

CLERK OF THE COURT

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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 REPLY IN SUPPORT OF MOTION
FOR COSTS, ATTORNEYS' FEES, AND
DAMAGES UNDER NRS 41.670**

Defendant, TMZ Productions, Inc. ("TMZ"), files its reply in support of its Motion for Costs, Attorneys' Fees, and Damages Under NRS 418.670.

1.0 INTRODUCTION AND FACTUAL BACKGROUND

Plaintiff Dan Bilzerian's ("Bilzerian") Opposition to TMZ's Motion for Costs, Attorneys' Fees, and Damages (the "Fee Motion") fails to present any evidence or authority suggesting that the motion should not be granted in its entirety.

Bilzerian sued TMZ for publishing an accurate description of a lawsuit he filed against The Dirty. TMZ filed its Anti-SLAPP Motion, which the Court granted.

The Court found that TMZ's article did not contain any false statements and TMZ in fact did a commendable job in reporting on the underlying facts of Bilzerian's original Complaint. (See transcript of Nov. 17, 2015 hearing on Anti-SLAPP Motion, attached as **Exhibit 1**, at 49:21-50:17.) The Anti-SLAPP statute provides for mandatory attorneys' fees and costs. See NRS 41.670(1). The Court also has it within its discretion to award up to \$10,000 in damages, and there is good cause for the Court to do so here.

In moving for fees, TMZ provided complete records of the hours its attorneys expended and their hourly rates, which was supported by un-rebutted expert testimony as well as client testimony. (See Fee Motion at *Exhibits 5, 6, 7, & 8*.) Bilzerian provided no countervailing evidence at all. Instead, he simply tries to re-litigate the SLAPP issue, and makes other unsupported claims and hyperbolic broadsides against counsel. None of this is sufficient to deny TMZ its mandatory fee award, and none of it should persuade the Court to decline to use its authority to impose a \$10,000 statutory award.

2.0 ARGUMENT

TMZ is entitled to all of its costs and attorneys' fees incurred in connection with the entire suit, not just those in connection with the Anti-SLAPP Motion. When a plaintiff's entire suit is dismissed by an Anti-SLAPP motion, the defendant is entitled to all fees expended, not just those directly connected to the motion. See *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)).¹ Bilzerian cites to *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi*, 141 Cal. App. 4th 15, 21 (2006) for a contrary proposition, but he appears to have misread the case.

¹ It is appropriate for this Court to rely upon California case law when interpreting Nevada's Anti-SLAPP statute. See *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 756 (Nev. 2009) ("we consider California caselaw because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute").

The Court in *Wanland* dealt with the question of whether fees incurred in defending a fee award following a successful Anti-SLAPP motion were recoverable under the Anti-SLAPP statute. *Id.* at 22. The Court found that they were. See *id.* It sidestepped the question of whether fees incurred on litigation matters other than an Anti-SLAPP motion were recoverable, only assuming *arguendo* that they were not. See *id.* at 21.

As a matter of policy, it makes perfect sense that a successful Anti-SLAPP defendant would collect a full fee award. Indeed, when a case is dismissed under the Anti-SLAPP statute, this constitutes not only an adjudication on the merits of the claim, but also a finding that the entire case was an unsupportable attack on the defendant's free speech rights. NRS 41.660(5). Because this lawsuit should never have been filed in the first instance, the Plaintiff should be held responsible for all of the consequences, including attorney's fees and costs incurred by TMZ, that flowed from his ill-considered claims.

2.1 The Court Should Use a Lodestar Method to Calculate a Fee Award

Nevada courts consider four factors in 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. Bezer 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)).

The lodestar method of calculation is "the guiding light of [Nevada's] fee-shifting jurisprudence" and creates a strong presumption that a lodestar figure is a reasonable fee. *Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 606 (Nev. 2007) (quoting *Burlington v. Dague*, 505 U.S. 557, 559, 562 (1992)); see also *Humana*, 105 Nev. at 590 (stating that "[t]here is a strong presumption that the lodestar rate is reasonable").

There is thus nothing "incredible" (Opposition at 8) about TMZ's request for a fee award based on the reasonable, customary rates charged by its counsel as opposed to the discounted rates actually paid by TMZ.² The Court should use the lodestar method of calculation as a baseline in determining a fee award and then adjust that amount up or down if it feels any modification is warranted.

