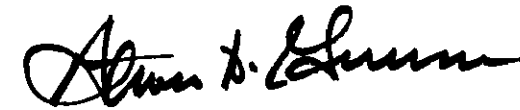


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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual
Plaintiff,

v.

DIRTY WORLD, LLC, a Delaware limited
liability company, d/b/a THEDIRTY.COM;
HOOMAN KARAMIAN, an individual, d/b/a
Nik Richie; TMZ PRODUCTIONS, INC., a
California Corporation; DOES I-X inclusive; and
ROE BUSINESS ENTITIES I –X, inclusive

Defendants.

Case No.: A-15-722801-C
Dept. No.: XXXII

**PLAINTIFF'S OPPOSITION TO ANTI-
SLAPP SPECIAL MOTION TO DISMISS
UNDER NRS 41.660**

Date of Hearing: November 17, 2015
Time of Hearing: 9:00 a.m.

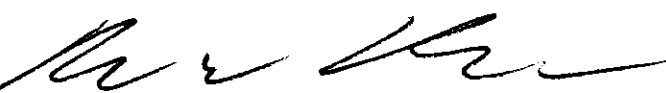
Plaintiff DAN BRANDON BILZERIAN ("Plaintiff"), by and through his attorney of record, the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, hereby files his Opposition to Anti-Slapp Special Motion to Dismiss Under NRS 41.660 (the "Opposition"). As described in detail below, Defendant TMZ PRODUCTIONS, INC.'s ("TMZ") Anti-Slapp Special Motion to Dismiss Under NRS 41.660 (the "Motion") must be denied in its entirety because: (1) as an initial matter, pursuant to NRS 41.660, the Motion is moot, as the Court was not able to make a decision on the Motion within seven judicial days, because TMZ failed to submit an order shortening time request to hear the Motion; (2) given that this case revolves around defamation per se, and not a First Amendment rights issue, Plaintiff has more than alleged enough facts to survive a motion to dismiss; (3) even if this Court applies NRS Chapter

1 41 to this action, TMZ's Motion must still be denied in its entirety because the publication(s) at
2 issue were not in furtherance of the right to free speech, and Plaintiff has established, by clear
3 and convincing evidence, a probability of prevailing on his claims hereto. As such, the Motion
4 must be denied in its entirety, and Plaintiff shall be awarded his reasonable attorneys' fees and
5 costs in responding to the Motion pursuant to NRS 41.670(2), as well as any other relief the
6 Court deems proper pursuant to NRS 41.670(3).

7 This Opposition is further supported by the below Memorandum of Points and
8 Authorities, the exhibits attached hereto and incorporated by reference, together with the
9 pleadings and papers on file herein, and such oral argument that may be adduced at a hearing of
10 this matter.

11 Dated this 26th day of October, 2015.

12 **HOLLEY, DRIGGS, WALCH,**
13 **FINE, WRAY, PUZEY & THOMPSON**

14 

15 BRIAN W. BOSCHEE, ESQ. (NBN 7612)
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21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 The theme throughout the Motion is that TMZ is allowed to exercise its First Amendment
24 rights. According to TMZ, as long as TMZ is reporting on a lawsuit that Plaintiff filed himself,
25 TMZ is allowed to report on anything it wants to related to the lawsuit. First and foremost
26 however, this is not a First Amendment rights issue. This case is about TMZ publishing
27 defamatory statements on its website, which has harmed Plaintiff's personal and business
28 reputations, to the amount of at least \$8.455 million. TMZ's publication is, in its simplest form,
defamation per se. This is what Plaintiff has alleged in its First Amended Complaint, and the
evidence will demonstrate, after discovery, that Plaintiff has been damaged, Plaintiff has lost

many business opportunities, and Plaintiff continues to lose many business opportunities because of TMZ's unauthorized publications.

Second, and what TMZ clearly does not want this Court to hear, is that TMZ did not simply report on Plaintiff filing a lawsuit against the other defendants hereto. TMZ chose to publish specifics about a defamatory statement, including the specific disease that the other defendants hereto improperly asserted Plaintiff has transmitted, and then compounded this defamation by providing commentary about the statements and the action. If TMZ simply reported that Plaintiff filed a defamation lawsuit, TMZ would not be in this dispute. Rather, because of its own actions, and because it chose to expand and comment on the specific disease that the other defendants are claiming Plaintiff had and transmitted, TMZ has no one to blame but itself in getting into this situation. Therefore, and based on the following, the Motion must be denied in its entirety, and Plaintiff shall be awarded his reasonable attorneys' fees and costs in responding to the Motion pursuant to NRS 41.670(2), as well as any other relief the Court deems proper pursuant to NRS 41.670(3).

II. STATEMENT OF RELEVANT FACTS

The below Statement of Facts in this Section are the only relevant facts hereto. Thus, Plaintiff, unless stated in this Section, disputes each and every one of the facts noted in TMZ's "Factual Background" on pages 4-8 of its Motion. Additionally, all of the facts noted in TMZ's "Factual Background" on pages 4-8 of its Motion are irrelevant to this Court's determination, at this time, given that this is not a First Amendment rights case, but rather, a defamation per se case.

