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FILED

DEC 01 2015

John L. Blum
CLERK OF COURT

MAFC
Marc J. Randazza (Nevada Bar No.: 12265)
Ronald D. Green (Nevada Bar No. 7360)
Alex J. Shepard (Nevada Bar No. 13582)
RANDAZZA LEGAL GROUP, PLLC
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Attorneys for Defendant
TMZ Productions, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual
Plaintiff,
vs.
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

DEFENDANT TMZ PRODUCTIONS,
INC.'S MOTION FOR COSTS,
ATTORNEYS' FEES, AND DAMAGES
UNDER NRS 41.670

Defendant, TMZ Productions, Inc. hereby files its Motion for Costs,
Attorneys' Fees, and Damages Under NRS 41.670.

This Motion is based upon the attached memorandum of points and
authorities, the papers and pleadings on file herein, and any oral argument
permitted by this Court.

A-15-722801-C
MAFC
Motion for Attorney Fees and Costs
4508118



RANDAZZA LEGAL GROUP

RECEIVED

DEC 01 2015

CLERK OF THE COURT

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NOTICE OF MOTION

To: Brian W. Boschee and Kimberly Stein, attorneys for

Plaintiff Dan Brandon Bilzerian

and

Paul A. Shpirt, attorney for

Defendants Dirty World LLC and Nik Richie

PLEASE TAKE NOTICE that the foregoing Motion for Costs, Attorneys' Fees, and Damages will be heard on the 14 day of January, 2016 at 9:00 A.m., or as soon thereafter as counsel may be heard.

Dated this 1st day of December 2015.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
Marc J. Randazza

Attorneys for Defendant,
TMZ Productions, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Plaintiff Dan Bilzerian ("Bilzerian") filed this lawsuit against Defendant TMZ Productions, Inc. ("TMZ") in violation of the Nevada Anti-SLAPP statute. Bilzerian filed a vague complaint against Defendants Dirty World, LLC and Nik Richie. TMZ, as is its right and responsibility under the Free Press clause of the First Amendment, investigated the underlying facts of the complaint and accurately reported on these facts. Its reward for praiseworthy journalism was a frivolous lawsuit by Mr. Bilzerian seeking to suppress TMZ's First Amendment rights.

Nevada's Anti-SLAPP statute, NRS 41.635 *et seq.*, ensures that lawsuits such as Bilzerian's are subject to quick review and dismissal. But early dismissal is only one part of how the statute protects First Amendment rights. The other part is the remedial portion of the statute, which provides for mandatory fees and costs, and allows for a discretionary award of up to \$10,000 in statutory damages. As TMZ prevailed in its motion under the Anti-SLAPP act, TMZ is statutorily entitled to its attorneys' fees and costs. The particular nature of this case warrants the Court's exercise of its discretion to also award \$10,000 in statutory damages.

2.0 FACTUAL BACKGROUND

On August 1, 2015, the Jane Doe defendant in this case posted a comment on the website <thedirty.com> claiming that she had recently slept with Bilzerian and that he had given her the sexually transmitted disease ("STD") chlamydia. (See comment on <thedirty.com>, attached as Exhibit 1.) On August 7, 2015, Bilzerian filed his original Complaint against Defendants Dirty World, LLC and Nick Richie for defamation based on this comment. On August 10, 2015, TMZ posted an article on its website, <tmz.com>, discussing the lawsuit and quoting a portion of the August 1 comment containing the allegation of

1 Bilzerian giving Jane Doe chlamydia. (See TMZ article, attached as **Exhibit 2**.)
 2 The following day, Bilzerian amended his Complaint to include TMZ as a
 3 defendant, claiming that the article was defamatory.

4 On October 12, 2015, TMZ filed an Anti-SLAPP motion. TMZ easily met the
 5 first prong of the Anti-SLAPP statute, demonstrating that its communications
 6 were on a matter of public concern. On the merits-based prong of the statute,
 7 TMZ also easily prevailed. Bilzerian failed to provide any evidence establishing
 8 any element of his defamation claim as to TMZ, neither in his written opposition
 9 nor at the hearing. The Court granted TMZ's motion on November 17, 2015,
 10 finding that TMZ's article was protected by Nevada's fair report privilege. The
 11 Court recognized that the defendant was simply doing its job and that TMZ
 12 "ought to be commended for looking and doing their homework." (Transcript of
 13 hearing on Anti-SLAPP motion, attached as **Exhibit 3**, at 49:25-50:1.)

14 **3.0 LEGAL STANDARDS**

15 Under NRS 41.670(1)(a) "[t]he court **shall** award reasonable costs and
 16 attorney's fees to the person against whom the action was brought" (emphasis
 17 added). The statute also provides that "[t]he court **may** award, in addition to
 18 reasonable costs and attorney's fees awarded pursuant to paragraph (a), an
 19 amount of up to \$10,000 to the person against whom the action was brought."
 20 NRS 41.670(1)(b).

21 **4.0 ARGUMENT**

22 **4.1 TMZ Is Entitled to Costs and Attorneys' Fees**

23 NRS 41.670(1)(a) mandates an award of costs and attorneys' fees to a
 24 successful Anti-SLAPP movant. This award is not limited to costs and fees
 25 incurred directly in connection with the motion, either; the statute directs that
 26 the court shall award "fees to the person against whom the action was
 27 brought." NRS 41.670(1)(a). If there is any ambiguity in this language, it is laid to

rest by reference to California case law regarding entitlement to fees under that state's Anti-SLAPP statute, Cal. Code Civ. Proc. 425.16. It is appropriate for this Court to rely upon California caselaw when interpreting the Anti-SLAPP act. See *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 756 (2009) ("we consider California caselaw because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute").

The 9th Circuit found, in interpreting California's Anti-SLAPP statute, that when an Anti-SLAPP motion disposes of every cause of action, it is appropriate to award all attorneys' incurred in connection with the case, even if not directly related to the Anti-SLAPP motion, because the successful movant "incurred the expenses Plaintiffs dispute in responding to a lawsuit the district court found baseless." *Graham-Suit v. Clainos*, 738 F.3d 1131, 1159 (9th Cir. 2013) (affirmed in *Graham-Suit v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014)).

Additionally, an award of Anti-SLAPP costs and fees includes fees incurred after the motion is granted. See *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 21 (2006) (finding that fees recoverable under California Anti-SLAPP statute include all post-motion fees, such as fees on fees, fees in connection with defending an award of fees, and fees on appeal of an order granting an Anti-SLAPP motion).

The statute does not require TMZ to attempt to compromise the amount of fees and costs sought, but it did make such an attempt in this case, as a matter of judicial economy. Despite a good faith meet and confer on the matter, the parties could not come to an agreement. (See Declaration of Marc J. ["Randazza Decl."], attached as **Exhibit 4**, at ¶25.)

4.2 The Fees Sought Are Reasonable

Under Nevada law, a court can consider the following factors when determining whether a litigant's claimed fees are reasonable:

- The quality of the advocate; his ability, training, education, experience, professional standing, and skill;
- The character of the work done; its difficulty, intricacy, importance, the time and skill required, the responsibility imposed and the prominence and character of the parties and the importance of the litigation;
- The work actually performed by the lawyer; the skill, time and attention given to the work; and;
- The result; whether the attorney was successful and what benefits were derived.

See *Schouweiler v. Yancy Co*, 101 Nev. 827, 833-34 (1985) (citing *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 (1969)). In determining a fee award, a district court has discretion to employ "any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount." *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864 (Nev. 2005). "The lodestar approach involves multiplying 'the number of hours reasonably spent on the case by a reasonable hourly rate.'" *Id.* at 864 n.98 (quoting *Herbst v. Humana Health Ins. Of Nevada*, 105 Nev. 586, 590 (1989)).

TMZ was represented in this action by experienced Anti-SLAPP counsel. Bilzerian and his counsel knew or should have known that his defamation claim against TMZ was baseless, that TMZ was protected by the fair report privilege, and that there was nothing false about the article. The lack of any liability on the part of TMZ was obvious from the outset.

4.2.1 The Number of Hours Worked is Reasonable

The time spent by TMZ's attorneys in connection with this case is detailed in the timesheet attached as **Exhibit 5** to this motion. Mr. Randazza spent 22.9 hours on work prior to the Court granting TMZ's Anti-SLAPP motion, and 2.9 hours

1 following the Court granting the motion. Attorney Ronald D. Green spent 6.6
2 hours prior to the Anti-SLAPP order, and 1.2 hours following the order. Attorney
3 Alex J. Shepard spent 43.4 hours on work prior to the Anti-SLAPP order, and 18.4
4 hours following the order. Paralegal Trey Rothell spent 11.7 hours on work prior to
5 the Anti-SLAPP order, and 1.8 hours following the order. Paralegal Danielle Diaz
6 spent 2 hours on work prior to the Anti-SLAPP order. TMZ's attorneys spent a total
7 of 72.9 hours prior to the Anti-SLAPP order, and 22.5 hours thereafter. Support
8 staff spent a total of 13.7 hours prior to the order, and 1.8 hours thereafter. The
9 total lodestar number of hours spent on the case is thus 95.4 for attorneys, and
10 15.5 for staff. This distribution of hours demonstrates a preference for delegation
11 of tasks to lower cost timekeepers, and using higher-priced timekeepers only
12 when deemed necessary.

13 All the time spent by TMZ's attorneys on this case was necessary. TMZ filed
14 an answer because it was not prepared to file its Anti-SLAPP motion within 20
15 days of service of Bilzerian's Amended Complaint¹ (nor was it required to).
16 Attorney Ron Green attended the early case conference because counsel for
17 parties were required to attend. TMZ additionally had to prepare a response to
18 Bilzerian's eleventh-hour attempt to impose an overbroad protective order
19 because the hearing on Bilzerian's application was set for the same time as the
20 Anti-SLAPP hearing, and TMZ would have been subject to the consequences of
21 the order, had the Court entered it.²

22 The time spent by TMZ's attorneys on each of these tasks was also
23 reasonable. (See Declaration of Wayne Smith ["Smith Decl."], attached as
24

25 ¹ TMZ is based in California and does not have regular counsel in Nevada. After it was served,
26 TMZ spent over a week investigating and interviewing potential counsel before retaining
Mr. Randazza.

27 ² The court may recall that the motion was filed on short notice, ex parte, giving TMZ very little
time to respond.

Exhibit 6, at ¶¶12-17; Declaration of Mark Hinueber, ["Hinueber Decl."], attached as Exhibit 7, at ¶¶13-15; Declaration of F. Christopher Austin ["Austin Decl."], attached as Exhibit 8, at ¶¶10-12; Randazza Decl. at ¶¶19-24.) The significant First Amendment implications of this case required thorough briefing and preparation at all stages of the proceedings. Additionally, TMZ's counsel made every reasonable effort to avoid duplication of work and otherwise minimize the fees TMZ incurred. (See Smith Decl. at ¶16; see also Austin Decl. at ¶11.) Almost all of the work was performed by one partner, Marc Randazza, with assistance primarily from one associate, Alex Shepard. To maximize cost efficiency, Mr. Randazza had Mr. Shepard take primary responsibility for functions that a lower-level associate could handle at a lower rate, including investigation, research, and drafting memoranda, while Mr. Randazza provided litigation strategy and made the ultimate decisions as to the motions and pleadings. (See Randazza Decl. at ¶24.)

The recent California case of *Wynn v. Chanos*, 2015 US. Dist. LEXIS 80062, *6 (N.D. Cal. June 19, 2015) provides a useful point of reference for the reasonability of the hours TMZ's attorneys spent on this case. The court there found that it was reasonable for the defendant's attorneys to spend 582.65 hours in connection with an Anti-SLAPP motion, despite the fact that these attorneys did not have any particular expertise in First Amendment or Anti-SLAPP litigation. *Id.* TMZ's attorneys only spent a small fraction of such hours in connection with the entire case. The number of hours worked is thus reasonable.

4.2.2 TMZ's Attorneys' Rates Are Reasonable

The hourly rates TMZ's counsel charged TMZ are reasonable, given the stakes of the case and their special expertise. (See Smith Decl. at ¶¶12-17; Hinueber Decl. at ¶¶13-15; Austin Decl. at ¶¶10-11; Randazza Decl. at ¶¶11-17.)

1 Mr. Randazza customarily bills at \$650 per hour, but out of respect for the First
 2 Amendment issues in this case, discounted his hourly rate to \$520. (See
 3 Randazza Decl. at ¶¶12, 18.) Mr. Green customarily charges an hourly rate of
 4 \$475, but discounted his rate on this matter to \$380. (See *id.* at ¶¶13, 18.)
 5 Mr. Shepard customarily charges an hourly rate of \$325, but discounted his rate
 6 for this matter to \$260. (See *id.* at ¶¶14, 18.) Mr. Rothell normally bills at \$150 per
 7 hour, but discounted his rate to \$140 per hour. (See *id.* at ¶¶15, 18.) Ms. Diaz bills
 8 at \$50 per hour. (See *id.* at ¶16.) Regardless of these discounts, however, courts
 9 routinely award fees at the market rate, rather than the rate the client actually
 10 paid. See *Blum v. Stenson*, 465 U.S. 886, 894-95 (1984) (stating that "reasonable
 11 attorneys' fees are determined by their market value among reasonable parties
 12 who would pay for them, rather than what a client actually paid").

13 Attorney Randazza accrued \$11,908 in billing prior to the Anti-SLAPP order
 14 and \$1,508 thereafter. Attorney Green accrued \$2,508 in billing prior to the Anti-
 15 SLAPP order and \$456 thereafter. Attorney Shepard accrued \$10,904 in billing
 16 prior to the Anti-SLAPP order and \$4,767 thereafter. Mr. Rothell accrued \$1,368 in
 17 billing prior to the order and \$294 thereafter. Ms. Diaz accrued \$100 in billing
 18 prior to the order. The total amount of fees charged to TMZ is thus \$26,788 prior
 19 to the Anti-SLAPP order and \$7,025 thereafter, for a total of \$33,813. TMZ
 20 requests, however, that the Court use a lodestar fee calculation and multiply
 21 the total number of hours worked on this case by TMZ's counsel by their
 22 customary rates, resulting in a fee award of \$43,555.

23 Marc Randazza's rate is justified, as he is an experienced attorney who
 24 specializes in First Amendment litigation, and is licensed to practice in the states
 25 of Nevada, California, Arizona, Florida, and Massachusetts. Mr. Randazza was
 26 instrumental in the passage of Nevada's 2013 Anti-SLAPP legislation, and played
 27 a significant role in shaping the statute's 2015 amendment. (See Smith Decl. at

¶¶5-7; Hinueber Decl. at ¶6; Austin Decl. at ¶3; Randazza Decl. at ¶¶8-9; Senate Committee on Judiciary hearing on Nev. SB 286 (May 6, 2013) attached as **Exhibit 9**.) When Nevada's Anti-SLAPP statute was amended in 2015, Mr. Randazza successfully led the lobbying effort to save the statute from repeal, and was instrumental in crafting the language in the statute today. (See Randazza Decl. at ¶9; see also Minutes on Assembly Committee on Judiciary hearing on SB 444, April 24, 2015, attached as **Exhibit 10**, at 35-38.)

Mr. Randazza is a nationally recognized expert on Anti-SLAPP legislation and free speech issues, and has assisted the judiciary committees in both Nevada and Pennsylvania on Anti-SLAPP legislation. (See **Exhibits 9-10**; see also video of public hearing on Pennsylvania Senate Bill 1095, April 23, 2014, at 32:30-43:47.³) He is also a commentator for CNN on Free Speech cases. (See Randazza Decl. at ¶7.) And, he previously has been a commentator on FOX News for First Amendment issues. (See Randazza Decl. at ¶7.) Mr. Randazza holds a JD from Georgetown University Law Center, a Masters in Mass Communications from the University of Florida (with a media law focus), and an international degree in the form of an LLM from the University of Turin, Italy. (See curriculum vitae of Marc Randazza, attached as **Exhibit 11**.) Mr. Randazza has been a practicing attorney for 13 years. (See Smith Decl. at ¶14; Hinueber Decl. at ¶14; Austin Decl. at ¶12; Randazza Decl. at ¶11.) Mr. Randazza has taught First Amendment law at the law school level. (See **Exhibit 11**.) And, he has given presentations to attorneys in CLE courses on how to handle Anti-SLAPP litigation. (See *id.*) Former senator Justin Jones described Mr. Randazza as "one of the preeminent experts on the issue" of Anti-SLAPP litigation. (See **Exhibit 9**, at 3.)

³ Available at: <<http://judiciary.pasenategop.com/senate-bill-1095-slapp-suits/>> (last visited November 25, 2015).

Mr. Randazza customarily bills at an hourly rate of \$650. According to the Laffey Matrix, attached hereto as **Exhibit 12**, the standard acceptable billing rate for such an experienced attorney is \$661 per hour. Accordingly, his customary rate is appropriate even in the absence of any specialized expertise. However, given his specialized expertise in the issues presented by this case, his rate could be considered to be even a bit low. (See Smith Decl. at ¶¶9-10; Hinueber Decl. at ¶9; Austin Decl. at ¶6.)

Attorney Shepard earned his JD from Washington University School of Law, is licensed to practice in both Nevada and California, and has two years of experience primarily in First Amendment litigation, including defamation cases and Anti-SLAPP motions. (See Randazza Decl. at ¶14.) According to the Laffey Matrix, the standard acceptable billing rate for an attorney of his experience is \$331 per hour, (see **Exhibit 12**), and his customary billing rate of \$325 per hour is reasonable. (See Smith Decl. at ¶14; Hinueber Decl. at ¶12; Austin Decl. at ¶9.)

Attorney Green has a JD from University of Pittsburgh School of Law and is a Nevada-licensed attorney with 15 years of litigation experience, including several years of experience with defamation and First Amendment cases. (See Randazza Decl. at ¶13.) According to the Laffey Matrix, the standard acceptable billing rate for an attorney of his experience \$661 per hour (see **Exhibit 12**), and his customary billing rate of \$475 per hour is reasonable. (See Smith Decl. at ¶13; Hinueber Decl. at ¶11, Austin Decl. at ¶8.)

Mr. Rothell is a paralegal with 1.5 years of experience. Under the Laffey Matrix, he is able to command a fee of \$180 per hour, and his customary rate of \$175 per hour is reasonable. (See Smith Decl. at ¶14; Hinueber Decl. at ¶12; Austin Decl. at ¶9.) Ms. Diaz's hourly rate is also reasonable. (See *id.*)

These rates are particularly reasonable when compared to those in *Wynn v. Chanos*, 2015 U.S. Dist. LEXIS 80062, *6. The court there found it was

1 reasonable for the defendant's senior attorneys to charge an hourly rate
2 between \$1,035 and \$1,085. Mr. Randazza's customary rate of \$650 per hour is
3 significantly lower than this, despite his special expertise in the areas of law
4 germane to this case. The *Chanos* court additionally found that associate
5 attorney rates of \$570 to \$710 per hour (for associates with four and six years of
6 experience, respectively) were reasonable. Mr. Shepard's customary rate of
7 \$325 per hour is significantly lower than this. The customary hourly rates of TMZ's
8 attorneys are thus reasonable.

9 **4.3 The Court Should Award TMZ \$10,000 in Statutory Damages**

10 NRS 41.670(1)(b) permits a court, in its discretion, to grant an award of up
11 to \$10,000 in statutory damages to a prevailing Anti-SLAPP movant. This
12 provision of the statute is intended to put a price tag on SLAPP suits over and
13 above attorneys' fees. When the plaintiff in a case such as this is a multi-
14 millionaire, the down-side of a few tens of thousands of dollars can be written off
15 as a mere "cost of doing business." The additional damages available at the
16 Court's discretion should be granted as a means of leveling the playing field.

17 Because there is no case law interpreting entitlement to an award of
18 damages, and there is no analogous provision in California's Anti-SLAPP statute,
19 entitlement to this damages award is a matter of first impression before this
20 Court. Nevertheless, the court should be guided by principles of equity and
21 deterrence in evaluating the \$10,000 request.

22 This was never a close case. Bilzerian admitted at the beginning of the
23 hearing on TMZ's Anti-SLAPP motion that he was a public figure. (See Exhibit 3 at
24 4:11-17.) A public figure sued a media outlet for accurately reporting on a
25 lawsuit he filed. There was never any question that Bilzerian's claims were based
26 on speech protected under the Anti-SLAPP statute, and the First Amendment
27 implications of the case are clear even to the casual observer.

1 It is equally obvious that Bilzerian's claims never had a legal or factual leg
2 to stand on. He provided no evidence to support any of his allegations. He
3 made no credible argument as to how TMZ's article was inaccurate or
4 unprivileged. He made no attempt to distinguish the adverse case law TMZ
5 provided in its motion and reply. He had no case, and he knew or should have
6 known this from day one. Simply put, Mr. Bilzerian was trying to censor the press.
7 This is exactly the type of SLAPP suit that Nevada's statute is meant to prevent
8 from going forward.

9 It is proper for the Court to consider Bilzerian's considerable wealth in making its
10 determination as well. It is likely, given his financial status, that the fee award
11 sought in this case likely amounts to a mere "rounding error" in his annual
12 budget. In fact, the press is riddled with reports that Bilzerian routinely spends
13 multiples of such sums on luxury goods. (See, e.g., "Dan Bilzerian Drops \$650k On
14 VIP Wristband for Rave," TMZ (July 30, 2015), attached as **Exhibit 13**.)⁴ While
15 another \$10,000 will likely not present much of a hardship to Bilzerian, it is the
16 maximum amount authorized under this portion of the Anti-SLAPP law. Part of
17 the purpose of the Anti-SLAPP law is to provide financial disincentives to would-
18 be SLAPP plaintiffs, and the Court should maximize that disincentive in a case
19 that was so patently frivolous. The Court should award TMZ \$10,000 in statutory
20 damages under NRS 41.670(1)(b). This will serve the statute's goal of deterring
21 SLAPP suits in this state.

22 **5.0 CONCLUSION**

23 Bilzerian filed a SLAPP suit in an attempt to censor the press, and Nevada's
24 Anti-SLAPP statute worked as intended by dismissing this suit in its infancy. TMZ is
25 entitled to recover its costs and attorneys' fees incurred in defending itself from

26 _____
27 ⁴ Available at: <<http://www.tMZ.com/2015/07/30/dan-bilzerian-electric-zoo-music-festival-half-a-million-vip/>> (last visited December 1, 2015).

VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS

Pursuant to NRS 18.110, Defendant, TMZ Productions, Inc. ("TMZ") hereby submits this Verified Memorandum of Costs and Disbursements.

Filing Fees	NRS 18.005(1)	\$223.00
Photocopies	NRS 18.005(12)	\$82.25
Legal Research	NRS 18.005(17)	<u>\$150.00</u>
		Total: \$ 455.25

State of Nevada)
County of Clark)

Marc J. Randazza, being duly sworn, states: that affiant is the attorney for Defendant, TMZ Productions, Inc., and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

I declare under penalty of perjury under the State of Nevada that the foregoing is true and correct.

Executed this 1st day of December, 2015.



/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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*Attorney for Defendant,
TMZ Productions, LLC*

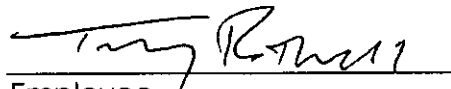
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 2015, I served a true and correct copy of the foregoing document via electronic mail and U.S. Mail to:

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON
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Respectfully Submitted,


Employee,
Randazza Legal Group, PLLC

MEMO

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*Attorneys for Defendant,
 TMZ Productions, Inc.*

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

DAN BRANDON BILZERIAN,
 an individual

Plaintiff,

vs.

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

**VERIFIED MEMORANDUM OF COSTS
 AND DISBURSEMENTS**

VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS

Pursuant to NRS 18.110, Defendant, TMZ Productions, Inc. ("TMZ") hereby submits this Verified Memorandum of Costs and Disbursements.

Filing Fees	NRS 18.005(1)	\$223.00
Photocopies	NRS 18.005(12)	\$82.25
Legal Research	NRS 18.005(17)	<u>\$150.00</u>
Total:		\$ 455.25

State of Nevada)
County of Clark)

Marc J. Randazza, being duly sworn, states: that affiant is the attorney for Defendant, TMZ Productions, Inc., and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

I declare under penalty of perjury under the State of Nevada that the foregoing is true and correct.

Executed this 1st day of December, 2015.



/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
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*Attorney for Defendant,
TMZ Productions, LLC*

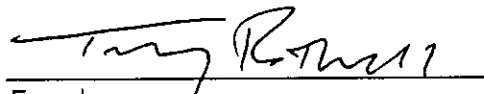
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 2015, I served a true and correct copy of the foregoing document via electronic mail and U.S. Mail to:

HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON
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Respectfully Submitted,



Employee,
Randazza Legal Group, PLLC

EXHIBIT 1

The Dirty Article

Updated August 10, 2015

<[http://thedirty.com/gossip/celebrities/
fakeequis/dan-bilzerian-gave-me-
chlamydia/](http://thedirty.com/gossip/celebrities/fakeequis/dan-bilzerian-gave-me-chlamydia/)>



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UPDATE: DAN BILZERIAN GAVE ME CHLAMYDIA

FAKE EQUIS August 10th, 2015 at 2:01 PM



THE DIRTY ARMY: Nik, a few weeks ago I met Dan Bilzerian at Marquee nightclub in New York when he was doing his presidential campaign. There was three of us who went back to his hotel room with his other girls Rosie and Megan. I ended up getting super drunk and sleeping with Dan. I got tested two weeks later and lucky me I found out he gave me chlamydia. I'm asking that any other girls out there that have slept with Dan go get tested!!!!

Presidential campalngns are never easy.- nik

****UPDATE via TMZ: Dan Bilzerian Sues Website I Don't Have Any STDs!!!**

♡ 221

💬 COMMENTS

👤 FAKE EQUIS

FAKE EQUIS POSTS

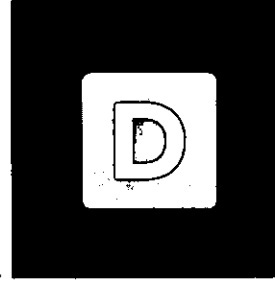
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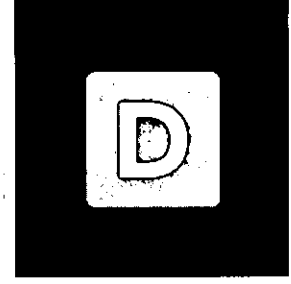
FAKE EQUIS' NEW GIRLFRIEND



****UPDATE: DAN BILZERIAN PRESIDENTIAL ENDORSEMENT BY PRINCE NASIR ALI KALAPPA PRESIDENT OF THE D.I.A.**



DAN BILZERIAN'S LATEST INTERVIEW



DAN BILZERIAN V. DIRTY WORLD - COMPLAINT

SUN SEP 06

sasha

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Featured Comment



Nik Richie Dirty Team · a month ago

FYI -- I removed the last post about Dan Bilzerian purchasing a table at Electric Zoo for 650k because it was FAKE. Dan wants people to believe he has money. I had a feeling so I made some calls. Self posts suck. I apologize.- nik

68 ^ v · Share ›

362 Comments

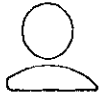
The Dirty

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Nik Richie Dirty Team · a month ago

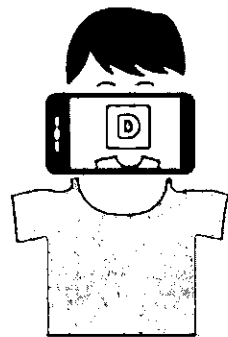
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FYI -- I removed the last post about Dan Bilzerian purchasing a table at Electric Zoo for 650k because it was FAKE. Dan wants people to believe he has money. I had a feeling so I made some calls. Self posts suck. I apologize.- nik

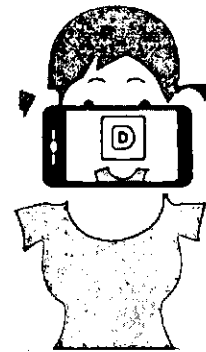
68 ^ v · Reply · Share ·



Pixel → Nik Richie · a month ago



FRIENDS
DON'T LET
FRIENDS
SELF POST.



Inspiring Change
Improving Lives

the PSA brought to you by the Dirty Army Council

57 ^ v · Reply · Share ·



ArmaniPrincess → Pixel · a month ago

Whaaaaat? Who made this? I love it. Someone in the DA with some real Graphic Design skills, hell yeah.

14 ^ v · Reply · Share ·



Pixel → ArmaniPrincess · a month ago

Thank you, I made it. :) So many self posts lately, it became more and more necessary haha

31 ^ v · Reply · Share ·



ArmaniPrincess → Pixel · a month ago

I guess you got in the perspective of the friends who posted the DA

 I mean you got in the perspective of the hands, replicated the AU Council logo perfectly, even gave the girl some eyes peeking over the top, color me impressed!

12 ^ v · Reply · Share ›

 **Phil Perrier** → Pixel · a month ago

Awesome work!

7 ^ v · Reply · Share ›

 **Pixel** → Phil Perrier · a month ago

Thanks! Designing stuff for the site keeps me on my toes haha because the conversations move so quickly.

17 ^ v · Reply · Share ›

 **Nisiek** → Pixel · a month ago

you are truly talented too talented for us mere DA.

8 ^ v · Reply · Share ›

 **Pixel** → Nisiek · a month ago

Thank you, to be honest I didn't draw the people with the phones lol found it on a free vector stock site. I love the Internet haha

7 ^ v · Reply · Share ›

 **Phil Perrier** → Pixel · a month ago

I might be able to add a couple of fun ones, just not from work would have to do it from home

2 ^ v · Reply · Share ›

 **Pixel** → Phil Perrier · a month ago

Can't wait, the more the merrier! :)

2 ^ v · Reply · Share ›

 **dawndavenport** → Pixel · a month ago

Girl, can you Photoshop like....FE face on WT body? Stuff like that? I've always wanted to sit down and do stuff like that but I'd get too carried away... Like sid from toy story

11 ^ v · Reply · Share ›

 **Pixel** → dawndavenport · a month ago

I will SO do that. Might take me a bit longer than Sluts R Us though haha

6 ^ v · Reply · Share ›



dawndavenport → Pixel · a month ago

Omg shit like that makes me laugh so hard! When my daughter was a kid I thought birds with arms was hilarious - she thought I was "ghey" I will love whatever u come up with!

3 ^ v · Reply · Share ›



Pixel → dawndavenport · a month ago

Ladies and Gentlemen, I give you.....Wicked Equis. I wish I had picked a better quality photo of him :(But the odd thing is, his face fit almost perfectly on hers lol



39 ^ v · Reply · Share ›



ArmaniPrincess → Pixel · a month ago

HAHAHAHAHA. Thank you, i so desperately needed that in my life, and i didn't even know i did.

11 ^ v · Reply · Share ›

 **Pixel** → ArmaniPrincess · a month ago
So glad I could help! :)
3 ^ v · Reply · Share ›

 **dr.avery** → Pixel · 24 days ago
You're amazing
1 ^ v · Reply · Share ›

 **miss piglet** → Pixel · a month ago
That is awesome! You've out done yourself!!
7 ^ v · Reply · Share ›

 **Pixel** → miss piglet · a month ago
Thank you! I would love to do a Dirty Army poster, for those of us who actually show our faces ;) I'll put our faces on an Avengers poster or something
7 ^ v · Reply · Share ›

 **miss piglet** → Pixel · a month ago
She-Ra esque.... for me please & thank you 🙏🙏



7 ^ v · Reply · Share ›



Pixel → miss piglet · a month ago

I dm'd you on twitter with an example, if you can send me a (decent quality) picture of your face at that angle, I'll make it happen! ;)

2 ^ v · Reply · Share ›



Kitty → Pixel · 24 days ago

That's going to be so amazing.

2 ^ v · Reply · Share ›



miss piglet → Pixel · a month ago

I'll get on it!!! I'll have you something by tomorrow! So excited 😁

1 ^ v · Reply · Share ›



L. Mary Dagan-Föxman → Pixel · a month ago

Can I send you a photo to use for that purpose of my face, please? I would really appreciate being included.

2 ^ v · Reply · Share ›



Pixel → L. Mary Dagan-Föxman · a month ago

Absolutely! Let me figure out which poster I'm going to use and then you can send me a photo with your face at that angle 😊

1 ^ v · Reply · Share ›



dawndavenport → Pixel · a month ago

HAHAHAHA!!!! I freakin LOVE it! make some more! You're awesome! You know how some days this site is just annoying AF? Not with your talent!

6 ^ v · Reply · Share ›



Pixel → dawndavenport · a month ago

I'm so glad you love it! If people can think of more combos or other things besides what I see in comments, I will make it so! :)

4 ^ v · Reply · Share ›



Pixel → Pixel · 24 days ago

It warms my heart to see people still upvoting and commenting on this. 😊 DA strong forever ever.

4 ^ v · Reply · Share ›



Kitty → Pixel · 24 days ago

Someone needs to give you a medal of honour or something, because this is everything.

3 ^ v · Reply · Share ›



Luxe → Pixel · a month ago

OMG, you Rock!

3 ^ v · Reply · Share ›



L. Mary Dagan-Föxman → Pixel · a month ago

That is glorious!!!!!! Bravo!

2 ^ v · Reply · Share ›



beth blackheart → Pixel · 24 days ago

what a lovely wicked midget! that made my night 😏

1 ^ v · Reply · Share ›



Steve Buscemi → Pixel · 24 days ago

Because they are the same height

1 ^ v · Reply · Share ›



Maia → Pixel · 24 days ago

Sadly, both look better!

1 ^ v · Reply · Share ›



captain awesome → Pixel · 24 days ago

Alright everyone. Gun to your head. Who'd you rather Wicked Equis or Caitlyn Jenner?

1 ^ v · Reply · Share ›



Pixel → captain awesome · 24 days ago

Caitlyn Jenner all the way. Boobs and a d*ck, best of both worlds. Wicked Equis' face alone won't be earning that Caitlyn Jenner money.

1 ^ v · Reply · Share ›



o3mta3o → captain awesome · 24 days ago

I'll take the gun

1 ^ v · Reply · Share ›



Heauxbag → Pixel · 24 days ago

I died.

1 ^ v · Reply · Share ›



Uncle Chug → Pixel · a month ago

I would have gone with Fake Tuna, but nicely done.

1 ^ v · Reply · Share ›



Snarkles → Pixel · a month ago

Wow! I'm laughing so hard right now I'm crying. Photoshop battles, DA style. I'm afraid of what our imaginations may come up with..like Vegas Dave, as Chewy.

1 ^ v · Reply · Share ›



Kitty → dawndavenport · 24 days ago

Thank you for requesting that photoshop edit.

It really made my Monday.

3 ^ v · Reply · Share ›



dr.avery → Pixel · 24 days ago

They do move quickly, as much as the people we knock hate us; we are actually a group of witty, quick quipped, wisecrackin bunch of geniuses.



And humble.... Hahahah

1 ^ v · Reply · Share ›



dawndavenport → Pixel · a month ago

Yayssssss.

4 ^ v · Reply · Share ›



Nisiek → dawndavenport · a month ago

holy shit, Nik hire this woman stat!!!

4 ^ v · Reply · Share ›



dr.avery → Pixel · 24 days ago

Nicely done Pixel

1 ^ v · Reply · Share ›



Heauxbag → Pixel · 24 days ago

So cool!!

1 ^ v · Reply · Share ›



Snarkles → Pixel · a month ago



Well done. I really had a laugh aloud!

1 ^ v · Reply · Share ›



JD Dirty Team → ArmaniPrincess · a month ago

pixel got those design skills.

12 ^ v · Reply · Share ›



DirtyWhiteGirl → Pixel · a month ago

It takes serious delusion and some big balls to self post

3 ^ v · Reply · Share ›

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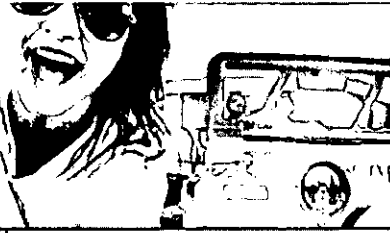
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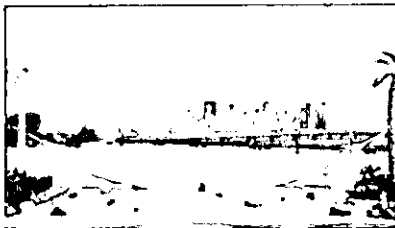
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Dan Bilzerian Sues Website ... I Don't Have Any STDs!!!

Dan Bilzerian

Sues Website

I Don't Have Any STDs!!!

8/10/2015 12:12 PM PDT BY TMZ STAFF

EXCLUSIVE



TMZ.com

Dan Bilzerian says he's clean as a whistle, which is why he's suing a website for claiming he's riddled with an STD.

Bilzerian filed a defamation suit against **TheDirty.com** and its founder, **Nik Richie**, claiming its story that he gave a sex partner chlamydia is false and damaging.

The playboy is complaining about a comment a woman made on the site, "I ended up getting super drunk and sleeping with Dan. I got tested two weeks later and lucky me I found out he gave me chlamydia."

Many websites are protected from such lawsuits by not editing the comments section. Richie has been sued before for comments on the site, and won. Bilzerian says this one's different, because the site posted pics of him with several women next to the comment.

Bilzerian and Richie have a long history of battling each other, most recently **in cake form**. Yes, really.

See also

- [Dan Bilzerian -- Drops \\$650K On VIP Wristband for Rave](#)
- [30 Times Dan Bilzerian Flaunted His Wealth -- See The Flashy Photos!](#)
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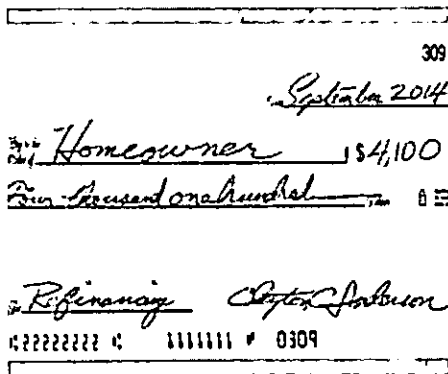
"In Case You Missed It..."

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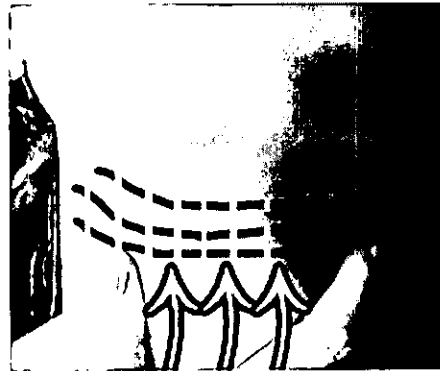
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Join the discussion...



Ryan · 23 days ago

He's an ass trying to buy his way into fame. Best of luck to him in that aspect, but if it was a comment by a third party... That would be like charging Facebook when someone writes a rude comment about you. If he can find out who wrote the comment, maybe, but good luck dude. I personally just think he's staying relevant. Paying \$650k for a rave wristband and now this? I'm sure he has an amazing life, but this reeks of desperation... As an aside, has he ever proven he washed out of BUDS (Seal School) with an injury? He says it constantly, but I've never seen an ounce of proof. Considering how much he posts about himself, you'd think he'd have some of that paperwork online. Just curious... If he did, then I'm all good with that part, but he better not be claiming false honor.

3 ^ v · Reply · Share ▸



L King · 23 days ago

What court is letting these so called celebrities file stupid lawsuits? The web site didn't say this douchebag had an STD, it was a quote from a bimbo that slept with him. It obvious that he's an idiot, but what excuse do his lawyers have?

2 ^ v · Reply · Share ▸



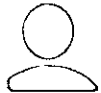
Chloee Brooks · 23 days ago



Chris Brooks · 23 days ago

2 things: considering what a manho he is chlamydia is not such a stretch to believe it's true. AND claiming you were drunk to sleep with him is lame. Granted if he didn't have money women would not look at him twice but, oh please, honey.

2 ^ v · Reply · Share ›



Tic · 23 days ago

The HO's that hangout with Dan all know they must perform by the end of the night.They eat,drink and dance all day then it's time to give your soul to a hideous man. Your walk of shame will haunt you for years to come.

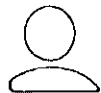
4 ^ v · Reply · Share ›



trollIntruth · 24 days ago

My ex use to bone dan.....and I bone her bare back now. Fml. I should have just boned a kardashian. Same risk way more reward

3 ^ v · Reply · Share ›



wokkawokka · 24 days ago

Dan Bilzerian is a fraud. He rents his Hollywood home and doesn't even own the jets he flies in. Half his cars are leased and he helps funnel his dads money who's a felon living in the Caribbean island of St. Kitts. The whole "poker" mirage is just that..... A mirage of smoke and mirrors

10 ^ v · Reply · Share ›



trollIntruth → **wokkawokka** · 24 days ago

Truth!!!!