2.2 The Hours Worked by TMZ's Counsel Were Reasonable

All the hours TMZ spent on this case were reasonable. It prepared an answer, attended an early case conference, which was premature, but insisted upon by Bilzerian, filed an Anti-SLAPP motion and reply in support thereof, and

² As detailed in TMZ's Fee Motion, TMZ's counsel worked on this case at discounted rates, paying a total of \$33,813 in attorneys' fees. When the number of hours worked is multiplied by the customary rates of TMZ's attorneys, however, the total fee amount is \$43,555.

opposed Bilzerian's attempt to impose a gag order that, if successful, would have been binding on TMZ.³

As already explained in the Fee Motion, all of these filings by TMZ were necessary. Bilzerian complains that TMZ could have reduced its attorneys' fees had it simply filed an Anti-SLAPP motion as its responsive pleading. The argument that TMZ was required to move even more quickly to dismiss Bilzerian's frivolous lawsuit than it did is unsupported, amounting to nothing more than disagreement with statutorily mandated deadlines and quibbling with a litigation strategy clearly contemplated by Nevada law.

NRS 41.660(2) requires a defendant to file an Anti-SLAPP motion, if at all, **within 60 days after being served with the complaint.** Meanwhile, an answer is due in 20 days. Nothing in the statute requires a defendant to serve an Anti-SLAPP motion as its initial pleading, even if the defendant hopes from the outset to file one eventually. In fact, it is not at all unreasonable for a well-crafted Anti-SLAPP motion clearly to take in excess of 20 days, as the Court can see from the billing records in this case. The fact that the statute allows for a defendant to file an Anti-SLAPP motion 40 days after filing an answer is a clear indication that the Legislature contemplated a defendant filing an initial responsive pleading followed by an Anti-SLAPP motion. An Anti-SLAPP motion requires the preparation and presentation of evidence, making it much more time-

³ Bilzerian claims that TMZ's work on opposing his attempt to impose a gag order was unnecessary, describing his application as "an unrelated dispute between Plaintiff and the Dirty relating to disclosure of communications between counsel regarding draft documents." (Opposition at 7.) As the record in this case reflects, this is simply incorrect. Bilzerian's Order to Show Cause ("OSC") sought two forms of relief: (i) to hold The Dirty and Nik Riichie in contempt; and (ii) to generally impose a protective "gag" order on *all* Defendants including TMZ. Indeed, the OSC generally asked for a "Protective Order, restraining *Defendants*" (which included TMZ), and the draft protective order attached as Exhibit 2 to the OSC also expressly bound TMZ. (OSC at 11; Exhibit 2.) TMZ's opposition to this attempt at censorship-by-litigation was entirely necessary. Bilzerian could have avoided this fee liability had he not filed a baseless motion.

consuming to brief than an answer or a standard motion to dismiss under NRCPC 12(b)(5).

There is thus no significance to the fact that TMZ filed an answer before filing its Anti-SLAPP Motion, as this was entirely proper. TMZ was under no obligation to rush to file a potentially incomplete Anti-SLAPP motion to lessen Bilzerian's fee liability for filing a baseless action.⁴ In fact, if Bilzerian actually believed that the matter should have been dismissed earlier, this was something entirely in his control. He had the opportunity to stipulate to the Anti-SLAPP motion immediately after it was filed, when the fees incurred were significantly less than they are today. He did not do so. Instead, he doubled down, arguing that the Anti-SLAPP motion was, itself, frivolous. (See Plaintiff's Opposition to Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 at 16.) For a Plaintiff to file a frivolous claim, refuse to dismiss that claim when its flaws were exposed, and then complain that the Defendant did not win quickly enough, is disingenuous.

As for TMZ's fees incurred in connection with the early case conference, Bilzerian has only himself to blame. Counsel for Bilzerian insisted on holding a premature early case conference, a fact acknowledged by his counsel during the conference. (See Declaration of Ronald D. Green ["Green Decl."],