As such, and regardless of Plaintiff's apparent celebrity status, on or about August 1, 2015, a story appeared on Defendants Dirty World, LLC d/b/a Thedirty.com and Hooman Karamian aka Nik Richie aka Nik Lamas-Richie's (collectively, the "Dirty World Defendants") website wherein a young woman ("Jane Doe I") misrepresented that she had engaged in sexual relations with Plaintiff and that Plaintiff had transmitted a sexually-transmitted disease to her.¹

¹ See First Amended Complaint filed on August 11, 2015 at pg. 2, ¶8; see also a copy of this August 1, 2015 publication, attached to the Motion as Exhibit "13".

1 This aforementioned statement was submitted to the Dirty World Defendants' website by Jane
 2 Doe I, but it was Defendant Hooman Karamian aka Nik Richie aka Nik Lamas-Richie
 3 ("Defendant Richie") who found the statement and made the determination, on behalf of the
 4 Dirty World Defendants, to publish the false and defamatory statement, along with photos of
 5 several young women, presumably including Jane Doe I, on the website, which is accessible to
 6 anyone with access to the internet.² Notably however, Plaintiff has never had sexual relations
 7 with any of the women from this photograph, nor has Plaintiff ever had or transmitted the
 8 sexually-transmitted disease attributed to him by the Dirty World Defendants and Jane Doe I.
 9 Thus, millions of people were able to see these untrue defamatory statements. Defendant Richie
 10 also commented on this defamatory statement, thereby adding to the false and defamatory
 11 information on the Dirty World Defendants' website.³

12 Thereafter, and directly because of the Dirty World Defendants' actions, Plaintiff was
 13 forced to file a Complaint against the Dirty World Defendants on August 7, 2015.⁴ Notably, the
 14 Complaint fails to note which sexually-transmitted disease is attributed to him according to the
 15 Dirty World Defendants and Jane Doe I.⁵

16 Without doing any investigatory work, on or about August 10, 2015, which was only
 17 three days after the Complaint was filed, TMZ published a story regarding the instant action.⁶ In
 18 this August 10, 2015 publication, TMZ posted the same untrue, defamatory statements regarding
 19 the Plaintiff through various media.⁷ Notably, even though Plaintiff did not articulate any
 20 specifics about the sexually-transmitted disease in his Complaint, TMZ chose to publish the
 21 specifics of this defamatory statement, including the specific disease that the Dirty World
 22 Defendants improperly assert Plaintiff has and transmitted, and then compounded the defamation

23 ² See First Amended Complaint at pg. 2, ¶9.

24 ³ See *id.* at pg. 2, ¶10.

25 ⁴ See *generally* Complaint filed on August 7, 2015.

26 ⁵ See *id.*

27 ⁶ See First Amended Complaint at pg. 3, ¶11; *see also* a copy of this August 10, 2015
 28 publication, attached to the Motion as Exhibit "14". Plaintiff is citing to an exhibit in TMZ's
 Motion because, once again, by filing the August 10, 2015 article, TMZ is once again defaming
 Plaintiff on a public forum.

⁷ See First Amended Complaint at pg. 3, ¶11; *see also* Exhibit "14" to the Motion.

by providing commentary about the statements and the action.⁸ Similar to the Dirty World Defendants, TMZ has a history of targeting the Plaintiff in its various media.⁹

Given the above, and solely because of TMZ's actions in publishing defamatory statements about Plaintiff, Plaintiff was forced to file a First Amended Complaint, adding in TMZ as a party.¹⁰ In the First Amended Complaint, the two claims for relief against the Dirty World Defendants and TMZ are for: (1) defamation per se; and (2) preliminary and permanent injunction.¹¹

On or about October 9, 2015, Plaintiff served his initial disclosures in this matter.¹² Besides listing his witnesses and documents, in his initial disclosures, in his damages' calculations, Plaintiff states that, because of the defendants' actions hereto, "[t]hese defamatory published statements have harmed Plaintiff's personal and business reputations. More specifically, these defamatory published statements have harmed Plaintiff's business reputations, relationships, and contracts (or contract negotiations) with several entities, entities that can only be disclosed with a protective order in place in this action. Even though the precise amount of damages is difficult to ascertain at this moment, as of date, the amount due and owing to Plaintiff because of Defendants' actions hereto . . . is at least \$8.455 million, plus punitive damages and reasonable attorneys' fees and costs."¹³ Given that this case is in its infancy stages, and initial disclosures were just served, there has been no discovery commenced in this case. This also makes sense since there is not a joint case conference report on file yet.

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⁸ See First Amended Complaint at pg. 3, ¶11; see also Exhibit "14" to the Motion.

⁹ See First Amended Complaint at pg. 3, ¶11.

¹⁰ See generally *id.*

¹¹ See generally *id.*

¹² See a true and correct copy of Plaintiff's initial disclosures, attached hereto as **Exhibit "1"**.

