No. _______

In the Supreme Court of the United States

WEALTHY, INC., AND DALE BUCZKOWSKI,

Petitioners,

v.

SPENCER CORNELIA, CORNELIA MEDIA LLC, CORNELIA EDUCATION LLC, JOHN MULVEHILL, AND JOHN ANTHONY LIFESTYLE, LLC

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Many States have enacted anti-SLAPP statutes that authorize a special motion to dismiss, impose a heightened burden on the plaintiff, and mandate fee-shifting to a prevailing defendant. The courts of appeals are divided three ways on whether and how such statutes operate in federal court under *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010). The D.C., Second, Fifth, and Eleventh Circuits hold they are displaced by Federal Rules of Civil Procedure 12(b)(6) and 56. The First Circuit applies them as enacted. The Ninth Circuit—in the decision below—applies a hybrid approach that substitutes the Federal Rules' merits standards while preserving mandatory fee-shifting. The court below granted Nevada's anti-SLAPP special motion to dismiss after designating Petitioners as limited-purpose public figures and finding no actual malice under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

The Questions Presented are:

1. Whether such an anti-SLAPP statute is displaced by Rules 12(b)(6) and 56, applies as enacted, or applies only in the hybrid form described above.

2. Whether the Ninth Circuit erred by designating Petitioners as limited-purpose public figures without finding a pre-existing public controversy, voluntary injection into it, and germaneness, as required by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 (1979), and *Hutchinson v. Proxmire*, 443 U.S. 111 (1979).

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants / Cross-Appellees below

- Wealthy, Inc.
- Dale Buczkowski

Respondents and Defendants-Appellees / Cross-Appellants below

- Spencer Cornelia
- Cornelia Media LLC
- Cornelia Education LLC

Respondents and Defendants-Appellees below

- John Mulvehill
- John Anthony Lifestyle, LLC

CORPORATE DISCLOSURE STATEMENT

Wealthy, Inc. has no corporate parent, and there is no publicly held company owning ten percent or more of its stock. Wealthy, Inc. is not publicly traded and has no stock ticker symbol. Petitioner Dale Buczkowski is an individual and is not subject to Rule 29.6.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit
Nos. 23-3227, 23-3390, 23-16132, 24-159
Wealthy Inc., et al. v. Spencer Cornelia, et al.
Superseding Opinion: February 25, 2026
Rehearing Denial: March 16, 2026

U.S. District Court for the District of Nevada
Nos. 2:22-cv-00740-JCM-EJY
2:21-cv-01173-JCM-EJY
Wealthy Inc., et al. v. Cornelia, et al.
Final Order: September 29, 2023

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OPINIONS BELOW

The Ninth Circuit's superseding opinion, App.1a–12a, is unpublished. The initial opinion of the Ninth Circuit, App.13a–22a, is unpublished. The opinion of the district court, App.23a–38a, is unpublished.

JURISDICTION

The Ninth Circuit issued its superseding opinion on February 25, 2026. The Ninth Circuit denied Petitioners' motion for leave to file a petition for rehearing en banc on March 16, 2026. This petition is timely filed within 90 days of the February 25, 2026, superseding opinion. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Nevada anti-SLAPP statute, Nev. Rev. Stat. §§ 41.660, .665, .670, is found in the appendix at App.53a–57a. The Rules of Decision Act, 28 U.S.C. § 1652, is found in the appendix at App.50a. The Rules Enabling Act, 28 U.S.C. § 2072, is found in the appendix at App.51a. The relevant subsections of Fed. R. Civ. P. 8, 12, and 56 are found in the appendix at App.51a–53a. The First Amendment to the U.S. Constitution is found in the appendix at App.49a. The Lanham Act false advertising provision, 15 U.S.C. § 1125(a)(1)(B), App.50a, and its jurisdictional provision, 15 U.S.C. § 1121(a), App.49a.

INTRODUCTION

This petition presents a mature, entrenched three-way conflict among six circuits over whether and how state anti-SLAPP burden-shifting special motions apply in federal court. Below, the Ninth Circuit applied its judicially reconstructed regime to revive Respondents' Nevada special motion and remanded for the mandatory fee award it triggered—producing a $600,000 bond demand no other circuit would have permitted. *See infra* Statement, Part C.

Four circuits—the D.C., Second, Fifth, and Eleventh—would have foreclosed both the motion and the linked fee award, holding under *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010), and *Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941), that anti-SLAPP burden-shifting motions answer the same question as Federal Rules 12(b)(6) and 56 and may not be judicially rewritten to avoid that conflict. *See*, *e.g.*, *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328 (D.C. Cir. 2015). The First Circuit disagrees and applies state anti-SLAPP statutes as written, following Justice Stevens's *Shady Grove* concurrence to conclude that Federal Rules 12(b)(6) and 56 do not answer the same question and thus apply in Federal Court under *Erie R.R. Co. v. Tompkins*, 304 U.S.

64 (1938). *See Godin v. Schencks*, 629 F.3d 79, 87–88 (1st Cir. 2010).

Only the Ninth Circuit has charted a third path. Through successive decisions since it first reached the question of anti-SLAPP applicability in *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963 (9th Cir. 1999), it has replaced each procedural component of the anti-SLAPP special motion found to conflict with a Federal Rule—merits standard, 60-day filing deadline, discovery stay, and interlocutory appeal—while preserving the fee-shifting and other remedial consequences the legislature tied to the unmodified motion. The result is a "hybrid mess that now resembles neither the Federal Rules nor the original state statute." *Gopher Media v. Melone*, 154 F.4th 696, 713 (9th Cir. 2025) (Bress, J., concurring) (citation omitted).

This case is the ideal vehicle. The panel applied the Ninth Circuit's reconstructed regime to grant a special motion the statute as enacted would not have permitted—filed more than a year after Nevada's 60-day window closed and after discovery the automatic stay would have prevented—and remanded for the mandatory fee award. The conditions making this posture uniquely dispositive across all three branches of the split are developed in Part I.C below.

The conflict is entrenched and recurring. The question implicates at least thirty-two anti-SLAPP regimes, and the Ninth Circuit—which adjudicates more anti-SLAPP cases than any other circuit—recently declined to revisit *Newsham* en banc, with four judges urging overruling in *Gopher Media*. 154 F.4th at 700 n.2. This Court's recent unanimous decision in *Berk v. Choy*, 607 U.S. 187 (2026), displaced a state pleading-burden requirement under *Sibbach* while rejecting selective harmonization—yet the Ninth Circuit denied Petitioners' motion for leave to seek rehearing en banc in light of *Berk*, App.46a–48a, confirming that only this Court can resolve the conflict.

The petition independently presents a second question reflecting a glaring departure from this Court's settled framework. In a single sentence untethered from the particularized findings required by *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), and *Wolston v. Reader's Digest Ass'n*, 443 U.S. 157 (1979), the decision below designated Petitioners as limited-purpose public figures. That designation is independently certworthy: it triggered the *New York Times Co. v. Sullivan* actual-malice standard supporting the Rule 56 affirmance and supplied the antecedent First Amendment predicate for the panel's reversal of the anti-SLAPP denial. The Court should grant plenary review on both Questions Presented. At a minimum, the public-figure ruling should be vacated and remanded for the particularized analysis *Gertz* and *Wolston* require—relief warranted regardless of the disposition of Question 1, because the unexamined *Gertz* designation is the sole ground on which the Rule 56 affirmance rests.