⁴ Bilzerian notes at a few points in his Opposition that it was somehow inappropriate for TMZ not to notify his counsel that it was planning to file an Anti-SLAPP motion. First, any reasonable attorney in Nevada should have anticipated that **filing a defamation lawsuit against a media company** would provoke an Anti-SLAPP motion. Nevertheless, does Bilzerian expect this Court to believe that calling Bilzerian's attorneys and warning them that an Anti-SLAPP motion was coming would have ended the case? When TMZ filed its motion, Bilzerian not only opposed it, but argued that it was such a frivolous motion, that TMZ should have been required to pay *his* fees in opposing it. (See Anti-SLAPP Opposition at 16.) In that document, Bilzerian argued "*the Motion must be denied in its entirety, and Plaintiff shall be awarded his reasonable attorneys' fees and costs in responding to the Motion.*" Even more aggressively, Bilzerian argued that not only should the motion be denied, but that TMZ should be punished for having the temerity to file it! (See Opposition at 16.) ("to punish and deter TMZ from filing a similar motion in another case, wasting judicial resources, Plaintiff respectfully requests that it be awarded \$10,000, as well as any additional relief the Court deems proper.") Given Bilzerian's scorched-earth opposition, in response, the notion that he would have simply walked away had TMZ given advance notice of its Anti-SLAPP intentions is preposterous.

1 attached as **Exhibit 2**, at ¶¶4-5.) TMZ did not want to attend. But, Bilzerian filed
 2 this matter, and Bilzerian pressed the matter. The fees incurred are now self-
 3 inflicted wounds.

4 Bilzerian further asserts that TMZ's counsel spent too much time
 5 researching applicable law, but fails to elaborate on this line of argument. Just
 6 as Bilzerian complained that TMZ's reporting was too detailed for his liking, he
 7 now complains that TMZ's counsel's work on this case was similarly too detailed.
 8 Case law is not static. And TMZ's counsel does not simply work from memory
 9 when important First Amendment issues are at stake. Professional diligence and
 10 updating legal research is no vice, as Bilzerian seems to suggest.

11 Bilzerian appears to intentionally distort the number of hours spent on
 12 research, as he claims that TMZ's counsel incurred \$3,617 in billing on
 13 researching Nevada's Anti-SLAPP statute. But this amount is for the *entirety* of
 14 fees in connection with legal research. (See Opposition at 7.)⁵ He does not
 15 explain how this amount is excessive for preparing a motion referring primarily to
 16 out-of-state case law.

17 Bilzerian is responsible for the amount of the billing incurred in this case.
 18 When TMZ filed its motion, Bilzerian fought it, seeking fees and a determination
 19 that the motion itself was frivolous. (See Footnote 4, *supra*.) Then, when the
 20 Anti-SLAPP motion was successful, Bilzerian refused to resolve the fee issue
 21 without involving the Court. This required the preparation of the Fee Motion and
 22 the Reply in support of it. The total amount of attorneys' fees incurred in
 23 connection with the Fee Motion, which is recoverable as part of NRS 41.670's
 24 mandatory fee award,⁶ is \$43,555.⁷ Again, Bilzerian has only himself to blame for

25 _____
 26 ⁵ The Court should also note that the majority of billing on legal research was not conducted by
 Mr. Randazza, but by an associate who bills at half his hourly rate.

27 ⁶ See *Wanland*, 141 Cal. App. 4th at 21.

⁷ This is the lodestar fee amount. The amount actually paid by TMZ for this work is \$33,813.

the size of the requested fee award, since he could have stopped the bleeding at any time.

As explained in greater detail in its Fee Motion, TMZ's attorneys worked 95.4 hours on this case, and support staff worked 15.5 hours on this case. Bilzerian has provided no supported argument as to why any of these hours are unreasonable, nor has he presented any reduction in these hours that he claims is appropriate. In support of his position he provides neither expert testimony nor case law, only attorney argument. Without a competent refutation of the evidence provided by TMZ, the Court should find that the hours expended are reasonable and use them in determining a proper lodestar amount.

2.3 TMZ's Attorneys' Rates are Reasonable

As explained in greater detail in TMZ's Fee Motion, attorney Marc Randazza bills at a customary rate of \$650/hour (discounted to \$520 for this case), attorney Ronald Green bills at a customary rate of \$475/hour (discounted to \$380), attorney Alex Shepard bills at a customary rate of \$325/hour (discounted to \$260), paralegal Trey Rothell bills at a customary rate of \$150/hour (discounted to \$140), and Danielle Diaz bills at \$50/hour. The reasonableness of these rates is supported by the quality of the work performed and the experience of TMZ's attorneys, as noted in the declarations of attorneys Wayne Smith, Mark Hinueber, and F. Christopher Austin, as well as the Laffey Matrix. (See *Exhibits 6-8 and 12* to Fee Motion.)