¹³ See *id.* at pg. 4.

III. LEGAL ARGUMENT

A. As an Initial Matter, Pursuant to NRS 41.660, the Motion is Moot because the Court was not able to Make a Decision on the Motion within Seven Judicial Days, because of TMZ's Failure to Submit an Order Shortening Time Request on the Motion.

TMZ filed this Motion pursuant to NRS 41.660. Even though Plaintiff does not believe that this case revolves around Anti-Slapp, but rather defamation per se issues, for purposes of this section only (Section III.A), Plaintiff will assume that this is an Anti-Slapp case. In relevant part, NRS 41.660(3)(f) states that, "[i]f a special motion to dismiss is filed pursuant to subsection 2, the court shall . . . **rule on the motion within 7 judicial days after the motion is served upon the plaintiff.**" Nev. Rev. Stat. §41.660(3)(f) (emphasis added).

On or about October 12, 2015, TMZ filed and served the Motion, pursuant to NRS 41.660. Thus, and pursuant to the plain language of the statute, this Court had to rule on the Motion by October 26, 2015, which would be seven judicial days, plus mailing time. However, the Court, solely because of TMZ' actions, never ruled on the Motion on or before October 26, 2015, and the Motion is scheduled to be heard by the Court on November 17, 2015.

Notably absent from the Motion was an order shortening time request by TMZ, requesting that this Court rule on the Motion (i.e. have a hearing on the Motion) within seven judicial days. If TMZ requested an order shortening time and requested that the Motion be heard within seven judicial days, then the Court would have had an opportunity to hear and review the Motion, any opposition to the Motion, any reply to the Motion, and had a hearing within seven judicial days. Yet, TMZ made no effort to shorten the time for consideration of the Motion. Solely because of TMZ's error to not include an order shortening time request in their Motion, this Court was unable to rule on the Motion within seven judicial days. Thus, as an initial matter, this Court cannot rule on the Motion now, and therefore, the Motion is moot.

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B. Given that this Case Revolves Around Defamation Per Se, and not a First Amendment Rights Case, Plaintiff Has More than Alleged Enough Facts to Survive A Motion to Dismiss.

1. Motion to Dismiss under NRCP 12(b)(5) Standard.

Within the context of a motion to dismiss for failure to state a claim, “a district court must construe the complaint liberally and draw every fair inference in favor of the” non-moving party. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993). Therefore, for purposes of a Rule 12(b)(5) motion, “[a]ll factual allegations of the complaint must be accepted as true.” *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). As such, a claim for relief “should not be dismissed unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to relief.” *Cohen*, 119 Nev. at 22, 62 P.3d at 734; *see also Simpson*, 113 Nev. at 190, 929 P.2d at 967. Additionally, “[t]he test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested.” *Vacation Vill., Inc. v. Hitachi Am., LTD*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994); *see also Breliant*, 109 Nev. at 846, 858 P.2d at 1260. Thus, a claim for relief will not be dismissed for failure to state a claim unless it appears beyond a doubt that the movant could prove no set of facts which, if accepted by the trier of fact, would entitle it to relief. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

2. Plaintiff has States a Valid Claim for Defamation Per Se.

In Nevada, “[a] defamation claim requires demonstrating (1) a false and defamatory statement of fact by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.” *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005); *see also Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (citations omitted). Additionally, the Nevada Supreme Court has previously stated that “[t]he four types of slander historically designated as defamatory *per se* are false statements made involving: (1) the

1 imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the
 2 person's lack of fitness for trade, business, or profession; and (4) imputing serious sexual
 3 misconduct." *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993)
 4 (overruled on other grounds by *Pope*, 121 Nev. at 317, 114 P.3d at 283).

5 As such, "if the defamatory communication imputes a 'person's lack of fitness for trade,
 6 business, or profession' or tends to injure the plaintiff in his or her business, it is deemed
 7 defamation per se and damages are presumed." *Clark County*, 125 Nev. at 385, 213 P.3d at 503
 8 (citations omitted). In other words, "[n]o proof of any actual harm to reputation or any other
 9 damage is required for the recovery of damages for these four kinds of slander . . . Otherwise
 10 stated, proof of the defamation itself is considered to establish the existence of some damages."
 11 *K-Mart Corp.*, 109 Nev. at 1192-93, 866 P.2d at 282.

12 With slander per se, the plaintiff is entitled to presumed, general damages.
 13 General damages are those that are awarded for loss of reputation, shame,
 14 mortification and hurt feelings. General damages are presumed upon proof of the
 15 defamation alone because that proof establishes that there was an injury that
 16 damaged plaintiff's reputation and because of the impossibility of affixing an
 exact monetary amount for present and future injury to the plaintiff's reputation,
 wounded feelings and humiliation, loss of business, and any consequential
 physical illness or pain.

17 *Bongiovi, v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006) (citations omitted).