^ v · Reply · Share ›



John Baker · 24 days ago

You girls call him nasty but most of you are probably sleeping with just as many people as him

2 ^ v · Reply · Share ›



trollIntruth → **John Baker** · 24 days ago

And raw dawg

2 ^ v · Reply · Share ›



seriously? · 24 days ago

It doesn't take a website to tell us that Dan has VD, it's common knowledge!

4 ^ v · Reply · Share ›

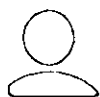


Passion Of The Taint · 24 days ago

Yes you did Dan!!!! You gave an acquaintance of mine a drippy peepee! He was in pain for weeks! You sick Beardo!!!!

^ v · Reply · Share ›

0 ^ v · Reply · Share ›



AlterEGO · 24 days ago

Did not say what year in story?

^ v · Reply · Share ›



Professor Hoops · 24 days ago

I honestly don't know either of these d-bags.

4 ^ v · Reply · Share ›



BlueyesRani → Professor Hoops · 24 days ago

And we are better people for that!

1 ^ v · Reply · Share ›



BlueyesRani · 24 days ago

Maybe something crawled out of that breeding ground on his face & into her wooha.....YUCK!!!
BTW...who is this clod?

2 ^ v · Reply · Share ›



DANIKAHUNTER · 24 days ago

Nasty man he's lucky his sausage hasn't fallen off or go rotten!

4 ^ v · Reply · Share ›



Cupcake · 24 days ago

Hush, Lawn Gnome. The Dirty made you.

6 ^ v · Reply · Share ›



The Man In Pain · 24 days ago

He doesn't have any STDs ANYMORE, so now he is suing, why not.. Lmao

3 ^ v · Reply · Share ›



The Man In Pain → The Man In Pain · 24 days ago

Again another person that no one knows nor cares about... Must be a slow weekend for
TMZ

5 ^ v · Reply · Share ›



really_now · 24 days ago

Never heard of him

4 ^ v · Reply · Share ›



Steve-o · 24 days ago

I hope the same thing happens to him that happened to Bolivar on The Strain.

^ v · Reply · Share ›

Reply · Share



Jennifer P · 24 days ago

She should consider herself lucky that Chlamydia is all he gave her. I would have thought he'd be carrying the whole spectrum of winky-diseases.

4 ^ v · Reply · Share



Milton · 24 days ago

Don't be silly, cover your willy.

1 ^ v · Reply · Share



leongreks@yahoo.com · 24 days ago

Hopefully he don't have any abnormalities related to Sex. But his life isn't perfect with easier women. He had strokes from overexherting with them.

1 ^ v · Reply · Share



Wp · 24 days ago

He sued the producers of Lone Survivor because he paid them millions to be in the movie and didn't get the time in the movie that they said he would. What a joke. He pays people off to be in movies.

5 ^ v · Reply · Share



Leilani · 24 days ago

I love how he tries to act like he is this big giant bearded playboy douche, when in fact you are such a small small man. 5'6" I believe? All those nasty woman with you constantly makes you look like you are desperately trying to over compensate always. Stupid trust fund moron with no job living off of parents money spreading std's. Yuck.

5 ^ v · Reply · Share



Lars. → Leilani · 23 days ago

5'3" according to rumors.

3 ^ v · Reply · Share



Wp → Leilani · 24 days ago

Smaller than 5'6.

2 ^ v · Reply · Share



Leilani → Wp · 24 days ago

Even better! Such a tiny insecure man 😊

4 ^ v · Reply · Share



Er Bear → Leilani · 23 days ago

I mean he's like Kim K's height! He's a hobbit! Haha

— Endo, he's like Kim K's height! He's a Hobbit! Haha

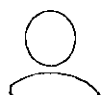
^ v · Reply · Share ·



Cali4life · 24 days ago

Are they both Armenian?

^ v · Reply · Share ·



StarsWrappedInYourHair · 24 days ago

Ahhhhhhhhhhhhhhhhhh! Please stop writing about him!!!!

This pig should have NO attention. He's unimportant in every way.

4 ^ v · Reply · Share ·



Redickutarded · 24 days ago

Dan, stop being upset. Every disease needs a face. Use this opportunity to actually do some good and spread awareness instead of more STD's to fresh Midwest girls.

4 ^ v · Reply · Share ·



Dan Dawson · 24 days ago

Not even warts...damn...must not spend any time in LA...

^ v · Reply · Share ·



This comment was deleted.



Ryan ↗ Guest · 23 days ago

It's definitely the guy from The a dirty trying to be famous, not the guy who paid over a million dollars to be in Lone Survivor and buys his friends... He's trying a bit too hard. Maybe if he was taller than 5'5", he'd get the reality show he wants.

^ v · Reply · Share ·



Redickutarded ↗ Guest · 24 days ago

Dan! Stop posting comments on the TMZ board trying to defend yourself.

6 ^ v · Reply · Share ·



agman · 24 days ago

Oh please. That beard probably has an std.

6 ^ v · Reply · Share ·



Sir Walter Really · 24 days ago

Two Armenian douchebags - hope they both go broke.

4 ^ v · Reply · Share ·



stacinpa · 24 days ago



No need to be a "crab" over it. Whats wrong now, you have the "itch" to clear up ur name? Well just "clap" , u have no " green flow". I hope you dont feel the "burn" from this story.

5 ^ v · Reply · Share ›



colored penguin → stacinpa · 24 days ago

Heh-heh. Herpes.

^ v · Reply · Share ›



SJ · 24 days ago

Dan has long since lost his soul and Nik peddles unverified gossip for a living...why we give EITHER any recognition is beyond me....

2 ^ v · Reply · Share ›



Anaaa · 24 days ago

a lion eat dan already please?? Nik Richie is a character.. He only acts the way he does on the site because that's what people want

2 ^ v · Reply · Share ›



bart4u · 24 days ago

If the guy or woman knows they have an STD and has sex without telling their partner they will always lose in a lawsuit. If fact that is also a criminal offense. She should find evidence he knew he had a disease then she could sue him for big bucks.

1 ^ v · Reply · Share ›



Soundofsilence · 24 days ago

A lot more ppl know about it now, than if he had just let it go.....

3 ^ v · Reply · Share ›



purplegurl · 24 days ago

This guy is so nasty and I am embarrassed for my fellow females who throw themselves at this douche.

10 ^ v · Reply · Share ›



Jmw26red → purplegurl · 24 days ago

I know! This guy will treat you like a piece of worthless trash. Don't get the appeal.

1 ^ v · Reply · Share ›



Gary Busey · 24 days ago

Castrate Bilzerian!

3 ^ v · Reply · Share ›



Marlon Hewitt · 24 days ago



He's suing because he's saddened that people think he only has one STD. He's slept with hundred of girls, he wants the recognition Dennis Rodman has.

Also, he's saying chlamydia is damaging his reputation (a very easily treated STD), but him throwing women off hotel roofs, and everything else he subjects women to isn't? Hahahaha ok. Loser.

7 ^ v · Reply · Share ›



Keith M Kabza · 24 days ago

The only reason a guy with that much money and woman at his disposal would sue is because he did have it. Get ready for a lawsuit TMZ.

5 ^ v · Reply · Share ›

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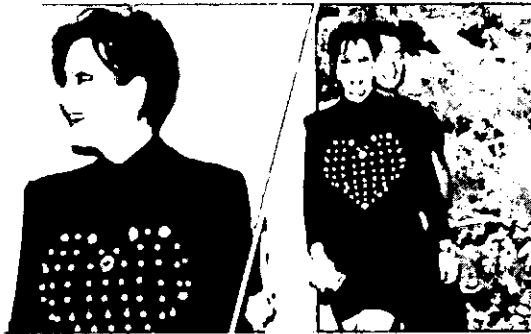
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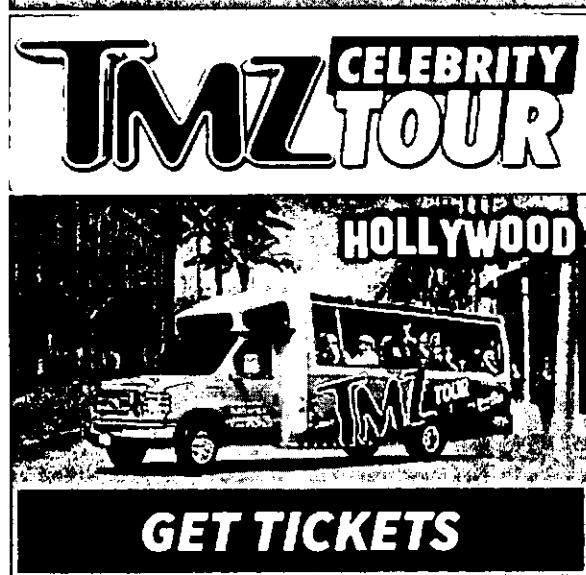
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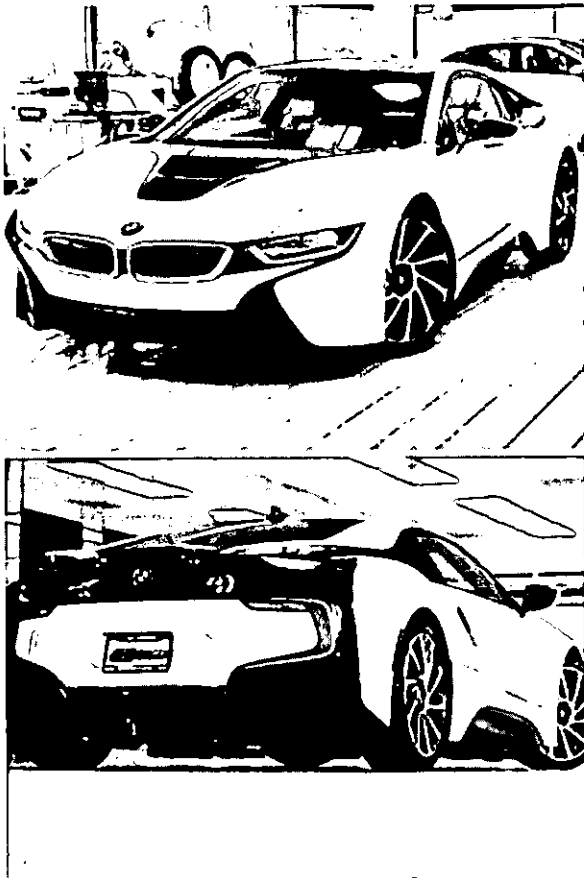
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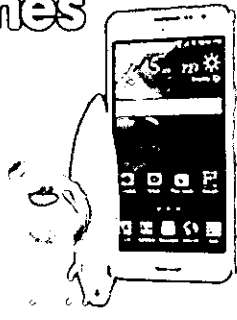
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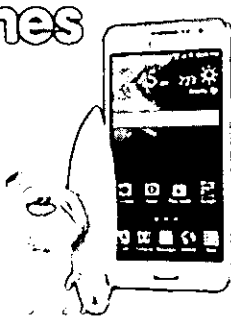
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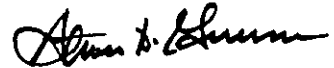


EXHIBIT 3

Excerpted Transcript of

Hearing on Anti-SLAPP
Special Motion to Dismiss

November 17, 2015



CLERK OF THE COURT

1 TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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DAN BILZERIAN,

Plaintiff,

vs.

DIRTY WORLD, LLC, TMZ
PRODUCTIONS, INC., HOOMAN
KARAMIAN,

Defendants.

CASE NO. A-15-722801

DEPT. NO. XXXII

Transcript of Proceedings

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE
**ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660;
PLAINTIFF'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANTS DIRTY WORLD, LLC, DBA THEDIRTY.COM AND HOOMAN
KARAMIAN AKA NIK RICHIE AKA NIK LAMAS-RICHIE SHOULD NOT BE
HELD IN CONTEMPT AND REQUEST FOR A PROTECTIVE ORDER ON OST
TUESDAY, NOVEMBER 17, 2015**

APPEARANCES:

For the Plaintiff:

BRIAN W. BOSCHKEE, ESQ.
KIMBERLY P. STEIN, ESQ.

For TMZ Productions, Inc.: MARC J. RANDAZZA, ESQ.
ALEX J. SHEPARD, ESQ.

For Dirty World, LLC and
Nik Richie:

PAUL SHPIRT, ESQ.

RECORDED BY:

CARRIE HANSEN, DISTRICT COURT

TRANSCRIBED BY:

KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 TUESDAY, NOVEMBER 17, 2015 AT 10:02 A.M.

2

3 THE CLERK: *Dan Bilzerian versus Dirty World, LLC,*
4 case number A722801.

5 MR. SHPIRT: Good morning, Your Honor. Paul
6 Shpirt for the defendants, the Dirty World and Nik Richie.

7 MR. RANDAZZA: Good morning, Your Honor. Marc
8 Randazza and Alex Shepard for TMZ.

9 MR. BOSCHEE: Good morning, Your Honor. Brian
10 Boschee and Kimberly Stein from Holley, Driggs on behalf of
11 the plaintiff.

12 THE COURT: All right. Go ahead and have a seat
13 and relax. Who is this guy?

14 UNIDENTIFIED SPEAKER: I'm here for your 10:30.

15 THE COURT: Oh, you're here for the 10:30?

16 UNIDENTIFIED SPEAKER: I had a status conference
17 earlier today and came right back.

18 THE COURT: All right. All right. So, in this
19 case, the plaintiff, Dan Bilzerian, filed a Complaint
20 against defendant, Dirty World, LLC, and also somebody
21 known as Nik Richie let's just say. Right?

22 MR. SHPIRT: That is his legal name, Your Honor.

23 THE COURT: Okay. Alleging defamation per se and
24 also a preliminary and permanent injunction. There was an
25 Amended Complaint that added TMZ Productions as a

1 defendant. That Amended Complaint came about on August
2 11th. We're here today as once served that Complaint,
3 looked at it, TMZ has filed a Motion under the anti-SLAPP
4 lawsuit sort of statutory scheme. It's a Motion to Dismiss
5 and also the plaintiff has a request for a protective order
6 having to do with relevant events that have happened in
7 discovery. We'll talk about that, of course.

8 Just to let you know, the Court -- I've looked
9 over everything and I see the attempt, and it was a really
10 good attempt, I think, that the plaintiffs made to try to
11 enter into an agreement having to do with a potential
12 dissemination of information and sort of a confidentiality
13 or protective order, if you will, but we'll talk about
14 that. I think the better thing to do is just start off
15 with TMZ's motion.

16 It's an interesting area of law, certainly. It
17 talks about the idea of what a District Court has to
18 involve itself with. So, I do want to tell you all that I
19 see that there is a process, both spelled out in the
20 statutory scheme, which is NRS 41.650, and also sort of
21 codified, if you will, or memorialized by case law the *John*
22 *versus Douglas County School District* case comes to mind,
23 the idea that if -- as I look at TMZ, if you move for a
24 Special Motion to Dismiss, if you bared the initial burden
25 of production and persuasion, that means that you, if

1 you're TMZ, you've got to make a threshold showing that the
2 lawsuit is based on good faith communication in furtherance
3 to -- the right of free speech, essentially. And if you do
4 that, then the burden of production shifts to the nonmoving
5 party and has to demonstrate a genuine issue of material
6 fact. That's sort of the way it works.

7 I think running through this, too, is the idea of
8 whether the plaintiff, Dan Bilzerian -- is that how you say
9 his name?

10 MR. BOSCHEE: Bilzerian.

11 THE COURT: Bilzerian. Yeah. Whether he is a
12 public figure. And so, let me just ask right off the bat,
13 for all legal purposes, do you agree that he's a public
14 figure?

15 MR. BOSCHEE: I think it would be difficult for us
16 to take the position that he is not a public figure.

17 THE COURT: Okay. So that's dispensed with. You
18 know, I would have -- I mean, I imagine court argument
19 could have potentially changed my mind, that's why you have
20 court, but I've got to tell you, I looked at everything
21 that I could look at on the issue of whether the plaintiff
22 is a public figure under the law and it did seem to me that
23 whether it's the million followers on Twitter, the sort of
24 the idea that he's the king of Instagram, or whether it's
25 the other things that have brought up here, including the

1 political activity, running for office, or ostensibly doing
2 so, you know, it seems like there's a lot of reason to find
3 that the plaintiff is a public figure under the law.

4 And, of course, as we all know, that becomes
5 relevant in some ways under the *New York Times versus*
6 *Sullivan* sort of analysis, the idea of the -- whether
7 there's malice and I can cover that with you if you'd like,
8 but it's well spelled out in here and I think we've known
9 about that for some time.

10 TMZ points out basically a couple things. They
11 talk about the idea of this is simply a fair report because
12 there is, I guess, this area of law, which I haven't seen a
13 whole lot of, the idea of a fair report privilege premised
14 on the theory that if -- since we have a public figure,
15 that members of the public have an interest in observing
16 and being made aware of public proceedings, such as the
17 fact that a lawsuit was filed which alleged whatever it
18 alleged concerning -- and it was filed by a public figure.

19 So, TMZ's position is: Well, you know, we don't
20 control whether this lawsuit was filed, but we certainly
21 can report on it and we have a privilege when we do so, is
22 part of what they pointed out. And so that's on my mind.
23 Certainly I see the idea that TMZ is just simply reporting
24 that a lawsuit was filed and giving the public --
25 concerning a public figure, some insight as to what the

1 drunk, she slept with him, got tested two weeks later, and
2 got -- found out she had chlamydia.

3 So that timeline is -- it's relatively recent. I
4 mean, in conjunction to August 1st. It's not as though this
5 is something that's alleged to have occurred some time ago
6 to where I might look at it and say: Well, the problem is
7 TMZ's alleging a current -- they're reporting there was an
8 allegation of a current STD when, in fact, it's real
9 crystal clear that it was some past STD that happened years
10 ago. Rather, it's all sort of contemporaneous with this
11 August 1st publication date.

12 Again, it talks about meeting Dan a few weeks ago
13 and then find out a few more weeks later that I had
14 chlamydia. That's what she says, or the person says.

15 And, so, when TMZ publicizes that the -- and they
16 sort of characterize her claim as he is riddled with STD,
17 given that the claim was August 1st and it -- the paragraph
18 describing the condition as alleged is all within about --
19 a few weeks or at most a month, to me, that's a
20 contemporaneous allegation of -- I mean, this is going to
21 sound like one of the weirdest things I've ever said as a
22 judge, but it's a contemporaneous allegation of chlamydia.
23 It's what it is and that's what TMZ said it was, a
24 contemporaneous allegation of chlamydia, where they say
25 he's riddled with the STD as alleged. That's what it says

1 here.

2 So, I -- what I really think at the end of the day
3 is that -- I don't -- I just don't think there's a material
4 issue of fact that remains because this is really taken as
5 the law says, this anti-SLAPP stuff, it's really supposed
6 to be taken in sort of a summary judgment mode.

7 It seems like what happened was on August 1st of
8 2015, Jane Doe's -- I don't know what this thing is, a blog
9 or whatever it was, was publicized by Dirty World, LLC. It
10 came to the attention of the plaintiff. He filed a
11 Complaint on August 7th. So, six days after the
12 publication, he files this Complaint alleging that there's
13 defamation and TMZ sees that. They, I think, rightly so,
14 then noted that he's -- that the plaintiff is a public
15 figure and so they reported on it. And when they said that
16 he's riddled -- that it's alleged in the lawsuit that the
17 plaintiff is riddled with an STD, I think that's a fair
18 factual depiction of what is essentially alleged by Jane
19 Doe. You have all this contemporaneous, like I said a few
20 times, but this August 1st date.

21 And as far as, I think I've already said enough,
22 TMZ now publicizing that it's chlamydia, well it's true. I
23 mean, as it turns out, you do any reasonable investigation
24 into what was alleged, it is chlamydia.

25 So, if anything, it seems like TMZ ought to be

1 commended for looking and doing their homework to figure
2 out what type of STD is alleged and maybe not leaving it so
3 open-ended to where maybe, you know, something worse could
4 come to the public's mind. I mean, I've -- you know, it's
5 not lost on me to say that as far as types of things that -
6 - diseases that could be alleged, chlamydia is certainly on
7 the lower end of -- if you're going to have a disease, that
8 one is curable, as I understand it, and, you know, some
9 other STDs aren't. Things that go as far as AIDS, you can
10 die from.

11 And, so, I think that the specific reporting was
12 done not with any reckless disregard, but actually with
13 decent investigative work because that's what she alleged,
14 chlamydia. She didn't allege anything else.

15 And, so, for all those reasons, the Defense Motion
16 to Dismiss is granted. And that means, Mr. Randazza, you
17 can prepare the Order on that.

18 MR. RANDAZZA: Thank you, Your Honor. Just --

19 THE COURT: Now that takes us to the -- do you
20 want to say something?

21 MR. RANDAZZA: Yes, Your Honor. Under the
22 statute, we have -- I just want to make it clear, we have
23 the right to fees on this, but also there is a
24 discretionary up to \$10,000 to dissuade similar suits in
25 the future. So what is Your Honor's ruling on that? We'd

1 lunch.

2 THE COURT: Only if you also equally publicize the
3 fact that you shouldn't get paid.

4 MR. SHPIRT: I think my client might publicize
5 that.

6 MR. RANDAZZA: Is that an -- is that part of the
7 order, Your Honor?

8 Thank you, Your Honor.

9 MR. SHPIRT: Thank you, Your Honor.

10

11 PROCEEDING CONCLUDED 10:38 A.M.

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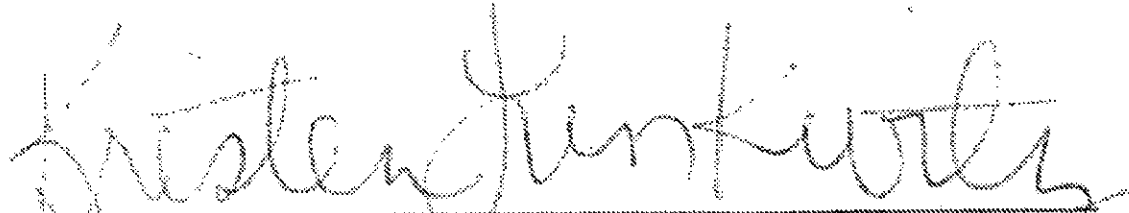
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4 I certify that the foregoing is a correct transcript from
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8 **AFFIRMATION**

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10 I affirm that this transcript does not contain the social
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12 entity.
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EXHIBIT 4

Declaration of
Marc J. Randazza

DISTRICT COURT
CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual
Plaintiff,

vs.

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

DECLARATION OF MARC J. RANDAZZA IN SUPPORT OF DEFENDANT TMZ PRODUCTIONS, INC.'S MOTION FOR COSTS, ATTORNEYS' FEES, AND DAMAGES UNDER NRS 41.670

I, Marc J. Randazza, having knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, do declare under penalty of perjury:

1. I am an attorney with 13 years of experience licensed to practice law in the State of Nevada, as well as California, Arizona, Florida, and Massachusetts. My curriculum vitae is attached as **Exhibit 11** to Defendant TMZ Productions, Inc.'s ("TMZ") Motion for Fees, Costs, and Damages.

2. I have a BA from the University of Massachusetts at Amherst, where I focused my studies on media law. I have a JD from Georgetown University Law Center. I also hold a Master's Degree in Mass Communications from the University of Florida, where I also focused on media and First Amendment law studies. Finally, I have an LLM from the University of Turin, in Italy.

3. I have taught First Amendment law at the law school level, specifically at Barry University School of Law, and have given presentations to other attorneys in CLE courses on how to handle Anti-SLAPP litigation.

1 4. I am the founder and managing partner of Randazza Legal Group,
2 PLLC ("RLG").

3 5. The primary focus of my practice consists of free speech and First
4 Amendment litigation.

5 6. I am attorney of record for TMZ.

6 7. Due to my legal expertise and reputation, I have appeared on and
7 written articles for numerous national news sources including National Public
8 Radio, The New York Times, CNN, Fox News, NBC, and Vegas Inc., and I am a
9 regular columnist for CNN.

10 8. I submitted my proposed Anti-SLAPP legislation to the Nevada
11 Senate on March 15, 2013. I was called as a witness before the Nevada State
12 Senate Judiciary committee to testify as an expert on First Amendment law and
13 Anti-SLAPP laws for the benefit of the committee and the Senate in passing this
14 important law. On April 22, 2013, the Nevada Senate voted on my proposed
15 Anti-SLAPP statute, and it passed **unanimously**. I appeared before the Assembly
16 Judiciary Committee on May 6, 2013. On May 22, 2013, the Nevada Assembly
17 voted on and unanimously passed the Anti-SLAPP statute. On May 27, Governor
18 Brian Sandoval approved the bill. Attached as **Exhibit 9** to TMZ's Motion for
19 Costs, Fees, and Damages is my presentation to the Senate.

20 9. I testified before the Nevada Assembly Committee on the Judiciary
21 on April 24, 2015 when the Nevada legislature was considering SB 444, an
22 amendment that originally would have stripped Nevada's Anti-SLAPP statute of
23 its most important protections and remedies. I also led the lobbying effort to
24 save the statute from the significant changes SB 444 would have brought, and
25 was instrumental in crafting the language in the statute today. The version of SB
26 444 that ultimately passed, creating the current version of the statute, retains the
27 substance of the 2013 statute with relatively mild changes. Attached as

1 **Exhibit 10** to the TMZ's Motion for Costs, Fees, and Damages is my presentation
2 to the Assembly Committee on the Judiciary.

3 10. As managing partner of RLG, I oversee the billing entries for the firm
4 on this case, utilizing the billing software Bill 4 Time. Attached as **Exhibit 5** to
5 TMZ's Motion for Costs, Fees, and Damages is the billing summary for this action.

6 11. Each invoice displays the date of the entry, the attorney, paralegal,
7 or staff performing the work, the description of the work performed, and the
8 amount of time spent performing that activity, as entered into Bill 4 Time tracked
9 in one-tenths of an hour. The bottom of each report totals the labor hours
10 expended in representing TMZ.

11 12. I customarily bill at an hourly rate of \$650 per hour.

12 13. My law partner, Ronald D. Green, has been an attorney licensed in
13 Nevada for 15 years, and has several years of experience with defamation and
14 First Amendment cases. Mr. Green is one of Nevada's preeminent attorneys in
15 the field of intellectual property litigation. Mr. Green graduated from
16 Washington & Jefferson College and obtained his JD from the University of
17 Pittsburgh School of Law. Mr. Green's standard hourly billing rate is \$475 per
18 hour.

19 14. My associate Alex J. Shepard is an attorney licensed in California
20 and Nevada. Mr. Shepard is a graduate of the University of Tennessee at
21 Chattanooga and received his JD from Washington University School of Law. He
22 has two years of litigation experience, primarily in First Amendment litigation,
23 including defamation cases and Anti-SLAPP motions. Mr. Shepard's standard
24 hourly billing rate is \$325 per hour.

25 15. Trey Rothell is a paralegal with 1.5 years of experience. He normally
26 bills at a rate of \$175 per hour.

27 16. Non-paralegal staff typically bill at a rate of \$50 to \$75 per hour.

1 17. These rates are based on national market rates, as RLG's practice is
2 nation-wide. However, we generally follow the Laffey Matrix, attached as
3 **Exhibit 12** to TMZ's Motion, with some elevated rates for special matters. RLG
4 also occasionally discounts the rates of its attorneys in cases that implicate
5 significant First Amendment issues. Furthermore, we do not charge for most
6 customary costs like long-distance phone calls, faxes, copies, and the like, as we
7 build most "costs" into our hourly rates rather than nickel-and-dime our clients for
8 small costs and charges.

9 18. TMZ negotiated a 20% discount on the customary rates charged by
10 RLG's attorneys for their work on this matter, and a slight discount for the hourly
11 rates of RLG's paralegals.

12 19. On August 11, 2015, Dan Bilzerian ("Bilzerian") amended his
13 Complaint in this action to add TMZ as a defendant, alleging a cause of action
14 for defamation.

15 20. TMZ filed its Answer to Bilzerian's Amended Complaint on
16 September 15, 2015.

17 21. On October 12, 2015, TMZ filed its Anti-SLAPP motion under NRS
18 41.660. Bilzerian filed an opposition to it, and TMZ filed a reply in support of it.

19 22. On November 12, 2015, Bilzerian filed an application for a
20 protective order that would have effectively imposed a gag order on all
21 Defendants, forbidding them from discussing this case to anyone. As TMZ would
22 have been subject to such an order, it filed an opposition to this application on
23 November 14, 2015.

24 23. On November 17, 2015, the Court heard oral argument on TMZ's
25 Anti-SLAPP motion and Bilzerian's application for a protective order, and found
26 in TMZ's favor, granting its Anti-SLAPP motion.

27 24. In order to maximize cost efficiency, I had attorney Alex Shepard
take primary responsibility for functions that a lower-level associate could handle

1 at a lower rate, including investigation, research, and drafting memoranda,
2 while I provided litigation strategy and made the ultimate decisions as to the
3 motions and pleadings.

4 25. To avoid litigation regarding TMZ's entitlement to fees and damages
5 under NRS 41.670, I contacted Bilzerian's counsel in a good-faith attempt to
6 compromise the amount of fees and costs sought. Despite a good-faith meet
7 and confer on the matter, the parties could not come to an agreement on this
8 issue.

9 26. In multiplying the respective rate by the hours expended working on
10 these matters, the total attorneys' fees incurred in representing TMZ in this action
11 is, to date, \$33,745. The number of hours spent on this matter multiplied by the
12 customary rates of RLG's attorneys and staff, rather than their discounted rates,
amounts to \$43,555.

13 27. TMZ has incurred \$455.25 in costs under NRS 18.005 and 18.110 in
14 connection with this matter.