Rather than attempting to refute any of TMZ's evidence with evidence of his own, Bilzerian simply complains that Mr. Randazza's customary rate is too high.⁸ To support this argument, Bilzerian claims that no one at his counsel's firm bills at over \$500/hour (again, without providing any evidence of this). Even

⁸ While Bilzerian claims that all of TMZ's customary billing rates are \$100 too high, he only provides argument regarding Mr. Randazza's rates.

1 assuming this is true, it is immaterial. Mr. Randazza customarily bills at 30% more
 2 than the Plaintiff's counsel, and it is submitted that an examination of the work
 3 product and results in this case does not immediately suggest that a 30% higher
 4 rate is entirely unwarranted. Nevertheless, even if Mr. Randazza billed at the
 5 same rate as Holley Driggs, this would mean a reduction in the lodestar fee
 6 amount of a mere \$4,100, and the actual fees paid of \$548. In other words, the
 7 full amount requested at lodestar is \$43,555. If Bilzerian's argument is to be
 8 accepted, then that would be reduced to \$39,455. On the other hand, if the
 9 Court is awarding fees paid, and not lodestar, then the Court could accept
 10 Bilzerian's argument, and reduce the fee award by \$548 – hardly an amount
 11 worth briefing over.

12 Bilzerian has failed to provide any authority or evidence to support his
 13 assertion that TMZ's counsel's rates are unreasonable. Accordingly, TMZ's actual
 14 fees incurred of \$33,813 are reasonable, as is its lodestar amount of \$43,555.

15 **2.4 TMZ Should Be Awarded \$10,000 in Statutory Damages**

16 NRS 41.670(1)(b) provides for a discretionary award to a successful Anti-
 17 SLAPP defendant of up to \$10,000 in statutory damages. The purpose and
 18 history of the statute make it clear that this award is meant to deter frivolous
 19 SLAPP suits, such as the one Bilzerian filed here. In fact, even Bilzerian's own
 20 counsel now tacitly concedes that the action was entirely without basis,
 21 asserting that it would have dismissed the action upon TMZ's mere request. This
 22 case, therefore, presents a prime example of where the deterrent effect of the
 23 \$10,000 statutory damages penalty should be applied.

24 In attempting to avoid statutory damages, Bilzerian argues that TMZ has
 25 provided no evidence of any improper motive on his part or any desire to
 26 silence the media. This is untrue; the evidence establishing Bilzerian's motives is
 27 clear and already in the record. He is a multi-millionaire public figure, as

1 established by Exhibits 1-12 to TMZ's Anti-SLAPP Motion. He filed a lawsuit against
 2 a media entity for accurately reporting on a lawsuit that he filed against Co-
 3 Defendants. (See Amended Complaint, *passim*; see also Exhibits 13 and 14 to
 4 Anti-SLAPP Motion.) He never had any articulable claim against TMZ, and yet he
 5 filed this suit anyway; nothing in Bilzerian's Opposition or at the November 17
 6 hearing came close to establishing a cause of action against TMZ. Bilzerian
 7 further showed his censorious tendencies when he attempted to impose a gag
 8 order against Defendants in response to a passing mention of this lawsuit made
 9 by TMZ's Co-Defendants. (See Bilzerian's Motion for Order to Show Cause and
 10 for Protective Order; see also Bilzerian's Supplement to Motion for Order to Show
 11 Cause and for Protective Order.) TMZ is not required, as Bilzerian suggests, to
 12 produce evidence that Bilzerian conceded before the case was filed that he
 13 knew he was going to lose, and if that degree of evidence were required, it
 14 would make a mockery of the \$10,000 provision and it may as well be repealed.