18 Accepting all factual allegations of the First Amended Complaint as true, which this
 19 Court must when considering a motion to dismiss, Plaintiff has more than adequately alleged his
 20 claim for defamation per se against TMZ. In other words, TMZ is clearly on notice of the nature
 21 and basis of the defamation per se claim against it. First, Plaintiff has alleged that TMZ
 22 published a false and defamatory statement concerning Plaintiff. It has alleged that Plaintiff had
 23 and transmitted a sexual disease, when in fact, Plaintiff has not and never had the sexually-
 24 transmitted disease. TMZ never investigated this matter before making its publication and either
 25 knew or should have known that the defamatory statements were not true prior to publishing
 26 them. Second, the publication, which is available to countless millions of people with access to
 27 the internet, and was published to these millions of people, was unprivileged. Third, TMZ is at
 28

1 fault for its own publication, as it was the one to publish this untrue story, and knew or should
 2 have known that the defamatory statements were not true prior to publishing them.

3 Fourth, there are actual damages here, as well as presumed damages. These defamatory
 4 published statements have harmed Plaintiff's personal, professional, and business reputations, to
 5 the tune of millions of dollars. At this stage, Plaintiff has alleged that because of the defendants'
 6 actions, including TMZ, Plaintiff has been harmed in the amount of at least \$8.455 million, plus
 7 punitive damages and reasonable attorneys' fees and costs.¹⁴ However, this number will more
 8 than likely increase, given that this case is at its inception and discovery has yet to commence.
 9 Plus, Plaintiff's damages are still accruing due to ongoing damages from the defamatory
 10 statements remaining on the internet.

11 As such, given the motion to dismiss standard, and its liberal nature of accepting all
 12 allegations in the pleading as true, Plaintiff has more than alleged a valid claim for defamation
 13 per se against the TMZ in this action.

14 **C. Even if this Court Applies NRS Chapter 41 to this Action, TMZ's Motion Must Still**
 15 **be Denied in its Entirety.**

16 **1. Legal Standard under NRS 41.660.**

17 As correctly noted by TMZ, if a special motion to dismiss is filed under NRS 41.660, the
 18 court shall conduct a two-part analysis. First, this Court must "[d]etermine whether the moving
 19 party has established, by a preponderance of the evidence, that the claim is based upon a good
 20 faith communication in furtherance of the right to petition or the right to free speech in direct
 21 connection with an issue of public concern." NEV. REV. STAT. §41.660(3)(a). Second, and only
 22 if defendant meets this burden, the court must "[d]etermine whether the plaintiff has established
 23 by clear and convincing evidence a probability of prevailing on the claim." NEV. REV. STAT.
 24 §41.660(3)(b).

25 Further, a "district court shall treat the special motion to dismiss as a motion for summary
 26 judgment." *Jones v. Douglas County Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009);
 27 *see also Stubbs v. Strickland*, ___ Nev. ___, 297, P.3d 326, 329 (2013). As such, and in relation to

28 ¹⁴ See **Exhibit "1"**.

a special motion to dismiss pursuant to NRS 41.660, a party is only entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” NEV. R. CIV. P. 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005); *see also Jones*, 125 Nev. at 753-54, 219 P.3d at 1281. In *Wood*, the Nevada Supreme Court abrogated the “slightest doubt” standard and adopted the above standard as employed by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). *See Wood*, 121 Nev. at 731, 121 P.3d at 1031.

The party moving for summary judgment has the initial burden of showing absence of a genuine issue of material fact. *See Celotex Corp.*, 477 U.S. at 323. After the movant has presented evidence sufficient to satisfy that burden, the burden shifts to the respondent to set forth specific facts demonstrating that there is a genuine issue of material fact. *See Maine v. Stewart*, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993). “A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (citations omitted).

“While the pleadings and other proof must be construed in a light most favorable to the nonmoving party,” the nonmoving party cannot “simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party’s favor.” *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (citations omitted). The “non-moving party [is required,] by affidavit or otherwise, [to] set forth specific facts demonstrating the existence of a genuine issue [of fact] for trial or have summary judgment entered against him.” *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.3d 588, 591 (1992).

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1 **2. Pursuant to NRS 41.660(3)(a), the Motion Must be Denied because TMZ has not**
 2 **Established, by Preponderance of the Evidence, that Plaintiff's Claim is based**
 3 **upon a Good Faith Communication in Furtherance of the Right to Petition or**
 the Right to Free Speech in Direct Connection with an Issue of Public Concern.

4 As noted above, under NRS 41.660(3)(a), this Court must "[d]etermine whether the
 5 moving party has established, by a preponderance of the evidence, that the claim is based upon a
 6 good faith communication in furtherance of the right to petition or the right to free speech in
 7 direct connection with an issue of public concern." NEV. REV. STAT. §41.660(3)(a). NRS
 8 41.637 defines "[g]ood faith communication in furtherance of the right to petition or the right to
 9 free speech in direct connection with an issue of public concern" as any:

- 10 1. Communication that is aimed at procuring any governmental or electoral
 action, result or outcome;
- 11 2. Communication of information or a complaint to a Legislator, officer or
 12 employee of the Federal Government, this state or a political subdivision of this
 13 state, regarding a matter reasonably of concern to the respective governmental
 entity;
- 14 3. Written or oral statement made in direct connection with an issue under
 15 consideration by a legislative, executive or judicial body, or any other official
 proceeding authorized by law; or
- 16 4. Communication made in direct connection with an issue of public interest
 in a place open to the public or in a public forum,
 ↳ which is truthful or is made without knowledge of its falsehood.

