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The Abrams Law Firm, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

T. MATTHEWS PHILLIPS

Plaintiff,

v.

(1) JENNIFER V. ABRAMS  
(2) THE ABRAMS LAW FIRM, L.L.C.  
(3) MARK DICIERO  
(4) DAVE SCHOEN  
And DOES I - X

Defendants.

Case No: A-21-829038-C

Hon. Michael P. Villani, Senior Justice

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER**

Defendants Mark Dicterio and Dave Schoen's Renewed Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5), and/or Motion for Summary Judgment, and Defendants Jennifer V. Abrams and The Abrams Law Firm, LLC's Joinder to Defendants Mark Dicterio and Dave Schoen's Renewed Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5), was heard on April 14, 2023.

On August 14, 2025, Judge Michael Villani conducted a status check hearing, with the Plaintiff appearing in propria persona. Defendants Mark Dicterio and Dave Schoen were represented by their counsel, David Clayson of the firm Lewis Brisbois Bisgaard & Smith LLP. Defendants Jennifer V. Abrams and The Abrams Law Firm,

1 L.L.C. were represented by their counsel, Joseph P. Garin of the firm Garin Law Group  
2 and Lipson Neilson P.C.

3 Having reviewed the Court's file, transcripts, the parties' pleadings and being fully  
4 advised in the premises, and good cause appearing therefor, the Court HEREBY  
5 ENTERS its Findings of Fact, Conclusions of Law, and Order as follows:

6 **FINDINGS OF FACT**

7 1. Plaintiff T. Matthew Phillips ("Phillips") is an attorney admitted to the  
8 California Bar. He resides in Nevada but he is not licensed to practice law in Nevada.

9 2. Defendant Jennifer Abrams ("Abrams") is an attorney licensed in Nevada  
10 and, at the time of the matters alleged in Plaintiff's First Amended Complaint, she was  
11 practicing at The Abrams Law Firm L.L.C. (the "Firm").

12 3. Defendant Mark Dicio ("Dicio") is a paralegal who, at the time of the  
13 matters alleged in Plaintiff's First Amended Complaint, was employed by the Firm.

14 4. Defendant Dave Schoen ("Schoen") is a paralegal who, at the time of the  
15 matters alleged in Plaintiff's First Amended Complaint, was employed by the Firm.

16 5. Defendants Schoen and Dicio are active participants in Nevada  
17 politics, particularly when it comes to judicial elections and the Nevada court system.  
18 See Declarations<sup>1</sup> of David Schoen and Mark Dicio. They are administrators of a  
19 Public Facebook page known as *Nevada Court Watchers* which specifically provides a  
20 forum for discussion about Nevada politics, the Nevada Court system and Nevada  
21 judicial elections. As of July 28, 2021, the NCW Facebook page had 570 followers. *Id.*

22 6. Plaintiff is involved with a competing political advocacy group known as  
23 Veterans in Politics. NCW and Veterans in Politics are often on opposite sides of  
24 debates about the judiciary, elections and judicial reforms.<sup>2</sup>

25 7. On February 7, 2021, Plaintiff filed a Complaint against Dicio, Schoen,

26  
27 <sup>1</sup> See Declarations of David Schoen and Mark Dicio attached as Exhibits A & B to their July 28,  
28 2021(Renewed) Motion to Dismiss pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5) and/or for  
Summary Judgment.

<sup>2</sup> *Id.*

1 Abrams and the Firm alleging claims for Defamation (Libel *Per Se*) based on postings to  
2 the NCW Facebook page.

3 8. On February 19, 2021, Plaintiff filed a First Amended Complaint alleging  
4 claims for Defamation (Libel *Per Se*), False Light in the Public Eye (Invasion of Privacy)  
5 and Intentional Infliction of Emotional Distress based on postings to the NCW Facebook  
6 page.

7 9. On March 12, 2021, Abrams and the Firm filed a Motion to Dismiss  
8 and/or Strike Plaintiff's First Amended Complaint.

9 10. On April 23, 2021, Defendants Dicioero and Schoen filed their Special  
10 Motion to Dismiss Pursuant to NRS 41.600 (Anti-SLAPP) and/or Motion for Summary  
11 Judgment.