15 Bilzerian urges the Court to adopt a "frivolous and vexatious" standard in
 16 determining whether statutory damages are warranted here based on the 2013
 17 statute's legislative history. (See Opposition at 5.) This argument, however, is
 18 based upon a clear misreading of the legislative history. The portion of the
 19 March 28, 2013 hearing testimony Bilzerian cites to, discussing the "frivolous or
 20 vexatious" standard, is concerned with NRS 41.670(2)-(3), which provides that if
 21 a **defendant** brings a frivolous or vexatious Anti-SLAPP motion, it may be
 22 penalized up to \$10,000 in statutory damages. (See Senate Committee on
 23 Judiciary hearing on Nev. SB 286 (Mar. 28, 2013), attached as **Exhibit 3**, at 15.)
 24 The legislature did not discuss applying this standard in determining whether a
 25
 26
 27

SLAPP *plaintiff* should be subject to a \$10,000 statutory damages award when his claims are dismissed under the statute.⁹

Furthermore, the statute itself does not impose a “frivolous or vexatious” standard on this determination, instead simply providing that the court “may award” this amount. NRS 41.670(1)(b). The reasoning for this is clear: the Legislature does not wish to chill defendants’ filing of Anti-SLAPP motions when appropriate, and thus it created a high evidentiary burden for assessing fees and damages against SLAPP defendants. (See **Exhibit 3**, hearing transcript, at 14-15.)

These same concerns do not animate the discussion of whether a successful Anti-SLAPP movant should be entitled to an award of statutory damages. By failing to display even minimal merit, there is a strong presumption that a losing SLAPP plaintiff brought his suit in bad faith. The weakness of Bilzerian’s case, coupled with his censorious litigation tactics, only strengthens this presumption. While an award of \$10,000 in damages may only amount to a pinprick to Bilzerian,¹⁰ this is the most the Court is allowed to grant TMZ and serves the deterrent purpose of NRS 41.670.

Bilzerian’s Amended Complaint is the paradigm of a SLAPP suit. He may claim that he filed this suit with pure intentions, but his actions in this litigation have spoken loudly, and clearly indicate that this is untrue. The Court should take this opportunity to admonish him and other censorious litigants like him by

⁹ The Court should recall that Bilzerian attempted to invoke this portion of the statute in opposing the Anti-SLAPP motion. (See Footnote 4, *supra*.) Accordingly, he can not seriously contend now that he is unfamiliar with it.

¹⁰ Bilzerian at one point argues that the wealth of a SLAPP plaintiff is irrelevant in deciding whether to award statutory damages under NRS 41.670(1)(b). (See Opposition at 6.) Intuitively, this is nonsensical; a wealthy plaintiff who can sustain multiple SLAPP suits is less likely to be deterred merely by a fee award than a SLAPP plaintiff of lesser means. He also argues that there is no evidence of his wealth, seemingly oblivious to the hundreds of pictures of himself surrounded by money, private jets, military hardware and yachts on his Instagram profile.

granting TMZ a maximum statutory damages award of \$10,000 pursuant to NRS 41.670(1)(b).

3.0 CONCLUSION

For all of the foregoing reasons, the Court should grant TMZ's Fee Motion. The Court should apply the lodestar method of fee calculation in determining the total fee award to TMZ, namely multiplying the number of hours worked by TMZ's counsel on this case and multiplying that amount by the respective customary hourly rates of TMZ's attorneys. It should also grant TMZ a maximum statutory damages award of \$10,000 under NRS 41.670(1)(b). If the Court is not inclined to use the lodestar method of calculation, however, preferring to use the amounts actually paid by TMZ, then at the bare minimum it should award TMZ the total fees and costs it incurred in defending itself, as well as a maximum statutory damages award of \$10,000. The total amount the Court should award to TMZ is as follows:

	Lodestar	Discounted
Attorneys' Fees	\$43,555	\$33,813
Costs	\$455.25	\$455.25
Statutory Damages	\$10,000	\$10,000
Total Award	\$54,010.25	\$44,268.25

Dated: 18th of December 2015.

Respectfully Submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

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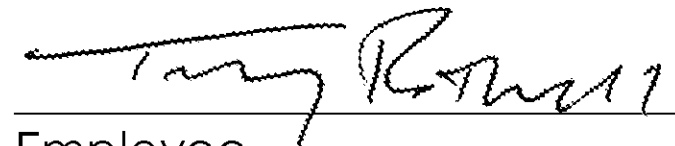
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2015, I served a true and correct copy of the foregoing document via electronic mail and U.S. Mail to:

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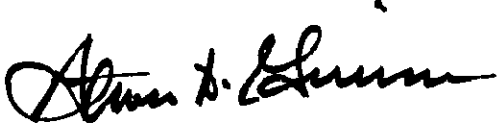
Respectfully Submitted



Employee,
Randazza Legal Group, PLLC

EXHIBIT 1

Excerpted Transcript of Nov. 17, 2015
Hearing on Anti-SLAPP Motion


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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. BOSCHEE, 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 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 ask --

2 THE COURT: I'd want you to file a separate
3 supplemental pleading on that.

4 MR. RANDAZZA: Thank you, Your Honor.

5 THE COURT: Okay. How much time do -- would you
6 need for that? Now that you know that you prevailed, I
7 want to see what you have to say about both.