15 Signed this 1st day of December, 2015

16
17 
18 Marc J. Randazza

EXHIBIT 5

Randazza Legal Group
Timesheet

Randazza Legal Group - Time Entry

Date Start: 6/1/2015 Date End: 12/1/2015 Clients: TMZ Matters: adv. Bilzerian Users: Client Type: All Matter Type: All Location: All Group By: Matter					
Date	User	Description	Billing Time	Hourly Rate	Billed Amt
09/03/2015	Alex Shepard	Review of terms of retainer agreement	0.00	\$0.00/hr	\$0.00
09/03/2015	Alex Shepard	Review of email correspondence between MJR and client re: [REDACTED]	0.00	\$0.00/hr	\$0.00
09/03/2015	Marc Randazza	Call with Wayne regarding [REDACTED]	0.30	\$520.00/hr	\$156.00
09/03/2015	Marc Randazza	Call to opposing counsel regarding answer due date. (left message)	0.10	\$520.00/hr	\$52.00
09/03/2015	Marc Randazza	Delegation of task (letter to opposing counsel) to lower cost associate.	0.10	\$520.00/hr	\$52.00
09/03/2015	Marc Randazza	Telephone Conference with counsel for The Dirty to discuss [REDACTED]	0.40	\$520.00/hr	\$208.00
09/03/2015	Alex Shepard	Review of email correspondence between MJR and client re: [REDACTED]	0.00	\$0.00/hr	\$0.00
09/03/2015	Alex Shepard	Meeting with RDG re: [REDACTED]	0.00	\$0.00/hr	\$0.00
09/03/2015	Marc Randazza	Drafting memorandum to Wayne Smith regarding [REDACTED]	0.30	\$520.00/hr	\$156.00
09/03/2015	Marc Randazza	receipt and review and analysis of arbitration exemption filed by plaintiff.	0.20	\$520.00/hr	\$104.00
09/03/2015	Marc Randazza	Correspondence to Wayne Smith regarding [REDACTED]	0.20	\$520.00/hr	\$104.00
09/03/2015	Alex Shepard	Phone call with MJR re: [REDACTED]	0.00	\$0.00/hr	\$0.00
09/03/2015	Marc Randazza	Emails with Wayne Smith regarding [REDACTED]	0.00	\$0.00/hr	\$0.00
09/03/2015	Trey Rothell	Prepare template pleading shell for use in matter.	0.20	\$140.00/hr	\$28.00
09/03/2015	Ron Green	Instruct AJS re: Special Motion to Dismiss and strategy going forward.	0.20	\$380.00/hr	\$76.00
09/03/2015	Trey Rothell	Prepare and file (1) Notice of Appearance, and (2) Initial Appearance Fee Disclosure; serve courtesy copy on counsel via email and US Mail; transmit check for appearance fee to Clerk's office via US Mail.	0.50	\$140.00/hr	\$70.00
09/03/2015	Ron Green	Conference with MJR re: [REDACTED]	0.10	\$380.00/hr	\$38.00
09/03/2015	Ron Green	Review and approval of Notice of Appearance.	0.10	\$380.00/hr	\$38.00
09/03/2015	Ron Green	Review and approval of initial appearance fee motion.	0.10	\$380.00/hr	\$38.00
09/03/2015	Alex Shepard	Review of complaint and annotation of particular language and allegations for incorporation into draft of Anti-SLAPP motion.	0.30	\$260.00/hr	\$78.00
09/03/2015	Marc Randazza	Receipt and review of [REDACTED]	0.30	\$520.00/hr	\$156.00
09/03/2015	Marc Randazza	Correspondence to counsel for The Dirty regarding [REDACTED]	0.10	\$520.00/hr	\$52.00
09/03/2015	Alex Shepard	Drafting of memo to MJR re: initial draft of Anti-SLAPP motion. Collection of exhibits to same.	0.50	\$260.00/hr	\$130.00
09/03/2015	Alex Shepard	Confer with MJR re: seeking extension to respond to complaint. Looking up contact information for opposing counsel and drafting memo to MJR re: initial draft of request for extension.	0.30	\$260.00/hr	\$78.00
09/04/2015	Alex Shepard	Meeting with MJR, AKM, and RDG re: [REDACTED]	0.00	\$0.00/hr	\$0.00
09/04/2015	Alex Shepard	Review of stipulation extending time to respond to complaint.	0.00	\$0.00/hr	\$0.00
09/04/2015	Marc Randazza	Receipt and review of [REDACTED] transmitted by Wayne.	0.30	\$520.00/hr	\$156.00
09/04/2015	Alex Shepard	Review of notice of appearance.	0.00	\$0.00/hr	\$0.00
09/04/2015	Alex Shepard	Review of email correspondence between MJR and o/c re: extension of time to respond to complaint.	0.00	\$0.00/hr	\$0.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
09/04/2015	Marc Randazza	Delegation of drafting tasks to lower cost associate (AJS)	0.10	\$520.00/hr	\$52.00
09/04/2015	Marc Randazza	Transmittal of [REDACTED] to Atty Smith, and render advice on [REDACTED]	0.10	\$520.00/hr	\$52.00
09/04/2015	Marc Randazza	Receipt and review of [REDACTED]	0.10	\$520.00/hr	\$52.00
09/04/2015	Trey Rothell	Prepare joint stipulation to extend time to respond to complaint.	0.30	\$140.00/hr	\$42.00
09/04/2015	Trey Rothell	Finalize and transmit joint stipulation to opposing counsel.	0.10	\$140.00/hr	\$14.00
09/04/2015	Alex Shepard	Review of [REDACTED], for incorporation of structure and content into draft of Anti-SLAPP motion.	0.30	\$260.00/hr	\$78.00
09/04/2015	Alex Shepard	Review of [REDACTED], for incorporation of content into draft of Anti-SLAPP motion.	0.20	\$260.00/hr	\$52.00
09/04/2015	Alex Shepard	Online research of [REDACTED]	0.60	\$260.00/hr	\$156.00
09/07/2015	Alex Shepard	Collection of exhibits of same for use in draft of Anti-SLAPP motion.			
09/07/2015	Alex Shepard	Drafting of memo to MJR re: initial draft of Anti-SLAPP motion.	1.50	\$260.00/hr	\$390.00
09/07/2015	Alex Shepard	Legal research re: [REDACTED], for use in memo to MJR re: initial draft of Anti-SLAPP motion.	0.20	\$260.00/hr	\$52.00
09/08/2015	Ron Green	Online research re: [REDACTED]	0.40	\$380.00/hr	\$152.00
09/09/2015	Alex Shepard	Further drafting of memo to MJR re: initial draft of Anti-SLAPP motion.	1.10	\$260.00/hr	\$286.00
09/09/2015	Alex Shepard	Legal research on [REDACTED]	0.20	\$260.00/hr	\$52.00
09/10/2015	Alex Shepard	Further drafting of memo to MJR re: initial draft of Anti-SLAPP motion.	2.70	\$260.00/hr	\$702.00
09/10/2015	Alex Shepard	Additional research on [REDACTED], for use in Anti-SLAPP motion. Creation of additional exhibits to same.	0.20	\$260.00/hr	\$52.00
09/10/2015	Alex Shepard	Organization and labeling of exhibits to Anti-SLAPP motion for easier and more expedient reference, to reduce attorney billing.	0.20	\$175.00/hr	\$35.00
09/10/2015	Alex Shepard	Completion of memo to MJR re: initial draft of Anti-SLAPP motion.	2.20	\$260.00/hr	\$572.00
09/10/2015	Alex Shepard	Legal research on [REDACTED] for use in Anti-SLAPP motion.	0.30	\$260.00/hr	\$78.00
09/11/2015	Marc Randazza	Review and revise Anti-SLAPP motion.	1.00	\$520.00/hr	\$520.00
09/11/2015	Alex Shepard	Confer with MJR re: [REDACTED]	0.10	\$260.00/hr	\$26.00
09/11/2015	Alex Shepard	Pulling of final text of SB 444 amending NV Anti-SLAPP statute, for incorporation into draft of Anti-SLAPP motion.	0.10	\$175.00/hr	\$17.50
09/11/2015	Alex Shepard	Revisions to draft of Anti-SLAPP motion.	1.70	\$260.00/hr	\$442.00
09/11/2015	Alex Shepard	Legal research as to [REDACTED] for inclusion in Anti-SLAPP motion.	0.50	\$260.00/hr	\$130.00
09/11/2015	Alex Shepard	Revisions to draft of Anti-SLAPP motion.	1.30	\$260.00/hr	\$338.00
09/11/2015	Alex Shepard	Legal research on [REDACTED]	0.50	\$260.00/hr	\$130.00
09/14/2015	Alex Shepard	Meeting with MJR re: [REDACTED]	0.10	\$260.00/hr	\$26.00
09/14/2015	Alex Shepard	Review of email correspondence from Wayne re [REDACTED] Drafting of memo to MJR re: initial draft of Answer and Affirmative Defenses.	1.00	\$260.00/hr	\$260.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
09/14/2015	Alex Shepard	Confer with MJR re: [REDACTED]	0.10	\$260.00/hr	\$26.00
09/14/2015	Alex Shepard	Legal research on [REDACTED]	0.20	\$260.00/hr	\$52.00
09/14/2015	Alex Shepard	Revisions to draft of Answer and Affirmative Defenses.	0.20	\$260.00/hr	\$52.00
09/15/2015	Alex Shepard	Review of redline version of draft of Answer and Affirmative Defenses. Mild revisions to same and transmission of same to lower-cost paralegal for formatting revisions.	0.20	\$260.00/hr	\$52.00
09/15/2015	Trey Rothell	Proofread and make formatting and cosmetic edits to draft answer.	0.30	\$140.00/hr	\$42.00
09/15/2015	Alex Shepard	Review of email correspondence from Wayne re: [REDACTED] Mild revisions to draft of Answer and Affirmative defenses, and transmission of same to Wayne.	0.20	\$260.00/hr	\$52.00
09/15/2015	Trey Rothell	Draft NRCP 7.1 disclosure v1.	0.10	\$140.00/hr	\$14.00
09/15/2015	Alex Shepard	Review of email from Wayne re: [REDACTED] Drafting of same.	0.10	\$175.00/hr	\$17.50
09/15/2015	Trey Rothell	Finalize and file Answer and Corporate Disclosure; serve via email and U.S. Mail.	0.40	\$140.00/hr	\$56.00
09/18/2015	Alex Shepard	Review of email correspondence from o/c re: scheduling early case conference.	0.10	\$260.00/hr	\$26.00
09/18/2015	Trey Rothell	Receive and review scheduling email from opposing counsel in regard to early case conference; respond with scheduling availability for MJR.	0.10	\$140.00/hr	\$14.00
09/25/2015	Alex Shepard	Meeting with MJR and RDG [REDACTED]	0.10	\$260.00/hr	\$26.00
09/25/2015	Alex Shepard	Meeting with RDG re: [REDACTED] (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$0.00/hr	\$0.00
09/25/2015	Ron Green	Prepare for early case conference.	0.30	\$380.00/hr	\$114.00
09/25/2015	Ron Green	Attend early case conference at offices of Plaintiff's counsel.	1.40	\$380.00/hr	\$532.00
09/28/2015	Ron Green	Draft memo re: early case conference to file.	0.30	\$380.00/hr	\$114.00
10/07/2015	Alex Shepard	Internal organization of files for more expedient attorney access to reduce future billing.	0.10	\$175.00/hr	\$17.50
10/08/2015	Trey Rothell	Draft initial NRCP 16.1 disclosures; transmit email memo to attys on case re: [REDACTED]	0.30	\$140.00/hr	\$42.00
10/08/2015	Ron Green	Instruct paralegal re: [REDACTED] Review draft initial disclosures.	0.40	\$380.00/hr	\$152.00
10/08/2015	Alex Shepard	Brief review of draft of NRCP 16.1 disclosures.	0.10	\$260.00/hr	\$26.00
10/08/2015	Trey Rothell	Edits to Rule 16.1 initial disclosures; draft/transmit email to client re disclosures.	0.20	\$140.00/hr	\$28.00
10/08/2015	Marc Randazza	review file and email with client regarding [REDACTED]	0.10	\$520.00/hr	\$52.00
10/08/2015	Marc Randazza	Confer with paralegal regarding [REDACTED]; email to client regarding [REDACTED]	0.10	\$520.00/hr	\$52.00
10/09/2015	Marc Randazza	Call to counsel for co-defendant regarding [REDACTED]	0.30	\$520.00/hr	\$156.00
10/09/2015	Alex Shepard	Review of email correspondence from Wayne re: [REDACTED]	0.10	\$260.00/hr	\$26.00
10/09/2015	Marc Randazza	Review client edits to Anti-SLAPP motion, review and revise motion.	1.50	\$520.00/hr	\$780.00
10/09/2015	Alex Shepard	Review and approval of declaration authenticating Anti-SLAPP exhibits.	0.10	\$260.00/hr	\$26.00
10/09/2015	Marc Randazza	receipt and review of documents dropped off by opposing counsel.	0.90	\$520.00/hr	\$468.00
10/09/2015	Marc Randazza	Call to P. Shpirt, counsel for co-defendant (left message)	0.00	\$0.00/hr	\$0.00
10/09/2015	Marc Randazza	Call to local counsel for The dirty regarding [REDACTED]	0.40	\$520.00/hr	\$208.00
10/09/2015	Alex Shepard	Meeting with MJR re: [REDACTED]	0.10	\$260.00/hr	\$26.00
10/09/2015	Alex Shepard	Review of and revisions to draft of Anti-SLAPP motion (1.1). Re-labeling of exhibits to same (1). Confer with paralegal re: preparing declaration authenticating exhibits and filing same (1.1).	1.30	\$260.00/hr	\$338.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
10/09/2015	Trey Rothell	Gathering exhibits to anti-SLAPP motion and drafting declaration authenticating same.	0.60	\$140.00/hr	\$84.00
10/09/2015	Ron Green	Brief research re: [REDACTED]. Brief review of documents provided with initial disclosures.	0.40	\$380.00/hr	\$152.00
10/09/2015	Trey Rothell	Receive and review [REDACTED] by client; make small edits to same; transmit to MJR for approval.	0.20	\$140.00/hr	\$28.00
10/09/2015	Trey Rothell	Receive service of plaintiff's NRCP 16.1 disclosures and proposed stipulated protective order; scan and place on server; pull documents off of enclosed CD and place on server.	0.10	\$140.00/hr	\$14.00
10/09/2015	Trey Rothell	Finalize 16.1 disclosures and serve same to o/c via email; prepare same for service via regular mail.	0.20	\$140.00/hr	\$28.00
10/12/2015	Marc Randazza	Finalize Anti-SLAPP motion.	0.80	\$520.00/hr	\$416.00
10/12/2015	Trey Rothell	Final proofreading of and edits to anti-SLAPP special motion to dismiss; e-filing with court and transmitting service on parties via email and regular mail.	1.70	\$140.00/hr	\$238.00
10/13/2015	Alex Shepard	Review of email correspondence re: [REDACTED] and organization of case-related emails.	0.00	\$0.00/hr	\$0.00
10/30/2015	Marc Randazza	Email to client regarding [REDACTED].	0.10	\$520.00/hr	\$52.00
10/30/2015	Marc Randazza	Confer with AJS regarding [REDACTED], delegation of tasks to lower cost associate.	0.30	\$520.00/hr	\$156.00
10/30/2015	Marc Randazza	Confer with counsel for The Dirty regarding [REDACTED].	0.10	\$520.00/hr	\$52.00
10/30/2015	Marc Randazza	Continued review of opposition with lower - cost associate and delegation of memo tasks to lower cost associate. Delegation of specific research tasks to lower cost associate.	0.50	\$520.00/hr	\$260.00
10/30/2015	Marc Randazza	Additional emails with opposing counsel.	0.10	\$520.00/hr	\$52.00
10/30/2015	Marc Randazza	Receipt and review of opposition to Anti-SLAPP motion.	0.60	\$520.00/hr	\$312.00
10/30/2015	Marc Randazza	Email with opposing counsel regarding opposition.	0.10	\$520.00/hr	\$52.00
10/30/2015	Alex Shepard	Review of deadline for Bilzerian to file opposition to Anti-SLAPP motion. Review of docket on Clark County website. Instruct paralegal to pull and distribute opposition to Anti-SLAPP motion.	0.10	\$175.00/hr	\$17.50
10/30/2015	Trey Rothell	Pull Plaintiffs opposition (which was not served) from Clark County court website and distribute to attorneys.	0.10	\$140.00/hr	\$14.00
10/30/2015	Alex Shepard	Review and analysis of Bilzerian's opposition to Anti-SLAPP motion.	0.40	\$260.00/hr	\$104.00
10/30/2015	Ron Green	Attempt to resolve issues with Plaintiff's failure to serve Anti-SLAPP opposition. Review and analysis of Anti-SLAPP opposition. Strategize same with MJR and AJS.	0.60	\$380.00/hr	\$228.00
10/30/2015	Alex Shepard	Comparison between current version of Anti-SLAPP statute to provisions cited in Bilzerian's opposition to Anti-SLAPP motion. Notation of differences.	0.10	\$260.00/hr	\$26.00
10/30/2015	Alex Shepard	Phone call with MJR re: [REDACTED] (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
10/30/2015	Alex Shepard	Review of draft of stipulation to extend time to file reply ISO Anti-SLAPP motion.	0.10	\$260.00/hr	\$26.00
10/30/2015	Trey Rothell	Draft stipulation to extend time to reply ISO anti-SLAPP; transmit to AJS for review.	0.20	\$140.00/hr	\$28.00
10/30/2015	Trey Rothell	Transmit joint stipulation to opposing counsel for approval and signature.	0.10	\$140.00/hr	\$14.00
11/02/2015	Alex Shepard	Drafting of memo to MJR re: initial draft of reply ISO Anti-SLAPP motion.	1.50	\$260.00/hr	\$390.00
11/03/2015	Alex Shepard	Drafting of memo to MJR and RDG re: initial draft of Reply ISO Anti-SLAPP motion.	4.50	\$260.00/hr	\$1,170.00
11/03/2015	Alex Shepard	Legal research on [REDACTED]	0.40	\$260.00/hr	\$104.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
11/03/2015	Ron Green	Review and revise Reply in Support of Anti-SLAPP motion.	0.40	\$380.00/hr	\$152.00
11/03/2015	Marc Randazza	Drafting reply brief for Anti-SLAPP. Including research concernin [REDACTED]	2.00	\$520.00/hr	\$1,040.00
11/03/2015	Alex Shepard	Legal research re: [REDACTED] Writing and editing reply brief.	0.60	\$260.00/hr	\$156.00
11/03/2015	Alex Shepard	Review of MJR's revisions to draft of reply ISO Anti-SLAPP motion, and additional revisions to same.	0.70	\$260.00/hr	\$182.00
11/04/2015	Marc Randazza	Final edits to Reply brief.	1.10	\$520.00/hr	\$572.00
11/04/2015	Marc Randazza	Additional revisions to Anti-SLAPP reply and directing lower cost associate on additional research and small additions to brief.	0.80	\$520.00/hr	\$416.00
11/04/2015	Alex Shepard	Revisions to draft of reply ISO Anti-SLAPP motion.	1.20	\$260.00/hr	\$312.00
11/04/2015	Alex Shepard	Research on [REDACTED] for use in reply ISO Anti-SLAPP motion.	0.60	\$260.00/hr	\$156.00
11/04/2015	Alex Shepard	Meeting with MJR re: reply ISO Anti-SLAPP motion (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/04/2015	Alex Shepard	Incorporation of MJR's revisions to draft of reply ISO Anti-SLAPP motion, and additional revisions to same.	0.70	\$260.00/hr	\$182.00
11/04/2015	Alex Shepard	Revisions to draft of reply ISO Anti-SLAPP motion.	0.20	\$260.00/hr	\$52.00
11/04/2015	Alex Shepard	Cite-checking legislative history, for inclusion in reply ISO Anti-SLAPP motion.	0.20	\$260.00/hr	\$52.00
11/04/2015	Alex Shepard	Cite-checking legislative history of NV Anti-SLAPP statute, for use in reply ISO Anti-SLAPP motion.	0.10	\$260.00/hr	\$26.00
11/04/2015	Alex Shepard	Meeting with MJR re: reply ISO Anti-SLAPP motion.	0.10	\$260.00/hr	\$26.00
11/04/2015	Alex Shepard	Review of email correspondence between MJR and Wayne re [REDACTED]	0.00	\$0.00/hr	\$0.00
11/05/2015	Marc Randazza	Finalize SLAPP reply	1.00	\$520.00/hr	\$520.00
11/05/2015	Alex Shepard	Review of Wayne's revisions to [REDACTED]	0.30	\$260.00/hr	\$78.00
11/05/2015	Trey Rothell	Review edits to reply ISO anti-SLAPP.	0.00	\$0.00/hr	\$0.00
11/05/2015	Ron Green	Supervise filing of Anti-SLAPP motion and final review.	0.40	\$380.00/hr	\$152.00
11/05/2015	Alex Shepard	Proofreading revisions to draft of reply ISO Anti-SLAPP motion.	0.60	\$175.00/hr	\$105.00
11/06/2015	Alex Shepard	Organizational and stylistic edits to reply ISO Anti-SLAPP motion.	0.40	\$260.00/hr	\$104.00
11/06/2015	Alex Shepard	Proofreading edits to reply ISO Anti-SLAPP motion.	0.50	\$175.00/hr	\$87.50
11/06/2015	Alex Shepard	Cite-checking reply ISO Anti-SLAPP motion.	0.10	\$260.00/hr	\$26.00
11/06/2015	Ron Green	Review and revise joint case conference report. Analysis of same and short memo re: same. Strategy discussion with MJR.	0.40	\$380.00/hr	\$152.00
11/06/2015	Alex Shepard	Brief review of email from o/c re: JCCR and draft of same.	0.10	\$260.00/hr	\$26.00
11/09/2015	Trey Rothell	Proofread and make minor formatting and editing changes to Reply ISO Anti-SLAPP; e-file same and serve on o/c.	0.80	\$140.00/hr	\$112.00
11/11/2015	Alex Shepard	Meeting with TAR re: status of case.	0.00	\$0.00/hr	\$0.00
11/11/2015	Alex Shepard	Review of docket to determine filings by The Dirty.	0.10	\$175.00/hr	\$17.50
11/12/2015	Marc Randazza	receipt and review and analysis of motion by bilzerian re protective order.	0.50	\$520.00/hr	\$260.00
11/12/2015	Marc Randazza	Email to client re [REDACTED]	0.10	\$520.00/hr	\$52.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
11/12/2015	Marc Randazza	Confer with D. Gingras, counsel for the Dirty re [REDACTED]	0.30	\$520.00/hr	\$156.00
11/12/2015	Marc Randazza	Email to opposing counsel (first draft) regarding admonishing him to drop motion for protective order	0.50	\$520.00/hr	\$260.00
11/12/2015	Ron Green	Review and analysis of Plaintiff's Motion for an Order to Show Cause. Determine whether a response is required. Instruct AJS re: response. Edit MJR letter to Bilzerian counsel.	0.80	\$380.00/hr	\$304.00
11/12/2015	Alex Shepard	Review of Bilzerian's motion for OSC and protective order and meeting with RDG re: same (.4 reduced to .3 to reflect multiple-attorney billing).	0.30	\$260.00/hr	\$78.00
11/12/2015	Trey Rothell	Receive, scan, and distribute to attorneys application for OSC filed by Bilzerian (.1); review same (.3 - 0.10 not billed).	0.10	\$140.00/hr	\$14.00
11/12/2015	Alex Shepard	Meeting with RDG re: opposing Bilzerian's motion for OSC and protective order, and review of email correspondence from MJR to o/c requesting withdrawal of same (.4 reduced to .2 to reflect multiple-attorney billing).	0.20	\$260.00/hr	\$52.00
11/13/2015	Marc Randazza	Drafting on opposition to motion for protective order.	1.00	\$520.00/hr	\$520.00
11/13/2015	Marc Randazza	Exchange emails with opposing counsel on protective order issues.	0.20	\$520.00/hr	\$104.00
11/13/2015	Marc Randazza	Receipt and review of supplement filed by Bilzerian.	0.40	\$520.00/hr	\$208.00
11/13/2015	Marc Randazza	Exchange emails with counsel for The Dirty on [REDACTED]	0.30	\$520.00/hr	\$156.00
11/13/2015	Alex Shepard	Meeting with MJR re: preparing opposition to Bilzerian's motion for OSC and protective order (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/13/2015	Alex Shepard	Research on [REDACTED] same.	3.00	\$260.00/hr	\$780.00
11/13/2015	Trey Rothell	Review of supplement to motion for OSC and protective order. Drafting of memo to MJR re: initial draft of opposition to same. Incorporation of MJR's revisions to draft of same and further revisions.	0.60	\$140.00/hr	\$84.00
11/14/2015	Marc Randazza	Begin preparation of materials for attorneys' use at anti-SLAPP hearing.	0.50	\$520.00/hr	\$260.00
11/14/2015	Trey Rothell	Finalize opposition to motion for protective order. Includes adding in new case law support	0.60	\$140.00/hr	\$84.00
11/14/2015	Trey Rothell	Proofread and edit opposition to application for osc/protective order.	0.40	\$140.00/hr	\$56.00
11/16/2015	Alex Shepard	Final review of opposition to request for protective order; finalize, file, and serve same. Cleaning up internal files.	0.00	\$0.00/hr	\$0.00
11/16/2015	Alex Shepard	Brief review of The Dirty's opposition to motion for OSC and protective order.	0.00	\$0.00/hr	\$0.00
11/16/2015	Alex Shepard	Organization of case-related emails.	0.10	\$175.00/hr	\$17.50
11/16/2015	Alex Shepard	Assisting MJR in preparing for hearing on Anti-SLAPP motion by [REDACTED]	1.70	\$175.00/hr	\$297.50
11/16/2015	Trey Rothell	Preparation of hearing binder materials; submission of same to FedEx office for printing.	0.50	\$140.00/hr	\$70.00
11/16/2015	Trey Rothell	Placing order for printing of cases for use at anti-SLAPP hearing via FedEx office online portal. (Billed at secretarial rate as client courtesy)	0.50	\$50.00/hr	\$25.00
11/16/2015	Ron Green	Assist in preparation for hearing and provide thoughts re: same.	0.30	\$380.00/hr	\$114.00
11/16/2015	Alex Shepard	Meeting with MJR and RDG re: preparing for hearing on Anti-SLAPP motion (.5 reduced to .2 to reflect multiple-attorney billing).	0.20	\$260.00/hr	\$52.00
11/16/2015	Trey Rothell	Preparation of hearing materials for attorneys. (Reduced to secretarial time for client courtesy)	2.50	\$50.00/hr	\$125.00
11/16/2015	Danielle Diaz	Assist in preparation of hearing materials for attorney use at anti-SLAPP hearing.	2.00	\$50.00/hr	\$100.00
11/17/2015	Alex Shepard	Assisting MJR in preparing for Anti-SLAPP hearing.	1.30	\$260.00/hr	\$338.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
11/17/2015	Alex Shepard	Travel to and from Anti-SLAPP hearing.	0.80	\$200.00/hr	\$160.00
11/17/2015	Alex Shepard	Listening in on phone call between MJR and Wayne re: [REDACTED]	0.00	\$0.00/hr	\$0.00
11/17/2015	Marc Randazza	Attendance at Anti-SLAPP hearing.	2.70	\$520.00/hr	\$1,404.00
11/17/2015	Marc Randazza	Post hearing call with client.	0.20	\$520.00/hr	\$104.00
11/17/2015	Marc Randazza	Prepare for hearing.	2.00	\$520.00/hr	\$1,040.00
11/17/2015	Alex Shepard	Meeting with MJR and RDG re: [REDACTED]	0.20	\$260.00/hr	\$52.00
11/17/2015	Alex Shepard	[REDACTED] (.5 reduced to .2 to reflect multiple-attorney billing).			
11/17/2015	Alex Shepard	Attendance at hearing on Anti-SLAPP hearing and assisting MJR during same.	2.70	\$260.00/hr	\$702.00
11/17/2015	Trey Rothell	Confer with AUS re [REDACTED]; place call to chambers re identification of court reporter.	0.10	\$140.00/hr	\$14.00
11/18/2015	Alex Shepard	Review of notes taken during Anti-SLAPP motion hearing, and drafting of memo to MJR re: initial draft of proposed order granting motion.	1.10	\$260.00/hr	\$286.00
11/18/2015	Alex Shepard	Confer with MJR re: ordering transcript, and revisions to draft of proposed order granting Anti-SLAPP motion (.3 reduced to .2 to reflect multiple-attorney billing).	0.20	\$260.00/hr	\$52.00
11/18/2015	Trey Rothell	Request hearing transcript.	0.20	\$140.00/hr	\$28.00
11/19/2015	Trey Rothell	Communicate with court recorder; distribute payment for transcript; arrange for runner to deliver payment.	0.30	\$140.00/hr	\$42.00
11/20/2015	Alex Shepard	Review of correspondence from MJR to o/c re: [REDACTED]	0.10	\$260.00/hr	\$26.00
11/20/2015	Trey Rothell	Review, edit, and format [REDACTED] letter.	0.30	\$140.00/hr	\$42.00
11/20/2015	Ron Green	Review and revise [REDACTED] to opposing counsel.	0.30	\$380.00/hr	\$114.00
11/22/2015	Alex Shepard	Brief review of transcript of hearing on Anti-SLAPP motion. Revisions to draft of proposed order granting Anti-SLAPP motion.	0.50	\$260.00/hr	\$130.00
11/23/2015	Alex Shepard	Confer with TAR re: status of case.	0.00	\$0.00/hr	\$0.00
11/23/2015	Alex Shepard	Organization of case-related emails.	0.00	\$0.00/hr	\$0.00
11/23/2015	Alex Shepard	Review of email from MJR to Wayne re: [REDACTED] and confer with MJR re: same and preparing motion for fees (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/23/2015	Alex Shepard	Review of time entries and drafting of memo to MJR re: initial draft of fee motion.	2.50	\$260.00/hr	\$650.00
11/23/2015	Alex Shepard	Legal research on [REDACTED] for use in fee motion.	0.50	\$260.00/hr	\$130.00
11/23/2015	Ron Green	Analysis of [REDACTED]	0.20	\$380.00/hr	\$76.00
11/24/2015	Marc Randazza	Drafting order edits	0.40	\$520.00/hr	\$208.00
11/24/2015	Alex Shepard	Confer with RDG re: revisions to draft of proposed order on Anti-SLAPP motion (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/24/2015	Alex Shepard	Review of email correspondence between MJR and o/c re: resolving fee issue.	0.10	\$260.00/hr	\$26.00
11/24/2015	Marc Randazza	Drafting fee motion, incorporating memo from AUS.	1.30	\$520.00/hr	\$676.00
11/24/2015	Ron Green	Review and revise Order granting Motion to Dismiss. Address Plaintiff's counsel's concerns re: same.	0.30	\$380.00/hr	\$114.00

Date	User	Description	Billable Time	Hourly Rate	Billable Amt
11/24/2015	Alex Shepard	Review of current draft of proposed order re: Anti-SLAPP motion. Review of hearing transcript and revisions to draft of proposed order.	0.50	\$260.00/hr	\$130.00
11/24/2015	Alex Shepard	Review of time sheets and hours worked. Further drafting of memo to MJR re: initial draft of fee motion.	3.20	\$260.00/hr	\$832.00
11/24/2015	Trey Rothell	Research re verified memorandum of costs; prepare draft of same.	0.40	\$140.00/hr	\$56.00
11/24/2015	Alex Shepard	Review of court and department rules re: submitting proposed orders. Confer with MJR [REDACTED]	0.40	\$260.00/hr	\$104.00
11/24/2015	Alex Shepard	Transmission of proposed order granting Anti-SLAPP motion to o/c.	0.10	\$260.00/hr	\$26.00
11/24/2015	Alex Shepard	Research concerning [REDACTED]	0.20	\$260.00/hr	\$52.00
11/24/2015	Alex Shepard	Drafting of memo to MJR re: initial drafts of declarations in support of fee motion.	0.80	\$260.00/hr	\$208.00
11/24/2015	Alex Shepard	Skype conversation with MJR and RDG re: [REDACTED] (.3 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/24/2015	Alex Shepard	Revisions to draft of proposed order re: Anti-SLAPP motion.	0.40	\$260.00/hr	\$104.00
11/25/2015	Alex Shepard	Review of email correspondence from prospective fee motion expert.	0.10	\$260.00/hr	\$26.00
11/25/2015	Alex Shepard	Minor revisions to draft of proposed order granting Anti-SLAPP motion.	0.10	\$260.00/hr	\$26.00
11/25/2015	Alex Shepard	Revisions to draft of fee motion.	0.60	\$260.00/hr	\$156.00
11/25/2015	Ron Green	Further revisions to Order granting Anti-SLAPP motion.	0.20	\$380.00/hr	\$76.00
11/25/2015	Alex Shepard	Minor revisions to draft of proposed order on Anti-SLAPP motion, and transmission of same to o/c.	0.20	\$175.00/hr	\$35.00
11/25/2015	Alex Shepard	Research and collection of additional evidence to support fee motion.	0.30	\$260.00/hr	\$78.00
11/25/2015	Alex Shepard	Review of and revisions to draft of fee motion.	0.30	\$260.00/hr	\$78.00
11/28/2015	Alex Shepard	Meeting with MJR re: coordinating with fee expert and revising draft of fee motion (.2 reduced to .1 to reflect multiple-attorney billing).	0.10	\$260.00/hr	\$26.00
11/28/2015	Alex Shepard	Collection of materials for fee expert review. Drafting of email to Chris Austin re: same.	0.30	\$260.00/hr	\$78.00
11/30/2015	Alex Shepard	Organization of case-related emails.	0.00	\$0.00/hr	\$0.00
11/30/2015	Marc Randazza	Confer with client regarding [REDACTED]	0.20	\$520.00/hr	\$104.00
11/30/2015	Marc Randazza	Review revised declaration from client rep re [REDACTED]	0.10	\$520.00/hr	\$52.00
11/30/2015	Marc Randazza	Confer with office regarding evidence for fee motion and lodestar tabulations.	0.20	\$520.00/hr	\$104.00
11/30/2015	Marc Randazza	Receipt and review of email from local expert on fees.	0.10	\$520.00/hr	\$52.00
11/30/2015	Alex Shepard	Revisions to draft of fee motion to incorporate expert testimony, and updating number of hours/amount of fees in motion.	1.50	\$260.00/hr	\$390.00
12/01/2015	Marc Randazza	Review evidence provided by expert (MH) regarding fees, back and forth on evidence and finalize evidence.	0.20	\$520.00/hr	\$104.00
12/01/2015	Marc Randazza	Confer with AIS regarding strategy on fee motion.	0.10	\$520.00/hr	\$52.00
12/01/2015	Marc Randazza	Review evidence provided by expert (CA) regarding fees, back and forth on evidence and finalize evidence.	0.10	\$520.00/hr	\$52.00
12/01/2015	Alex Shepard	Drafting follow-up email to fee expert re: [REDACTED] (.1). Confer with MJR re: [REDACTED] (.2 reduced to .1 to reflect multiple-attorney billing).	1.20	\$260.00/hr	\$312.00
		Revisions to draft of fee motion and drafting of memo to MJR re: declaration ISO fee motion (1.0).			

Date	0337	Description	Billable Time	Hourly Rate	Billable Amt
12/01/2015	Alex Shepard	Review of additional fee expert declarations, and incorporation of testimony into draft of fee motion. Transmission of current draft of motion to Wayne for review.	0.50	\$260.00/hr	\$130.00
12/01/2015	Alex Shepard	Meeting with RDG re: [REDACTED]	0.00	\$0.00/hr	\$0.00
12/01/2015	Alex Shepard	Drafting email to Wayne re: [REDACTED]	0.10	\$260.00/hr	\$26.00
12/01/2015	Alex Shepard	Review of email correspondence from o/c re: proposed order and revisions to same.	0.30	\$260.00/hr	\$78.00
12/01/2015	Ron Green	Instruct AIS re: [REDACTED]	0.20	\$380.00/hr	\$76.00
12/01/2015	Alex Shepard	Additional revisions to proposed order. Confer with TAR re: filing same and finalizing fee motion. Review of revisions from Wayne to fee motion, and additional revisions to same to incorporate MJR declaration.	0.80	\$260.00/hr	\$208.00

EXHIBIT 6

Declaration of
Wayne Smith, Esq.

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DISTRICT COURT
CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual
Plaintiff,

vs.

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

**DECLARATION OF WAYNE M. SMITH
IN SUPPORT OF DEFENDANT TMZ
PRODUCTIONS, INC.'S MOTION FOR
COSTS, ATTORNEYS' FEES, AND
DAMAGES UNDER NRS 41.670**

I, Wayne Smith, Esq., having knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, do declare under penalty of perjury:

1. I am an attorney licensed to practice law in the State of California for the past 31 years.

2. I am Senior Vice President, Senior Litigation and Chief Patent Counsel for Warner Bros. Entertainment Inc. ("Warner Bros."), a national media company and parent company of TMZ Productions, Inc. ("TMZ"), a defendant in this case. I have been employed by Warner Bros., or its predecessors, for nearly 16 years, and during that entire period my job responsibilities have included supervising outside counsel in litigation brought by or against Warner Bros. and its subsidiary companies, including TMZ, in federal and state courts throughout the United States. I have supervised outside lawyers in well over 200 matters, including in a number of First Amendment/anti-SLAPP cases, including, in *Blaha v. Rightscorp, Inc., et al.*, 2015 U.S. Dist. LEXIS 108461; Copy. L. Rep. (CCH) ¶130,765

1 (C.D. Cal. May 8, 2015) and *DC Comics v. Pacific Pictures Corp.*, 706 F.3d 1009
2 (9th Cir. 2013).

3 3. I am generally familiar with the fees that are customarily charged
4 by attorneys, paralegals, and legal assistants for the defense of such cases, and
5 know the reasonable value of such legal work.

6 4. I have known of Marc J. Randazza's work in this field since 2013 and
7 I am informed that Mr. Randazza has been practicing law for approximately 13
8 years.

9 5. I am aware that Mr. Randazza is a nationally recognized attorney in
10 the area of First Amendment and free speech litigation, and as such was
11 consulted by the Nevada legislature on the necessity for, and content of, the
12 Nevada Anti-SLAPP statute.

13 6. I have knowledge that Mr. Randazza was instrumental in drafting
14 the 2013 amendment to the Nevada Anti-SLAPP statute, which passed
15 unanimously through the legislature. I am aware of this both through media
16 coverage of the statute's amendments, as well as through reviewing portions of
17 the legislative history of the statute, including the "Minutes of the Meeting of the
18 Assembly Committee on Judiciary," Seventy-Seventh Session, May 6, 2013, that
19 Mr. Randazza's testimony formed a significant portion of the hearings on SB 286
(2013), and was influential in bringing the statute into its current form.

20 7. I also have knowledge that Mr. Randazza has played an important
21 role in shaping the 2015 amendment to the statute and helped stave off
22 amendments to the Anti-SLAPP statute that would have substantially weakened
23 it. I am aware of this both due to reviewing media reports on the legislative
24 process and by reviewing portions of the legislative history of SB 444 (2015).

25 8. Mr. Randazza's involvement in the drafting of the statute, as it
26 currently exists on the books, was instrumental in the decision of Warner Bros.
27 and TMZ to retain him to defend TMZ's interests in this action. Based on his

1 experience with the statute, we formed the belief that that his knowledge and
2 expertise in the particular nuances of the Nevada Anti-SLAPP law was equal to
3 or greater than that of any other lawyer in the state – a belief that we still
4 maintain.

5 9. I have also reviewed Mr. Randazza's resume, which is attached to
6 the Motion for Fees as an Exhibit. Mr. Randazza's resume exhibits qualifications
7 and expertise in this particular area of law well above the average attorney. He
8 has handled a large number of free speech cases, and has published
9 extensively on the subject, and has given a number of presentations on the
10 subject matter. As such, I believe it is reasonable (and expected) that his
11 customary billing rate would be higher than the rate that might be customary
12 for an "average" attorney.

13 10. I am also aware that the Laffey Matrix, which is attached to TMZ's
14 Motion as Exhibit 12, indicates that the rate for someone of Mr. Randazza's years
15 of experience is \$661 per hour. Accordingly, it appears that Mr. Randazza's
16 customary rate of \$650 per hour may well be slightly below what should be
17 expected even without his special qualifications, experience and nationally
18 recognized practice.

19 11. For this particular case, prior to retaining Mr. Randazza and his firm, I
20 negotiated a twenty percent (20%) discount off of the customary rates that Mr.
21 Randazza and the other professionals in his firm charge, as it is our standard
22 practice to seek discounted rates for legal work performed on behalf of Warner
23 Bros. and its subsidiary companies. That said, given the experience and
24 reputation of Mr. Randazza and his firm, and the quality of the work performed
25 in this case, it would not have been unreasonable for Mr. Randazza to have
26 charged, and for Warner Bros. to have paid, his customary rates.

27 12. Part of my responsibilities in supervising outside litigation counsel is to
review and approve (or in some cases, disapprove) their billing statements.

1 have reviewed the billing entries and rates (customary and discounted) for Mr.
2 Randazza and believe them to be reasonable, in light of Mr. Randazza's
3 experience and specialization. Mr. Randazza's customary billing rate is
4 commensurate with his qualifications and expertise, and the time he spent on
5 each task actually appears to be less than I would expect.

6 13. Prior to this case, I was not personally aware of his partner, Ronald
7 D. Green, but I know that Mr. Green has been a practicing attorney in Nevada
8 for approximately 15 years. I have reviewed the billing entries and rates
9 (customary and discounted) for Mr. Green and believe them to be reasonable.

10 14. I have also reviewed the billing entries and rates for associates and
11 staff at Randazza Legal Group, PLLC, specifically those of Alex J. Shepard, Trey
12 Rothell, and Danielle Diaz, and I believe that given the expertise of the firm and
13 the experience of Mr. Shepard, their billing rates (customary and discounted)
14 are reasonable as well.

15 15. I have reviewed the billing entries detailing the amount of work
16 performed, and have reviewed the pleadings in this matter. Based on my
17 review of the work performed, I believe that the amount of attorney time billed
18 in the matter has been very reasonable, and that the bills would have been
19 reasonable in this case even they had been billed at customary rates. As such, I
20 have approved all of the bills submitted by Randazza Legal Group, PLLC for this
21 matter without revision.

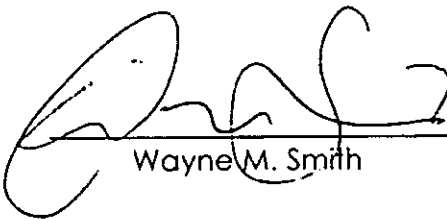
22 16. In my opinion, I find the level of experience and expertise of Mr.
23 Randazza and of his attorneys and staff to be exceptional, and therefore the
24 customary hourly rates to be reasonable, if not slightly below what I would
25 expect or consider being reasonable. The time spent on each task appears to
26 be appropriate, reasonable and efficient. There are frequent entries where
27 higher-rate attorneys are delegating tasks to lower-cost attorneys or paralegals,

1 which demonstrates the type of efficiency and cost-savings we expect from well
2 run law firms.

3 17. In short, the bills I have reviewed for Randazza Legal Group, PLLC's
4 work on this case are, in my view, reasonable and proper for work of the caliber
5 and volume that has been performed on TMZ's behalf in this matter, and would
6 have been reasonable and proper even had they been billed at customary
7 rates.

8 Signed this 1st day of December, 2015

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Wayne M. Smith

EXHIBIT 7

Declaration of
Mark Hibueber

DISTRICT COURT
CLARK COUNTY, NEVADA

DAN BRANDON BILZERIAN, an Individual
Plaintiff,

vs.

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

DECLARATION OF MARK HINUEBER, ESQ. IN SUPPORT OF DEFENDANT TMZ PRODUCTIONS, INC.'S MOTION FOR COSTS, ATTORNEYS' FEES, AND DAMAGES UNDER NRS 41.670

I, Mark Hinueber, having knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, do declare under penalty of perjury:

1. I am an attorney licensed to practice law in the State of Nevada for the past 15 years. I am also admitted to the bars of Illinois (1977), California (1978) and Arkansas (1994). I have practiced First Amendment law since January 1, 1978. Additionally, my family-owned a free weekly newspaper and I have worked as a reporter for a daily newspaper and a radio station. I am the chapter author of the Nevada Libel and Privacy guides for the Media Law Resource Center. I was previously Legal Counsel for Scripps League Newspapers, Inc., also a nationwide newspaper publisher, from January 1, 1978 to August 1, 1994.

2. I am the former general counsel for Stephens Media, a national media company, the previous owner of the Las Vegas Review-Journal. [The Review-Journal was sold on March 18, 2015] In that position, I supervised outside

1 counsel in First Amendment cases over the past 21 years. I also supervised First
2 Amendment counsel for Scripps League Newspapers, Inc. from 1978 to August
3 1994.

4 3. I am familiar with the fees that are customarily charged by
5 attorneys, paralegals, and legal assistants for the defense of such cases, and
6 know the reasonable value of such legal work.

7 4. I have known of Marc J. Randazza's work in this field for
8 approximately 5 years and I am informed that Mr. Randazza has been
9 practicing law for approximately 13 years.

10 5. I have knowledge that Mr. Randazza practices extensively in the
11 area of First Amendment and free speech litigation,

12 6. I have knowledge that Mr. Randazza helped draft the 2013
13 amendment to the Nevada Anti-SLAPP statute, which passed unanimously
14 through the legislature. Mr. Randazza also testified in 2015 in support of
15 amendments to the Nevada anti-SLAPP statute. (SB 444) and was active in the
16 drafting of the amendments to the legislation.

17 7. I have knowledge that Mr. Randazza has handled anti-SLAPP cases
18 throughout the United States

19 8. I have also reviewed Mr. Randazza's CV, which is attached to the
20 Motion for Fees as an Exhibit. Mr. Randazza's CV exhibits qualifications and
21 expertise in this particular area of law. He has handled a large number of free
22 speech cases, and has published extensively on the subject. As such, I believe it
23 is reasonable (and expected) that he would bill at rates above those that might
24 be customary for an "average" attorney.

25 9. That said, I am aware that the Laffey Matrix, which is attached to
26 TMZ's Motion as **Exhibit** , states that the rate for someone of Mr. Randazza's
27 years of experience is \$661 per hour. Accordingly, it appears to me that Mr.
Randazza's customary rate of \$650 is slightly below what should be expected

1 10. I have reviewed the billing entries and rate for Mr. Randazza and
2 believe them to be reasonable, in light of Mr. Randazza's experience and
3 specialization.

4 11. I do not know Mr. Randazza's law partner, Ronald D. Green
5 personally, but I know that Mr. Green has been a practicing attorney in Nevada
6 for approximately 15 years. I have reviewed the billing entries and rates for Mr.
7 Green and believe them to be reasonable.

8 12. I have also reviewed the billing entries and rates for associates and
9 staff at Randazza Legal Group, PLLC, specifically those of Alex J. Shepard, Trey
10 Rothell, and Danielle Diaz, and I believe that given the expertise of the firm and
11 the experience of Mr. Shepard, their billing rates are reasonable and customary
12 as well.

13 13. I have reviewed the billing entries detailing the amount of work
14 performed, and have reviewed the pleadings in this matter.

15 14. In my opinion, I find the level of experience and expertise of Mr.
16 Randazza and of his attorneys and staff to be within my experience for similar
17 matters, and therefore the hourly rates to be reasonable. The time spent on
18 each task appears to be appropriate and reasonable..

19 15. In short, the bills I reviewed for Randazza Legal Group, PLLC's work
20 on this case are reasonable and proper.

21 Signed this 30th day of November, 2015

DocuSigned by:

Mark Hinueber

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Mark Hinueber, Esq.

EXHIBIT 8

Declaration of
F. Christopher Austin

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DAN BRANDON BILZERIAN, an Individual
Plaintiff,

vs.

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

DECLARATION OF F. CHRISTOPHER AUSTIN IN SUPPORT OF DEFENDANT TMZ PRODUCTIONS, INC.'S MOTION FOR COSTS, ATTORNEYS' FEES, AND DAMAGES UNDER NRS 41.670

I, F. Christopher Austin, having knowledge of the matters set forth herein and being competent to testify about them if called to do so at trial, do declare under penalty of perjury:

1. I am an attorney licensed to practice law in the State of Nevada for the past 17 years. I am familiar with the fees that are customarily charged by attorneys, paralegals, and legal assistants and allowed by the court, and know the reasonable value of such legal work.

2. I have known Marc J. Randazza for approximately 5 years and have knowledge that Mr. Randazza has been practicing law for approximately 13 years.

3. I have knowledge that Mr. Randazza was instrumental in drafting the 2013 amendment to the Nevada Anti-SLAPP statute, which passed unanimously through the legislature. I also have knowledge that Mr. Randazza was played an important role in shaping the 2015 amendment to the statute.

1 4. I have knowledge that Mr. Randazza is a nationally acclaimed
2 attorney in the area of First Amendment and free speech litigation, and as such
3 was consulted by the Nevada legislature on the necessity for, and content of,
4 the Nevada Anti-SLAPP statute.

5 5. I have also reviewed Mr. Randazza's CV, which is attached to TMZ
6 Productions, Inc.'s Motion for Costs, Fees, and Damages as **Exhibit 11**. Mr.
7 Randazza's CV exhibits qualifications and expertise well above the average
8 attorney nationwide, and as such, I believe it is reasonable (and expected) that
9 he would bill at rates well above those that are customary for an "average"
10 attorney.

11 6. That said, I am aware that the Laffey Matrix, which is attached to
12 TMZ's Motion as **Exhibit 12**, states that the rate for someone of Mr. Randazza's
13 years of experience is \$661 per hour. Accordingly, it appears to me that Mr.
14 Randazza's customary rate of \$650 is slightly below what should be expected
15 even without his special qualifications, experience, and national practice and
16 notoriety.

17 7. I have reviewed the billing entries and rate for Mr. Randazza and
18 believe them to be reasonable, in light of Mr. Randazza's experience and
19 specialization. Mr. Randazza's billing rate is commensurate with his qualifications
20 and expertise, and the time he spent on each task actually appears to be less
21 than I would expect.

22 8. I have known Mr. Randazza's law partner, Ronald D. Green, for 14
23 years. Mr. Green has been a practicing attorney in Nevada for approximately
24 15 years. Mr. Green is one of the most experienced Intellectual Property
25 Litigation attorneys in Nevada. I have reviewed the billing entries and rates for
26 Mr. Green and believe them to be reasonable.

27 9. I have also reviewed the billing entries and rates for associates and
staff at Randazza Legal Group, PLLC, specifically those of Alex J. Shepard, Trey

1 Rothell, and Danielle Diaz, and I believe that given the expertise of the firm and
2 the experience of Mr. Shepard, their billing rates are reasonable and customary
3 as well.

4 10. I have reviewed the billing entries detailing the amount of work
5 performed, and have reviewed the pleadings in this matter.

6 11. In my opinion, I find the level of experience and expertise of Mr.
7 Randazza and of his attorneys and staff to be exceptional, and therefore the
8 hourly rates to be reasonable, if not slightly below what I would expect or
9 consider being reasonable. The time spent on each task appears to be
10 appropriate and reasonable, and in fact appears to be quite efficient. There
11 are frequent entries where higher-rate attorneys are delegating tasks to lower-
12 cost attorneys or paralegals, which demonstrates an additional level of
efficiency and cost-savings.

13 12. In short, the bills I reviewed for Randazza Legal Group, PLLC's work
14 on this case are reasonable and proper, if not a bit low, for work of the caliber
15 and volume that appears in this file.

