)). Conversely, a limited public figure is “a person who voluntarily injects himself  
5 or is thrust into a particular public controversy or public concern and thereby becomes a public  
6 figure for a limited range of issues.” *Id.* at 720, 57 P.3d at 91. More importantly, the public  
7 official is treated like a public figure in defamation cases, *Gertz v. Robert Welch, Inc.*, 418 U.S.  
8 323,351 (1974) (*supra*).

9 With respect to any defamatory statement at issue, a statement is not defamatory if it is  
10 an exaggeration or generalization that could be interpreted by a reasonable person as “mere  
11 rhetorical hyperbole.” *Pegasus, Id.* at 715, 57 P.3d at 88. Here at minimum, Mr. Lackey is a  
12 limited public figure, most likely a public figure, based upon the extent of his exposure on TV,  
13 not only on the local scale but on a national and international scale, and he is definitely a public  
14 official. Either way are the statements defamatory? Does anyone really believe other than for  
15 rhetorical purposes that NDOW and Lackey are “murderers”? They can’t be murderers of bears  
16 by the simple legal definition of murder. Mr. Lackey is a bear killer because he has killed bears,  
17 a lot of them.

18 NRS41.650 is specifically designed to protect free, open speech about a public matter,  
19 that is its purpose. Anti-SLAPP statutes are to specifically design to assure that there is  
20 absolute free speech about public concerns. Although not binding, California decisions  
21 interpreting its anti-SLAPP statute are persuasive in Nevada. The Supreme Court of Nevada  
22 acknowledged this in *John v. Douglas County Schools*, 125 Nev. 746, 219 P.3d (2009), when it  
23 noted that “[N]evada’s anti-SLAPP statute was enacted in 1993, shortly after California adopted  
24 its statute, and both statutes are similar in purpose and language.” 125 Nev. At 752, 219 P.3d at  
25 1281. By doing so, the Legislature implicitly adopted California case law interpreting that  
26 statute. “When the Legislature adopts a statute substantially similar to a federal statute, a  
27 presumption arises that the legislature knew and intended to adopt the construction placed on  
28 the federal statute by federal courts.” *International Game Technology, Inc. v. Dist. Ct.*, 122 Nev.

1 132, 153, 127 P.3d 1088, 1103 (2006). See also Shapiro, *supra*.

2 The language of both states' anti-SLAPP statutes remained similar after Nevada's 2013  
3 and 2015 amendments. For instance, California uses substantively identical language to define  
4 communications that qualify for protection. Like Nevada, protection is provided to

5  
6 (3) any written or oral statement or writing made in a place open to the  
7 public or a public forum in connection with an issue of public interest, or (4) any  
8 other conduct in furtherance of the exercise of the constitutional right of petition  
or the constitutional right of free speech in connection with a public issue or any  
issue of public interest.

9  
10 Cal Code Civ Proc § 425.16(e)(3), (4). California has applied these definitions broadly to  
11 protect speech similar to that at issue here.

12 California has also interpreted the requirement that the lawsuit "arise from"  
13 protected statements, similar to Nevada's requirement that the lawsuit be "based upon"  
14 protected statements.

15 In short, the statutory phrase "cause of action...arising from" means  
16 simply that the defendant's act underlying the plaintiff's cause of action must  
17 itself have been an act in furtherance of the right of petition or free speech. In the  
anti-SLAPP context, the critical point is whether the plaintiff's cause of action  
itself was based on an act in furtherance of the defendant's right of petition or  
free speech.

18  
19 *City of Cotati v. Cashman*, 52 P.3d 695, 701(Cal. 2002) (internal citations omitted). "In the anti-  
20 SLAPP context, the critical consideration is whether the cause of action is based on the  
21 defendant's protected free speech or petitioning activity." *Episcopal Church Cases*, 198 P.3d 66,  
22 73 (Cal. 2009). "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's  
23 cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability  
24 – and whether that activity constitutes protected speech or petitioning." *Navellier v. Sletten*, 52  
25 P.3d 703, 711 (Cal. 2002) (emphasis in original).

26 The motive for the speech is irrelevant. "[C]auses of action do not arise from motives;  
27 they arise from acts." *Wallace v. McCubbin*, 196 Cal. App. 4<sup>th</sup> 1169, 1186 (2011). California's  
28 anti-SLAPP statute "applies to claims 'based on' or 'arising from' statements or writings made

1 in connection with protected speech or petitioning activities, regardless of any motive the  
2 defendant may have had in undertaking its activities, or the motive the plaintiff may be  
3 ascribing to the defendant's activities." *Tuszynska v. Cunningham*, 199 Cal.App.4<sup>th</sup> 257, 269  
4 (2011). "[T]he defendant's purported motive in undertaking speech and petitioning activities  
5 is irrelevant in determining whether the plaintiff's cause of action is based on those activities."  
6 *Id.* at 271. Once it is shown that this conduct is protected by Nevada's anti-SLAPP legislation,  
7 the burden then shifts to the Plaintiffs to demonstrate by prima facie, the likelihood that they  
8 will prevail. *See*, NRS 41.660(3)(b) and NRS 41.665. Here, the Plaintiff must show, by such  
9 evidence that they will prevail on each claim for relief. California's standard is similar to that  
10 enacted by the Nevada Legislature in 2015. California weighs whether the plaintiff has  
11 established that there is legally sufficient prima facie evidence that the plaintiff will prevail on  
12 the claim. Cal Code Civ Proc § 425.16(b)(1).

13  
14 California's courts have interpreted the extent of this lower standard. To  
15 satisfy the second prong, a plaintiff responding to an anti-SLAPP motion must  
16 state and substantiate a legally sufficient claim. Put another way, the plaintiff  
17 must demonstrate that the complaint is both legally sufficient and supported by a  
sufficient prima facie showing of facts to sustain a favorable judgment if the  
evidence submitted by the plaintiff is credited.

18 *Oasis W. Realty, LLC v. Goldman*, 250 P.3d 1115, 1120 (Cal. 2011) (internal citations and  
19 parentheticals omitted). "[A] plaintiff opposing an anti-SLAPP motion cannot rely on  
20 allegations in the complaint, but must set forth evidence that would be admissible at trial  
21 *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4<sup>th</sup> 688, 699 (2007).

22 Plaintiff here lacks the prima facie evidence required to demonstrate a probability of  
23 prevailing upon any of his claims. In fact, it is readily apparent that all of the Plaintiff's causes  
24 of action arise out of the protected free speech rights. Irrespective of how Plaintiff crafts his  
25 claims for relief, it is abundantly clear that the issues concerning the protection of bears at Lake  
26 Tahoe has been, and continues to be, an issue of significant public concern. The Defendant in  
27 this case, Carolyn Stark, is being sued for her exercise of free speech and association on this  
28 matter of public concern. The Nevada Legislature has made clear with the passage of NRS



1 41.635 et. seq., and subsequent amendments to same, and 47 U.S.C. § 230(c)(1), that such  
2 conduct cannot form the basis of civil liability under any cause of action.

3 As such, all of the claims for relief pled by the Plaintiff must be dismissed in accordance  
4 with Nevada's Anti-SLAPP statutes.

5 **PLAINTIFF'S CIVIL CONSPIRACY CLAIM FAILS AS A MATTER OF LAW**

6 In addition, as pled in the complaint, Plaintiff's claim for relief for civil conspiracy fails as  
7 a matter of law. Specifically, Plaintiff claims that the Defendants engaged in a civil conspiracy  
8 against him to accomplish some unlawful purpose. It appears that conspiracy is again based  
9 upon this exercise of free speech since no other activity is alleged. See, Amended Complaint, ¶  
10 34-36. Plaintiff's failure to plead with specificity also brings into question NRCP 9, in that it  
11 conveys claims of malice.

12 In order to succeed on such a cause of action in Nevada, the Plaintiff must show, by a  
13 preponderance of the evidence, the following elements: (1) the Defendants, by acting in  
14 concert, intent to accomplish an unlawful objective for the purpose of harming the plaintiff and  
15 (2) that the Plaintiff sustained damage resulting from Defendants' act or acts. *Consol Generator-*  
16 *Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 971 P.2d 1251 (1999).

17 This claim may also be subject to dismissal under Nevada's intra-corporate conspiracy  
18 doctrine. Under this doctrine, agents and employees of a corporation cannot conspire with  
19 their corporate principal or employer where they act in their official capacities on behalf of the  
20 corporation and not as individuals for their individual advantage. *Collins v. Union Fed. Savings*  
21 *& Loan*, 99 Nev. 284 (1983). That's assuming the Plaintiff is somehow claiming that this  
22 Defendant is a member of one of the other Defendants, then as a matter of law she could not  
23 have conspired to violate any of the Plaintiff's rights and Plaintiff's civil conspiracy claim fails to  
24 state a claim upon which relief may be granted. Unfortunately, Plaintiff's conspiracy claim is so  
25 vague, it is impossible to see upon what context the conspiracy lies, except that of speech and as  
26 such, Plaintiff's claim must be dismissed.

27 **CONCLUSION**

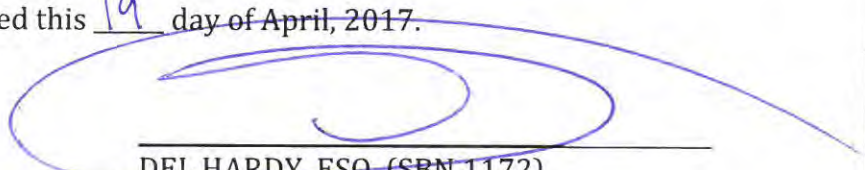
28 Therefore, Plaintiff's lotto ticket must be cancelled. Unlike the Evans case (*supra*), there



1 will be no payday, nor will the action of Mr. Lackey silence the free speech against NDOW and  
2 him.

3 More to the finishing point, Mr. Lackey will be required to bear the burden of his ill  
4 thought out vexatious claims against this defendant. NRS 41.670 provides that the court "shall"  
5 award reasonable attorney's fees and costs and may also award up to \$10,000 against Mr.  
6 Lackey, who brought this frivolous suit. All should be well warranted after the Plaintiff  
7 attempts to skirt the errors of its frivolous Amended Complaint by opposing this Motion.  
8

9 Dated this 19 day of April, 2017.

10  
11   
12 \_\_\_\_\_  
13 DEL HARDY, ESQ. (SBN 1172)  
14 WINTER STREET LAW GROUP  
15 Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WINTER STREET LAW GROUP, 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing document(s) described as **SPECIAL MOTION TO DISMISS/ANTI-SLAPP** on all parties to this action by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

\_\_\_\_\_ Personal Delivery

XX \_\_\_\_\_ Facsimile (FAX)

\_\_\_\_\_ Federal Express or other overnight delivery

\_\_\_\_\_ Messenger Service

\_\_\_\_\_ Certified Mail with Return Receipt Requested

XX \_\_\_\_\_ Electronically filed

addressed as follows:

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**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding document and attached exhibits, if any, do not contain the Social Security Number of any person.

DATED this 19 day of April, 2017.

Eun Di Rubio  
EMPLOYEE OF WINTER STREET LAW GROUP

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**SECOND JUDICIAL DISTRICT COURT WASHOE COUNTY**

**CARL LACKEY V. CAROLYN STARK ET AL.**

**CASE NO. CV17-00434**

**SPECIAL MOTION TO DISMISS/ANTI-SLAPP**

**EXHIBIT INDEX**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>LENGTH</b>
1	Tahoe Daily Tribune Article dated 4/12/07	3
2	Tahoe Daily Tribune Article dated 1/11/14	2
3	Photos	8
4	Advertisement for Dart Tranquilizing Company	1
5	NDOW Press releases	13
6	How To File a Facebook Complaint Article	2

***EXHIBIT “1”***

***EXHIBIT “1”***

# Bear warrior: 15 Minutes with Carl Lackey

April 12, 2007

By Dylan Riley

Nevada Department of Wildlife Biologist Carl Lackey and his Karelian bear dogs Rooster and Stryker are local celebrities featured in a National Geographic Channel program titled "The Animal Extractors," a series that explores what happens when the boundaries between cities and natural habitats blur and creatures of all kinds find their way into populated areas looking for food and new places to shelter.

Q: How long have you been with the department of wildlife?

A: Since 1993. Almost 14 years now. The last 10 of that have been as a the biologist here dealing with the bears.

Q: Did you start with the bears or just wildlife in general?

A: I started titling boats in the Reno office and then I moved to a wildlife management area. I Kind of just lucked into the bears. It wasn't planned that way.

Q: How big is the local bear population?

A: We estimate it at somewhere between 200 and 300 animals total in the state and that's restricted to just the far western edge of Nevada.

Q: How are people more of a threat to bears than bears are to people?

A: Well, people are a threat to the bears through constriction and destruction of the habitat. Bears are what you call, I guess, a keystone species. Their abundance and the health of the bear population is indicative of the habitat and the ecosystem in general because they are at the top of the food chain in a lot of instances. So they are an indicator species. They indicate what the ecosystem is doing and the health of the habitat. Bears as a threat to people? There is always that possibility because they are a carnivore. They are a wild animal.

Q: Even black bears?

A: Absolutely. Black bears predaciously kill people. I don't want to say every year in North America but pretty close to at least one instance every year in all of North America. A lot of times down here in the U.S. we've had predacious attacks in Arizona, Colorado, Tennessee. People either have the Disney view of bear: or the horrific view that they're out there to attack at the drop of a hat. One extreme or the other but bears

really fall somewhere in-between. We've had some people doing some pretty stupid things. What they don't realize is that by habituating the bears to people or by feeding the bears intentionally or unintentionally they are creating a situation where the bears may ultimately have to be killed or are killed because of humans. Mostly by cars, mostly getting hit by cars. Although a few have to be put down for management reasons every year because they become so bold around people that they're approaching people for food and breaking into homes for food and becoming a threat to safety.

Q: Do you relocate bears?

A: We haven't relocated as a general practice since 1996 when I took over the position. We have chosen instead to use on-site releases, meaning releasing right where we catch them or in very close proximity in the bear's home range. And then we subject the bears to the aversive conditioning which is the use of the rubber bullets or pepper spray and Karelian bear dogs and give the bear a real bad experience and teach him that his behavior is unwanted and he's not welcome around people.

Q: What is a Karelian bear dog?

A: It's a Russian and Finnish breed that were originally bred to hunt big game animals and mainly brown bears in Europe and Russia. We're using them here for hazing of problem bears and using them to modify their behavior around people.

Q: How big was the biggest bear you ever encountered?

A: We had several that were 600 pounds, but the biggest was 640 pounds, and that was one of our collared males last year over at Incline Village.

Q: Is that the one that was breaking into places?

A: No, all he's been doing is getting into garbage. We had one up here about a year ago that was tearing doors off of trucks and breaking into garages and stuff, he was 620 pounds. But the 640 pounder is alive and well, as far as I know; he's feeding on all the good food over in Incline.