17 Here, first and foremost, none of the four communications noted in NRS 41.637 apply
 18 because the communication, or publication, made by TMZ was certainly not truthful and was not
 19 made without knowledge of tis falsehood. Plaintiff has not and never had the alleged sexually-
 20 transmitted disease. Therefore, the allegation is not truthful. TMZ never investigated this matter
 21 before making its publication and either knew or should have known that the defamatory
 22 statements were not true prior to publishing them. Thus, none of the four communications noted
 23 above are applicable.

24 Notwithstanding this fact, clearly NRS 41.637(1)-(3) do not apply to this situation, and
 25 TMZ even admits that, as the only argument it makes in its Motion pursuant to this statute is
 26 under NRS 41.647(4).¹⁵ Yet, NRS 41.647(4) does not apply here. Plaintiff admits that the
 27

28 ¹⁵ See Mot. at pgs. 10-12.

defamed communication was made “in a place open to the public or in a public forum.” NEV. REV. STAT. §41.647(4). TMZ published the defamatory statements to countless millions of people over the internet, defaming and damaging Plaintiff to the tune of millions of dollars.

Unlike TMZ asserts however in its Motion, TMZ’s communication/publication was certainly not “made in direct connection with an issue of public interest.” *Id.* Alleging that Plaintiff has a sexually-transmitted disease is not an issue of public interest. Rather, even if this allegation was true, which it is not, this is a private matter of Plaintiff. The entire world should not be privy to this information, if it was true, which again, Plaintiff denies. This private matter detailing the type of sexual disease Plaintiff apparently has, which Plaintiff actually does not have, is certainly not a notion that the world should know. Since TMZ broadcasted this false information to millions of people, it has only itself to blame for putting a private matter into the public arena. As such, TMZ has certainly not met its burden under 41.660(3)(a).

3. Pursuant to NRS 41.660(3)(b), the Motion Must be Denied because Plaintiff has Established, by Clear and Convincing Evidence, a Probability of Prevailing on his Claim for Defamation Per Se against TMZ.

If TMZ has met its burden under NRS 41.660(3)(a), which Plaintiff vehemently would disagree with for the reasons articulated in the previous section, Plaintiff has established, by clear and convincing evidence at this early stage in the litigation, there is a probability of prevailing on his claim for defamation per se against TMZ.

As noted previously in the Motion, in Nevada, “[a] defamation claim requires demonstrating (1) a false and defamatory statement of fact by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.” *Pope*, 121 Nev. at 315, 114 P.3d at 282; *see also Clark County*, 125 Nev. at 385, 213 P.3d at 503 (citations omitted). Additionally, the Nevada Supreme Court has previously stated that “[t]he four types of slander historically designated as defamatory *per se* are false statements made involving: (1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the person’s lack of fitness for trade, business, or profession; and (4) imputing serious sexual misconduct.” *K-Mart Corp.*,

1 109 Nev. at 1192, 866 P.2d at 282 (overruled on other grounds by *Pope*, 121 Nev. at 317, 114
2 P.3d at 283). As such, “if the defamatory communication imputes a ‘person’s lack of fitness for
3 trade, business, or profession’ or tends to injure the plaintiff in his or her business, it is deemed
4 defamation per se and damages are presumed.” *Clark County*, 125 Nev. at 385, 213 P.3d at 503
5 (citations omitted). In other words, “[n]o proof of any actual harm to reputation or any other
6 damage is required for the recovery of damages for these four kinds of slander . . . Otherwise
7 stated, proof of the defamation itself is considered to establish the existence of some damages.”
8 *K-Mart Corp.*, 109 Nev. at 1192-93, 866 P.2d at 282.

9 This case is at its inception. There have been complaints filed, answers filed, and initial
10 disclosures disclosed. No depositions have been taken. No written discovery has been served or
11 answered. No joint case conference report is on file. No discovery dates have been entered by
12 this Court. No trial date has been set by this Court. At this stage in the litigation, the only
13 allegations are set forth in the First Amended Complaint. As such, since Plaintiff, at this stage,
14 believes that all of the allegations set forth in the First Amended Complaint are true and will be
15 proven through discovery, Plaintiff has demonstrated, by clear and convincing evidence, a
16 probability of prevailing on his claim for defamation per se against TMZ.