12 11. By Order of June 15, 2021, the Court denied the Motion to Dismiss and  
13 granted the Motion to Strike the First Amended Complaint. Plaintiff was directed to file  
14 a Second Amended Complaint. The Court concluded that granting the Motion to Strike  
15 "mooted" the Anti-SLAPP Motion.

16 12. On June 29, 2021, Plaintiff filed a Second Amended Complaint alleging  
17 claims for Defamation (Libel *Per Se*) and False Light in the Public Eye (Invasion of  
18 Privacy), based on postings to the NCW Facebook page.

19 13. The Second Amended Complaint alleged in part that Defendants  
20 Schoen and Dicioero were directly liable for the postings to the NCW Facebook page and  
21 that Abrams (as supervising attorney) and the Firm (as employer) were vicariously liable  
22 for the allegedly defamatory statements. All of the communications which give rise to  
23 Plaintiff's complaint were made on Facebook, a social media website. See Second  
24 Amended Complaint for Damages and Injunction at ¶¶ 9-27; Schoen and Dicioero's July  
25 28, 2021 (Renewed) Motion to Dismiss pursuant to NRS 41.660 (Anti-SLAPP), NRCP  
26 12(b)(5) and/or for Summary Judgment, Exhibits A & B (Declarations of David Schoen  
27 and Mark Dicioero), and Exhibit F (NCW Facebook pages.)

28 14. On July 28, 2021, Schoen and Dicioero filed a (Renewed) Motion to

1 Dismiss pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5) and/or for Summary  
2 Judgment.

3 15. On July 28, 2021, Abrams and the Firm filed a Joinder to Defendants  
4 Mark Dicio and Dave Schoen's Special Motion to Dismiss pursuant to NRS 41.660  
5 (Anti-SLAPP) and/or Motion for Summary Judgment. The Joinder and Motion was  
6 supported by the Declaration of Jennifer Abrams (¶¶ 5-8) which stated:

7 5. Activities by Dicio and Schoen on Facebook related to the Nevada  
8 Court Watchers ("NCW") page are not part of their job duties for me or  
9 The Firm. They have never been asked or directed to post to Facebook as  
10 part of their work as paralegals. Any of their posts to Facebook generally  
and, related to the NCW page, is not incidental to or a part of their work as  
paralegals.

11 6. [Dicio and Schoen's] activities on Facebook are personal and are  
12 not directed, controlled, monitored, encouraged or ratified by me or The  
13 Firm. They are not compensated by me or The Firm for their personal  
activities on Facebook.

14 7. I do not directly or indirectly own, control, manage, or moderate posts  
15 on the NCW Facebook page. [Dicio and Schoen's] activities on  
Facebook do not further the work of me or The Firm.

16 8. I do not directly or indirectly own, control, manage, or moderate posts  
17 on the NCW Facebook page. Their personal activities on Facebook do not  
18 further the work of me or The Firm.

19 16. On August 16, 2021, Plaintiff filed his Opposition to the Anti-SLAPP  
20 Motions along with his Declaration and Evidentiary Objections. On August 23, 2021,  
21 Dicio and Schoen filed their reply brief.

22 17. On August 20, 2021, Plaintiff filed a Notice of Erratum and Supplemental  
23 Brief In Opposition to Motion to Dismiss.

24 18. On August 23, 2021, Abrams and the Firm filed their reply brief.

25 19. On August 24, 2021, Plaintiff filed a sur-reply.

26 20. The parties started oral argument on the Anti-SLAPP Motions on  
27 September 21, 2021. Approximately half-way through the hearing, oral argument was  
28 continued to an agreed upon date of October 5, 2021. However, before oral argument

1 could be completed on the Anti-SLAPP Motions, Plaintiff filed a motion to disqualify  
2 Judge Susan Johnson. No Affidavit was submitted by Judge Johnson in response to the  
3 Motion to Disqualify, Judge Johnson was taken off of the case, and the case was  
4 randomly reassigned.<sup>3</sup>

5 21. Subsequently, there have been multiple reassignments among various  
6 Departments. On February 6, 2023, the Supreme Court of the State of Nevada  
7 Administrative Office of the Courts filed a Memorandum of Temporary Assignment  
8 which provides:

9 IT IS HEREBY ORDERED that the Honorable Michael A. Cherry, Senior  
10 Justice, is assigned to hear and all matters in *Phillips v Abrams*, Case  
11 Number A-21-829038-C, and he shall have the authority to sign any order  
arising out of this assignment....