Q: Smart bear. They are pretty smart, too, right?

A: Oh yeah, they're real smart.

Q: Are they smarter than trappers? Can they dodge people like wolves or are they not considered as smart in the wildlife world?

A: No, there are smart bears; they're curious. I guess their intelligence is driven by their curiosity. Or vice versa. And they can learn from one experience and then remember that behavior, so they're smart in that way, I guess.

Q: There aren't any brown bears around here right?

A: No brown bears, grizzlies, same thing. The closest is going to be up in Yellowstone, Idaho, and I think there's even a possibility of a few over in Washington.

Q: You will be on the National Geographic Channel?

A: It's been a series of about 12 or 13 episodes called ... the "Animal Extractors" is what they ended up calling it. They spent all summer with us last year. Several different film crews kind of took turns, they were from England and they went on every call with us and filmed all kinds of stuff.

Q: Did any good bear stories happen during that time when they were with you?

A: Yeah, but not as good as we've had. We had one in Gardnerville at a youth camp that locked itself into a bathroom and then proceeded to rip sinks off the wall and toilets off the wall and flooded the bathroom. We've had some interesting and hair-raising experiences with bears in homes, breaking into homes and being in the house when we got there. We've had tons of stuff.

Q: How do you track bears?

A: Every bear that we put our hands on we ear tag and tattoo. Tattoo on the inner lip, put in a corresponding number on the ear tag so if we ever catch them again we can positively identify them. We do a lot of collaring with the Wildlife Conservation Society since 1999. I think we've radio collared 60 some odd bears with them over that period and tracked the bears through a VHF signal via radio telemetry. And with the Wildlife Conservation Society, we've put out seven GPS collars that take a fix off a satellite so many times a day and then store that data on the collar so that when you retrieve the collar you have a dot to dot of everywhere that bear was at.

Q: How long do bears live for?

A: In the wild I'd say the average is probably 15 to 20 years they lose their competitiveness after that. But there are bears that have lived to be well over 20 years old. I think the oldest in captivity was 33 years old.

Q: Do people recognize you as the bear guy in public and ask you for your autograph?

A: No, no autographs. Yeah I'm called the bear guy or the bear man or other things depending on whether they're happy with me or not, but I've never been asked for my autograph. They recognize me or they recognize the dogs. A lot of people see the dogs and make the connection that way.

***EXHIBIT “2”***

***EXHIBIT “2”***



# Carson Valley's Lackeys keep it wild

by Caryn Haller [challer@recordcourier.com](mailto:challer@recordcourier.com)

January 11, 2014

National Geographic isn't usually the place for match-making, but that's where Johnson Lane residents Carl and Heather Lackey got their start.

While filming separate episodes of Animal Extractors in 2006 featuring Heather's work with rattlesnake removal in California, and Carl's work with nuisance bears in the Sierra, National Geographic crew member suggested the two meet.

"It was all I could do to keep him from chasing me after that," Heather, 39, joked. "Once we met each other and I got to know him, I knew I wasn't going to be happy unless I was with Carl."

In 2007, Heather moved to Carson Valley, and the two were married the following year.

Wanting to keep working with wildlife, Heather started Carson Creature Catchers that same year.

"I told her there was a need for nuisance wildlife control, so she started the business," said Carl, a 49-year-old biologist with the Nevada Department of Wildlife.

Heather captures and removes raccoons, skunks, badgers, beavers, snakes, bats and other critters from homes and business in the Reno, Tahoe, Carson City area.

"I grew up hiking with my dad and holding gopher snakes, so it wasn't something I was afraid of," Heather said of her job. "Every single day is different. I get to solve problems for people who can't solve it themselves. It's challenging and a lot of fun."

Along with Carl's adult son, Nolan, the Lackeys have two young sons together, 5-year-old Tristan "Spud," and 3-year-old Brogan, "Munch."

"It's a challenge having two little, active boys, and we both get called out any time of day," Carl said of balancing work and family.

In order to instill their love for wildlife in their young sons, the Lackeys take them to work as much as possible.

"Tristan helps me bait traps and check traps. He likes it. He knows more about wildlife than most adults do," Heather said. "We teach them to respect the animals and about safety."

"They understand the difference between reality and Disney," Carl added. "They know mountain lions eat deer and bears eat squirrels."

Since January, Carl has captured and released close to 100 black bears, and Heather has done close to 1,500 removals, keeping them both busy.

"We make when we're together about the family rather than work," Heather said. "The boys do ask what kind of animals we caught that day."

As far as worrying about his wife catching poisonous snakes and potentially rabid raccoons, Carl said he has the utmost confidence in Heather's abilities.

"She knows what she's doing, so I don't worry about her," he said. "A lot of people don't think a cute little blonde girl can do what she does."

"Sometimes guys don't like it when a girl shows up to solve their problems," Heather said. "They ask if I have back-up, and that's when it's fun to have Tristan with me."

After talking with the Lackeys it's obvious they are the right people for the job and each other.

"Neither of us could handle a 9 to 5 job," Carl said. "We thrive off the spontaneity of our work."

Carl has worked as a wildlife biologist for 20 years. He specializes in population management of fur-bearing animals.

Heather can be reached at <http://www.carsoncreaturecatchers.com> (<http://www.carsoncreaturecatchers.com>) or 315-7124.

***EXHIBIT “3”***

***EXHIBIT “3”***

Carolyn stark

liskey pics

April 10, 2017 at 2:18 PM

You can only imaging our surprise when we started gathering cubs from the bed. One,,, two,,, three,,,,,, four. Unreal. 4 healthy cubs from a 20+ year old sow. And the story of her life continues and we can only imagine the number of cubs she had brought into this wor... [See More](#)





9







JA 0051







**DANGER**

**KEEP OUT!**

*DO NOT APPROACH*

DON'T WORRY — BEARS CAN'T READ



JA 0053









Carl & Heather (ackey)





JA 0056

***EXHIBIT “4”***

***EXHIBIT “4”***





**PNEU-DART**

## Pneu-Dart used With Bears & the Nevada Department of Wildlife



Pneu-Dart used With Bears & the Nevada Department of Wildlife from Pneu Dart on Vimeo.

Carl Lackey, Wildlife Biologist with the Nevada Department of Wildlife, demonstrates how he uses Pneu Dart drug delivery systems when responding to human bear conflict calls and/or when conducting bear research during the winter.

Full HD Video | Pneu Dart | Carl Lackey | Pneu Dart, Inc.

***EXHIBIT “5”***

***EXHIBIT “5”***

# **Nevada Department of Wildlife--Black Bear Advisory**

April 8, 2015

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **JACK'S VALLEY BLACK BEAR CAPTURED**

### **To be processed Wednesday; released Thursday**

A black bear captured in the early morning hours of Wednesday in the rural area of Jack's Valley (Douglas County) will be processed today at the Nevada Department of Wildlife Reno office.

Biologist Carl Lackey will tranquilize the bear, perform a biological assessment and possibly affix a satellite collar to monitor its future movements.

If you want to witness this process for the first time in 2015, be at NDOW's Reno office at 1:30 p.m. NDOW officials will be on hand to answer any questions you may have about what is expected to be a very busy year for black bears in western Nevada.

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

# **Nevada Department of Wildlife--Black Bear Advisory**

April 9, 2015

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **JACK'S VALLEY BLACK BEAR RELEASED THURSDAY MORNING**

A black bear captured Wednesday morning in Jack's Valley has been safely released back in to the wild near the area where it was trapped. The bear was seen as a potential trouble bear because of its interest in the livestock in the area.

In a whirlwind 24-hour period, the 350-pound male bear was trapped, tranquilized, fitted with ear tags, a satellite collar, a micro-chip and a tattoo. After sleeping off the tranquilizer induced hangover, it was safely released back in to the wild Thursday morning.

At the release, in a rural area of Douglas County in Jack's Valley, the bear was shot in the rear with a rubber slug and chased and treed by Karelian bear dogs in a process called aversive conditioning by Nevada Department of Wildlife biologists.

"We got to this bear early during its conflict behavior and we have a chance of keeping him alive and wild with aversive conditioning," says wildlife biologist Carl Lackey. "Without early intervention in the bear's conflict behavior, this bear could have become a dangerous bear, perhaps killing livestock or breaking in to dwellings."

It is expected to be a busy year for NDOW biologists and game wardens as bears expand their search for food over a drought-stricken landscape.

## **Call the experts: NDOW Bear Hotline Number: (775) 688-BEAR (2327)**

Persons needing to report nuisance bear activity can call the NDOW's Bear Hotline telephone number at (775) 688-BEAR (2327). For information on living with bears persons can go to [www.ndow.org](http://www.ndow.org) and find the "Bear Logic" page on the web.

## **Aversive Conditioning: How it Works**

Black bear biologist Carl Lackey describes aversive conditioning like this:

"Once we have the bear in the trap and right as we release it, we shoot rubber bullets at it and chase it with Karelian bear dogs, using all of the tools available to us in our aversion conditioning program. The goal is to make the bear uncomfortable and make it think twice before coming back to civilization."

Lackey stated that on-site releases and the chance to use aversion conditioning on the bear gives NDOW a chance to "save" the bear from becoming a dangerous bear in the future. "When people who need help call us first, it gives us the chance to intervene right at the time when the bear first gets into trouble, when that happens we have a chance to alter its behavior."

NDOW has saved nearly 400 bears using aversive conditioning treatment since the technique was first employed in the late 1990s. "The key to saving these bears is that we receive a phone call from the public right when the bear shows up in a neighborhood," said Lackey. "When we're allowed to do our job from the beginning, without interference from outside groups, we can save most bears."

JA 0061



# **Nevada Department of Wildlife--Black Bear Advisory**

May 23, 2015

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **TWO BLACK BEARS CAUGHT AND SAFELY RELEASED SINCE FRIDAY**

The Nevada Department of Wildlife caught two black bears on Friday May 22 and have safely released both animals.

A yearling cub, caught near the casino area of Stateline near Lake Tahoe's South Shore was captured early Friday morning and was safely released later that day in the Mt. Rose Wilderness Area near Verdi, Nevada.

A large male bear, estimated to be four to five years of age and weighing a hefty 400 to 450 pounds was caught near Kingsbury Grade, above Lake Tahoe's South Shore, on Friday morning. The large bear had never been handled before by NDOW. It was tranquilized and fitted with ear tags, a tattoo was affixed to its lip and jaw area and a microchip was placed in the neck area in order to identify it in the future.

"We performed an on-site release using aversive conditioning techniques which features the use of Karelian bear dogs," said NDOW biologist Carl Lackey. "We reached this really big bear at the right time. We have a chance to keep him alive and wild because we did not have anyone interfering with our attempts to trap and educate this bear. When we can reach bears when they first display conflict behavior, we can usually change their habits. When people interfere with our traps, the bear can become progressively more dangerous until it has to be euthanized."

NDOW reminds everyone living in and around the Sierra Nevada to do all that they can to keep bears from being attracted to homes and campsites by keeping garbage and other potential food sources away from black bears.

"It is going to be a long, hot summer and the bears need our help to stay alive and wild," said Lackey. "People are encouraged to call NDOW's experts if they need help dealing with potential conflict bears."

### **Call the experts: NDOW Bear Hotline Number: (775) 688-BEAR (2327)**

Persons needing to report nuisance bear activity can call the NDOW's Bear Hotline telephone number at (775) 688-BEAR (2327). For information on living with bears persons can go to [www.ndow.org](http://www.ndow.org) and find the "Bear Logic" page on the web.

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**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

# **Nevada Department of Wildlife--Black Bear Advisory**

July 24, 2015 Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **BLACK BEARS CAPTURED IN INCLINE VILLAGE and STATELINE**

**Processed in Reno Friday morning; to be released Saturday morning**

**Bear hit and killed on highway near Topaz Lake**

Two black bears caught in separate Lake Tahoe traps during the early morning hours of Friday will be safely released Saturday morning by the Nevada Department of Wildlife. Both bears were males and neither had ever been handled by NDOW before Friday morning.

An eight year old, 300 pound male bear was captured in a NDOW trap in Incline Village. There had been reports of a bear that had broken in to houses in the area but the bear that ended up in the trap on Friday morning did not match the description of the bear performing the break-ins. "Because we cannot determine that this is the bear that has been breaking in to homes at Incline Village, we're going to give this one a second chance and move him to some wild country southeast of Lake Tahoe," said NDOW Black Bear Biologist Carl Lackey.

The bear caught at Stateline, on Lake Tahoe's south shore, was a three year old male weighing about 175 pounds and had never been handled before by NDOW. "We'll release this guy in the same general area where he was caught," said Lackey. "We'll perform aversive conditioning (*see description below*) on each of the bears and hopefully that will dissuade them from becoming too dependent on humans and human activity as a source of food."

A five year old male black bear weighing nearly 400 pounds was hit and killed by a car on the highway near Topaz Lake early Friday. This was the 10<sup>th</sup> bear hit and killed by an automobile in 2015. Eighteen bears were hit and killed by cars last year.

### **Aversive Conditioning: How it Works**

Black bear biologist Carl Lackey describes aversive conditioning like this:

"Once we have the bear in the trap and right as we release it, we shoot rubber bullets at it and chase it with Karelian bear dogs, using all of the tools available to us in our aversion conditioning program. The goal is to make the bear uncomfortable and make it think twice before coming back to civilization."

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# **Nevada Department of Wildlife--Black Bear Advisory**

July 24, 2015

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **BLACK BEAR CAPTURED IN INCLINE VILLAGE**

### **To be processed in Reno today; to be released TBA**

A black bear captured in the early morning hours of Friday July 24, 2015, in Incline Village will be processed today at the Nevada Department of Wildlife Reno office.

Biologist Carl Lackey will tranquilize the bear, perform a biological assessment and possibly affix a satellite collar to monitor its future movements.

If you want to witness this process, be at NDOW's Reno office at 11:00 a.m. NDOW officials will be on hand to answer any questions you may have about what is expected to be a very busy year for black bears in western Nevada.

The nighttime hours between Thursday and Friday were very busy for NDOW and the black bears. One other bear was captured in the Lake Tahoe area (Stateline) and there is a report of a bear hit and possibly killed by a car near Topaz. Details on those bears should be available later this morning.

**Contact:** Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

## 2014:

- 704 calls
  - 63% in Washoe County which does include Incline.
    - ✓ Incline by itself was 100 calls which equals about 15% of the total of 704, or 1/7 th of all calls. For comparison, Incline accounted for 18% of calls the previous year, 2013.
  - 14% in Douglas
  - 14% in Carson
  - 9% in outlying areas (Lyon County, Mineral County, Storey County)
- 
- Complaints and we are down compared to same time last year. 162 compared to 108 as of today.
- 
- In July of 2014, we handled (according to my notes) 20 bears in July. By July 24 of 2014, we had already handled 16.
- 
- Of the 20,,,14 were released, 4 hit by car, 2 euthanized (one for public safety—sick and dangerous bear) and one for livestock depredation.