8 MR. RANDAZZA: Your Honor, if it weren't
9 Thanksgiving coming up, we could probably do it in seven
10 days. Would you be okay with 14 days?

11 THE COURT: That's fine.

12 MR. RANDAZZA: Thank you, Your Honor.

13 THE COURT: All right. And, Mr. Boschee, how much
14 time do you want to respond to that?

15 MR. BOSCHEE: I'm doing the math in my head. 14
16 days from today puts us in -- probably -- yeah, I was going
17 to say it's right around the beginning of December. I'd
18 probably want -- I guess I'd get 10 days normally in an
19 Opposition. So, --

20 THE COURT: So 10 days is?

21 THE CLERK: I have this on Friday, December 11th.

22 THE COURT: Okay. I don't know if you need a
23 Reply on something like that. Do you want a Reply
24 opportunity?

25 MR. RANDAZZA: We'd like to reserve the right to

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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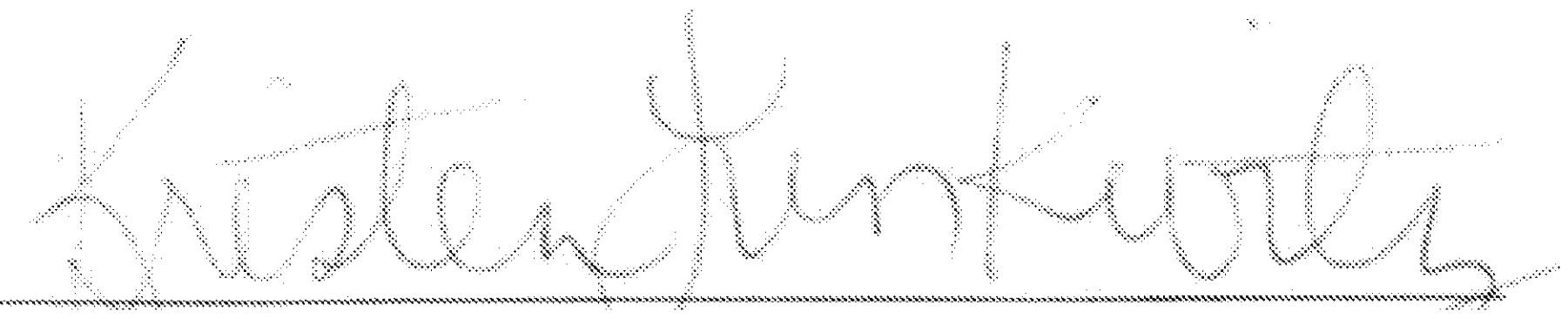
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal dotted line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT 2

Declaration of
Ronald D. Green, Jr.

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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*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

**DECLARATION OF
 RONALD D. GREEN, JR.**

DECLARATION OF RONALD D. GREEN, JR.

I, Ronald D. Green, Jr., hereby depose and say:

1. I am a partner with Randazza Legal Group, PLLC, counsel for Defendant TMZ Productions, Inc. ("TMZ") in this litigation. I have been licensed to practice law in the State of Nevada since 2000.

2. On or about September 25, 2015, I attended an early case conference in this matter at the offices of Plaintiff's counsel. Also in attendance were Plaintiff's counsel, Brian Boschee, and Paul Shpirt, counsel for the other Defendants.

3. Immediately after I returned to the office following the early case conference, I drafted a memorandum regarding what occurred at the conference.

4. I presently recall that Mr. Shpirt pointed out that the early case conference was premature.

5. I presently recall that Mr. Boschee agreed with Mr. Shpirt but stated that his law partner had insisted that the early case conference occur early.

6. I presently recall that Mr. Shpirt indicated that TMZ would probably be filing a motion designed to dismiss TMZ from the case.

7. My present recollection is consistent with the memorandum that I drafted regarding the conference on September 25, 2015.

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

Executed on December 18, 2015.