17 First, Plaintiff has alleged that TMZ published a false and defamatory statement
18 concerning Plaintiff. It is alleged that Plaintiff had and transmitted a sexual disease, when in fact,
19 Plaintiff has not and never had the sexually-transmitted disease. TMZ never investigated this
20 matter before making its publication and either knew or should have known that the defamatory
21 statements were not true prior to publishing them. Through discovery, the Plaintiff will
22 demonstrate that TMZ’s publication, concerning Plaintiff, is false and defamatory. Second, the
23 publication, which is available to countless millions of people with access to the internet, and
24 was published to these millions of people, was unprivileged. Again, through discovery, Plaintiff
25 will be able to further prove this element. Third, TMZ is at fault for its own publication, as it
26 was the one to publish this untrue story, and knew or should have known that the defamatory
27 statements were not true prior to publishing them. There is no question that TMZ was the one to
28 publish the August 10, 2015 publication and knew, or should have known, it was publishing a

1 defamatory statement. Again, discovery will further demonstrate this as well. Fourth, and since
 2 these defamatory published statements have harmed Plaintiff's personal, professional, and
 3 business reputations, to the tune of millions of dollars, there are damages here, presumed
 4 damages. As such, there is no question that Plaintiff has established, by clear and convincing
 5 evidence, a probability of prevailing on his claim for defamation per se against TMZ.

6 In the Opposition, TMZ argues that this prong is not met for a few reasons. All of TMZ's
 7 arguments lack merit. First, TMZ argues that "there is nothing untruthful in TMZ's article."¹⁶
 8 However, this is not true. TMZ's article noted that Plaintiff filed a lawsuit against the Dirty
 9 World Defendants **and** that Plaintiff had a sexually-transmitted disease. Thus, TMZ published a
 10 false and defamatory statement, namely that Plaintiff has a sexually-transmitted disease, when in
 11 fact, Plaintiff has not and never had the sexually-transmitted disease. TMZ did not "simply
 12 [make] an accurate report that [Plaintiff] claimed that the statements defamed him."¹⁷ Rather, as
 13 soon as TMZ published the notion regarding a sexually-transmitted disease, it published a false
 14 and defamatory statement.

15 Second, TMZ has an extensive analysis on why its article is privileged as a fair report,
 16 including the notion that it is privileged because it involves judicial proceedings.¹⁸ However,
 17 this notion is inapplicable here. For one, TMZ published the defamatory comments on its
 18 website, which is available to countless millions of people with access to the internet, and was
 19 published to these millions of people. Moreover, TMZ's article noted that Plaintiff filed a
 20 lawsuit against the Dirty World Defendants **and** that Plaintiff had a sexually-transmitted disease.
 21 If TMZ simply noted that Plaintiff filed a lawsuit, TMZ's analysis would be more applicable.
 22 Yet, TMZ went above and beyond and noted that Plaintiff had a sexually-transmitted disease.
 23 As such, TMZ's arguments regarding privilege relating to judicial proceedings have to be
 24 irrelevant here, as TMZ's actions included much more than just reporting on a judicial
 25 proceeding (i.e. a filing of a complaint).

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 27 ¹⁶ See Mot. at pg. 13, l. 16.

28 ¹⁷ See *id.* at pg. 13, ll. 21-22.

¹⁸ See *id.* at pgs. 14-15.

Third, TMZ argues extensively that since Plaintiff is a public figure, TMZ cannot be liable if there is no actual malice here.¹⁹ Yet, being a public figure and showing actual malice is irrelevant to this dispute. As noted above in this section, there are four elements in proving defamation per se in Nevada; being a public figure and actual malice are not evident in any of these elements. In other words, whether or not Plaintiff is a public figure is irrelevant to this Court's inquiry in deciding whether Plaintiff has a valid claim for relief for defamation per se. Additionally, whether or not actual malice is evident is also irrelevant to this Court' inquiry. This is especially the case since damages are presumed in defamation per se case when the statements involve/harm Plaintiff's personal, professional, and business reputations, which is the case here.

However, even if actual malice was an element, which it is not, Plaintiff still has asserted that, "TMZ has a history of targeting the Plaintiff in its various media."²⁰ Thus, Plaintiff asserts that there was actual malice here, given the long standing relationship between Plaintiff and TMZ and its targeting of Plaintiff.²¹ Additionally, TMZ never investigated this matter before making its publication and either knew or should have known that the defamatory statements were not true prior to publishing them. In other words, TMZ failed to investigate and recklessly, and maliciously, published the defamatory article. Again, this is actual malice, even though this is not one of the Nevada elements of defamation per se.

As such, despite TMZ's arguments to the contrary, and as noted above, there is no question that Plaintiff has established, by clear and convincing evidence, a probability of prevailing on his claim for defamation per se against TMZ. Thus, the Motion must be denied in its entirety.

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¹⁹ See *id.* at pgs. 15-20.

²⁰ First Amended Complaint at pg. 3, ¶11.

²¹ See *id.* at pg. 3, ¶13

D. If this Court Denies the Motion, Plaintiff is Entitled to its Fees and Costs for Having to Respond to the Motion.

NRS 41.670(2) states, “[i]f the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney’s fees incurred in responding to the motion.” Additionally, NRS 41.670(3) states, “[i]n addition to reasonable costs and attorney’s fees awarded pursuant to subsection 2, the court may award: (a) an amount of up to \$10,000; and (b) any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.”