16 Signed this 1st day of December, 2015

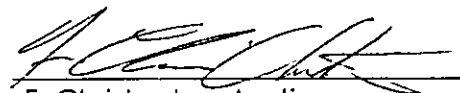
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EXHIBIT 9

Minutes of the Meeting
of the
Assembly Committee on Judiciary

Seventy-Seventh Session
May 6, 2013

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
May 6, 2013**

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:19 a.m. on Monday, May 6, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblyman Wesley Duncan (excused)

GUEST LEGISLATORS PRESENT:

Senator Justin C. Jones, Clark County Senatorial District No. 9
Senator Tick Segerblom, Clark County Senatorial District No. 3

Minutes ID: 1059



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Linda Whimple, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Marc J. Randazza, Attorney, Randazza Legal Group
James McGibney, CEO, ViaView, Inc.
Wayne Carlson, Executive Director, Public Agency Risk Management Services, Inc.
Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Scott Scherer, representing the Nevada Registered Agent Association
Robert C. Kim, representing the State Bar of Nevada
Peter C. Neumann, Private Citizen, Reno, Nevada
Robert T. Eglet, Private Citizen, Las Vegas, Nevada
Stephanie H. Allen, representing the Nevada District Judges Association
Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office
Patterson Cashill, representing the Nevada Justice Association

Chairman Frierson:

[Roll was called. Protocol was explained.] Good morning, everyone. Welcome back to the Assembly Committee on Judiciary. We have four bills on the agenda for today, and I see Senator Jones here. I will open the hearing on Senate Bill 286 (1st Reprint) and accommodate you, and then we will get back on track.

Senate Bill 286 (1st Reprint): Provides immunity from civil action under certain circumstances. (BDR 3-675)

Senator Justin C. Jones, Clark County Senatorial District No. 9:

As guaranteed by the First Amendment, the right to petition our government for redress is one of the most important rights we have. Nevada recognizes this right and protects people who exercise their First Amendment right to petition. Specifically, Chapter 41 of the *Nevada Revised Statutes* (NRS) protects people from civil liability for claims based on protected communication. Generally speaking, protected communications must be made in good faith and be truthful, or at least made without knowing it is false. The provisions of NRS Chapter 41 are meant to deter frivolous lawsuits, commonly known as

strategic lawsuits against public participation (SLAPP). A SLAPP is a meritless lawsuit that a plaintiff initiates primarily to stop someone from exercising his First Amendment rights. When a plaintiff files a SLAPP, NRS Chapter 41 allows the defendant to file a special motion to dismiss the lawsuit. If the court grants the special motion, it must also award attorney's fees to the defendant. The defendant may also file a new lawsuit for compensatory damages, punitive damages, and attorney's fees and costs for bringing the new lawsuit.

In a recent decision, the Ninth Circuit Court of Appeals held that Nevada's anti-SLAPP provisions under NRS Chapter 41 only protect communications made directly to a governmental agency. The Court also held that Nevada provisions only protect defendants from liability, not from trial. Finally, the Ninth Circuit Court of Appeals concluded that in Nevada there is no right to immediate appeal, an order denying a special motion to dismiss a SLAPP.

I am introducing Senate Bill 286 (1st Reprint) to resolve these limitations. Beginning with section 1, the bill expands the type of protected communication to include the right to free speech if it is about an issue of public concern. Section 1 also protects communications about an issue of public interest made in public places. Section 2 expands the anti-SLAPP provisions to cover any civil action, not just liability. Section 3 specifies standards of proof for motions to dismiss a SLAPP and requires the court to rule on those motions within a specified period of time.

If a court grants a motion to dismiss a SLAPP, section 4 requires the court to grant the defendant, in addition to attorney's fees and costs, an additional amount of \$10,000. If a court denies a motion to dismiss and finds it was frivolous, the bill requires the court to grant the plaintiff reasonable costs and attorney's fees for responding to the motion.

That is my presentation. I also have Marc Randazza in Las Vegas, who is one of the preeminent experts on this issue, if the Committee has any questions for me or Mr. Randazza.

Chairman Frierson:

Senator, do you want any comments from Las Vegas to be part of your introduction, or is that just someone available to answer questions?

Senator Jones:

I think he has a presentation. It is up to you, Mr. Chairman, whether you want to hear from him first or ask questions.

Chairman Frierson:

I would like to hear from him.

Marc J. Randazza, Attorney, Randazza Legal Group:

I am a First Amendment attorney. I am based in Nevada, but I practice nationwide. When you look at this bill, it is a pretty rare species of bill. This is probably the first bill you are going to see where you are passing something that is both proconsumer and probusiness simultaneously. This is not only going to protect consumers who want to exercise their right to free speech on government issues, commercial issues, and social issues, but it will also create an environment that will attract more tech jobs to this state. I represent a number of companies that engage in social media, social networking, online media, and traditional media. When I speak to them about where to generate bigger operations, where they should move, where they should be, the top of the list is always Washington, California, Oregon, and Texas, because these are states that have anti-SLAPP laws. I will tell you why that is important.

As I mentioned, I defend First Amendment cases nationwide. The right to free expression is severely hampered in states that do not have anti-SLAPP laws. Let me give you a comparison between two of the states where I do most of my work outside of Nevada, which would be Florida and California. A very long time ago, I had my very first SLAPP in Florida. A gentleman came into my office who had had a dispute with a contractor, and the contractor said, "What are you going to do about it? Go ahead and sue me. I have more money than you." He looked at his situation and said, "Yes, you are right. There is not much I can do about that. But I can warn other people not to do business with you," and he wrote a very truthful account of his experience, backed it up with documents, backed it up with evidence, and backed it up with letters from other people. He was completely within his rights. The contractor sued him for defamation and he came into my office and I said, "Yes, you can beat this," and we fought it, and we beat it. At the end of it, I handed him his win and he looked at me. It was a very formative day in my legal career. He looked at me and said, "Well, if I won, how come I am the one with my retirement fund completely empty? How come I am the one who is broke?" I said, "I am really sorry." In my inexperience as an attorney at the time, I really believed that if we were right, we would win. We did; he has a case named after him, which he said is about as good as having a disease named after him.

Now I have run into the opposite experience in California. I often get calls from people who say they are being sued in a similar case. There is competition from other lawyers to get that case, even when the person cannot afford to pay, because when you see that it is a valid use of a citizen's First Amendment rights they are being sued for, they have the security of knowing that an

anti-SLAPP law is standing behind them. If that case has been brought because of that citizen's exercise of their right to free expression, and it is a case that has no chance of winning, that case is going to be dispensed with early, with the cost of that case falling on the plaintiff. We need this in Nevada. We do not just need this because it is the right thing to do constitutionally. Your constitutional rights do not mean a whole lot if you cannot afford to exercise them.

One of my clients actually came here today. He will be speaking as well, if you would like to hear from him, but he runs a relatively mid-sized media company. He has 26-odd employees, a third of them in Washington, a third in California, and a third here. As they expand, they consider where they should move their operations. They have to consolidate somewhere. When they have those discussions and they ask me, I say, "You get frivolous lawsuit threats on a weekly basis." So far—knock on wood—they have not been sued. But when that happens, and it is inevitable that it is going to happen, if it happens here in Nevada, that can cripple a fledgling tech company like this. So when these tech companies are looking at where they want to be, where they want to create jobs, where is the environment friendly for them, they look at Washington, California, Texas, and they look at Nevada. Despite all of the great things that Nevada has to offer them, they know that they can be smothered in their cradle because of a lack of an anti-SLAPP law.

I think S.B. 286 (R1) is an example of some brilliant legislation. It is going to put us at the forefront, it is going to make us a leader in this area, and I cannot see any reservation that anyone could have to this bill, unless you are the kind of person who wants to run around suing people in frivolous defamation suits.

Assemblywoman Spiegel:

On page 4 of the bill, in section 4, subsection 1, paragraph (b), it talks about how the court may award, in addition to reasonable costs and attorney's fees, an amount of up to \$10,000 to the person against whom the action was brought. I am wondering if they use that \$10,000 in other states, or if it should be higher, or if it is higher in other places, to really be a detriment?

Marc Randazza:

As a First Amendment advocate, I certainly would not say it would be a bad thing to make that higher, but there is only one state that has statutory damages for violating the anti-SLAPP law, and that is Washington, and this is identical to Washington's bill. So I believe the \$10,000 is imported directly from the Washington statute.

Senator Jones:

That is correct. The Washington statute made the \$10,000 mandatory. There were some concerns raised on the Senate side about that, so we made it discretionary in the court, so it could be up to \$10,000.

Assemblywoman Spiegel:

Would you entertain a discussion of making it higher?

Senator Jones:

I certainly would.

Assemblywoman Spiegel:

Thank you.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] On page 4, line 1, reducing it from 30 days to 7 days, has there been any conversation with the courts about the practical ability for the courts to comply?

Senator Jones:

Yes. I had a discussion with Judge Elizabeth Gonzalez about that issue, and her concern had been that it needed to be after service. Originally, as drafted, the bill said seven days after the motion is filed. Her concern was making sure that the motion is actually served on the plaintiff before the seven days goes into effect. She did not have an issue with the seven days, as long as the plaintiff had been served with the motion. I have not talked with all the judges, but since I practiced before Judge Gonzalez a lot, and many of these go into business court, I figured that was a pretty good measure.

Chairman Frierson:

Thank you, Senator. I know there is a good deal of flexibility with the business courts. Are there any other questions from the Committee? [There were none.]

James McGibney, CEO, ViaView, Inc.:

We are a social media company. We are also involved in reality TV. We have a massive online media presence. This is very important to us because we get threatened with lawsuits on a daily basis. As you can imagine, companies like Facebook and Twitter, anyone who has a social online presence, is constantly hit with lawsuits. For example, Facebook is already protected by anti-SLAPP, and we would like to have the same thing in Nevada. Even if we go through a trial and it is determined that we are not held liable for something that was posted on our site, we are still going to spend on average \$100,000 in attorney's fees. Being a company that makes a few million dollars a year, if we

get hit with three or four of these per year, we could pretty much be out of business. We have a presence in Washington, California, and Nevada, and we are actually thinking about going back to California because of the protections that are afforded there, but we do love Nevada. We are very hopeful that this gets passed.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition, either in Carson City or Las Vegas?

Wayne Carlson, Executive Director, Public Agency Risk Management Services, Inc.:

I had attorneys testify on the Senate side but, unfortunately, they are all out of town today, so I get the opportunity to try to clarify some of the things that we had concerns with in the bill. We supported the expansion under section 1 to private as well as public. We have had success with some of these cases where we have defended government entities against vexatious litigants, so it is an important bill from that standpoint to protect the private sector as well.

We have concerns under section 3, line 22, where they delete the existing process of motion for summary judgment, which we have used successfully and it has worked well. Our testimony was that we did not think it was necessary to substitute it. Part of the reason is because we have had successful awards from the Nevada Supreme Court fairly recently and they were supportive in analyzing the anti-SLAPP provisions. Because the courts have clarity, we thought this might introduce an element of uncertainty in terms of the success of those kinds of defense motions for summary judgment. We would suggest that the new language is not necessary because the existing process is successful.

The next area of concern is a practical matter. We have never been able to recover attorney's fees and costs under existing law because the vexatious litigants did not have any funds or they filed bankruptcy in order to avoid it. It is meaningless to have a fine in there that you cannot collect, and that is the practical reality of it. It was helpful to get that amended, but on the other hand, in section 2, it reverses that possibility. That reversal of the possibility of the defendant having to pay a fine in addition to attorney's fees causes us to pause because it is very subjective as to whether or not the motion is frivolous or vexatious, and we would then be in a position to have to very carefully consider

whether to even go forward with defending the case with a motion, whether it is a summary judgment or the proposed procedure. That is a concern that we have.

Adding the appeal under subsection 4 of section 3, that is probably useful. We support that. We are kind of mixed on the various elements of the bill, but we do not want to create a situation where it deters defendants from defending themselves because they could be subject to fines and penalties for trying to defend themselves from what are most of the time—the ones we have seen where we have used this defense—fairly frivolous and repetitive situations where the person just kept amending the suit every time they lost a motion. It creates a lot of litigation costs. We are realistic that we will likely not recover costs from most of these individuals, but it does cost us money, and we do not want to be in a situation where we are now abandoning that strategy to defend these cases because of a provision in the bill. I do not know how you fix it, but that is a concern that we have expressed.

Chairman Frierson:

It seems to me that you have two concerns that seem to counter each other. On the one hand, you were saying that you preferred it to be more like a motion for summary judgment, but on the other hand, you expressed concern about the defendant being exposed to attorney's fees. It also seems to me that by not necessarily making it a motion for summary judgment, you create a process by which a defendant could defend being hit with attorney's fees. It appears there is a balance attempted to be stricken here. There are two points. Number one is getting rid of the motion for summary judgment but creating this process. The court can still rule on it in a similar fashion with these things being considered and could dismiss the action in subsection 4 of section 3, so we do not seem to lose a great deal of that. By creating a process, if the defendant is exposed to attorney fees, then this at least creates a process where they could defend it.

Wayne Carlson:

I am not an attorney, so I cannot respond to all the details like that, but our attorney did address it in his memorandum, which is on the Nevada Electronic Legislative Information System (NELIS). On number four he says, "When a party moves for a special motion to dismiss under NRS 41.660(1), the party must first make a threshold showing that the lawsuit is based on good faith communications made in furtherance of the right to petition the government. A good faith communication is one which is truthful or made without knowledge of its falsehood."

In number five, he says, "The purpose of the anti-SLAPP legislation in Nevada is to allow a defendant to extricate himself from the litigation early on without being put to great expense, harassment, or interruption of his productive activities." If these other procedures are going to increase the cost to pursue an anti-SLAPP strategy, then it is defeating some of the effort to try to make it easier and cheaper for businesses or governments that are subjected to SLAPP to get out of those suits. So early and quick is the better way. That is why we thought this other process seemed to add cost.

Chairman Frierson:

Who is this letter from? I am not seeing it.

Wayne Carlson:

It is a memo. It says, "From SCB to file." That was Steve Balkinbush's testimony. I believe it is on NELIS.

Chairman Frierson:

If you are talking about NELIS over in the Senate, then we would not have it.

Wayne Carlson:

Yes. I am sorry.

Chairman Frierson:

If he would like that to be circulated to the Committee, he would have to make sure to send it over. At least now we have what you are referring to on record, so the Committee can certainly look at the exhibits over on the Senate side.

Are there any questions from the Committee? [There were none.] Is there anyone wishing to offer testimony in a neutral position either in Carson City or Las Vegas? [There was no one.] Mr. Jones, would you come back up for closing remarks?

Senator Jones:

Mr. Balkinbush was there for the original committee. I think the general sentiment was, "We are okay with how it is," and the Ninth Circuit Court has said that it does not protect people in the way that it should, and that is what this bill is trying to address.

With regard to the concerns that a public agency could be subject to additional cost as a result of this legislation, I would respectfully disagree, and also direct the Committee's attention to section 4, subsection 2, where it speaks of someone who files these special motions to dismiss. The additional fees and \$10,000 penalty only apply if the court were to find that the motion was filed in

a frivolous or vexatious manner. Mr. Chairman, as you are aware, it is pretty hard to show that someone's filing of a motion was frivolous or vexatious. I think that those protections are in the bill for public agencies that might be filing these suits and will not deter them in that effect.

Chairman Frierson:

Thank you, Senator. I will direct the Committee that if they want to go back and look at the Senate side, they are more than welcome to do so for any of the exhibits.

[Also submitted but not discussed were (Exhibit C) and (Exhibit D).]

With that said, I will close the hearing on S.B. 286 (R1) and open the hearing on Senate Bill 60 (1st Reprint).

Senate Bill 60 (1st Reprint): Revises various provisions relating to businesses. (BDR 7-380)

Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

Senate Bill 60 (1st Reprint) proposes several changes to Title 7 and Chapter 225 of the *Nevada Revised Statutes* (NRS) that will further standardize and refine the filing processes of the Secretary of State's Commercial Recordings Division. The bill also strengthens provisions relating to registered agent practices in the state. We have met with representatives of the Registered Agent Association and the State Bar of Nevada Business Law Section in coming up with a bill acceptable to all parties. I will touch on the major provisions of the bill and will be happy to answer any questions you may have as we go. As you can see, the bill is quite large due to the fact that the same provisions are repeated in the individual entity chapters within Title 7. Therefore, I will not cite each section specifically, but I will touch on the substance of the provisions contained in the multiple sections.

Section 2 of the bill adds a penalty to provisions previously added to the individual entity statutes for purporting to do business without proper registration. It adds to those that are only required to have a state business license—sole proprietors, general partnerships, and those required to have a business license but not required to file formation documents with the Secretary of State. This section mirrors those already in statute relating to business entities doing business in Nevada without proper registration and is necessary to ensure that the same penalties for noncompliance with the filing requirements apply to sole proprietors and general partnerships as they do for corporations, limited liability companies, and other Title 7 entities doing business in Nevada.

Section 3 of the bill clarifies that any claim for exemption from the state business license be renewed annually. Currently it is not clear that a claim for exemption must be renewed annually. Title 7 entities must renew their state business license annually as it is inexorably connected to the initial and annual lists. Since the requirement for an exemption may not be met annually, sole proprietors, partnerships, and those not filing annual lists that are claiming an exemption should be required to file a declaration of exemption on or before the last day of their exemption.

Section 4 of S.B. 60 (R1) expands what information contained in the state business license is considered public information. Currently, the information in the state business license application is considered confidential. Only the name of the sole proprietorship or partnership and whether such has a state business license may be disclosed to the public and, for that matter, to law enforcement. In addition to the name and license status, the street address where they are doing business in Nevada should also be disclosed. Title 7 entities must provide a physical street address where any legal process or notice may be served. We have received numerous complaints from persons wishing to serve process on a sole proprietor or a partnership but were unable to do so as they were unable to locate a street address for the business.

This section also defines that the information contained in the state business license application may be shared with law enforcement and any other state, local, or federal agency to assist in any enforcement action. This would treat the state business license information the same as information received for Title 7 entities.

Section 6 simply moves the provisions for the registered agent listing from NRS Chapter 78 to NRS Chapter 77, where they belong. Nevada has come under significant federal, international, and media scrutiny for its limited information for registered agent practices involving business entity creation and related services. The provisions in sections 6.3 through 6.9 strengthen Nevada's requirements pertaining to registered agents. Section 6.3 allows the Secretary of State to conduct examinations of any records required to be maintained pursuant to NRS Chapter 77 or any other provision of the NRS pertaining to the duties of a registered agent. Section 6.7 provides the procedures by which a penalty for a violation of this chapter may be recovered, which would be through a civil action brought in district court. It also provides for a noticing of violations and for the opportunity to correct a violation. This section also provides for Secretary of State action when a registered agent is found to have engaged in conduct that was intended to deceive or defraud the public or to promote illegal activities.

Sections 7.2 through 7.9 provide provisions requiring that a registered agent with ten or more represented entities be registered as a commercial registered agent. A commercial registered agent must register with the Secretary of State and declare that the registered agent, or the principals of a registered agent company, have not been convicted of a felony or has been restored to his or her civil rights, that the registered agent has not had his ability to serve as a registered agent denied or revoked in this or another state, nor has been enjoined from serving as a registered agent.

The ten-entity-or-more threshold in the provisions allow for those registered agents serving as their own registered agent, or who may serve voluntarily as a registered agent, to do so without becoming a commercial registered agent. These provisions track very closely with those enacted by the state of Wyoming in their efforts to address similar registered agent practices.

Sections 10, 13, 16, 17, 19, 22, 24, 27, 29, 33, 35, 36, 39, 43, 46, 48, 51, 55, 61, 64, 67, 75, 78, 81, and 84 of the bill provide that a person specifically authorized by the entity may sign an annual list or other documents submitted by an entity. This allows for a more efficient filing of documents as it allows the authorized person to sign and eliminates the barrier of having to find an officer to file routine documents. This also allows registered agents to file routine documents for the represented entities. We expect that this will increase the usage of the Secretary of State's online services.

The bill prohibits naming of officers and directors in its annual lists with the fraudulent intent of concealing the identity of any person exercising the power or authority of an officer or director in furtherance of any unlawful conduct, and provides the fraudulent filing penalties of NRS 225.084 for violations. Again, Nevada has come under significant scrutiny regarding practices that make it difficult for law enforcement or other enforcement agencies to identify the responsible parties during the course of an investigation. We have worked with the Business Law Section of the State Bar of Nevada to craft language that will not prohibit acceptable practices.

The bill removes the provisions requiring a foreign corporation filing its qualification documents in Nevada to provide a certificate of good standing dated within 90 days from its date of incorporation. This is an antiquated provision that is cause for unnecessary rejections and delays in filing. This requirement is replaced by a declaration of the filer of the entity's existence and good standing in its home jurisdiction. Many other states have removed this requirement for such a certificate.

Senate Bill 60 (R1) also removes the requirement that the registered agent information be included on the annual list of officers. This is also an antiquated provision that has been made obsolete by the availability of registered agent information online through the Secretary of State's website, <www.nvsilverflume.gov>, Nevada's business portal. This requirement is also confusing, as customers believe they can change registered agent information by changing the information on the annual list form. This is incorrect, as other provisions in statute provide for changing registered agent information through a separate filing.

Sections 2, 12, 18, 25, 32, 38, 42, 45, 50, 57, 59, 60, 63, 69, 71, 72, 74, 80, and 83 add the interrogatory provisions of NRS 78.152, subsection 3, paragraph (b), allowing the Secretary of State to issue interrogatories relating to investigations of entities doing business in Nevada without proper registration. The authority to issue interrogatories will allow the Secretary of State, when necessary, to more readily obtain information required, ensuring that Nevada entities are properly registered with the office. These sections also remove the provisions that the Secretary of State may instruct a district attorney or the Attorney General to institute proceedings against a noncompliant entity. This provision has been changed to a "may refer" provision per discussion with representatives of the district attorneys and the Nevada Prosecution Advisory Council. We believe prosecutors should have prosecutorial discretion and this amendment recognizes that.

Sections 14, 15, 20, 26, 28, 30, 34, 37, 40, 44, 47, 53, 56, 65, 68, 76, 79, and 85 deal with business identity theft and reinstatements of entities. The growing trend in the U.S. is corporate or business identity theft. The unauthorized reinstatement or revival of seemingly defunct entities is one method perpetrators are using to conduct business identity theft. This bill prohibits the reinstatement or revival of entities without proper authorization from the governing board of an entity or by court order and requires a declaration under penalty of perjury that such authorization has been received. This provision will allow the Secretary of State to require additional information before a reinstatement or a revival is processed. If one is fraudulently filed, the Secretary of State may investigate. Current statute should be sufficient in penalizing the offending party.

Sections 11, 17, 21, 23, 31, 35, 41, 49, 54, 58, 62, 66, 70, 73, 77, and 82 prohibit the creation of any entity for unlawful purposes or with the intent of creating false history by which, for example, one may gain favorable financing. These provisions are also designed to discourage the creation of shell entities that are set up for no legitimate purpose other than to conceal money laundering activities or other unlawful activities. They are also designed to discourage the

creation of shelf or aged entities, called such as their existence is in paper only in a binder on a shelf. These entities are created for the sole purpose of creating a corporate history when there has been no legitimate business activity conducted. These entities are offered for sale at a substantial premium over the cost of initially creating the entity and filing the annual lists. They lend an air of legitimacy and a legacy of compliance when all that has been done is that the appropriate documents have been filed at the state or local level and certain meetings held. They have also been used to obtain financing for new businesses with the illusion that they have been in business for years. You can look on eBay or craigslist and find aged entities for sale at a significant premium.

Sections 86 and 87 simply correct the name of the International Association of Commercial Administrators in Chapter 104. Section 88 of the bill repeals provisions of NRS 78.795 that we are proposing to move to NRS Chapter 77 in section 6. This concludes my testimony. Thank you for the opportunity to testify this morning, and I will be happy to answer any questions.

Chairman Frierson:

In reviewing the bill, language is being used throughout the bill—the first use is on page 4, section 2, subsection 3, where it says, "the Secretary of State may require a person to answer any interrogatory" The thing that jumped out at me is any Fifth Amendment implication requiring someone who is being investigated for violating any of these provisions to answer interrogatories, and whether or not there is some problem with requiring someone who is being investigated to answer.

Scott Anderson:

That issue has not been discussed. We have the interrogatory authority already in Chapter 78 and the other entity statutes in regard to any investigation that we may issue interrogatories to assist in any criminal investigation that we are asked to, and this is adding that same interrogatory authority to our investigations of entities that are not complying with Nevada's registration requirements.

Chairman Frierson:

I get that, but asking a witness to respond to interrogatories is certainly different than asking a defendant or an accused or someone who is the subject of an investigation. To your knowledge, under the existing statute, are there times when an individual who might be subjected to criminal prosecution is provided an interrogatory? I would imagine they would advise him not to answer.

Scott Anderson:

I do not have an answer to that question. We would be happy to take a look at that and get back with you.

Chairman Frierson:

Thank you very much.

Assemblywoman Spiegel:

One of the things that concerns me is that we have seen some actions by registered agents in the past that have not been illegal and I do not think would fit under the provisions that you outlined in section 6.7, subsection 2 or 3. Is there a way that we could have some of these things covered? For example, in 2009, when we increased the license fee from \$100 to \$200, there were registered agents who went to their clients and said, "Nevada has doubled their business license fees. It is no longer a business-friendly state. You need to move your corporation to Wyoming." They charged their clients a fortune to do that, and it hurt the state and it hurt their clients, because their clients would not really be able to recoup the extra \$100 per year compared to the thousands of dollars that they were spending moving their businesses. I am wondering if something was being done. It was not defrauding them, it was not illegal, as I read it, by this, but it was clearly hurting businesses and hurting the state.

Scott Anderson:

We have some regulations in place that would already take care of this in regard to noticing and registered agent practices. I would be happy to speak with you about any specific provisions you would like to see in here. As far as the flight of entities from Nevada to Wyoming, it is somewhat anecdotal because while there may be some that have left, we have also gone through the most significant economic crisis recently. We are also finding that entities are not being created because of uncertainties in the economy. They are letting their businesses go because it is not economically feasible to keep them going. I would be happy to entertain any ideas you have.

Assemblywoman Diaz:

Page 4, lines 3 through 5, says, "the district attorney of the county . . . or the Attorney General . . ." can be the entities that can go after the person who conducts business in our state without obtaining the appropriate licensure. I would like to know how it is distinguished who is going to do it and who actually does the legal legwork behind it. It is not clear to me. It just says it can be one or the other. How do we ensure who is doing what?

Scott Anderson:

We would definitely consult with the Attorney General's Office with our deputy attorney general in regard to how this would be processed. This is a relatively new process that we have recently started in our Compliance Division within our office. We are just now starting to refer cases to the Attorney General's Office with their instruction on how we should proceed on it. We do not have our own legal counsel within the office other than the deputy attorney general.

The Attorney General makes the determination as to whether they will take it on or if it should be referred to the district attorney.

Assemblyman Carrillo:

On page 4, lines 1 through 14, how are businesses which currently are not in compliance with having state business licenses held accountable now?

Scott Anderson:

Right now we are investigating and getting the information regarding noncompliance, and we are discussing that with the Attorney General's Office. As I stated, this is a relatively new process. In fact, our first referrals to the Attorney General's Office came this past week. This is a new process for us. We will be giving them a referral with information in regard to what we have found during our investigation, and then they will make the determination as to how to move forward.

Assemblyman Carrillo:

So up until now there really has not been a process in place to deal with this?

Scott Anderson:

There has not.

Assemblyman Ohrenschall:

My question is on page 6, lines 38 through 44. What is the Secretary's rationale behind not allowing someone to correct an alleged wrong if they have had a violation in three years?

Scott Anderson:

What is the page?

Assemblyman Ohrenschall:

On page 6, subsection 2 of section 6.7, an alleged wrong can be fixed but not if there has been a violation in the last three years?

Scott Anderson:

This provision follows the Wyoming provisions in regard to if they have had a violation in the past three years, they basically do not have the opportunity to correct because they have to keep a clean slate. It was originally a five-year period and the registered agents asked if this could be a three-year period. If they have been found noncompliant and they have had these violations, they would need to keep their slate clean for a period of three years so we do not have to continue going into the district court to ask for relief to penalize them and enjoin them from their practices.

Assemblyman Carrillo:

On page 20, lines 1 through 3, why is this being removed, and does the Secretary of State not need to have documents translated to English?

Scott Anderson:

This refers only to a certificate of good standing or a certificate of existence issued by another state that would be filed with the qualification documents. We found that this is an antiquated provision. Most states are getting rid of this with just having an affidavit or a declaration on their filings and the information regarding their filing in another state. The entire provision would be removed, and therefore there is no need for that translation. There are other provisions in statute that require that the documents coming into the Secretary of State's Office be translated. This only relates to this certificate of good standing or certificate of existence that we are looking to remove.

Assemblyman Carrillo:

If something like that is required for translation, obviously that is going to require—I know this is not a money committee, but there has to be something attached to that in regard to the expense of translation.

Scott Anderson:

We would not be translating that. The translation has to accompany the document. The translation is the responsibility of the person filing the documents.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.] I will now invite those here to provide testimony in support of S.B. 60 (R1) to come forward.

Scott Scherer, representing the Nevada Registered Agent Association:

We had a good debate on S.B. 60 (R1) on the Senate side and worked together to come up with an amendment that created the first reprint. As it has been

amended, we are in support of the bill. I would like to note two things. From our position, the concerns that have been expressed, especially at the federal level, are somewhat overblown and have been addressed by current law and regulations and the Secretary's regulations, so we believe that those are adequate. We also believe that we need to make sure we are staying on track to compete with Wyoming and Delaware for corporate business here and make sure that business owners also have rights to privacy to the extent that it is not necessary to have that information be public. We think the first reprint of this bill is a good compromise that we can support. There was in the language—and this goes into section 6.7. There are a couple of sections of our agreed-upon amendment that were combined with the result being that on page 7, subsection 3 of section 6.7, beginning on line 6, "the Secretary of State may take any or all of the following actions," such as if there has been an intent to deceive or defraud the public. Our understanding of the original amendment was that the Secretary would have the authority to deny registrations, but there would be a civil action to revoke. We are fine; we can live with this language. It is our understanding—and we have been assured by the Secretary of State's Office—that there will be due process given to either prove or disprove that those prerequisite facts exist. With that, we are comfortable with continuing to support the bill as is.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support? [There was no one.] Is there anyone wishing to testify in opposition to S.B. 60 (R1)? [There was no one.] Is there anyone in Las Vegas wishing to testify in opposition? [There was no one.] Is there anyone wishing to offer testimony in a neutral position either here or in Las Vegas?

Robert C. Kim, representing the State Bar of Nevada:

I am here on behalf of the State Bar of Nevada Business Law Section, and I am the chairman of the Executive Committee. Due to State Bar protocol, I cannot support the bill necessarily, but we did work with the Secretary of State with the language that is in the bill, particularly those relating to prohibition against the use of any Nevada entity with respect to any illegal conduct and/or the provision of names on annual or initial lists with a fraudulent intent.

My purpose of speaking is to clarify that these are in response to marketplace factors that seem to have a negative view of Nevada entities. It is not to say that these activities were not prohibited beforehand, but this is merely meant to emphasize affirmatively that such conduct is not permitted and the use of entities in that regard is not allowed and to give the Secretary of State some clear tools to enforce any illegal conduct or activity by means of a Nevada

entity. I wanted to reaffirm our work with the Secretary of State in this regard and to give clarity as to the purpose and intent of those sections.

Assemblyman Ohrenschall:

On page 6, when I asked that earlier question about the civil penalty that could be imposed under section 6.7, I think the deputy secretary also mentioned seeking to enjoin the registered agent. I do not see that power specifically mentioned in this section. Is it somewhere else in the bill that I am missing?

Robert Kim:

I do not have the familiarity with this bill to say whether it does or does not.

Scott Scherer:

That is in existing law—the right to get an injunction in the district court, in NRS 77.430.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.] Is there anyone wishing to offer testimony in a neutral position either here in Carson City or Las Vegas? [There was no one.] I will close the hearing on S.B. 60 (R1) and open the hearing on Senate Bill 421 (1st Reprint).

Senate Bill 421 (1st Reprint): Requires a court to excuse a juror for cause under certain circumstances. (BDR 2-1109)

Peter C. Neumann, Private Citizen, Reno, Nevada:

I am here to support Senate Bill 421 (1st Reprint). Mark Twain was famous for saying, everybody complains about the weather, but nobody ever does anything about it. I have been a lawyer since 1964, and I have tried, I think, 140 or 145 jury trials to a conclusion as both a prosecutor for the state of Arizona and as a defense attorney in criminal matters, having been appointed by courts to defend various defendants. I have been a prosecutor or a plaintiff's lawyer in various types of civil matters, and I have also been a defense lawyer in various types of civil matters in my career, defending small businessmen, doctors, and others. There is a jury selection process that the courts call voir dire, which means "speak the truth," in which the purpose is to ferret out people who are biased or prejudiced for or against one side or the other who come into the courtroom seeking a certain result before they have even heard the evidence and the judge can excuse those jurors, so what remains is a jury panel of people who come in with a clean slate, will listen to the evidence on both sides, and decide according to the law given to them by the judge.

There are two ways of getting those biased jurors out of that particular trial. One is peremptory challenges, which are given to both sides by this Legislature. In Nevada it is four per side in a civil action and in most criminal actions, although in capital murder cases it is eight. In those peremptory challenges, either side may excuse a juror for no reason at all just because you have a feeling or your client has a feeling, maybe a gut reaction, that that juror is not going to be fair or maybe will not get along with the other jurors on the panel or will be a troublemaker in some way. We get four peremptory strikes. These are very precious to the parties in the lawsuit and their attorneys. It has been my experience that I always wished I had at least one or two more peremptory challenges because when it came down to the use of those strikes, I usually had to juggle one or two of my strikes and say, "Well, this fourth strike that I have, should I go with Juror A or Juror B? They are both looking pretty bad," so I made an educated guess and half the time I guessed wrong.

The other way to excuse a juror who is biased or prejudiced is the use of a for-cause challenge, and that is what is addressed in S.B. 421 (R1), which, in my opinion, is simply a housekeeping bill which does not establish any new law but establishes a legislative standard by which trial judges will continue to exercise their discretion in deciding a challenge of a juror "for cause." There are a few judges—and this is all over the United States and I have attended many, many seminars nationwide, where lawyers and some judges have complained about this. There are a few judges who believe it is incumbent upon them to rehabilitate a juror who has openly expressed that he or she is not fair or is unfair or is biased or prejudiced for or against one side or the other. This happens all the time. When this happens, the party to that lawsuit, whether it be the state of Nevada in a criminal case, or the plaintiff for a defendant in a civil case, has the opportunity to challenge that juror for cause. The statute, which was written in 1911, *Nevada Revised Statutes* (NRS) 16.050, has some pretty old-fashioned language in it, which is okay. I do not condemn that. The problem is that statute does not actually say what the judge is supposed to do when the juror has been shown to be—and the judge determines—biased or prejudiced for one side or the other. It is implied, I am sure, because it says the judge shall—and it uses the word "try"—try the issue of the challenge, but it does not create a standard.

Now there are many Supreme Court cases that do use many, many pages of case law that established the standard, but there is no statutory standard. In the heat of battle, the parties only have a very few minutes to exercise both peremptory challenges and for-cause challenges, and the judge is pressed and has to make a decision very quickly as to whether or not to excuse a juror for cause and ask that juror to come back on some other case. The juror does not get off the hook by being excused for cause except on that case, and usually

the judges will tell the juror, "Well, if I excuse you, sir, you understand, do you not, that you must come back. You have to report to the jury commissioner downstairs in the courthouse and come back and you will be summoned later on maybe this month. By the way, the case that you are on is only going to be a four-day jury trial, but if you get excused for this case, I must warn you that when you come back for another case, which might be as early as three weeks from now, that case may be a ten-week jury trial or may be a two-month or three-month jury trial. So keep that in mind." Anyway, what happens is some judges—not all of them by any means, and I think they are in the minority—take it as incumbent upon themselves to rehabilitate a juror who has already said he or she cannot be fair.

Here is how it works, for those of you who have not had the pleasure of being in a lawsuit or being a trial lawyer in a lawsuit—and it is not very much fun. The judge will often say to the juror, "Mr. Jones, you have said that you cannot be fair to the defendant in this case, but you understand, do you not, that you are under oath to be fair, that you understand that it would be against the law for you not to be fair. You understand that there could be penalties and it is very important for you to be fair. I am the judge here, and I am telling you that." The judge is sitting on the bench with a black robe on with the authority in the courtroom, and nine times out of ten, when that happens, that juror who has just said a few minutes ago that he or she will not be fair, says, "Well, when you put it that way, Judge, yes, I can be fair." So the magic words have been said by the prospective juror. It has not changed anything, and everyone in the courtroom knows that it has not changed anything. The juror is still going to be in the same frame of mind; it is just that the judge has sort of bullied him or her into saying those magic words, "I can be fair." So what the effect of that is is that the aggrieved party—let us say it is a businessman who is being sued by a plaintiff—knows that juror is not going to be fair to him, and so he instructs his attorney to use one of the very valuable peremptory challenges on the juror. The problem is that we do not have enough peremptory challenges ever, and so it is unfair and also kind of against the body of law that has been established for the judge to do that. If the juror is unfair, then the judge is supposed to, under the law, excuse that juror and have him come back for some other trial.

This bill is an attempt to put in a legislative standard that the judges can look at in a quick and dirty way. This is my bill. It is not a trial lawyer's bill. I did not consult anyone on this bill. I did not consult anyone at all, actually. I just wrote the bill. Well, I told Tick Segerblom I was going to do it, and he understood because he has tried cases. He liked it. When I did this bill, I was on my own. I drafted the language of it, and originally I made it both for criminal and civil. Some of the judges expressed to me, "Well, the prosecutors might have a

problem with this bill, especially in capital murder cases, because they are trying to find 12 people who are willing to put someone to death in a heinous case, and that is not an easy task." As an old prosecutor, I can tell you that.

I thought the language I chose was the most moderate and most reasonable, the standard that the judge will use in determining—and it is still the judge's call. Nothing has been changed. The judge is the decider of this, but the test the judge is supposed to use under this bill is, if the judge determines that the juror in question, who has been challenged, is more likely than not to be biased or prejudiced, for or against any party, the judge then has the duty, stated in the law, to excuse that juror. It is pretty simple.

I put in the other thing at the request of someone—because I found out that some judges, especially in Clark County, do this already, and I think it is a very good idea. When a for-cause challenge of a prospective juror occurs, some judges will handle that outside the presence of the other jurors, such as in chambers, or excusing all the jurors before the for-cause challenge is "tried" by the judge. That is to prevent or minimize the chance of other jurors mocking the answers of the challenged juror, and then trying to get out of jury duty by using the same language. That is the reason for putting that little phrase in, "may be held in chambers." It is still the judge's discretion. The judge might say, "No, I am going to do it in open court" and can do so. That is why I brought this bill. I have seen this happen so many times and I have heard other trial lawyers and other judges complain about this practice of rehabilitating jurors, not only in Nevada, but in many, many of the states, that I thought, "Why not put in a standard, because the 1911 law does not have a standard."

Chairman Frierson:

Thank you, Mr. Neumann. Senator Segerblom, I apologize for not realizing you were going to be a part of the introduction. I would have waited for you.

Senator Tick Segerblom, Clark County Senatorial District No. 3:

There has been some discussion that we should not get involved in this process because this is for judges only. First off, the statute already governs for-cause, so it is a legislative issue, and secondly, at the end of the day, we represent and set public policy, and if we find that there is a need to change the law or make it clearer, then that is our role. Judges interpret the law, but we set the law. I think it is appropriate for us to be involved in this issue.

Robert T. Eglet, Private Citizen, Las Vegas, Nevada:

I am a partner with the law firm of Eglet Wall Christiansen, Trial Attorneys, in Las Vegas, Nevada. Mr. Neumann asked me to come up and testify before you with respect to this bill, I suspect, because of my experience with jury selection.

I have been practicing law primarily in Clark County for 25 years. The first roughly 12 1/2 years, or half of my years of practice, I was exclusively a defense attorney. For the last roughly 12 1/2 years I have been primarily a plaintiff's attorney in the area of personal injury and wrongful death. However, my firm also represents a number of corporations in southern Nevada in commercial litigation, so we are often on the defense side as well as the plaintiff's side in those cases. I also often represent medical doctors in Clark County as personal counsel in medical malpractice cases.

I have tried to verdict well more than 100 jury trials in Nevada, and I have started—which means I finished jury selection in more than 100 jury trials in Clark County, because often jury cases settle during the middle of trial. I can easily say that I have selected more than 200 juries over my career.

Many years ago while I was a defense attorney, I saw this problem that Mr. Neumann was discussing with the rehabilitation of jurors who clearly had expressed a bias at some point during jury selection, and then the judge will go and attempt to rehabilitate them by asking them what we call "the magic question." They are sitting up there on the bench in their black robe and they say, "Well, Mr. Smith, in spite of what you said, you will follow the law, will you not, that I give you?" "Well, yes, Your Honor, of course I will follow the law." "Therefore, you can be fair and impartial in this case, can you not, in spite of your biases, in spite of your prior experiences?" There have been independent studies across the country over the past several decades and what happens is that invariably, even though the juror has a bias, they do not want to tell the judge, who is wearing a black robe and sitting above them with a lot of authority, that they cannot be fair and impartial and that they cannot follow the law, even though—it is essentially almost an intimidation thing that occurs because they do not want to engage in it. Then what happens because of that, other jurors who may also have biases are afraid to express their biases once they have seen this occur with the judge, so you end up with jurors on the panel who have a bias one way or the other.