12 22. On March 15, 2023, the parties appeared before Honorable Michael A.  
13 Cherry. The parties were directed to submit an agreed list of matters to be considered  
14 by the Court in connection with Diciero and Schoen's Anti-SLAPP Motion, Motion to  
15 Dismiss and Motion for Summary Judgment, and Abrams and the Firm's Joinder and  
16 Motion for Summary Judgment.

17 23. The parties collaborated and jointly submitted the Motions and Filings to  
18 be considered by the Court at the next hearing including:

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26 ///

27

28 <sup>3</sup> See November 4, 2021 Minute Order.

**Phillips v. Abrams, et al.**  
**Case No. A-21-829038-C**

**Joint Submission by the Parties of Outstanding  
Motions to be Decided**

| Date               | Pleading   |
|--------------------|--|
| July 28, 2021      | [50] Renewed Special Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (Diciero & Schoen)  |
| July 28, 2021      | [51] Joinder to Renewed Special Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (Abrams)   |
| August 16, 2021    | [55] Plaintiff's Opposition to Special Motion to Dismiss (Anti-SLAPP) and Joinder (TMP)  |
| August 16, 2021    | [56] Plaintiff's Evidentiary Objections (TMP)  |
| August 16, 2021    | [57] Affidavit of T. Matthew Phillips (TMP)  |
| August 20, 2021    | [58] Plaintiff's Notice of Erratum and Supplemental Brief in Opposition to Motion to Dismiss (TMP)   |
| August 23, 2021    | [59] Reply In Support of Renewed Special Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (Diciero & Schoen)                      |
| August 23, 2021    | [60] Appendix of Exhibits (A-I) in Support of Renewed Special Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (Diciero & Schoen) |
| August 23, 2021    | [61] Reply & Joinder in Support of Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (Abrams)                                      |
| August 24, 2021    | [62] Plaintiff's Sur-Reply re Renewed Special Motion to Dismiss (Anti-SLAPP) and/or Motion for Summary Judgment (TMP)                              |
| September 16, 2021 | [68] Defendants' Joint Motion to Strike Plaintiff's Sur-Reply to Defendants' Reply on OST (all Defendants)   |
| September 16, 2021 | [69] Plaintiff's Opposition to Defendant's Late-Filed Joint Motion to Strike Plaintiff's Aug. 24, 2021 Sur-Reply (TMP)                             |
| September 20, 2021 | [72] Defendants' Joint Reply in Support of Joint Motion to Strike Sur – Reply (all Defendants)   |
| October 2, 2021    | [78] Plaintiff's Notice of Non-Opposition to   |

|                   |  |
|-------------------|--|
|                   | Plaintiff's Evidentiary Objections (TMP)   |
| October 14, 2021  | [84] Defendants Joint Response to Plaintiff's Request for Ruling on Plaintiff's Evidentiary Objections, Plaintiff's Notice of Non-Opposition, and Plaintiffs' Proposed Order Sustaining Plaintiffs Evidentiary Objections and Countermotion to Strike (all Defendants) |
| October 21, 2021  | [86] Plaintiff Reply to Defendants' Joint Response to Plaintiff's Request for Ruling on Plaintiff's Evidentiary Objections, etc.(TMP)  |
| November 17, 2021 | [95] Plaintiff's Objections to the Introduction of Evidence on Defendants' Anti-SLAPP Motion (TMP)   |
| December 1, 2021  | [99] Defendants Joint Motion to Strike Plaintiff's November 17, 2021 Objection & for an Order Precluding Plaintiff from Filing any Further Fugitive Documents (all Defendants)   |
| December 12, 2021 | [104] Plaintiff's Opposition to Defendants' Motion to Strike Plaintiff's Objection (Nov. 17, 2021) (TMP)   |
| February 16, 2022 | [142] Defendants' Joint Reply in Support of Joint Motion to Strike Plaintiff's November 17, 2021 Objection & for an Order Precluding Plaintiff From Filing Any Further Fugitive Documents (all Defendants)   |

24. The Parties appeared for oral argument on April 14, 2023. The Court considered each of the matters in the preceding table and permitted arguments.