## 2015:

We've handled nearly 50 bears. 10 have been killed by cars so far this year.

**Table 1: Bears handled in the Western Region 2005-2015.**

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Bears Handled	74	88	159	68	40	79	78	83	97	140
Cumulative Total (since 1997)	383	471	630	698	738	817	895	978	1075	1215

**Table 6: Documented Mortalities 2005-2014**

Mortality Type	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total (1997-present)
Hit by Car	14	22	35	6	8	8	3	9	12	18	188
Public Safety	1	4	10	17	3	12	8	4	5	1	84
3 - Strikes	NA	NA	1	6	3	8	0	1	0	0	19
Sport Hunt	NA	NA	NA	NA	NA	NA	14	11	14	18	57

Depredation	2	5	5	1	0	2	1	2	2	2	35
Illegal	0	0	3	0	0	1	1	0	0	0	6
Other	0	1	8	2	1	3	6	4	9	9	57
<b>Total</b>	<b>17</b>	<b>32</b>	<b>62</b>	<b>32</b>	<b>15</b>	<b>34</b>	<b>33</b>	<b>31</b>	<b>42</b>	<b>48</b>	<b>446</b>
Cumulative Total (since 1997)	117	149	211	243	258	292	325	356	398	446	

Marked Nevada bears killed in other states (25 since 2001) are not recorded in Table 1.

# **Nevada Department of Wildlife--Black Bear Advisory**

July 24, 2015 Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **BLACK BEARS CAPTURED IN INCLINE VILLAGE and STATELINE**

**Processed in Reno Friday morning; to be released Saturday morning**

**Bear hit and killed on highway near Topaz Lake**

Two black bears caught in separate Lake Tahoe traps during the early morning hours of Friday will be safely released Saturday morning by the Nevada Department of Wildlife. Both bears were males and neither had ever been handled by NDOW before Friday morning.

An eight year old, 300 pound male bear was captured in a NDOW trap in Incline Village. There had been reports of a bear that had broken in to houses in the area but the bear that ended up in the trap on Friday morning did not match the description of the bear performing the break-ins. "Because we cannot determine that this is the bear that has been breaking in to homes at Incline Village, we're going to give this one a second chance and move him to some wild country southeast of Lake Tahoe," said NDOW Black Bear Biologist Carl Lackey.

The bear caught at Stateline, on Lake Tahoe's south shore, was a three year old male weighing about 175 pounds and had never been handled before by NDOW. "We'll release this guy in the same general area where he was caught," said Lackey. "We'll perform aversive conditioning (see description below) on each of the bears and hopefully that will dissuade them from becoming too dependent on humans and human activity as a source of food."

A five year old male black bear weighing nearly 400 pounds was hit and killed by a car on the highway near Topaz Lake early Friday. This was the 10<sup>th</sup> bear hit and killed by an automobile in 2015. Eighteen bears were hit and killed by cars last year.

## **Aversive Conditioning: How it Works**

Black bear biologist Carl Lackey describes aversive conditioning like this:

"Once we have the bear in the trap and right as we release it, we shoot rubber bullets at it and chase it with Karelian bear dogs, using all of the tools available to us in our aversion conditioning program. The goal is to make the bear uncomfortable and make it think twice before coming back to civilization."

Lackey stated that on-site releases and the chance to use aversion conditioning on the bear gives NDOW a chance to "save" the bear from becoming a dangerous bear in the future. "When people who need help call us first, it gives us the chance to intervene right at the time when the bear first gets into trouble, when that happens we have a chance to alter its behavior."

NDOW has saved nearly 400 bears using aversive conditioning treatment since the technique was first employed in the late 1990s. "The key to saving these bears is that we receive a phone call from the public right when the bear shows up in a neighborhood," said Lackey. "When we're allowed to do our job from the beginning, without interference from outside groups, we can save most bears."

# **Nevada Department of Wildlife--Black Bear Advisory**

July 25, 2015 Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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## **BLACK BEARS FROM INCLINE VILLAGE and STATELINE RELEASED**

### **Aversion Conditioning Applied---“Hopefully we’ll never see them again”**

Two male black bears caught in separate Lake Tahoe traps on Friday were safely released Saturday by the Nevada Department of Wildlife. Both bears were males and neither had ever been handled by NDOW before Friday morning.

The eight year old, 300 pounder captured in Incline Village was released early Saturday afternoon in the Stillwater Mountains southeast of Gardnerville. In the late morning of Saturday, a three year old male weighing about 175 pounds was released in area adjacent to Kingsbury Grade.

Both bears were “treated” to aversion conditioning treatment highlighted by the use of Karelian Bear Dogs. (See below for completed description of Aversion Conditioning).

### **“Hopefully we’ll never see them again”**

The releases were conducted by NDOW Black Bear Biologist Carl Lackey. “We have a chance to alter the bears behavior if we can get to them quickly enough as they develop conflict behavior. The release went very well. Hopefully we’ll never see them again.”

### **Aversive Conditioning: How it Works**

Black bear biologist Carl Lackey describes aversive conditioning like this:

“Once we have the bear in the trap and right as we release it, we shoot rubber bullets at it and chase it with Karelian bear dogs, using all of the tools available to us in our aversion conditioning program. The goal is to make the bear uncomfortable and make it think twice before coming back to civilization.”

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# **Nevada Department of Wildlife--Black Bear Advisory**

September 1, 2015

Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

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- **NDOW captures sow and cub; to be released on Wednesday morning**
- **Call the experts: NDOW Bear Hotline (775) 688-BEAR (2327)**

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## **NDOW CAPTURES AND SUCCESSFULLY RELEASES SOW AND CUB FROM CRYSTAL BAY**

Two black bears, trapped on Tuesday September 1 at Crystal Bay, along Lake Tahoe's North Shore, have been tranquilized and will be released on Wednesday morning (after sleeping off the effects of the tranquilizer drugs) in the mountains above Crystal Bay.

NDOW personnel responded on Tuesday morning to a delicate situation. A sow (weighing about 150 pounds) was caught in a trap with her cub remaining free outside the trap. After about an hour of trying NDOW was able to capture the cub (six months old and 30 pounds) and reunite it with the sow. Both bears were tranquilized, tagged, tattooed and micro chipped in order to identify them in the future should they come back in to contact with humans. Neither bear had previously been handled by NDOW.

"This kind of situation is actually fairly common when dealing with bears in an urban interface situation," said Carl lackey, NDOW Black Bear biologist. "We had a similar situation in west Reno last year that resulted with a sow and a cub in a trap and a second cub outside the trap. After the second cub was captured, they were all safely released back in to the wild. The same will happen in this situation."

The six-year old sow and her cub were captured in a Nevada Department of Wildlife trap that was intended for a potential conflict bear that had been reported to have been causing property damage to homes in the area.

**Call the experts: NDOW Bear Hotline Number: (775) 688-BEAR (2327)**

Persons needing to report nuisance bear activity can call the NDOW's Bear Hotline telephone number at (775) 688-BEAR (2327). For information on living with bears persons can go to [www.ndow.org](http://www.ndow.org) and find the "Bear Logic" page on the web.

# **Nevada Department of Wildlife--Black Bear Advisory**

Sept. 2, 2015 Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

## **UPDATE**

- **NDOW releases captured sow and cub**  
*Photos attached*
- **Wednesday morning release near Crystal Bay**

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**NDOW CAPTURES AND SUCCESSFULLY RELEASES SOW AND CUB FROM CRYSTAL BAY**

Two black bears, trapped on Tuesday September 1 at Crystal Bay, along Lake Tahoe's North Shore, were released on Wednesday morning in the mountains above Crystal Bay.

A six-year old, 150-pound sow was caught, along with her cub, on Tuesday morning near the same area where the bears were released. ***(See below for description of Tuesday capture)***

The release was witnessed by a small gathering of about 20 people according to Nevada Department of Wildlife Black Bear Biologist Carl Lackey. "Hopefully the experience of being handled will stick with the bears and they'll stay in the wild where they belong. That will only happen if humans are more careful about attracting bears with garbage and other food temptations," said Lackey.

Both bears were tranquilized, tagged, tattooed and micro-chipped in order to identify them in the future should they come back in to contact with humans. Neither bear had previously been handled by NDOW.

**Call the experts: NDOW Bear Hotline Number: (775) 688-BEAR (2327)**

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# **Nevada Department of Wildlife--Black Bear Advisory**

September 23, 2015    Contact: Chris Healy, NDOW (775) 688-1554 or 848-3274 [chealy@ndow.org](mailto:chealy@ndow.org)

## ***Hyperphagia***

### **Nature's Dinner Bell—It's ringing and the bears are eating**

- Let the gorging begin---Hungry bears are on the move!
- Bears are responding to their zeitgebers as they enter hyperphagia

***"Bears don't need memos, e-mails, or text messages; they just know when to start eating."***

**Carl Lackey, NDOW Biologist**

As autumn begins, the appetite of the Sierra Nevada black bear takes a dramatic swing upwards. Motivated by signals from nature known as zeitgebers, the bears spectacularly increase their daily caloric intake from 3,000 calories per day to upwards of 25,000 calories per day. This physiological wonder is known as hyperphagia. Nature's dinner bell is ringing!

"Hyperphagia is a period where bears eat as much as they possibly can so they can put on as much fat as possible to carry them through winter hibernation," said biologist **Carl Lackey**. "Nothing much gets in the bear's way when they are this hungry."

Armed with that big appetite and motivated by zeitgebers like decreased daily sunlight and cooler morning temperatures, the bears will search far and wide in the hunt for food. Those 25,000 calories are the human equivalent of eating about 50 cheeseburgers per day over the next couple of months.

The moon is at or nearly full for the rest of September and the first days of October. "They will eat up to 20 hours per day during a full moon period as they pile on the fat," **stressed Lackey**. "People living in bear country should not be tempting these already hungry bears with easy access to garbage, bird feeders, bowls of pet food or ripened fruit falling from trees."

Areas most at risk of attracting bears by granting access to garbage and other attractants are the Tahoe Basin, west Carson City and the foothill areas of Douglas and Washoe Counties.

Nevada has had four dry winters in a row and the natural foods that the bears desire are not in abundance in the wild lands. "Plants that create nuts and berries like manzanita, squirrel tail, snowbush, desert peach and rosehips are highly desired but not always abundant in dry years," **bemoaned Lackey**. "It will be a busy next few weeks in bear country."

Persons needing to report nuisance bear activity can call the NDOW's Bear Hotline telephone number at (775) 688-BEAR (2327). For information on living with bears persons can go to [www.ndow.org](http://www.ndow.org) and find the "Bear Logic" page on the web.

#### **WEBSITES:**

NDOW Bear Logic Page: [http://www.ndow.org/Nevada\\_Wildlife/Bear\\_Logic/](http://www.ndow.org/Nevada_Wildlife/Bear_Logic/)

MoonConnection.com <http://www.moonconnection.com/moon-august-2013.phtml>

Wikipedia—Zeitgebers <http://en.wikipedia.org/wiki/Zeitgeber?vm=r>

# EXHIBIT 6

FILED  
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# EXHIBIT 6

# How to File a Complaint With Facebook for Slander

.ara Webster



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- 1 [How to Lodge a Complaint on Facebook](#)
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Facebook is home to the profiles of lots of people, some whom are your friends, and some who may be less than friendly. If you see an abusive or slanderous comment about yourself on the site, use Facebook's report feature to alert administrators. The site does caution, however, that not all content you find objectionable will automatically be removed. If the comment is not clearly slanderous, Facebook may not see fit to delete it. In that case, your best option is to block the other user so that she can no longer access your profile or see you anywhere on Facebook.

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**1. Point your browser to the** profile that contains the slanderous post -- do not flag the post from the News Feed if you want to fill out a more detailed report.

**2. Hover your mouse over the slanderous post until a** "x" appears in the top right corner of the post.

**3. Click on the "x" and choose "Report Post or Spam"** from the drop-down menu.

**4. Click on the blue "Report" link that appears beneath** the "Thanks for your help" message.

**5. Choose the reason for your report from the options** provided by Facebook. If the slander is about you, choose "It's harassing me" from the options; if the post is about a friend, choose "It's harassing a friend." Click "Continue" to send the report.

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ind Name, Phone Number & Address. See Their Online Pics

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## How to Turn Someone in for Facebook Slander

*by James Wright*

Slander can be removed.

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Facebook aims to create an entertaining and safe environment for people to use their social network, and they are strict about removing content that breaks their terms of service. If you believe someone is slandering you on Facebook, she and her content can be reported as harassment. You can report anything, even if it's not visible to you on Facebook. Understand that reporting content doesn't guarantee that the content will be removed.

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Residents shocked over website posting their public data

[www.truthfinder.com](http://www.truthfinder.com)

### Defining Slander

Slander is the act of spreading false information with the intent of ruining or harming someone's reputation.

This is slightly different than gossip

in that gossip is simply hearsay and generally uninformed discussion and rumor. Slander, in contrast, has direct, malicious intent. The line between rumor and slander can sometimes be fuzzy, but if you feel that you could be harmed as a result, it's a good idea to try to report the offending content.

### How to Report

If you can see the offending content, find the post that you want to report. Hover over the post until downward arrow appears in the corner. Click it to hide the post, then click "Report Story or Spam." Once the post is hidden, click "file a report." Select "It's harassing me," then click

1 **CODE: 1030**

2 DEL HARDY, ESQ.(SBN 1172)  
3 STEPHANIE RICE, ESQ. (SBN 11627)  
4 WINTER STREET LAW GROUP  
5 96 & 98 Winter Street  
6 Reno, Nevada 89503  
7 Telephone: (775) 786-5800  
8 Fax: (775) 329-8282

9 *Attorneys for Defendant Carolyn Stark*

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 **CARL LACKEY,**

13 Plaintiff,

14 vs.

15 BEAR LEAGUE, a California Corporation,  
16 ANNE BRYANT, an individual, MARK E.  
17 SMITH, an individual dba LAKE TAHOE WALL  
18 OF SHAME, CAROLYN STARK, an individual  
19 dba NDOW WATCH KEEPING THEM  
20 TRANSPARENT, and DOES 1-20, INCLUSIVE.

21 Defendants.

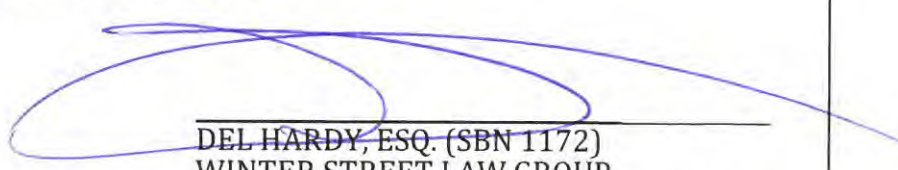
CASE NO.: CV17-00434

DEPT. NO.: 4

22 **AFFIDAVIT OF CAROLYN STARK**

23 Attached hereto is the Affidavit of Defendant Carolyn Stark in support of the Special  
24 Motion to Dismiss/Anti-SLAPP in the above-entitled matter.