STATEMENT OF THE CASE

A. Statutory Background

The state anti-SLAPP statutes at issue share a common architecture. Each creates a special motion to dismiss triggered by a showing that the challenged claim arises from protected speech or petition activity, then shifts the burden to the plaintiff to demonstrate the merit of the claim under a heightened standard. The Nevada, D.C., Georgia, Texas, California, and Maine statutes involved in the circuit split each provide this structure, plus a stay of discovery upon filing and a fee award tied to the outcome of the motion. App.53a–70a. Forty-one U.S. jurisdictions have enacted anti-SLAPP legislation, and thirty-two have adopted statutes employing this burden-shifting special-motion architecture.[1] This shared architecture is what makes the circuit split a true conflict: the four circuits that hold the special motion inapplicable in federal court necessarily foreclose all remedies linked to it, while

1 *See* David Keating, Helen Knowles-Gardner & Dan Greenberg, *Anti-SLAPP Statutes: A Report Card*, Inst. for Free Speech, at 25 tbl. (Sept. 2025), https://www.ifs.org [https://perma.cc/3KZ4-55YW] (identifying thirty jurisdictions whose statutes shift the burden to the plaintiff to establish a probability of prevailing or a prima facie case as to each essential element of the claim); Keating et al., Updates to the 2025 Anti-SLAPP Report Card, https://www.ifs.org [https://perma.cc/H3BY-FZAM] (documenting enactment of Michigan H.B. 4045 (signed Dec. 23, 2025) and South Dakota S.B. 137 (signed Mar. 16, 2026), each employing the same burden-shifting architecture, bringing the total to thirty-two of forty-one anti-SLAPP jurisdictions).

the First and Ninth Circuits preserve those remedies along with the motion.

Nevada's anti-SLAPP statute provides that 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" may file a special motion to dismiss. NRS § 41.660(1)(a). As amended in 2013, the statute employs a two-prong framework: the defendant must first make that good-faith showing, NRS § 41.660(3)(a); the burden then shifts to the plaintiff to demonstrate with "prima facie evidence a probability of prevailing on the claim." NRS § 41.660(3)(b). The Nevada legislature expressly adopted California's "probability of prevailing" anti-SLAPP standard. NRS § 41.665(2).

The special motion "must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown." NRS § 41.660(2). Upon filing, the court is to "stay discovery," § 41.660(3)(e). If denied, "an interlocutory appeal lies to the [Nevada] Supreme Court." § 41.670(4). If granted, "the dismissal operates as an adjudication on the merits," § 41.660(5), and "[t]he court shall award reasonable costs and attorney's fees," § 41.670(1)(a). The court may also award up to $10,000 in additional damages, § 41.670(1)(b), and the defendant may bring a separate action to recover additional fee awards. § 41.670(1)(c). These remedies are not available under Federal Rules 12(b)(6) or 56.

The Rules of Decision Act, 28 U.S.C. § 1652, requires federal courts to apply "[t]he laws of the several states, except where . . . Acts of Congress otherwise require or provide. . . . " App.50a. The Rules Enabling Act, 28 U.S.C. § 2072(a), authorizes this Court to “prescribe general rules of practice and procedure” for the federal courts; those rules “shall not abridge, enlarge or modify any substantive right,” and “[a]ll laws in conflict with such rules shall be of no further force or effect.” 28 U.S.C. § 2072(b). App.51a. Rule 8(a) governs the requirements for filing a federal action, App.51a, and Rules 12(b)(6) and 56 govern motions to dismiss and summary judgment, establishing the federal standards for evaluating the sufficiency of claims and the allocation of pretrial burdens of proof. App.52a–53a.

B. Factual Background

Petitioners Wealthy, Inc. and Dale Buczkowski (“Petitioners”) operate an entrepreneurship, finance, business, real-estate, and self-improvement company under a federally registered trademark, Derek Moneyberg . . . . App.24a–25a. At the time of the complaint, Petitioners had 23,700 YouTube subscribers and over 1.2 million video views. *Id.*; Compl. ¶¶ 10–25, ECF No. 1 (D. Nev. June 21, 2021). Respondents Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (collectively, the “Cornelia Defendants”) produce and monetize content on their YouTube channel, where they have offered coaching programs, including Cornelia’s “house hack expert book” and a “first 1,000 subscribers” mentoring program. App.25a, 31a–32a. Their YouTube channel had approximately 150,000 subscribers and over 13.8 million views when the complaint was filed. App.24a; Compl. ¶¶ 26–40.

Between December 2020 and February 2021, the Cornelia Defendants produced multiple video interviews with a guest, John Mulvehill, and launched them on their YouTube channel. App.24a. Petitioners alleged that the Cornelia Defendants promoted their competing products and services on their YouTube channel, App.31a, and published five assertions in the videos that Buczkowski: (1) lied about his educational achievement, (2) laundered money, (3) manufactured and/or sold illegal drugs, (4) framed a co-defendant for a 2013 arrest leading to four felony and four misdemeanor charges, and (5) was involved in the death of a 28-year-old woman. App.24a–25a; Compl. ¶¶ 58–75.

C. Proceedings Below

Petitioners brought suit in the United States District Court for the District of Nevada, asserting claims for defamation, intentional infliction of emotional distress, and business disparagement under state law, as well as false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B). App.25a, 31a, 50a. The District Court had federal-question jurisdiction over the Lanham Act claim under 15 U.S.C. § 1121(a) (App.49a), 28 U.S.C. §§ 1331 and 1338(a), and supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367(a). Petitioners pointed to the five statements above to support their claims for false advertising under the Lanham Act and defamation under Nevada law. App.24a–25a; Compl. ¶¶ 58–75, 111–129.

On September 30, 2022—after the close of discovery and 465 days[2] after service of the complaint—the Cornelia Defendants moved for summary judgment on all claims and separately filed a Special Motion to Dismiss under NRS § 41.660. App.23a–24a. The District

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[2] *See* Compl., ECF No. 1 (D. Nev. June 21, 2021); Summons Returned Executed, ECF No. 5 (D. Nev. June 25, 2021) (Spencer Cornelia served June 22, 2021); Defs.' Mot. to Dismiss, ECF No. 61 (D. Nev. Sept. 30, 2022) (filed 465 days after service).

Court granted summary judgment on all claims. App.37a–38a. On the Lanham Act claim, the court held that none of the challenged videos themselves contained an express reference to Cornelia's competing mentorship programs, and that the presence of those programs elsewhere on Cornelia's YouTube platform was legally insufficient to render the video statements "commercial speech" under the Lanham Act. App.31a–32a. As to defamation, the court held that "plaintiffs are, at the very least, limited-purpose public figures," relying on the Complaint's description of Buczkowski as the owner of a "leading" company with 23,700 YouTube subscribers and over 1.2 million views, and reasoning that Plaintiffs "cannot 'have it both ways.'" App.32a–35a. The court rejected Plaintiffs' objection that defendants relied only on post-publication evidence as "irrelevant." *Id.* The court separately denied the anti-SLAPP special motion, finding that the Cornelia Defendants failed to satisfy the first-prong good-faith requirement. App.29a–31a.

On appeal, the Ninth Circuit initially affirmed the summary judgment rulings and dismissed the anti-SLAPP denial as moot. App.21a. The decision addressed Petitioners' public-figure status in a single sentence: "Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020." App.20a–21a. Neither court below identified any specific record evidence supporting that conclusion or made findings on the existence of a discrete pre-existing public controversy, Petitioners' voluntary injection into it, or any purpose to influence its resolution. App.20a–21a, 32a–35a.

Petitioners requested reconsideration of the panel's limited-purpose public figure determination, which the court summarily denied. Pet. for Panel Reh'g, No. 23-3227 (9th Cir. Jan. 12, 2026), Dkt. No. 76, App.41a. The Cornelia Defendants requested panel reconsideration of the mootness determination. While formally denying their petition for rehearing, the court withdrew the original disposition and issued a superseding decision on February 25, 2026, that (1) maintained its earlier summary judgment rulings, and (2) reversed the district court's denial of the anti-SLAPP motion. App.1a–12a. The panel reversed its mootness determination because "[w]hen a movant prevails on a Nevada anti-SLAPP motion, they have the right to mandatory fee shifting, additional discretionary awards, and filing of a separate action for compensatory and punitive damages," which is "relief beyond what grant of summary judgment under Fed. R. Civ. P. 56 provides." App.5a n.1. On the first prong, the panel noted that Nevada's good-faith element is "'essentially the same' standard as that for actual malice 'only differing in the party with whom the burden of proof lies.'" App.10a (citing *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019)). It concluded that Cornelia had "reasonably researched and corroborated the statements" and met that burden. App.10a. On the second prong, the panel "collapsed" the anti-SLAPP analysis into the Rule 56 standard to conclude that the Nevada "probability of prevailing" standard was also met. App.11a.

