

CODE: \$2515
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Nov 15 2017 03:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

CARL LACKEY,

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV17-00434

DEPT. NO.: 4

NOTICE OF APPEAL

Notice is hereby given that Defendant, MARK E. SMITH, by and through his counsel, STEPHANIE RICE, ESQ. and WINTER STREET LAW GROUP, hereby appeals to the Supreme Court of Nevada from the Order denying Defendant Mark E. Smith's Special Motion to Dismiss/ Anti-SLAPP pursuant to NRS Chapter 41 and NRCP 12 as to claims of defamation, civil conspiracy and intentional infliction of emotional distress, entered herein on November 13, 2017.

DATED this 13th day of November, 2017.



STEPHANIE RICE, ESQ. (SBN 11627)
WINTER STREET LAW GROUP
*Attorneys for Defendant
Mark E. Smith*

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 **NOTICE OF APPEAL** 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

☐ Facsimile (FAX) and/or Email:

☐ Federal Express or other overnight delivery

☐ Messenger Service

☐ Certified Mail with Return Receipt Requested

☒ Electronically filed

addressed as follows:

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Sacramento, CA 95811

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 13th day of November, 2017.


AN EMPLOYEE OF WINTER STREET LAW GROUP

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

2 IN AND FOR THE COUNTY OF WASHOE

3 IN THE MATTER OF THE ESTATE OF:
4 CARL LACKEY v. BEAR LEAUGE, et al

CASE NO. CV17-00434

5 DEPT. NO. 4

EXHIBIT INDEX

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EXHIBIT #	DESCRIPTION	LENGTH
7 1	Notice of Entry of Order	19

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EXHIBIT 1

EXHIBIT 1

1 **CODE: 2540**

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9 *Attorneys for Defendant Mark E. Smith*

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

15 **CARL LACKEY,**

16 Plaintiff,

17 vs.

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

24 Defendants.

CASE NO.: CV17-00434

DEPT. NO.: 4

25 **NOTICE OF ENTRY OF ORDER REGARDING MARK SMITH'S**
26 **SPECIAL MOTION TO DISMISS/MOTION TO DISMISS**

27 NOTICE IS HEREBY GIVEN that an ORDER was entered in the above-entitled matter on
28 October 23, 2017, a copy of which is attached hereto.

Dated this 13th day of November, 2017.



DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
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 **NOTICE OF ENTRY OF ORDER (AS TO MARK E. SMITH)** on all
5 parties to this action by:

6 X Placing an original or true copy thereof in a sealed envelope placed for collection
7 and mailing in the United States Mail, at Reno, Nevada, postage paid, following
8 ordinary business practices.
9 Personal Delivery
10 Facsimile (FAX)
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15 addressed as follows:

16 **Sean P. Rose, Esq.**
17 **Rose Law Office**
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Robin Shofner, Esq.
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1830 15th Street, Ste. 100
Sacramento, CA 95811

22 **AFFIRMATION**

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

26 DATED this 13th day of November, 2017.

27 
28 **EMPLOYEE OF WINTER STREET LAW GROUP**

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

2 IN AND FOR THE COUNTY OF WASHOE

3 IN THE MATTER OF THE ESTATE OF:
4 CARL LACKEY v. BEAR LEAUGE, et al

5 CASE NO. CV17-00434

6 DEPT. NO. 4

7 EXHIBIT INDEX

8 EXHIBIT #	DESCRIPTION	LENGTH
9 1	Order regarding Mark E. Smith's Special Motion to Dismiss/Motion to Dismiss	15

EXHIBIT 1

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

CARL LACKEY,

Plaintiff,

v.

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

Defendants.

Case No. CV17-00434

Dept. No.: 4

**ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION
TO DISMISS**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant", an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On June 5, 2017, Smith, by and through his counsel Cameron D. Bordner, Esq., and Robin D. Shofner, Esq., of Molsby & Bordner, LLP, filed *Special Motion to Dismiss/Motion to Dismiss*. Lackey filed an opposition on June 23, 2017. Smith filed a reply on July 3, 2017. Lackey filed a

1 supplement to his opposition on July 26, 2017. The Court heard oral arguments on July 26, 2017
2 and took the matter under advisement.

3 Smith asserts the FAC is subject to dismissal under Nevada's Anti-SLAPP statutes, NRS
4 41.635, et. seq, as well as 12(b)(5) for failure to state a claim. Smith alleges absent from the FAC
5 are any allegations that Smith published any comments whatsoever, and certainly not any
6 comments about or concerning Lackey. Smith contends he is not an administrator or responsible
7 party for Lake Tahoe Wall of Shame. As such, he is not responsible for comments posted on Lake
8 Tahoe Wall of Shame. Further, even assuming arguendo that Smith had any management control
9 over the page, such comments cannot be attributed to him under the Communications Decency
10 Act (hereinafter "CDA"), 11 U.S.C. 230(c)(1). In his capacity as an employee for Nevada
11 Department of Wildlife (hereinafter "NDOW"), a governmental organization, there is no doubt
12 Lackey is a public figure. Or at a minimum, Lackey is a limited purpose public figure and he must
13 plead and prove actual malice. Smith asserts he did not act with actual malice. Because the
14 preservation and treatment of bears is undoubtedly a matter of public concern, Smith contends, the
15 lone comment posted on Lake Tahoe Wall of Shame's Facebook page addresses the same.

16 Smith argues Lackey has failed to state a claim for defamation, as he has failed to allege
17 that Smith published any statements whatsoever. Similarly, Smith alleges, as Lackey has not
18 alleged any conduct by Smith, Lackey has failed to plead facts to establish the first element of
19 intentional infliction of emotional distress, extreme and outrageous conduct, and the second
20 element of a negligent infliction of emotional distress, breach of duty. Additionally, as with Smith,
21 Lackey has failed to allege any conduct of Bryant or Stark. Lackey has only alleged conduct by
22 one defendant, Bear League, as such, Lackey has also failed to allege how Smith purportedly acted
23 in concert for the conspiracy claim.

24 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First
25 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP
26 statute does not apply because the statements do not involve a public interest. The statements are
27 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under
28 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking

1 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with
2 both violence and murder. Lackey contends Smith's reliance on the CDA is misplaced, as Smith
3 is also an information content provider. Lackey asserts that Smith does business as Lake Tahoe
4 Wall of Shame and is essentially its voice. Lackey alleges just because Smith may not have created
5 the Facebook page or manage it does not mean that he did not author the posts. Even though
6 Lackey contends the burden has not shifted pursuant to Nevada's Anti-SLAPP legislation, Lackey
7 nonetheless argues, while providing additional evidence, he will be successful on his claims.

8 ANTI-SLAPP

9 "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's
10 exercise of his or her First Amendment free speech rights." Stubbs v. Strickland, 129 Nev. Adv.
11 Op. 15, 297 P.3d 326, 329 (2013). "Under Nevada's anti-SLAPP statutes, a defendant may file a
12 special motion to dismiss if the defendant can show 'by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to petition or the right
14 to free speech in direct connection with an issue of public concern.'" Shapiro v. Welt, 133 Nev.
15 Adv. Op. 6, 389 P.3d 262, 267 (2017)(quoting NRS 41.660(3)(a)). The term "good faith
16 communication" includes "[c]ommunication made in direct connection with an issue of public
17 interest in a place open to the public or in a public forum, which is truthful or is made without
18 knowledge of its falsehood." NRS 41.637(4). If a defendant makes this initial showing, the burden
19 shifts to the plaintiff to show "with prima facie evidence a probability of prevailing on the claim."
20 Id.; NRS 41.660(3)(b).

21 When determining whether the conduct is protected under the anti-SLAPP statute, the court
22 should not look to First Amendment law, but to Nevada's anti-SLAPP legislation. See Delucchi
23 v. Songer, 133 Nev. Adv. Op. 42, 396 P.3d 826, 833 (Nev. 2017). Thus, when analyzing whether
24 the defendant's conduct constitutes "good faith communication" the court must determine whether
25 "it falls within one of the four categories enumerated in NRS 41.637, and whether it is truthful or
26 is made without knowledge of its falsehood." Delucchi, 133 Nev. Adv. Op. at 15; 396 P.3d at
27 833(internal quotations omitted). However, if the alleged conduct is illegal as a matter of law,
28 then the conduct is not protected activity within the anti-SLAPP context.

1 To determine whether an issue is one of public interest as used in NRS 41.637(4), the
2 Nevada Supreme Court adopted the guiding principles California utilizes. Shapiro, 133 Nev. Adv.
3 Op. 6, 389 P.3d at 268 (citing Piping Rock Partners, Inc. v. David Lerner Assocs, Inc., 946
4 F.Supp.2d 957, 968 (N.D. Cal 2013). Specifically,

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

16 Id.

17 The FAC attributes the following statement to Smith: “A department with no real interest
18 in wildlife other than to make it available to hunters and trappers...some might say they are
19 criminals against nature...they are certainly ignorant about it.” Commenter Sean Stansfield on
20 Lake Tahoe Wall of Shame’s Facebook Page. [FAC, Statement P].

21 First the Court considers whether the alleged conduct is illegal as a matter of law, and
22 therefore does not fall within the protection of Nevada’s anti-SLAPP legislation. 18 USC § 2261A
23 (the federal stalking statute) provides in relevant part, whoever,

24 (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with
25 intent to kill, injure, harass, or intimidate another person, uses the mail, any
26 interactive computer service or electronic communication service or electronic
27 communication system of interstate commerce, or any other facility of interstate or
28 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.

Here, the Court cannot conclude as a matter of law that the conduct was illegal. The Court
does not find that suggesting a government department is a “criminal against nature” places a
person in reasonable harm or fear of death or would cause a person severe emotional distress.

1 Second, the Court finds this statement was made in a public forum as it was made on
2 Facebook. Third, the Court considers the Shapiro factors to determine whether the statement was
3 made in the public interest. Smith's articulated public interest is conservation of natural resources,
4 specifically the preservation and treatment of bears, as well as bribery of a public official. The
5 Court finds this interest does not equate with mere curiosity.

6 In order to evaluate the degree of closeness between the asserted public interest and
7 speaker's statements/conduct, the Court must evaluate the specific statements (statement P)
8 attributed to Smith. When determining whether these statements are related to the public interest,
9 the court should focus on the specific nature of the speech rather than the generalities. The Court
10 questions whether there is a sufficient degree of closeness between this statement and purported
11 public interest of preserving wildlife or bribery of a public official. There is no indication of what
12 this "department" is (although, the Court presumes it is referring to the NDOW).

13 Nonetheless, even if this statement fell within the broadly stated public interest, in order to
14 shift the burden to Lackey, Smith must prove, by the preponderance of the evidence, that the
15 statements are true or were made without knowledge of their falsehood. See NRS 41.637; NRS
16 41.660. Here, there is no evidence provided that shows the statement is truthful or was made
17 without knowledge of its falsehood. In fact, Smith attests that he had no role in drafting or
18 publishing the comment of Sean Sarsfield on the Lake Tahoe Wall of Shame Facebook's page.
19 Therefore, the Court finds the first prong of NRS 41.660 has not been satisfied. Thus, the Court
20 does not find the burden shifts to Lackey to prove his likelihood of success on his claims. The
21 Court will deny Smith's motion to dismiss under Nevada's anti-SLAPP legislation.

22 NRCP 12

23 Next the Court considers Smith's 12(b) motion to dismiss. Although evidence was
24 provided for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to
25 dismiss under into a motion for summary judgment by considering matters outside the pleadings
26 at this stage of the case.

27 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim
28 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the

1 pleader seeks.” “A complaint must set forth sufficient facts to establish all necessary elements of
2 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief
3 sought.” Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

4 Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a
5 claim upon which relief should be granted. A motion to dismiss should be granted only if “it
6 appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.
7 Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-
8 pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which
9 are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a
10 motion to dismiss, the court must take all allegations in the complaint as true and draw all
11 inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54,
12 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal
13 conclusions merely because they are cast in the form of factual allegations.” Hotel Employees &
14 Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

15 *Communications Decency Act*

16 First, the Court address arguments concerning the CDA, as Smith is of the position that the
17 statements/conduct alleged are not attributable to him by virtue of the statute. The CDA
18 immunizes interactive computer services or users from any cause of action that would make them
19 liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A
20 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher
21 or speaker of any information provided by another information content provider”).¹ The CDA
22 defines “interactive computer service” to mean, “any information service, system, or access
23 software provider that provides or enables computer access by multiple users to a computer server,
24 including specifically a service or system that provides access to the Internet and such systems

25
26 ¹ See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc.,
27 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a
28 publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter
content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under
the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer
service provider).

1 operated or services offered by libraries or educational institutions.” Courts have consistently
2 found Facebook operates as an interactive computer service.²

3 The CDA, however, does not immunize an interactive computer service if it also functions
4 as an information content provider for the portion of the statement or publication at issue.³
5 “Information content provider” means “any person or entity that is responsible, in whole or in part,
6 for the creation or development of information provided through the Internet or any other
7 interactive computer service.” 47 USC 230(3). A website may lose immunity under the CDA by
8 making a material contribution to the creation or development of content.⁴

9 Thus, passive websites or websites that permit comments (without encouraging or
10 developing the content at issue) have not been deemed information content providers for the
11 purposes of the CDA.⁵ Therefore, absent some solicitation/encouragement of the defamatory
12 remarks, an interactive website/user will not be liable for the content that originated from a third
13 party.

14 Here, the FAC alleges that Smith is doing business as Lake Tahoe Wall of Shame. The
15 FAC alleges a specific comment of a person (not Smith) on Lake Tahoe Wall of Shame’s Facebook
16 page as well as generally states that members of Lake Tahoe Wall of Shame, and Lake Tahoe Wall
17 of Shame (itself) has made and continues to make false statements regarding Lackey and initiates
18 public comment threads on Facebook slandering Lackey including accusing him of criminal
19

20 ² See e.g. Fraleigh v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d
1354, 1359 (D.C. Cir. 2014).