Some states, in recognizing this problem, have actually even taken it to an extreme, which I certainly do not recommend. For example, the state of New York does not even allow the judge to be present during voir dire. Only the attorneys and the venire are present during voir dire, and the trial judges are not present because they have recognized this problem. I do not support that kind of thing in Nevada because I think New York's way of jury selection is rather inefficient; but I think this bill that has been proposed can certainly take care of these problems.

When I recognized this problem as a defense lawyer years ago, I began to do a lot of research across the country. I researched every case there was on jury selection and read just about every book there was on jury selection. I have published myself in this area and over the last eight to ten years I have lectured to the trial lawyers here in Nevada. When I say trial lawyers, I do not mean just plaintiff's trial lawyers; I mean trial lawyers who try on the defense side as well as the plaintiff's side. I have lectured and taught jury selection all over the country to various states, trial lawyer organizations, as well as national organizations. This is a problem, not only here in our state, but some other states. But some other states have done things to rectify this situation.

I cannot express to you enough that the right to trial by jury is a constitutional right under both the *U.S. Constitution* and *Nevada Constitution*, and the right to trial by jury only means something if the jury—the entire jury, every member of the jury—is fair and unbiased and states so unequivocally before the trial begins. Voir dire is the practice that exists to make sure juries are fair and unbiased, and I believe that S.B. 421 (R1) and the standards protect this constitutional right. In fact, the United States Supreme Court has stated that the importance of a truly impartial jury is so basic to our notion of jurisprudence that its necessity has never really been questioned in this country, and the U.S. Supreme Court has recognized the fundamental importance of impaneling a fair and impartial jury, stating it is difficult to conceive of a more effective obstruction to the judicial process than a juror who has prejudiced the case. The U.S. Supreme Court in the *Wainwright v. Witt*, 469 U.S. 412 (1985) case, which is a 1985 case and is the seminal case from the U.S. Supreme Court on jury selection, held that prospective jurors must be excused if their views would substantially impair their ability to perform their function as jurors and the impairment need not be shown with unmistakable clarity. I think the last part of that statement from our country's Supreme Court is in line with this bill, which gives the trial judges a standard which is simply a more likely than not standard as to whether the potential juror would be biased or not be biased, for or against any party. I would suggest that the U.S. Supreme Court statement in *Wainwright* that the impairment need not be shown with unmistakable clarity stands for that proposition. In other words, it is not a higher standard. It is just more likely than not. It just has to tip the scales, just like the burden of proof in civil cases.

I know that some of the opposition to this case has been that certain people think this is going to extend jury selection. My first response would be, "Well, even if that were true, that does not trump a party's constitutional right, both under our state and federal constitutions, to a fair and impartial jury." I would suggest that, in fact, this bill will save time in jury selection. One of the reasons for that is that the Nevada Supreme Court came down with a case

called *Jitnan v. Oliver*, 127 Nev. Adv. Op. 35, 254 P.3d 623 (2011), several years ago. It is a case where I actually handled the appeal before our Nevada Supreme Court here. I did not handle the underlying trial. In that case, there was a potential juror who clearly expressed a bias against one of the parties in the case. Even after the defense attorney got up and tried to rehabilitate the juror, he continued to express a bias. Even after the judge tried to rehabilitate the juror, the juror somewhat backed off, but there were still hints of a bias. The trial judge did not excuse that juror for cause when a challenge was made, and as a result, one of the attorneys had to use a peremptory challenge against that juror and was left with the situation that Mr. Neumann discussed. Now he did not have enough peremptory challenges to remove all the jurors that he felt were negative or against his client.

The Nevada Supreme Court has clearly said in case after case that there are two basic purposes for voir dire in Nevada and why it is so important in Nevada for counsel to be able to participate in voir dire. The first purpose is to ferret out, or attempt to ferret out, any jurors who have some prejudice or bias that would make them unfit to sit on the jury, that they just simply cannot be fair and impartial. The second purpose is for counsel to be able to garner or gain information so that they can make their peremptory challenges based on intelligent information and not on demographics and race and things that are not correct or proper under our law.

It is made clear that the first important part of jury selection of ferreting out bias is those people should be excluded for cause. What happened in the *Jitnan* case was the Supreme Court ultimately found that the district court judge abused her discretion and that she should have struck that jury—it caused an appeal in the case that probably would not have occurred but for this problem with the jury selection. Because of what the Supreme Court did in this case—they really did not set forth a standard that the trial courts should use in evaluating whether a juror should be excused for cause or not—it really left it as a subjective thing for the judge. But, in fact, what that case did because the Supreme Court did not set forth the standard, it extends jury selection. It requires that if one of the parties, and this is what the Supreme Court's opinion did, challenge is either granted or denied by the trial court, who expresses a potentially disqualifying opinion or bias, that the trial counsel must then ensure that the trial judge sets forth on the record her reasons for the grant or denial of the challenge for cause. You must make sure that the court makes an extensive record.

Secondly, trial counsel must now challenge any prospective juror for cause if trial counsel states, or if the juror states, any potentially disqualifying opinion or bias during voir dire, which would not necessarily be required by this bill.

Third, if trial counsel loses a challenge for cause prior to the exercise of peremptory challenges, trial counsel should make an extensive record that he or she is now forced to use one of his or her peremptory challenges on a prospective juror that should have been excused for cause. There are now more objectionable prospective jurors to trial counsel's clients remaining on the panel than peremptory challenges trial counsel has to exercise and request additional peremptory challenges to rectify the situation, which will rarely be given.

Fourth, once peremptory challenges are exercised and the district court asks if trial counsel has any objection to the jury as seated, trial counsel should make a record that trial counsel does object to the jury as seated and then clearly set forth on the record which juror is objectionable to trial counsel's client and why he is objectionable. Then trial counsel should also clearly identify which juror on the jury, as seated, trial counsel would have exercised a peremptory challenge against had the court granted trial counsel's challenge for cause. Because the trial court denied counsel's cause challenge, there are now members of the jury that are objectionable to the trial counsel's client. Now this is a very tedious exercise, which is going to drastically extend the voir dire process for this case.

I believe this bill gives the trial courts a standard to use when making this decision as to whether a challenged potential juror should be excused for cause or not, a standard that is not set forth currently in the law.

Because of the *Jitnan* case, I would suggest that under the current state of the law as it is, it is going to extend unnecessarily the voir dire process in civil cases. This is not just a problem for one side of the case or the other. As some members of the Committee may know, I have been lead counsel on the cases involving the hepatitis C outbreak that occurred in 2008 in Clark County. I have now tried three cases to verdict. One case settled right before we began closing arguments. That case is a perfect example of how this bill would substantially assist the defense attorneys in that case. Because of the extensive publicity in that case, each of the trial judges in the case had 500 prospective jurors fill out questionnaires. As plaintiff's counsel, as some less experienced plaintiff's counsel may not understand, I knew that I cannot go get a verdict that is not going to hold up on appeal. I have to protect the record as well as the judge for my own purposes. So I stipulated to excuse any jurors who said something in their questionnaire that showed they had a bias against the defendants. About 250 out of 500 people said because of the publicity that they were going to favor any party who got hepatitis C because of these cases. So we excused them. Many of these people did not express this opinion in their jury questionnaire, and when it came to the voir dire process, we had juror after juror after juror, after my probing them by some of the things I saw in the jury questionnaire, state that they would have a bias and tend to favor my clients in

the case. Now, if I was not interested or was not thinking about the appeal, and I was just an attorney who was trying to stack the deck and I knew I had a judge—and there are many judges in Clark County who would rehabilitate that juror—I could have just said, "Okay" and passed. If the defense attorney tried to strike them, I could attempt to rehabilitate them and could have ended up with a jury stacked full of people who would have been unfair and biased against the defendants before the case started.

I just recently finished a case where the same thing occurred. Even though we had dismissed almost half the panel based on their questionnaires, I was able to pull out the first 50 people on the panel because they had biases, because they could not be fair and impartial. I teach this around the country. I suggest that trial counsel on both sides—whether it is the defendants or plaintiffs—should be trying to get a completely fair and impartial jury before the trial begins, because nine times out of ten, when you have a juror who engages in some misconduct, it is one of those jurors who has expressed a pretrial bias in the case, did not follow the rules, caused problems, and caused appeals. So under the current state of the law, it causes many more appeals on this issue whereas if we had this standard, it is going to lessen the number of appeals, it is going to give the judges an actual standard.

This issue that some people have expressed about the judges may try this in chambers—what that really means is they do not take the parties back to chambers because they want to make a record of it. They excuse the jurors from the courtroom and then we argue over the challenge outside the presence of the other jurors. Sometimes we may bring that one juror back in for additional questioning. So it is a practice—at least in Clark County; I can tell you, I have tried cases in virtually every department in Clark County—it is a practice that is done by almost every judge in Clark County now, not having these arguments for challenge in front of the rest of the panel. It does not really change anything by having that in there.

It is my view that S.B. 421 (R1) will save costs. These trials cost a lot of money. If we have to retry them based on having a bad juror and we get a new trial—well, in some of the cases I have tried over the last few years, the parties have incurred millions of dollars in costs just to get through the trial, and it has cost the county an extensive amount of money because some of these trials have lasted as long as four or five months.

Assemblyman Wheeler:

If you run out of your peremptory challenges and you still think a juror is biased, would you take it to the judge and say, "Now you must follow this new rule?"

Robert Eglet:

Actually, the way this is written, the challenges for cause are done before peremptory challenges, during the voir dire process. The judge makes these decisions before we ever get to the peremptory challenge stage. This just gives the judge specific guidelines on how to make those decisions, and once that is done, and both sides have exercised all the cause challenges they wish to make, then we go into the peremptory challenge stage. It is two separate sections of voir dire.

Assemblyman Ohrenschall:

I remember a case a decade or so ago out of Las Vegas, and it was a jury trial. The foreman was very convinced, in his opinion, and there was one holdout and I remember hearing in the media after they came back that that juror had been in tears because the foreman really bullied her and bullied all the other jurors. I wonder, if this measure passes into the NRS, do you think that can be avoided? It happens more often than people think, where you do get a member of the jury, maybe it is the foreperson, who is a bully and so confident in their opinion and then you have folks who are scared to hold out if that is what they really believe.

Robert Eglet:

I think those situations will be lessened significantly. I certainly cannot guarantee that is not a point that will occur. You may have someone on the jury who, after the evidence has been presented, has a very strong opinion one way or the other and they are very vocal and they engage in bully tactics. I think it will significantly lessen the number of people who are able to get on a jury with a preconceived idea of what the outcome of the case should be.

Assemblyman Hansen:

We started off with a quote by Mark Twain, and one of my favorites is, "We have a criminal jury system which is superior to any in the world; and its efficiency is only marred by the difficulty of finding twelve men every day who don't know anything and can't read." The reason I bring that up is you do have paragraph (f) in this bill. "Having formed or expressed any opinion or belief" You want to be able to remove anyone for having any knowledge whatsoever apparently—of course, it says you can read the newspaper. Why is it limited to civil actions? Why would this not also apply to the criminal jury selection process?

Peter Neumann:

The change in the existing statute puts in "any opinion" instead of "an unqualified opinion." I actually suggested that change because I did not know what an unqualified opinion meant. I asked a lot of people and they did not

know either. It is just housekeeping for the present statute, which says that if the prospective juror has "formed or expressed an unqualified opinion or belief as to the merits of the action, or the main question involved," then that juror should not serve, although it did say the reading of newspaper accounts was not a reason to disqualify the juror. I thought it would read a little better if it said, "any opinion" instead of "an unqualified opinion" because I think we are trying to find people who do not have an opinion on how the case should turn out before they have heard the evidence. That was the reason for it. I forgot what your other question was.

Assemblyman Hansen:

Why civil only? Why not criminal and civil?

Peter Neumann:

When I originally suggested the language of the bill, I did not exclude criminal cases. One of the judges, Judge Janet Berry, who is a very experienced judge in Washoe County, told me that she thought that some of the prosecutors in the criminal area, especially in capital murder cases where they are having a hard time getting twelve jurors who will be willing to exact the death penalty, might have an objection to this. So she said, "Why do you not just limit it to civil cases and then put a sunset on there and if people do not like it then it expires on the sunset, and if they do like it, then hopefully the Legislature will renew it and expand it to the criminal as well."

Assemblyman Hansen:

In section 1, paragraph (g), it says, "The existence of a state of mind in the juror . . ." and then you cross out, "evincing enmity against or bias to either party." What is the difference between what you are eliminating and what you are adding? You have it that the juror's biased for or against any party to the proceeding. It seems like it is splitting hairs to me.

Peter Neumann:

Yes, I agree with you. It is splitting hairs. "Evinced enmity" was drafted in 1911, as I understand it, and that is old-fashioned language and I was just trying to make it a little more simple.

Assemblywoman Dondero Loop:

On page 2, paragraph (f), it talks about the reading of newspaper accounts of the subject matter. With this day and age of technology, is there a need to add anything else in there?

Robert Eglet:

Certainly most people now do not get their news from the newspaper. They get it from the Internet or Twitter or other social media things that are going on. I know that we have—in fact, I actually rewrote the instructions for the admonition for the judges to now give to the prospective jurors because it used to be limited to newspaper or TV news accounts, and now we have all that in there with respect to social media and the Internet. The admonition they give the jury now every time—at least in Clark County; I cannot speak for Washoe County—is now inclusive of all forms of media and it is mentioned in the admonition every time there is a break that they give to the jury. I do not think we would have any objection to adding that language.

Peter Neumann:

I think it is a good idea, although I hope it would not derail the bill by tinkering with it. I agree with what Mr. Eglet says. Our judges in Washoe County do that too. We do not know whether the jurors follow that or not. There have been reports that some jurors will go out during the middle of a trial and read up on something. There have been some cases over the years where jurors have actually gone to the scene of the crime or the scene of an accident and looked at things for themselves, and that gets back somehow—maybe the bailiff hears about it in the jury room and the bailiff reports it to the judge—and that will cause a mistrial. A good judge will admonish the jurors not to do that, such as, "Jurors, I know you want to find out, but you have to follow the law, which is that the evidence comes in through this courtroom and you have to decide the case on what comes in. If you go out and do your own investigation, you could cause a major problem."

Robert Eglet:

In the trial I just finished, we had a juror who stayed on the panel for most of the jury selection. At the beginning he had expressed bias in favor of my clients in the case, and the defense attorney requested that he be excused and I did not object. At that time, the trial judge indicated, "Well, I do not think he has said enough yet," and, in fact, a week into jury selection, we discovered that he was tweeting information about the juror process and the trial and what was going on. That gives you the example I was talking about. It is usually these types of jurors who engage in this type of misconduct and ultimately he was excused.

Chairman Frierson:

Are there any other questions? [There were none.] I believe there is an amendment that is being proposed, and I have been reading back and forth and doing some research myself. Mr. Neumann, I assume you are aware of

the proposed amendment and if you are, would you let us know what your thoughts are?

Peter Neumann:

I have read the amendment just recently, and I would never turn down more peremptory challenges, because that is what the amendment basically does. The amendment would wipe out all of the language in S.B. 421 (R1) and substitute the addition of two more peremptory challenges in civil cases and four more in criminal cases.

I have never had a case where I did not want more peremptory challenges. I would not turn that down; however, I do not think it is going to address the problem that I have tried to address in S.B. 421 (R1). Even if you give both sides two more peremptories, you still have a limited number of peremptories. If the judge refuses to excuse a juror who is obviously biased for or against one side or the other, you still have the problem that the *Jitnan* case addressed—and in other cases, too, like *Thompson v. State*, 111 Nev. 439, 894 P.2d 375 (1995), which is a criminal case, where the court is saying it is not fair to the party who is aggrieved by that biased juror to make that party use up one of their challenges. The challenges are limited by necessity. The court, by the way, has said that the right to voir dire by parties in a lawsuit—whether it is civil or criminal—is a constitutional right, and the right to challenge a biased juror is a constitutional right. I hate to admit this, but the fact that we get any peremptory challenges or not, that is a legislative grant completely, and our court has said, "There is no guarantee constitutionally to peremptory challenges at all."

I admire the suggestion of giving two more peremptory challenges in civil cases and four in criminal cases, but it still is not going to solve the problem that we do not have a standard which judges use to exercise the challenge factors in the high profile cases which Mr. Eglet has so much experience with.

Chairman Frierson:

Thank you. I will now invite those who are wishing to offer testimony in support of S.B. 421 (R1) to come forward either here or in Las Vegas. [There was no one.] Is there anyone wishing to offer testimony in opposition here or in Las Vegas?

Stephanie H. Allen, representing the Nevada District Judges Association:

I am here in opposition to S.B. 421 (R1). On the Senate side, we testified in the neutral position, but we also placed on the record some concerns that the Nevada District Judges Association may have with the bill. Subsequent to that, they recently had their conference, discussed the bill at length, and voted to

oppose S.B. 421 (R1). I provided for your information a letter from the new president, Judge James T. Russell, on the Nevada Electronic Legislative Information System (NELIS) (Exhibit E) as well as a proposed amendment (Exhibit F) that was previously discussed. Judge Russell wanted to be here today but unfortunately had a conflict in court, so for your information I would like to read his letter in opposition for the record.

The purpose of this letter is to relate to you and the members of your committee that the Nevada District Judges Association, at its recent conference, voted to oppose S.B. 421 (R1). [Continued to read from (Exhibit E).]

On NELIS, for the Committee's information as well as for the public, we have provided an amendment (Exhibit F) to that effect which would increase the peremptory challenges in both civil and criminal matters. I believe Mr. Neumann testified at the very beginning that there are a few occasions where judges may not exercise their discretion in their for-cause challenges, and in those instances, by increasing the peremptory challenges, they would have those one or two extra peremptory challenges to correct those errors. We believe this is a viable alternative. It would keep the current law that has been in place for many, many years as it is, allow the judges to have their continued discretion, and to use their discretion in making those determinations. With that said, I am happy to answer any questions, and thank you for your consideration.

Assemblywoman Cohen:

The letter seems to give us reasons with no basis for the reasons. Could we get more information? We have a list of these things but no background for the list.

Stephanie Allen:

I will be happy to get more information. I think generally the judges think that the standard and the ability for them to use their discretion under the existing law is sufficient, so the alternative was proposed to provide some additional checks and balances in the cases where perhaps someone should have been discharged for cause and they were not, then you would have those additional peremptory challenges. I am happy to get some more information for you and let you know.

Chairman Frierson:

Some of the provisions of the bill seem to do the opposite of some of the court's concerns. It would seem to me that there is a chance this could decrease the number of appeals by providing more options and making sure that jurors who do have bias are removed. As a trial lawyer, I agree there is nothing

more frustrating than finding a juror with bias and then sitting and watching them be rehabilitated back into being all of a sudden unbiased. It is frustrating. It does not surprise us that the court would have some concerns about restrictions. They are some valid concerns about the rehabilitation of some jurors in particular that is frustrating in the trial process. Anything that you can get back to the Committee from the judges I think would be beneficial.

Are there any other questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in opposition to S.B. 421 (R1)? [There was no one.] Is there anyone wishing to offer testimony in a neutral position?

Chris Frey, Deputy Public Defender, Washoe County Public Defender's Office:

We are in a neutral position this morning. We are also in a neutral position on the Senate side with respect to S.B. 421 (R1). We would note, though, that we have reviewed the amendment submitted by the Nevada District Judges Association and we would be supportive of the proposed new section 6, increasing the number of peremptory challenges in a capital case as well as increasing the number of peremptory challenges in regular criminal cases. Certainly, we would echo the proponents' sentiment. We are not going to object to more peremptory challenges. We think on net it is a good improvement and we support it.

Chairman Frierson:

You are talking about the proposed amendment?

Chris Frey:

Correct. We are neutral on the substance of the bill as drafted, but we are supportive of the proposed new section 6.

Chairman Frierson:

Are there any questions for Mr. Frey? [There were none.] Is there anyone else wishing to offer testimony in a neutral position either here or in Las Vegas? [There was no one.] Senator, do you have any closing remarks you would like to make?

Senator Segerblom:

I think you were correct to point out the judges' opposition seemed to be lacking in specifics. What they do mention is the fact of having dual standards for civil and criminal, and if you want to put criminal back in, I think that would be appropriate. If you want to add peremptories, that would be great too. This is just a two-year sunset. I think we have identified a real deficiency in our current law as far as no standard, and I think it is worth trying.

Chairman Frierson:

So you would be okay with adding their proposed amendment to the existing bill and also putting criminal back in?

Senator Segerblom:

Yes.

Chairman Frierson:

Thank you. With that, I will close the hearing on S.B. 421 (R1) and open the hearing on Senate Bill 441 (1st Reprint).

Senate Bill 441 (1st Reprint): Makes various changes to provisions governing business entities. (BDR 7-166)

Robert C. Kim, representing the State Bar of Nevada:

I am here in my capacity as chair of the Business Law Section of the State Bar of Nevada to present to you Senate Bill 441 (1st Reprint), which is a stunning collection of amendments to our business law statutes meant to design a more flexible and better way of doing business in our state. The Executive Committee for the Business Law Section meets 15 to 20 times during the off year, the even-numbered year, to prepare a bill for submission. This has been conducted since the early 1990s in terms of the process that is before you. We glean from suggestions that we are provided. We also take from our own practice, we take from trends in the marketplace in terms of aspects of corporate law, limited liability company, partnership law, entity law that should be considered, and incorporate it or flat-out reject it, for that matter, to the extent that it is not consistent with what needs to be a flexible business-friendly environment.

To clarify the approval process, S.B. 441 (R1) has been approved by the State Bar of Nevada Board of Governors. However, I am submitting this on behalf of the Business Law Section itself and not on behalf of the State Bar of Nevada. This has been approved unanimously by the Executive Committee, but it has not been submitted to the section members necessarily, as that has not been custom in prior legislatures.

I will go through the highlights of the bill. As I went through a section-by-section discussion on the Senate side, I want to focus on some key areas for the sake of time. Obviously if there are any specific questions, I am happy to answer any portion of the bill as may be identified.

A memorandum dated May 6, 2013, has been provided (Exhibit G) that should provide a high-level perspective as to what we are trying to do and what is in

the content of this bill. In the pages that follow, tracking the section numbers of S.B. 441 (R1) is a more precise summary as to the amendments made, the impetus for the amendments, and any necessary commentary to understand the amendments provided. I would like to go through the bill and identify the key areas that I would like to create a record for so that it is properly understood.

In section 1, and at the prompting of certain footnotes in the Nevada Supreme Court's holding, *Consipio Holding, BV v. Carlberg*, 128 Nev. Adv. Op. 43, 282 P.3d 751 (2012), we thought it was appropriate to clarify the jurisdiction of courts in Nevada over officers and directors of Nevada entities such that there was a clear standard. In that case, there were officers and directors who did not reside in the state that actually resided in Europe, and there was an issue as to whether the jurisdiction was properly held over those individuals. We thought that balance was appropriate. If someone is going to avail themselves of our laws, then they should also avail themselves of a process by which jurisdiction can be had over them in case there was a lawsuit. What we have tried to do is take the lead from other states that have addressed this issue and adopted a framework by which jurisdiction can be had over such individuals.

Section 2 addresses changes of control. We wanted to change the wording of *Nevada Revised Statutes* (NRS) 78.139 such that it was not written in a way that only covered changes of control that were brought to the attention of the board of directors, but that the standards of care and the presumptions of good faith apply to any and all changes of control that were either brought to the board of directors or initiated by the board of directors themselves. This is a key distinction in Nevada versus those of other jurisdictions that afford the board of directors with at least a good faith presumption that they are doing what they need to do, informing themselves even in changes of control.

Moving on to sections 6 and 20, we wanted to pick up again on a footnote provided by the Nevada Supreme Court in the case of *Canarelli v. Dist. Ct.*, 127 Nev. Adv. Op. 72, 265 P.3d 673 (2011) where it was unclear as to what one would do for causes of action brought after an entity had dissolved themselves. Our current statute provides a two-year time frame for causes of action brought prior to dissolution, but is silent as to claims post-dissolution. What we tried to do in that instance was to look to see what other states have done, what the Model Business Corporation Act has done, and in that context identify that there is a ceiling or a stop-date as to when claims may be brought post-dissolution. In that regard, we have proposed amendments that set forth a three-year statute of limitations. The three years was an amendment made during the Senate work session that addresses certain concerns that were raised as to whether two years, which was the original proposal, was sufficient.

This bill before you, as amended, provides for a three-year statute of limitations post-dissolution. We believe this addresses an area of the law that was unclear and provides greater clarity for the court.

The next areas I would like to address relate to limited liability companies in general. As you know, limited liability companies (LLCs) have become the entity of choice for a wide host of business ventures, being real estate related, joint venture, or even a sole proprietorship that wants to move to the next level. What we have tried to do is clarify some areas that are key aspects of business. The first area is called bankruptcy remoteness. This is a concept commonly used in a context of more traditional bank-driven financing whereby in exchange for the loan itself, a key term is that the entity cannot avail themselves of bankruptcy laws in the event there is a default in the payment terms. The basis for that is to preserve the revenues that are set forth in the loan agreement as they have been negotiated in good faith and by both sides and with the assistance of counsel.

There was some uncertainty as to whether Nevada entities were sufficiently bankruptcy remote vis-à-vis Delaware entities, so to speak, which is another common vehicle to be used in different financings. Although the Executive Committee believed that those features were equal and, in fact, potentially superior, we thought it was again necessary to emphasize that a Nevada LLC can be bankruptcy remote if the right provisions are provided for in the operating agreements.

As you will recall, there is a common misconception as to Nevada entities in general, so much of what we do is meant to merely emphasize the abilities and features that we currently have.

Assemblyman Hansen:

Having been involved in residential construction, one thing that has come up a lot ever since the economy collapsed was a lot of these parent corporations would form an LLC out of every single housing tract that they were involved with. Then they would basically bankrupt one LLC, and a bunch of subcontractors or people involved in those tracts would get burned by them. But they continued to function as other LLCs, and for the parent corporation there would seemingly be no way to get at their assets to make them pay the legitimate debts that they had incurred on the LLC that they bankrupted. Is there anything in this law that deals with that? I am not a lawyer, and some of this is clearly going over my head.

Robert Kim:

The bankruptcy remoteness feature is designed to address the borrower/creditor relationship with respect to loan transactions. I understand your situation and the context, and many times an important feature when agreeing to do work is to have multiple parties sign on behalf of the parent and subsidiary. Obviously, it is troubling to the extent that good work is done without proper payment even though it was negotiated for in good faith at the onset as you described. This particular provision does not address that per se. It is meant to address situations where the parties that negotiated it cannot file bankruptcy.

Assemblyman Hansen:

I would love to talk with you sometime about that and see if we can make some resolutions in the future on that. There were really ugly situations for these people.

Patterson Cashill, representing the Nevada Justice Association:

There is a large body of existing common law in the state of Nevada and statutory law that enables one who has a claim, for example, against an LLC in the example you have raised to pierce the veil of immunity that the LLC provides if the entity, or the LLC, has been used to perpetrate a fraud or to create an injustice. Even though this particular bill does not address the issue with which you are concerned, other aspects of Nevada law do afford some measure of protection to creditors such as the one you have raised here.

Assemblyman Hansen:

Since it is not germane to this bill specifically, I would love to talk to you later about it.

Chairman Frierson:

Mr. Kim, you can continue your introductory remarks.

Robert Kim:

To follow on the points regarding LLCs, we also want to introduce in sections 15, 17, 18, and 19 the mandatory dissolution amendments that I just clarified to the extent to which an LLC is required to be dissolved or not. There were some potential inconsistencies with respect to the fact that the statute demanded that the LLC must have a member, and that rubs against the potential bankruptcy remoteness aspects and also the successor aspects in terms of LLCs and the benefits of having to continue contractually for various reasons. We felt that we should introduce provisions that bridge the potential ambiguity there.

Lastly, the area of LLCs that we want to address is the timing of articles of dissolution. As currently written, the articles of dissolution are to be filed once a company has wound up and completed its affairs, which is in contrast to the corporate standard of allowing a company to file articles of dissolution and then continue as a corporate body for the purposes of winding up its affairs, such that the articles of dissolution are filed where further winding up of affairs were done prospectively. We just wanted to align the LLC statutes to be consistent with that of the corporate statutes.

The other aspect I would like to point out are sections 24 and 25, which actually allows a board of directors to affirmatively adopt on behalf of stockholders the right to dissent to certain corporate actions and events. Currently, the general rule is that if you are a public company, there is no right to dissent because the stock market allows for a sale of shares where you can exit the company at a fair market price, and if the dissenter's rights exist for nonpublic companies such that there is a merger transaction or other combination such that you believe you do not receive fair value for your shares, you can then initiate a process by which ultimately there could be a fair value hearing to determine what is the fair value for your shares. We thought that it was appropriate to allow a board of directors, if they believed it was in the best interest of the stockholders, to adopt those rights on behalf of the stockholders as soon as the circumstances permit themselves.

That would be the highlights of S.B. 441 (R1). At this point, I am happy to entertain questions to any portion of the bill, or provide further summary if desired.

Assemblywoman Spiegel:

Under the right to dissent, what would happen if the way the dissent was put forth harmed the corporation?

Robert Kim:

Is your question to dissent that if the board of directors adopted the rights on behalf of stockholders in a manner that was ultimately harmful to the corporation?

Assemblywoman Spiegel:

As I read this—and I realize I may be getting into the weeds a little bit—it seems to me that this would also include corporations that were nonprofit corporations, including things like community associations where the shareholders are all people who own houses in those corporations, and if the board takes an action that is voted on and approved and there is a board

member who dissents, and that dissent were put forth in a manner that would then harm the corporation, would there be some sort of remedy?

Robert Kim:

These amendments and the dissenter's rights statutes are designed to be for profit corporations, not for the nonprofit context. There is no value per se to the membership of a person in a nonprofit, if there is even a membership aspect. So it is meant to be in the context of for-profit corporations by board of directors that believe it is appropriate to engage those rights of the corporation.

Assemblywoman Spiegel:

If you look at page 5, line 17 of the bill, where it talks about what an entity is, the subsection 1 under that on line 18 includes a "Corporation, whether or not for profit."

Robert Kim:

The amendments to dissenter's rights are in NRS Chapter 92A, and in Chapter 92A there is a prefacing portion which has their own unique definitions that are applicable to that chapter with respect to entities. They relate to a corporation for profit; they relate to a limited liability company; they relate to a limited partnership and a business trust. They exclude entities such as general partnerships and other Nevada bodies that are not entities per se.

The definition of entity relates to a different set of amendments which I will identify for you in a moment.

Assemblywoman Spiegel:

When you say amendments, do you mean provisions of the bill?

Robert Kim:

Yes. To be more precise, provisions of the bill. In section 1, the purpose of defining "entity" was for the purposes of setting forth the proper foundation for personal jurisdiction over those that served as officers and directors of a Nevada entity as defined. And that was the purpose of the amendments on page 5, or the changes to the statute on page 5, lines 17 through 21.

Assemblywoman Cohen:

On page 3, line 29, it says, "The appointment of the registered agent is irrevocable." What is the purpose of that, and is it standard?

Robert Kim:

Again, this is in the context of trying to establish personal jurisdiction over nonresident officers and directors in Nevada such that they cannot evade

personal jurisdiction by revoking or assigning a new registered agent. That way there is a body through which a service can be provided such that it cannot be evaded by having a registered agent whose authority has been revoked to accept service of process.

Chairman Frierson:

The wording is confusing, going back and forth. I think we get the point, but the way it is worded seems to say—such as in one section, it is saying that you have to always have a registered agent in the jurisdiction, and then this section it says it is irrevocable, which sounds like once you are the registered agent, you are stuck for life. We want to make sure that it is clear, and I do not know if phrase making it irrevocable is something that is standard and that folks in the industry will understand. At least we have a record that your intention is that there will always be a registered agent in the jurisdiction and if they change, they have to change consistent with the other section that requires it to be a local registered agent.

Robert Kim:

Right. There is no intent to undermine that existing requirement at all.

Assemblyman Wheeler:

On page 11, section 7, line 17, it says, "for each subsequent filing of a certificate increasing authorized capital stock." You went from \$35,000 to \$34,925. I need to know why you did \$75 less there.

Robert Kim:

This was a follow-on to an amendment that was adopted in either 2011 or 2009 and was made for Nevada for-profit corporations—NRS Chapter 80 is for foreign corporations. As you can imagine, it is a very technical amendment because one already pays \$75 just to file for the articles of incorporation or for qualification. Given the maximum \$35,000, it made sense to net out what you have already paid. This number represents the additional amount you would have to pay if your capitalization was of a certain level that triggered the different higher amounts.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] There are sections where, for example, on page 18, section 18, subsection 1, paragraph (e), it is setting the time limit at 180 days. I think it is in another section as well. In the absence of that provision, what is happening now?

Robert Kim:

This is in the context of mandatory dissolution. What we are trying to do is establish some clearer guidelines as to what happens when an LLC no longer has a member. Although technically if an LLC was owned by an individual and that person passed away, his estate necessarily would succeed, there are provisions of operating agreements whereby the successor cannot be admitted as a member unless the other members approve. They can succeed to the economic interests, but not necessarily as to any management-related powers. It was not our intent to try to capture the ambiguity of the statute by going through this process. We have come to a solution where we bring the resolution LLC to a clearer situation whether it is dissolution or otherwise by requiring during that window for those who have economic interest that the personal representative to actually continue the LLC or not.

Chairman Frierson:

Are there any other questions from the Committee? [There were none.] I will invite anyone who wishes to offer testimony in support of S.B. 441 (R1) to come forward now.

Patterson Cashill:

I would like to comment on one section, which is section 20 of the first reprint on page 20. It has to do with the extension of the statute of limitations from two years to three years. I would like to give a little bit of legislative history if I may provide it. About 20 years or so ago, the state of California modified its one-year statute of limitations for general tort actions to two years because California found, during the legislative hearing process, that the shorter the statute of limitations, the more likely it was that lawsuits would be brought which would not have been brought had lawyers and clients had ample opportunity to investigate the underlying facts.

When Mr. Kim and I began to work on S.B. 441 (R1), he and I negotiated an extension of the statute of limitations to achieve that very purpose from two years to three years with certain nuances that are not relevant here because the amendment addresses my concerns and our association's concerns. The point here is to give people ample opportunity, following the dissolution, to fully explore whatever claims anyone thinks they might have. Launching the lawsuit, Mr. Chairman, as you well know, is subject to the provisions of *Nevada Rules of Civil Procedure* 11, which requires a lawyer to investigate the facts of the law behind the claims that are actually filed and subject to NRS 7.085, which is the vexatious litigation statute. There are protections in place to sanction lawyers and their clients who bring meritless actions or vexatious litigation, which tend to ferret out one way or the other, lawsuits which ought not to have been brought. The amendment to this statute

of limitations in section 20 is for the very valid public purpose of giving people ample time to investigate the underlying facts so as to present meritorious claims and weed out those which perhaps ought not be brought.

Chairman Frierson:

Thank you for that clarification and making that record as an effort to provide more opportunity for attorneys to get together and talk so that we decrease the number of claims instead of being in a rush to get them filed.

Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State:

We come in support of this bill. We applaud the efforts of the Business Law Section and their efforts to improve Nevada's business law and continue to make Nevada a business-friendly state. Any concerns that we had with the original bill were taken care of, and we support the bill.

Chairman Frierson:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to offer testimony in support? [There was no one.] Is there anyone wishing to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in a neutral position? [There was no one.] I will close the hearing on S.B. 441 (R1).

There being no other items on the agenda and no previous business, is there anyone wishing to offer any public comment either in Carson City or Las Vegas? [There was no one.] With nothing else to be discussed, today's Committee on Judiciary is now adjourned [at 10:43 a.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 6, 2013

Time of Meeting: 8:19 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 286 (R1)	C	Marc Randazza	Testimony
S.B. 286 (R1)	D	James A. McGibney	Testimony
S.B. 421 (R1)	E	Stephanie Allen	Letter from Judge James T. Russell
S.B. 421 (R1)	F	Stephanie Allen	Proposed Amendment
S.B. 441 (R1)	G	Robert Kim	Memorandum

EXHIBIT 10

Minutes of the Meeting
of the
Assembly Committee on Judiciary

Seventy-Eighth Session
April 24, 2015

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 24, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, April 24, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman David M. Gardner (excused)

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senate District No. 19
Senator Greg Brower, Senate District No. 15

Minutes ID: 930



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Janet Jones, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Henry Krenka, President, Nevada Outfitters and Guides Association
Mitch Buzzetti, Private Citizen, Lamoille, Nevada
Walt Gardner, Private Citizen, Ruby Valley, Nevada
Danny Riddle, Private Citizen, Ruby Valley, Nevada
Alex Tanchek, representing Nevada Cattlemen's Association
Regan Comis, representing Nevada Judges of Limited Jurisdiction
Steve Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, representing Washoe County Public Defender's Office
Kristin Erickson, representing Nevada District Attorneys Association
Brett Kandt, Special Deputy Attorney General, Office of the Attorney
General
Mitchell Langberg, Private Citizen, Los Angeles, California
Allen Lichtenstein, Private Citizen, Las Vegas, Nevada
John L. Smith, representing *Las Vegas Review-Journal*
Trevor Hayes, representing Nevada Press Association
Joseph Guild, representing Motion Picture Association of America
Melissa Patack, Vice President and Senior Counsel, Motion Picture
Association of America
Marc Randazza, Private Citizen, Las Vegas, Nevada
Ron Green, Private Citizen, Las Vegas, Nevada
Theresa Haar, Private Citizen, Las Vegas, Nevada
Joe Johnson, representing Toiyabe Chapter, Sierra Club
Anne Macquarie, Private Citizen, Carson City, Nevada
John Mehaffey, Private Citizen, Las Vegas, Nevada
Heather Snedeker, Private Citizen, Las Vegas, Nevada
Homa Woodrum, Private Citizen, Las Vegas, Nevada
Ed Uehling, Private Citizen, Las Vegas, Nevada

Chairman Hansen:

[The roll was called and Committee protocol explained.] We have three bills on the docket for today. We are going to start with Senate Bill 129 (1st Reprint).

Senate Bill 129 (1st Reprint): Limits civil liability of certain persons for injuries or death resulting from certain equine activities. (BDR 3-611)

Senator Pete Goicoechea, Senate District No. 19:

Good morning, Chairman Hansen and members of the Committee. It is good to be back on the Assembly side where I served with several of you. I am here to bring you Senate Bill 129 (1st Reprint) this morning. This bill was very well vetted and amended on the Senate side. Senate Bill 129 (1st Reprint) is what is known as the equine liabilities bill. It provides some protection for those people who are engaged in equine activities. If this bill is passed, Nevada will become the forty-seventh state with an equine liabilities law. It is hard to believe that Maryland, New Hampshire, and Nevada are the states without an equine liabilities law. We are in the West, and horses are second nature to us. I do not know if the Chairman would like for me to walk through the bill. It is fairly basic and was very well vetted with the trial attorneys. We did reach a consensus in the Senate, and it was amended to the bill it is today.

We think there are protections in the bill for the equine owner. There were a couple of pieces we were concerned about. If you have a horse in your backyard and you have a secure fence, this helps with liability. In case the neighbor's child happened to crawl in that fence getting by your horse, it removes some of the liability. You have to know it is a nuisance in order for you to not be covered under this law.

The other piece of the bill clearly states that if you are at an equine event, have indulged in alcoholic beverages, and you are riding intoxicated at the event, this does not grant you immunity. If you are negligent, you are not immune under this bill. I think we have touched on all of the pieces of it to ensure that it is a good bill. However, if you are negligent, this will not provide you with immunity. Under normal conditions, it will grant you a level of immunity for owning, maintaining, or using an equine at an event.

Assemblyman Nelson:

I like your bill, Senator. As defined, equine does not include burros. At least I do not see it in the bill. I see horse, pony, mule, hinny, or donkey. By the way, I looked up hinny and now I know what that is.

Senator Goicoechea:

A hinny is a cross-bred animal. Technically a donkey is a burro.

Assemblyman Trowbridge:

At one time, I was responsible for a couple of arenas. One thing that always came up was the condition of the arena itself, such as the flooring. Does this eliminate the liability for a public agency that may be utilizing fairgrounds or a horse arena? One weekend it might be used for one type of activity whereas the next weekend it may be used for another. I am not a horseman, but people argue the preparation of the arena floor is a big deal.

Senator Goicoechea:

Yes, and you will see it in section 1, subsection 5(d) where it says, "'Inherent risk of an equine activity' means a danger or condition that is an essential part of an equine activity, including, without limitation:... (3) A hazardous surface or subsurface or other hazardous condition'." That is part of it; it is something you have in these conditions. There is sometimes an unpredictable reaction of equines to loud noises. These are all things that are part of the bill, and it does not automatically make you liable. This is probably the third time that we have brought this bill forward.