The superseding decision noted that "[n]o future petitions for rehearing or rehearing en banc will be entertained." App.45a. Petitioners moved for leave to file a petition for rehearing en banc on the anti-SLAPP ruling in light of this Court's decision in *Berk*, Mot. for Leave to File Pet. for Reh'g En Banc, No. 23-3227 (9th Cir. Mar. 11, 2026), Dkt. No. 86, which the panel denied on March 16, 2026, App.46a–48a. The Cornelia Defendants thereafter demanded a $600,000 bond, which they claimed was "the amount of attorneys' fees to which Appellees will likely be entitled when the mandate issues." Appellees' Resp. to Mot. to Stay Mandate, No. 23-3227 (9th Cir. Mar. 5, 2026), Dkt. No. 85.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari to Resolve the Three-Way Circuit Conflict Over the Federal Court Applicability of State Anti-SLAPP Statutes.

Certiorari is warranted under this Court's Rule 10(a) and (c). The courts of appeals are openly and intractably divided over whether, and how, state anti-SLAPP special motions that impose heightened, burden-shifting merits standards and mandatory fee-shifting apply in federal court. Four circuits hold such statutes categorically displaced by Rules 12(b)(6) and 56; the First Circuit applies them in federal court as enacted; and the Ninth Circuit has evolved a unique, judicially reconstructed hybrid that strips conflicted state-law preconditions while preserving mandatory fee consequences. The same Nevada statute thus produces materially different outcomes across circuits on identical claims.

A. The Circuits Are Openly and Intractably Divided on the Federal Applicability of State Anti-SLAPP Statutes.

The three-way circuit split is recognized,[3] mature, and beyond self-correction. Six circuits have squarely addressed the question, with considered, precedential rulings on each side that subsequent panels are bound to follow. Each circuit acted with full awareness of the contrary authority, and the Ninth Circuit recently declined to reconsider its longstanding *Newsham* precedent and denied Petitioners' motion for rehearing en banc in this very case, confirming that its position is entrenched.

1. Four Circuits Hold That Anti-SLAPP Burden-Shifting Special Motions to Dismiss Conflict with the Federal Rules and Do Not Apply in Federal Court

Each of these circuits, after considering and rejecting the Ninth Circuit's reasoning, has held that state anti-SLAPP special motions imposing burdens

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[3] *See* Nicholas Rinehart, Comment, *Three Ways to Sit Under a Shady Grove: The Uncertain Future of the Oklahoma Citizens Participation Act in Federal Court*, 75 OKLA. L. REV. 861, 877–85 (2023) (identifying the same three-way framework, with the D.C., Second, Fifth, and Eleventh Circuits holding anti-SLAPP statutes inapplicable in federal court, the First Circuit holding them applicable as enacted, and the Ninth Circuit adopting a "fractured" approach involving "complex severing" of state-law provisions that produces a regime the state legislature did not enact).

beyond the Federal Rules conflict with Rules 12(b)(6) and 56 and are inapplicable in federal court. Because each holding is categorical, all linked remedies—including fee-shifting—are necessarily foreclosed.

The D.C. Circuit led the way in *Abbas*, 783 F.3d 1328, in a decision authored by then-Judge Kavanaugh. Applying the D.C. Anti-SLAPP Act, D.C. Code §§ 16-5501 *et seq.,* App.57a–59a, described *supra*, the court held that the Act's special motion procedure, under which the plaintiff must demonstrate that "the claim is likely to succeed on the merits" to avoid dismissal, conflicts with Federal Rules 12(b)(6) and 56. *Id.* at 1334–35 (quoting D.C. Code § 16-5502(b)). The *Abbas* court applied *Shady Grove*'s two-step framework. At step one, it held that "Federal Rules 12 and 56 answer the same question as the D.C. Anti-SLAPP Act," namely, "the circumstances under which a court must dismiss a case before trial." *Id.* at 1334–37. At step two, applying *Sibbach*, the court readily concluded that Rules 12 and 56 are valid because they "really regulat[e] procedure." *Id.* at 1336–37.

The court then dismissed *Abbas*'s defamation complaint on alternative grounds under Rule 12(b)(6) but explicitly held that the Act's fee-shifting provision, D.C. Code § 16-5504(a), does not independently survive: "The Act does not purport to make attorney's fees available to parties who obtain dismissal by other means, such as under Federal Rule 12(b)(6)." *Id.* at 1338 n.5. The defendants thus won on the merits yet received no fees—the opposite of the Ninth Circuit's approach, where prevailing on a Rule 12(b)(6) or 56 motion satisfies the second prong and, with a first-prong showing of protected speech, triggers fee-shifting.

The Eleventh, Fifth, and Second Circuits each followed *Abbas*'s reasoning.

Following *Abbas*, the Eleventh and Fifth Circuits foreclosed anti-SLAPP motions and their associated fee remedies in federal court. In *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345 (11th Cir. 2018), the Eleventh Circuit held that the Georgia Anti-SLAPP statute, O.C.G.A. § 9-11-11.1, App.59a–62a, conflicts with Rules 12 and 56 because requiring a plaintiff to establish "a probability of prevailing" imposes burdens "over and above the requirements contemplated by the Federal Rules that control the same issue." *Id.* at 1354 (citing O.C.G.A. § 9-11-11.1(b)(1)). The court rejected *Godin* and *Newsham* as unpersuasive. *Id.* at 1355–56. The Fifth Circuit reached the same conclusion in *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019), holding that the Texas Citizens Participation Act ("TCPA"), Tex. Civ. Prac. & Rem. Code §§ 27.001–.011, App.62a–65a, in effect at that time,[4] does not apply in federal court because Rules 12 and 56 "answer the same question." *Id.* at 245 (citing TCPA § 27.005(c)). The court reversed the district court's awards of attorney's fees and sanctions in their entirety, holding that those provisions are "not applicable apart from the burden-shifting early dismissal framework." *Id.* at 247 n.6.

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[4] In 2019, the TCPA was amended but district courts in the Fifth Circuit have continued to find it inapplicable under *Klocke*. *See Parker v. Spotify USA, Inc.*, 569 F.Supp.3d 519, 539 (W.D. Tex. 2021) ("Based on this Court's reading of the *Klocke* reasoning, the Texas Legislature did not amend the chapter in a way that cured the issues with the overlap between 12(b)(6) dismissals and TCPA dismissals.").

The Second Circuit held in *La Liberte v. Reid* that the California Anti-SLAPP Statute, Cal. Civ. Proc. Code § 425.16, App.65a–68a, does not apply in federal court. 966 F.3d 79, 88–89 (2d Cir. 2020). Following *Abbas* and *Carbone*, the court held that the special motion requiring a plaintiff to demonstrate a "probability of prevailing" answers the same question as Rules 12 and 56, and because those Federal Rules are valid under the Rules Enabling Act, the state procedures must yield. *Id.* at 88. The court further held that California's anti-SLAPP statute "does not purport to make attorney's fees available to parties who obtain dismissal by other means," and that a prevailing defendant may never recover anti-SLAPP fees in federal court—even if the plaintiff ultimately loses the case. *Id.* at 88–89. This categorical bar directly contrasts with the Ninth Circuit's approach in the decision below.

Particularly significant here, *La Liberte* distinguished its earlier decision in *Adelson v. Harris*, 774 F.3d 803, 809 (2d Cir. 2014), which had applied a Nevada anti-SLAPP statute in federal court. 966 F.3d at 88 n.3. *Adelson* dealt with a pre-2013 version of Nevada's anti-SLAPP statute which "does not establish a 'reasonable probability of success' standard that must be met without discovery, like the California Anti-SLAPP law." *Id.* The former NRS § 41.660(3)(a) (1997), instead, simply required the court to "[t]reat the motion as a motion for summary judgment." App.70a. In 2013, the Nevada legislature amended its anti-SLAPP statute to add the "probability of prevailing" and burden-shifting mechanism to § 41.660(3)(b) for the express purpose under § 41.665(2), of conforming Nevada's anti-SLAPP statute to that of California—the same California law that the Second Circuit in *La Liberte* held conflicts with the Federal Rules. App.55a–56a. The amended Nevada statute at issue in the present case is thus materially different from the pre-amendment statute that the Second Circuit applied in *Adelson*, and falls squarely within the class of anti-SLAPP statutes that four circuits have held are displaced by the Federal Rules.