21 ³ Carafano, 339 F.3d at 1123-25 (47 USC 230(c)(1) would bar plaintiff’s claims unless defendant “created or
22 developed the particular information at issue”); see also Anthony v. Yahoo! Inc., 421 F.Supp. 2d 1257, 1262-1263
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service’s alleged creation of false profiles
which induced plaintiff to maintain his membership there).

23 ⁴ Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 (9th Cir. 2016)(noting Roommates.Com, 521 F.3d at 1171, clarified “the
24 language used in Carafano [Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could
be a developer of content where it encouraged users to provide illegal content”). In Fair Hous. Council of San
25 Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1172 (9th Cir. 2008), the court discussed when a website
may also act as an information content provider: “The salient fact in Carafano was that the website’s classifications
26 of user characteristics did absolutely nothing to enhance the defamatory sting of the message, to encourage defamation
or to make defamation easier: The site provided neutral tools specifically designed to match romantic partners
depending on their voluntary inputs. By sharp contrast, Roommate’s website is designed to force subscribers to divulge
27 protected characteristics and discriminatory preferences, and to match those who have rooms with those who are
looking for rooms based on criteria that appear to be prohibited by the FHA.”

28 ⁵ See e.g. Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F.Supp.2d 1112, 1125–26 (D. Nev. 2013; Spreadbury v.
Bitterroot Pub. Library, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012; Piping Rock, 946 F.Supp.2d at 957.

1 conduct (accepting bribes and conspiracy). [FAC, at 3:18-28; 4: 1-7)]. It further alleges that Smith
2 and Lake Tahoe Wall of Shame published and encouraged statements. [FAC, at 8:14-19].

3 Facebook permits a comment by both the webpage as well as third party users. An original
4 post may contain a reply, as well as a reply to the reply, and can continue, the Court supposes,
5 indefinitely. Given the nature of Facebook, the Court cannot conclude for the purposes of a motion
6 to dismiss, that Smith did not encourage the third party user's statement. Therefore, at this time,
7 the Court cannot find Smith is immunized from liability for the third party comments under the
8 CDA.⁶

9 For the purposes of a motion to dismiss, that the Court is declining at this time in the
10 litigation to convert to summary judgment, the Court will not consider the evidence provided by
11 the parties that discusses Smith's role (or lack thereof) in Lake Tahoe Wall of Shame.

12 ***Defamation***

13 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate
14 the necessary elements of the claim so the defending party has adequate notice of the nature of the
15 claim.

16 Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.
17 8(a), the court may look to decisions interpreting N.R.C.P. 8(a)'s federal counterpart for guidance,
18 especially the federal opinions that were decided prior the US Supreme Court's adoption of the
19 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic
20 Corporation v. Twombly, 550 U.S. 544 (2007). Although, some federal courts, applying FRCP 8,
21 have required defamation to be pled with more specificity, such as dictating the claim must set
22 forth an adequate identification of the communication, who made the statements, to whom they
23 were made, and when the statements were made. See Bushnell Corporation v. ITT Corporation,
24 973 F.Supp. 1276 (D.Kan.1997); Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569,

25
26 ⁶ See e.g. Hy Cite Corp v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148-49 (D. Ariz. 2005)(declining
27 to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that defendants added
28 editorial comments, titles, and original content to third-party complaints posted on defendants' website); Whitney
Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding whether Defendants
were entitled to CDA immunity remained in question because the complaint plead Defendants' involvement in
creating or developing the alleged defamatory content posted on their website.

1 573–74 (D. Vt. 1998);(Blanck v. Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220
2 Fed. Appx. 697 (9th Cir. 2007).

3 Other federal courts have expressed disfavor about requiring a higher pleading requirement
4 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,
5 1027 (D. Nev. 2013); Rivera v. Allstate Ins. Co., 140 F. Supp. 3d 722, 728 (N.D. Ill. 2015).

6 As the Nevada Supreme Court has not adopted the higher pleading standards many courts
7 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a
8 claim for damages is not premised on defamation per se, special damages must be pled with
9 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225
10 (1981).

11 The general elements of a defamation claim require a plaintiff to prove: “(1) a false and
12 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to
13 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
14 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are
15 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation
16 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,
17 occupation or profession.” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff'd,
18 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

19 When a public figure or a limited public figure is involved, a plaintiff must plead and prove
20 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public
21 figures are those individuals who achieve such pervasive fame or notoriety that they become a
22 public figure for all purposes and in all contexts,” as well as those who hold government office.
23 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure
24 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and
25 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.
26 556, 573–74, 138 P.3d 433, 446 (2006).

27 The FAC generally alleges Smith is doing business as Lake Tahoe Wall of Shame. The
28 FAC states that Lake Tahoe Wall of Shame has and continues to initiate public comment threads

1 on its Facebook page slandering Lackey in his official capacity as a state employee and urging and
2 encouraging the public at large to shame and harass Lackey so that he will lose his job and/or feel
3 threatened enough to leave the community. The FAC alleges Lake Tahoe Wall of Shame acted
4 intentionally and with malice with the primary purpose being to harm, threaten, intimidate, cause
5 fear, anxiety, embarrassment and damage to his reputation by publishing false and vicious
6 comments accusing Lackey of criminal conduct (including accepting bribes and conspiracy)
7 designed to incite public outrage. The FAC lists some, but allegedly not all of the comments made
8 by Lake Tahoe Wall of Shame and the other defendants (see above for statements alleged
9 attributable to Smith dba Lake Tahoe Wall of Shame). The FAC asserts Lackey is either a limited
10 purpose public figure or a private individual. The FAC sets forth that Smith and Lake Tahoe Wall
11 of Shame published and encouraged statements despite having actual knowledge that such
12 statements were false, or with reckless disregard for their veracity. [FAC, at 8:14-19]. The FAC
13 states defendants know the inflammatory false information they were posting was malicious, false,
14 and accusatory of criminal conduct and had the purposes of harming, threatening, intimidating and
15 or harassing plaintiff and his livelihood. It further alleges Lackey has suffered damages and has
16 incurred attorneys' fees.

17 The specific statements attributed to Smith is Statement P. Generally, whether a statement
18 is capable of defamatory construction is a question of law. K-Mart Corp. v. Washington, 109 Nev.
19 1180, 886 P.2d 274 (1993). "Statements of opinion as opposed to statements of fact are not
20 actionable," however, "expressions of opinion may suggest that the speaker knows certain facts to
21 be true or may imply that facts exist which will be sufficient to render the message defamatory if
22 false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous or a 'mixed
23 type,' which is an opinion, which gives rise to the inference that the source has based the opinion
24 on underlying, undisclosed defamatory facts;" and when a statement is ambiguous, "the question
25 of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117 Nev. 107, 113,
26 17 P.3d 422, 426 (2001).

27 Statement P critiques an unspecified "department" and not Lackey himself. As Lackey is
28 the plaintiff, and not NDOW or some other "department," the Court finds that this is not a

1 statement about the plaintiff by the defendant. Therefore, the Court finds, as a matter of law,
2 statement P is not actionable in this case for defamation. However, because the FAC generally
3 alleges the elements of defamation, and specifically states that Smith and Lake Tahoe Wall of
4 Shame published and encouraged the statements, the Court finds Lackey has stated a claim for
5 defamation. Lackey has put Smith on notice of the defamatory conduct by alleging defendants
6 have accused him of criminal conduct (accepting bribes and conspiracy), have slandered Lackey
7 in his official capacity, and made false statements of his character. These general allegations,
8 especially when read together with the specific examples provided, give Smith notice of the nature
9 of the defamation claim.

10 ***Civil Conspiracy***

11 Civil conspiracy "consists of a combination of two or more persons who, by some
12 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,
13 and damage results from the act or acts." Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,
14 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants
15 continuously over the past several years have acted in concert with one another to accomplish the
16 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their
17 supporters post a threat to his safety and as a result he has suffered damages. The Court finds
18 Lackey has properly alleged a claim for civil conspiracy against Smith. Lackey has pled the
19 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,
20 Lackey incorporates by reference the other allegations in his complaint. See discussion *supra*,
21 discussing the conduct Smith has been specifically alleged to do, such as using Facebook to
22 encourage the public to shame and harass Lackey. In addition to the conduct attributed to Smith
23 (through Lake Tahoe Wall of Shame), the FAC likewise sets forth specific Facebook
24 threats/comments attributed to the other defendants.

25 ***Intentional Infliction of Emotional Distress:***

26 The elements of a claim for intentional infliction of emotional distress are: 1) that the
27 defendant's conduct was extreme and outrageous; (2) that the defendant either intended or
28 recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered

1 severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately
2 caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).
3 "[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is
4 regarded as utterly intolerable in a civilized community." Maduik v. Agency Rent-A-Car, 114
5 Nev. 1, 4, 953 P.2d 24, 26 (1998).

6 Based on the allegations set forth above, the FAC alleges, defendants have engaged in
7 willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing
8 emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as
9 a result of defendants' conduct and remains fearful of physical harm or violence directed at him.
10 Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly
11 stated a claim for intentional infliction of emotional distress against Smith as the FAC alleges,
12 among other allegations, that Lake Tahoe Wall of Shame (who Smith does business as) has
13 initiated public comment to encourage the public to shame and harass Lackey so he will lose his
14 job and/or feel threatened enough to leave the community, and that Smith and Lake Tahoe Wall
15 of Shame published and encouraged the statements. Here, the FAC alleges Smith (in addition to
16 Lake Tahoe Wall of Shame) engaged in tortious conduct by publishing and encouraging
17 statements. Thus, for purposes of a motion to dismiss, taking the allegations in light most favorably
18 to Lackey, the Court cannot find that Smith is shielded for tortious acts.⁷ Thus, a jury could find
19 this is extreme and outrageous conduct. The Court incorporates by reference the analysis of the
20 CDA and purported defamatory statements set forth above.

21 ***Negligent Infliction of Emotional Distress⁷***

22 A claim for negligent infliction of emotional distress requires a showing that defendant
23 owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause
24 of the plaintiff's injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116
25

26 ⁷ See: "Directors or officers of a corporation do not incur personal liability for torts of the corporation merely by
27 reason of their official position, unless they participate in the wrong or authorize or direct that it be done."
United States Liab. Ins. Co. v. Haidinger-Hayes, Inc., 1 Cal. 3d 586, 595 (1970)(emphasis added).

28 ⁷ Although this third claim for relief is titled as "Intentional Infliction of Emotional Distress," because the FAC
alleges that Defendants acted negligently under this heading, the Court assumes it should be titled "Negligent
Infliction of Emotional Distress."

1 Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.
2 213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court has cited favorable in Turner,
3 supra, the explanation of the duty required when a person complains they are the direct victim of
4 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220-21
5 (2002):

6 The distinction between the "bystander" and the "direct victim" cases is found in
7 the source of the duty owed by the defendant to the plaintiff.' 'Bystander' claims
8 are typically based on breach of a duty owed to the public in general, whereas a
9 right to recover for emotional distress as a 'direct victim' arises from the breach of
a duty that is assumed by the defendant or imposed on the defendant as a matter of
law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 "In cases where emotional distress damages are not secondary to physical injuries, but
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the
12 absence of physical impact, proof of 'serious emotional distress' causing physical injury or illness
13 must be presented." Barmettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants' negligence.
16 However, the Court finds the FAC has failed to plead that Smith owed Lackey a duty. As such,
17 the Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Mark E. Smith's *Special Motion to Dismiss brought under*
20 *NRS 41.635 et seq.* is DENIED.

21 IT IS HEREBY FURTHER ORDERED that Mark E. Smith's *Special Motion to Dismiss*
22 *brought under NRCP 12* is DENIED as to claims of defamation, civil conspiracy and intentional
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim
24 shall be DISMISSED.

25 ///

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED that Mark E. Smith shall file an Answer to the
2 First Amended Complaint within twenty (20) days of the date of this Order.

3 DATED this 23 day of October, 2017.

4 Connie J. Stinham
5 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV17-00434

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 23 day of October, 2017, I filed the **ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

SEAN ROSE, ESQ. for CARL LACKEY

THOMAS BRENNAN, ESQ. for CARL LACKEY

DEL HARDY, ESQ. for CAROLYN STARK DBA NDOWL WATCH KEEPING THEM TRANSPARENT

CAMERON BORDNER, ESQ. for BEAR LEAGUE, MARK E SMITH, ANNE BRYANT

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 23 day of October, 2017.



CODE: 1310
DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
WINTER STREET LAW GROUP
96 & 98 Winter Street
Reno, Nevada 89503
Telephone: (775) 786-5800
Attorneys for Defendant Mark E. Smith

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CARL LACKEY,

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV17-00434

DEPT. NO.: 4

CASE APPEAL STATEMENT

COMES NOW, Defendant Mark E. Smith, by and through his undersigned attorneys,
hereby respectfully submits this Case Appeal Statement as follows:

1. Name of appellant(s) filing this case appeal statement:

Defendant, MARK E. SMITH

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Judge Connie Steinheimer

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant Herein:

MARK E. SMITH

Counsel Name & Address:

DEL HARDY, ESQ.
STEPHANIE RICE, ESQ.
RICHARD SALVATORE, ESQ.
WINTER STREET LAW GROUP
96 & 98 Winter Street
Reno, Nevada 89503

1 **4. Identify each respondent and the name and address of appellate counsel, if**
2 **known, for each respondent (if the name of a respondent's appellate counsel is**
3 **unknown, indicate as much and provide the name and address of that**
4 **respondent's trial counsel):**

5 Respondent Herein: CARL LACKEY

6 Appellate Counsel: Unknown

7 Respondents' Trial Counsel: SEAN P. ROSE, ESQ.
8 Rose Law Office
9 150 W. Huffaker Lane, Suite 101
10 Reno, Nevada 89511
11 Trial Counsel for Above-Named Respondent

12 THOMAS R. BRENNAN, ESQ.
13 Durney & Brennan, Ltd.
14 6900 S. McCarran Blvd., Suite 2060
15 Reno, Nevada 89509
16 Trial Counsel for Above-Named Respondent

17 **5. Indicate whether any attorney identified above in response to question 3 or 4 is**
18 **not licensed to practice law in Nevada and, if so, whether the district court granted**
19 **that attorney permission to appear under SCR 42:**

20 At all times herein, all attorneys identified in response to questions 3 and 4 above
21 are believed to be licensed to practice law in Nevada. There was no grant of
22 permission to appear under SCR 42 granted by the District Court in this matter.