25 Dated this 19th day of April, 2017.

26  
27  
28  
  
DEL HARDY, ESQ. (SBN 1172)  
WINTER STREET LAW GROUP  
*Attorneys for Defendant*



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of WINTER STREET LAW GROUP,  
3 96 & 98 Winter Street, Reno, Nevada 89503, and that on this date I served the foregoing  
4 document(s) described as **AFFIDAVIT OF CAROLYN STARK** on all parties to this action by:

5 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope placed for collection  
6 and mailing in the United States Mail, at Reno, Nevada, postage paid, following  
7 ordinary business practices.

8 \_\_\_\_\_ Personal Delivery

9 XC \_\_\_\_\_ Facsimile (FAX)

10 \_\_\_\_\_ Federal Express or other overnight delivery

11 \_\_\_\_\_ Messenger Service

12 \_\_\_\_\_ Certified Mail with Return Receipt Requested

13 XC \_\_\_\_\_ Electronically filed

14 addressed as follows:

15 **Sean P. Rose, Esq.**  
16 **Rose Law Office**  
17 **150 W. Huffaker Lane, Suite 101**  
18 **Reno, NV 89511**  
19 **F: 775-657-8517**

20 **Thomas R. Brennan, Esq.**  
21 **Durney & Brennan, Ltd.**  
22 **6900 S. McCarran Blvd., Suite 2060**  
23 **Reno, NV 89509**  
24 **F: 775-322-3014**

25 **AFFIRMATION**

26 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the proceeding  
27 document and attached exhibits, if any, do not contain the Social Security Number of any  
28 person.

DATED this 19 day of April, 2017.

Eun DiPietro  
EMPLOYEE OF WINTER STREET LAW GROUP



1  
2 **AFFIDAVIT OF CAROLYN STARK**

3 STATE OF NEVADA                                 }  
4 COUNTY OF WASHOE                            }ss.

5 I, Defendant Carolyn Stark, hereby affirm under penalty of perjury, that the following  
6 assertions are true of my own personal knowledge:

7 1. My name is Carolyn Stark;

8 2. I am an animal rights advocate and believe that no wild animal in its habitat should be  
9 needlessly moved or killed or be subject to cruelty;

10 3. That I have a Facebook page known as "NDOW Watch Keeping Them Transparent";

11 4. That I have only personally posted true facts on the Facebook page, except these matters  
12 of opinion, of which I have stated as such;

13 5. That I have read the Special Motion to Dismiss and know the contents therein to be true  
14 and correct;

15 6. That I am aware of who Carl Lackey is and know that he has voluntarily made himself  
16 who I would consider to be a public figure and public official. He has done commercials using  
17 his name as an NDOW biologist; he has given presentations and lectures on bear population  
18 control in the Tahoe area; he has given numerous news interviews about bears;

19 7. That I do not know what Carl Lackey means when he says I engaged in willful, malicious,  
20 wanton and egregious conduct, or even negligence that caused him emotional distress;

21 8. That Carl Lackey has never told me I caused any type of emotional distress;

22 9. That I have never acted in concert with any other Defendant in the case to harass or  
23 threaten Carl Lackey;

24 10. That I have never harassed or threatened Carl Lackey, nor have I attempted to cause him  
25 fear, anxiety, embarrassment or tried to damage the reputation that he has;

26 11. That I am informed and believe to be true that NDOW substantially disclosed the  
27 confidential settlement of Adrienne and Richard Evans v. the Bear League;

28 12. That Carl Lackey has stated and inferred as a representative of NDOW to the Truckee  
Police Department that some of the defendants by name maybe should be arrested for engaging

1 in domestic terrorism, all surrounding the disputes about treatment of bears. He also inferred  
2 that one of the other defendants may be driving drunk.

3 13. That Carl Lackey has acted as a representative of NDOW in a manner from time to time  
4 that is condescending to me as though I have no right to voice my opinion as to the handling of  
5 bears in the Tahoe region;

6 14. That I believe two of the major reasons that Carl Lackey filed a suit against me are to  
7 shut me up and to get money from me;

8 15. That I believe that the statements made by others on the Facebook page "NDOW Watch  
9 Keeping Them Transparent" are statements of opinion or contain substantial truth.

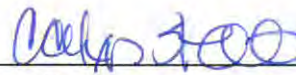
10 16. That I have not as alleged, conspired with the other defendants to do anything about  
11 Carl Lackey, much less harass or threaten him.

12 17. That "NDOW Watch Keeping Them Transparent" does not have any officers or members;  
13 it does have Facebook followers, some are supporters, some are not, but I have not conspired to  
14 act in concert with any of them to do anything about Carl Lackey;

15 18. That Carl Lackey, if he feels he has a claim against an individual as to what they have  
16 said or written about him, can approach that individual by lawsuit or otherwise.

17  
18 FURTHER YOUR AFFIANT SAYETH NAUGHT.

19 DATED this 19 day of April, 2017.

20  
21   
22 Carolyn Stark

23 SUBSCRIBED and SWORN to  
24 before me this 19 day of April, 2017.

25  
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27 NOTARY PUBLIC



ORIGINAL

FILED  
Electronically  
CV17-00434  
2017-04-24 12:32:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6066252 : tbritton

Code: 4085

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,  
Plaintiff / Petitioner / Joint Petitioner,

Case. No. CV17-00434

vs. AnneBryant/Bear League/Mark E. Smith/  
Lake Tahoe Wall of Shame/Carolyn Dept. No. 4  
Stark/NDOW Watch Keeping them Transparent  
Defendant / Respondent / Joint Petitioner.

**SUMMONS**

**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND IN WRITING WITHIN 20 CALENDAR DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

A civil complaint or petition has been filed by the plaintiff(s) against you for the relief as set forth in that document (see complaint or petition). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b).

The object of this action is: \_\_\_\_\_.

1. If you intend to defend this lawsuit, you must do the following within 20 calendar days after service of this summons, exclusive of the day of service:
  - a. File with the Clerk of the Court, whose address is shown below, **a formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and;
  - b. Serve a copy of your answer upon the attorney or plaintiff(s) whose name and address is shown below.
2. Unless you respond, a default will be entered upon application of the plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the complaint or petition.

Dated this \_\_\_\_\_ day of APR 4 2017, 20\_\_\_\_.

Issued on behalf of Plaintiff(s):

Name: Sean P. Rose, Esq.  
Address: 150 W Huffaker Lane #101  
Reno, NV 89511  
Phone Number: (775) 824-8200

JACQUELINE BRYANT  
CLERK OF THE COURT

By: \_\_\_\_\_  
Deputy Clerk  
Second Judicial District Court  
75 Court Street  
Reno, Nevada 89501

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,

Plaintiff(s),

VS.

CASE NO: CV17-00434

Bear League, a California Corporation,

Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:

SHEILA MARTINEZ-CARRERA, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the SUMMONS; FIRST AMENDED COMPLAINT; COMPLAINT FOR DAMAGES On 4/4/2017 and served the same on 4/10/2017 at 12:41 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with CAROLYN STARK AN INDIVIDUAL DBA NDOW WATCH KEEPING THEM TRANSPARENT at 185 Martin St Reno, NV 895092827

A description of Carolyn Stark is as follows

Gender	Color of Skin/Race	Hair	Age	Height	Weight
Female	White - Non Hispanic	Blond	36 - 40	5'6 - 6'0	140-160 Lbs

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 4/12/2017

by SHEILA MARTINEZ-CARRERA

Registration: R-088481

No notary is required per NRS 53.045

*[Signature]*  
SHEILA MARTINEZ-CARRERA  
Registration: R-088481  
Reno Carson Messenger Service, Inc #322  
185 Martin St.  
Reno, NV 89509  
(775) 322-2424  
www.renocarson.com



CODE 1067

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF WASHOE

Carl Lackey,

Plaintiff(s),

VS.

CASE NO: CV17-00434

Bear league, a California Corporation; et al,

Defendant(s),

DECLARATION OF SERVICE

STATE OF NEVADA

COUNTY OF WASHOE

ss.:

SHEILA MARTINEZ-CARRERA, being duly sworn says: That at all times herein Affiant was and is a citizen of the United States, over 18 years of age, and not a party to nor interested in the proceedings in which this Affidavit is made.

That Affiant received copy(ies) of the **SUMMONS; FIRST AMENDED COMPLAINT FOR DAMAGES; COMPLAINT FOR DAMAGES** On 4/4/2017 and served the same on 4/10/2017 at 12:41 PM by delivery and leaving a copy with:

1. Delivering and leaving a copy with Carolyn Stark at 185 Martin St Reno, NV 895092827

A description of Carolyn Stark is as follows

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Female	White - Non Hispanic	Blond	36 - 40	5'6 - 6'0	140-160 Lbs

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Affiant does hereby affirm under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on: 4/12/2017

by SHEILA MARTINEZ-CARRERA

Registration: R-088481

No notary is required per NRS 53.045

SHEILA MARTINEZ-CARRERA

Registration: R-088481

Reno Carson Messenger Service, Inc #322

185 Martin St.

Reno, NV 89509

(775) 322-2424

www.renocarson.com



Order#: R8980 NVPRF411

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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, \_\_\_\_\_

Affidavit of Service

(Title of Document)

filed in case number: CV17-00434



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 4/24/17

Collette Zahniser  
(Signature)

Collette Zahniser / Sean P. Rose, Esq.  
(Print Name)

Plaintiff  
(Attorney for)

2645

1 SEAN P. ROSE, ESQ.  
State Bar No. 5472  
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3 Reno, NV 89511  
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5 THOMAS R. BRENNAN, ESQ.  
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6900 S. McCarran Blvd., Suite 2060  
7 Reno, NV 89509  
Telephone: (775) 322-2923  
8 Facsimile: (775) 322-3014

9 Attorneys for Plaintiff

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11 IN AND FOR THE COUNTY OF WASHOE

12 CARL LACKEY,

13 Plaintiff,

14 vs.

Case No.: CV17-00434

15 BEAR LEAGUE, a California Corporation, ANNE  
16 BRYANT, an individual, MARK E. SMITH, an  
individual dba LAKE TAHOE WALL OF SHAME,  
17 CAROLYN STARK, an individual dba NDOW  
WATCH KEEPING THEM TRANSPARENT and  
18 DOES 1-20, INCLUSIVE,

19 Defendants.

Dept. No.:4

20 **PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT  
CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP<sup>1</sup>**

21 Plaintiff Carl Lackey opposes Defendant Carolyn Stark's *Special Motion to Dismiss/Anti-SLAPP*  
22 ("*Motion*") and submits the following Memorandum of Points and Authorities and attached exhibits in  
23 support of his opposition.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

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27 <sup>1</sup> SLAPP is an acronym for "strategic lawsuit against public participation".

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## I. INTRODUCTION

This action arises out of Defendants' outrageous, harassing, intimidating and threatening conduct towards Plaintiff, an innocent third party in Defendants' crusade to change the way the Nevada Department of Wildlife ("NDOW") deals with problem bears in the Lake Tahoe area. Defendant Stark's *Motion* is predicated upon the following grounds: (1) Nevada's anti-SLAPP statutes mandate dismissal of all claims against her; (2) the Communications Decency Act ("CDA") as codified in 42 U.S.C. § 230 immunizes Defendant Stark from liability; (3) Plaintiff is a public figure; and (4) Plaintiff's claims for defamation and civil conspiracy cannot survive an NRCP 12(b) motion to dismiss. Neither the facts nor case law support any of these asserted grounds.

## II. STATEMENT OF FACTS

Plaintiff is employed as a Biologist III by the NDOW. *FAC* ¶ 7. NDOW's Biologist III are to "manipulate fish and wildlife populations and habitats by introducing species into suitable habitats consistent with biological and social constraints; bait and trap, tranquilize, radio collar or band wildlife and transport to selected locations" and "investigate and assess damage caused by wildlife upon private property and public lands; recommend appropriate courses of action to mitigate or resolve the problem." *Id.* ¶ 8. Citizens are encouraged to contact the NDOW when there is a human-bear conflict. *Id.* ¶ 10. Defendant Stark does business as NDOW Watch Keeping Them Transparent and is a Bear League board member. *Id.* ¶ 5; **Exhibit 1.**

In the course and scope of performing his employment duties, Plaintiff has become the victim of continuing vicious online and in person threatening and harassing conduct from members of Defendant Bear League and the online forums Lake Tahoe Wall of Shame and NDOW Watch Keeping Them Transparent. *Id.* ¶ 11. Defendants Stark, Ann Bryant and Mark Smith, Bear League, along with volunteers, members and followers of the online forums Bear League, Lake Tahoe Wall of Shame and NDOW Watch Keeping Them Transparent, through Defendants inciting conduct, have colluded to make and continue to make false statements regarding Plaintiff's character in a vicious and calculated scheme to damage his reputation and jeopardize his employment. *Id.* ¶ 12. Defendants Bear League, Lake Tahoe Wall of Shame



1 and NDOW Watch Keeping Them Transparent have and continue to initiate public common threads on  
2 their public Facebook pages and other Facebook pages slandering Plaintiff in his official capacity as a state  
3 employee and inciting, urging and encouraging the public at large and their followers to shame, harass and  
4 take action against him. *Id.* ¶ 13.

5 More disturbingly, some of these comments incite violence or illegal conduct. *See, e.g., id.* ¶ 14.z.  
6 (post suggests that Plaintiff should be assassinated); *see also* August 3, 2015 Post from Victoria LeDoux  
7 Serpa ("time for assassination"); May 21, 2013 Post from Lake Tahoe Wall of Shame ("we must rid Nevada  
8 of this monster who lives and is paid to kill bears"); August 23, [year unknown] Post from Carolyn Ford  
9 ("Carl Lackey needs to be relocated. Preferably to someplace hot for eternity."); August 24, [year unknown]  
10 Post from Edward Wardeshick ("how bout putting Carl Lackey in trap and roll into bear territory"); August  
11 24, [year unknown] Post from Aron Jones ("I'd love to run into Car at a bar. I'll ram a fist full of  
12 marshmallows and a pie up his backside, tie him to a trailer and let the bears climb on, then take to Iraq and  
13 drop him off in a hunting zone"); June 22, [year unknown] Post from Unknown Author ("Carl Lackey is  
14 decrease!! I wish someone would shoot him with a tranquilizer and let him see how it feels!"); Unknown  
15 Dated Post from Roger Mattson ("I agree. Lackey need to be darted in a trap and drive far away hard  
16 release. Bring in the dogs shot guns pellets bags rock salt."); and April 17, [year unknown] Post from Cathy  
17 Compton ("I'd like to put both of them [referring to Plaintiff and his wife] in the trap."), collectively **Exhibit**  
18 **2** hereto.