Petitioners exclude the Tenth Circuit from the identified split because, in *Los Lobos Renewable Power, LLC v. AmeriCulture, Inc.*, 885 F.3d 659, 670–73 (10th Cir. 2018), the court construed the New Mexico Anti-SLAPP statute, N.M. Stat. § 38-2-9.1, App.71a–72a, as "purely procedural" and resolved the case on the threshold *Erie* procedure/substance step without resting its holding on a conflict with Federal Rules 12(b)(6) and 56. The Tenth Circuit also explained that Justice Stevens's concurrence in *Shady Grove* supplies the controlling approach in that circuit but emphasized that New Mexico's statute—unlike most anti-SLAPP laws—does not shift burdens or alter merits standards and thus does not affect the outcome on the merits. 885 F.3d at 668 n.3; *id.* at 670–71. Because Nevada's post-2013 statute NRS § 41.660(3)(b), App.54a, incorporates a California-style "probability of prevailing" burden-shifting mechanism, NRS § 41.665(2), App.56a, *Los Lobos* does not address the question presented here.

2. The First Circuit Applies Anti-SLAPP Statutes Exactly as Enacted by the State Legislature

The First Circuit stands as the only one to permit state anti-SLAPP special motions in federal court while applying the state statute exactly as the legislature enacted it. Like the Ninth Circuit, the First Circuit concludes that the special motion is available in federal court; unlike the Ninth Circuit, it preserves the statute's merits standard, filing deadline, discovery stay, and interlocutory appeal right intact.

The First Circuit held that Maine's anti-SLAPP statute applies in federal court in *Godin*, 629 F.3d 79, 92. That decision involved the Maine anti-SLAPP statute then in effect, Me. Rev. Stat. tit. 14, § 556, App.68a–70a, which provided the special motion to dismiss procedure described *supra*. Once a defendant demonstrates "that the claims in question are based on the defendant's petitioning activity," the court shall grant the special motion "unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party." *Id.* at 82 (quoting § 556). Maine's statute also links fees to the special motion: "[i]f the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees."[5]

The *Godin* court applied this Court's *Shady Grove* framework and concluded that Federal Rules 12(b)(6) and 56 "are not so broad as to cover the issue within the scope of [Maine's anti-SLAPP law]." *Id.* at

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[5] In 2024, Maine's legislature repealed the former anti-SLAPP statute (14 M.R.S. § 556) and replaced it with the Maine Uniform Public Expression Protection Act, codified at 14 M.R.S. §§ 731–742 (P.L. 2023, ch. 626, eff. Jan. 1, 2025) [https://perma.cc/U5FA-JU2U]. The new law provides for a "special motion for expedited relief" under § 734 that, like its predecessor, must generally be filed within 60 days of service (or later upon a showing of good cause) and places the burden on the plaintiff to establish a prima facie case. *See* 14 M.R.S. §§ 734, 737.

88. The court followed Justice Stevens's *Shady Grove* concurrence rather than the plurality, finding it binding because, together with the four dissenting Justices, it formed a functional majority that "whether a Federal Rule is valid under the Rules Enabling Act depends not on the Federal Rule alone, but also on the nature of the state rule it seeks to displace." *Id.* at 87. Under that framework, the court concluded that Rules 12(b)(6) and 56 were not "meant to control the particular issues under [Maine's anti-SLAPP statute]" and that the twin aims of *Erie* favored application of the state law. *Id.* at 86.

Critically, the First Circuit applies Maine's prima facie standard exactly as the legislature enacted it, treating the state burden of proof and the heightened showing required to defeat the motion as substantive features that travel with the claim into federal court. *Godin*, 629 F.3d at 82, 88–89. The First Circuit also enforces the statute's procedural architecture as written: it applies the timing requirements as enacted and permits interlocutory appeals from denials under the collateral order doctrine. *Franchini v. Investor's Bus. Daily, Inc.*, 981 F.3d 1, 6–7 (1st Cir. 2020); *Godin*, 629 F.3d at 83–84. Because the First Circuit views Rules 12(b)(6) and 56 as addressed to "entirely different" questions than § 556, no judicial reconstruction of the merits standard, filing deadline, discovery stay, or interlocutory appeal right is needed. *Id.* at 89. The state statute thus operates in federal court as the integrated legislative scheme the legislature designed.

3. The Ninth Circuit Applies a Judicially Reconstructed Regime That Substitutes Federal Rules Standards While Preserving State-Law Remedies

The Ninth Circuit occupies a third position no other circuit has adopted. In a line of decisions stretching back to *Newsham* in 1999, it has held that state anti-SLAPP special motions are available in federal court. As procedural-compliance questions have arisen case by case, the court has stripped each precondition found to conflict with federal procedure while preserving the mandatory fee-shifting and other state-law remedial consequences the legislature tied to the unmodified motion. The result is a judicially reconstructed regime that no legislature enacted—and one that lower-court panels, including the panel below, are bound to apply without revisiting.

The Ninth Circuit was the first federal appellate court to consider whether a state anti-SLAPP special motion applies in federal court in *Newsham*, 190 F.3d 963, involving California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, App.65a–68a.[6] The court held that the Federal Rules and the anti-SLAPP statute share the goal of "expeditious weeding out of meritless claims before trial" but that this overlap was not a "direct collision" because the Federal Rules were not intended to "occupy the field" of pretrial dismissal. 190 F.3d at

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[6] California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, has remained materially unchanged in its relevant provisions since *Newsham*, 190 F.3d 963 (9th Cir. 1999). Although the Legislature has made limited amendments since then, the core burden-shifting framework, 60-day filing deadline, discovery stay, and fee-shifting provisions at issue have remained substantially the same.

972 (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 556 (1949)). Emphasizing the statute's substantive purpose of protecting First Amendment rights, the court concluded that *Erie*'s twin aims favored application in federal court. *Id.* at 972–73. Critically, however, *Newsham* did not grapple with how the "probability" standard deviates from the Rule 12(b)(6) and Rule 56 standards—the precise question that would later divide the circuits in light of *Shady Grove*.

Nearly two decades after it first began applying state anti-SLAPP statutes in federal court, the Ninth Circuit was directly confronted with the *Shady Grove* question that its earlier decision in *Newsham* had left open. In *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828 (9th Cir. 2018), the court acknowledged that California's "probability of prevailing" standard would create a "stark collision" with Federal Rules 12(b)(6) and 56 if applied according to its terms. *Id.* at 834. Rather than follow the D.C. Circuit's approach in *Abbas* and displace the special motion entirely, the Ninth Circuit instead adopted a conflict-avoidance construction: it directed federal courts to apply Rule 12(b)(6) when the motion challenges the legal sufficiency of a claim and Rule 56 when it challenges the factual sufficiency. *Id.* at 833–34. In doing so, the Ninth Circuit accepted *Abbas*'s core premise—that the state-law merits standard "answers the same question" as the Federal Rules—yet declined to draw the same conclusion regarding displacement under the Rules Enabling Act.

The Ninth Circuit has used this conflict-avoidance approach to selectively strip each anti-SLAPP provision found to conflict with federal procedure while preserving the special motion and its mandatory remedial consequences. The discovery-limiting aspects do not apply, *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001); the sixty-day filing deadline does not apply, *Sarver v. Chartier*, 813 F.3d 891, 900 (9th Cir. 2016) (allowing motions up to thirty days after the close of discovery under Rule 56(b)); and interlocutory appeal from denial does not apply, *Gopher Media*, 154 F.4th at 699 (overruling *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003)). The anti-SLAPP special motion has thus been converted into a post-discovery motion that applies federal merits standards but triggers the full panoply of state-law remedial consequences—a regime no legislature enacted.