25. Plaintiff failed to substantively refute the Declarations of David Schoen and Mark Diciro attached as Exhibits A & B to their July 28, 2021 (Renewed) Motion to Dismiss pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5) and/or for Summary Judgment.

26. Plaintiff failed to substantively refute the July 28, 2021 Declaration of Jennifer Abrams.

27. Plaintiff never requested the opportunity to conduct discovery in order to respond to Defendants' Motions. See NRS 41.660(e)(4); NRCP 56(d).

28. On April 14, 2023, Justice Cherry granted Defendants' Motions from the bench and a minute order was entered reflecting the Court's ruling. Before a written

1 order had entered, Plaintiff sought recusal of Justice Cherry who did not respond to  
2 Plaintiff's challenge.

3 29. On August 11, 2025, the parties were notified that this case was  
4 randomly reassigned to Hon. Michael Villani, Sr. Judge of Clark County District Court.

5 30. On August 14, 2025, the Court conducted a status check regarding the  
6 April 14, 2023 hearing and Submittal of Order. Judge Villani advised the parties that he  
7 had read and was familiar with the file. The parties were directed to attempt to agree on  
8 a written order. But if they could not agree, the parties were directed to submit  
9 competing order within 14 days.

### 10 CONCLUSIONS OF LAW

11 The Court, having examined each of the items listed in the table in Finding of  
12 Fact No. 23, the briefs of the parties, the records and documents on file, being fully  
13 advised of the premises, and good cause appearing, hereby makes the following  
14 Conclusions of Law with regard to: 1) Schoen and Diciero's (Renewed) Motion to  
15 Dismiss pursuant to NRS 41.660 (Anti-SLAPP), NRCP 12(b)(5) and/or for Summary  
16 Judgment; and 2) Abrams' and the Firm's Joinder to Defendants Mark Diciero and Dave  
17 Schoen's Special Motion to Dismiss pursuant to NRS 41.660 (Anti-SLAPP) and/or  
18 Motion for Summary Judgment:

19 1. In 1993, the Nevada legislature adopted an anti-SLAPP statute based  
20 upon California's anti-SLAPP statute. *John v. Douglas Cty. Sch. Dist*, 125 Nev. 746,  
21 752, 219 P.3d 1276, 1281 (2009). "A SLAPP lawsuit is characterized as a meritless suit  
22 filed primarily to chill the defendant's exercise of First Amendment rights." *Id.* at 752,  
23 219 P.3d at 1280 (internal quotation marks omitted). "SLAPP lawsuits abuse the judicial  
24 process by chilling, intimidating, and punishing individuals for their involvement in public  
25 affairs." *Id.* at 752, 219 P.3d at 1281. The primary purpose of these SLAPP lawsuits is  
26 to chill a "defendant's exercise of First Amendment rights." *Id.* In most cases, this is  
27 accomplished "by increasing litigation costs until the adversary's case is weakened or  
28





1 abandoned.” *Id.*, citing *United States ex rel. Newsham v. Lockheed Missiles & Space*  
2 *Co.*, 190 F.3d 963, 969-70 (9th Cir. 1999).

3 2. Nevada's anti-SLAPP statutes aim to protect First Amendment rights by  
4 providing defendants with a procedural mechanism to dismiss "meritless lawsuit[s] that  
5 a party initiates primarily to chill a defendant's exercise of his or her First Amendment  
6 free speech rights" before incurring the costs of litigation. *Coker v. Sassone*, 432 P.3d  
7 746, 748 (Nev. 2019) (citing *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329  
8 (2013)). Under NRS 41.660, a defendant may file a special motion to dismiss within 60  
9 days after service of the complaint. NRS 41.660(1)-(2). Initially, a defendant filing a  
10 special motion to dismiss has the initial burden of demonstrating, by a preponderance of  
11 the evidence, that the claims at issue are "based upon a good faith communication in  
12 furtherance of the right to petition or the right to free speech in direct connection with an  
13 issue of public concern." NRS 41.660(3)(a). Then, if the moving defendant meets her  
14 initial burden, the burden shifts to the plaintiff to demonstrate, with "prima facie  
15 evidence," that he has a "probability of prevailing on the claim." NRS 41.660(3)(c). If the  
16 plaintiff fails to meet his burden, the matter must be dismissed and "the dismissal  
17 operates as an adjudication on the merits." NRS 41.660(5).