23 **6. Indicate whether appellant was represented by appointed or retained counsel in**
24 **the district court:**

25 Appellant herein was represented by retained counsel in the District Court.

26 **7. Whether appellant is represented by appointed or retained counsel on appeal:**

27 Appellant herein is represented by retained counsel on appeal.

28 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
the date of entry of the district court order granting such leave:

N/A, appellant herein was never granted leave to proceed in forma pauperis.

1 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
2 **complaint, indictment, information, or petition was filed):**

3 Plaintiff Carl Lackey filed the Complaint on March 1, 2017.

4 **10. Provide a brief description of the nature of the action and result in the district**
5 **court, including the type of judgment or order being appealed and the relief**
6 **granted by the district court:**

7 This is a case where Carl Lackey, an employee of the Nevada Department of Wildlife
8 ("NDOW") and public figure responsible for the bear population in Northern Nevada, filed this
9 action against Appellant and others, to silence public comment and communications regarding
10 Mr. Lackey and his actions on behalf of NDOW, matters of public concern in Northern Nevada
11 and the surrounding areas.

12 Mr. Lackey filed the present action against Appellant Smith herein alleging claims for
13 defamation, intentional infliction of emotional distress, negligent infliction of emotional
14 distress, and civil conspiracy. Mr. Lackey's entire suit rests upon allegations that Defendants
15 Bear League, a California Corporation, Ann Bryant, an individual, Mark E. Smith an, individual
16 dba Lake Tahoe Wall of Shame, and Carolyn Stark, an individual dba NDOW Watch Keeping
17 Them Transparent, "published false and malicious comments" regarding Mr. Lackey.

18 However, noticeably absent from Mr. Lackey's First Amended Complaint are any
19 allegations that Appellant Mr. Smith published any comments whatsoever, and certainly not
20 any comments about or concerning Mr. Lackey.

21 Instead, Mr. Lackey, in a clear effort to discourage Defendants' free speech and free
22 assembly rights under the First Amendment, premises his entire suit on comments purportedly
23 posted by the Bear League and comments posted by various third parties on the Bear League's
24 Lake Tahoe Wall of Shame's and NDOW Watch Keeping them Transparent's respective social
25 media (Facebook) pages.

26 However, Mr. Smith did not create and is not an administrator or responsible party for
27 either one of the subject social media (Facebook) pages; and, as such, comments posted on the
28

1 subject Facebook pages cannot be attributed to Mr. Smith under even the most generous
2 interpretation of the term "publication". Further, assuming arguendo that Mr. Smith had any
3 management control over either social media pages, which Mr. Smith has at all times herein
4 expressly denied, such comments cannot be attributed to Mr. Smith under the Communications
5 Decency Act. 11 U.S.C. § 230(c)(1). Accordingly, Mr. Smith filed a Special Motion to Dismiss
6 pursuant to Nevada's Anti-SLAPP statutes. See, NRS 41.635, et seq. and NRCP 12.

7 This is exactly the type of case that the Anti-SLAPP (Strategic Lawsuits Against Public
8 Participation) was designed to protect. Thereafter, instead of ruling on the matter within
9 twenty (20) judicial days after the motion was served on the Plaintiff pursuant to NRS
10 41.660(3)(f), on June 30, 2017, the District Court Ordered that the matter be set for oral
11 arguments. Oral arguments were held on July 26, 2017 after which, the District Court took the
12 matter under advisement. The District Court then issued its Order denying Appellant's Special
13 Motion to Dismiss as to the three (3) claims on appeal herein (Defamation, Intentional Infliction
14 of Emotional Distress and Civil Conspiracy) and granted the same as to an additional cause of
15 action for Negligent Infliction of Emotional Distress on October 23, 2017. A Notice of Entry of
16 Order was filed thereon on November 13, 2017. Accordingly, Appellant herein files the instant
17 interlocutory appeal of this anti-SLAPP matter in accordance with NRS 41.670(4).

18 **11. Indicate whether the case has previously been the subject of an appeal to or**
19 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme**
20 **Court docket number of the prior proceeding:**

21 This case has not previously been the subject of an appeal or original writ
22 proceeding in the Supreme Court.

23 **12. Indicate whether this appeal involves child custody or visitation:**

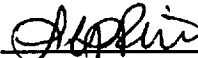
24 This appeal does not involve child custody or visitation.

25 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
26 **settlement:**

27 While the undersigned is always hopeful that the possibility of settlement exists
28

1 in all matters, in light of the contentious nature of this action, the realistic
2 possibility of settlement in this case is unlikely, but always available for
3 consideration.

4 DATED this 13th day of November, 2017.

5 
6 STEPHANIE RICE, ESQ. (SBN 11627)
7 DEL HARDY, ESQ. (SBN 1172)
8 *Attorneys for Appellant, Mark E. Smith*

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 **CASE APPEAL STATEMENT** on all parties to this action by:

X 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

Facsimile (FAX) and/or Email:

Federal Express or other overnight delivery

Messenger Service

Certified Mail with Return Receipt Requested

X Electronically filed

addressed as follows:

Sean P. Rose, Esq.
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150 W. Huffaker Lane, Suite 101
Reno, NV 89511
F: 775-657-8517

Cameron Bordner, Esq.
Molsby & Bordner, LLP
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Durney & Brennan, Ltd.
6900 S. McCarran Blvd., Suite 2060
Reno, NV 89509
F: 775-322-3014

Robin Shofner, Esq.
Molsby & Bordner, LLP
1830 15th Street, Ste. 100
Sacramento, CA 95811

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 13th day of November, 2017


AN EMPLOYEE OF WINTER STREET LAW GROUP

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV17-00434****Case Description: CARL LACKEY VS BEAR LEAGUE, ET AL (D4)****Case Number: CV17-00434 Case Type: OTHER TORT - Initially Filed On: 3/1/2017****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - CONNIE J. STEINHEIMER - D4	Active
PLTF - CARL LACKEY - @1305782	Active
DEFT - ANNE BRYANT - @1305780	Active
DEFT - CAROLYN STARK dba NDOWL WATCH KEEPING THEM TRANSPARENT - @1307108	Active
DEFT - MARK E SMITH - @1305781	Active
DEFT - BEAR LEAGUE - @1268652	Active
ATTY - Sean P. Rose, Esq. - 5472	Active
ATTY - Stephanie Rice, Esq. - 11627	Active
ATTY - Thomas Richard Brennan, Esq. - 481	Active
ATTY - Robin D. Shofner, Esq. - 13758	Party ended on: 11/13/2017 12:00:00AM
ATTY - Cameron D. Bordner, Esq. - 13831	Party ended on: 11/13/2017 12:00:00AM
ATTY - Del L. Hardy, Esq. - 1172	Active

Disposed Hearings

- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 5/16/2017 at 09:03:00
Extra Event Text: DEFT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP FILED 4-19-17
Event Disposition: S200 - 6/30/2017
- Department: D4 -- Event: CONFERENCE CALL -- Scheduled Date & Time: 5/24/2017 at 16:15:00
Event Disposition: D435 - 5/24/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 6/26/2017 at 10:49:00
Extra Event Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED)
Event Disposition: S200 - 6/26/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 6/26/2017 at 10:50:00
Extra Event Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED)
Event Disposition: S200 - 6/26/2017
- Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 7/26/2017 at 14:30:00
Extra Event Text: - BEAR LEAGUE, BRYANT, SMITH AND STARK'S MOTION TO DISMISS (ANTI-SLAPP) TAKEN UNDER ADVISEMENT AFTER ORAL ARGUMENT
Event Disposition: S200 - 10/23/2017
- Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 7/26/2017 at 14:30:00
Extra Event Text: ON MOTIONS TO DISMISS
Event Disposition: D840 - 7/26/2017

ActionsFiling Date - Docket Code & Description**Report Does Not Contain Sealed Cases or Confidential Information**

- 1 3/1/2017 - \$1425 - \$Complaint - Civil
Additional Text: Transaction 5974772 - Approved By: CSULEZIC : 03-01-2017:14:40:12
- 2 3/1/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$260.00 was made on receipt DCDC567724.
- 3 3/31/2017 - 1090 - Amended Complaint
Additional Text: FIRST AMENDED COMPLAINT FOR DAMAGES - Transaction 6026938 - Approved By: TBRIITON : 03-31-2017:10:22:13
- 4 3/31/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6027039 - Approved By: NOREVIEW : 03-31-2017:10:24:50
- 5 4/4/2017 - 4090 - ** Summons Issued
Additional Text: 6
- 6 4/17/2017 - 1067 - Affidavit of Service
Additional Text: Carolyn Stark & NDOW Watch Keeping them Transparent - Transaction 6053906 - Approved By: CSULEZIC : 04-17-2017:10:02:27
- 7 4/17/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6053911 - Approved By: NOREVIEW : 04-17-2017:10:03:19
- 8 4/19/2017 - 1030 - Affidavit in Support...
Additional Text: AFFIDAVIT OF CAROLYN STARK - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 9 4/19/2017 - 2315 - Mtn to Dismiss ...
Additional Text: (CAROLYN STARK) SPECIAL MOTION TO DISMISS/ANTI-SLAPP - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 10 4/19/2017 - \$1560 - \$Def 1st Appearance - CV
Additional Text: DEFT CAROLYN STARK - Transaction 6060978 - Approved By: TBRIITON : 04-20-2017:08:25:43
- 11 4/20/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC572884.
- 12 4/20/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6061091 - Approved By: NOREVIEW : 04-20-2017:08:26:53
- 13 4/24/2017 - 4085 - Summons Filed
Additional Text: ANNE BRYANT - APRIL 13, 2017; 2:05 PM - Transaction 6066073 - Approved By: YVILORIA : 04-24-2017:11:53:21
- 14 4/24/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6066134 - Approved By: NOREVIEW : 04-24-2017:11:55:54
- 15 4/24/2017 - 4085 - Summons Filed
Additional Text: CAROLYN STARK SERVED ON 04/10/17 - Transaction 6066252 - Approved By: TBRIITON : 04-24-2017:12:53:19
- 16 4/24/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6066294 - Approved By: NOREVIEW : 04-24-2017:12:54:12
- 17 5/8/2017 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP1 - Transaction 6090491 - Approved By: TBRIITON : 05-09-2017:09:08:44
- 18 5/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6090677 - Approved By: NOREVIEW : 05-09-2017:09:09:52

- 19 5/9/2017 - 1650 - Errata...
Additional Text: ERRATA TO PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAP - Transaction 6090965 - Approved By: CSULEZIC : 05-09-2017:11:20:30
- 20 5/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6091231 - Approved By: NOREVIEW : 05-09-2017:11:21:18
- 21 5/15/2017 - 3860 - Request for Submission
Additional Text: Transaction 6101482 - Approved By: YVILORIA : 05-16-2017:08:55:51
DOCUMENT TITLE: DEFT CAROLYN STARK'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP FILED 4-19-17
PARTY SUBMITTING: DEL L HARDY ESQ
DATE SUBMITTED: MAY 16, 2017
SUBMITTED BY: YVILORIA
DATE RECEIVED JUDGE OFFICE:
- 22 5/15/2017 - 3795 - Reply...
Additional Text: DEFENDANT CAROLYN STARK'S REPLY TO ANTI-SLAPP MOTION
DFX: EXHIBITS PRESENTED INCORRECTLY, NO INDEX OF EXHIBITS AND EXHIBITS ARE ALPHABETICAL - - Transaction 6101485 - Approved By: YVILORIA : 05-16-2017:08:58:01
- 23 5/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6101683 - Approved By: NOREVIEW : 05-16-2017:08:56:48
- 24 5/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6101687 - Approved By: NOREVIEW : 05-16-2017:08:58:57
- 25 5/23/2017 - 2315 - Mtn to Dismiss ...
Additional Text: (ANN BRYANT) SPECIAL MOTION TO DISMISS/MOTION TO DISMISS Transaction 6115133 - Approved By: CSULEZIC : 05-24-2017:08:51:15
- 26 5/23/2017 - \$1560 - \$Def 1st Appearance - CV
Additional Text: ANN BRYANT - Transaction 6115133 - Approved By: CSULEZIC : 05-24-2017:08:51:15
- 27 5/23/2017 - 1520 - Declaration
Additional Text: (ANNE BRYANT) DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6115136 - Approved By: CSULEZIC : 05-24-2017:08:54:49
- 28 5/24/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC576117.
- 29 5/24/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6115251 - Approved By: NOREVIEW : 05-24-2017:08:52:13
- 30 5/24/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6115263 - Approved By: NOREVIEW : 05-24-2017:08:55:55
- 31 5/24/2017 - 1005 - Acceptance of Service
Additional Text: CAMERON BORDNER, ESQ. FOR MARK SMITH, LAKE TAHOE WALL OF SHAME, AND BEAR LEAGUE ON 5/24/17 - Transaction 6116442 - Approved By: PMSEWELL : 05-24-2017:14:51:57
- 32 5/24/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6116602 - Approved By: NOREVIEW : 05-24-2017:14:54:09
- 33 5/30/2017 - 3880 - Response...
Additional Text: RESPONSE AFTER MAY 24, 2017 CONFERENCE CALL - Transaction 6123175 - Approved By: YVILORIA : 05-30-2017:15:04:32
- 34 5/30/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6123288 - Approved By: NOREVIEW : 05-30-2017:15:05:23

- 35 6/5/2017 - 1520 - Declaration
Additional Text: DECLARATION OF MARK E. SMITH IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 36 6/5/2017 - 1520 - Declaration
Additional Text: DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 37 6/5/2017 - 2315 - Mtn to Dismiss ...
Additional Text: (MARK SMITH) SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 38 6/5/2017 - \$1560 - \$Def 1st Appearance - CV
Additional Text: MARK E. SMITH - Transaction 6133236 - Approved By: CSULEZIC : 06-06-2017:09:06:11
- 39 6/6/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC577033.
- 40 6/6/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6133617 - Approved By: NOREVIEW : 06-06-2017:09:07:12
- 41 6/13/2017 - 1520 - Declaration
Additional Text: DECLARATION OF ROBIN D. SHOFNER IN SUPPORT OF DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 42 6/13/2017 - 1520 - Declaration
Additional Text: DECLARATION OF ANN BRYANT IN SUPPORT OF DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 43 6/13/2017 - 2315 - Mtn to Dismiss ...
Additional Text: (BEAR LEAGUE) SPECIAL MOTION TO DISMISS - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 44 6/13/2017 - \$1560 - \$Def 1st Appearance - CV
Additional Text: BEAR LEAGUE - Transaction 6146880 - Approved By: YVILORIA : 06-14-2017:07:59:27
- 45 6/14/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$213.00 was made on receipt DCDC577825.
- 46 6/14/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6147320 - Approved By: NOREVIEW : 06-14-2017:08:00:45
- 47 6/23/2017 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT ANN BRYANT'S SPECIAL MOTION TO DISMISS - Transaction 6165007 - Approved By: CSULEZIC : 06-23-2017:16:49:56
- 48 6/23/2017 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6165098 - Approved By: TBRITTON : 06-26-2017:08:27:10
- 49 6/23/2017 - 3860 - Request for Submission
Additional Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED) - Transaction 6165117 - Approved By: TBRITTON : 06-26-2017:08:29:53
PARTY SUBMITTING: CAMERON D. BORDNER, ESQ.
DATE SUBMITTED: JUNE 26, 2017
SUBMITTED BY: TBRITTON
DATE RECEIVED JUDGE OFFICE:
- 50 6/23/2017 - 3860 - Request for Submission

Additional Text: SPECIAL MOTION TO DISMISS/MOTION TO DISMISS (PAPER ORDER NOT PROVIDED) - Transaction 6165117 -

Approved By: TBRIITON : 06-26-2017:08:29:53

PARTY SUBMITTING: CAMERON D. BORNDER, ESQ.