B. The Question Is Important, Recurring, and Warrants Urgent Resolution.

In circuits where they are applicable, anti-SLAPP statutes are now the principal procedural vehicle through which federal courts resolve threshold First Amendment determinations on often-truncated records, and the constitutional stakes make the procedural divide all the more consequential. Several Members of this Court have flagged the unchecked expansion of public-figure doctrine for reconsideration. *See infra* Part II. Media organizations have noted the "exceptional importance" of anti-SLAPP applicability in federal court, observing that "a media company would have to think about the threat of retaliatory litigation before deciding whether to locate and maintain substantial operations in Georgia—as opposed to, say, California, whose anti-SLAPP statute does apply in federal court"[7] for cases brought in the Ninth Circuit.

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[7] Amici Curiae Brief of 25 Media Organizations in Support of Rehearing En Banc in *Carbone v. Cable News Network, Inc.*, No.

The split creates intolerable uncertainty as states increasingly adopt special-motion frameworks modeled on the Uniform Public Expression Protection Act (UPEPA),[8] which provides a special motion for expedited relief (§ 3) that shifts the burden to the plaintiff (§ 7(a)(3)), suspends proceedings upon filing (§ 3), permits immediate interlocutory appeal from denial (§ 9), and mandates fees if granted (§ 10). Even the proponents of broad anti-SLAPP applicability acknowledge that the holdings of the Second Circuit and by logical extension the D.C., Fifth, and Eleventh Circuits "present[] an identical threat to the fee-shifting provisions in the [UPEPA] model statute" in federal cases.[9] As noted above, thirty-two of forty-one anti-SLAPP jurisdictions have adopted special motions placing the burden of proof on the plaintiff. As states continue to adopt and strengthen these frameworks, the need to resolve federal court applicability grows more pressing.

The Ninth Circuit's reconstruction approach described *supra* Part I.A.3 has produced consequences far beyond what any legislature contemplated. Defendants who prevail at summary judgment after expensive discovery receive automatic, uncapped fees that the original early-screening mechanism was designed to avoid—the product of more than twenty-five years of

17-10812 (11th Cir.) at 11, [https://perma.cc/F5M7-7D5E].

8 Unif. Pub. Expression Prot. Act §§ 3–10 (Unif. L. Comm'n 2020), full text available at [https://perma.cc/VY53-7WCT].

9 Amici Curiae Brief of 33 Media Organizations in Support of Defendant Appellee's Petition for Panel Rehearing and Rehearing En Banc at 8, *La Liberte v. Reid*, No. 19-3574 (2d Cir.), [https:// perma.cc/6WCX-Z6E2].

"alter[ing] the state's anti-SLAPP procedures in various ways to avoid conflicts with the Federal Rules." *Gopher Media*, 154 F.4th at 709 (Bress, J., concurring). State courts, by contrast, enforce procedural preconditions like the 60-day filing deadline, which together with the discovery stay limits expensive discovery. *See Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 4 Cal. 5th 637, 645–646 (2018); *Mancilla v. Taxfree Shopping, Ltd.*, No. 05-18-00136-CV, 2018 WL 5993318 (Tex. App.—Dallas Nov. 16, 2018, no pet.); *Bradbury v. City of Eastport*, 72 A.3d 512, ¶¶ 10–14 (Me. 2013). Under the Ninth Circuit's approach allowing post-discovery fee shifting, the same statute produces different outcomes in federal and state court, turning *Erie* on its head.

Without guidance from this Court on the proper application of the *Shady Grove* framework, state legislatures cannot confidently design effective anti-SLAPP remedies. If burden-shifting special motions are inapplicable in federal court, states may be incentivized to abandon attempts to have anti-SLAPP special motions apply in federal court altogether, and instead enact standalone fee-shifting mechanisms untethered from any special procedural vehicle—precisely as Florida and New York have done. *See* Fla. Stat. § 768.295(3) (App.73a–74a); N.Y. Civ. Rights Law § 70-a (App.75a–76a). Yet those statutes do not make fee awards mandatory, as is typical of traditional anti-SLAPP regimes. Resolution by this Court is therefore urgently needed to restore uniformity in federal procedure and to give states the certainty they need to craft remedies that function as intended in both state and federal court.

The stakes of further delay are concrete. Mandatory fee-shifting converts the decision whether to file a speech-related claim into a decision whether to risk a large fee award if it does not survive a threshold motion, driving forum selection, settlement dynamics, insurance pricing, and willingness to litigate to judgment. The same defamation claim today faces materially different incentive structures depending on the circuit, imposing ongoing costs on both the speech interests anti-SLAPP statutes protect and the reputational interests defamation law vindicates.

The urgency is underscored by the explosion of anti-SLAPP litigation in federal court. As Judge Kozinski observed, such cases have "spread like kudzu through the federal vineyards," with the Ninth Circuit hearing the overwhelming majority of these cases. *Travelers Cas. Ins. Co. of Am. v. Hirsh*, 831 F.3d 1179, 1182–83 (9th Cir. 2016) (Kozinski, J., concurring). The breadth of amicus interest—from government,[10] media organizations,[11] and civil-society[12] groups—confirms

[10] Amicus Curiae Brief of the District of Columbia in Support of the District of Columbia Anti-SLAPP Act's Applicability in Federal Diversity Cases, *Abbas v. Foreign Policy Group, LLC*, No. 13-7171 (D.C. Cir.) [https://perma.cc/JW7F-5UDX].

[11] Amici Curiae Brief of 25 Media Organizations in Support of Defendant-Appellant, *Carbone v. Cable News Network, Inc.*, No. 17-10812 (11th Cir.) [https://perma.cc/N2A2-7P6Q]; Brief of Amici Curiae Media Organizations in Support of Defendants-Appellees, *Abbas v. Foreign Policy Group, LLC*, No. 13-7171 (D.C. Cir.) [https://perma.cc/DG7U-L52P].

[12] Amici Curiae Brief (Corrected) of Members of "Protect the Protest" Task Force ("PTP") in Support of Defendants-Appellees Seeking Affirmance, *CoreCivic, Inc. v. Candide Group, LLC*, No. 20-17285 (9th Cir.) [https://perma.cc/84CA-CDVR]; Amici Curiae Brief of Non-Governmental Organizations Supporting Appellees /Cross-Appellants and Seeking Reversal In Part, .*Christiana Tah*

that the question affects the broader administration of justice in federal courts.

This case also presents a clean vehicle for resolving the persistent disagreement over how to read *Shady Grove*—specifically, whether Justice Stevens's concurrence supplies the controlling Rules Enabling Act analysis or whether courts must instead apply Justice Scalia's plurality and the "really regulates procedure" test from *Sibbach*. As shown *supra* Part I, the First and Tenth Circuits follow Stevens's concurrence. *See Godin*, 629 F.3d at 87; *Los Lobos*, 885 F.3d at 668 n.3. *Abbas* squarely rejects that premise with respect to the same 4–1–4 split in *Shady Grove*, holding that "[n]either the 4-Justice view nor the 1-Justice view on its own is binding." 783 F.3d at 1337. In addition, *Abbas* held Stevens's concurrence cannot be the narrowest opinion under *Marks v. United States*, 430 U.S. 188 (1977), because "the four Justices in dissent simply did not address the issue." *Id.* With no common ground between Scalia's plurality and Stevens's concurrence on the governing Rules Enabling Act standard, *Abbas* concluded that the answer "is to follow the Supreme Court's pre-existing precedent in *Sibbach*"—*i.e.*, that any Federal Rule that "really regulates procedure" is valid. *Id.* Resolving this disagreement would do more than settle the anti-SLAPP question: it would fix the governing framework for Federal Rule displacement generally, curb forum-shopping and inequitable administration in mixed federal-question and supplemental-jurisdiction cases, and align lower-court practice with

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v. Global Witness Publishing, Inc., No. 19-7132 (D.C. Cir.) [https://perma.cc/6SHE-6Q2L].

this Court's recent emphasis on a straightforward *Shady Grove* two-step test in *Berk*, 607 U.S. at 193.