18 3. Nevada's anti-SLAPP statute defines a "[g]ood faith communication in  
19 furtherance of the right to free speech in direct connection with an issue of public  
20 concern" by four categories of communication. See NRS 41.637. One such category  
21 protects "[c]ommunication that is aimed at procuring any governmental or electoral  
22 action, result or outcome. . . ." NRS 41.637(1). Another category protects "[w]ritten or  
23 oral statement made in direct connection with an issue under consideration by a  
24 legislative, executive or judicial body, or any other official proceeding authorized by law .  
25 . . . ." NRS 41.637(3). Another category protects "[c]ommunication made in direct  
26 connection with an issue of public interest in a place open to the public or in a public  
27 forum . . . ." NRS 41.637(4). Finally, the statute requires that the communication at issue  
28 must be "truthful or . . . made without knowledge of its falsehood." NRS 41.637.

1           4.     The Court finds by a preponderance of the evidence that Defendants  
2     Diciero and Schoen have established that Phillips' claims against Defendants are based  
3     on good faith communications in furtherance of the right to petition or the right to free  
4     speech in direct connection with an issue of public concern. See NRS 41.637(1), (3)  
5     and (4). Further, the Court finds the challenged statements were made without  
6     knowledge of falsehood.

7           5.     The Court concludes that the "gist or sting" of the challenged  
8     communications are aimed at procuring an electoral action or result in Clark County  
9     Family Court elections and/or made in direct connection with an issue of public interest  
10    in a place open to the public or in a public forum. See *Rosen v Tarkanian*, 453 P3d  
11    1220, 1224 (Nev. 2019). The statements were made to a public Facebook forum which  
12    is recognized in this context as a public forum. *Stark v. Lackey*, 136 Nev 38, 40, 458  
13    P.3d 342, 345-46 (2020) (Court held that a Facebook page is a public forum *citing*  
14    *Barrett v. Rosenthal*, 40 Cal.4th 33, 51 Cal.Rptr.3d 55, 146 P.3d 510, 514 n.4 (2006)  
15    and *Cross v. Facebook, Inc.*, 14 Cal.App.5th 190, 222 Cal. Rptr. 3d 250, 258 (2017));  
16    see also, *Adelson v Harris*, 133 Nev 512, 519, 402 P3d 665, 670 (2017); *Songer v*  
17    *Delucchi*, 133 Nev 290, 296, 396 P3d 826, 830 (2017). The challenged statements were  
18    made in direct connection with an issue under consideration by a legislative, executive  
19    or judicial body, or any other official proceeding authorized by law. Plaintiff's criticism of  
20    Judge Ochoa and Plaintiff's domestic disputes in the family court system were at issue.  
21    Furthermore, the statements are in direct connection with an issue, namely elections  
22    and the Clark County Family Court, of public interest in a place open to the public or in a  
23    public forum. The Declarations of Diciero and Schoen show that they investigated the  
24    factual basis of the statements at issue and that they reasonably believed the  
25    statements at issue were truthful or matters of opinion incapable of being true or false.  
26    *Pegasus v Reno Newspapers, Inc.*, 118 Nev 706, 57 P3d 82, 87 (2002) (statements of  
27    opinion cannot be made with knowledge of their falsehood because there is no such  
28    thing as a false idea.) Likewise, a statement is not defamatory if it is an exaggeration or



1 generalization that could be interpreted by a reasonable person as "mere rhetorical  
2 hyperbole." *Wellman v Fox*, 108 Nev 83, 824 P2d 208 (1992). The Plaintiff's opposition,  
3 as well as the record before this Court, fail to provide evidence contradicting the  
4 Declarations of Diciero and Schoen. The Court also concludes that the challenged  
5 statements were either expressions of opinion<sup>4</sup> or were made in good faith without  
6 knowledge of their falsehood.