DATE SUBMITTED: JUNE 26, 2017

SUBMITTED BY: TBRIITON

DATE RECEIVED JUDGE OFFICE:

51 6/23/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165119 - Approved By: NOREVIEW : 06-23-2017:16:50:57

52 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165312 - Approved By: NOREVIEW : 06-26-2017:08:28:14

53 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165317 - Approved By: NOREVIEW : 06-26-2017:08:30:56

54 6/26/2017 - 4302 - Withdrawal ...

Additional Text: WITHDRAWAL OF REQUEST FOR SUBMISSION OF MOTION - Transaction 6165858 - Approved By: YVILORIA : 06-26-2017:11:13:00

55 6/26/2017 - 4302 - Withdrawal ...

Additional Text: WITHDRAWAL OF REQUEST FOR SUBMISSION OF MOTION - Transaction 6165858 - Approved By: YVILORIA : 06-26-2017:11:13:00

56 6/26/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6165989 - Approved By: NOREVIEW : 06-26-2017:11:14:02

57 6/26/2017 - S200 - Request for Submission Complet

Additional Text: WITHDRAWN 6/26/17

58 6/26/2017 - S200 - Request for Submission Complet

Additional Text: WITHDRAWN 6/26/17

59 6/27/2017 - 2645 - Opposition to Mtn ...

Additional Text: PLAINTIFF CARL LACKEY'S OPPOSITION TO DEFENDANT BEAR LEAGUE'S SPECIAL MOTION TO DISMISS - Transaction 6168248 - Approved By: YVILORIA : 06-27-2017:11:50:06

60 6/27/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6168648 - Approved By: NOREVIEW : 06-27-2017:11:52:32

61 6/30/2017 - S200 - Request for Submission Complet

No additional text exists for this entry.

62 6/30/2017 - 3347 - Ord to Set

Additional Text: ORDER TO SET HEARING (ON ALL MOTIONS TO DISMISS) - Transaction 6176419 - Approved By: NOREVIEW : 06-30-2017:15:49:46

63 6/30/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6176428 - Approved By: NOREVIEW : 06-30-2017:15:50:41

64 7/3/2017 - 3790 - Reply to/in Opposition

Additional Text: (ANN BRYANT) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6177697 - Approved By: YVILORIA : 07-03-2017:14:09:14

65 7/3/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6177794 - Approved By: NOREVIEW : 07-03-2017:14:10:14

66 7/3/2017 - 3790 - Reply to/in Opposition

Additional Text: (MARK SMITH) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6178055 - Approved By: YVILORIA : 07-03-2017:15:57:32

- 67 7/3/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6178061 - Approved By: NOREVIEW : 07-03-2017:15:58:24
- 68 7/7/2017 - 3790 - Reply to/in Opposition
Additional Text: (BEAR LEAGUE) REPLY TO OPPOSITION TO SPECIAL MOTION TO DISMISS - Transaction 6184984 - Approved By: YVILORIA : 07-07-2017:16:47:03
- 69 7/7/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6185279 - Approved By: NOREVIEW : 07-07-2017:16:48:17
- 70 7/10/2017 - 1250E - Application for Setting eFile
Additional Text: ORAL ARGUMENTS ON MOTIONS TO DISMISS - JULY 26, 2017 AT 2:30 P.M. (1.5 HOURS) - Transaction 6185895 - Approved By: NOREVIEW : 07-10-2017:10:19:49
- 71 7/10/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6185901 - Approved By: NOREVIEW : 07-10-2017:10:20:49
- 72 7/26/2017 - 4105 - Supplemental ...
Additional Text: Plaintiff's Supplement to Opposition to Defendant Mark E. Smith's Special Motion to Dismiss - Transaction 6215081 - Approved By: YVILORIA : 07-26-2017:11:43:12
- 73 7/26/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6215131 - Approved By: NOREVIEW : 07-26-2017:11:43:59
- 74 7/27/2017 - 4185 - Transcript
Additional Text: Oral Argument - 7-26-17 - Transaction 6219320 - Approved By: NOREVIEW : 07-27-2017:17:17:38
- 75 7/27/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6219321 - Approved By: NOREVIEW : 07-27-2017:17:18:38
- 76 8/2/2017 - MIN - ***Minutes
Additional Text: ORAL ARGUMENTS ON MOTIONS TO DISMISS - 7/26/17 - Transaction 6228612 - Approved By: NOREVIEW : 08-02-2017:14:11:48
- 77 8/2/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6228620 - Approved By: NOREVIEW : 08-02-2017:14:12:55
- 78 10/20/2017 - 3025 - Ord Granting/Denying in Part
Additional Text: STARK'S SPECIAL MTN TO DISMISS/ANTI-SLAPP IS DENIED-STARK'S SPECIAL MTN TO DISMISS UNDER NRCP 12 IS DENIED AS TO CERTAIN CLAIMS AND GRANTED AS TO CERTAIN CLAIMS-STARKS HAS 20 DAYS TO FILE AN ANSWER - Transaction 6358318 - Approved By: NOREVIEW : 10-20-2017:17:53:36
- 79 10/20/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6358319 - Approved By: NOREVIEW : 10-20-2017:17:56:25
- 80 10/23/2017 - 3025 - Ord Granting/Denying in Part
Additional Text: ORDER REGARDING ANNE BRYANT'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6360763 - Approved By: NOREVIEW : 10-23-2017:17:21:43
- 81 10/23/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6360765 - Approved By: NOREVIEW : 10-23-2017:17:24:05
- 82 10/23/2017 - 3025 - Ord Granting/Denying in Part
Additional Text: ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS - Transaction 6360766 - Approved By: NOREVIEW : 10-23-2017:17:26:14
- 83 10/23/2017 - S200 - Request for Submission Complet
No additional text exists for this entry.

- 84 10/23/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6360767 - Approved By: NOREVIEW : 10-23-2017:17:27:04
- 85 11/8/2017 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 6385514 - Approved By: NOREVIEW : 11-08-2017:08:58:29
- 86 11/8/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6385518 - Approved By: NOREVIEW : 11-08-2017:09:00:53
- 87 11/9/2017 - 1310 - Case Appeal Statement
Additional Text: Transaction 6388316 - Approved By: YVILORIA : 11-09-2017:10:15:08
- 88 11/9/2017 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 6388316 - Approved By: YVILORIA : 11-09-2017:10:15:08
- 89 11/9/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$34.00 was made on receipt DCD591878.
- 90 11/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6388338 - Approved By: NOREVIEW : 11-09-2017:10:17:45
- 91 11/9/2017 - 1360 - Certificate of Service
Additional Text: AMENDED - Transaction 6388982 - Approved By: SWILLIAM : 11-09-2017:13:57:56
- 92 11/9/2017 - SAB - **Supreme Court Appeal Bond
Additional Text: Bond ID: SAB-17-00079; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 09-NOV-2017 in the amount of \$500.00 on case ID CV17-00434.
- 93 11/9/2017 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6389160 - Approved By: NOREVIEW : 11-09-2017:13:46:20
- 94 11/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6389161 - Approved By: NOREVIEW : 11-09-2017:13:47:20
- 95 11/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6389223 - Approved By: NOREVIEW : 11-09-2017:13:58:42
- 96 11/9/2017 - MIN - ***Minutes
Additional Text: CONFERENCE CALL - 5/23/17 - Transaction 6390027 - Approved By: NOREVIEW : 11-09-2017:16:12:16
- 97 11/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6390032 - Approved By: NOREVIEW : 11-09-2017:16:13:18
- 98 11/13/2017 - 4075 - Substitution of Counsel
Additional Text: WINTER STREET LAW GROUP FOR DEFT IN PLACE OF CAMERON BORDNER, ESQ. AND ROBIN SHOFNER, ESQ. - Transaction 6390940 - Approved By: PMSEWELL : 11-13-2017:12:23:19
- 99 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391545 - Approved By: NOREVIEW : 11-13-2017:12:26:31
- 100 11/13/2017 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 6391563 - Approved By: NOREVIEW : 11-13-2017:12:39:33

- 101 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391565 - Approved By: NOREVIEW : 11-13-2017:12:40:36
- 102 11/13/2017 - 1310 - Case Appeal Statement
Additional Text: MARK E. SMITH - Transaction 6391581 - Approved By: PMSEWELL : 11-13-2017:13:50:30
- 103 11/13/2017 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: MARK SMITH - ORDER DENYING DEFENDANT MARK E. SMITH'S SPECIAL MOTION TO DISMISS/ANTI-SLAPP PURSUANT TO NRS CHAPTER 41 AND NRCP 12 - Transaction 6391581 - Approved By: PMSEWELL : 11-13-2017:13:50:30
- 104 11/13/2017 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 6391616 - Approved By: NOREVIEW : 11-13-2017:12:58:28
- 105 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391629 - Approved By: NOREVIEW : 11-13-2017:12:59:25
- 106 11/13/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$34.00 was made on receipt DCDC592095.
- 107 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391835 - Approved By: NOREVIEW : 11-13-2017:13:51:28
- 108 11/13/2017 - SAB - **Supreme Court Appeal Bond
Additional Text: Bond ID: SAB-17-00081; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 13-NOV-2017 in the amount of \$500.00 on case ID CV17-00434.
- 109 11/13/2017 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6392316 - Approved By: NOREVIEW : 11-13-2017:15:18:29
- 110 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6392317 - Approved By: NOREVIEW : 11-13-2017:15:19:17

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

CARL LACKEY,

Plaintiff,

v.

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

Defendants.

Case No. CV17-00434

Dept. No.: 4

**ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION
TO DISMISS**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant", an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On June 5, 2017, Smith, by and through his counsel Cameron D. Bordner, Esq., and Robin D. Shofner, Esq., of Molsby & Bordner, LLP, filed *Special Motion to Dismiss/Motion to Dismiss*. Lackey filed an opposition on June 23, 2017. Smith filed a reply on July 3, 2017. Lackey filed a

1 supplement to his opposition on July 26, 2017. The Court heard oral arguments on July 26, 2017
2 and took the matter under advisement.

3 Smith asserts the FAC is subject to dismissal under Nevada's Anti-SLAPP statutes, NRS
4 41.635, et. seq, as well as 12(b)(5) for failure to state a claim. Smith alleges absent from the FAC
5 are any allegations that Smith published any comments whatsoever, and certainly not any
6 comments about or concerning Lackey. Smith contends he is not an administrator or responsible
7 party for Lake Tahoe Wall of Shame. As such, he is not responsible for comments posted on Lake
8 Tahoe Wall of Shame. Further, even assuming arguendo that Smith had any management control
9 over the page, such comments cannot be attributed to him under the Communications Decency
10 Act (hereinafter "CDA"), 11 U.S.C. 230(c)(1). In his capacity as an employee for Nevada
11 Department of Wildlife (hereinafter "NDOW"), a governmental organization, there is no doubt
12 Lackey is a public figure. Or at a minimum, Lackey is a limited purpose public figure and he must
13 plead and prove actual malice. Smith asserts he did not act with actual malice. Because the
14 preservation and treatment of bears is undoubtedly a matter of public concern, Smith contends, the
15 lone comment posted on Lake Tahoe Wall of Shame's Facebook page addresses the same.

16 Smith argues Lackey has failed to state a claim for defamation, as he has failed to allege
17 that Smith published any statements whatsoever. Similarly, Smith alleges, as Lackey has not
18 alleged any conduct by Smith, Lackey has failed to plead facts to establish the first element of
19 intentional infliction of emotional distress, extreme and outrageous conduct, and the second
20 element of a negligent infliction of emotional distress, breach of duty. Additionally, as with Smith,
21 Lackey has failed to allege any conduct of Bryant or Stark. Lackey has only alleged conduct by
22 one defendant, Bear League, as such, Lackey has also failed to allege how Smith purportedly acted
23 in concert for the conspiracy claim.