First and foremost, the Motion must be denied, because the Court has not ruled on the Motion within seven judicial days, and TMZ made no effort to shorten the time for consideration of the Motion (*see* Section III.A above). Second, for the reasons described above, mainly that Plaintiff has adequate notice of the defamation per se and that this case is truly a defamation per se case, and not a First Amendment rights case, the Motion must be denied as well. As such, Plaintiff asserts that the Motion was both frivolous and vexatious. Rather than proceeding with discovery in this action, TMZ has filed a Motion to stall this case, essentially before it even begun. This is especially true because, if this was not a frivolous or vexatious motion, the Dirty World Defendants would have either filed their own motion pursuant to NRS Chapter 41, or would have joined in the instant Motion.

Given the above then, and if this Court denies the Motion, pursuant to NRS 41.670(2), this Court shall award Plaintiff its attorneys’ fees and costs in responding to the Motion. Plaintiff asserts that its reasonable costs and attorneys’ fees would be approximately \$4,000.00 for having to review the Motion, draft an opposition to the Motion, review a reply to the Motion, and then prepare and attend for the hearing on the Motion. Additionally, pursuant to NRS 41.670(3), to punish and deter TMZ from filing a similar motion in another case, wasting judicial resources, Plaintiff respectfully requests that it be awarded \$10,000.00, as well as any additional relief the Court deems proper.

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IV. CONCLUSION

Accordingly, and based upon the above, Plaintiff respectfully request that this Court deny the Motion in its entirety. This Court should not let TMZ get away with this unauthorized and defamatory publication of Plaintiff, which has harmed Plaintiff's personal and business reputations. At this early stage of this litigation, and when discovery has not even commenced, this Court should not dismiss the action against TMZ. Therefore, and based on the foregoing, the Motion must be denied in its entirety, and Plaintiff shall be awarded his reasonable attorneys' fees and costs in responding to the Motion pursuant to NRS 41.670(2), as well as any other relief the Court deems proper pursuant to NRS 41.670(3).

Dated this 26th day of October, 2015.

**HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON**



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WILLIAM N. MILLER, ESQ. (NBN 11658)
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the PLAINTIFF'S OPPOSITION TO ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660 was served in accordance with Administrative Order 14-2, this ____ day of October, 2015, addressed to the following:

Lewis Brisbois Bisgaard & Smith LLP

Contact

Email

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Josh.Aicklen@lewisbrisbois.com

Pamela January

Pamela.January@lewisbrisbois.com

Paul Shpirt

paul.shpirt@lewisbrisbois.com

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Randazza Legal Group

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Marc J. Randazza

ecf@randazza.com

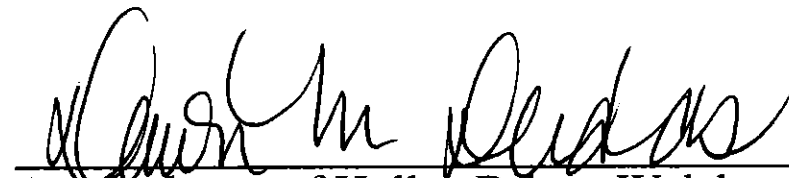

An employee of Holley Driggs Walch
Fine Wray Puzey & Thompson

EXHIBIT 1

EXHIBIT 1

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5 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
6 Telephone: 702/791-0308
Facsimile: 702/791-1912
7 Attorneys for Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 DAN BRANDON BILZERIAN, an Individual
11 Plaintiff,

12 v.

13 DIRTY WORLD, LLC, a Delaware limited
liability company, d/b/a THEDIRTY.COM;
14 HOOMAN KARAMIAN, an individual, d/b/a
Nik Richie; TMZ PRODUCTIONS, INC., a
15 California Corporation; DOES I-X inclusive; and
ROE BUSINESS ENTITIES I -X, inclusive

16 Defendants.

Case No.: A-15-722801-C
Dept. No.: XXXII

PLAINTIFF'S EARLY CASE
CONFERENCE EXCHANGE OF
INFORMATION, DOCUMENTS AND
LIST OF PERSONS WITH KNOWLEDGE
PURSUANT TO NRCP 16.1

17 Plaintiff DAN BRANDON BILZERIAN ("Plaintiff"), by and through his attorneys of
18 record, the law firm of Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, hereby submits
19 the following information for the purpose of this Early Case Conference Exchange of
20 Information, Documents and List of Persons with Knowledge Pursuant to NRCP 16.1.

21 DOCUMENTS

22 Pursuant to NRCP 16.1(a)(1)(B), Plaintiff hereby produces the following documents:

- 23 1. Documents disclosed on the attached CD, which are screenshots/video of
24 publications by Defendants.
25 2. Any and all non-confidential letter correspondences between counsel(s) in this
26 matter.
27 3. Any and all pleadings and other documents filed in this action.
28

1 4. Any and all documents identified by all other parties.

2 5. Plaintiff reserves the right to supplement this list of documents as more
3 information becomes known and as discovery progresses in this matter.