7 6. The Court also finds Phillips has failed to demonstrate, with "prima facie  
8 evidence," that he has a "probability of prevailing" on his claims. See NRS 41.660(3)(c).  
9 Plaintiff did not meet this burden:

10 A. For purposes of the challenged statements, Plaintiff is a limited  
11 public figure.<sup>5</sup>

12 B. Plaintiff was a limited public figure in a public forum. As part of the  
13 on-going political discourse it was reasonable for Diciero and Schoen to rely on publicly  
14 available findings of fact from the Divorce case and TPO hearings. The challenged  
15 statements were either truthful or made without knowledge of its falsehood. The  
16 Nevada Supreme Court has emphasized that "it is not the literal truth of each word or  
17 detail used in a statement which determines whether or not it is defamatory; rather, the  
18 determinative question is whether the gist or sting of the statement is true or false."  
19 *Rosen v. Tarkanian, supra*. This prong of Nevada's anti-SLAPP statute is satisfied  
20 when the "gist or sting" of the statements is substantially true. *Id.; Pegasus, supra*. The  
21 gist or sting of the challenged statements reflects the findings of Judge Ochoa with  
22 respect to the TPO decision referenced in those findings.

23  
24  
25 <sup>4</sup> See *State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 143, 43 P.3d 233, 236 (2002)  
26 (opinions cannot support a defamation claim because a reasonable person would not treat them as  
statements of existing fact.)

27 <sup>5</sup> A limited-purpose public figure is defined as someone who voluntarily injects themselves or is thrust into  
28 a particular public controversy or public concern, thereby becoming a public figure for a limited range of  
issues. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82, 91 (2002). This determination is a  
question of law. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433 (2006).

1 C. Statements that Plaintiff is a bad lawyer, ugly, stupid, etc., are  
2 statements of opinion that cannot be deemed false and, therefore, are not actionable.  
3 *Pegasus, supra*. Courts recognize that “rhetorical hyperbole” is part of the political  
4 process. *Clifford v Trump*, 339 F Supp 3d 915, 927 (CD Cal 2018); *Reed v Gallagher*,  
5 248 Cal App 4<sup>th</sup> 841 (Cal. Ct. App. 2016); *Anzalone, supra*.

6 D. Under Nevada law, in order to establish a prima facie case of  
7 defamation, a plaintiff must prove: (1) a false and defamatory statement by a defendant  
8 concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault,  
9 amounting to at least negligence; and (4) actual or presumed damages. See *Chowdhry*  
10 *v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (citing Restatement  
11 (Second) of Torts § 558 (1977)). Plaintiff has not presented prima facie evidence that  
12 Schoen and Dicio’s statements were false because the statements were substantially  
13 true or statements of opinion or hyperbole. Plaintiff’s defamation claim fails on multiple  
14 fronts.

15 1) A statement is not defamatory if it is absolutely true, or substantially  
16 true. See *Pegasus*, 118 Nev. at 715 (2002). Further, statements of opinion  
17 cannot be made with knowledge of their falsehood because there is no such  
18 thing as a false idea. *Id.* Also, a statement is not defamatory if it is an  
19 exaggeration or generalization that could be interpreted by a reasonable person  
20 as “mere rhetorical hyperbole.” *Wellman, supra*.

21 2) Schoen and Dicio’s statements to the effect that Plaintiff had  
22 threatened to shoot up and/or blow up his child’s school (Exhibit F and Second  
23 Amended Complaint for Damages and Injunction at ¶¶ 9-27) reflect the express  
24 findings of Judge Ochoa’s Decision and Order.

25 3) Plaintiff’s defamation claim also fails because Plaintiff cannot  
26 establish prima facie evidence that Schoen and Dicio’s statements were made  
27 with fault or malice, as the statements were based on findings in the Divorce  
28 Case. As a limited public figure, Plaintiff must show actual malice, rather than



1 mere negligence. *Bongiovi v. Sullivan*, 122 Nev. 556, 572, 138 P.3d 433, 445  
2 (2006). Courts have recognized that “one who repeats what he hears from a  
3 reputable news source, with no individualized reason external to the news report  
4 to doubt its accuracy has not acted recklessly.” See *Flowers v. Carville*, 310 F.  
5 Supp. 2d 1157, 1164 (D. Nev. 2004). Here, Schoen and Diciero looked to Judge  
6 Ochoa’s Opinion and findings in the divorce case. Plaintiff cannot even establish  
7 that Schoen and Diciero acted negligently, much less with actual malice.