Chairman Hansen:

Is this similar to the bill that Assemblyman Munford has brought over the years?

Senator Goicoechea:

Assemblyman Munford and I carried the same bill last session.

Assemblyman Ohrenschall:

I have seen this bill before, and I am glad you have reached a consensus on it. I am a big believer in equal justice under the law. I do not want to be a "neigh-sayer," but under this bill, will quarter horses and Appaloosas receive the same level of immunity? I would not want inequality under the law.

Senator Goicoechea:

Yes, everyone is treated the same. Anytime you are putting a hinny, a donkey, and a horse on the same level, it is equal.

Henry Krenka, President, Nevada Outfitters and Guides Association:

I have been in business for over 30 years, and I am a fourth generation resident of Ruby Valley. I will provide you with a little bit of history on this bill. The Nevada Outfitters and Guides Association is asking the Legislature to enact an equine activity liability statute for Nevada. We first became aware of such laws through our insurance companies when we applied for liability insurance.

One of the questions we were always asked was if Nevada had an equine activity liability law. Through research, we learned what an equine activity liability law was and that Nevada is one of five states that does not have such a law.

The goal of this law is to further define the duties of the equine owner, sponsor, or professional to the public. The laws also provide the equine owner, sponsor, or professional some protection from possible civil liabilities arising from the inherent danger of an equine activity. The laws are not only useful in defending a lawsuit, but they may deter the filing of one as well.

The key feature of these laws is that an owner, sponsor, or professional is not liable for an injury that is the result of an inherent risk of equine activities. The potential risks are amended in S.B. 129 (R1) as are the areas where an equine owner, sponsor, or professional would be immune from civil liability under the statute. The Legislative Counsel Bureau (LCB) has taken the Montana law and has done an excellent job in drafting a bill catered to Nevada. Two-thirds of the states where such law exists require notice included in the contract or signs posted to the public. The master guides are required to have contracts with their clients, and we will advise our members to include notice of this law in those contracts even without the specific requirements, if the law is enacted.

Mitch Buzzetti, Private Citizen, Lamoille, Nevada:

I would like to thank the Committee for your time today. I think this is a really good bill. I am a horse owner and a guide who takes people into the mountains on horseback. This bill gives me some protection as a responsible horse owner. I would like to see this bill passed.

Walt Gardner, Private Citizen, Ruby Valley, Nevada:

I would like to thank you for hearing this bill. I am in support of the bill. As a rancher, I am nervous when people are around our property. Kids are unpredictable, just as horses are. I do not want to be liable for some kid who may run up behind my horse when I have no control over him. At the same time, it would become my responsibility if the horse were to injure him. I think this bill covers that.

Danny Riddle, Private Citizen, Ruby Valley, Nevada:

I lived in Las Vegas for 40 years. As a retired certified public accountant, I am spending my golden years subguiding and working as a backcountry horseman. I would hate to lose everything I own just because I have mules. I would like for you to pass this bill.

Chairman Hansen:

In front of us are four people who literally spend their lives in the backcountry of Nevada. They have more real-life, on-the-ground experience with wildlife than probably anybody you will meet in Nevada. When I have an opportunity to have four top-notch guides who spend all of these years in the backcountry, it is a unique thing. Being the Chairman of this Committee, I am going to take some liberties to ask you an off-topic question. What is going on with the deer herd?

Walt Gardner:

The deer herd in Area 10 has been decimated. It is the lowest that I have ever seen it, and success is the lowest it has ever been. We are killing fawns and bucks that are not mature. If it was any other kind of animal such as sheep, lions, or bears, and 30 percent of the animals being killed were not mature, we would close the season. What the Department of Wildlife's (NDOW) Fisheries and Game Divisions have has done is disgraceful.

Chairman Hansen:

What about the predator situation?

Walt Gardner:

The predators are rampant. They are running us over, and they are out of control.

Danny Riddle:

Ditto.

Henry Krenka:

I also would like to mention that I have taken a poll of the members in the state. There are 40 members of the association, and not one of them in the last five years has seen an increase in any deer herd in Nevada.

Mitch Buzzetti:

We have struggled with our mule deer herds, especially in northeastern Nevada. I sit on the local advisory board for NDOW in Elko County. It is tough when people come to our local meetings and ask to cut the tag issuance. However, on the state level, we have to deal with the Board of Wildlife Commissioners. Many times we do not get the same recommendation from the state that we got from the locals. It is sometimes hard to go back to those individuals to explain why. When we see the decrease in deer numbers or the increase in

predators, it can be kind of difficult. The hard part of it is that it goes from extremes. It goes from one extreme where we give an overabundance of tags to the other extreme where we have a tough time maintaining a low number of tags. It is frustrating sometimes.

Assemblyman Jones:

You mentioned what the NDOW Fisheries and Game Divisions are doing is not very good. You also mentioned deer tag and predators. Can you quickly frame what the issue is?

Walt Gardner:

In my mind, we have way too many predators, and we are not handling them. They are out of control. At the same time, we are issuing way too many tags for the number of deer we have. Between the two, it is decimating the herd.

Chairman Hansen:

Walt Gardner actually lives in Ruby Valley. The Ruby Range traditionally has had the highest number of big game species of any mountain range in Nevada. Typically, it is one-third of the herd for the entire state. When these guys who live there speak, it carries some weight with me.

Assemblyman Ohrenschall:

I served with my late colleague, Assemblyman Jerry Claborn. He was Chairman of the Assembly Committee on Natural Resources, Agriculture, and Mining. The mule deer herd issue was very important to him. When I served with him on that committee, the big predation issue was the mountain lions. I understand there is now an issue with wolves. I wonder if any of the witnesses could testify about how bad the wolf problem is getting, or is it primarily just the cougars?

Walt Gardner:

The lions are an issue. The wolves have been spotted, but they are not an issue yet. They will be a huge issue in the future. Coyotes are the biggest issue currently. In sheer numbers, they are taking more deer than the lions are.

Assemblyman Trowbridge:

I know where you stand on the issue. I would like to get back to the topic of the bill and my prior question about the preparation of the surface. Does this bill provide any protection for the owner or operator of the facility? This provides protection against people that get hurt. We used to have shows where people would bring in their \$5 million show animal. They would always

threaten that if their horse came up lame because the surface was not prepared correctly, they would sue. Does this provide any protection from lawsuits by the owner of the animal?

Henry Krenka:

Yes, it does. In section 1, subsection 5(b)(1) it says "Shows, fairs, competitions, performances, parades, rodeos, cutting events, polo matches, steeplechases, endurance rides, trail rides or packing or hunting trips."

Assemblyman Trowbridge:

That seems to address the activities that they are involved in. What if someone's horse comes up lame because there were rocks in the area?

Henry Krenka:

Section 1, subsection 3(c) says, "Owns, leases, rents or is otherwise in lawful possession and control of the property or facility where the injury or death occurred if the injury or death was the result of a dangerous latent condition that was known or should have been known to the person."

Assemblyman Trowbridge:

It is a great bill that needs to be in place. Maybe next year we will have to include the animals. I am not going to make an issue of it.

Chairman Hansen:

Thank you for your testimony this morning, gentlemen. I apologize if I took you off topic a little bit. Is there anyone else who would like to testify in favor of S.B. 129 (R1)?

Alex Tanchek, representing Nevada Cattlemen's Association:

I am here on behalf of Neena Laxalt representing the Nevada Cattlemen's Association. The Nevada Cattlemen's Association wants to be on record as being in support of S.B. 129 (R1).

Chairman Hansen:

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone in opposition or in the neutral position? Seeing no one, we will close the hearing on Senate Bill 129 (1st Reprint), and we will open up the hearing on Senate Bill 449.

Senate Bill 449: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-1140)

Senator Greg Brower, Senate District No. 15:

It is a privilege to be back before the Assembly Committee on Judiciary. Senate Bill 449 is a very simple bill which addresses an advisory commission that I am sure many of you are familiar with. The Advisory Commission on the Administration of Justice deals with the administration of justice. This Commission meets every interim and studies a wide range of criminal justice issues. This bill would simply change the governing statute in two ways. First, it would add an additional member, specifically a municipal judge or justice of the peace appointed by the governing body of the Nevada Judges of Limited Jurisdiction. In my view as a veteran of the Commission, this has been a missing piece. I have spoken with a couple of justices of the peace who have expressed an interest in participating in the Commission, and the consensus seems that it would be a welcome addition. That is the first change.

The second change is found in section 2 of the bill. That change would simply require that during the next interim the Commission study the issue of the parole system of our state. This is an issue that has been kicking around for a while and is something that I have been involved with. I think it is time to take a very serious look at our parole system and whether it works, whether it should exist, et cetera. As many of the Committee members may know, many states and the federal system have done away with parole. They have gone to a determinant type of sentencing whereby defendants are sentenced to a number of months of probation, depending on the nature of the offense, and actually serve that number of months. In the federal system, they may get up to 10 percent good-time credit on the back end.

This bill would require the Commission to study the issue and look into whether or not such a change in Nevada might make sense and, ultimately, whether a bill should be introduced during the next legislative session.

Assemblyman Ohrenschall:

How do you see the role of the Advisory Commission on the Administration of Justice changing with the new appellate court and possibly using two Supreme Court justices? Do you think they will be able to take on all of the issues they have taken on in the past? Do you think they may have more time and more energy to look at other issues in terms of trying to improve our criminal justice system?

Senator Brower:

My answer would be yes. I am not sure if anyone on this Committee has served on the Commission. Wesley Duncan and Jason Frierson, former members of this Committee, served on the Commission. It is a very busy commission with a wide range of issues. It is incumbent upon the chair of the Commission to do his or her best to rein in the scope and focus on the issues that are most pressing in a given interim period. Your question is a great one. There is always the possibility that the Commission looks at too much. As a result, they may not have enough time to focus appropriately on anything. That is a challenge. The parole system, in light of some recent events and trends around the country, really deserves a careful study. That is what this bill proposes.

Chairman Hansen:

There are 17 members on the Commission. When you get commissions that are that large trying to get a consensus, it is often very difficult to give everyone an opportunity for discussion. Is 17 members too many? You have served on the Commission. Do you think that is an appropriate number, or should it be decreased?

Senator Brower:

That is another great question. I would say that the number works. It sounds like a large number, but in practice, it has not been a problem. We did look at considering the possibility of adding a judge from a court of unlimited jurisdiction. We looked the rest of the list with an eye toward eliminating one or more of the other positions. Quite frankly, they all make sense. We do not have two of anything except legislators, in which case, we have four. We have two members of the Senate and two members of the Assembly. I think we would all agree that is important because we want one member of each party from each body. When you go through the rest of the list, there is really no surplus there. We have considered this factor, and we think that 18 members can work.

Chairman Hansen:

Is there anyone else who would like to testify in favor of S.B. 449?

Regan Comis, representing Nevada Judges of Limited Jurisdiction:

We would just like to say on the record that we would appreciate the opportunity to serve on the Commission.

Steve Yeager, representing Clark County Public Defender's Office:

We are in support of S.B. 449. I look forward to offering my services and input in any way that would help the Commission in the interim.

Sean B. Sullivan, representing Washoe County Public Defender's Office:

I want to be on the record showing the Washoe County Public Defender's Office also supports S.B. 449.

Kristin Erickson, representing Nevada District Attorneys Association:

We are in support of any efforts to improve the criminal justice system. We support this bill.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

On behalf of Attorney General Adam Laxalt who also sits on the Commission, I want to express support for this bill.

Chairman Hansen:

Seeing no further testimony in support, is there anyone who would like to testify in opposition or in the neutral position? Seeing none, we will close the hearing on S.B. 449 and open up the hearing on Senate Bill 444 (1st Reprint).

Senate Bill 444 (1st Reprint): Revises provisions governing civil actions.
(BDR 3-1137)

Senator Greg Brower, Senate District No. 15:

It is a pleasure to be here once again to present Senate Bill 444 (1st Reprint). While this is not my own personal bill per se, it was introduced by the Senate Committee on Judiciary, which I chair, and was unanimously approved by that committee. Therefore, I felt compelled to provide introductory remarks.

In addition, I am also here to try to bring some sanity to the debate about this bill. I certainly respect everyone's right to have and to express an opinion about the important matters we take up here in the Legislature, especially bills like this one which implicates the First Amendment. I have been a little surprised by the exaggerated rhetoric that I have seen about this bill. Please know that I, and each member of the Senate Judiciary Committee, care as much about the First Amendment as anyone else in this room. However, there must be a balance.

This is a reasonable bill that would bring Nevada back into the mainstream with respect to important legislation against strategic lawsuits against public participation (SLAPP). These are the facts. First, let us understand that only about half the states even have an anti-SLAPP statute on the books. Nevada has had an anti-SLAPP statute since 1997. I think it is important that we do. Until 2013, when our current statute was changed, it seemed to work pretty well. Our statute was in what we might call the mainstream of anti-SLAPP statutes from around the country. It was not as narrow as most

state's statutes in that it did not require the speech in question to be related to a citizen's right to petition only the government. Also, it was not as broad as a small minority of states whose statutes allow virtually any type of speech to be subject to special protections of the anti-SLAPP statute.

I would submit that ours was sort of in-between and was a very balanced approach. That balance was upset with the change to our statute in 2013. I have to admit to the Committee, what the change brought about in 2013 sort of snuck in under the radar. I think we all know that this happens from time to time. Although I, and a few others on the Senate side, had some discomfort with the 2013 bill, Senate Bill No. 286 of the 77th Session, the opposition was not very strong. None of us are experts in the area, and so the bill was passed without much discussion. Since that time, real experts in this area of the law have had a chance to review the 2013 law and have convinced me and all of the members of the Senate. Although some may now have some reservations, this bill passed 21 to 0 in the Senate.

We were all convinced that the 2013 legislation went a little too far for those who seek justice in the courts when someone has maligned their personal or business reputation by making false and defamatory statements. Nevada's current anti-SLAPP statute substantially infringes on their First Amendment rights. Senate Bill 444 (1st Reprint) is intended to ensure that citizens who speak out on important matters of public concern will have a swift and powerful mechanism to dispose of meritless lawsuits that seek to do nothing more than intimidate and quash such speech. At the same time, S.B. 444 (R1) is also intended that persons in businesses, large and small, who have suffered from false and defamatory accusations and who have evidence to support their defamation claim, will be afforded their constitutional right to a day in court where a jury of their peers can decide the facts. Let me be clear. Under S.B. 444 (R1), defendants accused of defamation will still have all of the constitutional rights and protections afforded by landmark U.S. Supreme Court precedent, like in the case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Mr. Chairman, before I turn it over to a real expert in this area of the law to talk more about the bill and walk the Committee through the bill and answer the Committee's questions, let me share just one example of what I would submit has been the kind of overreaction that I mentioned earlier.

Yesterday, one of Nevada's newspapers of record published an editorial with a particularly egregious misrepresentation regarding this bill. It read, "SB444 would amend Nevada's anti-SLAPP law by erasing the provision that provides defendants with penalty compensation; by shifting the burden of proof to defendants and requiring them to show a plaintiff's claims are false...." This is simply not true. I would submit to you and the Committee to do your best to

keep your collective eye on the ball. Look at the bill, understand the bill, and know what the bill does and what the bill does not do. In cases where the anti-SLAPP statute would apply, under this bill, the plaintiff alleging defamation would be required to present admissible evidence that the challenged speech is false in order to proceed to trial with the case.

As I have acknowledged, I am not an expert in this very specialized area of the law. Therefore, I want to introduce Mr. Mitch Langberg, a real expert in this area. He has litigated dozens of defamation cases, maybe hundreds, on behalf of plaintiffs, defendants, individuals, small businesses, and large corporations. His clients have included a wide range of business clients including the *Las Vegas Sun*. He was one of the first to notice the flaws in the 2013 statute, and he played a central role in drafting this bill. He is here today to explain the bill in detail and answer questions. With that, I will rest for now. Mr. Chairman, I appreciate the Committee hearing the bill.

Mitchell Langberg, Private Citizen, Los Angeles, California:

I appreciate the time that you have spent trying to learn these issues. Although I know time is limited, I would like to digress. I am a full supporter of every single aspect of the First Amendment. Even my eight- and ten-year-old daughters search my name on the Internet every week to see what they find. They will see that the chief opponent of this bill has called me names that would get me thrown out of here, if repeated. Then I have to explain to my daughters why somebody would do such a thing. I support his right to do that. I support people exercising their First Amendment rights to review and to make truthfully factual statements in criticism of others. I also support the First Amendment for people to exercise their right to petition and to come to the courts to address grievances.

Before talking about the specifics of S.B. 444 (R1), I think the most important thing to do is to address some aspects of the opposition because they are simply not true. First and foremost, the opposition will tell you that to pass S.B. 444 (R1) will be to deprive Nevada citizens of their First Amendment rights; it will eviscerate the First Amendment in Nevada. I find this to be a curious allegation for several reasons. First, the opposition in 2013 said that the new statute that exists today was based substantially on the anti-SLAPP statutes in Washington and California. Many, if not most, of the changes we propose are also borrowed from Washington and California. If this statute is one that eviscerates the First Amendment, the statutes that the current statute was based on also does. As Senator Brower said, about half of the states provide no First Amendment rights because there is no SLAPP statute or at least one that does not protect speech.

When I say we borrow from Washington's and California's statutes, in the anti-SLAPP context, Washington only protects speeches or matters of public concern, and not public interest. This is something that was added by the now-opposition last term. Washington's statute allows a court to grant limited specified discovery in an appropriate case during the SLAPP process. Our current statute does not, and it was intentionally eliminated, even though courts across the country have said that the right to discovery is fundamental to access to the courts and therefore fundamental to the First Amendment right to petition. The California statute only requires a plaintiff to demonstrate prima facie evidence of their claim. That is what we do to ensure there is not a frivolous lawsuit that goes forward. However, the opposition last session demanded clear and convincing evidence. The California statute, which we borrowed from, says if a defendant successfully files an anti-SLAPP motion that is granted, he is entitled to attorney fees. There are no additional penalties. However, according to the opposition, our making that change today also deprives people of their First Amendment rights.

The opposition says that if S.B. 444 (R1) is passed, businesses, particularly those in the electronic media industry, will flee Nevada or not come to Nevada. They say clearly that the standards from Washington and California that have been adopted into S.B. 444 (R1) would be insufficient. However, in Washington, where the standard is public concern and not public interest, and where there is limited discovery, Amazon, which is one of the largest review websites on the Internet, has not left to come to Nevada. Avvo, which is a review website for lawyers, and Expedia remain in Washington. In California, where the standard is prima facie evidence and not clear and convincing evidence, Yelp, Google, Facebook, LinkedIn, Twitter, and Epinions all remain in California, subject to that onerous statute that violates the First Amendment. By the way, Ripoff Report is in Arizona, TripAdvisor in Maryland, and Consumer Reports in New York, and are all review sites themselves. Some consumer review sites are in states where the anti-SLAPP statute does not protect speech on public concern at all, but only petitioning activity. The sky is not falling; and by the way, New York, where they do not have a SLAPP statute that applies to speech at all, is the media, news, and publishing capitol of the world. When the media representatives say that this statute is somehow onerous, we should remember that this bill is one that protects and gives an early remedy for people who exercise their First Amendment right of free speech on matters of public concern to get rid of frivolous lawsuits.

The constitutional implications are important, but there has to be a constitutional balance. We cannot focus on only one constitutional right. The First Amendment not only protects the right of free speech, but it protects the right to petition. The Seventh Amendment gives the right to

a jury trial in issues of law. The *Nevada Constitution*, Article 1, Section 9, recognizes the constitutional right of free speech for Nevada citizens and also says that those citizens must be responsible for the abuse of that right. To deprive a plaintiff with a legitimate defamation claim access to the courts is also to deprive him of his right to protect his reputation under the *Nevada Constitution*.

Why does the current statute go too far? The current statute goes too far because the person is speaking on merely a matter of public interest, not necessarily a matter of public concern, which is one that has political, social, or other community interest at large. In Nevada currently, if there is a matter of public interest, it may be just mere curiosity. Let us assume that somebody knowingly makes a false statement of fact. He will be able to implicate the anti-SLAPP statute. A plaintiff who is seeking to defend his reputation is going to have to prove, in less than seven days, by clear and convincing evidence, every single element of his claim including that the statement is defamatory, false, and in some cases, the defendant knew or had serious doubt about truth at the time the statement was made. While I am familiar with this and I swim in this water all the time, this concept is incredible to me. How can any plaintiff prove the subjective knowledge and intent of a defendant by clear and convincing evidence with no discovery within seven days, unless a defendant has somehow admitted it?

The real question here is, as a matter of policy, do we allow people whose reputations have been maligned by significant false and defamatory statements to have a remedy to repair their reputation? We are not talking about big corporations alone. As a matter of fact, for big corporations, the anti-SLAPP statute is not nearly the disincentive as it is to individuals and small business owners. Because of the incredible penalties under the anti-SLAPP statute and the fact that the burdens are so high, they will have to consider whether or not to defend their reputation and are willing to risk losing their homes, retirement, and savings to do so. If they do not prove their case, they will be subject to attorney fees, penalties, and a separate suit.

A few years ago, I lectured at the local branch of the Association of Corporate Counsel. Despite what you might read, although I live in California, I am a member of the State Bar of Nevada. I have lived here for six years, and a third of my cases are in Nevada. I honestly wish I still lived here. I have a great passion for this subject. I was speaking to the Association of Corporate Counsel, and the lecture was on protecting reputations on the Internet badlands. Basically, what we now know is there is another side to these review sites, which are important and legitimate places to speak one's opinions. Disgruntled employees, former employees, and competitors are using these sites to put up

false reviews that are devastating. There is no way to get these websites to take down the false statements. It is protected under the Communications Decency Act. The fact of the matter is people rely on them. If somebody is looking for a doctor, they go to Yelp. Let us say there are three doctors on there, and for one doctor, there is a completely fabricated allegation of malpractice. The potential patient will not investigate if it is true. The potential patient will go on to one of the other doctors listed rather than take the risk. I am receiving calls from people every day throughout the country having to do with the attacks they deal with on the Internet. There needs to be a remedy.

People speak on legitimate matters of public concern, which includes reviewing goods and services under Nevada law. It is a matter of public concern. They should have their rights too. If a plaintiff is going to come and say that someone speaking on a matter of public concern has defamed him, that plaintiff should be put to the task of showing he has prima facie evidence that the statement was defamatory and false. Our bill does other things to revise this, but these are the main points of concerns. I am happy to answer any questions.

Assemblyman Elliot T. Anderson:

I want to thank you for coming by to help me get through this bill and understand it. It has been a real crash course in the First Amendment and the defamation law. I want to point out that we are academically lucky to have this discussion because it is an interesting area of law. I think we will hear from some very good lawyers, including yourself.

I want to get into the definition of public concern because I think it is a critical piece of this. For better or for worse, we have to talk about it. You sent me some documents yesterday. One of the issues you included was the definition from Washington trying to define what a public concern is. Washington defines it as social, political, et cetera. I am wondering if that definition would be a little bit more inclusive. If the defendant cannot show in their SLAPP motion that it is based on an issue of public concern, the plaintiff could be entitled to attorney fees. With those two elements working together, I think we have to be very careful. I am worried that if the definition is not inclusive enough, it could discourage these motions because people would be on the hook for attorney fees.

Looking at Washington's definition and looking at our definition in section 4, do you think that Washington's definition is a bit more inclusive? It appears to me like it is a little bit broader. Say we have a casino, and someone is concerned about labor policies and how employees are being treated. To me, the Washington definition would protect someone who is speaking out about

employment practices because it fits the social definition. However, under section 4 of the bill, it might be a more general interest definition and it might be excluded. Does that make sense?

Mitchell Langberg:

I understand the question, and it makes sense. I will disagree, however. It feels like this is moot court for a moment. The concept of what is a matter of public concern is well defined in cases both federally and at the state level. I pointed out the Washington case because it had a wonderful discussion about matters of public concern are different than matters of public interest. I think under S.B. 444 (R1), the labor dispute at a casino would clearly fall under a matter of public concern. Let me make a distinction that would apply under S.B. 444 (R1). No matter what we do, there is going to be debate in individual cases, and courts are going to have to decide. A labor dispute or a comment about an employer's employment practices in this community, particularly under *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (Nev. 2002), would be matters of public concern. Perhaps an employment dispute that is about specifics such as, my company says I was drinking on the job and I was not, is not one of general public concern, but rather one of a personal, private interest. Under Washington's definition and the one covered by S.B. 444 (R1), it might be different. I do not think it is difficult to parse out what standards there are. There may be some very marginal calls if the standard of public interest is the California standard. There is a great deal of debate about what public interest is. No one is ever going to agree at the line. There are federal cases, particularly out of the U.S. Court of Appeals for the Tenth and Second Circuits, which talk about public employees and when they have a First Amendment right to speak freely and when they do not. The standard is the government can impinge on First Amendment rights depending on whether someone is speaking on a matter of public concern versus private concern. We adopted that, and it is where the second part of the definition comes from.

Chairman Hansen:

Before we go on to further questions, I would like to make it clear that I am going to allow testimony until 9:30 a.m. from the proponents. I will then allow about 45 minutes for the opponents. I just wanted to make sure that you get the people up to testify that you want, Senator Brower. If there are other experts that you intend to have testify, I want to make sure that we can coordinate that correctly. Some of these questions are obviously going to be quite detailed with legalese.

Senator Brower:

Thank you for that reminder; we are cognizant of that. Your question is an excellent one, Assemblyman Anderson. When we started talking about drafting the bill, this issue probably generated the most concern and discussion on my part. With all things considered, this is what we came up with. We had an eye towards coming up with not the best bill for a potential plaintiff, not the best bill for a potential defendant, but the most balanced bill that would work for this type of litigation in the public interest for Nevadans. I think your question is right on target, but we think this is about as good as it gets.

Assemblyman Elliot T. Anderson:

Can you talk about the attorney fees in section 6? As I understand the bill, the defendant would be the moving party. They would move an anti-SLAPP motion and would have the burden to show that it is a matter of public concern. If they cannot, it would lead to attorney fees if there is no reasonable basis found. I am worried about that because the whole idea of a SLAPP motion is to protect litigants that do not have a ton of money. They may be going against someone with deep pockets. Do those folks with deep pockets need those attorney fees? Many times they have folks on staff. I worry that it is a fundamental shift from the idea of an anti-SLAPP motion to protect those smaller litigants. Can you comment on that?

Mitchell Langberg:

Your question is a good one, but it has a false premise. The belief is that defamation plaintiffs tend to be the big guys and defamation defendants tend to be the little guys. If you search Nevada law, you will see that some of our lead cases are public officials or mom-and-pop restaurants that are suing for defamation because they have been financially devastated by the things that have been said about them. If a defendant wins the anti-SLAPP motion, that defendant automatically gets his reasonable attorney fees with no showing of bad faith. If a plaintiff defeats the SLAPP motion, that plaintiff gets his attorney fees only on a showing of bad faith. Remember that plaintiff is also exercising his First Amendment right to petition. Part of my job is difficult because people say First Amendment and everybody thinks free speech. This is a free-speech-protecting statute beyond three-quarters of the states and equal to the rest. The point is that there has to be a remedy. The whole concept behind SLAPP-backs in the current statute recognizes that there are people who will file an anti-SLAPP motion to try to intimidate and financially pressure a plaintiff. There needs to be that remedy, which requires a showing of bad faith.

Assemblyman Ohrenschall:

This is a particular concern to me because back in 1997, Assembly Bill No. 485 of the 69th Legislative Session was sponsored by an assemblywoman from Clark County named Genie Ohrenschall. Therefore, she was the sponsor of this law in its original form. She is still very concerned about it, and I have a couple of questions to ask.

The bill shows text to be omitted from *Nevada Revised Statutes* (NRS) 41.670. That is the chapter that has the penalties for a frivolous or vexatious lawsuit for up to \$10,000. Why is that not adequate if someone is trying to abuse the SLAPP process?

Mitchell Langberg:

The body of S.B. 444 (R1) provides that when a defendant prevails on an anti-SLAPP motion, he is going to be awarded all of his attorney fees. It is the same provision that exists in California, which was one of the alleged models for the bill last term. I appreciate the reference to the statute that preceded last term's statute. It was a good statute and was with the majority of anti-SLAPP statutes. This improves upon it because it expands the First Amendment rights that are covered by the anti-SLAPP statute from that old version.

Assemblyman Ohrenschall:

In section 5 of the bill, we are changing the time periods. Let us say that I am an irate consumer who stands outside of Bob's Used Cars, and I am holding a sign that says "Bob's Used Cars sells lemons. Never buy a car here." Let us say that I do that every day. On January 1, I get served with a defamation suit. Under the old law, I would have 60 days to get an attorney and figure out if a SLAPP suit is warranted with the attorney. However, under the new law, you are shortening it to 20 days.

Mitchell Langberg:

Under old law, you mean current law right?

Assemblyman Ohrenschall:

Under the proposed bill, we are truncating it to 20 days. There are a lot of unsophisticated people who do not have in-house counsel and do not know much about law. It might be that person standing outside of Bob's Used Cars who is worked up and scared who may spend 20 days just trying to figure out which attorney is competent to practice in this area. I wonder if that is wise.

Mitchell Langberg:

There is a missing premise there. Anti-SLAPP motion or not, for a defamation case, contract case, fraud case, or negligence case, that person needs to find an attorney within 20 days because in Nevada, an answer and/or motion to dismiss is due within 20 days.

Assemblyman Ohrenschall:

That is correct. However, finding an attorney and determining the merits of the case and whether a SLAPP motion is warranted are different things.

Mitchell Langberg:

I do agree with that, and the court is allowed to extend it. As a matter of routine, people stipulate to extend motions to dismiss. You will note that in the first instance, the only part of the anti-SLAPP motion is showing that the anti-SLAPP statute applies because it is a matter of speech on a public concern. All of the other issues about the merits of the case are deferred. Honestly, what is required in the first part of the anti-SLAPP motion is much less complicated and takes much less time than a motion to dismiss. With that said, somebody is going to have to find an attorney within 20 days or get an extension to answer or motion. They can do the same thing with regard to the single issue on the anti-SLAPP.

Assemblyman Ohrenschall:

Regarding the argument that seven days is not enough time, and going back to the hypothetical situation of me standing outside of Bob's Used Cars from Christmas to New Year's Day with the sign about Bob selling lemons. Let us say that June 1 of the following year, I get served with the lawsuit. There is a two-year statute of limitations from the time the alleged defamation occurred. Bob's Used Cars would have had two years to sue me. In this hypothetical, they waited six months before serving me with a defamation suit. Is it really too much to ask that Bob defend himself within seven days? He has had six months, and he could have had up to two years to file the defamation suit, feeling that he had been injured by my actions. Is it unreasonable to ask for a reply within seven days? Would 14 or 21 days be a reasonable answer?

Mitchell Langberg:

It would be unreasonable. Once again, you are assuming that the plaintiff has an attorney on retainer or an in-house counselor.

Assemblyman Ohrenschall:

I am not assuming he has an in-house counsel. He does have an attorney because he sued me. I am the alleged defamer, and he is the alleged victim.

Mitchell Langberg:

Eventually he has an attorney. The point is that at the time he realized he has been defamed, unless he is sophisticated, he may not recognize he has been defamed. Even if he does, he has to go and get an attorney. He may not know that until close to the statute of limitations is up. More realistically, in my experience, particularly with small businesses and individuals, the damage that is being incurred can be so substantial that there is no time to wait. As soon as the defamation is posted, as in a case where someone is intentionally making a false statement, you need to take action. You need to file your claim, get it out in the public record, and your sole goal is to be vindicated by a jury. You want to get there as quickly as you can. That seven days can be very onerous. What it sometimes takes is to make a showing of falsity by clear and convincing evidence. To prove a negative by clear and convincing evidence without any discovery and to prove what was in the defendant's mind is an onerous burden.

Assemblyman Nelson:

Thank you, Mr. Langberg, for presenting this bill. You touched upon one of my main concerns with the statute as it is currently written. The plaintiff would have to establish by clear and convincing evidence a probability of prevailing on the claim without any discovery at all. You changed it back to preponderance of the evidence. Can you comment why you did that for those who may not know the difference between those standards?

Mitchell Langberg:

We have changed it in S.B. 444 (R1) to prima facie evidence, which is consistent with the California statute. In the current statute, clear and convincing evidence is something short of beyond a reasonable doubt, which is what is used in criminal court. Some courts have said that clear and convincing evidence is evidence that would give you a 70 percent certainty of truth. Preponderance of the evidence is the standard by which most elements in most civil cases are governed. That just means 50 percent plus a feather to tip the scales. In a defamation case, at trial, the plaintiff only needs to show a preponderance of evidence on all of the elements except for a knowledge of falsity case, which needs to be shown by clear and convincing evidence at trial after discovery.

I appreciate the question about prima facie evidence because I believe that it has been misrepresented. Here is what prima facie evidence has been said to be, but is not. Prima facie evidence is not that you just have to allege the fact and the fact is taken as true until the defendant proves otherwise. That is not true. Prima facie evidence is admissible evidence under the rules of evidence that, if believed, would be sufficient to prove the cause of action. The question

becomes if the legislative intent that was expressed last term is to be accepted. This means that we are looking to find a mechanism to dispose of meritless lawsuits at the beginning of a case. The standard must be one that identifies meritless lawsuits but lets through lawsuits that have merit. The universal standard for that is prima facie evidence. It is the summary judgement standard. For the nonlawyers, a summary judgement is a mechanism by which a defendant or a plaintiff can say that there are no issues of fact that are material and in dispute so the court can decide the case. We do not need a jury because juries decide facts. To oppose a summary judgement motion, all you have to do is show that you have prima facie evidence. This is evidence, which if believed, without regard to the other side's evidence, would carry the day. You have to be allowed to get to trial. A standard at the outset of the case that is already placing an extra burden on the right to petition is understandable when talking about the free speech right on issues of public concern. A standard that is in excess of what everyone else has to prove to get to trial at the outset of the case is not only unreasonable, but it does something different. In meritorious cases, it would be dismissed. We can come up with hypothetical after hypothetical cases that we could agree have merit that would be dismissed under the current statute.

Assemblyman Araujo:

I am looking for more clarification, specifically in regard to section 12. The language changed from, "A cause of action against a person who engages in 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 is immune from any civil action for claims based upon the communication." It was changed pretty drastically, to "A cause of action against a person arising from a communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is subject to a special motion to dismiss, and that motion must be granted by the court unless the plaintiff establishes that the claim is not meritless pursuant to section 8 of this act." I am looking for more clarification as to why we changed it so much. As a follow-up, I want to make sure we are not stripping away rights from folks who genuinely made an accusation in good faith without the intent to harm anyone.

Mitchell Langberg:

Thank you for the question, and thank you for your time yesterday. It is a good question. The truth is that the changes in this section of the bill are to provide clarification and give more rights to a defendant. States that have included the immunity language in their anti-SLAPP statutes did so because there was some question in federal court as to whether the federal court would apply states' anti-SLAPP statutes as substantive rights or procedural matters.

Somebody cleverly decided that using the term "immunity" would make it clear that it was a substantive right. It is confusing; it is not accurate to call it an immunity. It is unnecessary, particularly in the U.S. Court of Appeals for the Ninth Circuit, because the Ninth Circuit has made clear that anti-SLAPP statutes are substantive rights that relate to the substantive right of defamation and other claims that may fall under the anti-SLAPP statute. It is not accurate because an immunity is something that is not dependent on whether or not somebody can make a showing if they have enough evidence. That is not an immunity; it is a burden. Therefore, that is not accurate.

We took out the words "who engages in a good faith." We took that out for the protection of defendants because it is my opinion that if somebody is speaking on a matter of public concern, that should be enough to implicate the anti-SLAPP statute putting the plaintiff to the test of showing prima facie evidence. A defendant should not have to show any evidence about whether he believed what he said was true. We are talking about core First Amendment speech while talking about a public matter of public concern. A plaintiff coming into court should be able to show they have some evidence of falsity. We deleted that in order to recognize what I think is an important policy matter in favor of a defendant's First Amendment rights.

Assemblywoman Diaz:

I am still trying to reconcile what is in the bill and the points you are trying to make. Regarding section 6 and the awarding of attorney fees, you said the initial burden shift requires the showing of bad faith. As I read the section, it speaks to a reasonable basis and not bad faith. Bad faith is discussed in a different section, maybe section 8. Am I wrong?

Mitchell Langberg:

You are not off. In all candor, in practice, I believe that something someone does not have a reasonable basis for is something that is done in bad faith. How do you prove that something has been done in bad faith? By showing there was no reasonable basis. I cannot remember every single word, and I cannot tell you honestly whether it was an oversight or whether it was a matter of intent using different terms that are the corollaries of each other, but I think it has the same effect.

Senator Brower:

That is an excellent question, and I was thinking the same thing when I was reading the bill again during this hearing. I think Mr. Langberg is right. Perhaps further clarification or the use of different language might make the bill clearer.

However, with respect to other context, such as Rule 11 of the Federal Rules of Civil Procedure in the civil litigation context, or Hyde Amendment (1997) claims in the federal criminal context, generally bad faith is equated to without reasonable basis. It is an excellent point to raise.

Assemblyman Jones:

I have to confess, this bill is an example of third-year law school. There are so many issues that it could take a week of going back and forth. I am a lawyer myself, although not practicing in Nevada. It is unbelievable how many issues you have in this bill. They are all so technical and so specific that it could take years of analysis. My head is swimming looking at this bill, and I am a lawyer. I can imagine how the nonlawyers must feel. Rather than go further into the weeds, I would rather look at this from a practical application. What is it doing in the real world from a practical application? How is this affecting people? First of all, we had an anti-SLAPP law preventing people from making false statements against others. It lasted for almost 15 years until last session when we had a change. My first question is, what brought about the desire for that change? Why is there now a desire to change it back to shift the burden the other way?

Mitchell Langberg:

The old anti-SLAPP statute that Assemblyman Ohrenschall spoke of was a good idea at the time. Anti-SLAPP statutes were relatively new throughout the country. The original intent of the people who created the idea of the anti-SLAPP statutes was to protect people when they were exercising their First Amendment right to petition only. I can give you a long history, but we will get too far into the weeds. Nevada joined the small minority of states that started to adopt anti-SLAPP statutes. As time went on, anti-SLAPP statutes started to address not only speech that arises from the right to petition but also First Amendment rights that arise from the right of free speech in certain context. Today, that is still the minority of states. If you count the states with no anti-SLAPP statute at all and the ones that only have it for rights of petition, that leaves somewhere near less than a quarter of the states. Contrary to commentary, I feel strongly about the right to free speech. I think it was very important for Nevada to include the right of free speech in the anti-SLAPP statute. The concept of amending the statute last session was a good idea. We took the pendulum from the place where free speech rights were not protected at all, and it has moved to the place where it is too broad and the procedural mechanisms deprive plaintiffs of the right to petition.

During the Senate hearings for this bill, the chief proponent at the time, who is now the chief opponent, was asked directly whether the now-current law would make us like California. He said yes. While there are aspects of the current statute that are like California, we could not be further from California with our anti-SLAPP statute as far as timing, burdens, penalties, et cetera.

Senator Brower:

While this Committee is well aware of our general propensity of not wanting to be like California, I would respectfully submit that on this issue, California has done a pretty good job.

Assemblyman Jones:

I appreciate that, but you are again using a lot of legal terms and jargon that does not communicate on a practical level what the comparison is between the old law, the current law, and the proposed law. You talk about a pendulum, but in practical reality, is this now going to allow rich people to squash the smaller people because they will now have the ability to? Or, did it prevent the rich people before from doing anything because people could do anything they wanted to and they had no rights to protect themselves against slander, et cetera? In a practical way, can you talk in real world language and not all these legal terms?

Mitchell Langberg:

I owe you an apology because you were clear in that part of the question. When we got to the legislative history, I moved off to the stuff that is really technical and interesting to me. As a practical matter, what is the difference between all of these things? I would say we do not need to go back to the original statute because it did not give any extra protection to anyone exercising their First Amendment rights to free speech. Therefore, if somebody big or large wanted to intimidate a potential defendant, there was no remedy there. The idea of the new statute was, if you are going to sue for defamation, you better have some evidence before you start challenging somebody on a matter of public concern or public interest, depending on which statute you are talking about. Basically, if your case is frivolous, we are going to get rid of it early and you will pay attorney fees so you cannot be so intimidating. Both the current statute and S.B. 444 (R1) are designed with that theory. However, the current statute goes too far by not only protecting against such intimidation, but deprives people of the ability to defend their reputations. Focusing on the big, bad bullies is an interesting thing to do because the people who are most harmed by the statute are not the big companies. The people most harmed by the statute are the individuals and small businesses whose reputations are being attacked and have only one forum to get their reputations vindicated having to face potential costs and burdens to do that.