C. This Case Is an Ideal Vehicle for Resolving the Circuit Split.

This petition presents the cleanest vehicle the Court has had, or is likely to have, for resolving every branch of the three-way conflict. To present all three positions as live, outcome-determinative alternatives, a petition must satisfy three conditions: (i) it must arise from a circuit applying the hybrid reconstruction approach—in practice, the Ninth Circuit; (ii) the special motion must have been granted, not denied, so the manner in which the reconstructed regime is applied is squarely engaged; and (iii) the motion must have been granted in a posture the statute as enacted would not have permitted, yielding an opposite outcome under the First Circuit's as-enacted approach. This case satisfies every condition. The Ninth Circuit treated Nevada's 60-day deadline and discovery stay as inapplicable while preserving the statute's mandatory remedial consequences. The 465-day delay between service and the special motion is dispositive across the split: the four opposing circuits would foreclose the motion and its fee award outright; the First Circuit would have required dismissal as untimely; only in the Ninth Circuit does the same merits victory trigger a post-discovery mandatory fee demand—here, the $600,000 bond demand described above.

This posture distinguishes every prior anti-SLAPP petition this Court has considered. The pending petition in *Gopher Media LLC v. Melone*, No. 25-1067 (U.S. filed Mar. 6, 2026), highlights another facet of the First–Ninth Circuit split: the availability of interlocutory appeals from the merits denial of anti-

SLAPP special motions in federal court. Most state anti-SLAPP statutes, including Nevada's, expressly authorize interlocutory appeals from denied special motions. *See* NRS § 41.670(4). The First Circuit permits them according to the statute's terms, but the Ninth Circuit reversed its longstanding practice in *Gopher Media*. Although the broader question of anti-SLAPP applicability may be fairly included, the en banc court expressly declined to reach it and noted that "neither side argue[d] in favor of overruling our precedent holding that the California anti-SLAPP statute applies in federal court under the *Erie* doctrine." 154 F.4th at 700. By contrast, Petitioners directly challenged the applicability of Nevada's anti-SLAPP statute after the superseding decision revived it. This difference matters because important legal issues are best resolved through the crucible of true adversarial presentation. *See Poe v. Ullman*, 367 U.S. 497, 503 (1961); *Muskrat v. United States*, 219 U.S. 346, 357 (1911).

Several other petitions in which this Court has called for a response have presented substantial vehicle problems not present here. In *Ctr. for Med. Progress v. Planned Parenthood*, No. 18-696 (U.S. filed Nov. 21, 2018), the plaintiff, having prevailed below, did not contest anti-SLAPP applicability. *Retzlaff v. Van Dyke*, No. 19-1272 (U.S. filed May 4, 2020), and *Clifford v. Trump*, No. 20-602 (U.S. filed Oct. 29, 2020), both involved an earlier, since-amended version of the Texas Citizens Participation Act, raising serious questions about the precedential value of any ruling. *Clifford* also presented additional choice-of-law complications stemming from an inter-circuit transfer. Finally, *AmeriCulture v. Los Lobos Renewable Power*, No. 18-89 (U.S. filed Jul. 16, 2018), arose under New Mexico's statute, which the Tenth Circuit treated as "purely procedural" and which lacks the burden-shifting framework central to *Shady Grove* analysis. By contrast, this case arises under Nevada's current (post-2013) anti-SLAPP statute, on a fully developed record, and involves a grant of the special motion followed by a remand. It presents none of the vehicle defects that have plagued prior petitions.

The federal-question posture is, if anything, an affirmative virtue. Anti-SLAPP fee-shifting is not confined to diversity actions; it routinely distorts federal-question litigation through supplemental jurisdiction over accompanying state-law claims. *See*, *e.g.*, *Tobinick v. Novella*, 848 F.3d 935 (11th Cir. 2017) (Lanham Act, 15 U.S.C. § 1125(a)(1)(B)); *Godin*, 629 F.3d 79 (42 U.S.C. § 1983); *Newsham*, 190 F.3d 963 (False Claims Act, 31 U.S.C. §§ 3729–3733); *Iqe PLC v. Newport FAB, LLC*, 155 F.4th 1370, 1374–75 (Fed. Cir. 2025) (18 U.S.C. § 1836; 35 U.S.C. § 256).[13] Where, as here, the federal claim itself carries concurrent state and federal jurisdiction—such as the Lanham Act under 15 U.S.C. § 1121(a), App.49a—the plaintiff's choice of forum is functionally identical to the diversity-case choice that animates *Erie*'s twin aims. A Nevada Lanham Act plaintiff in state court is subject to anti-SLAPP fees only if the defendant satisfies the statute's procedural prerequisites; the same plaintiff in federal court, under the Ninth Circuit's reconstructed regime, faces a mandatory post-discovery fee demand on a motion the legislature would have foreclosed as untimely.

[13] The Federal Circuit does not independently contribute to the split. On non-jurisdictional issues that are not unique to patent law, it applies the law of the regional circuit from which the case arose. *See Newport FAB*, 155 F.4th at 1378.

That divergence is the inequitable administration of the laws *Erie* was designed to prevent.

Although the decision below is unpublished, this Court has granted certiorari to review unpublished decisions presenting important questions of federal law. *See Berk*, 607 U.S. at 187 (reviewing unpublished *Berk v. Choy*, 2024 WL 3534482 (3d Cir. July 25, 2024)). The question presented is a pure question of law that the panel squarely decided, the Ninth Circuit has recently reaffirmed its anti-SLAPP applicability in the en banc *Gopher Media* decision, and the circuit split is documented across numerous published decisions in six circuits.

D. Under *Shady Grove* and *Berk*, Nevada's Anti-SLAPP Special Motion Is Displaced by Federal Rules 12(b)(6) and 56.

This Court has recently remarked that "[a]nalyzing whether a Federal Rule displaces state law is straightforward" under the two-step test of *Shady Grove*. *See Berk*, 607 U.S. at 193 (citing *Shady Grove*, 559 U.S. at 398). Under the first step, a court must determine whether a Federal Rule "answers the question in dispute." *Id.* And "[i]f a Federal Rule answers the disputed question, it governs, unless it 'exceeds statutory authorization or Congress's rulemaking power.'" *Id.* As demonstrated *supra* Part I.A.1, four circuits have held that anti-SLAPP burden-shifting requirements like Nevada's "probability of prevailing" standard answer the same question as Rules 12(b)(6) and 56. The anti-SLAPP statute at issue here, NRS § 41.660 (3)(b), likewise "answers the same question" as Rules 12(b)(6) and 56. The Ninth Circuit's decision below implicitly confirms this: the panel applied the Rule 56 standard to satisfy the second-prong analysis. App.11a.

Because Rules 12(b)(6) and 56 and NRS § 41.660 (3)(b) answer the same question, Rules 12(b)(6) and 56 "govern[] so long as [they are] valid under the Rules Enabling Act, which requires that Federal Rules be procedural rather than substantive." *Id.* at 198 (citing 28 U.S.C. § 2072(b)). Under *Berk*, validity under the Rules Enabling Act is governed by the "modest test" of *Sibbach*: "whether the Federal Rule 'really regulates procedure.'" *Id.* (quoting *Sibbach*, 312 U.S. at 14). There is no question that Rules 12(b)(6) and 56 regulate procedure. *Berk* rejected an approach to Rules Enabling Act validity that involved "asking . . . whether *the displaced state law* is substantive." *Id.* at 199. Even if the fee-shifting provision is viewed as having substantive effect, the Court need not concern itself with whether aspects of the anti-SLAPP law are substantive. "Rules which incidentally affect litigants' substantive rights do not violate [the Rules Enabling Act] if reasonably necessary to maintain the integrity of that system of rules." *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 5 (1987).