8 4) Plaintiff’s remaining claim for false light sounds in defamation. The  
9 nature of the grievance, rather than the form of the pleadings, determines the  
10 character of the action. See *State Farm Mutual Automobile Ins. Co. v. Wharton*,  
11 88 Nev. 183, 186, 495 P.2d 359, 361 (1972) (citing *Automobile Ins. Co v. Union*  
12 *Oil Co.*, 193 P.2d 48, 50-51 (Cal. App. 1948)). False light claims that are derived  
13 from alleged defamatory statements are derivative of defamation claims and,  
14 therefore, false light claims, along with other similar derivative torts, will stand or  
15 fall with the defamation claim. *Kapellas v. Kofman*, 459 P.2d 912, 921 n16 (Cal.  
16 1969); *Chapman v. Journal Concepts, Inc.*, 2008 U.S. Dist. LEXIS 104448 at \*58  
17 (D. Haw. 2008) (holding that additional tort claims, including false light claim,  
18 were derivative of defamation claim and, therefore, would all stand or fall with the  
19 defamation claim); *Murray v. Moyers*, 2015 U.S. Dist. LEXIS 128742 at \*10 (D.  
20 OH 2015) (holding that since claims for defamation and false light were based on  
21 same underlying alleged defamatory statements, that false light claim was  
22 subject to statute of limitations on defamation claims); *Unelko Corp. v. Rooney*,  
23 912 F.2d 1049, 1058 (9th Cir. 1990) (recognizing that claim for IIED was subject  
24 to same defense as defamation claim); *Basilius v. Honolulu Pub. Co.*, 711 F.  
25 Supp. 548, 552 (D. Haw. 1989) (describing IIED claim as “parasitic” and  
26 concluding that the claim was properly dismissed because the gravamen of the  
27 claim was based on same underlying alleged false statement). Plaintiff’s  
28 defamation and false light claims are based on the same factual allegations.



1 Accordingly, the false light claim is derivative of and superfluous to the  
2 defamation claim and Plaintiff's false light claim is not viable.

3 E. When a court grants a special anti-SLAPP motion to dismiss,  
4 defendants are also entitled as a matter of law to an award of reasonable costs and  
5 attorneys' fees. The court may also in its discretion award up to \$10,000.00 to the  
6 defendants. NRS 41.670(1)(a)-(b). Based on the record, the Court grants the requests  
7 by Schoen, Dicioero, Abrams and The Firm for their reasonable costs and attorneys'  
8 fees. Defendants shall submit their requests for reasonable costs and attorneys' fees as  
9 a motion, with points and authorities, declaration(s) and exhibits which shall be filed no  
10 later than 21 days after written notice of entry of service of these Findings of Fact and  
11 Conclusions of Law. NRCP 54(d)(2)(B)(i). Further, the Court having considered the  
12 record, fully exercises discretion and awards Defendants \$10,000 each. This award  
13 shall be entered as a judgment with the award(s) on attorney fees.

14 F. These preceding Conclusions of Law apply equally to Abrams and  
15 the Firm based on their Joinder to the Dicioero and Schoen Motion.

16 7. Plaintiff failed to specifically oppose the Joinder and Motion for Summary  
17 Judgment filed by Abrams. See Plaintiff's Opp. at 2:4; EDCR 2.20(e). "Respondeat  
18 superior liability attaches only when the employee is under the control of the employer  
19 and when the act is within the scope of employment." *Rockwell v. Sun Harbor Budget*  
20 *Suites*, 112 Nev. 1217, 1223, 925 P.2d 1175, 1179 (1996) (citing *Molino v. Asher*, 96  
21 Nev. 814, 817, 618 P.2d 878, 879 (1980)). An actionable claim on a theory of  
22 respondeat superior requires proof that (1) the actor at issue was an employee, and (2)  
23 the action complained of occurred within the scope of the actor's employment.  
24 *Rockwell*, 112 Nev. at 1223. See also, *Fowler v. Howell*, 42 Cal. App. 4th 1746, 1750-  
25 51, 50 Cal. Rptr. 2d 484 (1996) ("An employee acts within 'the scope of his employment'  
26 when he is engaged in work he was employed to perform or when an act is incident to  
27 his duty and was performed for the benefit of his employer and not to serve his own  
28 purpose.") Citing *Mazzola v. Feinstein*, 154 Cal. App. 3d 305, 311, 201 Cal. Rptr. 148