19 Plaintiff brought suit against Defendants Stark, Bear League, Anne Bryant, Mark E. Smith and  
20 Lake Tahoe Wall of Shame alleging claims for defamation, intentional infliction of emotional distress,  
21 negligent infliction of emotional distress, and civil conspiracy. *See generally FAC.* Defendant Stark filed  
22 the instant *Motion* seeking dismissal of Plaintiff's claims on the grounds that the statements are protected  
23 under Nevada's anti-SLAPP statutes as the statements were communications purportedly made in direct  
24 connection with an issue of public interest in a place open to the public or in a public forum. Defendant  
25 Stark further argues that Plaintiff's civil conspiracy claim is "subject to dismissal under Nevada's intra-  
26 corporate conspiracy doctrine. Under this doctrine, agents and employees of a corporation cannot conspire  
27  
28

1 with the corporate principal or employer where they act in their official capacities on behalf of the  
2 corporation and not as individuals for the individual advantage.” *Motion* at 12:18-20. Defendant Stark's  
3 reliance upon these two theories are entirely misplaced.

### 4 III. STANDARDS FOR DISMISSAL

5 It is axiomatic that to withstand a motion to dismiss, Plaintiff is *not* required to provide evidence  
6 of or prove the truthfulness of his allegations. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev.  
7 224, 228, 181 P.3d 670, 672 (2008).<sup>2</sup> In assessing the legal feasibility of Plaintiff's claims, this Court should  
8 not assay the weight of the evidence that might support the requested dismissal. *See id.*, 181 P.3d at 672.

9 In ruling on the instant motion to dismiss, this Court must accept the allegations as true, and the  
10 *FAC* may not be dismissed unless it appears beyond a doubt that Plaintiff can prove no set of facts in support  
11 of claims that would entitle him to relief. *See, e.g., Bermann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993);  
12 *Edgar v. Wagner*, 101 Nev. 226, 699 P.2d 110 (1985); *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163,  
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15 <sup>2</sup> Plaintiff's *FAC* does not allege every factual act and omission by Defendants that gave rise  
16 to the action. Rather, Plaintiff simply pled general facts sufficient to place Defendants on notice  
17 of the claims against them. Nevada is a notice pleading state. NRCP 8(a); *Chavez v. Robberson*  
18 *Steel Company*, 94 Nev. 597, 599 (1978) (“Nevada is a notice pleading jurisdiction and liberally  
19 construes pleadings to place into issue matter which is fairly noticed to the adverse party.”). A  
20 complaint is sufficient so long as it gives the defendant fair notice of the nature and basis of the  
21 claims being asserted. *Crucil v. Carson City*, 95 Nev. 583 (1979). A plaintiff is only required to  
22 provide a short and plain statement of his claim showing that he is entitled to relief. Thereafter,  
23 the defendant may use discovery mechanisms, such as interrogatories, to ascertain more details  
24 regarding the complaint allegations. *Remick v. Manfredy*, 238 F.3d 248 (3<sup>d</sup> Cir. 2001); *Starks v.*  
25 *Northeast Ill. Reg'l Commuter R.R. Corp.*, 245 F. Supp. 2d 896 (N.D. Ill. 2003) (Rule 8 does not  
26 require plaintiff to plead facts, legal theories, cases or statutes, but merely to describe his claims  
27 briefly and simply - defendant may then ferret out case through interrogatories). The notice  
28 pleading system established by Rule 8 of the Federal Rules of Civil Procedure, from which NRCP  
8 was derived, does not require the plaintiff to plead facts or legal theories. *Nance v. Vieregge*,  
147 F.3d 589 (7<sup>th</sup> Cir. 1998). A complaint is sufficient to withstand a motion to dismiss if there is  
any set of facts, consistent with the allegations, under which relief could be granted. *Id.* In other  
words, Plaintiff does not have to prove anything by a preponderance of the evidence in the *FAC*,  
especially claims that could not be protected by NRS 41.660 (Nevada's anti-SLAPP legislation),  
such as claims for defamation.

1 400 P.2d 621 (1965). Because motions to dismiss are disfavored, all doubts must be resolved in favor of  
2 Plaintiff. *See, e.g., Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997).

3 If this Courts considers the documents presented by the parties outside of the pleadings, then this  
4 Court would treat the *Motion* as one for summary judgment. *See, e.g., MacDonald v. Kassel*, 97 Nev. 305,  
5 629 P.2d 1200 (1981). Under this standard, Plaintiff's claims against Stark should not be dismissed.

6 The Nevada Supreme Court has held that summary judgment should not be used as a "shortcut" to  
7 resolve disputes upon facts material to the determination of the case. *See, e.g., Sierra Nev. Stagelines v.*  
8 *Rossi*, 111 Nev. 360, 892 P.2d 592 (1995); *Parman v. Petricciani*, 70 Nev. 427, 272 P.2d 492 (1954).  
9 Hence, district courts must be cautious in granting a motion for summary judgment. *Posadas v. City of*  
10 *Reno*, 109 Nev. 448, 851 P.2d 438 (1993); *Johnson v. Steel, Inc.*, 100 Nev. 181, 678 P.2d 676 (1984).

11 When reviewing a motion for summary judgment, "the evidence, and any reasonable inferences  
12 drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*,  
13 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In fact, this Court is obligated to accept as true all evidence  
14 favorable to Plaintiff. *See, e.g., Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 83 Nev. 143, 425 P.2d 599  
15 (1967). And in doing so, it is clear that Defendant has failed to carry her burden of demonstrating that no  
16 questions of fact remain. Hence, Defendant's motion must be denied.

#### 17 IV. DISCUSSION

##### 18 A. Nevada's Anti-SLAPP Statutes Protect Only a Defendant's First Amendment Free Speech 19 Rights and Not Threats and "Fighting Words".

20 A "strategic lawsuit against public participation suit" is a lawsuit that a party initiates to chill a  
21 defendant's exercise of his First Amendment free speech rights. *Stubbs v. Strickland*, \_\_ Nev. \_\_, 297 P.3d  
22 236 (2013). If the declared speech is illegal as a matter of law, then that speech is not protected by Nevada's  
23 anti-SLAPP statutes. *Id.*, 297 P.3d at 236; *see also Flatley v. Mauro*, 139 P.3d 2 (Cal. 2006)(holding  
24 declared speech or petitioning activities that are illegal as a matter of law are not protected by anti-SLAPP  
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1 statute).<sup>3</sup> That is unequivocally the case here.

2 Not all speech and petition activities are constitutionally protected. *See, e.g., United States v.*  
3 *Alvarez*, 132 S. Ct. 2537, 2544 (2012). Obscenity, libel, and "fighting words" have long been recognized  
4 as falling outside the scope of the First Amendment because they lack any social value. *Id.*

5 [I]t is well understood that the right of free speech is not absolute at all times and under all  
6 circumstances. There are certain well-defined and narrowly limited classes of speech, the  
7 prevention and punishment of which have never been thought to raise any Constitutional  
8 problem. These include the lewd and obscene, the profane, the libelous, and the insulting  
9 or "fighting" words . . . It has been well observed that such utterances are no essential part  
of any exposition of ideas, and are of such slight social value as a step to truth that any  
benefit that may be derived from them is clearly outweighed by the social interest in order  
and morality.

10 *Chapinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942).

11 In other words, if the subject communication is such that a reasonable person would perceive it as  
12 a threat to cause him harm or it could incite others to cause harm, it not subject to First Amendment  
13 protection. In *D.C. v. R.R.*, 106 Cal. Rptr. 3<sup>rd</sup> 399 (2010), the California Court of Appeals was called upon  
14 to determine if California's anti-SLAPP statutes applied to cyber-bullying statements by high school  
15 students toward another student they believed to be gay. The victim student and his parents filed an action  
16 against the perpetrators for violations of California's hate crime statute, defamation and intentional  
17 infliction of emotional distress. *Id.*, at 405. In response, one of the defendants filed an anti-SLAPP motion  
18 to dismiss. *Id.*

19 In denying the defendant's motion to dismiss, the court set out a detailed and well reasoned  
20 discussion of the application of California's anti-SLAPP statutes and First Amendment free speech rights  
21 to speech involving threats and incitement:

22 [T]he *First Amendment* does not protect true threats--"statements where the speaker means  
23 to communicate a serious expression of an intent to commit an act of unlawful violence to  
24 a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 358-360  
(2003) "The speaker **need not actually intend to carry out the threat.**" *Id.* "A true threat

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26 <sup>3</sup> Defendant Stark does not dispute that California case law is persuasive authority.  
27  
28

1 is a serious one, not uttered in jest, idle talk, or political argument." *U.S. v. Fuller*, 387  
2 F.3d 643, 646 (7th Cir. 2004).

3 *Id.* at 419 (emphasis added).

4 The court noted that an **objective standard** is applied to determine if a statement is a "true threat"  
5 unworthy of protection.

6 "In the context of a threat of physical violence, '[w]hether a particular statement may  
7 properly be considered to be a threat is governed by an **objective standard**--whether a  
8 reasonable person would foresee that the statement would be interpreted by those to whom  
9 the maker communicates the statement as a serious expression of intent to harm or assault.  
10 ... Although a threat must be distinguished from what is constitutionally protected speech  
11 ... this is not a case involving statements with a political message. A true threat, where a  
12 reasonable person would foresee that the listener will believe he will be subjected to  
13 physical violence upon his person, is unprotected by the *first amendment*.' ... Moreover,  
14 '[a]lleged threats should be considered in light of their entire factual context,  
15 including the surrounding events and reaction of the listeners.' . . ."

16 Under an objective standard, the court's inquiry focuses on whether a reasonable person  
17 would foresee that the speaker's or author's statement would be interpreted by the recipient  
18 as a serious expression of intent to inflict bodily harm.

19 *Id.* (emphasis added) (citations omitted); *see also Uss-Posco Industries v. Edwards*, 111 Cal. App. 4th 436,  
20 444 - 446 (Ca. Ct. App. 2003) (First Amendment does not protect threats that cause listeners to fear for  
21 their safety); *Planned Parenthood v. American Coalition of Life Activists et al*, 290 F. 3d 1058, 1070 (9th  
22 Cir. 2002) ("while advocating violence is protected, threatening a person with violence is not") (citations  
23 omitted).

24 In *Planned Parenthood*, the court noted that "a true threat, that is one 'where a reasonable person  
25 would foresee that the listener will believe he will be subjected to physical violence upon his person, is  
26 unprotected by the *First Amendment*.'" *Planned Parenthood*, 290 F. 3d at 1075 (citations omitted). "[A]  
27 true threat is: a statement which, in the **entire context and under all circumstances**, a reasonable person  
28 would foresee would be interpreted by those to whom the statement is communicated as a serious expression  
of intent to inflict bodily harm upon that person." *Id.* at 1077 (emphasis added) (citations omitted). The  
court further noted that "it is not necessary that the defendant intend to, or be able to carry out his threat;  
the only intent requirement for a true threat is that the defendant intentionally or knowingly communicate  
the threat." *Id.* (citations omitted).

1 Whether the communication is a “true threat” is for the trier of fact to determine. *Id.* at 1069  
2 (citations omitted). “Thus, it is a jury question whether actions and communications are clearly outside the  
3 ambit of *First Amendment* protection.” *Id.* (citations omitted).

4 Under this rubric, it is indisputable that the First Amendment does not protect the subject  
5 communication and that they are a “true threat”. Pursuant to the objective standard for true threats, when  
6 Defendants' actions and statements are considered under the “**entire context and under all circumstances**”  
7 it is undeniable that a reasonable person would interpret the statements as conveying a serious intent for  
8 defendants to cause physical harm to Plaintiff or that they were inciting others to inflict physical harm on  
9 Plaintiff. *See generally Exhibit 2*; *see also FAC* ¶ 14. These posts, along with a photo showing Plaintiff's  
10 home address, demonstrate that a reasonable person could interpret the statements and the posting of  
11 Plaintiff's address as conveying a serious intent by Defendants to cause physical harm to Plaintiff and/or  
12 his family or that they were inciting others to inflict physical harm on Plaintiff or his family. *FAC* ¶ 14.v.

13 Defendants knew or should have known that these threatening posts, combined with posts by  
14 various individuals on the Lake Tahoe Wall of Shame and Bear League pages encouraging everyone to post  
15 pictures of Plaintiff's wife and children, would incite their followers to take action against Plaintiff. *See*  
16 April 17 to April 18 [year unknown] Postings, *Exhibit 3*; *see also* Unknown Dated Post on the Lake Tahoe  
17 Wall of Shame Facebook Page posting pictures of Plaintiff and his children with a bear, *Exhibit 4*. The  
18 overwhelming evidence, when “**considered in light of their entire factual context, including the**  
19 **surrounding events and reaction of the listeners**” supports the conclusion that a reasonable person would  
20 foresee that Defendants' statements and conduct would be viewed as a threat of bodily harm or would incite  
21 others to cause Plaintiff and/or his family bodily harm. Accordingly, Defendant Stark cannot make a  
22 sufficient showing of First Amendment protection under an objective standard for identifying true threats.

23 For these reasons alone, this Court should deny in its entirety Defendant Stark's *Motion*. Even  
24 assuming this Court could conclude that the declared speech falls within the First Amendment protections,  
25 Nevada's anti-SLAPP statutes have no application as a matter of law.

26 **B. Legal Standard Applicable to an Anti-SLAPP Motion to Dismiss.**

1 Nevada's anti-SLAPP statutes apply to "[g]ood faith communication in furtherance of the right to  
2 petition or the right to free speech in direct connection with an issue of public concern" and defines such  
3 communication as any "[c]ommunication made in direct connection with an issue of public interest in a  
4 place open to the public or in a public forum, **which is truthful or is made without knowledge of its**  
5 **falsehood.**" NRS 41.637(4) (emphasis added). Nevada's anti-SLAPP statutes permit a defendant to file a  
6 special motion to dismiss. NRS 41.660.

7 The standard for dismissal under Nevada's anti-SLAPP statutes, however, is different from that  
8 applicable to a standard NRCP 12(b) motion. A motion to dismiss based upon Nevada's anti-SLAPP  
9 statutes involves a two part test. NRS 41.660(3).

10 The first part requires Defendant Stark to show "by a preponderance of the evidence, that the claim  
11 is based upon a good faith communication in furtherance of the right to petition or the right to free speech  
12 in direct connection with an issue of public concern . . ." NRS 41.660(3)(a). Defendant Stark cannot make  
13 this initial showing with any evidence, let alone a preponderance of the evidence.

14 If Defendant Stark makes this initial showing, the burden shifts to Plaintiff to show "with prima  
15 facie evidence a probability of prevailing on the claims." NRS 41.660(3)(b). Even assuming Defendant  
16 Stark can make the initial showing, Plaintiff can show with prima facie evidence a probability of prevailing  
17 on his claims.