4 **WITNESSES**

5 Pursuant to NRCP 16.1(a)(1)(A), Plaintiff discloses the following individuals who are
6 believed to have knowledge of the events and circumstances surrounding the subject matter of
7 this action:

8 1. DAN BRANDON BILZERIAN
9 c/o Brian W. Boschee, Esq. and Kimberly P. Stein, Esq.
10 Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
11 400 South Fourth Street, Third Floor
12 Las Vegas, Nevada 89101
13 702-791-0308

14 DAN BRANDON BILZERIAN is expected to provide testimony regarding the facts and
15 circumstances at issue in this action.

16 2. MO MOSTASHARI
17 c/o Brian W. Boschee, Esq. and Kimberly P. Stein, Esq.
18 Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
19 400 South Fourth Street, Third Floor
20 Las Vegas, Nevada 89101
21 702-791-0308

22 MO MOSTASHARI is expected to provide testimony regarding the facts and
23 circumstances at issue in this action.

24 3. KEVIN WOODWARD
25 c/o Brian W. Boschee, Esq. and Kimberly P. Stein, Esq.
26 Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
27 400 South Fourth Street, Third Floor
28 Las Vegas, Nevada 89101
702-791-0308

KEVIN WOODWARD is expected to provide testimony regarding the facts and
circumstances at issue in this action.

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2 4. **TIM YALE**
3 c/o Brian W. Boschee, Esq. and Kimberly P. Stein, Esq.
4 Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
5 400 South Fourth Street, Third Floor
6 Las Vegas, Nevada 89101
7 702-791-0308

8 TIM YALE is expected to provide testimony regarding the facts and circumstances at
9 issue in this action.
10

- 11 5. **GREG BAROTH**
12 c/o Brian W. Boschee, Esq. and Kimberly P. Stein, Esq.
13 Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson
14 400 South Fourth Street, Third Floor
15 Las Vegas, Nevada 89101
16 702-791-0308

17 GREG BAROTH is expected to provide testimony regarding the facts and circumstances
18 at issue in this action.
19

- 20 6. **Person Most Knowledgeable of DIRTY WORLD, LLC d/b/a THEDIRTY.COM**
21 c/o Josh Cole Aicklen, Esq. and Paul A. Shpirt, Esq.
22 Lewis Brisbois Bisgaard & Smith, LLP
23 6385 S. Rainbow Boulevard, Suite 600
24 Las Vegas, Nevada 89118
25 702-893-3383

26 The Person Most Knowledgeable of DIRTY WORLD, LLC d/b/a THEDIRTY.COM is
27 expected to provide testimony regarding the facts and circumstances at issue in this action.
28

- 29 7. **HOOMAN KARAMIAN aka Nik Richie aka Nik Lamas-Richie**
30 c/o Josh Cole Aicklen, Esq. and Paul A. Shpirt, Esq.
31 Lewis Brisbois Bisgaard & Smith, LLP
32 6385 S. Rainbow Boulevard, Suite 600
33 Las Vegas, Nevada 89118
34 702-893-3383

35 HOOMAN KARAMIAN aka Nik Richie aka Nik Lamas-Richie is expected to provide
36 testimony regarding the facts and circumstances at issue in this action.
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8. Person Most Knowledgeable of TMZ PRODUCTIONS, INC.
c/o Marc J. Randazza, Esq., Ronald D. Green, Esq. and Alex J. Shepard, Esq.
Randazza Legal Group, PLLC
3625 S. Town Center Drive, Suite 150
Las Vegas, Nevada 89135
702-420-2001

The Person Most Knowledgeable of TMZ PRODUCTIONS, INC. is expected to provide testimony regarding the facts and circumstances at issue in this action.

Any and all witnesses identified by all other parties. Additionally, Plaintiff reserves the right to supplement this list of witnesses as more information becomes known and as discovery progresses in this matter.

DAMAGES

Pursuant to NRCP 16.1(a)(1)(C), Plaintiff discloses the following computation of damages due to Defendants' actions, as identified in the First Amended Complaint on file herein:

Defendants hereto each published statements about Plaintiff on their respective websites that constitute defamation per se under Nevada law. These defamatory published statements have harmed Plaintiff's personal and business reputations. More specifically, these defamatory published statements have harmed Plaintiff's business reputations, relationships, and contracts (or contract negotiations) with several entities, entities that can only be disclosed with a protective order in place in this action. Even though the precise amount of damages is difficult to ascertain at this moment, as of date, the amount due and owing to Plaintiff because of Defendants' actions hereto, the actions noted in the First Amended Complaint on file herein, is at least \$8.455 million, plus punitive damages and reasonable attorneys' fees and costs.

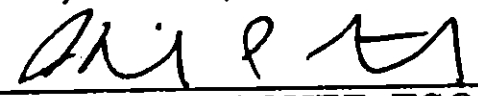
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Plaintiff reserves the right to amend and/or supplement his damage computations as they become known through discovery or as may otherwise be determined to be necessary in this matter.

Dated this 9th day of October, 2015.

**HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON**


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