I am going to give you an example of a case where, under the current statute, it would be thrown out, and under S.B. 444 (R1), it would not be thrown out. We are not talking about bullies. The chief opposition will be familiar with this because he was the plaintiff's counsel in this case. There was this revenge porn website. This website was for people who break up with their girlfriends and can post naked pictures in retaliation. There was also an antibullying website. The antibullying website was publicly calling out the revenge porn website guy. The revenge guy started publicly accusing the antibullying guy of being a pedophile and possessing child pornography. As you can imagine, if you are standing up against bullying, the concept that you might be abusing and bullying children into doing inappropriate things is very harmful to your reputation. The attorney for the antibullying guy filed a defamation suit under the original statute. The revenge porn guy did not respond to the complaint, received a default judgement, and the righteous plaintiff was awarded \$250,000.

Let us pretend that same case was filed today. We know that this was a case where the antibullying guy is being knowingly falsely accused of being a pedophile. Today, the revenge porn guy would file an anti-SLAPP motion and say this is a matter of public interest. The guy talks about antibullying and the subject matter of my speech was abuse of children. It could not be more of a public interest and could even be a matter of public concern under our statute. The revenge porn guy would come back and say he has a confidential source who said it was true. Whatever else he says, he lied about the guy and he is now going to lie about his evidence. He now has the anti-SLAPP statute in play. Within seven days, the antibullying guy would have to not only show that he is not a pedophile, but he has to prove by clear and convincing evidence that he is not a pedophile and that the revenge porn guy knew it was false or had serious doubt about the truth at the time. He has to show that by clear and convincing evidence, otherwise the case will be thrown out and he will owe attorney fees plus he can get sued for \$10,000.

Under S.B. 444 (R1), there is a different result. The revenge porn guy is going to say this is a matter of public concern. He will file his anti-SLAPP suit. The antibullying guy is going to put in a declaration showing he is not a pedophile. He is going to get people that know him to testify. He will say there has never been a police complaint about him. He will do whatever else he needs to in order to show that he has at least prima facie evidence of falsity and that it was defamatory. The case will go on, and he will have to show actual malice. All of the constitutional protections that exist will remain in the case. Somebody will argue with me about whether this is how it is going to turn out. I do this a lot, and that is how I think the turnouts would be. We can come up with other examples.

Chairman Hansen:

We are going to move to opposition now, and you will have the opportunity for rebuttal. However, we have 16 people signed up in opposition. I am going to start in southern Nevada.

Allen Lichtenstein, Private Citizen, Las Vegas, Nevada:

I will keep my comments as brief as possible and try to stay out of the weeds. There were a few interesting points made while listening to the proponents. The first point that I always find interesting is that we are among a minority of states that do not have anti-SLAPP laws. It is true, but Nevada is usually ahead of the curve in terms of protecting rights. The fact that most states do not have this, I do not take as a criticism.

I did not hear about any actual case since 2013 that has created the kinds of horror stories that are being presented. We have had a law in effect that does not cause any problems. Some people do not like the language and think it is too far in one particular direction. No one has pointed to a case that egregious results occurred from. The reason for the 2013 amendments was to broaden the scope of the law, which everyone seems to agree was necessary. However, this is all hypothetical.

The one area that concerns me the most is the actual definition in section 4 about an issue of public concern. It describes an issue of public concern as "any topic that concerns not only the speaker and the speaker's audience, but the general public, and is not merely a subject of curiosity or general interest." Just from the plain language, what does that mean? It means everybody. It means stuff like war and peace, the crash of the economy, a volcano, and things that affect everybody. As legislators, you know that a lot of the important work you do which ultimately affects our community does not directly concern everybody in the community. Regulation of particular industries may have some effect in the long run.

Another concern is that matters of general interest are discarded from what is considered public interest. To me, that sounds awfully condescending to the public. I was sitting here trying to imagine each of you going to town hall meetings and telling your constituents the issues that interest them are not really of public concern. None of you would do that because you would have a negative reaction, and rightfully so. The real question for me is a matter of public interest.

What I also found interesting is the case of revenge porn. Does an instance of revenge porn affect the general public, and is it of general concern? I think when we are talking about "of public interest," we have to have a more

expansive definition there because things that start off seemingly of individual interest may end up being something of very important public interest as we dig deeper. If I saw a blog about problems with a homeowners' association (HOA) back in 2006, it does not affect me because I do not live in an HOA. It does not affect a lot of people. Obviously, it had a great deal of effect on Nevada. I can say the same thing about human trafficking or prime mortgages. My biggest concern is to define things that do not affect the general public directly as being equivalent to a simple person-to-person employment type of argument, such as getting caught drinking on the job. There is a lot of law about that in the area of public employment. The law is pretty clear that it takes a pretty expansive view of what is in the public interest and only limits those particular things that truly are purely personal.

Regarding the case of *Pegasus v. Reno Newspapers Inc.*, about restaurant reviews, if you do not go to that particular restaurant, it is really not going to be of a public interest under this definition. Under the normal definitions of the courts, particularly the Nevada Supreme Court as in this case, it would be defined as a matter of public interest. What we are finding in section 4 is a rather severe truncation of what would be considered a public interest. It is to the extent that this section is even saying what interests the public may not be of public concern because the public does not know what is important to them. That is very troubling.

Chairman Hansen:

Are you representing the American Civil Liberties Union (ACLU) today?

Allen Lichtenstein:

I am not representing the ACLU. I am here as a private attorney who has represented many of these cases.

Chairman Hansen:

Vanessa Spinazola sent in a letter in opposition to the bill on behalf of the ACLU of Nevada (Exhibit C). I just wanted to double-check that with you.

John L. Smith, representing *Las Vegas Review-Journal*:

Thank you for letting me testify today. I come before you as a long-time Nevada journalist and author to voice strong opposition to S.B. 444 (R1). It would make critical and deleterious changes to Nevada's anti-SLAPP law. Legal experts will speak to the damage the changes will do to a law that helps provide an essential protection of the free speech rights for all Nevadans, whether you are speaking in a public place, blogging on the Internet, writing a column, or writing an investigative story for a newspaper.

The legislation arises out of the desire of Wynn Resorts and Steve Wynn, its Chairman, to change a law specifically designed to change Nevadans from practitioners of SLAPP litigation and lawsuits meant to silence criticism. Wynn certainly qualifies on that account. Last year, Wynn sued stock trader and analyst James Chanos after a public talk during an investigative journalism conference where Mr. Chanos warned of an ongoing upheaval in the immensely lucrative Macau casino market that has been so good to Wynn Resorts. Mr. Chanos warned that a crackdown on corruption by the Chinese government would likely have a powerful negative impact on casino stocks, and he was right. Remember, Mr. Chanos was appearing at an investigative journalism conference. Associated with the investigative reporting program at the University of California, Berkeley, the Logan Symposium is attended by hundreds of reporters and hosted by legendary investigative journalist Lowell Bergman of *60 Minutes*. Mr. Bergman's investigative unit last year was busy putting the final touches on its lengthy investigation of Macau's casino industry for a *FRONTLINE* documentary that was to air on the Public Broadcasting Service (PBS). Was the lawsuit intended not only to silence Mr. Chanos, but to chill out that investigative documentary? The very reasonable conclusion is, yes it was. Fortunately, a California court twice dismissed Wynn's lawsuit. By the way, you did not miss the *FRONTLINE* documentary; it never aired.

I know from firsthand experience that Steve Wynn is not shy about using the courts as his personal whipping post. Following the 1995 publication of my investigative biography of Steve Wynn called *Running Scared*, he sued me in a court of comfort and convenience in Clark County. He did not sue over the book, which was factual and gave a balanced look at his meteoric rise in the casino business. Instead he sued over a fragment of a sentence printed in a publisher's catalog advertising the book's publication. It was not the book, not even a full sentence in the catalog, but a factual fragment advertising that *Running Scared* would tell why a Scotland Yard report called Wynn an associate of organized crime. The report said that, and the chapter in the book accurately and fairly reflected the report. During the litigation, Wynn showed his vindictiveness by explaining to a reporter that he would "get Smith's house and bankrupt the publisher." Let me tell you, I was worried sick over the litigation even if I could not quite imagine Steve Wynn moving into my three-bedroom, 1300-square-foot starter home. I was eventually dismissed from the lawsuit, but the publisher was forced to pay to defend the remainder of the litigation. When Wynn won what I consider a kangaroo court decision, the publisher was forced to endure bankruptcy reorganization. The lawsuit was thrown out on appeal by the Nevada Supreme Court, so technically, Wynn did not prevail in court. That was not his purpose, however. His purpose was to punish anyone who sought to take a close look at his personal and business history.

Wynn never collected a dime and lost the lawsuit. I will say one thing for him, he managed to inflict a lot of pain on myself and my family, and on my publisher and his family. I am proud to say that *Running Scared* is still in publication after 20 years, but that status did not come without a hell of a fight.

Wynn is not the only powerful Nevadan to claim offense at critical coverage and use the courts to punish a critic. He is far from it. Around these parts, SLAPP litigation is the sport of billionaires. Nevada has one of the nation's best anti-Slapp laws, and anything less is an invitation to bullies to attempt to drive working reporters, bloggers, and anyone else with a critical comment to ruination. In other words, all Nevadans, not just journalists, need this law to remain strong. We have an opportunity to correct a mistake made recently by the state Senate. You can do your fellow Nevadans a tremendous service by stopping misguided S.B. 444 (R1) in its tracks.

Assemblyman Elliot T. Anderson:

Mr. Lichtenstein, I know you are no longer associated with the ACLU, but I do want to draw on your experience. Can you tell me what you think limited discovery means? That is something that I have some great concern about because discovery can really ratchet up the cost of litigation. It can be used by litigants to abuse other litigants. There are some firms that have entire floors that do discovery requests. I am really concerned about that provision because I can see it being used to ratchet up those costs and bankrupt them even if they technically win the case. What do you think limited discovery means?

Allen Lichtenstein:

As a sole practitioner, I see this all of the time. Large firms will try to paper you to death in order to win the case based on cost. As for limited discovery, I would say the key element there is a question of relevance. It should not be a fishing expedition but to determine things that can be shown to have particular relevance to find particular facts to reach that particular kind of conclusion. We can go off on a particular tangent on how courts tend not to do that, but the idea of limited discovery is important in any kind of preliminary type of procedure such as an anti-SLAPP procedure. I do not think it is necessary to have that type of open-ended discovery, but judges have the ability to limit the discovery to things that are relevant for the particular purpose. In this case, it would be relevant to the anti-SLAPP statute.

Assemblyman Ohrenschall:

Mr. Smith, it was just about a month and an half ago when we had a bill in this Committee having to do with lay justices of the peace. I was informing

fellow Committee members about an excellent justice of the peace that I met as a kid while tagging along with my mother in Clark County. I am talking about Judge Jan Smith and what a great job she did.

My question is for Mr. Lichtenstein. The proposed bill omits text from NRS Chapter 41.670. My question is, are you aware of any hesitancy among our state's judges to impose the fines listed in subsections 2 and 3 of NRS Chapter 41.670 if there is a finding that a party has filed an anti-SLAPP motion with no merit solely in the effort to vex the other party?

Allen Lichtenstein:

I think the answer is going to depend on the judge. I also think that a statement by the Legislature of a very clear intention that these provisions are there to be taken seriously and not just as pro forma would go a long way to avoid those particular problems. Obviously, as we all know, judges have a certain level of independence. However, they also seem to be quite adherent to what they see as legislative intent. Clear legislative intent would be very helpful.

Assemblywoman Diaz:

This question is for Mr. Smith. On a national level, we are seeing that First Amendment rights are being annihilated. People in power basically get to dictate what gets printed in the press. As a reporter, if this law were to move forward, what do you think would be the ripple effect to you and fellow journalists? Would you still be willing to report things that you know can put you in a bad situation, or are you just going to say what you think people are going to want to hear?

John Smith:

A lot of it depends on the institution. My newspaper stands up for not only what I write but also for the staff in general. The institution is always important. There is a case currently pending in which a *Wall Street Journal* reporter has been sued individually by Sheldon Adelson. It was the reporter that was sued and not the newspaper. Folks who follow anti-SLAPP issues are certainly keeping an eye on that. There are challenges everywhere. I think the more you are out on your own as a freelancer, the tougher the job is. There is an expression that we use in our craft called the chilling effect. What happens quite often is even when lawsuits are not filed, when laws change to favor powerful potential plaintiffs, it seems to have a chilling effect on the ability of folks to be aggressive news gatherers, critics, and commentators. Those protections are essential, in my opinion.

Chairman Hansen:

Can I relate to that? The chilling effect of an opinion columnist running for office, Mr. Smith, I think you can appreciate where I am coming from with that. Thank you both for your testimony this morning.

Trevor Hayes, representing Nevada Press Association:

As I testified in a committee yesterday on a different bill, the current state of the press and the business model has changed. Mr. Smith talked about how the *Las Vegas Review-Journal* has stood up for him and its reporters throughout history. I believe that some of the other Nevada papers have done so too. In a time where newspapers are struggling to survive, to ask a newspaper to back one of its reporters to the tune of hundreds of thousands of dollars of litigation costs is a tough thing to ask them to do. You are going to have publishers and editors sitting and talking about the financial cost of writing the story, instead of asking if it is important for the readers, for legislators, for citizens to know. Is it going to be a good story, providing good reporting? It is honest and nondefamatory? Instead, the question is going to turn to how much money is it going to cost us to defend ourselves in a defamation case. Having strong anti-SLAPP laws makes that question a whole lot easier to answer.

Mr. Smith's book was written in 1995. Assemblywoman Genie Ohrenschall drafted the first anti-SLAPP law in 1997. He and his publisher could have gone through a lot less hassle on a case they eventually won had there been a strong anti-SLAPP law in place.

I want to apologize to Senator Brower because we missed this bill when it was being heard on the other side. This is a bill that is one of those solutions searching for a problem. We have heard of no case filed because of this statute that has been in place for two years. If you have read anything in the last week on this bill, everyone from bloggers to libertarian groups like *Reason* magazine to general interest newspapers in every corner of our state and others have stood up to say the anti-SLAPP law we have in place currently is a great law that protects free speech.

Mr. Langberg pointed out certain things in S.B. 444 (R1) that exist in other states. He did not point out a state that has all of those things. He said it is not a problem to have the prima facie standard that California has. It is not a problem to have the public concern that Washington has. It is not a problem to have the lack of penalties that this or other states have. Basically, there are bad parts to these other states' laws and no state, until Nevada, has tried to put

together all these bad things into one bill. Let us not do that. We have the best anti-SLAPP law in the country, or close to it. We have taken the good parts from other states. Let us not knock that down.

One of my biggest concerns is shortening the time from 60 days to 20 days for someone to file. If you are hit with a defamation suit, whether you are a sophisticated or unsophisticated defendant, it takes some time to get your bearings about you. You do not see this coming most of the time, even if you are a newspaper reporter and you think you have done a great job. All of a sudden you are hit with this. It takes time to go out and find the right attorney. If you are a less well-heeled defendant, it may take your meeting with several attorneys because you do not have the money to pay and are looking for someone to do it pro bono or on a reduced basis. Giving someone 60 days is not going to have a negative impact on the plaintiffs in this case.

Regarding changing the standard to prima facie evidence, prima facie evidence says that if I have admissible evidence, it has to be accepted as truth. The standard is, if I have admissible evidence, the court has to look at it as if it were true. The other side now has to have the burden to prove that it is false. Therefore, it is shifting the burden unlike what was testified to earlier. This will not stop good defamation cases from going forward. If someone makes a defamatory statement, those cases will go forward. What this does is stop someone from having a vexatious, penalizing, chilling effect, defamation suit against the rightful actor who spoke properly and spent three years going bankrupt to defend his right to speak freely. So much of what I wanted to say I believe was covered by Mr. Lichtenstein and Mr. Smith. The Nevada Press Association and I believe the law as it stands is fine the way it is.

Joseph Guild, representing Motion Picture Association of America:

I would like to apologize to the Chairman of the Senate Judiciary Committee. I have talked to him in private about this. Frankly, we missed this bill as well when it was on the Senate side. We do have concerns and believe it is an infringement on First Amendment rights. As most of you know, I am a Nevada lawyer for more than 30 years. I am licensed to practice in California as well. Frankly, I know a whole lot more about equine liability than I do about the First Amendment and SLAPP lawsuits. In that regard, I will introduce my colleague.

Melissa Patack, Vice President and Senior Counsel, Motion Picture Association of America:

I appreciate the opportunity to testify regarding S.B. 444 (R1). The Motion Picture Association of America is the trade association for the major producers and distributors of filmed entertainment content across all platforms

from theatrical to motion pictures to programming for cable, over-the-air broadcast, satellite television, and the Internet. Our member companies include The Walt Disney Company, Fox Filmed Entertainment, NBC Universal, Paramount Pictures, Sony Pictures Entertainment, and Warner Brothers. CBS is an associate member. I am here to explain why we oppose S.B. 444 (R1) and to offer our suggestions for amending the bill.

Anti-SLAPP laws exist in some form in 29 states. They are very important to our member companies as entertainment companies are frequently sued on a variety of theories from someone who believes they were not portrayed accurately in a motion picture to a news outlet over the reporting of a news story. These types of lawsuits implicate the First Amendment and are often filed because a plaintiff disagrees with what one of our companies or its affiliates has said or disseminated. The ability of the defendant to bring an anti-SLAPP motion can resolve the case efficiently and economically—preserving the defendant's First Amendment rights.

The bill pending before this Committee moves Nevada's anti-SLAPP law in the wrong direction. It would make the anti-SLAPP motion a complex two-part process. I think that has not really been discussed. That is one of the major changes. It bifurcates the process. The first proceeding would be whether the matter is of public concern. If the moving party establishes that, it goes on to the so-called merit. It is really in two parts and really increases the complexity of a SLAPP motion rather than what the SLAPP motion is designed to do, which is to expedite a resolution of the case.

The bill sets an unrealistic time barrier for the filing of an anti-SLAPP motion. Many defendants will not have the ability to comply with that short 20-day requirement. The bill also narrows the issues that can be subject to an anti-SLAPP motion from an issue of public interest to an issue of public concern. We also believe that narrows the focus. When a plaintiff files a lawsuit that implicates the First Amendment rights of a defendant, the plaintiff should have sufficient information that supports his or her claim. When the defendant files the anti-SLAPP motion, the plaintiff should have to come forward with evidence that is sufficient to support every element of his or her claim. It is important that the court have enough information to determine that the plaintiff can establish a legitimate claim.

The bill also took us by surprise since the Legislature amended Nevada's anti-SLAPP law in 2013. We are not aware of any court decisions that could be motivating this effort to roll back a very good law. To the extent the Legislature has the desire to revisit the law, we respectfully request you consider turning to

your neighbor to the west. The California anti-SLAPP law enacted in 1992 strikes a good balance. It allows the defendant the opportunity to seek dismissal of a case that seeks to stifle the defendant's First Amendment rights, and it does not dissuade plaintiffs from bringing claims in the first instance. I am happy to talk further about California's law. I also have some examples of cases that have been filed against our companies and how the SLAPP motion has worked to resolve these cases expeditiously. Thank you, and I appreciate your consideration.

Marc Randazza, Private Citizen, Las Vegas, Nevada:

I am here in opposition of S.B. 444 (R1). I practice defamation law extensively. I am licensed in five states. I am actually sitting for the Ontario, Canada bar exam this summer. I have worked on defamation cases worldwide, including one recently in Zambia. Let us just say that I am obsessed with this area of law, and not just on the defense side. I believe in protecting people's reputations. I believe in people being responsible for the exercise of their right of free speech. I have my name on a number of plaintiff's cases, as pointed out by the proponents. The majority of them have been in states where there is an anti-SLAPP law like the one we have now. I have no fear of this law when I am signing a complaint on behalf of a plaintiff because I do my homework first. I sit down and use some of that statute of limitations time to make sure that we are ready and have our evidence. Frankly, I get calls frequently from people who ask me to file the suit even though there is not much of a chance of winning. They suggest that we drive the defendants into discovery knowing the defendants do not want that. When that happens, I hear the cash registers ringing in my ears, and I think that I can keep this case going for 18 months or so. I do not use my law license that way, and I will not do it because I believe in freedom of expression. I do not believe in bullying people with lawsuits designed to suppress their First Amendment rights.

I want you to think about something. There are a lot of people talking about the technical aspects of this, which I really wanted to talk about. However, they have already expressed it eloquently and perfectly. I just want you to think about the spirit of what is happening here. The intellectual spark of the American Revolution was lit in a defamation suit. It was a seditious libel suit filed pre-Revolution against Mr. John Peter Zenger, by the then-governor of colonial New York. All they had to prove at that time to punish Mr. Zenger was that he published it. It was a prima facie case. The jury in that case refused to convict him despite the fact that the law required them to. From there grew our freedom of the press. From there grew our theories of free expression that continue to this day.

I believe its high-water mark in this country was in 2013 when this body passed the current anti-SLAPP law. I was involved in drafting the current anti-SLAPP law, and I was involved in advocating for it. I did not get everything I wanted. I would have seen it go a little further. We really looked to Washington to our inspiration, which was an evolution of Oregon's law, which was an evolution of California's law. One thing I wish we had put in there from Washington is the fact that these attorney fees can also be imposed on the attorney who brings the action. I am not going to make myself very popular with other members of the bar calling for liability for us, but I think if you want to amend the statute, put that in there.

I want to talk about the functionality of the 2013 law. As soon as it passed, I was able to go to clients of mine who run media companies and tech companies and say now we have the best one; move here. I did move some of them here. I am in the process of trying to move a Yelp competitor here. They are currently in New York. I have explained to them that they will be under this umbrella. It is true that they are protected under federal law from liability for anything that someone puts on that consumer review site. That is not an immunity from a lawsuit, however. I have many active cases on behalf of this client currently. Many of them begin with a phone call from a plaintiff's attorney who says, I know we will not win at the end, but do you really want to spend tens of thousands of dollars defending this? Or, do you want to pull this one review down? That does not infringe on my clients' rights. That infringes on the free market and the marketplace of ideas. That hurts the people who go to this review site looking for information about goods and services that they are going to consume. It is an artificial finger on the scales of justice and on the scales of the free market.

I do not fit into any camp whether liberal or conservative. I am very much a free-market libertarian. I seem to only wind up defending the little guy. This bill really eviscerates the statement that this body made in 2013 that we are going to be a bastion of liberty. Other states do not have laws this strong. Ohio and Pennsylvania are currently looking to us for inspiration. They are working on laws that are going to be mirrors of ours. Florida is on the verge of passing its own anti-SLAPP law partly inspired by us. We are standing at the top of the mountain here, and we want to climb down lower than we were when we passed the law in 2013. This statute is terrifying for a defendant. I can answer any specific questions you may have. I have my head into this thing very deeply, but I do not want to go off on my speech about liberty and the economy too much more.

Chairman Hansen:

Before I go to questions, this is just a reminder that I have another six people in southern Nevada that would like to testify. Since three of them are ordinary citizens, I want to make sure I give them an opportunity. Let us question these three and then we will go to the others.

Assemblyman Jones:

I do not want to get into the weeds because there are so many constitutional issues and technical legal issues. We had the original law that Assemblywoman Genie Ohrenschall brought about. What caused the change to go to the law that exists now, and what is really driving the change back? I would like the practical application for people and businesses in society. Why did we change it in 2013 and why are we trying to change it again in 2015?

Marc Randazza:

The pre-2013 law was way too narrow. It only applied to petitioning activity and not free speech. We expanded it for that purpose. There was also a question as to whether it would provide for an interlocutory appeal; it did not. If you lose an anti-SLAPP motion, it is not much good to you that the plaintiff's case was frivolous and you figure that out three years later on appeal after spending \$100,000; you are already dead. It allows you to immediately have that denial reviewed, which is very important. The current statute provides for your immunity from suit as a substantive right. What is beautiful about that is that it applies in federal court. If somebody decides to try to prey upon a Nevadan or a Nevada-based business, bringing them to court in a state that does not have an anti-SLAPP statute, which is a creative approach that is tried once in a while, you can attempt to use choice of law to have our SLAPP law applied in the other state. It is not always successful, but if we want to update our law, we could possibly sure-up that right.

The other things that were in the original law were great. Another issue is S.B. 444 (R1) completely and totally repeals the SLAPP-back law. I do not know why we would do that because it provides penalties for somebody who does abuse this law and is not scared of a \$15,000 legal bill that might get imposed on them for trying to take someone to task for simply exercising his First Amendment rights. If you want to know about this in very simple terms, it does not change the end result of the case. All that S.B. 444 (R1) does is narrow the class of cases and makes it harder to employ the statute to get rid of frivolous cases early. The end result of the case is the same. You just do not get there until you have gone through 36 months of litigation.

Assemblyman Elliot T. Anderson:

This question is for Mr. Randazza. I would like to ask you about section 12. We have heard some discussion about what section 12 would do. When Mr. Langberg came into my office, he mentioned the Ninth Circuit case which declared SLAPP suits to be substantive and would, therefore, apply if the forum court is outside of Nevada. Is that your understanding? It does look like section 12 crosses out the unity provision, which is loss-allocating and, therefore, substantive under a conflicts analysis. Can you comment generally on the totality of the case law and what this strike would do?

Marc Randazza:

I will talk about the Ninth Circuit case issue. The Ninth Circuit did not hold that anti-SLAPP statutes apply in federal court as a blanket statement. In fact, there have been federal appellate courts that have looked at other states' anti-SLAPP laws and said that since they are procedural and not substantive, they do not apply. Most notably, the Eleventh Circuit looked at Georgia's anti-SLAPP law, which is really similar to the West Coast states. However, it threw in a procedural element that controlled the statute. Most states will look at a legal issue and will not say that the whole case is governed by one state's law. Maybe the defendant's immunities are under one state's law, but other issues are under another state's law, or could even be the plaintiff's responsibility. It is not true that anti-SLAPP laws automatically apply in federal court. Only their substantive issues will apply. Assemblyman Anderson, you get an A+ for identifying that issue.

Ron Green, Private Citizen, Las Vegas, Nevada:

I am Marc's partner at Randazza Legal Group. I am also a 15-year Nevada resident. Unlike Mr. Randazza, I am not a nationally renowned First Amendment attorney. I practice primarily in trademarks and copyrights. I am not going to discuss the technical aspects of S.B. 444 (R1) or the current anti-SLAPP law. I am just going to tell you about what I have seen over the past 18 months.

Chairman Hansen:

Are the both of you with Mr. Randazza at the law firm? He has already testified, and I want to make sure I provide the opportunity for other folks to testify. If all three of you are basically representing the same view, I will have to stop you, unless you have something very specific and new to add that he did not testify to. I would like you to limit your testimony to new material only. Frankly, we are up against a time window.

Ron Green:

I am going to testify as to what I have seen the current anti-SLAPP law do. I have seen it interest media, technology, and entertainment companies in Nevada. I have seen those companies relocate to Nevada. After this bill was introduced, I have seen those same companies say that they may have to leave if this bill is passed. This bill is bringing business here and makes our citizens' First Amendment rights arguably the strongest in the nation. It does not make sense to pare that back when we are currently the leader. I do not want to see us become a follower again.

Theresa Haar, Private Citizen, Las Vegas, Nevada:

I am also an attorney with the Randazza Legal Group. I am a 25-year resident of Nevada. In addition to being licensed in Nevada, I am also licensed in New York. The difference between the progression in litigation in states that do not have anti-SLAPP laws versus Nevada is remarkably different. As Mr. Smith spoke about the chilling effect in states where there is no anti-SLAPP statute, we have had clients that have had no other option than to simply forgo their rights because they cannot afford the tens and hundreds of thousands of dollars that years of litigation costs. The anti-SLAPP statute that Nevada has is remarkable because it can afford people the opportunity to recover attorney fees. We have taken a number of cases on a contingency basis knowing that they will be made whole again by the award of attorney fees at the end. If you value your own opinions, if you value the opinions of Nevadans, and if you respect your right to express your opinion and to stand on your truth, I urge you to be in opposition of S.B. 444 (R1).

Joe Johnson, representing Toiyabe Chapter, Sierra Club:

We are here in opposition of S.B. 444 (R1). I am happy to be here this morning. It has been a long time since I have been before your Committee. I was around here in 1997, when the original bill was passed. I was once an Assembly member and a member of the Assembly Committee on Judiciary. I am testifying today as a geologist. The weeds overwhelm me, but there are very significant reasons to leave the existing law alone. There are some proposed amendments that may clarify things. It is a very good bill, but I would like to go on record as opposing its passage.

Anne Macquarie, Private Citizen, Carson City, Nevada:

I am here speaking on behalf of myself and the Sierra Club. I am a citizen of Carson City. I urge you to oppose S.B. 444 (R1). As you have heard, we currently have a strong anti-SLAPP law on the books. If S.B. 444 (R1) is enacted, I believe it will greatly gut this law and diminish our right to free speech in Nevada. As you know, SLAPP lawsuits are used as a way to punish small organizations and individuals with sometimes years of attorney fees in

order to scare us from speaking out against the actions of powerful businesses and individuals. The name really does say it all—strategic lawsuit against public participation. My colleagues and I are all about public participation. I belong to, and have worked for, organizations that can be and have been threatened by such SLAPP suits. This bill would remove the vital protection of the existing law from the active citizens and small businesses of Nevada. I believe it does not help the citizens of our state.

John Mehaffey, Private Citizen, Las Vegas, Nevada:

When the 2013 law was enacted, I read about it in tech magazines. It essentially advertised our state as the place to move your tech business, especially if you were involved in the media or speech issues. I was about to leave the media business because I was burned out, but this got me excited about the First Amendment and invigorated my career. Part of my job involves the online poker industry. I help expose scams of the offshore sites from other states. There are a lot of bad characters in that industry. For the past few years, I have been part of exposing them and helping to advocate for players to not only avoid the scams but to get the industry legalized in their own states to protect them. It is a very heated debate. When the anti-SLAPP law was enacted, it gave me the reason to stay. I was going to move and get into another industry. It completely changed my mind.

One benefit of my business is that 100 percent of my revenue comes from outside of Nevada. Some of it even comes from outside of the country. Not only do I not take a job from somebody else, but I am creating jobs when I spend the money in Nevada's economy. I was also able to talk two other businesses into moving here specifically because this law exists. I am prepared to move to Texas if S.B. 444 (R1) passes, because they have an enacted law that is almost identical to ours.

I have been threatened by people who did not like that I exposed their business practices. In 2014, I received a letter from someone who was trying to use me as leverage against somebody he was angry at. I sent this person a link to our current anti-SLAPP law and suggested he read it. I never heard from him again.

My main concern about S.B. 444 (R1) is the change of definition on what is qualified speech. I work in the online poker industry, and most people do not care about that. I do not think that would fall under the new definition. Suddenly, I am going to be exposed to things that are freedom of the press simply because it is not considered to be a wide public concern issue. I feel that all speech should be covered. Whether it is factual or is someone's opinion, I do not think we should separate one thing from another. Just because you disagree with me or think the topic is of no interest to you does

not make it have any less effect. If I can prove that something has an effect, it should fall under this law, and I should be able to get a charge against me dismissed. I have never been involved in a lawsuit like this, but it is a concern when you work in media. You have to protect yourself.

My family planted roots here after this law went into effect. My wife is going to be a teacher in the Clark County School District this fall, and my kids are involved. We are all involved in the community. I want to stay here, but I am really prepared to leave if this passes. I do not see any reason to stay and continue on with the type of business that I operate. [John Mehaffey also submitted written testimony (Exhibit D).]

Heather Snedeker, Private Citizen, Las Vegas, Nevada:

I am a current law student at the William H. Boyd School of Law at the University of Nevada, Las Vegas. I am also a member of the Federalist Society at the law school. While I do not believe that First Amendment speech is particularly a partisan issue, I will be especially surprised if the conservative members of this Assembly are for S.B. 444 (R1).

First Amendment principals are the cornerstone of our foundation and our tradition as a nation. From the John Peter Zenger trial of 1735 to *New York Times Co. v. Sullivan*, it is clear that defamation claims must be absolutely proven by the plaintiff just so that we can all protect our rights to free speech. Lowering the standard to prima facie goes against our own principals as a nation.

I would also hope that Senator Brower or other proponents of this bill do not let a personal vendetta against a particular attorney who is leading the opposition against this bill cause them to sell out their own constituents. Voters in 2016 will not take too kindly to their assemblymen and assemblywomen selling out their rights for financial and personal reasons. Therefore, I urge you all to vote no on S.B. 444 (R1).

Chairman Hansen:

Thank you, although I would appreciate no ad hominem attacks on the persons bringing the bills forward. Frankly, this is not the place for that.

Homa Woodrum, Private Citizen, Las Vegas, Nevada:

I have lived in Nevada for 15 years, both in Las Vegas and Winnemucca. My practice focuses mostly on elder law and guardianship. I am also a food allergy blogger and cofounder of the Allergy Law Project, a blog that focuses on disability rights related to individuals who suffer from food allergies. I mention this because the intersection of being an attorney and being part of a narrow

online community results in contacts who reach out to me when they receive requests to remove content on their personal blogs. These individuals wonder about their rights and may opt to take down information rather than wrangle threatened legal action. Other individuals contact me after anaphylactic reactions wondering what they can or cannot say about their experiences out of a desire to keep others in the food allergy community safe. Some examples are a mother whose son was served real milk instead of soy milk; a college student being served his allergen knowingly by a barista; or a visitor to Las Vegas for a convention being served nuts and being left to administer his own epinephrine by hotel staff. Every single one of these individuals opted not to share their stories because of a commonly held notion that they cannot speak out against companies with big pockets without risking suit.

The way S.B. 444 (R1) is written, I would have to advise them that the risks are indeed too high. A suit can still be filed and the expense of a defense incurred even if you ultimately prevail. There are others, like Mr. Randazza, who I respect as a nationally recognized First Amendment attorney, that can speak more pointedly about the nuances of S.B. 444 (R1). I am here to add my voice because I think this is an access to justice issue. I imagine some attorneys would see S.B. 444 (R1) as job security. I would rather see continued protective measures available to the host who would be crushed by the expense of defending litigation. A plaintiff always has a choice to do a cost-benefit analysis before initiating suit. *Nevada Revised Statutes* 41.670 is a necessity in the digital era. As a Nevadan and attorney and a mommy-blogger, I thank you for your time and I urge you reject S.B. 444 (R1).

Chairman Hansen:

I see no questions. Thank you both for your testimonies. We are going to move to the neutral position on S.B. 444 (R1). Seeing none, I will bring Senator Brower and Mr. Langberg back up.

Senator Brower:

Mr. Langberg is going to begin by addressing a few points in rebuttal. I will then wrap things up.

Mitchell Langberg:

I want to say that I appreciate the policy decisions to be made in this, and I appreciate the portion of the opposition that has engaged in some intellectual debate about it. I think that is important and part of the First Amendment.

Changing the law by adopting S.B. 444 (R1) does not mean defendants do not have all of their constitutional rights and the ability to defend themselves against a defamation claim that has shown initial merit. With apologies to Assemblyman Jones, I realized that I half-answered your question, but I would like to fully answer your question now. People have said that there is no example of a case that has been filed that has somehow been harmed by the existing law. That is because when somebody is considering a case, particularly a case that requires proof of knowledge of falsity, it cannot be filed under this statute. That is not theoretical; that is real. There is more than one case that I have filed for Nevada businesses in other states because we could not proceed here. In other states, courts have found claims to be meritorious enough to proceed past initial motions. It is a practical effect. I also told you about the doctor on Yelp who has been falsely accused of committing malpractice. That is a real case that could not be filed here because he would be putting his finances at risk if he could not show clear and convincing evidence that the person knew it was false even though it was false.

I will reframe the premise because everyone is talking about First Amendment rights and free speech. The question is, when somebody is accessing his or her First Amendment rights to petition, what should be required? Why should he or she be required to do something that no other plaintiff has to do to prove he or she has evidence to support the case at the very beginning of trial? How much are we going to burden the First Amendment right to petition with our SLAPP statute? This is a balancing and a policy decision. The description by the Washington appellate courts, which I can make available to anybody, talks about the difference between matters of public concern and matters of public interest, and why one might get more initial protection than the other. It is a very good analysis to explain this. If it is a matter of public interest, people will still have all of their constitutional rights to be able to defend the lawsuit. Everyone who is a defendant in any lawsuit has to face the possibility that they may have to spend a lot of money to defend themselves. What is going to be subject to this special notion?

I want to clarify how this bill came to be and who is behind it in order to affect the ears with which listening occurs. I missed it the last time around. As soon as the statute that exists came out two years ago, I recognized what I think are very serious issues that impinge on the First Amendment right to petition. I started working very hard and talking to lots of people about how to do this because I am not familiar with the process. I am thankful for a client that I worked for in the litigation context whom I no longer work for today. When the negative impact that this could have on businesses was explained to my former client, he agreed and was willing to put his "know-how" behind it and assisted me to get this bill to you today. That is how we got here.

I want to make something else abundantly clear. I am very familiar with the case that Mr. Smith spoke of. I am talking about the Wynn case out of California against Mr. Chanos, which was recently dismissed. It should not surprise you that I disagree with the court's decision and we are appealing. If the same judge was considering the same case under S.B. 444 (R1), the case would have been dismissed. What S.B. 444 (R1) does is ensure that meritless lawsuits are dismissed. I hear cries for examples which I have now given you. What you have not yet heard is an example of a meritless lawsuit on a matter of public concern that would not be dismissed under S.B. 444 (R1). You will not hear that because we worked very hard to balance the First Amendment rights to have meritless cases dismissed with the interest of plaintiffs having cases that meet the minimal standard get to the next step where there are even more constitutional protections that a defendant might use to have the case dismissed.

Somebody said that we have the best anti-SLAPP statute in the country. With a caveat, that is actually true. We have the best anti-SLAPP statute in the country if you believe that people whose reputations have been maligned and damaged in public should not have a right to seek redress in the courts. Certainly, if I ran a newspaper or media company, my preference would be to repeal all defamation laws because I do not want to answer those questions at all.

Assemblyman Anderson asked about discovery and what limited discovery means. Fortunately, both the states of Washington and California have recognized discovery is a constitutional right when it is controlled by the courts. They have litigated this very well. In the context of an anti-SLAPP motion, discovery can only be granted when the court finds there is good cause and approves the specified discovery request. Therefore, you do not get your discovery templates and send them all out. The court is going to approve the specific discovery requested.

There was a question about the current penalties for SLAPP-backs and whether judges are reluctant. I cannot tell you what happens in Nevada. There is not a lot of anti-SLAPP litigation here because cases are not being filed, and sometimes they are meritorious cases that are not being filed. From experience in California, where I have litigated anti-SLAPP cases, judges are very reluctant to do it. They have just told the defendants that they have lost on their anti-SLAPP motion and will have to spend the money to defend the lawsuit because there is merit to it. They are very reluctant to also say the defendant will have to pay attorney fees on top of that. They usually defer it until the end of the case. As you know, most cases do not ever get to the end.

I believe I have addressed the major concerns that stood out to me. If the Committee has any further questions, I am happy to answer them.

Senator Brower:

We appreciate the chance to have this very productive dialogue, and I know Mr. Langberg appreciates all of the excellent questions from the Committee.

I would like to make a few closing remarks. First, I would like to address Ms. Snedeker if she is still listening. I really appreciate law students participating in the process. I, too, am a member of the Federalist Society and have been since law school. I currently serve on the Executive Committee of the Federalist Society's Criminal Law and Procedure Practice Group, and I am a proud member of that group. I am also an adjunct professor at Boyd School of Law. I respectfully suggest to Ms. Snedeker, if she is interested in becoming an effective legislative advocate, she might want to think about taking the course on legislative advocacy. Frankly, I have no idea what she was talking about when she mentioned personal gain or vendetta. I thank you, Mr. Chairman, for trying to restore some decorum to the Committee's process.

From my perspective, we did not make a statement on this issue during the 2013 Legislative Session. That was a bill that probably did not deserve enough debate and scrutiny. A few of us were uncomfortable during various provisions. To say that the 2013 Legislature made a statement about what the policies should be is a gross exaggeration. We can make a statement this session in trying to restore some balance to the situation.

I want to commend Assemblyman Ohrenschall and his mother, whom I served with in this body. I know she is very proud of the 1997 law, and she should be. It is a good law. We think that S.B. 444 (R1) is an improvement upon that and we also think it is necessary change given what happened last session.

As Mr. Langberg said, we only have the best statute in the country currently. If you are a person who wants to engage in defamation with impunity, we have a pretty darn good law. If you are a potential plaintiff or defendant in a defamation case, I would respectfully submit that S.B. 444 (R1) represents a much better law and a much better process for litigating such disputes. The only goal of mine in supporting this bill and testifying before you today is to protect the right of both plaintiffs and defendants in these cases. That is what this bill does and why we think it is important.

I have watched this Committee closely over the last three days, and I have been impressed. I know you will focus on the real issues presented by this bill and that you will do your best to ignore the background noise, some of which we heard today. It is an important issue, and we need to get this right. This is not my bill, but I have interjected myself into this issue because I think it is important. I, Mr. Langberg, and others stand ready to work with this Committee to make this bill the best it can be. We understand your continued concerns and will take your recommendations and suggestions in order to get this right. Thank you very much for your time, and I am happy to answer any questions.