24 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First
25 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP
26 statute does not apply because the statements do not involve a public interest. The statements are
27 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under
28 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking

1 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with
2 both violence and murder. Lackey contends Smith's reliance on the CDA is misplaced, as Smith
3 is also an information content provider. Lackey asserts that Smith does business as Lake Tahoe
4 Wall of Shame and is essentially its voice. Lackey alleges just because Smith may not have created
5 the Facebook page or manage it does not mean that he did not author the posts. Even though
6 Lackey contends the burden has not shifted pursuant to Nevada's Anti-SLAPP legislation, Lackey
7 nonetheless argues, while providing additional evidence, he will be successful on his claims.

8 ANTI-SLAPP

9 "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's
10 exercise of his or her First Amendment free speech rights." Stubbs v. Strickland, 129 Nev. Adv.
11 Op. 15, 297 P.3d 326, 329 (2013). "Under Nevada's anti-SLAPP statutes, a defendant may file a
12 special motion to dismiss if the defendant can show 'by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to petition or the right
14 to free speech in direct connection with an issue of public concern.'" Shapiro v. Welt, 133 Nev.
15 Adv. Op. 6, 389 P.3d 262, 267 (2017)(quoting NRS 41.660(3)(a)). The term "good faith
16 communication" includes "[c]ommunication made in direct connection with an issue of public
17 interest in a place open to the public or in a public forum, which is truthful or is made without
18 knowledge of its falsehood." NRS 41.637(4). If a defendant makes this initial showing, the burden
19 shifts to the plaintiff to show "with prima facie evidence a probability of prevailing on the claim."
20 Id.; NRS 41.660(3)(b).

21 When determining whether the conduct is protected under the anti-SLAPP statute, the court
22 should not look to First Amendment law, but to Nevada's anti-SLAPP legislation. See Delucchi
23 v. Songer, 133 Nev. Adv. Op. 42, 396 P.3d 826, 833 (Nev. 2017). Thus, when analyzing whether
24 the defendant's conduct constitutes "good faith communication" the court must determine whether
25 "it falls within one of the four categories enumerated in NRS 41.637, and whether it is truthful or
26 is made without knowledge of its falsehood." Delucchi, 133 Nev. Adv. Op. at 15; 396 P.3d at
27 833(internal quotations omitted). However, if the alleged conduct is illegal as a matter of law,
28 then the conduct is not protected activity within the anti-SLAPP context.

1 To determine whether an issue is one of public interest as used in NRS 41.637(4), the
2 Nevada Supreme Court adopted the guiding principles California utilizes. Shapiro, 133 Nev. Adv.
3 Op. 6, 389 P.3d at 268 (citing Piping Rock Partners, Inc. v. David Lerner Assocs, Inc., 946
4 F.Supp.2d 957, 968 (N.D. Cal 2013). Specifically,

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

16 Id.

17 The FAC attributes the following statement to Smith: “A department with no real interest
18 in wildlife other than to make it available to hunters and trappers...some might say they are
19 criminals against nature...they are certainly ignorant about it.” Commenter Sean Stansfield on
20 Lake Tahoe Wall of Shame’s Facebook Page. [FAC, Statement P].

21 First the Court considers whether the alleged conduct is illegal as a matter of law, and
22 therefore does not fall within the protection of Nevada’s anti-SLAPP legislation. 18 USC § 2261A
23 (the federal stalking statute) provides in relevant part, whoever,

24 (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with
25 intent to kill, injure, harass, or intimidate another person, uses the mail, any
26 interactive computer service or electronic communication service or electronic
27 communication system of interstate commerce, or any other facility of interstate or
28 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.

Here, the Court cannot conclude as a matter of law that the conduct was illegal. The Court
does not find that suggesting a government department is a “criminal against nature” places a
person in reasonable harm or fear of death or would cause a person severe emotional distress.

1 Second, the Court finds this statement was made in a public forum as it was made on
2 Facebook. Third, the Court considers the Shapiro factors to determine whether the statement was
3 made in the public interest. Smith's articulated public interest is conservation of natural resources,
4 specifically the preservation and treatment of bears, as well as bribery of a public official. The
5 Court finds this interest does not equate with mere curiosity.

6 In order to evaluate the degree of closeness between the asserted public interest and
7 speaker's statements/conduct, the Court must evaluate the specific statements (statement P)
8 attributed to Smith. When determining whether these statements are related to the public interest,
9 the court should focus on the specific nature of the speech rather than the generalities. The Court
10 questions whether there is a sufficient degree of closeness between this statement and purported
11 public interest of preserving wildlife or bribery of a public official. There is no indication of what
12 this "department" is (although, the Court presumes it is referring to the NDOW).

13 Nonetheless, even if this statement fell within the broadly stated public interest, in order to
14 shift the burden to Lackey, Smith must prove, by the preponderance of the evidence, that the
15 statements are true or were made without knowledge of their falsehood. See NRS 41.637; NRS
16 41.660. Here, there is no evidence provided that shows the statement is truthful or was made
17 without knowledge of its falsehood. In fact, Smith attests that he had no role in drafting or
18 publishing the comment of Sean Sarsfield on the Lake Tahoe Wall of Shame Facebook's page.
19 Therefore, the Court finds the first prong of NRS 41.660 has not been satisfied. Thus, the Court
20 does not find the burden shifts to Lackey to prove his likelihood of success on his claims. The
21 Court will deny Smith's motion to dismiss under Nevada's anti-SLAPP legislation.

22 NRCP 12

23 Next the Court considers Smith's 12(b) motion to dismiss. Although evidence was
24 provided for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to
25 dismiss under into a motion for summary judgment by considering matters outside the pleadings
26 at this stage of the case.

27 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim
28 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the

1 pleader seeks.” “A complaint must set forth sufficient facts to establish all necessary elements of
2 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief
3 sought.” Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

4 Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a
5 claim upon which relief should be granted. A motion to dismiss should be granted only if “it
6 appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.
7 Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-
8 pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which
9 are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a
10 motion to dismiss, the court must take all allegations in the complaint as true and draw all
11 inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54,
12 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal
13 conclusions merely because they are cast in the form of factual allegations.” Hotel Employees &
14 Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

15 ***Communications Decency Act***

16 First, the Court address arguments concerning the CDA, as Smith is of the position that the
17 statements/conduct alleged are not attributable to him by virtue of the statute. The CDA
18 immunizes interactive computer services or users from any cause of action that would make them
19 liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A
20 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher
21 or speaker of any information provided by another information content provider”).¹ The CDA
22 defines “interactive computer service” to mean, “any information service, system, or access
23 software provider that provides or enables computer access by multiple users to a computer server,
24 including specifically a service or system that provides access to the Internet and such systems

25
26 ¹ See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc.,
27 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a
28 publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter
content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under
the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer
service provider).

1 operated or services offered by libraries or educational institutions.” Courts have consistently
2 found Facebook operates as an interactive computer service.²

3 The CDA, however, does not immunize an interactive computer service if it also functions
4 as an information content provider for the portion of the statement or publication at issue.³
5 “Information content provider” means “any person or entity that is responsible, in whole or in part,
6 for the creation or development of information provided through the Internet or any other
7 interactive computer service.” 47 USC 230(3). A website may lose immunity under the CDA by
8 making a material contribution to the creation or development of content.⁴

9 Thus, passive websites or websites that permit comments (without encouraging or
10 developing the content at issue) have not been deemed information content providers for the
11 purposes of the CDA.⁵ Therefore, absent some solicitation/encouragement of the defamatory
12 remarks, an interactive website/user will not be liable for the content that originated from a third
13 party.

14 Here, the FAC alleges that Smith is doing business as Lake Tahoe Wall of Shame. The
15 FAC alleges a specific comment of a person (not Smith) on Lake Tahoe Wall of Shame’s Facebook
16 page as well as generally states that members of Lake Tahoe Wall of Shame, and Lake Tahoe Wall
17 of Shame (itself) has made and continues to make false statements regarding Lackey and initiates
18 public comment threads on Facebook slandering Lackey including accusing him of criminal
19

20 ² See e.g. Fraley v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d
21 1354, 1359 (D.C. Cir. 2014).

22 ³ Carafano, 339 F.3d at 1123-25 (47 USC 230(c)(1) would bar plaintiff’s claims unless defendant “created or
23 developed the particular information at issue”); see also Anthony v. Yahoo! Inc., 421 F.Supp. 2d 1257, 1262-1263
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service’s alleged creation of false profiles
24 which induced plaintiff to maintain his membership there).

25 ⁴ Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 (9th Cir. 2016)(noting Roommates.Com, 521 F.3d at 1171, clarified “the
26 language used in Carafano [Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could
27 be a developer of content where it encouraged users to provide illegal content”). In Fair Hous. Council of San
28 Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1172 (9th Cir. 2008), the court discussed when a website
may also act as an information content provider: “The salient fact in Carafano was that the website’s classifications
of user characteristics did absolutely nothing to enhance the defamatory sting of the message, to encourage defamation
or to make defamation easier: The site provided neutral tools specifically designed to match romantic partners
depending on their voluntary inputs. By sharp contrast, Roommate’s website is designed to force subscribers to divulge
protected characteristics and discriminatory preferences, and to match those who have rooms with those who are
looking for rooms based on criteria that appear to be prohibited by the FHA.”

⁵ See e.g. Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F.Supp.2d 1112, 1125–26 (D. Nev. 2013); Spreadbury v.
Bitterroot Pub. Library, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012); Piping Rock, 946 F.Supp.2d at 957.

1 conduct (accepting bribes and conspiracy). [FAC, at 3:18-28; 4: 1-7]]. It further alleges that Smith
2 and Lake Tahoe Wall of Shame published and encouraged statements. [FAC, at 8:14-19].

3 Facebook permits a comment by both the webpage as well as third party users. An original
4 post may contain a reply, as well as a reply to the reply, and can continue, the Court supposes,
5 indefinitely. Given the nature of Facebook, the Court cannot conclude for the purposes of a motion
6 to dismiss, that Smith did not encourage the third party user's statement. Therefore, at this time,
7 the Court cannot find Smith is immunized from liability for the third party comments under the
8 CDA.⁶

9 For the purposes of a motion to dismiss, that the Court is declining at this time in the
10 litigation to convert to summary judgment, the Court will not consider the evidence provided by
11 the parties that discusses Smith's role (or lack thereof) in Lake Tahoe Wall of Shame.

12 ***Defamation***

13 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate
14 the necessary elements of the claim so the defending party has adequate notice of the nature of the
15 claim.

16 Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.
17 8(a), the court may look to decisions interpreting N.R.C.P. 8(a)'s federal counterpart for guidance,
18 especially the federal opinions that were decided prior the US Supreme Court's adoption of the
19 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic
20 Corporation v. Twombly, 550 U.S. 544 (2007). Although, some federal courts, applying FRCP 8,
21 have required defamation to be pled with more specificity, such as dictating the claim must set
22 forth an adequate identification of the communication, who made the statements, to whom they
23 were made, and when the statements were made. See Bushnell Corporation v. ITT Corporation,
24 973 F.Supp. 1276 (D.Kan.1997); Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569,

25
26 ⁶ See e.g. Hy Cite Corp v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148-49 (D. Ariz. 2005)(declining
27 to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that defendants added
28 editorial comments, titles, and original content to third-party complaints posted on defendants' website); Whitney
Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding whether Defendants
were entitled to CDA immunity remained in question because the complaint plead Defendants' involvement in
creating or developing the alleged defamatory content posted on their website.

1 573–74 (D. Vt. 1998);(Blanck v. Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220
2 Fed. Appx. 697 (9th Cir. 2007).

3 Other federal courts have expressed disfavor about requiring a higher pleading requirement
4 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,
5 1027 (D. Nev. 2013); Rivera v. Allstate Ins. Co., 140 F. Supp. 3d 722, 728 (N.D. Ill. 2015).

6 As the Nevada Supreme Court has not adopted the higher pleading standards many courts
7 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a
8 claim for damages is not premised on defamation per se, special damages must be pled with
9 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225
10 (1981).

11 The general elements of a defamation claim require a plaintiff to prove: “(1) a false and
12 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to
13 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
14 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are
15 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation
16 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,
17 occupation or profession.’” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff'd,
18 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

19 When a public figure or a limited public figure is involved, a plaintiff must plead and prove
20 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public
21 figures are those individuals who achieve such pervasive fame or notoriety that they become a
22 public figure for all purposes and in all contexts,” as well as those who hold government office.
23 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure
24 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and
25 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.
26 556, 573–74, 138 P.3d 433, 446 (2006).

27 The FAC generally alleges Smith is doing business as Lake Tahoe Wall of Shame. The
28 FAC states that Lake Tahoe Wall of Shame has and continues to initiate public comment threads

1 on its Facebook page slandering Lackey in his official capacity as a state employee and urging and
2 encouraging the public at large to shame and harass Lackey so that he will lose his job and/or feel
3 threatened enough to leave the community. The FAC alleges Lake Tahoe Wall of Shame acted
4 intentionally and with malice with the primary purpose being to harm, threaten, intimidate, cause
5 fear, anxiety, embarrassment and damage to his reputation by publishing false and vicious
6 comments accusing Lackey of criminal conduct (including accepting bribes and conspiracy)
7 designed to incite public outrage. The FAC lists some, but allegedly not all of the comments made
8 by Lake Tahoe Wall of Shame and the other defendants (see above for statements alleged
9 attributable to Smith dba Lake Tahoe Wall of Shame). The FAC asserts Lackey is either a limited
10 purpose public figure or a private individual. The FAC sets forth that Smith and Lake Tahoe Wall
11 of Shame published and encouraged statements despite having actual knowledge that such
12 statements were false, or with reckless disregard for their veracity. [FAC, at 8:14-19]. The FAC
13 states defendants know the inflammatory false information they were posting was malicious, false,
14 and accusatory of criminal conduct and had the purposes of harming, threatening, intimidating and
15 or harassing plaintiff and his livelihood. It further alleges Lackey has suffered damages and has
16 incurred attorneys' fees.

17 The specific statements attributed to Smith is Statement P. Generally, whether a statement
18 is capable of defamatory construction is a question of law. K-Mart Corp. v. Washington, 109 Nev.
19 1180, 886 P.2d 274 (1993). "Statements of opinion as opposed to statements of fact are not
20 actionable," however, "expressions of opinion may suggest that the speaker knows certain facts to
21 be true or may imply that facts exist which will be sufficient to render the message defamatory if
22 false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous or a 'mixed
23 type,' which is an opinion, which gives rise to the inference that the source has based the opinion
24 on underlying, undisclosed defamatory facts;" and when a statement is ambiguous, "the question
25 of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117 Nev. 107, 113,
26 17 P.3d 422, 426 (2001).