/s/ Ronald D. Green

Ronald D. Green

EXHIBIT 3

Excerpted Transcript of
Senate Committee on Judiciary
Hearing on Nev. SB 286
(Mar. 28, 2013)

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 28, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:05 a.m. on Thursday, March 28, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Marc Randazza, Randazza Legal Group
Allen Lichtenstein, American Civil Liberties Union
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool
Steve Balkenbush, Nevada Public Agency Insurance Pool
Rebecca Bruch, Nevada Public Agency Insurance Pool

Senate Committee on Judiciary
March 28, 2013
Page 2

Kenneth A. Carabello, Vice President Operations, Liberty Healthcare Corporation
Jayne Shale, Liberty Healthcare Corporation
Richard Whitley, M.S., Administrator, Division of Mental Health and
Developmental Services, Department of Health and Human Services
Elizabeth Neighbors, Ph.D., Director, Mental Health Developmental Services,
Lake's Crossing Center
Christy Craig, Office of the Public Defender, Clark County
Robert Compan, Farmers Insurance Group
David Goodheart, American Insurance Association
Jeanette K. Belz, Property Casualty Insurers Association of America
George Ross, Las Vegas Metro Chamber of Commerce
Tray Abney, The Chamber, Reno-Sparks-Northern Nevada
Mark C. Wenzel, President, Nevada Justice Association
Diana Alba, Clerk, Clark County
Nancy Parent, Chief Deputy Clerk, Washoe County
Margaret Flint

Chair Segerblom:

Today we have Senate Bill (S.B.) 286.

SENATE BILL 286: Provides immunity from civil action under certain circumstances. (BDR 3-675)

Senator Justin C. Jones (Senatorial District No. 9):

I am presenting S.B. 286. The First Amendment of the United States Constitution guarantees the right to petition the government for redress and is one of the most important rights the citizens possess. Nevada addresses, upholds and protects this right to petition. Chapter 41 of *Nevada Revised Statutes* (NRS) protects citizens from civil liability for claims based upon protected communication. Protected communication must be made in good faith and be truthful. The provisions of NRS 41 are meant to deter frivolous lawsuits commonly known as Strategic Lawsuits Against Public Participation (SLAPP). These SLAPP lawsuits are primarily used to stop someone from exercising his or her First Amendment rights. When a plaintiff files a SLAPP suit, NRS 41 allows the defendant to file a special motion to dismiss the lawsuit. If the court grants a 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. In a recent decision, the Ninth Circuit Court of Appeals held that Nevada's anti-SLAPP provision in NRS 41 only

Mr. Balkenbush:

That is correct. The district attorney said it was a matter of public concern. He believed these problems that the employee had were truthful or, at least, had no knowledge of their falsity. The judge agreed and granted the motion. The case went to the Nevada Supreme Court and the Justices affirmed the ruling.

Senator Brower:

Your view is that the current anti-SLAPP statute worked properly in this case?

Mr. Balkenbush:

That is correct. And the Supreme Court Justices have had no trouble with the current anti-SLAPP statute. Nor have they had any trouble applying NRS 41 in any of the cases in which I have used it. I have had two cases go to the Nevada Supreme Court, and the Court has affirmed both of the decisions. The Court has not had any trouble interpreting any of the provisions in NRS 41. Some of the provisions proposed in S.B. 286 are cumbersome.

Senator Brower:

Might the outcome of the case be different if it is an individual not working for a county who could hire a lawyer experienced with these anti-SLAPP litigations? Would the current statute be just as logical and workable as in the case you just described?

Mr. Balkenbush:

The statute would be just as logical. What the statute does not do now is cover these private individuals. That is an expansion of the language proposed in S.B. 286. We are not opposed to keeping the language covering private individuals. The rest of S.B. 286 seems unduly cumbersome by penalizing people who file motions to dismiss, if they do not prevail on the motions. It prolongs the amount of time required to litigate these cases. Legislative history says cases should not be unduly lengthy. The existing anti-SLAPP statute works well as a practical matter.

Rebecca Bruch (Nevada Public Agency Insurance Pool):

I was one of the attorneys on the *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 219 P.3d 1276 (2009) case that went before the Supreme Court, and the statute was upheld.

Mr. John filed union grievances along with a lawsuit. Every time someone at various stages of the grievance level would offer testimony, Mr. John would amend the lawsuit and add new parties. He did this trying to intimidate those who would offer testimony.