[Items submitted but not discussed, and are included as exhibits for the meeting, include a letter of opposition from Ryan A. Hamilton (Exhibit E), a letter of opposition from TechNet (Exhibit F), a letter of opposition from Reporters Committee for Freedom of the Press (Exhibit G), and letter of opposition from Marc Randazza (Exhibit H).]

Chairman Hansen:

Thank you all for your testimony. At this point, we are going to close the hearing on S.B. 444 (R1), and open it up to public comment.

Ed Uehling, Private Citizen, Las Vegas, Nevada:

I am a 72-year resident, and I have had two brushes with this issue. I just wanted to talk about those.

Chairman Hansen:

Sir, we have actually closed the hearing on that bill. However, you may briefly say whether you are in favor or against the bill.

Ed Uehling:

I am totally against the bill and very appalled by allowing this person to present himself as an advocate of the poor when everyone knows who he is representing and the bully he is representing.

Chairman Hansen:

Okay, that is all I need to know. Thank you, I appreciate your testimony. We will now close public comment. Is there anything else that needs to be brought to the Committee at this time?

Assemblyman Elliot T. Anderson:

I want to make a quick comment to Senator Brower and Mr. Langberg to say that I appreciated the academic discussion. It was invigorating, and I truly enjoyed it.

Assembly Committee on Judiciary
April 24, 2015
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Chairman Hansen:

This meeting is adjourned [at 10:40 a.m.].

RESPECTFULLY SUBMITTED:

Janet Jones
Recording Secretary

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 24, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 444 (R1)	C	Vanessa Spinazola, ACLU of Nevada	Letter of Opposition
S.B. 444 (R1)	D	John Mehaffey, Private Citizen, Las Vegas, Nevada	Written Testimony
S.B. 444 (R1)	E	Ryan A, Hamilton, Private Citizen, Las Vegas, Nevada	Letter of Opposition
S.B. 444 (R1)	F	John Doherty, Vice President and General Counsel, TechNet	Letter of opposition
S.B. 444 (R1)	G	Bruce D. Brown, Executive Director, Reporters Committee for Freedom of the Press, Washington, D.C.	Letter of Opposition
S.B. 444 (R1)	H	Marc Randazza, Private Citizen, Las Vegas, Nevada	Testimony in Opposition

EXHIBIT 11

Curriculum Vitæ
of Marc J. Randazza

CURRICULUM VITAE

Marc J. Randazza, JD, MAMC, LLM

EDUCATION

Legum Magister (LLM)

2014 | Università di Torino Facoltà di Giurisprudenza
International Intellectual Property Law.

LLM program administered by the University of
Turin, the U.N.'s International Labour Organization
and the World Intellectual Property Organization.

Master of Arts in Mass Communication (MAMC)

2003 | University of Florida

Focus on research in media studies, branding,

*public relations, and advertising as well as
publication and teaching in First Amendment studies*

Juris Doctor (JD)

2000 | Georgetown University Law Center

Focus on First Amendment and media law

Bachelor of Arts in Journalism (BA) with honors

1994 | University of Massachusetts

Focus on media law studies

LEGAL PRACTICE EXPERIENCE

RANDAZZA LEGAL GROUP, Managing Partner | July 2009 to Present

Litigation and Appellate Responsibilities

- First Amendment litigation in federal and state courts
- Copyright, Trademark, and Patent related litigation in federal and state courts
- Anti-SLAPP litigation under the California, Nevada, and Florida Anti-SLAPP acts
- Intermediary liability litigation under the CDA (47 U.S.C. § 230) and the DMCA (17 U.S.C. § 512)
- Appellate practice in state and federal appellate courts on free speech cases and intellectual property cases
- Litigation consulting in foreign actions in order ensure enforceability of foreign defamation claims under 28 U.S.C. §§ 4101-4105
- International arbitrations involving intellectual property disputes both under the UDRP and in non UDRP jurisdictions

Transactional Responsibilities

- Providing advice to clients on First Amendment, copyright, trademark, domain name law, internet law, and entertainment law
- Trademark registration practice in United States, Canada, and Europe
- Negotiating and drafting intellectual property agreements including right of publicity, non-competition, and trade secret protection agreements
- Drafting online affiliate agreements, terms & conditions, and privacy policies
- Providing advice on state, federal, and international regulatory matters

WESTON, GARROU, WALTERS & MOONEY, Partner | July 2004 to July 2009

Litigation and Appellate Responsibilities

- First Amendment litigation in federal and state courts
- Trademark and copyright infringement litigation in federal court
- Defamation and Anti-SLAPP litigation in federal and state courts
- Appellate practice in state and federal appellate courts
- Domain name disputes under the UDRP
- Domain name disputes before international bodies outside of the UDRP

Transactional Responsibilities

- Trademark registration practice
- Negotiating and drafting intellectual property agreements including right of publicity transactions, non-competition agreements, and trade secret protection agreements
- Drafting online affiliate agreements, terms & conditions, and privacy policies
- Drafting website reviews for clients to assist in intellectual property protection, litigation avoidance, and compliance with federal law

BECKER & POLIAKOFF, PA, Associate | January 2003 – June 2004

Litigation and Appellate Responsibilities

- Providing pre-publication review, and libel defense counsel to publications
- Handling zoning and First Amendment issues
- Advising clients on FCC regulations
- Advising clients on copyright issues

Real estate/corporate/community association practice

- Corporate counsel to condominium, cooperative, and homeowners associations
- Assisting clients with resolution of construction defect, maintenance, and covenant enforcement disputes
- Defamation counseling to condo and homeowners association boards

LEGAL TEACHING EXPERIENCE

Barry University School of Law | Orlando, Florida, August 2006 to May 2009

Courses Taught:

- First Amendment Law, 2007 – 2009
- Trademark Law, 2006 – 2009
- Entertainment Law, 2007 – 2009
- Copyright Law, 2006 – 2007
- Sports Law, 2007

Additional Activities and Responsibilities:

- Serving as a supervised research advisor to multiple students for First Amendment and intellectual property publications and research
- Assisting with First Amendment moot court competition

University of Florida, Research and Teaching Fellowship | Gainesville, Florida, August 2000 - May 2002

- Teaching classes on media law, including coverage of copyright, trademark, obscenity, libel, campaign finance, and constitutional law
- Assisting in the production of a media law case book
- Conducting legal research and writing for publication in various law journals

CLERKSHIPS

RYDIN & CARLSTEN AVOKATBYRÅ AB, Summer Associate | Stockholm, Sweden, Summer 1999

- Researching and writing memoranda for the firm's intellectual property law practice
- Second-chair to a case in the International Court of Arbitration resulting in a \$2.8 million verdict in a commercial dispute

SUPREME COURT OF VERMONT, Judicial Law Clerk | Montpelier, Vermont, Summer 1998

- Writing memoranda of law for Justice Denise Johnson
- Writing draft opinions that were later adopted and published by the Supreme Court
- Attending weekly meetings to discuss cases with the justices of the Supreme Court

ACADEMIC AND LEGAL PUBLICATIONS

- *Lenz v. Universal: A Call to Reform § 512(f) of the DMCA*, ____ VANDERBILT J. ENT. & TECH LAW ____ (publication in Spring 2016)
- *Joyce's Ulysses - An Unsung Hero in the Fight for Freedom of Expression*, ____ U. MASS. L. REV. ____ (2016) (publication in Spring 2016)
- *Kosovo's Digital Independence: Time for Kosovo's ccTLD*, ____ WISCONSIN INT'L L.J. ____ (2015) (publication in Fall 2015)
- *Freedom of Expression and Morality-Based Impediments to the Enforcement of Intellectual Property Rights*, 16 NEVADA L.J. ____ (2015) (publication in Fall 2015)
- "War of the Words": Differing Canadian and American Approaches to Internet Defamation", in Todd L. Archibald and Randall Scott Echlin, eds., ANNUAL REVIEW OF CIVIL LITIGATION IN CANADA 2015, Toronto: Thomson Carswell, 2015, 403 (co-authored with Antonin I. Pribetic)
- *The Legal Status of Making Adult Films in Nevada*, 23 NEVADA LAWYER 20 (May 2015)
- *Nevada's New Anti-SLAPP Law: The Silver State Sets the Gold Standard*, 21 NEVADA LAWYER 7 (Oct. 2013)
- *The Need for a Unified and Cohesive National Anti-SLAPP Law*, 91 OR. L. REV. 627 (2013)
- *Gambling in America's Senior Communities*, 8 MARQ. ELDER ADVISOR 343 (2007)
- *The Florida Supreme Court Dulls the Edge of Rule 1.420(e)*, 80 FLA. B.J. 39 (2006)
- *Condo Casino! Gambling in Florida Community Associations*, 79 FLA. B.J. 8 (2005)
- *The Other Election Controversy of Y2K: Core First Amendment Values and High-Tech Political Coalitions*, 82 WASH. U. L. Q. 143 (2004)
- *Getting to Yes With Terrorists*, 2002 L. REV. M.S.U.-D.C.L. 823. (2002)

- *Breaking Duverger's Law is not Illegal: Strategic Voting, the Internet and the 2000 Presidential Election*, 2001 UCLA J.L. & TECH. 6. (2001)
- *The Constitutionality of Online Vote Swapping*, 34 LOYOLA L.A. L. REV. 1297 (2001)

CNN LEGAL COLUMN

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ <i>We Don't Shoot People For Bigoted Views</i>, CNN, May 4, 2015 ▪ <i>Decision on Asian-American Band's Name is Wrong</i>, CNN, Apr. 23, 2015 ▪ <i>What's Wrong with Saying the Pledge in Arabic?</i> CNN, Mar. 23, 2015 ▪ <i>What We Risk When We Ban Racists Speech</i>, CNN, Mar. 20, 2015 ▪ <i>Why Schools Should Observe "Day of the Dude."</i> CNN, Mar. 6, 2015 ▪ <i>Should We Always Believe the Victim?</i> CNN, Dec. 7, 2014 ▪ <i>ESPN's Stephen Smith is Entitled to His Opinions</i>, CNN, Aug. 4, 2014 | <ul style="list-style-type: none"> ▪ <i>Why Redskins Decision is Wrong</i>, CNN, June 21, 2014 ▪ <i>Posting Elliot Rodger's Video is Legal, but is it Right?</i> CNN, May 29, 2014 ▪ <i>We Need a "Right to be Forgotten,"</i> CNN, May 15, 2014 ▪ <i>What Happened to Sterling was Wrong</i>, CNN, Apr. 30, 2014 ▪ <i>N.J. Texting Ruling is Not What You Think</i>, CNN, Aug. 30, 2013 ▪ <i>Chick-fil-A and Free Speech</i>, CNN, July 31, 2012 ▪ <i>It's Un-American to Silence Rush Limbaugh</i>, CNN, Mar. 12, 2012 |
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SPEAKING ENGAGEMENTS

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ European Law Students' Association Conference (<i>upcoming</i>) (Trieste, Italy May 2016) ▪ Internet Law Leadership Conference, <i>Anti-SLAPP Statutes and Litigation Strategies</i>, (Las Vegas, Nov. 19, 2015) ▪ European Law Students' Association Summer Law Institute, <i>Freedom of Expression and Morality-Based Impediments to the Enforcement of Intellectual Property Rights</i> (Trieste, Italy July 28, 2015) | <ul style="list-style-type: none"> ▪ European Law Students' Association Summer Law Institute, <i>Global Freedom of Expression and New Media, an American Perspective</i> (Trieste, Italy July 27, 2015) ▪ James Joyce School, <i>Joyce's Ulysses, an Unsung Hero in the Fight for Freedom of Expression</i>, (Trieste, Italy July 3, 2015) ▪ Virgin Islands Bar Association, <i>Keynote Speech – Anti-SLAPP laws and freedom of speech in the Virgin Islands</i> (US Virgin Islands Dec. 13, 2014) ▪ Virgin Islands Bar Association, <i>The Law and Ethics of Social Media</i>, (US Virgin Islands Dec. 13, 2014) |
|---|---|

- First Amendment Lawyers' Association, A *Comparative Analysis of Canadian and American Defamation Law* (Toronto, Canada July 2014)
- Beverly Hills Bar Association *Panel: Pornography, Coercion, and the Courts: The Rise and Fall of Copyright Trolling*, Discussion with Morgan Pietz on ethical enforcement of copyright and Prenda Law (Los Angeles, CA May 2, 2014)
- The Stanford Technology Law Review 2013 Symposium: *Privacy Challenges in the Internet Age*, Lecture on Internet Torts & Cybercrimes (Stanford, CA April 11, 2014)
- Above The Law Attorney@Blog Conference, Lecture on copyright, trademark, defamation, and general Internet issues to numerous attorneys and members (New York, NY Mar. 2014)
- First Amendment Lawyers' Association, Lecture on updates in defamation law and related litigation in prominent cases across the country (Philadelphia PA July 2013)
- Nevada Legislative Session 2013, *Drafted, lobbied, and successfully argued for the passage of a revised anti-SLAPP statute in Nevada and revision to proposed human trafficking law with potential First Amendment implications for production of adult entertainment* (Carson City, NV May 2013)
- Libertarian Party of Nevada Convention, Lecture on freedom of expression and First Amendment matters, including the rights of the adult entertainment industry (Las Vegas, NV Apr. 2013)
- First Amendment Lawyers' Association, Lecture on updates, development, and application on Anti-SLAPP statutes and defamation cases across the country (New Orleans, LA Feb. 2013)
- First Amendment Lawyers' Association, Lecture on updates, development, and application on Anti-SLAPP statutes across the country (Chicago, IL July 2012)
- CineKink Film Festival, Lecture on First Amendment and intellectual property issues in the adult entertainment industry (Las Vegas, NV June 2012)
- American Intellectual Property Law Association, Lecture on updates, development, and application on Anti-SLAPP statutes across the country (Austin, TX Spring Meeting 2012)
- First Amendment Lawyers' Association, Lecture on updates, development, application of Anti-SLAPP statutes (San Diego, CA Feb. 2012)
- First Amendment Lawyers' Association, Lecture on issues in BitTorrent litigation (Minneapolis, MN July 2011)
- First Amendment Lawyers' Association, Lecture on copyright litigation and the errors present in current anti-piracy litigation models (Washington, D.C. Feb. 2011)
- XBIZ LA Conference, Lecture on intellectual property law and piracy litigation issues (Los Angeles, CA Feb. 2011)
- InterNext Conference, Panel discussion concerning online adult entertainment issues, focusing on antipiracy litigation trends and strategies (Las Vegas, NV Jan. 2011)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (San Antonio, TX Feb. 2010)
- International Trademark Association, Table topics leader (Boston, MA May 2010)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (Vancouver, BC July 2009)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (New Orleans Feb. 2009)

- Adult Entertainment Expo, Lecture on intellectual property, brand management, free speech issues and section 2257 (Las Vegas, NV Jan. 2009)
- First Amendment Lawyers' Association, Lecture on U.S. trademark law and domain name disputes (San Francisco, CA July 2008)
- Seminole County Inns of Court, Lecture judges and lawyers on defamation law issues (Orlando, FL Feb. 10, 2008)
- The International Institute of Communications Annual Meeting, Lecture on US media law to an audience of international businesspeople, government officials, and academics. (Singapore Oct. 1–4, 2001)
- Friedrich Ebert Stiftung and Nanyang Technological University *Conference on "Media, Civil Society and Good Governance in Southeast Asia,"* Lecture on media law in the post-September 11th United States. (Singapore Nov. 7–9, 2001)
- Association for Education in Journalism and Mass Communication (AEJMC) southeast colloquium, Lecture on Internet law (Columbia, SC Mar. 8–10, 2001)

OTHER PUBLICATIONS

- *Adult Biz & the Law: Violations and the Violated*, XBiz, Jan. 23, 2015
- *Is It Legal to Shoot Porn in Your State?*, XBiz, Mar. 30, 2014
- *Copyright Ruling May have Implications for Adult Industry*, XBiz, Mar. 1, 2014
- *Reversal of Fortune in Taiwan for Porn Producers*, XBiz, Feb. 25, 2014
- *The Case for Relocating Porn Production to Las Vegas*, XBiz, Aug. 6, 2012
- *Challenging the Copyrightability of Porn*, XBiz, Apr. 19, 2012
- *Malign Neglect*, ADULT VIDEO NEWS, Jan. 2012
- *Are You Guilty If Pirates Use Your Internet?* TORRENTFREAK, Aug. 6, 2011
- *XXX Revenue Reporting?*, XBIZ WORLD, July 28, 2010
- *Standard Deviation: What's Obscene in an Online World?*, ADULT VIDEO NEWS, Feb. 1, 2010
- *A Domain by Any Other Name...*, ADULT VIDEO NEWS, Dec. 1, 2008
- *2257 Regs a Boon to Patriotic Adult Film Producers*, ADULT VIDEO NEWS, Jun. 2, 2005
- *Foreign Content and Section 2257*, XBiz, Aug. 4, 2005
- *Republicans Save US Jobs (unwittingly)*, XBiz, May 31, 2005
- *Commentary for Congress*, ADULT VIDEO NEWS, Mar. 2005
- *Kiffmeyer – Too Partisan for the Job?* MINN. LAW & POLITICS, Summer 2004
- *Copyright and the Clubhouse*, CONDO MANAGEMENT, Nov. 2003
- *Character Counts: Defamation Law for Community Associations*, COMMUNITY UPDATE, Jan. 2003
- *Copyright Issues for Free Fall Photographers*, SKYDIVING MAGAZINE, Oct. 2003
- *Neither is a Fish or a Bird (the Prisco Decision)*, 25 ACTIONLINE 4, (2003)
- *Satellite Dishes and Community Associations*, CONDO MANAGEMENT, (2003)
- *The Forgotten Electoral Controversy*, INTERMEDIA, Apr. 2001

TELEVISION & RADIO GUEST APPEARANCES

- CBS News, Roca Labs Case, (CBS Oct. 1, 2015)
- *The Daily Share: Discussing the Redskins Trademark Decision* (Headline News Network July 9, 2015)
- *Ralston Reports: Anti-SLAPP?* (Apr. 23, 2015)
- *Ralston Reports: First Amendment and SLAPP Cases* (Aug. 7, 2014)
- *Michael Smerconish Show: Sterling, Sam and Free Speech* (CNN May 17, 2014)
- *CNN Newsroom: Was Leak of NBA Owner's Rant 'Morally Wrong'?* (CNN May 1, 2014)
- *Legal View with Ashleigh Banfield: What's Next for Donald Sterling?; The First Amendment and a Technological Surveillance Society* (CNN Apr. 30, 2014)
- *Democracy Now!: Steubenville Rape Trial* (Feb. 2013)
- *CNN, Discussing the Steubenville Rape Case* (Feb. 2013)
- *Reason TV: Discussing Steubenville Rape Case* (Feb. 2013)
- *Crime, Inc.: Discussing Copyright Law* (CNBC Aug. 29, 2012)
- *NBC Las Vegas: Internet providers turn to attorneys to protect content* (KSNV July 25, 2013)
- *NBC Bay Area: Porn Copyright Trolls* (July 3, 2012)
- *National Public Radio: On the Media, Combating "Bad" Speech with More Speech* (Apr. 6, 2012)
- *KLAS-TV: Economic Diversity By Legalizing Marijuana* (Mar. 26, 2012)
- *State of Nevada, The End of Righthaven, (Nevada Public Radio Mar. 22, 2012)*
- *Michael Savage: First Amendment Attorney Speaks About Freedom of Speech* (Mar. 14, 2012)
- *Cyber Law and Business Report: Randazza, Righthaven, and Roger Williams* (Dec. 21, 2011)
- *Congress Weighs Law Against Some Lawsuits* (National Public Radio Apr. 2, 2010)
- *Cyber Harassment and the Law* (National Public Radio Mar. 3, 2009)
- *Fox 35 Orlando: Kids Can't Play Outside Condos* (Mar. 3, 2009)
- *Fox 35 Orlando: New Year's Festivities and the Law* (Dec. 30, 2008)
- *Fox 35 Orlando: Teacher to Blame Hormones* (Nov. 19, 2008)
- *Fox 35 Orlando: Target Mis-prices Car Seats* (Nov. 18, 2008)
- *Lisa Macci's The Justice Hour: Discussing new Sex Laws and The Theory of Intentional Sex Torts* (WWNN July 14, 2008)
- *The Curtis Sliwa Show, discussing the Bauer v. Wikipedia defamation case, and Section 230* (WABC: New York July 1, 2008)
- *Lisa Macci's The Justice Hour: Discussing the Connection Distribution case and Section 2257* (WWNN May 5, 2008)
- *Fox and Friends: The First Amendment and the "Lyrical Terrorist"* (Fox News Nov. 10, 2007)
- *Fox and Friends: Discussing Bradenton High School "Body Painting" Issue* (Fox News Oct. 18, 2007)
- *Lisa Macci's The Justice Hour: SLAPP suits and attorney ethics* (WWNN Jul. 2, 2007)

- *Fox and Friends: Discussing Don Imus' Comments about the Rutgers' Basketball Team* (Fox News Apr. 10, 2007)
- *Lisa Macci's The Justice Hour: Restrictions on Attorney Speech* (WWNN Jan. 22, 2007)
- *CNBC: On the Money, Discussing online gambling and prosecutions* (Jan. 16, 2007)
- *Domain Masters: Discussing domain law, gaming law, and First Amendment law with Monte Cahn.* (Dec. 22, 2006)
- *Bess Kargman: "Blogsuits" What Effect will Libel Threat Have on the Blogosphere?* (Oct. 23, 2006)
- *The Lineup: Video Games and the First Amendment* (Fox News Sept. 30, 2006)
- *The Lineup: First Amendment and Prisons* (Fox News Sept. 9, 2006)
- *Heartland with John Kasich: First Amendment Issues and Public Schools* (Fox News Dec. 30, 2005)
- *Dayside: Commentary on Church-State Issues* (Fox News Nov. 9, 2005)
- *Heartland with John Kasich: Commentary on Separation of Church and State* (Fox News Oct. 15, 2005)
- *Live: Commentary and Debate on Online Vote Pairing* (Fox News Oct. 17, 2004)
- *Bob Frantz Show: News/Talk 1370: Discussing Election Law Issues* (Oct. 10, 2004)

REPORTED CASES

- *Tobinick v. Novella*, 2015 U.S. Dist. LEXIS 150083 (Sept. 30, 2015)
- *Roca Labs, Inc. v. Consumer Op. Corp.*, 2015 U.S. Dist. LEXIS 143107 (Oct. 21, 2015)
- *Tobinick v. Novella*, 43 Media L. Rep. 1803 (S.D. Fla. June 4, 2015)
- *NML Capital, Ltd. v. Republic of Argentina*, 2015 U.S. Dist. LEXIS 20722 (D. Nev. Feb. 19, 2015)
- *Roca Labs, Inc. v. Consumer Opinion Corp.* 2014 U.S. Dist. LEXIS 161132 (Oct. 28, 2014)
- *Chevaldina v. R.K./FL Mgmt.*, 133 So. 3d 1086 (Fla. 3d DCA 2014)
- *Expert Witness Case: Calista Enters. v. Tenza Trading*, 43 F. Supp. 3d 1099 (D. Or. 2014)
- *Jones v. Dirty World Entm't Recordings*, 755 F.3d 398; 42 Media L. Rep. 1984 (6th Cir. 2014). Counsel for amicus curiae.
- *Comins v. VanVoorhis*, 135 So. 3d 545; 42 Media L. Rep. 2021 (Fla. 5th DCA 2014)
- *Liberty Media Holdings v. Henson*, 516 F. App'x. 673 (9th Cir. 2013)
- *Righthaven LLC v. Hoehn*, 716 F.3d 1166 (9th Cir. 2013)
- *Rakofsky v. Washington Post*, 971 N.Y.S.2d 74, 2013; 41 Media L. Rep. 1863 (N.Y. 2013)
- *Katz v. Chevaldina*, 900 F. Supp. 2d 1314 (S.D. Fla. 2012)
- *AIRFX.com v. AirFX*, 2012 U.S. Dist. LEXIS 31541, 2012 WL 780941 (D. Ariz. 9 Mar. 2012)
- *Liberty Media Holdings v. Vinigay.com*, 2012 U.S. Dist. LEXIS 24978, 2012 WL 641579 (D. Ariz. 28 Feb. 2012)
- *Sanchez v. Joel*, 94 So. 3d 594, (Fla. 2d DCA 2012)
- *Liberty Media Holdings, LLC v. BitTorrent Swarm*, 277 F.R.D. 669 (S.D. Fla. 2011)
- *Righthaven v. Hoehn*, 792 F. Supp. 2d 1138, (D. Nev. 2011)

- *Righthaven v. Wolf*, 813 F. Supp. 2d 1265, (D. Colo. 2011)
- *Doe v. Fry*, 22 Fla. L. Weekly 378, (M.D. Fla. 2010)
- *Ricks v. BMEzine.com*, 727 F. Supp. 2d 936, (D. Nev. 2010)
- *Internet Solutions v. Marshall*, 39 So. 3d 1201 (Fla. 2010)
- *Internet Solutions v. Marshall*, 611 F.3d 1368 (11th Cir. 2010)
- *Internet Solutions v. Marshall*, 557 F.3d 1293 (11th Cir. 2009)
- *Solid Host, NL v. Namecheap, Inc.*, 652 F. Supp. 2d 1092 (C.D. Cal. 2009)
- *Porter v. Bowen*, 496 F.3d 1009 (9th Cir. 2007)
(Not counsel in case, but my law review article was cited in the decision)
- *Salle v. Meadows*, 2007 U.S. Dist. LEXIS 92343, 2007 WL 4463920 (M.D. Fla. Dec. 17, 2007)

ADMITTED TO PRACTICE

States

- Massachusetts (2002)
- Florida (2003)
- California (2010)
- Arizona (2010)
- Nevada (2012)
- Province of Ontario (pending admission)

Federal Courts

- United States Supreme Court
- 1st Circuit Court of Appeals
- 4th Circuit Court of Appeals
- 6th Circuit Court of Appeals
- 7th Circuit Court of Appeals
- 9th Circuit Court of Appeals
- 10th Circuit Court of Appeals
- 11th Circuit Court of Appeals
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court - District of Arizona
- U.S. District Court - Northern District of California
- U.S. District Court - Eastern District of California
- U.S. District Court - Central District of California
- U.S. District Court - Southern District of California
- U.S. District Court - District of Colorado
- U.S. District Court - Middle District of Florida
- U.S. District Court - Northern District of Florida
- U.S. District Court - Southern District of Florida
- U.S. District Court - Northern District of Ohio
- U.S. District Court - District of Massachusetts
- U.S. District Court - Eastern District of Michigan
- U.S. District Court - District of Nevada
- U.S. District Court - Northern District of Texas
- U.S. District Court - Eastern District of Wisconsin

EXHIBIT 12

Laffey Matrix

LAFFEY MATRIX

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No.

00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 13

TMZ Article

Published July 30, 2015

[<http://www.tmz.com/2015/07/30/dan-bilzerian-electric-zoo-music-festival-half-a-million-vip/>](http://www.tmz.com/2015/07/30/dan-bilzerian-electric-zoo-music-festival-half-a-million-vip/)

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[Rockin' Out To Selena Gomez's New Video](#)



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[Mystery Guy Identified ... I'm with Kanye!](#)

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Dan Bilzerian -- Drops \$650K On VIP Wristband for Rave

Dan Bilzerian Drops \$650K On VIP Wristband for Rave

[9.9k](#)

7/30/2015 8:34 AM PDT BY TMZ STAFF

Exclusive Details



Electric Zoo festivalgoers who dropped \$439 for a VIP wristband have nothing on Instagram kingpin **Dan Bilzerian** ... because he's taking VIP to a new stage ... literally.

Bilzerian dropped \$654,400 on his Amex Black card for a VIP deck at New York's Electric Zoo ... one of America's premier dance music festivals.

We're told this isn't your average VIP experience ... Electric Zoo is building out a deck for Bilzerian with tables that will hold up to 200 of the playboy's guests. Most of the bill is liquor-related ... which will total up to \$500k.

The sweetest part of the deal ... the personal firework/pyro controller that he'll be able to launch whenever he's feeling that epic techno build to headliners **Above & Beyond** and **Chemical Brothers**.

In other words ... it's good to be friends with Bilzerian.



Instagram

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See also



- [Dan Bilzerian -- Lifestyle Could Cost Him Millions in Face Kick Lawsuit](#)



- [Instagram's Biggest Playboy Dan Bilzerian Throws Porn Star Off Roof](#)

[VIDEO]

[Dan Bilzerian](#) [Exclusive Details](#) [Party All The Time](#) [Music](#)

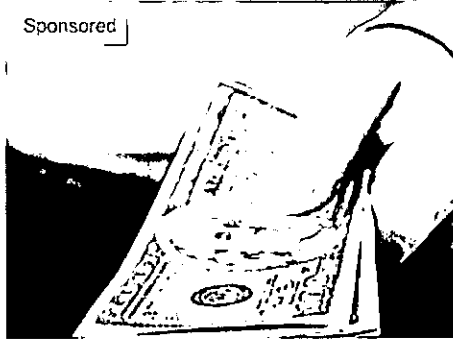
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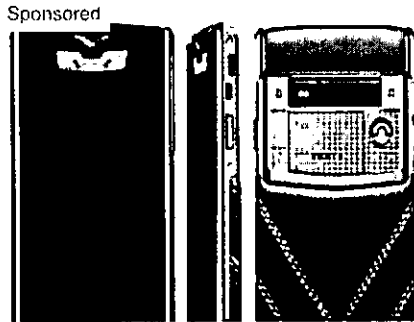
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Prince Amukamara -- We Have Dance Battles ... In Giants Locker Room

Deion Sanders' Ex-Wife, Pilar Sanders: America Can't Touch Me ... I Answer to Moroccan Law Now!

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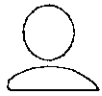
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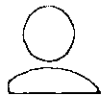
Join the discussion...



Bad reporting · 4 months ago

This is fake he didn't do this

^ v · Reply · Share



sockmonkeyninja · 4 months ago

Biggest D bag on earth

1 ^ v · Reply · Share



Wolfgang → sockmonkeyninja · 4 months ago

Kayne is...

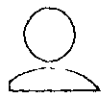
^ v · Reply · Share



IMHO · 4 months ago

He makes Armenians look bad. As does his father.

^ v · Reply · Share



Amanda Black · 4 months ago

Ridiculous, superficial, man-child caveman.

2 ^ v · Reply · Share



Angel M · 4 months ago

Electric Zoo is officially dead.

^ v · Reply · Share



Abby · 4 months ago

The man is downright disgusting.

3 ^ v · Reply · Share



The Man They Call Louis · 4 months ago

Unreal...can't hate on him. Must be nice being able to do whatever, whenever and travel like that.

2 ^ v · Reply · Share



SisterRottenCrotch · 4 months ago

I hope this feminine hygiene product blows himself up

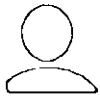
3 ^ v · Reply · Share



BMC · 4 months ago

I tried to hate him but I can't. I'm just jealous. Grr!

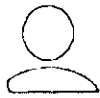
2 ^ v · Reply · Share



jackie123 · 4 months ago

I hate to think of this guy being in charge of fireworks/Pyro controls. He might fire it at somebody and hurt them because that's just the kind of man he is!

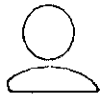
4 ^ v · Reply · Share ›



GreatGazoo · 4 months ago

I treated Dan's mom like stiffers mom

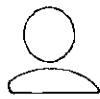
2 ^ v · Reply · Share ›



GreatGazoo · 4 months ago

Have you ever seen this guy without a beard? It's like Marilyn Manson without makeup! No lie

4 ^ v · Reply · Share ›



GreatGazoo · 4 months ago

Friends and Bilzerian is an oxymoron. I've decided

2 ^ v · Reply · Share ›



Ashley Nicole Duke → **GreatGazoo** · 4 months ago

Nik Richie? Lol

1 ^ v · Reply · Share ›



lawrence1 · 4 months ago

Had me at Chemical Brothers

1 ^ v · Reply · Share ›



Redickutarded · 4 months ago

This guy is short. He's like 5'6".

2 ^ v · Reply · Share ›



lawrence1 → **Redickutarded** · 4 months ago

and gets more chicks than you

1 ^ v · Reply · Share ›



shawna evettex → **lawrence1** · 4 months ago

BUYS more chicks than him.

^ v · Reply · Share ›



Redickutarded → **lawrence1** · 4 months ago

This is true...

^ v · Reply · Share ›



AnnaBelle → **lawrence1** · 4 months ago



Only because he pays for them.

10 ^ v · Reply · Share ›



Nito123 → AnnaBelle · 4 months ago

Money talks but we all know how he gets his

^ v · Reply · Share ›



Ajew · 4 months ago

This guy is awesome

^ v · Reply · Share ›



bart4u · 4 months ago

This guy is a creep.

2 ^ v · Reply · Share ›



StarsWrappedInYourHair → bart4u · 4 months ago

I still don't understand his significance.

3 ^ v · Reply · Share ›



Amanda Black → StarsWrappedInYourHair · 4 months ago

He's a rich man who degrades women. Media gold.

1 ^ v · Reply · Share ›



Nito123 → StarsWrappedInYourHair · 4 months ago

How does he still have a lot of money

^ v · Reply · Share ›



Danny Mellman · 4 months ago

How much is this douche paying you, TMZ? His father was nothing more than a common thief, amassing a fortune by grifting the working man. Then his sleazy old man gave everything to the kids before he got busted. Good thing he's rotting in hell now, where he BELONGS! He is also a pretend navy seal. Money just can't buy you class, especially when that money was STOLEN from others.

7 ^ v · Reply · Share ›



Lukas → Danny Mellman · 4 months ago

Sad thing is that there is no hell for him to go to.

^ v · Reply · Share ›



Danny Noonan · 4 months ago

Oooo man! You wait till I see you Dan..... I'm gonna reef on that fake douche beard !

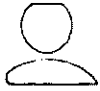
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Stand Back I Got This · 4 months ago

12/1/2015

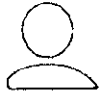
Dan Bilzerian -- Drops \$650K On VIP Wristband for Rave | TMZ.com



Stand Back I Got This · 4 months ago

who? again i don't know who this loser is but i want him off my internets NOW

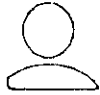
5 ^ v · Reply · Share ›



Pandy · 4 months ago

Misogynistic Neanderthal

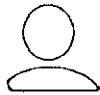
5 ^ v · Reply · Share ›



Areader · 4 months ago

Trust fund baby!

1 ^ v · Reply · Share ›



FlancrestEnterprises · 4 months ago

I would love to hear how this loser spent 600K on a charity instead of women, alcohol or a club for once.

That would actually be shocking.

5 ^ v · Reply · Share ›



Nik Richie · 4 months ago

This is 100% false/fake. I pulled from TheDirty. Dan's camp is desperate.

8 ^ v · Reply · Share ›



Larrybird_91 → Nik Richie · 4 months ago

Real jurnalism at it finest. D.A. Strong all day.

2 ^ v · Reply · Share ›



AJ2 · 4 months ago

I would rather spend that money on a house.

1 ^ v · Reply · Share ›



Rhiannon · 4 months ago

He must keep his local clinic funded. Nothing worse than an overcompensating 5"4 d0ūche with money and the women who will become a worthless possession for a ride on a private plane.

3 ^ v · Reply · Share ›



Guest → Rhiannon · 4 months ago

I wonder how many abortions he has paid for ??

^ v · Reply · Share ›



This comment was deleted.



AnnaBelle → Guest · 4 months ago



Pimps make money off girls. Dan pays for them.....making him NOT a pimp. Idiot.

2 ^ v · Reply · Share ›



bart → AnnaBelle · 4 months ago

He is more of like a client. Do you think any of these girls would hang around this guy if he was poor. I would think not.

1 ^ v · Reply · Share ›



Richard Rinker → Guest · 4 months ago

anybody can play if they wanna paycalled a john

1 ^ v · Reply · Share ›



ForgetTheName · 4 months ago

Deeeee-baaaaggg

^ v · Reply · Share ›



Shay Edwards · 4 months ago

He is not a kingpin, he is a short, tiny D-bag. I went to high school with this fool and I can see the mentality remains. He's pointless.

13 ^ v · Reply · Share ›



AJ2 → Shay Edwards · 4 months ago

LOL.

1 ^ v · Reply · Share ›



hollowx · 4 months ago

And thus concludes the latest douche-bag report...stay tuned folks more to come...

2 ^ v · Reply · Share ›



Jay W. · 4 months ago

Good for him...

2 ^ v · Reply · Share ›



WWEfanatic22 · 4 months ago

Is this the dude that threw a woman off a roof into a pool?

5 ^ v · Reply · Share ›



Guest → WWEfanatic22 · 4 months ago

He broke her foot I think? Wonder if she's still hanging around him lol She probably is SMH

^ v · Reply · Share ›

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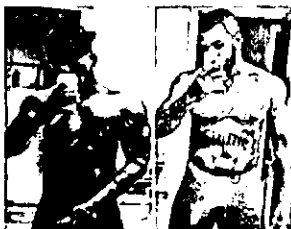
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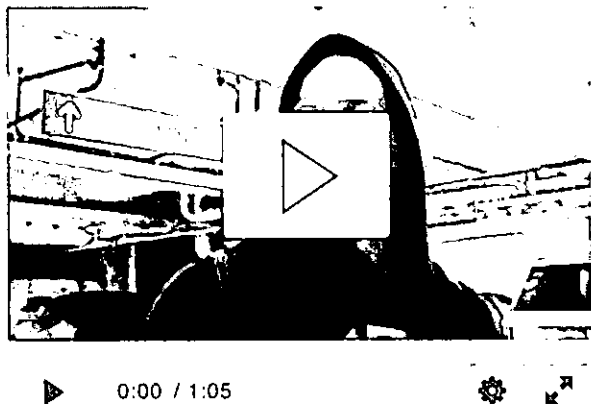


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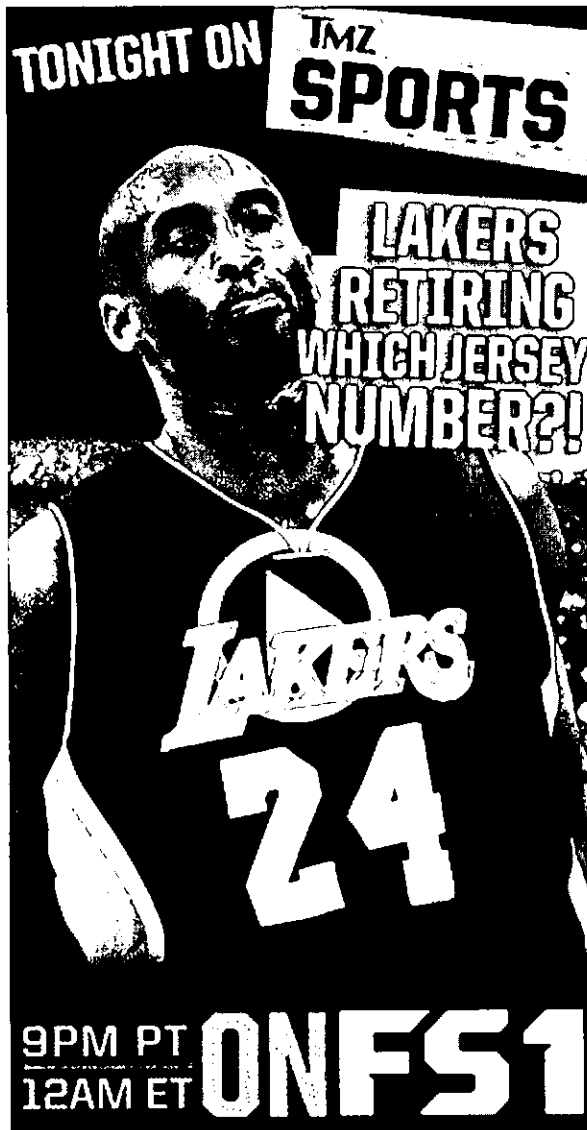
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TMZ Sports



Yasiel Puig
Denies Striking Sister
... 'Big Misunderstanding'

L.A. Dodgers star Yasiel Puig is adamant he never laid a hand on his sister at a Miami bar last week ... claiming they did get into an argument, but things NEVER got physical. Puig's...

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11/28/2015 | 11:58 AM PDT



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11/27/2015 | 1:00 AM PDT



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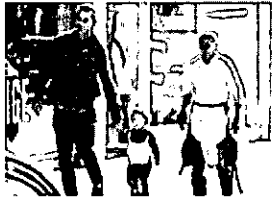
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9/23/2015 | 9:01 AM PDT



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STREET FIGHT ... KO's Man In Boston

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Gavin Rossdale
Out with the Nanny ... But Not THAT One

11/24/2015 | 3:51 PM PDT

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