The Ninth Circuit's approach—developed over nearly three decades of decisions since *Newsham* and applied by the panel below—effectively severs the fee-shifting aspects of the anti-SLAPP law from the procedural preconditions to granting that motion. But the Nevada legislature tied the fee-shifting consequences to the granting of a special motion, including all of its procedural preconditions. *See* NRS § 41.670(1)(a). As the *Abbas* court recognized, severing fee-shifting from those preconditions improperly rewrites the statute in a way no legislature enacted. 783 F.3d at 1334–35 ("The main problem with the defendants' theory is that it requires the Court to re-write the special motion to dismiss provision”). This Court’s precedent does not support such judicial rewriting. *See Berk*, 607 U.S. at 196–197 (“Defendants offer a workaround: They rewrite Delaware’s law. . . . That defendants cannot fit the affidavit requirement into the Federal Rules illustrates that it has no place there.”). Justice Stevens’s *Shady Grove* concurrence, often cited to support anti-SLAPP applicability, warned that “simply because a rule should be read in light of federalism concerns, it does not follow that courts may rewrite the rule.” 559 U.S. at 431 (Stevens, J., concurring). The Ninth Circuit’s judicial rewriting of the state anti-SLAPP laws therefore does not prevent displacement.

Accordingly, Nevada’s anti-SLAPP special motion to dismiss and its associated fee award do not apply in federal court, and the anti-SLAPP judgment below must be reversed.

II. The Panel’s Single-Sentence Public-Figure Designation Departs from *Gertz*, *Wolston*, and *Hutchinson*.

The decision below designated Petitioners as limited-purpose public figures—the constitutional determination that drove every dispositive ruling against them—without the particularized analysis this Court’s precedents demand. App.8a–9a. Rather than affirm a developed district-court analysis, the panel supplied a new appellate rationale, compressing the constitutionally required three-part inquiry into a single conclusory sentence. That compression reflects the broader appellate drift Members of this Court have urged it to confront: actual malice has “evolved from a high bar to recovery into an effective immunity from liability,” *Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from denial of certiorari); *see* *also id.* at 2424–25 (Thomas, J., dissenting from denial of certiorari), and conclusory public-figure designations are a principal mechanism by which that immunity now operates. At a minimum, the panel's disposition—no more illuminating than the district court's, App.32a–34a—warrants vacatur with instructions to apply the controlling framework in the first instance.

This Court has consistently cabined the limited-purpose public figure category. *Gertz* held that an individual qualifies only when he has "voluntarily inject[ed]" himself into a "particular public controversy" to "influenc[e] the resolution of the issues involved." 418 U.S. at 345, 351–52. *Wolston* confirmed that a plaintiff does not become a public figure merely by being drawn into matters of public attention, 443 U.S. at 166–68, and *Hutchinson v. Proxmire* rejected the view that a person becomes a public figure by receiving federal funds and responding to public criticism, 443 U.S. 111, 134–36 (1979); *see also Time, Inc. v. Firestone*, 424 U.S. 448, 453–55 (1976) (mere notoriety insufficient). Together, those decisions require particularized findings on (1) a discrete public controversy predating the alleged defamation whose outcome "affects the general public or some segment of it in an appreciable way," *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980); (2) the plaintiff's voluntary participation in that controversy to influence its resolution, *Gertz*, 418 U.S. at 345; and (3) the germaneness of the challenged statements to that participation, *Wolston*, 443 U.S. at 167–68.

The Ninth Circuit's own precedent demands the same "fact-specific" inquiry on each element. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022) (citing *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 266 (9th

Cir. 2013), and *Gertz*, 418 U.S. at 351). The inquiry turns on "attention-generating activities" tied to the controversy itself, not on a plaintiff's general commercial profile or ordinary business advertising and social media presence. *Id.* at 926–28. The defendant must show that the plaintiff "thrust" himself into the debate at issue. *Makaeff*, 715 F.3d at 266–67. In *Planet Aid*, the challenged statements concerned the very fundraising and aid-distribution practices in which the plaintiff had publicly participated. 44 F.4th at 926–28. In *Makaeff*, Trump University had itself injected the disputed subject matter into public debate through an aggressive promotional campaign inviting commentary on the very issues the challenged statements addressed. 715 F.3d at 266–68. Here, the panel identified no comparable nexus between any attention-generating activity by Petitioners and the specific accusations at issue—lying about education, money laundering, drug manufacturing, framing a co-defendant, and involvement in a death.

Neither court below made the required findings. The panel held in a single sentence: "Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020." App.9a, 20a–21a. That formulation fails on every prong. As to controversy, the panel pointed to no record evidence of any discrete public dispute predating the Cornelia Defendants' December 2020–February 2021 video series—and the "legitimacy and quality of Plaintiffs' coaching services" is not a pre-existing controversy at all but a description of the very content of the alleged defamation, which

Wolston forbids using to bootstrap public-figure status. 443 U.S. at 167–68. As to voluntary injection, operating a coaching business with 23,700 YouTube subscribers is ordinary commercial activity, not *Makaeff*-style injection into a debate the plaintiff itself made public. 715 F.3d at 266–68. And as to germaneness, the five challenged assertions—that Buczkowski lied about his education, laundered money, manufactured or sold illegal drugs, framed a co-defendant in a 2013 arrest, and was involved in the death of a young woman, App.24a–25a; Compl. ¶¶ 58–75—are accusations of personal misconduct and criminality untethered to any debate about coaching services. *See Gertz*, 418 U.S. at 351–52.

The district court's antecedent analysis fares no better. Rather than identify record evidence of a discrete pre-existing controversy and Petitioners' purposeful entry into it, the court treated routine marketing language in the Complaint—descriptions of Wealthy as a "leading" company and references to subscriber counts and view totals—as dispositive under a "cannot 'have it both ways'" rationale. App.33a–34a. Self-promotional puffery satisfies no prong of the constitutional test. *Planet Aid*, 44 F.4th at 926–28; *Makaeff*, 715 F.3d at 266–67. The panel did not confront that flawed reasoning but substituted an equally unexamined rationale—leaving Petitioners with two conclusory dispositions and no reasoned application of *Gertz* at either level.

Nor can unspecified pre-December 2020 material rescue the panel's holding. To the extent it silently relied on Petitioners' pre-publication advertising, such generalized commercial promotion cannot, as a matter of law, satisfy *Gertz*'s requirement of voluntary injection into a discrete public controversy. *Gertz*, 418 U.S. at 351–52; *Planet Aid*, 44 F.4th at 926–28; *Makaeff*, 715 F.3d at 266–67. Ordinary advertising is not an "attention-generating activity" tied to a pre-existing debate over money laundering, drug manufacturing, fabrication of criminal charges, or involvement in a death. Treating it as such would convert every business that promotes its offerings into a limited-purpose public figure as to any reputational attack, however unrelated—precisely the result *Gertz*, *Wolston*, and *Hutchinson* foreclose.

At a minimum, the judgment should be vacated and remanded for the particularized analysis the controlling framework requires. This Court has done exactly that when confronting dispositions too opaque to permit meaningful review. In *Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809, 811 (1986) (per curiam), the Court vacated a Federal Circuit decision that failed to delineate "the degree to which the obviousness determination is one of fact." *Carter v. Stanton*, 405 U.S. 669, 671 (1972) (per curiam), vacated a disposition "opaque and unilluminating as to either the relevant facts or the law," and *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 78 (2000) (per curiam), reaffirmed that "ambiguous or obscure adjudications . . . do not stand as barriers" to the determination of federal questions. The limited-purpose public figure inquiry, like the obviousness inquiry in *Dennison*, requires a legal conclusion grounded in specific factual findings; the panel's single-sentence disposition is at least as opaque as the rulings vacated in those cases, and the constitutional stakes are markedly higher.

CONCLUSION

For the foregoing reasons, the petition should be granted on both Questions Presented. At a minimum, the public-figure ruling should be vacated and remanded for the particularized analysis required by *Gertz*, *Wolston*, and *Hutchinson*.

Respectfully submitted,

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May 26, 2026

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Opinions and Orders

Rehearing Orders

CONSTITUTIONAL, STATUTORY, AND PROCEDURAL PROVISIONS

SUPERSEDING MEMORANDUM* OPINION, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 25, 2026)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC, *Defendants-Appellees,*

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Argued and Submitted December 9, 2025
San Francisco, California

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.**

MEMORANDUM

Dale Buczkowski and his company Wealthy, Inc. (together, "Plaintiffs") appeal from the district court's dismissal for lack of personal jurisdiction of their claims against John Mulvehill and John Anthony Lifestyle, LLC (together, "*Mulvehill* Defendants"); summary judgment rulings for Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (together, "*Cornelia* Defendants"); and award of costs for the *Cornelia* Defendants. The *Cornelia* Defendants appeal from the district court's denial of their Special Motion to Dismiss Pursuant to Nevada Revised Statute § 41.660.