18 **C. Issue of Public Interest.**

19 Because the Nevada Supreme Court has yet to determine what constitutes "an issue of public  
20 interest" as contemplated by the anti-SLAPP statutes, the court in *Shapiro v. Welt*, "look[ed] to California  
21 law for guidance on this issue" and "adopt[ed] California's guiding principles, as enunciated in *Piping Rock*  
22 *Partners[, Inc. v. David Lerner Assocs., Inc.]*, 946 F. Supp.2d 957, 968 (N.D. Cal. 2013), for determining  
23 whether an issue is of public interest under NRS 41.637(4)." \_\_ Nev. \_\_, 389 P.3d 262, 268 (2017). In  
24 doing so, the court adopted the following guiding principles.

- 25 (1) "public interest" does not equate with mere curiosity;  
26 (2) a matter of public interest should be something of concern to a substantial number of  
27 people; a matter of concern to a speaker and a relatively small specific audience is not a  
28 matter of public interest;

1 (3) there should be some degree of closeness between the challenged statements and the  
2 asserted public interest -- the assertion of a broad and amorphous public interest is not  
3 sufficient;

4 (4) the focus of the speaker's conduct should be the public interest rather than a mere effort  
5 to gather ammunition for another round of private controversy; and

6 (5) a person cannot turn otherwise private information into a matter of public interest  
7 simply by communicating it to a large number of people.

8 *Id.*, 389 P.3d at 268 (citing *Piping Rocks Partners*, 946 F. Supp.2d at 968).

9 Once the court determines that the issue is of public interest, it must next determine whether the  
10 communication was made "in a place open to the public or in a public forum." NRS 41.637. *Id.*, 389 P.3d  
11 at 268 (citing NRS 41.637). "Finally, no communication falls within the purview of NRS 41.660 unless it  
12 is 'truthful of or made without knowledge of its falsehood.'" *Id.*, 389 P.3d at 268 (citing NRS 41.637).

13 In analyzing the statements at issue and as pled in the *FAC*, this Court is compelled to conclude  
14 that the statements simply do not involve an issue of public interest as contemplated by NRS 41.637. "In  
15 evaluating the first [step] of the anti-SLAPP statute, we must focus on 'the *specific nature of the speech*  
16 rather than the generalities that might be abstracted from it. . . .'" *D.C.*, 106 Cal. Rptr.3d at 418 (brackets  
17 in original) (emphasis in original). In other words, the Court must look at the specific speech, not simply  
18 the fact that it may have some remote relationship to a public concern.

19 Defendant Stark claims that the harassing communications regarding Plaintiff are protected because  
20 they are a matter of public concern and Defendants have a right to petition for a change in the manner in  
21 which black bears are handled by the State of Nevada. Defendants' statements directed at Plaintiff giving  
22 rise to this action are unrelated to a public concern.

23 First, the subject speech only involves a matter of concern to a relatively small specific audience -  
24 Bear League, NDOW Watch and Tahoe Wall of Shame followers. As such, it cannot be a matter of public  
25 interest.

26 As noted above, in order for communications to enjoy First Amendment protection, "there should  
27 be **some degree of closeness** between the challenged statements and the asserted public interest." *Shapiro*,  
28 \_\_\_ Nev. at \_\_\_, 389 P.3d at 268. The subject communications are directed at Plaintiff, who was simply  
performing his duties as an NDOW's Biologist III to "manipulate fish and wildlife populations and habitats



1 by introducing species into suitable habitats consistent with biological and social constraints; bait and trap,  
2 tranquilize, radio collar or band wildlife and transport to selected locations" and "investigate and assess  
3 damage caused by wildlife upon private property and public lands; recommend appropriate courses of  
4 action to mitigate or resolve the problem." *FAC* ¶ 8.

5 As an NDOW Biologist III, Plaintiff "is under the supervision of a Biologist IV who is responsible  
6 to, among other things, 'direct the operation of wildlife programs' and 'train, supervise, and evaluate the  
7 performance of assigned personnel,' and 'assign and review work' involving game, non-game, fish,  
8 botanical, and habit within a region." *Id.* ¶ 9. As a Biologist III, Plaintiff has no ability to change the law  
9 or the manner in which NDOW directs the operation of wildlife programs.

10 Moreover, the communications falsely accused Plaintiff of corruption as they repeatedly accused  
11 Plaintiff of taking bribes from hunters in exchange for placing bears in hunt zones and giving their locations  
12 to the hunters and of using his knowledge of a bear's location to assist his wife, family and friends with  
13 their bear hunts. The further accused him of illegally torturing and killing bears and, most disturbingly of  
14 all, incited and encouraged violence towards Plaintiff and/or his family. *Id.* ¶ 14; *see also Exhibit 2*. These  
15 threatening posts, in addition with posts by various followers on the Lake Tahoe Wall of Shame Page and  
16 Bear League page encouraging everyone to post pictures of Plaintiff's wife and their children cannot, as a  
17 matter of law, involve an issue of public interest. *See Exhibits 3 and 4*

18 Speech that (1) asserts that Plaintiff is corrupt and that he takes bribes from hunters in exchange  
19 for information regarding bear locations, (2) asserts that Plaintiff is illegally torturing and killing bears, and  
20 (3) threatens Plaintiff and his family with both violence and murder has absolutely no "degree of closeness"  
21 to Defendants' claimed "public concern". Instead, the focus of Defendants' conduct was "**a mere effort to**  
22 **gather ammunition for another round of private controversy . . .**" *Shapiro*, \_\_ Nev. at \_\_, 389 P.3d  
23 at 268 (emphasis added). That private controversy is nothing more harassing and defaming Plaintiff and  
24 inciting violence against him.

25 Because Defendant Stark cannot establish that the subject communications involve a matter of  
26 public interest, the communications do not, as a matter of law, fall within the purview of Nevada's anti-  
27

1 SLAPP statutes and, as such, dismissal is not warranted. Even assuming that this Court could conclude  
2 that the harassing and defaming statements of and concerning Plaintiff and statements encouraging  
3 violence, including killing Plaintiff, involve a matter of public interest, Defendant Stark cannot show that  
4 the subject communications are truthful or made without knowledge of their falsehood to justify dismissal.

5 **D. Defamatory Communications Are Not Protected.**

6 In light of the clear language of the statute, the Nevada Supreme Court concluded that "no  
7 communication falls within the purview of [Nevada's anti-SLAPP] unless it is "truthful or is made  
8 without knowledge of its falsehood." *Shapiro*, \_\_ Nev. at \_\_, 389 P.3d at 268 (emphasis added). The  
9 *FAC* alleges that Defendants published false and vicious comments accusing Plaintiff of criminal conduct  
10 (including accepting bribes and conspiracy to commit illegal acts). *FAC* ¶¶ 14, 19. Defendants further  
11 accused Plaintiff of murder. *Id.*

12 First, as an employee with NDOW, Plaintiff was merely performing his employment duties.  
13 Second, there is absolutely no evidence, and Defendants cannot proffer any, that Plaintiff purportedly  
14 accepted any bribes or conspired with others to commit illegal acts. Lastly, Plaintiff could not be a murderer  
15 as a matter of law where only bears are involved and not humans; and murder is the unlawful taking of a  
16 human life.

17 Notably, Defendants were fully aware of these facts when they published the false statements.  
18 Nevertheless, Defendants published the false statements. At a minimum, Defendants failed to take any  
19 steps to investigate the truthfulness of their statements.

20 Based upon the foregoing, Defendant Stark may not invoke Nevada's anti-SLAPP statutes'  
21 protections because the subject communications do not arise from protected speech. Plaintiff's defamation  
22 claim arises out of contentions that some of Defendants' and her followers' statements were false and  
23 defamatory. Defendants' *Motion* must be denied, as Nevada's anti-SLAPP statutes and the First  
24 Amendment do not protect defamatory statements.

25 **E. Defendants' Speech Is Not Protected by the First Amendment as It Violated the  
26 Federal Stalking Statutes as Codified in 18 U.S.C. § 2261A.**

27 18 U.S.C. § 2261A provides, in pertinent part:  
28

Whoever--

(1) travels in interstate . . . of the United States, . . . with the intent to . . . injure, harass, intimidate, . . . with intent to . . . injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that--

(A) places that person in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) an immediate family member of that person; or

(iii) a spouse or intimate partner of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to . . . injure, harass, intimidate, . . . with intent to . . . injure, harass, or intimidate another person, uses the mail, any **interactive computer service or electronic communication service or electronic communication system** of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that--

(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A), . . . shall be punished as provided in section 2261(b) of this *title*.

18 U.S.C. § 2261A (emphasis added).

Communications that are intended to injure, harass and intimidate and reasonably cause fear of injury or substantial emotional distress in violation of 18 U.S.C. § 2261A are not protected by First Amendment. *United States v. Petrovic*, 701 F.3d 849 (8<sup>th</sup> Cir. 2012); *see also United States v. Sayer*, 748 F.3d 425 (1<sup>st</sup> Cir. 2014) (speech integral to criminal stalking recognized as long-established category of unprotected speech); *United States v. Osinger*, 753 F.3d 939 (9<sup>th</sup> Cir. 2014) (defendant's threatening messages to victim and to victim's co-workers and friends unquestionably evinced defendant's intent to harass and intimidate victim and to cause substantial emotional distress, and thus, defendant's course of conduct was unmistakably proscribed by this section, and any related speech was not afforded First Amendment protection).

As noted above, when the facts alleged by Plaintiff are taken as true, as the Court must, and combined with the additional facts contained in the exhibits attached hereto, it is indisputable that Plaintiff has alleged sufficient facts from which the trier of fact could conclude that Defendants' conduct and speech were intended to harass and intimidate Plaintiff and to cause them substantial emotional distress in violation of 18 U.S.C. § 2261A. As such, Defendants' speech is not protected by the First Amendment and Defendant

1 Stark's *Motion* based upon Nevada's anti-SLAPP statutes must be denied.

2 For these same reasons, Defendant Stark's reliance upon the CDA is misplaced. Even assuming  
3 that this Court could conclude that 18 U.S.C. § 2261A has no application, Defendant Stark's reliance upon  
4 the CDA is still misplaced where Defendant Stark is also an information content provider.

5 The CDA immunizes providers of interactive computer services against liability arising from  
6 content created by third parties. 47 U.S.C. § 230(c). This grant of immunity, however, applies only if the  
7 interactive computer service provider is **not** also an "information content provider". 47 U.S.C. § 230(f)(3).  
8 An "information content provider" is someone who is "responsible in whole or in part, for the creation or  
9 development of" the offending content. *Id.*

10 Defendant Stark erroneously contends that she is not an "information content provider" and  
11 therefore CDA immunizes her from liability. This is false.

12 As the individual who operates NDOW Watch Keeping Them Transparent Facebook Page, any  
13 postings made by NDOW Watch Keeping Them Transparent is essentially Defendant Stark's postings. *See*  
14 Collected Postings by NDOW Watch Keeping Them Transparent, **Exhibit 5** hereto. Defendant Stark  
15 herself also made postings. *See* Collected Postings by Defendant Carolyn Stark, **Exhibit 6** hereto.

16 **F. Plaintiff Will Likely Prevail on His Claims.**

17 Because Defendant Stark cannot carry her burden of establishing that Defendants' conduct and  
18 statements were protected as being in the subject of public concern, the burden has not shifted to Plaintiff  
19 to demonstrate that he will likely prevail on his claims. "[T]he plaintiff . . . has no obligation to demonstrate  
20 [a] probability of success if the defendant fails to meet [his] threshold burden [at the first step]." *D.C.*, 182  
21 Cal. App. 4th at 1225, 106 Cal. Rptr. 3d at 425. Nevertheless, Plaintiff submits that there is a high  
22 probability that his claims will be successful.

23 **1. Defamation.**

24 A claim for defamation requires Plaintiff to establish the following: (1) Defendants made a false  
25 and defamatory statement concerning Plaintiff; (2) an unprivileged publication of this statement was made  
26 to a third person; (3) Defendants were at least negligent in making the statement; and (4) Plaintiff sustained  
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1 actual or presumed damages as a result of the statement. *Pegasus*, 118 Nev. at 706, 57 P.3d at 82.  
2 Defamation per se are false statements made involving any of the following: (1) the imputation of a crime;  
3 (2) the imputation of having a loathsome disease; (3) imputing a person's lack of fitness for trade, business,  
4 or profession; and (4) imputing serious sexual misconduct. *K-Mart Corp. v. Washington*, 109 Nev. 1180,  
5 866 P.2d 274 (1993). No proof of any actual harm to reputation or any other damage is required for these  
6 four types of defamation. *Id.*, 866 P.2d at 274.

7 Plaintiff's *FAC* alleges that Defendants maliciously attacked his reputation by publishing false and  
8 vicious comments accusing him of criminal conduct (including accepting bribes and conspiracy) designed  
9 to incite public outrage. *FAC* ¶ 14. The *FAC* further alleges that Defendants maliciously published false  
10 and vicious comments imputing his lack of fitness for the profession in which he is engaged. *Id.* Some of  
11 the published statements at issue, therefore, are defamatory per se and Plaintiff is not required to prove  
12 actual harm to his reputation or any other damages in order to recover damages.

13 It is likely that Plaintiff will prevail on the merits where there is no evidence that Plaintiff accepted  
14 bribes and conspired to kill the bear population. It is further undisputed that the published statements were  
15 not privileged and were made to third parties. In light of the maliciousness of some of the speech, it is clear  
16 that more than mere negligence was involved.

17 Defendant Stark nevertheless contends that Plaintiff is a limited public figure. "A limited-purpose  
18 figure is a person who voluntarily injects himself or is thrust into a particular public controversy or public  
19 concern, and thereby becomes a public figure for a limited range of issues." *Pegasus*, 118 Nev. at 720, 57  
20 P.3d at 91. "Whether a person becomes a public figure depends on whether the person's role in a matter of  
21 public concern is voluntary and prominent." *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445  
22 (2006). The Court determines this by examining the "nature and extent of an individual's participation in  
23 the particular controversy giving rise to the defamation." *Pegasus*, 118 Nev. at 720, 57 P.3d at 91 (quoting  
24 *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974)).

25 Plaintiff did not voluntarily inject himself into a particular public controversy or public concern.  
26 First, Plaintiff was merely performing his duties as a Biologist III with NDOW. Second, his role as argued  
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1 by Defendant Stark is neither voluntary nor prominent. The issue of how NDOW treats bear is really of  
2 concern to the Bear League, NDOW Watch and Tahoe Wall of Shame followers. There is no evidence that  
3 it is a matter of prominent concern.

4 Even assuming that this Court could conclude that Plaintiff was somehow a limited public figure,  
5 "no protection is warranted when 'the speech is wholly false and clearly damaging to the victim's business  
6 reputation.'" *Id.* at 572, 138 P.3d at 445 (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders*, 472 U.S.  
7 749, 762 (1985)). As discussed above, the allegations that Plaintiff accepted bribes and that he illegally  
8 conspired to kill bears is not only false but clearly impugns his reputation. As such, no protection is afforded  
9 to Defendant Stark. Under these circumstances, Plaintiff will likely prevail on his defamation claim.