(1984)). The Declaration of Jennifer Abrams, summarized above in paragraph 15 of the Findings of Fact, shows that Plaintiff cannot prevail against Abrams and the Firm. Dicio and Schoen's actions related to the Facebook and NCW page are outside the scope of their employment. Ms. Abrams and the Firm did not ratify, authorize or approve any of the statements. Plaintiff's attempt to impose liability under NRPC 5.3(b) is likewise insufficient. Plaintiff has never consulted with Abrams and has never been a client. More importantly, a violation of the Rules of Professional Conduct is not a basis to impose civil liability. *Mainor v. Nault*, 120 Nev. 750, 768, 101 P3d 308, 320 (2004) (a violation of professional rules of responsibility does not create a private right of action); *Ricks v Dabney*, (*In re Tiffany Living Trust* 2001), 124 Nev 74, 177 P3d 1060, 1061 (2008) (same); NRPC 1.0(d) ("Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. . . . (The Rules) are not designed to be a basis for civil liability.") Plaintiff has not established with prima facie evidence a probability of prevailing on claims against Abrams and this case should be dismissed. Plaintiff further failed to file a declaration to contradict Ms. Abrams' declaration and summary judgment is proper under EDCR 2.20(e) and NRCP 56(e)(2) and (3).

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**ORDER**

**IT IS HEREBY ORDERED** that the Defendants' Special Motion to Dismiss and the Joinder are GRANTED, in entirety, pursuant to NRS 41.660 (anti-SLAPP).

**IT IS FURTHER ORDERED** the Motion for Summary Judgment by Abrams and the Firm is also GRANTED.

**IT IS FURTHER ORDERED** that Defendants Schoen and Dicio's separate Motion to Dismiss and for Summary Judgment is denied.

**IT IS FURTHER ORDERED** that Plaintiff's Second Amended Complaint is DISMISSED WITH PREJUDICE.

**IT IS FURTHER ORDERED** that all other motions not expressly decided by these Findings of Facts and Conclusions of Law are deemed moot.

**IT IS FURTHER ORDERED THAT** Defendants shall file their Motions for costs and Attorneys' fees no later than 21 days after written notice of entry of service of these Findings of Fact and Conclusions of Law.

**IT IS SO ORDERED.**

9/9/25   
Hon. Michael P. Villani, Senior Justice



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| <p>Submitted by:</p> <p>GARIN LAW GROUP</p> <p><b>G</b></p> <hr/> <p>JOSEPH P. GARIN, ESQ.<br/>         Nevada Bar No. 6653<br/>         9900 Covington Cross Drive, Suite 210<br/>         Las Vegas, Nevada 89144<br/> <a href="mailto:jgarin@garinlawgroup.com">jgarin@garinlawgroup.com</a></p> <p><i>Attorneys for Defendants Jennifer V. Abrams and The Abrams Law Firm, LLC</i></p> | <p>Approved:</p> <p>LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</p> <p><i>/s David R. Clayson</i></p> <hr/> <p>DAVID R. CLAYSON<br/>         Nevada Bar No. 2826<br/>         6385 S. Rainbow Blvd., Suite 600<br/>         Las Vegas, NV 89119<br/> <a href="mailto:David.Clayson@lewisbrisbois.com">David.Clayson@lewisbrisbois.com</a><br/> <i>Attorneys for Defendants,<br/>         Dave Schoen and Mark Diciro</i></p> |
| <p>Approved:</p> <p>REFUSED TO SIGN</p> <hr/> <p>T. MATTHEW PHILLIPS, ESQ.<br/>         4894 W. Lone Mtn. Rd., No. 132<br/>         Las Vegas, NV 89130<br/> <a href="mailto:tmatthewphillips@aol.com">tmatthewphillips@aol.com</a></p> <p><i>Plaintiff in Propria Persona</i></p>   |  |

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Shantei O'Dell