27 Statement P critiques an unspecified "department" and not Lackey himself. As Lackey is
28 the plaintiff, and not NDOW or some other "department," the Court finds that this is not a

1 statement about the plaintiff by the defendant. Therefore, the Court finds, as a matter of law,
2 statement P is not actionable in this case for defamation. However, because the FAC generally
3 alleges the elements of defamation, and specifically states that Smith and Lake Tahoe Wall of
4 Shame published and encouraged the statements, the Court finds Lackey has stated a claim for
5 defamation. Lackey has put Smith on notice of the defamatory conduct by alleging defendants
6 have accused him of criminal conduct (accepting bribes and conspiracy), have slandered Lackey
7 in his official capacity, and made false statements of his character. These general allegations,
8 especially when read together with the specific examples provided, give Smith notice of the nature
9 of the defamation claim.

10 ***Civil Conspiracy***

11 Civil conspiracy “consists of a combination of two or more persons who, by some
12 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,
13 and damage results from the act or acts.” Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,
14 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants
15 continuously over the past several years have acted in concert with one another to accomplish the
16 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their
17 supporters pose a threat to his safety and as a result he has suffered damages. The Court finds
18 Lackey has properly alleged a claim for civil conspiracy against Smith. Lackey has pled the
19 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,
20 Lackey incorporates by reference the other allegations in his complaint. See discussion *supra*,
21 discussing the conduct Smith has been specifically alleged to do, such as using Facebook to
22 encourage the public to shame and harass Lackey. In addition to the conduct attributed to Smith
23 (through Lake Tahoe Wall of Shame), the FAC likewise sets forth specific Facebook
24 threats/comments attributed to the other defendants.

25 ***Intentional Infliction of Emotional Distress:***

26 The elements of a claim for intentional infliction of emotional distress are: 1) that the
27 defendant's conduct was extreme and outrageous; (2) that the defendant either intended or
28 recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered

1 severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately
2 caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).
3 “[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is
4 regarded as utterly intolerable in a civilized community.” Maduike v. Agency Rent-A-Car, 114
5 Nev. 1, 4, 953 P.2d 24, 26 (1998).

6 Based on the allegations set forth above, the FAC alleges, defendants have engaged in
7 willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing
8 emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as
9 a result of defendants’ conduct and remains fearful of physical harm or violence directed at him.
10 Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly
11 stated a claim for intentional infliction of emotional distress against Smith as the FAC alleges,
12 among other allegations, that Lake Tahoe Wall of Shame (who Smith does business as) has
13 initiated public comment to encourage the public to shame and harass Lackey so he will lose his
14 job and/or feel threatened enough to leave the community, and that Smith and Lake Tahoe Wall
15 of Shame published and encouraged the statements. Here, the FAC alleges Smith (in addition to
16 Lake Tahoe Wall of Shame) engaged in tortious conduct by publishing and encouraging
17 statements. Thus, for purposes of a motion to dismiss, taking the allegations in light most favorably
18 to Lackey, the Court cannot find that Smith is shielded for tortious acts.⁷ Thus, a jury could find
19 this is extreme and outrageous conduct. The Court incorporates by reference the analysis of the
20 CDA and purported defamatory statements set forth above.

21 ***Negligent Infliction of Emotional Distress***⁷

22 A claim for negligent infliction of emotional distress requires a showing that defendant
23 owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause
24 of the plaintiff’s injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116

26 ⁷ See: “Directors or officers of a corporation do not incur personal liability for torts of the corporation merely by
27 reason of their official position, **unless they participate in the wrong or authorize or direct that it be done.**”
United States Liab. Ins. Co. v. Haidinger-Hayes, Inc., 1 Cal. 3d 586, 595 (1970)(emphasis added).

28 ⁷ Although this third claim for relief is titled as “Intentional Infliction of Emotional Distress,” because the FAC
alleges that Defendants acted negligently under this heading, the Court assumes it should be titled “Negligent
Infliction of Emotional Distress.”

1 Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.
2 213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court has cited favorable in Turner,
3 supra, the explanation of the duty required when a person complains they are the direct victim of
4 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220–21
5 (2002):

6 The distinction between the “bystander” and the “direct victim” cases is found in
7 the source of the duty owed by the defendant to the plaintiff. ‘Bystander’ claims
8 are typically based on breach of a duty owed to the public in general, whereas a
9 right to recover for emotional distress as a ‘direct victim’ arises from the breach of
a duty that is assumed by the defendant or imposed on the defendant as a matter of
law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 “In cases where emotional distress damages are not secondary to physical injuries, but
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the
12 absence of physical impact, proof of ‘serious emotional distress’ causing physical injury or illness
13 must be presented.” Barmettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants’ negligence.
16 However, the Court finds the FAC has failed to plead that Smith owed Lackey a duty. As such,
17 the Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Mark E. Smith’s *Special Motion to Dismiss brought under*
20 *NRS 41.635 et seq.* is DENIED.

21 IT IS HEREBY FURTHER ORDERED that Mark E. Smith’s *Special Motion to Dismiss*
22 *brought under NRCP 12* is DENIED as to claims of defamation, civil conspiracy and intentional
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim
24 shall be DISMISSED.

25 ///

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28 ///

1 IT IS HEREBY FURTHER ORDERED that Mark E. Smith shall file an Answer to the
2 First Amended Complaint within twenty (20) days of the date of this Order.

3 DATED this 23 day of October, 2017.

4 Connie J. Steinhauser
5 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV17-00434

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 23 day of October, 2017, I filed the **ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

SEAN ROSE, ESQ. for CARL LACKEY

THOMAS BRENNAN, ESQ. for CARL LACKEY

DEL HARDY, ESQ. for CAROLYN STARK DBA NDOWL WATCH KEEPING THEM TRANSPARENT

CAMERON BORDNER, ESQ. for BEAR LEAGUE, MARK E SMITH, ANNE BRYANT

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 23 day of October, 2017.



1 **CODE: 2540**

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
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9 *Attorneys for Defendant Mark E. Smith*

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.

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.

CASE NO.: CV17-00434

DEPT. NO.: 4

24 **NOTICE OF ENTRY OF ORDER REGARDING MARK SMITH'S**
25 **SPECIAL MOTION TO DISMISS/MOTION TO DISMISS**

26 NOTICE IS HEREBY GIVEN that an ORDER was entered in the above-entitled matter on
27 October 23, 2017, a copy of which is attached hereto.

28 Dated this 13th day of November, 2017.



DEL HARDY, ESQ. (SBN 1172)
STEPHANIE RICE, ESQ. (SBN 11627)
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 **NOTICE OF ENTRY OF ORDER (AS TO MARK E. SMITH)** on all
5 parties to this action by:

6 X Placing an original or true copy thereof in a sealed envelope placed for collection
7 and mailing in the United States Mail, at Reno, Nevada, postage paid, following
8 ordinary business practices.
9 Personal Delivery
10 Facsimile (FAX)
11 Federal Express or other overnight delivery
12 Messenger Service
13 Certified Mail with Return Receipt Requested
14 X Electronically filed

15 addressed as follows:

16 **Sean P. Rose, Esq.**
17 **Rose Law Office**
18 **150 W. Huffaker Lane, Suite 101**
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Robin Shofner, Esq.
Molsby & Bordner, LLP
1830 15th Street, Ste. 100
Sacramento, CA 95811

22 **AFFIRMATION**

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

26 DATED this 13th day of November, 2017.

27 
28 **EMPLOYEE OF WINTER STREET LAW GROUP**

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

2 IN AND FOR THE COUNTY OF WASHOE

3 IN THE MATTER OF THE ESTATE OF:
4 CARL LACKEY v. BEAR LEAUGE, et al

CASE NO. CV17-00434

5 DEPT. NO. 4

EXHIBIT INDEX

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7 1	Order regarding Mark E. Smith's Special Motion to Dismiss/Motion to Dismiss	15

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EXHIBIT 1

EXHIBIT 1

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

CARL LACKEY,

Plaintiff,

v.

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

Defendants.

Case No. CV17-00434

Dept. No.: 4

**ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION
TO DISMISS**

On March 31, 2017, Carl Lackey (hereinafter "Lackey") filed a *First Amended Complaint* (hereinafter "FAC"), by and through his undersigned counsel, Sean Rose, Esq. of the Rose Law Office and Thomas R. Brennan, Esq. of Durney & Brennan, Ltd., against Bear League, a California Corporation, Anne Bryant (hereinafter "Bryant", an individual, Mark E. Smith (hereinafter "Smith"), an individual dba Lake Tahoe Wall of Shame, Carolyn Stark (hereinafter "Stark") an individual dba NDOW Watch Keeping Them Transparent (hereinafter "NDOW WATCH"), and DOES defendants. The FAC sets forth four claims against all Defendants: Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and Civil Conspiracy. On June 5, 2017, Smith, by and through his counsel Cameron D. Bordner, Esq., and Robin D. Shofner, Esq., of Molsby & Bordner, LLP, filed *Special Motion to Dismiss/Motion to Dismiss*. Lackey filed an opposition on June 23, 2017. Smith filed a reply on July 3, 2017. Lackey filed a

1 supplement to his opposition on July 26, 2017. The Court heard oral arguments on July 26, 2017
2 and took the matter under advisement.

3 Smith asserts the FAC is subject to dismissal under Nevada's Anti-SLAPP statutes, NRS
4 41.635, et. seq, as well as 12(b)(5) for failure to state a claim. Smith alleges absent from the FAC
5 are any allegations that Smith published any comments whatsoever, and certainly not any
6 comments about or concerning Lackey. Smith contends he is not an administrator or responsible
7 party for Lake Tahoe Wall of Shame. As such, he is not responsible for comments posted on Lake
8 Tahoe Wall of Shame. Further, even assuming arguendo that Smith had any management control
9 over the page, such comments cannot be attributed to him under the Communications Decency
10 Act (hereinafter "CDA"), 11 U.S.C. 230(c)(1). In his capacity as an employee for Nevada
11 Department of Wildlife (hereinafter "NDOW"), a governmental organization, there is no doubt
12 Lackey is a public figure. Or at a minimum, Lackey is a limited purpose public figure and he must
13 plead and prove actual malice. Smith asserts he did not act with actual malice. Because the
14 preservation and treatment of bears is undoubtedly a matter of public concern, Smith contends, the
15 lone comment posted on Lake Tahoe Wall of Shame's Facebook page addresses the same.

16 Smith argues Lackey has failed to state a claim for defamation, as he has failed to allege
17 that Smith published any statements whatsoever. Similarly, Smith alleges, as Lackey has not
18 alleged any conduct by Smith, Lackey has failed to plead facts to establish the first element of
19 intentional infliction of emotional distress, extreme and outrageous conduct, and the second
20 element of a negligent infliction of emotional distress, breach of duty. Additionally, as with Smith,
21 Lackey has failed to allege any conduct of Bryant or Stark. Lackey has only alleged conduct by
22 one defendant, Bear League, as such, Lackey has also failed to allege how Smith purportedly acted
23 in concert for the conspiracy claim.

24 Lackey argues Nevada's Anti-SLAPP legislation only protects a defendant's First
25 Amendment free speech rights and not threats and fighting words. Further, Nevada's Anti-SLAPP
26 statute does not apply because the statements do not involve a public interest. The statements are
27 directed at Lackey who was simply performing his duties as a NDOW, Biologist III, who is under
28 the supervision of a Biologist IV. There are false statements alleged that Lackey is corrupt, taking

1 bribes, and illegally torturing and killing bears. Defendants threaten Lackey and his family with
2 both violence and murder. Lackey contends Smith's reliance on the CDA is misplaced, as Smith
3 is also an information content provider. Lackey asserts that Smith does business as Lake Tahoe
4 Wall of Shame and is essentially its voice. Lackey alleges just because Smith may not have created
5 the Facebook page or manage it does not mean that he did not author the posts. Even though
6 Lackey contends the burden has not shifted pursuant to Nevada's Anti-SLAPP legislation, Lackey
7 nonetheless argues, while providing additional evidence, he will be successful on his claims.

8 ANTI-SLAPP

9 "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's
10 exercise of his or her First Amendment free speech rights." Stubbs v. Strickland, 129 Nev. Adv.
11 Op. 15, 297 P.3d 326, 329 (2013). "Under Nevada's anti-SLAPP statutes, a defendant may file a
12 special motion to dismiss if the defendant can show 'by a preponderance of the evidence, that the
13 claim is based upon a good faith communication in furtherance of the right to petition or the right
14 to free speech in direct connection with an issue of public concern.'" Shapiro v. Welt, 133 Nev.
15 Adv. Op. 6, 389 P.3d 262, 267 (2017)(quoting NRS 41.660(3)(a)). The term "good faith
16 communication" includes "[c]ommunication made in direct connection with an issue of public
17 interest in a place open to the public or in a public forum, which is truthful or is made without
18 knowledge of its falsehood." NRS 41.637(4). If a defendant makes this initial showing, the burden
19 shifts to the plaintiff to show "with prima facie evidence a probability of prevailing on the claim."
20 Id.; NRS 41.660(3)(b).

21 When determining whether the conduct is protected under the anti-SLAPP statute, the court
22 should not look to First Amendment law, but to Nevada's anti-SLAPP legislation. See Delucchi
23 v. Songer, 133 Nev. Adv. Op. 42, 396 P.3d 826, 833 (Nev. 2017). Thus, when analyzing whether
24 the defendant's conduct constitutes "good faith communication" the court must determine whether
25 "it falls within one of the four categories enumerated in NRS 41.637, and whether it is truthful or
26 is made without knowledge of its falsehood." Delucchi, 133 Nev. Adv. Op. at 15; 396 P.3d at
27 833(internal quotations omitted). However, if the alleged conduct is illegal as a matter of law,
28 then the conduct is not protected activity within the anti-SLAPP context.