## 10 **2. Civil conspiracy.**

11 Defendant Stark erroneously contends that Plaintiff's civil conspiracy fails as a matter of law and  
12 predicates her contention upon two erroneous grounds: (1) Plaintiff's conspiracy claim is subject to a  
13 heightened pleading requirement and (2) the intra-corporate conspiracy doctrine bars the claim. *Motion* at  
14 12. In Nevada, a civil conspiracy claim predicated upon defamation is not subject to a heightened pleading  
15 requirement. *See, e.g., Flowers v. Carville*, 266 F. Supp.2d 1245 (D. Nev. 2003). In the event this Court  
16 concludes that Plaintiff's civil conspiracy claim has been insufficiently pled, this Court should grant Plaintiff  
17 leave to amend any purported pleading deficiencies.

18 Contrary to defendant's understanding, Plaintiff's civil conspiracy claim is not based upon  
19 concerted acts of Defendant Stark and the employees, officers and directors of NDOW Watch. Rather,  
20 Plaintiff contends that all the named defendants, including Stark and NDOW Watch, conspired together  
21 and with their followers to unlawfully harass, threaten, intimidate, embarrass and damage Plaintiff's  
22 reputations and to threaten Plaintiff and his family with bodily harm in order to get them to acquiesce to  
23 defendants and their co-conspirators demands. Accordingly, defendants' motion must be denied.

24 An actionable civil conspiracy claim is defined as a combination of two or more persons who by  
25 some concerted action intend to accomplish some unlawful objective for the purpose of harming another  
26 which results in damage. *See, e.g., Guilfoyle v. Olde Monmouth Stock Transfer Company, Co., Inc.*, —  
27

1 Nev. \_\_\_, 335 P.3d 190 (2014). The intra-corporate conspiracy doctrine has no applicability here where  
2 Plaintiff alleged that Defendants Bear League, Anne Bryant, Mark E. Smith, Lake Tahoe Wall of Shame,  
3 Carolyn Stark, and NDOW Watch Keeping Them Transparent "acted in concert with one another and their  
4 followers to accomplish the goals of harassing and threatening Plaintiff and causing him fear, anxiety,  
5 embarrassment and damaging his reputation." *FAC* ¶ 35. This is not a case where Plaintiff has sued only  
6 Defendant Stark and her business NDOW Watch Keeping Them Transparent.

7 Defendant Stark's reliance upon the intra-corporate conspiracy doctrine is entirely misplaced.  
8 Plaintiff will likely prevail on his claim for civil conspiracy.

9 **3. Intentional Infliction of Emotional Distress.**

10 The elements of a claim for intentional infliction of emotional distress are: (1) Defendants' conduct  
11 was extreme and outrageous; (2) Defendants either intended or recklessly disregarded to cause emotional  
12 distress; (3) Plaintiff suffered severe or extreme emotional distress; and (4) Defendants' conduct actually  
13 or proximately caused the distress. See *Nelson v. City of Las Vegas*, 99 Nev. 548, 665 P.2d 1141 (1983).  
14 "[E]xtreme and outrageous conduct is that which is 'outside all possible bounds of decency' and is regarded  
15 as 'utterly intolerable in a civilized community.'" *Maduikie v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d  
16 24 26 (1998) (quoting California Book of Approved Jury Instructions (hereinafter "BAJI") No. 12.74).  
17 Whether a defendant engaged in extreme and outrageous conduct is a question of fact for the jury. *Posadas*  
18 *v. City of Reno*, 109 Nev. 448, 456 (1993); *Branda v. Sanford*, 97 Nev. 643, 645 (1981).

19 Plaintiff submits that based upon the alleged facts, a jury could easily find that Defendants acted  
20 with extreme and outrageous conduct. Defendants undertook conduct of posting false information and  
21 personal information about Plaintiff on their Facebook pages with the apparent sole purpose of harassing,  
22 intimidating and bullying Plaintiff. The postings also impugned Plaintiff's reputation and viciously accused  
23 him of criminal conduct. More egregiously of all, the postings incited violence towards Plaintiff.  
24 Defendants' acts as alleged in the *FAC* and as set forth in the exhibits hereto undoubtedly amounted to  
25 extreme and outrageous conduct.



1 Defendants' conduct clearly caused Plaintiff severe emotional distress where he remains fearful of  
2 physical harm and violence directed at him and his wife and children. Plaintiff will likely prevail on his  
3 claim for intentional infliction of emotional distress.

4 **4. Negligent Infliction of Emotional Distress.**

5 A claim for negligent infliction of emotional distress requires Plaintiff to show that Defendants  
6 acted negligently and "either a physical impact . . . or, in the absence of physical impact, proof of 'serious  
7 emotional distress' causing physical injury or illness." *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447,  
8 956 P.2d 1382, 1387 (1998). For the reasons set forth above, Plaintiff will likely prevail on his claim for  
9 negligent infliction of emotional distress. Plaintiff lives in fear of physical harm and violence directed  
10 towards him and his family.

11 **V. CONCLUSION**

12 As a matter of law, Nevada's anti-SLAPP statutes have no applicability to the instant case and  
13 Defendant Stark's reliance upon those statutes are entirely misplaced. The anti-SLAPP statutes do not  
14 protect speech that is illegal as a matter of law. The anti-SLAPP statutes also do not protect speech that is  
15 untruthful. Dismissal pursuant to Nevada's anti-SLAPP is simply not warranted.

16 When this Court views the allegations as alleged in the *FAC* and accepts the allegations as true, it  
17 does not appear beyond a doubt that Plaintiff can prove no set of facts in support of claims that would entitle  
18 him to relief. If this Court concludes that there are pleading deficiencies, Plaintiff respectfully requests  
19 leave to amend.  
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1 **AFFIRMATION**

2 The undersigned hereby affirms that the preceding document does not contain the social security  
3 number of any person.

4 DATED this 8<sup>th</sup> day of May, 2017.

5 **ROSE LAW OFFICE**

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18 Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I hereby certify that I am an employee of the Rose Law Office and  
3 that on the date indicated below, I served a true copy of the foregoing *Plaintiff Carl Lackey's*  
4 *Opposition to Defendant Carolyn Stark's Special Motion to Dismiss/Anti-Slapp*, on the party(s)  
5 set forth below by:

6 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope, postage prepaid  
7 for collection and mailing in the United States Mail, at Reno, Nevada

8 \_\_\_\_\_ Hand Delivery

9 \_\_\_\_\_ Facsimile

10 X All parties signed up for electronic filing have been served electronically, all  
11 others have been served by placing a true copy thereof in a sealed envelope  
12 for collection and mailing in the United States mail, at Reno, Nevada, postage  
13 prepaid, following ordinary business practices

14 addressed as follows:

15 Del Hardy, Esq.  
16 Stephanie Rice, Esq.  
17 WINTER STREET LAW GROUP  
18 96 & 98 Winter Street  
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28

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# EXHIBIT 1

# EXHIBIT 1

BEAR League: Board and Staff

[www.savethebears.org/directors.html](http://www.savethebears.org/directors.html)

BEAR LEAGUE - BOARD OF DIRECTORS  
Ann Bryant, Executive Director Ann Bryant Executive  
Director Carolyn Stark, Board Member, Carolyn Stark  
You visited this page on 5/5/17.

# Tensions high over Tahoe bears

By Tom Knudson - [tknudson@sacbee.com](mailto:tknudson@sacbee.com)

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Drawn by the scent of months-old garbage, the mother bear clawed her way into the garage of the Lake Tahoe condo – twice.

But when Ian Knight, a game warden with the Nevada Department of Wildlife, showed up to capture her, he found himself outsmarted – not by the bear but by bear-lovers.

People huddled near his culvert-like trap, waiting to shoo the bear away if it returned. Some booed him. A woman cried. He sniffed the air and caught the scent of Pine-Sol, a bear deterrent, on the trap; inside, someone had tossed two teddy bears.

“It makes me frustrated,” Knight said. “I’m just trying to do a job, trying to help these bears not cause problems and move them into a different area.”

Rimmed by snow-clad peaks, as blue as a tropical sea, Lake Tahoe is one of the nation’s most magnificent settings. But today, that splendor masks a divisive drama onshore: a bitter battle over bears.

On one side are members of the Bear League, a feisty California nonprofit, and other animal activists who say too many bears are being lured into danger by careless trash management and needlessly killed.

“They are just gorgeous creatures, and they are so misunderstood,” said Carolyn Stark, a Bear League board member who helped maintain a round-the-clock vigil at Knight’s trap. “It’s so unfair. I want to help protect them.”

On the other side are wildlife biologists who say such action risks backfiring by allowing bears to become too comfortable around people, making them potentially more dangerous.

“They are allowing bears to progress up that ladder of conflict,” said Carl Lackey, a bear biologist with the Nevada Department of Wildlife. “Once a bear is inside somebody’s house, we have to go in and kill the bear.”



Activists aren't just thwarting game wardens. Some are making threatening late-night calls to residents and business owners who have reported bear problems, and posting slurs and threats online.

This year, Incline Village landscaper Tony Robinson said he received two anonymous calls after he reported a bear problem and a wildlife biologist arrived with a trap.

"The first was like: 'If you don't get rid of that trap, we're going to kill you,'" Robinson said. "The second one (said), 'We're going to destroy your business and screw up your boats and destroy your property.'"

In California, John Brissenden, manager of Sorensen's Resort near Lake Tahoe in Hope Valley, said employees were threatened after two bears were killed there in 2012.

"We were branded as murderers and executioners," said Brissenden, a board member of the Sierra Nevada Conservancy, a state agency, and a longtime conservationist. "It was alarming, discouraging, given our 40 years of protecting wildlife habitat, including bear habitat."

Ann Bryant, executive director of the Bear League, said her group's activism is both civil and legal.

"We are a peaceful people," Bryant said. "We don't tolerate ill treatment of wildlife, but we sure don't take our revenge out. We don't tamper with traps. We don't threaten people."

Mark Smith, an Incline Village mining consultant who rallies bear lovers to trap sites on a website called the Lake Tahoe Wall of Shame, said citizen action is crucial.

"I think we have an obligation, as members of a democracy, when our government stops serving us, to take certain action, nonviolent action," Smith said. But he added: "I think it's unfortunate that fear is part of the equation. Fear is an inappropriate tool."

At its simplest, the conflict is about how best to live with animals so charismatic that activists give them names – Jasper, Cloud, Rascal, Calvin, Butterscotch – but which also can be destructive and on rare occasions deadly.

"We are the intruders here," said Ali Van Zee, a Bear League board member. "If you want to live in a beautiful area like this, let's learn how to live with the animals that are here."

Lackey, the bear biologist, believes in more hands-on management, saying animals that become too accustomed to people should be captured, relocated and – if they become too dangerous – killed.

"Black bears are normally very tolerant of human presence, but it only takes one time to ruin your day," he said. "NDOW (the Nevada Department of Wildlife) errs on the side of caution."

But the biggest problem may be human. In some cases, Tahoe residents no longer call authorities about problem bears because they're more afraid of bear lovers.

“We’ve had residences broken into by bears where the occupants made the statement that the people were more dangerous than the bears,” said Tony Wasley, director of the Nevada wildlife department. “For that reason, they didn’t want a trap or, in one case, asked that the trap be removed.”

Bill Devine, an Incline Village trustee and a Washoe County sheriff’s sergeant, is concerned.

“It’s almost like a vigilante-type mentality,” he said. “If you see something like that and don’t report it, who’s to say the next house the bear breaks into doesn’t have some kids in it?”

Bear numbers booming

*Ursus americanus*, the American black bear, is the most far-flung bear on the continent and perhaps the most poorly named. While many are indeed as black as midnight, others are a painter’s palette of brown and tan — from caramel to chestnut, cinnamon to cappuccino.

They are the ultimate omnivore, content to dine on everything from pine nuts to pork chops, kokanee salmon to potato salad. Around Tahoe, they’re not just celebrated; they’re mourned. When a bear known as Charlie was captured and killed by authorities in Incline Village in 2011, activists held a candlelight vigil.

“They’re not just another animal,” said Smith, the pro-bear activist. “There is something special about bears. It’s hard to explain. The more I am with them, the closer I feel to them.”

Few people spend more time with bears than Lackey, the Nevada biologist. “They can be very human-like,” he said. “They are very persistent. They will figure things out.

“I’ve had bears open jars,” Lackey said. “I had a bear that drank a whole six-pack of beer. He bit a hole in the top of each can and drank every one. Then he went and rolled around on a trampoline.”

Bears numbers are booming. In California, the population is estimated at more than 30,000, up from 10,000 to 15,000 three decades ago. Some 200 to 300 animals are believed to inhabit the California side where lately they have stayed mostly out of trouble.

“This year has been relatively stable, definitely lower numbers than some past years for significant conflicts,” said Jason Holley, a supervising wildlife biologist with the California Department of Fish and Wildlife.

They are thriving on the Nevada side, too, which is home to one of the highest densities of bears in North America, according to the Nevada wildlife department. Human-bear conflicts are on the upswing in Nevada, too, averaging around 250 per year, up from less than 100 in the late 1990s.

Most conflicts are tied to trash, and Incline Village — a well-heeled community of woodsy homes on the northeast shore of Lake Tahoe — is a hotspot.

“Monday through Friday are collection days,” said Smith, who is 56. “If you drive around, you’ll see tattered, raggedy plastic bins. You’ll see Glad Bags on the street waiting for pick-up.

“On any given week, there’ll be one neighborhood where a bear’s wandered in and he’s going door to door, ravaging those trash bags. I think that’s ludicrous.”

Incline Village trustees are weighing a proposal to make bearproof containers mandatory but took no action on it last month, disappointing wildlife officials.

“Dealing with trash is the only effective way to address nuisance bears,” said Wasley, the Nevada wildlife director. “It’s unfair for Incline Village to expect the department to address their bear issues when they are unwilling to manage their trash.”

#### A capital offense

When bears do get into trouble, bear lovers say, the Nevada wildlife department responds excessively, especially bear biologist Lackey.

“Carl Lackey is the ultimate bear serial killer,” said the Bear League’s Bryant. “He’s killed more bears than old snaggletooth hunters. He kills sometimes several a month.”

Lackey is a familiar target on the Bear League and Lake Tahoe Wall of Shame Facebook pages. “Carl is on a killing spree,” one person wrote. “Oh, please beat the crap out of this guy,” another added.

Not long ago, Ron Stiller, an Incline Village business consultant trying to defuse the tension, sat down to talk with Lackey. “I made him take his hat off to check for horns – and I didn’t find any,” Stiller said. “I checked his coffee. There was no bear blood in it.