I had come across the anti-SLAPP statute and knew that the *John v. Douglas County School District* was the perfect case. Mr. John was clearly trying to intimidate people from participating in the serious claims made against him. District Judge David R. Gamble ruled in our favor. It then went to the Nevada Supreme Court on the issue of whether Nevada's anti-SLAPP statutes could apply to federal claims in State court. The Court ruled and upheld the Ninth Judicial District Court's ruling.

There were attorney's fees awarded because of the existing NRS 41.670.

I join in Mr. Balkenbush's comments on the chilling effect of the \$10,000 award. I often file the special motion to dismiss on behalf of large entities that can absorb the cost if they must. But a serious conversation takes place warning the clients that if the motion to dismiss is lost, it could cost them \$10,000. That is still a lot of money. The chilling effect comes because of a provision in NRS 41.670 subsection 1 that: "the court shall award reasonable costs and attorney's fees."

The 7-day provision in S.B. 286 is also problematic for judges and their calendars. The idea is to speed along or, possibly, stop litigation from the beginning. That places an undue burden on the courts. In our case, the judges know they must rule within 30 days, and they request an excusal from that time limit.

Chair Segerblom:

So they work around that?

Ms. Bruch:

Yes.

Chair Segerblom:

Would you like to point out anything else?

Ms. Bruch:

There was a question regarding whether a federal caselaw equivalent exists. It is called the *Noerr-Pennington* doctrine. I refer to that on federal claims and when I am in federal court.

Senator Ford:

I am still stuck on the \$10,000 award. Looking at S.B. 286, section 4, subsection 2, "If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious"; that last phrase "finds that the motion was frivolous or vexatious" makes a big difference. That makes the defendant more contemplative before they file a motion to dismiss. Those are hard standards to meet. The court seldom calls a motion frivolous or vexatious. The \$10,000 award does not seem to be an automatic award just because the defendant does not win the motion to dismiss. The question now is why should the defendant not be penalized \$10,000 for filing a motion to dismiss that was frivolous or vexatious?

Mr. Balkenbush:

You are correct. The frivolous and vexatious standard does exist in the proposed bill. But that standard exists regardless of S.B. 286. Under Rule 11 of the *Federal Rules of Civil Procedure*, a defendant cannot file frivolous and vexatious motions. There does not seem to be any other statute in Nevada law with a \$10,000 penalty if the defendant loses the motion to dismiss. I agree that the frivolous and vexatious standard is a difficult standard. The \$10,000 award is not a part of Nevada statute and can cause the defendant to pause moving forward with filing the special motion to dismiss.

Chair Segerblom:

What if S.B. 286 was amended to say "up to \$10,000"?

Mr. Balkenbush:

I do not believe that \$10,000 penalty should be levied on the defendant if he or she loses the motion to dismiss.

Chair Segerblom:

But the \$10,000 award is only if the motion to dismiss is frivolous.

Mr. Balkenbush:

I understand.

Senator Brower:

I hear what you are saying, Mr. Balkenbush. Nowhere in the NRS or the *Nevada Rules of Civil Procedure* is a dollar amount penalty levied toward something someone does in litigation. This would be very unusual. Not to say that it should not be considered. There is still much work to be done on S.B. 286.

Senator Jones:

I am willing to work with Mr. Balkenbush and Ms. Bruch to resolve the concerns raised.

I do want to emphasize Senator Ford's point: the standard for award of attorney's fees on the plaintiff's side is clear and convincing evidence. On the defendant's side the standard is frivolous and vexatious. Both are very high standards.

With regard to Mr. Balkenbush's statement that NRS 41 has worked well in Nevada, I do not contest that. However, in light of the Ninth Circuit Court's decision last year, there is cause for concern. I echo Mr. Randazza's comments. If Nevada wants to compete for businesses which want to move in, we must compete with those states which have sufficient protection against SLAPP lawsuits: California, Washington and Texas.

Chair Segerblom:

Do these other states have the \$10,000 award?

Senator Jones:

Senate Bill 286 came from the Washington statute. I will have to check with Mr. Randazza on that amount.

Mr. Balkenbush:

The \$10,000 provision only exists in Washington. California, Oregon and Texas do not have this provision.

Chair Segerblom:

We will close the hearing on S.B. 286. Senator Hardy is presenting S.B. 323.

SENATE BILL 323: Revises provisions relating to incompetent defendants.
(BDR 14-1063)