1 To determine whether an issue is one of public interest as used in NRS 41.637(4), the
2 Nevada Supreme Court adopted the guiding principles California utilizes. Shapiro, 133 Nev. Adv.
3 Op. 6, 389 P.3d at 268 (citing Piping Rock Partners, Inc. v. David Lerner Assocs, Inc., 946
4 F.Supp.2d 957, 968 (N.D. Cal 2013). Specifically,

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

16 Id.

17 The FAC attributes the following statement to Smith: “A department with no real interest
18 in wildlife other than to make it available to hunters and trappers...some might say they are
19 criminals against nature...they are certainly ignorant about it.” Commenter Sean Stansfield on
20 Lake Tahoe Wall of Shame’s Facebook Page. [FAC, Statement P].

21 First the Court considers whether the alleged conduct is illegal as a matter of law, and
22 therefore does not fall within the protection of Nevada’s anti-SLAPP legislation. 18 USC § 2261A
23 (the federal stalking statute) provides in relevant part, whoever,

24 (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with
25 intent to kill, injure, harass, or intimidate another person, uses the mail, any
26 interactive computer service or electronic communication service or electronic
27 communication system of interstate commerce, or any other facility of interstate or
28 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.

Here, the Court cannot conclude as a matter of law that the conduct was illegal. The Court
does not find that suggesting a government department is a “criminal against nature” places a
person in reasonable harm or fear of death or would cause a person severe emotional distress.

1 Second, the Court finds this statement was made in a public forum as it was made on
2 Facebook. Third, the Court considers the Shapiro factors to determine whether the statement was
3 made in the public interest. Smith's articulated public interest is conservation of natural resources,
4 specifically the preservation and treatment of bears, as well as bribery of a public official. The
5 Court finds this interest does not equate with mere curiosity.

6 In order to evaluate the degree of closeness between the asserted public interest and
7 speaker's statements/conduct, the Court must evaluate the specific statements (statement P)
8 attributed to Smith. When determining whether these statements are related to the public interest,
9 the court should focus on the specific nature of the speech rather than the generalities. The Court
10 questions whether there is a sufficient degree of closeness between this statement and purported
11 public interest of preserving wildlife or bribery of a public official. There is no indication of what
12 this "department" is (although, the Court presumes it is referring to the NDOW).

13 Nonetheless, even if this statement fell within the broadly stated public interest, in order to
14 shift the burden to Lackey, Smith must prove, by the preponderance of the evidence, that the
15 statements are true or were made without knowledge of their falsehood. See NRS 41.637; NRS
16 41.660. Here, there is no evidence provided that shows the statement is truthful or was made
17 without knowledge of its falsehood. In fact, Smith attests that he had no role in drafting or
18 publishing the comment of Sean Sarsfield on the Lake Tahoe Wall of Shame Facebook's page.
19 Therefore, the Court finds the first prong of NRS 41.660 has not been satisfied. Thus, the Court
20 does not find the burden shifts to Lackey to prove his likelihood of success on his claims. The
21 Court will deny Smith's motion to dismiss under Nevada's anti-SLAPP legislation.

22 NRCP 12

23 Next the Court considers Smith's 12(b) motion to dismiss. Although evidence was
24 provided for the purposes of the Anti-SLAPP motion, the Court will not convert the motion to
25 dismiss under into a motion for summary judgment by considering matters outside the pleadings
26 at this stage of the case.

27 NRCP 8 requires that a complaint contain a "(1) a short and plain statement of the claim
28 showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the

1 pleader seeks.” “A complaint must set forth sufficient facts to establish all necessary elements of
2 a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief
3 sought.” Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

4 Pursuant to NRCP 12(b)(5), a party may bring a motion to dismiss for failure to state a
5 claim upon which relief should be granted. A motion to dismiss should be granted only if “it
6 appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.
7 Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d. 670 (2008). As a notice-
8 pleading jurisdiction, the court must “liberally construe pleadings to place into issue matters which
9 are fairly noticed to the adverse party.” Hay, 100 Nev. at 198, 678 P.2d at 674. In ruling on a
10 motion to dismiss, the court must take all allegations in the complaint as true and draw all
11 inferences in favor of the complainant. Id.; Torres v. Nev. Direct Ins. Co., 131 Nev. Adv. Op. 54,
12 353 P.3d 1203, 1210 (2015). However, the court does not have to “assume the truth of legal
13 conclusions merely because they are cast in the form of factual allegations.” Hotel Employees &
14 Rest. Employees Int’l Union Welfare Fund v. Gentner, 815 F. Supp. 1354, 1357 (D. Nev. 1993).

15 *Communications Decency Act*

16 First, the Court address arguments concerning the CDA, as Smith is of the position that the
17 statements/conduct alleged are not attributable to him by virtue of the statute. The CDA
18 immunizes interactive computer services or users from any cause of action that would make them
19 liable for publishing information provided by a third-party user of the service. See 47 U.S.C.A
20 230(c)(1)(“[n]o provider or user of an interactive computer service shall be treated as the publisher
21 or speaker of any information provided by another information content provider”).¹ The CDA
22 defines “interactive computer service” to mean, “any information service, system, or access
23 software provider that provides or enables computer access by multiple users to a computer server,
24 including specifically a service or system that provides access to the Internet and such systems

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26 ¹ See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir.2003); Zeran v. America Online, Inc.,
27 129 F.3d 327, 330–31 (4th Cir.1997) (finding “lawsuits seeking to hold a service provider liable for its exercise of a
28 publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter
content—are barred”); Doe v. MySpace, Inc., 528 F.3d 413, 420 (5th Cir. 2008) (noting there is no liability under
the CDA for “decisions relating to the monitoring, screening, and deletion of content” by an interactive computer
service provider).

1 operated or services offered by libraries or educational institutions.” Courts have consistently
2 found Facebook operates as an interactive computer service.²

3 The CDA, however, does not immunize an interactive computer service if it also functions
4 as an information content provider for the portion of the statement or publication at issue.³
5 “Information content provider” means “any person or entity that is responsible, in whole or in part,
6 for the creation or development of information provided through the Internet or any other
7 interactive computer service.” 47 USC 230(3). A website may lose immunity under the CDA by
8 making a material contribution to the creation or development of content.⁴

9 Thus, passive websites or websites that permit comments (without encouraging or
10 developing the content at issue) have not been deemed information content providers for the
11 purposes of the CDA.⁵ Therefore, absent some solicitation/encouragement of the defamatory
12 remarks, an interactive website/user will not be liable for the content that originated from a third
13 party.

14 Here, the FAC alleges that Smith is doing business as Lake Tahoe Wall of Shame. The
15 FAC alleges a specific comment of a person (not Smith) on Lake Tahoe Wall of Shame’s Facebook
16 page as well as generally states that members of Lake Tahoe Wall of Shame, and Lake Tahoe Wall
17 of Shame (itself) has made and continues to make false statements regarding Lackey and initiates
18 public comment threads on Facebook slandering Lackey including accusing him of criminal
19

20 ² See e.g. Fraley v. Facebook, Inc., 830 F.Supp.2d 785, 801–02 (N.D.Cal.2011); Klayman v. Zuckerberg, 753 F.3d
1354, 1359 (D.C. Cir. 2014).

21 ³ Carafano, 339 F.3d at 1123-25 (47 USC 230(c)(1) would bar plaintiff’s claims unless defendant “created or
22 developed the particular information at issue”); see also Anthony v. Yahoo! Inc., 421 F.Supp. 2d 1257, 1262-1263
(N.D. Cal. 2006)(finding the CDA did not bar claims arising out of dating service’s alleged creation of false profiles
which induced plaintiff to maintain his membership there).

23 ⁴ Kimzey v. Yelp! Inc., 836 F.3d 1263, 1269 (9th Cir. 2016)(noting Roommates.Com, 521 F.3d at 1171, clarified “the
24 language used in Carafano [Metrosplash.com, Inc., 339 F.3d 1119 (9th Cir.2003)] recognizing that a website could
be a developer of content where it encouraged users to provide illegal content”). In Fair Hous. Council of San
25 Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1172 (9th Cir. 2008), the court discussed when a website
may also act as an information content provider: “The salient fact in Carafano was that the website’s classifications
26 of user characteristics did absolutely nothing to enhance the defamatory sting of the message, to encourage defamation
or to make defamation easier: The site provided neutral tools specifically designed to match romantic partners
27 depending on their voluntary inputs. By sharp contrast, Roommate’s website is designed to force subscribers to divulge
protected characteristics and discriminatory preferences, and to match those who have rooms with those who are
looking for rooms based on criteria that appear to be prohibited by the FHA.”

28 ⁵ See e.g. Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F.Supp.2d 1112, 1125–26 (D. Nev. 2013; Spreadbury v.
Bitterroot Pub. Library, 856 F.Supp.2d 1195, 1198 (D. Mont. 2012; Piping Rock, 946 F.Supp.2d at 957.

1 conduct (accepting bribes and conspiracy). [FAC, at 3:18-28; 4: 1-7]]. It further alleges that Smith
2 and Lake Tahoe Wall of Shame published and encouraged statements. [FAC, at 8:14-19].

3 Facebook permits a comment by both the webpage as well as third party users. An original
4 post may contain a reply, as well as a reply to the reply, and can continue, the Court supposes,
5 indefinitely. Given the nature of Facebook, the Court cannot conclude for the purposes of a motion
6 to dismiss, that Smith did not encourage the third party user's statement. Therefore, at this time,
7 the Court cannot find Smith is immunized from liability for the third party comments under the
8 CDA.⁶

9 For the purposes of a motion to dismiss, that the Court is declining at this time in the
10 litigation to convert to summary judgment, the Court will not consider the evidence provided by
11 the parties that discusses Smith's role (or lack thereof) in Lake Tahoe Wall of Shame.

12 ***Defamation***

13 Pursuant to Rule 8, defamation must be pled by setting forth sufficient facts to demonstrate
14 the necessary elements of the claim so the defending party has adequate notice of the nature of the
15 claim.

16 Based on the substantial similarity between the language in F.R.C.P. 8(a) and N.R.C.P.
17 8(a), the court may look to decisions interpreting N.R.C.P. 8(a)'s federal counterpart for guidance,
18 especially the federal opinions that were decided prior the US Supreme Court's adoption of the
19 higher pleading standard as set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009) and Bell Atlantic
20 Corporation v. Twombly, 550 U.S. 544 (2007). Although, some federal courts, applying FRCP 8,
21 have required defamation to be pled with more specificity, such as dictating the claim must set
22 forth an adequate identification of the communication, who made the statements, to whom they
23 were made, and when the statements were made. See Bushnell Corporation v. ITT Corporation,
24 973 F.Supp. 1276 (D.Kan.1997); Decker v. Vermont Educ. Television, Inc., 13 F. Supp. 2d 569,

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26 ⁶ See e.g. Hy Cite Corp v. badbusinessbureau.com, L.L.C., 418 F. Supp. 2d 1142, 1148-49 (D. Ariz. 2005)(declining
27 to grant defendants' motion to dismiss based on CDA immunity because plaintiffs alleged that defendants added
28 editorial comments, titles, and original content to third-party complaints posted on defendants' website); Whitney
Info. Network, Inc. v. Xcentric Venture, LLC, 199 Fed. Appx. 738, 744 (11th Cir. 2006)(finding whether Defendants
were entitled to CDA immunity remained in question because the complaint plead Defendants' involvement in
creating or developing the alleged defamatory content posted on their website.

1 573–74 (D. Vt. 1998);(Blanck v. Hager, 360 F. Supp. 2d 1137, 1160 (D. Nev. 2005), aff'd, 220
2 Fed. Appx. 697 (9th Cir. 2007).

3 Other federal courts have expressed disfavor about requiring a higher pleading requirement
4 as defamation is not covered by FRCP 9. See Okeke v. Biomat USA, Inc., 927 F. Supp. 2d 1021,
5 1027 (D. Nev. 2013); Rivera v. Allstate Ins. Co., 140 F. Supp. 3d 722, 728 (N.D. Ill. 2015).

6 As the Nevada Supreme Court has not adopted the higher pleading standards many courts
7 have advocated for as discussed *supra*, the Court will not do so here. However, to the extent a
8 claim for damages is not premised on defamation per se, special damages must be pled with
9 particularity. See NRCP 9; see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225
10 (1981).

11 The general elements of a defamation claim require a plaintiff to prove: “(1) a false and
12 defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to
13 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
14 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). “Statements are
15 libel per se under Nevada law when they ‘naturally tend to degrade [the plaintiff] in the estimation
16 of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business,
17 occupation or profession.” Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff'd,
18 161 Fed. Appx. 697 (9th Cir. 2006)(citing Talbot v. Mack, 41 Nev. 245, 169 P. 25 (1917)).

19 When a public figure or a limited public figure is involved, a plaintiff must plead and prove
20 actual malice as opposed to negligence. Pegasus, 118 Nev. at 719, 57 P.3d at 91. “General public
21 figures are those individuals who achieve such pervasive fame or notoriety that they become a
22 public figure for all purposes and in all contexts,” as well as those who hold government office.
23 Id. at 719; 91; Gertz v. Robert Welch, Inc., 94 S. Ct. 2997, 3008 (1974). A limited public figure
24 “voluntarily injects himself or is thrust into a particular public controversy or public concern, and
25 thereby becomes a public figure for a limited range of issues.” Id.; Bongiovi v. Sullivan, 122 Nev.
26 556, 573–74, 138 P.3d 433, 446 (2006).