“It’s always easy when you have a movement to have an enemy,” Stiller said. “They’ve made him the enemy. Carl’s a good guy. He’s a good husband, a good father.”

Stiller also has met with pro-bear activists.

“There is a time to protest and a time to lay off,” he said. “If you take it too far, you get polarization. Then what pays the ultimate price are the entities everybody is trying to protect: the bears.”

For his part, Lackey – who has a bachelor’s degree in wildlife management and has co-authored five peer-reviewed articles about bears – shrugs off the criticism.

“I’ve got some pretty thick skin,” he said. “I’ve got too many things on my plate to worry about things they’re saying, especially when they are lies.”

Since late 1996, Lackey has responded to more than 3,500 human-bear conflicts, handled bears more than 900 times and put down about 80.

"I've been very consistent when I kill a bear and when I don't," he said. "If I know I have the right bear and that bear is either breaking into homes or very aggressively seeking human food, it's a dead bear."

That rule was put to the test last month when a bear wandered into Incline Village and began sniffing around some vehicles, drawn by a doughnut on a dashboard.

Lackey set up his trap in a quiet driveway, out of sight of bear activists. Overnight, the door slammed shut. When Lackey arrived the next day, he had a job on his hands.

Inside was a surly, restless 160-pound male with no ear tags or other markings, meaning it hadn't been captured before and likely was not habituated to people. And it was young, making it a good candidate for rehab. This bear would live.

After sedating the animal, Lackey knelt beside it and clipped tags on both ears. He drew a blood sample and stenciled a tattoo on the animal's gum. He worked quickly and said very little. But a beige cap on his head bore a message: "Think! like a BEAR."

A day later, on a rocky mountain road outside town, Lackey lifted the trap door. After hesitating for a moment, the bear leaped to the ground with two yelping dogs on its heels and the sharp bang-bang of two non-lethal shotgun rounds in its ears, headed for the rugged Carson Range.

The goal was to scare the bear, a process called aversive conditioning. "We're trying to change their behavior, make them so they are not so comfortable around people," Lackey said.

### **Let sleeping bears lie**

Bear League activists argue that by releasing bears in mountain terrain, Lackey is only making them afraid of the wild. "He punishes them in the area where he wants them to supposedly stay," said Bryant. "Carl does it wrong."

She believes in conditioning bears when and where they get into trouble, saying that sends a more direct message.

"When a bear is where he shouldn't be, tell him right then and there," Bryant said. "Wave your arms and stomp your feet." Once the animal has fled into the forest, "you stop and say, 'Good bear.'"

Lackey is a fan of on-site conditioning, too, but said it's often risky in congested settings. "The last thing I want to do is get a bear or my dogs run over by a car," he said.

Since 1998, Bryant said, she has responded to more than 2,500 bear conflicts that have led to the deaths of just two bears. "I agreed they were incorrigible," she said. "Prior to allowing them to be killed, I searched for other options."

Bryant, 62, applies her tough-love with paintball gun, rubber buckshot and a fierce passion that has brought her frequent media coverage: She was the focus of an Animal Planet miniseries, "Blonde vs Bear," in 2011 – and also sometimes stirs conflict with wardens, wildlife biologists and homeowners.

In 2010, one incident turned ugly on the California side after a home where a bear had been trapped was vandalized. As an El Dorado County sheriff's deputy wrote in a report, blood-colored paint covered "the exterior walls, windows, the stone chimney, the slate porch, the Trex decking and stairs, the roof and the planters."

The deputy contacted the Bear League. "Bryant was unaware of the vandalism (and) advised if she received any information ... she would let me know immediately," he wrote in the report.

"We are accused of all kinds of things," said Bryant, who majored in psychology and philosophy at Mankato State University in Minnesota. "People who don't like bears don't like us. We know that.

"Maybe I don't just quietly sit back and say, 'yes, sir, no, sir,' " Bryant said. "I will speak how I feel. But I am not a terrorist, and I don't break the law."

With blonde hair that spills over her shoulders, black sunglasses and black gloves, she is a well-recognized figure around Tahoe. Her group has about 1,500 members and 250 trained volunteers. "We have to be the voice for these animals," she said.

Not long ago, she was called out to the scene of a potential human-bear conflict in Kings Beach on the California side, where a 250-pound bear lay napping behind a pizza joint.

Bryant walked to within a few yards of the animal and spoke to it. "You're quite comfortable there, aren't you?" she said.

The bear, dozing near a bag of garbage, didn't seem to notice. A few moments later, it lifted its head and gazed at its human visitors. "It's OK, doll," said Van Zee, a Bear League board member who had accompanied Bryant. The bear went back to sleep.

The animal had shown up overnight, after breaking through a wooden fence.

"This bear's mellow," said Rick Buhler, owner of the pizza take-out and delivery business. "I've dealt with it for two years now. He doesn't seem to be in any mood to harm anybody. I just don't want him coming back."

Bryant could have chased the animal off, but with a busy highway nearby, she chose to let a sleeping bear lie.

After the bear left that evening, a Bear League volunteer dumped Pine-Sol on his napping spot. Buhler patched up the fence and hasn't seen the animal since.

A bear named Cloud

Black bears generally leave people alone, but not always. Since 1900, at least 63 people have been killed, most in Canada and Alaska, and none in California and Nevada. A recent study found 86 percent of those fatalities have occurred since 1960, as human and bear populations have grown.

Bryant contends the more habituated bears are around people, the safer they are likely to be. “Animals who grow up around our villages, especially here in Tahoe, are the least likely to harm a human,” she said.

But there was a close call this year in Incline Village. It happened when a young, light-colored bear that activists had named Cloud walked into a condo occupied by a disabled 92-year-old woman.

“Bears just don’t walk in out of the wild and break into homes,” said Lackey, the Nevada biologist. “If they had it named, that tells me it had been in that area long enough to become human-habituated.”

The woman escaped unharmed, but the condo did not. The bear tipped over a dresser, broke a window, tore up a couch and ripped up molding. In 2001, a similar break-in ended tragically for a 93-year-old New Mexico woman.

“The same scenario: an elderly lady, a conflict bear,” Lackey said. “She got killed.”

In Incline Village, the bear was still inside the woman’s condo when Lackey arrived at 12:35 a.m. There was no doubt about its fate. It was guilty of home invasion — a capital offense. After darting the animal with a sedative, Lackey shot it through the head with a .22.

“I didn’t become a biologist to kill bears,” Lackey said. “We do a lot of good for bears in Nevada, but we err on the side of caution when bears are in homes. Killing that bear was justified.”

Bear lovers were furious.

“We demand a new biologist,” one activist stated on the Lake Tahoe Wall of Shame’s Facebook page. “Cloud was a gentle, sweet bear. He was our ‘poster child.’”

# EXHIBIT 2

# EXHIBIT 2



Search for posts on this Page

14,198 people like this  
Bryan Robinson

42 people have been here

Invite friends to like this Page

4.6 of 5 stars - 221 reviews  
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Welcome

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2 Replies · 1 hr

Randy L Simar So what reason are they using this time?? Bear in trash? Bear break into the house etc ....???

Don't they need a reason to set a trap??

Like · Reply · 33 hrs

3 Replies

Brandi Berman-Smith This is absurd. Don't they have anything to do besides harass locals?

Like · Reply · 1 · 13 hrs

Randy L Simar Can people request a trap set? As in one that won't catch a bear. Use up their resources and traps in places that they won't catch anything??

Like · Reply · 1 · 13 hrs

Victoria LeDoux Sarpa This is becoming UNREAL OUT OF CONTROL. CRAZY, Humming, maybe time for a assassination.

Like · Reply · 12 hrs · Edited

Victoria LeDoux Sarpa Why this time did someone call and complain about the bears?

Like · Reply · 12 hrs

Leslie Banton No way to treat me when I have supported the Bear League for YEARS!! I AM NOT THE ENEMY. Get your facts straight before you attack me on here!!!

Like · Reply · 12 hrs

BEAR League What are you talking about, Leslie? I can't find a post from you or a comment about you anywhere.

Like · Reply · 1 · 12 hrs

Carolyn Stark Leslie Banton, you are part of the bear team! You are on the right side with us. Who is doing this?

Like · Reply · 12 hrs · Edited

Leslie Banton I took a screenshot, reported to FB, then deleted it. (It was a comment to my comment, so it all got erased). Someone thought I was associated with NIGHT. All in good now. But I don't like people trying to smear my name.

Like · Reply · 1 · 12 hrs

View more replies.

Write a reply...

Kelsie Ann Lindsey Can we all pull together and protest this #1?? This has got to STOP!!

Like · Reply · 1 · 12 hrs

Direct Page

Postcard

2016

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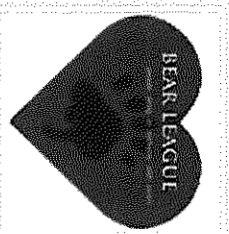
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Like · Reply · August 24 at 9:21am

Martha Doranison When I moved West I was horrified at the propensity of Westeners to kill anything and everything with four feet. Never thought I'd see the mustangs being rounded up and killed along with so many others. Very tragic to me.

Like · Reply · August 24 at 9:41am

Christine Verdee

Like · Reply · August 24 at 5:07pm

Write a reply...

Jackie Bowen Not night

Like · Reply · August 24 at 9:51am

Kerry Mahoney I have no words that I can use safely here.....they are animal terrorists

Like · Reply · August 24 at 10:31am

Pat Faye Disgusting ! Leave the bears ALONE AHICLES

Like · Reply · August 24 at 10:45am

Alberta Finegan NVDW stop the killing. You have become part of the problem, not part of the solution. You are supposed to protect the animals, not kill them. The animals are part of the reason we all moved here.

Like · Reply · August 24 at 10:45am

Shale Fredson People ruin everything.

Like · Reply · August 24 at 1:11am

1 Reply

Yvicki Brown How about putting Carlsbad in that trap and roll it into bear territory.

Like · Reply · August 24 at 12:22pm

Kelly Pettit-Lopez Car for bait. Gets my vote

Like · Reply · August 24 at 2:07pm

Carol Dickerson Sticking the pond. Did his disgusting self apply for a permit? What a major conflict of interest. I can't believe Nevada enables such corruption.

Like · Reply · August 24 at 2:37pm

Christine Verdee Nevada enables such corruption. It's sad. You can see the hunting permits for his wife and other NDOW people (and relatives) as they are public info. They hunt black bears, mountain lions and most other wildlife.

Like · Reply · August 24 at 5:02pm

Jill Buede This is horrible. Can we organize a protest to Douglas County???

Like · Reply · August 24 at 2:45pm

Aaron Jones I'd love to run into Carl at a bar.

Like · Reply · August 24 at 3:25pm

Aaron Jones I'll ram a fist full of marshmallows and a pie up his backside, tie him to a trailer and let the bears climb on it, then take him to Iraq and drop him off in a hunting zone.....seems fair to me.

Like · Reply · August 24 at 3:34pm

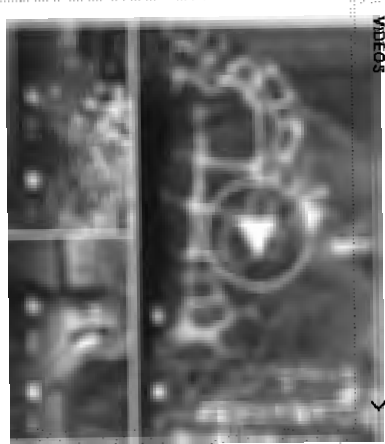
Christine Verdee So sad. Humans. :- (

Like · Reply · August 24 at 4:12pm

Deborah Delaney Can anything be done so close to the bear hunt? Every year I find more all the hunters who participate can't shoot straight.



## VIDEOS



## VISITOR POSTS



Katrina Letson Bridgley  
August 24 at 8:04pm

How can I get involved with your organization?

Like · Comment



Randy L Sinar  
August 23 at 12:03pm

See photo

Like · Comment



Chene Smutnick  
August 21 at 8:11pm

What a beautiful story about Maud her mom and those sweet Bulldogs... See More

Like · Comment

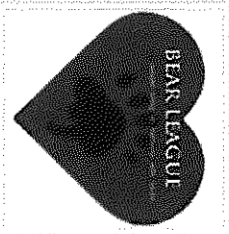


Crissy Hill

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Like · Reply · 6 · August 24 at 8:21am

Martha Donaldson When I moved West I was horrified at the propensity of Westerners to kill anything and everything with four feet. Never thought I'd see the mustangs being rounded up and killed along with so many others. Very tragic to me.

Like · Reply · 4 · August 24 at 8:41am

Christine Verdee

Like · Reply · August 24 at 5:07pm

Write a reply...

Like · Reply · August 24 at 8:51am

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Like · Reply · 4 · August 24 at 10:45am

Shelia Fredson People ruin everything.

Like · Reply · 2 · August 24 at 11:11am

1 Reply

Yek! Brown How about putting Carl backy in that trap and not a hind bear sanctuary.

Like · Reply · 1 · August 24 at 12:22pm

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Carol Dickerson Sticking the pond. Did his disgusting self apply for a permit? What a major conflict of interest. I can't believe Nevada enables such corruption.

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Like · Reply · August 24 at 5:05pm

Write a reply...

Jill Beede This is horrible. Can we organize a protest to Douglas County???

Like · Reply · 2 · August 24 at 2:45pm

Aaron Jones I'd love to run into Carl at a bar.

Like · Reply · 5 · August 24 at 3:22pm

Aaron Jones I'll ram a fist full of marshmallows and a pie up his backside. lie him to a trailer and let the bears climb on in, then take him to Iraq and drop him off in a hunting zone.....seems fair to me.

Like · Reply · 5 · August 24 at 3:34pm

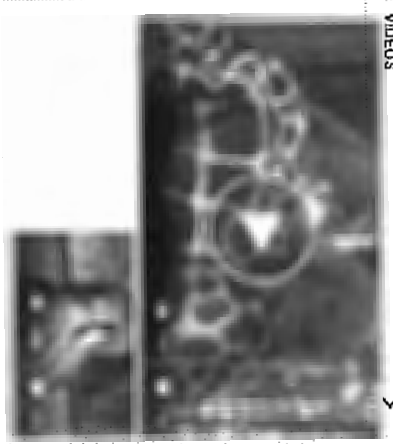
Christine Verdee So sad. Humans . : (

Like · Reply · August 24 at 4:18pm

Deborah Delaney Can anything be done so close to the bear hunt? Every year I just pray all the hunters who participate can't shoot straight.



## VIDEOS



## VISITOR POSTS

Katrina Leticia Midgley  
August 24 at 8:04am

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Like · Comment

Randy L Simar  
August 23 at 10:03pm

See photo

Like · Comment

Cherie Smuthrick  
August 21 at 8:14am

What a beautiful story about Maud her mom and those sweet Bulldogs... See More

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# EXHIBIT 3

# EXHIBIT 3