27 The FAC generally alleges Smith is doing business as Lake Tahoe Wall of Shame. The
28 FAC states that Lake Tahoe Wall of Shame has and continues to initiate public comment threads

1 on its Facebook page slandering Lackey in his official capacity as a state employee and urging and
2 encouraging the public at large to shame and harass Lackey so that he will lose his job and/or feel
3 threatened enough to leave the community. The FAC alleges Lake Tahoe Wall of Shame acted
4 intentionally and with malice with the primary purpose being to harm, threaten, intimidate, cause
5 fear, anxiety, embarrassment and damage to his reputation by publishing false and vicious
6 comments accusing Lackey of criminal conduct (including accepting bribes and conspiracy)
7 designed to incite public outrage. The FAC lists some, but allegedly not all of the comments made
8 by Lake Tahoe Wall of Shame and the other defendants (see above for statements alleged
9 attributable to Smith dba Lake Tahoe Wall of Shame). The FAC asserts Lackey is either a limited
10 purpose public figure or a private individual. The FAC sets forth that Smith and Lake Tahoe Wall
11 of Shame published and encouraged statements despite having actual knowledge that such
12 statements were false, or with reckless disregard for their veracity. [FAC, at 8:14-19]. The FAC
13 states defendants know the inflammatory false information they were posting was malicious, false,
14 and accusatory of criminal conduct and had the purposes of harming, threatening, intimidating and
15 or harassing plaintiff and his livelihood. It further alleges Lackey has suffered damages and has
16 incurred attorneys' fees.

17 The specific statements attributed to Smith is Statement P. Generally, whether a statement
18 is capable of defamatory construction is a question of law. K-Mart Corp. v. Washington, 109 Nev.
19 1180, 886 P.2d 274 (1993). "Statements of opinion as opposed to statements of fact are not
20 actionable," however, "expressions of opinion may suggest that the speaker knows certain facts to
21 be true or may imply that facts exist which will be sufficient to render the message defamatory if
22 false." Pegasus, 118 Nev. at 714, 57 P.3d at 88. A "statement may be ambiguous or a 'mixed
23 type,' which is an opinion, which gives rise to the inference that the source has based the opinion
24 on underlying, undisclosed defamatory facts;" and when a statement is ambiguous, "the question
25 of whether it is a fact or evaluative opinion is left to the jury." Lubin v. Kunin, 117 Nev. 107, 113,
26 17 P.3d 422, 426 (2001).

27 Statement P critiques an unspecified "department" and not Lackey himself. As Lackey is
28 the plaintiff, and not NDOW or some other "department," the Court finds that this is not a

1 statement about the plaintiff by the defendant. Therefore, the Court finds, as a matter of law,
2 statement P is not actionable in this case for defamation. However, because the FAC generally
3 alleges the elements of defamation, and specifically states that Smith and Lake Tahoe Wall of
4 Shame published and encouraged the statements, the Court finds Lackey has stated a claim for
5 defamation. Lackey has put Smith on notice of the defamatory conduct by alleging defendants
6 have accused him of criminal conduct (accepting bribes and conspiracy), have slandered Lackey
7 in his official capacity, and made false statements of his character. These general allegations,
8 especially when read together with the specific examples provided, give Smith notice of the nature
9 of the defamation claim.

10 ***Civil Conspiracy***

11 Civil conspiracy “consists of a combination of two or more persons who, by some
12 concerted action, intend to accomplish an unlawful objective for the purpose of harming another,
13 and damage results from the act or acts.” Consol. Generator-Nevada, Inc. v. Cummins Engine Co.,
14 Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). The FAC sets forth that defendants
15 continuously over the past several years have acted in concert with one another to accomplish the
16 goals of harassing and threatening Lackey. The FAC alleges Lackey feels the defendants and their
17 supporters post a threat to his safety and as a result he has suffered damages. The Court finds
18 Lackey has properly alleged a claim for civil conspiracy against Smith. Lackey has pled the
19 unlawful objective is to harass and threaten Lackey. Further, in stating a claim for conspiracy,
20 Lackey incorporates by reference the other allegations in his complaint. See discussion *supra*,
21 discussing the conduct Smith has been specifically alleged to do, such as using Facebook to
22 encourage the public to shame and harass Lackey. In addition to the conduct attributed to Smith
23 (through Lake Tahoe Wall of Shame), the FAC likewise sets forth specific Facebook
24 threats/comments attributed to the other defendants.

25 ***Intentional Infliction of Emotional Distress:***

26 The elements of a claim for intentional infliction of emotional distress are: 1) that the
27 defendant's conduct was extreme and outrageous; (2) that the defendant either intended or
28 recklessly disregarded the causing of emotional distress; (3) that the plaintiff actually suffered

1 severe or extreme emotional distress; and (4) that the defendant's conduct actually or proximately
2 caused the distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983).
3 "[E]xtreme and outrageous conduct is that which is outside all possible bounds of decency and is
4 regarded as utterly intolerable in a civilized community." Maduikie v. Agency Rent-A-Car, 114
5 Nev. 1, 4, 953 P.2d 24, 26 (1998).

6 Based on the allegations set forth above, the FAC alleges, defendants have engaged in
7 willful, malicious, wanton, and egregious conduct that was extreme and outrageous causing
8 emotional distress. The FAC alleges Lackey has suffered severe and extreme emotional distress as
9 a result of defendants' conduct and remains fearful of physical harm or violence directed at him.
10 Taking the factual allegations set forth in the FAC as true, the Court finds Lackey has properly
11 stated a claim for intentional infliction of emotional distress against Smith as the FAC alleges,
12 among other allegations, that Lake Tahoe Wall of Shame (who Smith does business as) has
13 initiated public comment to encourage the public to shame and harass Lackey so he will lose his
14 job and/or feel threatened enough to leave the community, and that Smith and Lake Tahoe Wall
15 of Shame published and encouraged the statements. Here, the FAC alleges Smith (in addition to
16 Lake Tahoe Wall of Shame) engaged in tortious conduct by publishing and encouraging
17 statements. Thus, for purposes of a motion to dismiss, taking the allegations in light most favorably
18 to Lackey, the Court cannot find that Smith is shielded for tortious acts.⁷ Thus, a jury could find
19 this is extreme and outrageous conduct. The Court incorporates by reference the analysis of the
20 CDA and purported defamatory statements set forth above.

21 *Negligent Infliction of Emotional Distress*⁷

22 A claim for negligent infliction of emotional distress requires a showing that defendant
23 owed a duty of care to the plaintiff, defendant breached that duty, the breach was the legal cause
24 of the plaintiff's injuries, and plaintiff suffered serious emotional damages. Olivero v. Lowe, 116

25
26 ⁷ See: "Directors or officers of a corporation do not incur personal liability for torts of the corporation merely by
27 reason of their official position, unless they participate in the wrong or authorize or direct that it be done."
United States Liab. Ins. Co. v. Haidinger-Hayes, Inc., 1 Cal. 3d 586, 595 (1970)(emphasis added).

28 ⁷ Although this third claim for relief is titled as "Intentional Infliction of Emotional Distress," because the FAC
alleges that Defendants acted negligently under this heading, the Court assumes it should be titled "Negligent
Infliction of Emotional Distress."

1 Nev. 395, 399, 995 P.2d 1023, 1026 (2000); Turner v. Mandalay Sports Entm't, LLC, 124 Nev.
2 213, 222, 180 P.3d 1172, 1178 (2008). The Nevada Supreme Court has cited favorable in Turner,
3 supra, the explanation of the duty required when a person complains they are the direct victim of
4 emotional distress in Moon v. Guardian Postacute Services, Inc., 116 Cal. Rptr. 2d 218, 220-21
5 (2002):

6 The distinction between the "bystander" and the "direct victim" cases is found in
7 the source of the duty owed by the defendant to the plaintiff. 'Bystander' claims
8 are typically based on breach of a duty owed to the public in general, whereas a
9 right to recover for emotional distress as a 'direct victim' arises from the breach of
a duty that is assumed by the defendant or imposed on the defendant as a matter of
law, or that arises out of the defendant's preexisting relationship with the plaintiff.

10 "In cases where emotional distress damages are not secondary to physical injuries, but
11 rather, precipitate physical symptoms, either a physical impact must have occurred or, in the
12 absence of physical impact, proof of 'serious emotional distress' causing physical injury or illness
13 must be presented." Barmettler v. Reno Air, Inc., 114 Nev. 441, 448, 956 P.2d 1382, 1387 (1998).

14 Throughout, the FAC alleges defendants acted negligently in causing severe and emotional
15 distress, and Lackey suffered severe and emotional distress as a result of Defendants' negligence.
16 However, the Court finds the FAC has failed to plead that Smith owed Lackey a duty. As such,
17 the Court finds Lackey has failed to state a claim for negligent infliction of emotional distress.

18 Based on the forgoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Mark E. Smith's *Special Motion to Dismiss brought under*
20 *NRS 41.635 et seq.* is DENIED.

21 IT IS HEREBY FURTHER ORDERED that Mark E. Smith's *Special Motion to Dismiss*
22 *brought under NRCP 12* is DENIED as to claims of defamation, civil conspiracy and intentional
23 distress, and GRANTED as to the claim of Negligent Infliction of Emotional Distress, said claim
24 shall be DISMISSED.

25 ///

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28 ///

1 IT IS HEREBY FURTHER ORDERED that Mark E. Smith shall file an Answer to the
2 First Amended Complaint within twenty (20) days of the date of this Order.

3 DATED this 23 day of October, 2017.

4 Connie J. Stanham
5 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CV17-00434

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 23 day of October, 2017, I filed the **ORDER REGARDING MARK E. SMITH'S SPECIAL MOTION TO DISMISS/MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

SEAN ROSE, ESQ. for CARL LACKEY

THOMAS BRENNAN, ESQ. for CARL LACKEY

DEL HARDY, ESQ. for CAROLYN STARK DBA NDOWL WATCH KEEPING THEM TRANSPARENT

CAMERON BORDNER, ESQ. for BEAR LEAGUE, MARK E SMITH, ANNE BRYANT

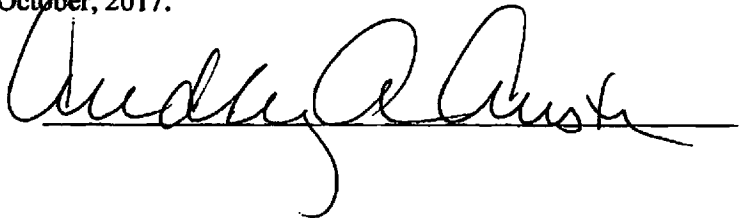
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 23 day of October, 2017.



CASE NO. CV17-00434

**TITLE: CARL LACKEY VS. BEAR LEAGUE, ANNE
BRYANT, CAROLYN STARK, individually and as d.b.a.
NDOW WATCH KEEPING THEM TRANSPARENT, and
MARK SMITH, individually and as d.b.a. LAKE TAHOE
WALL OF SHAME**

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

7/26/17

ORAL ARGUMENTS ON MOTIONS TO DISMISS

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

Thomas Brennan, Esq., represented the Plaintiff. Cameron Bordner, Esq., and Robin Shofner, Esq., represented the Defendants Bear League, Anne Bryant, and Mark Smith, individually and as d.b.a Lake Tahoe Wall of Shame. Del Hardy, Esq., represented Defendant Carolyn Stark, individually and as d.b.a. NDOW Watch Keeping Them Transparent.

Counsel advised the Court that despite the delay in the start of this hearing, counsel were unable to settle this matter but settlement discussions are ongoing between the Plaintiff and Defendants Smith, Bryant and Bear League.

Defendant Stark's Motion to Dismiss by counsel Hardy; presented argument.

Defendants Bryant and Smith's Motion to Dismiss by counsel Shofner; presented argument.

Defendant Bear League's Motion to Dismiss by counsel Shofner; presented argument.

Counsel Brennan submitted all Motions on the pleadings.

COURT took all Motions to Dismiss under advisement. Should any settlement be reached between any of the parties, counsel must notify the Court immediately.

Court recessed.

CASE NO. CV17-00434

**TITLE: CARL LACKEY VS. BEAR LEAGUE, ANNE
BRYANT, CAROLYN STARK, individually and as d.b.a.
NDOW WATCH KEEPING THEM TRANSPARENT, and
MARK SMITH, individually and as d.b.a. LAKE TAHOE
WALL OF SHAME**

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/24/17

CONFERENCE CALL

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

Not Reported

Sean Rose, Esq., represented the Plaintiff. Cameron Bordner, Esq., represented the Defendants Bear League, Anne Bryant, and Mark Smith, individually and as d.b.a Lake Tahoe Wall of Shame. Del Hardy, Esq., represented Defendant Carolyn Stark, individually and as d.b.a. NDOW Watch Keeping Them Transparent.

Court noted receipt of the recently filed Request for Submission and advised counsel that she has a home in Incline Village and has had bears enter her home. The Court further indicated that she has no bias in presiding over this case, but wanted counsel to determine if a different Judge would be better suited to preside over this case.

Counsel Bordner asked questions of the Court.

COURT directed counsel to notify the Court in writing by 3:00 p.m. on Tuesday, May 30, 2017 whether or not their client(s) wish this Court to recuse itself from the case.

Court recessed.

1 **Code 1350**

2
3
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **CARL LACKEY,**

Case No. CV17-00434

7
8 **Plaintiff,**

Dept. No. 4

9 **vs.**

10 **BEAR LEAGUE, a California Corporation,**
11 **ANNE BRYANT, an individual, MARK E.**
12 **SMITH, an individual dba LAKE TAHOE**
13 **WALL OF SHAME, CAROLYN STARK,**
14 **individual dba NDOW WATCH KEEPING**
15 **THEM TRANSPARENT, and DOES 1-20**
16 **Inclusive,**

17 **Defendants.**

18 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

19 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,
20 County of Washoe; that on the 13th day of November, 2017, I electronically filed the Notice of
21 Appeal in the above entitled matter to the Nevada Supreme Court.

22 I further certify that the transmitted record is a true and correct copy of the original
23 pleadings on file with the Second Judicial District Court.

24 Dated this 13th day of November, 2017

25 Jacqueline Bryant
26 Clerk of the Court

27 By /s/ Phillip Sewell
28 Phillip Sewell
Deputy Clerk

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RENO, NV 89503

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11/13/17

PAY TO THE ORDER OF Nevada Supreme Court

\$ **250.00

Two Hundred Fifty and 00/100 ***** DOLLARS

Nevada Supreme Court

MEMO

R: Smith: CV17-00434



[Handwritten Signature]
AUTHORIZED SIGNATURE

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