As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for lack of personal jurisdiction, grant of summary judgment, and denial of an anti-SLAPP motion that challenges the factual sufficiency of a claim. *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011)); *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 343

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

(2021); *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 923–24 (9th Cir. 2022). We reverse the district court's dismissal of the claims against the *Mulvehill* Defendants, affirm the district court's summary judgment rulings for the *Cornelia* Defendants, and reverse the district court's denial of the *Cornelia* Defendants' Special Motion to Dismiss Pursuant to Nevada Revised Statute § 41.660 ("anti-SLAPP motion").[1]

1. Because the Mulvehill Defendants' motion to dismiss was based on written materials—specifically, interrogatory responses and deposition testimony regarding Buczkowski's state of residence—Plaintiffs "need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citation omitted). "'[W]e may not assume the truth of allegations in a pleading which are contradicted by affidavit,' but we resolve factual disputes in the plaintiff's favor." *Id.* (citations omitted).

To determine whether a defendant has sufficient minimum contacts with the forum state to warrant the court's exercise of specific personal jurisdiction, we conduct a three-part inquiry: (1) the non-resident defendant "must purposefully direct his activities" towards the forum state or "purposefully avail[] himself of the privilege of conducting activities in the forum[;]" (2) the claim must arise out of or relate to the defendant's forum-related contacts; and (3) "the exercise

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[1] This last issue is not moot. When a movant prevails on a Nevada anti-SLAPP motion, they have the right to mandatory fee shifting, additional discretionary awards, and filing of a separate action for compensatory and punitive damages. Nev. Rev. Stat. § 41.670(1)(a)-(b). This is relief beyond what a grant of summary judgment under Fed. R. Civ. P. 56 provides.

of jurisdiction . . . must be reasonable.” *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.,* 905 F.3d 597, 603 (9th Cir. 2018).

A. Purposeful Direction

“For claims sounding in tort,” like those brought by Plaintiffs, “we most often employ a purposeful direction analysis.” *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2023) (en banc). Purposeful direction requires satisfaction of the three-factor test derived from *Calder v. Jones*, 465 U.S. 783, 789 (1984): the defendant must “have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citations omitted).

Here, Plaintiffs have satisfied the *Calder* effects test. The parties agree that the first factor is satisfied. As for the second factor, Plaintiffs plausibly allege that Mulvehill made defamatory comments implicating Buczkowski and his company Larson Consulting, registered and domiciled in Nevada, in arrests, money laundering, and other controversial events that allegedly occurred in Nevada. They also plausibly allege that Mulvehill did so with the express intent that the comments would be published on a Nevada-based influencer’s YouTube channel and disseminated to worldwide audiences, including those in Nevada. As “differential targeting” of Nevadans is not required, this is a sufficient prima facie showing of jurisdictional facts to satisfy the second *Calder* factor.[2] *See Briskin*, 135 F.4th at 757.

Turning to the third *Calder* factor, the parties dispute whether Buczkowski is a Nevada resident. However, "defamation causes harm to 'the subject of the falsehood' in the state where the defamatory material circulates, whether the subject of the statement resides there or not." *Burri L. PA v. Skurla*, 35 F.4th 1207, 1215 (9th Cir. 2022) (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776-77 (1984)). Furthermore, while the district court considered the evidence and found that Buczkowski was not a resident of Nevada, it is undisputed that Buczkowski spent at least "several months" in Nevada in 2021 and that Larson Consulting is a Nevada-based business. Accordingly, Plaintiffs have made a prima facie showing that the *Mulvehill* Defendants knew or should have known that their alleged conduct would cause harm in Nevada.

B. Arising Out of or Relating to

Plaintiffs' claims arise out of the *Mulvehill* Defendants' purposeful direction of activities toward Nevada, *i.e.*, their statements about Nevada-based events and a Nevada-based business on a Nevada-based influencer's YouTube channel.

C. Reasonableness

When the first two minimum contacts prongs are met, the burden shifts to the defendant to "'present a

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[2] The *Mulvehill* Defendants' evidentiary showing does not contradict these allegations, and in this posture, "uncontroverted allegations in the complaint must be taken as true." *See Mavrix Photo*, 647 F.3d at 1223.

compelling case' that the exercise of jurisdiction is not reasonable." *Briskin*, 135 F.4th at 761 (citation omitted). Seven factors are considered when determining whether jurisdiction is reasonable. *Id.* While the *Mulvehill* Defendants argue that alternative fora may exist, they have not shown that any other factors render jurisdiction unreasonable. They therefore have not "carried [their] heavy burden of rebutting the strong presumption in favor of jurisdiction." *See Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Accordingly, we reverse the district court's dismissal of the claims against the *Mulvehill* Defendants for lack of personal jurisdiction and remand to the district court.

2. Clear and convincing evidence of actual malice —a statement made with knowledge of falsity or reckless disregard for the truth—is required to survive summary judgment on defamation and intentional infliction of emotional distress claims regarding limited-purpose public figures. *See New York Times Co. v. Sullivan,* 376 U.S. 254, 279-280 (1964) (defamation); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (intentional infliction of emotional distress); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (limited-purpose public figures). A showing of malice is also required to establish business disparagement under Nevada law, by proving that the defendant published with knowledge of falsity, reckless disregard for the truth, or intent to harm the plaintiff's pecuniary interests. *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 504-05 (Nev. 2009).

Plaintiffs become limited-purpose public figures when they voluntarily inject themselves into a public controversy which predates their conduct for the purpose of influencing the controversy's resolution. *Planet Aid, Inc.*, 44 F.4th at 925.

Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020. Plaintiffs have not made the requisite clear and convincing showing that the *Cornelia* Defendants had actual knowledge that their comments were false or acted with reckless disregard as to their falsity. Similarly, Plaintiffs have not made the requisite showing that the *Cornelia* Defendants acted with intent to harm Plaintiffs' pecuniary interests. Accordingly, we affirm the district court's dismissal of the defamation, intentional infliction of emotional distress, and business disparagement claims against the *Cornelia* Defendants.

3. The Lanham Act prohibits misrepresentations in "commercial advertising or promotion." 15 U.S.C. § 1125(a)(1)(B). Because none of the videos at issue advertise or promote the *Cornelia* Defendants' products or services, the videos are not commercial speech as a matter of law. We affirm the district court's dismissal of the Lanham Act claims.

4. Finally, there is no evidence that the district court abused its discretion in awarding costs. Accordingly, we affirm the district court's award of costs to the *Cornelia* Defendants.

5. Nevada's anti-SLAPP law presents a two-prong analytical framework. First, movants must show by a preponderance of the evidence that the statements were "based upon a good faith communication in furtherance of the right to petition or the right to free

speech in direct connection with an issue of public concern[.]" Nev. Rev. Stat. § 41.660(3)(a); *see also Shapiro v. Welt*, 389 P.3d 262, 267 (Nev. 2017). Next, it is the plaintiffs' burden to show "with prima facie evidence a probability of prevailing on the claim," and, if they cannot, the anti-SLAPP motion is granted. Nev. Rev. Stat. § 41.660(3)(b); *see also Shapiro*, 389 P.3d at 267.

A. Prong One

As discussed, the *Cornelia* Defendants' statements address the legitimacy and quality of Plaintiffs' coaching services, thus connecting directly to an issue of public concern or interest under the first prong of Nevada's anti-SLAPP analysis. To satisfy the good faith requirement under the same prong, a movant must show by a preponderance of the evidence that the statements were true or made without knowledge of their falsity. Nev. Rev. Stat. § 41.660(3)(a). This is "essentially the same" standard as that for actual malice "only differing in the party with whom the burden of proof lies[.]" *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019). As discussed, the record does not show that Cornelia made his statements with knowledge of their falsity. Rather, it shows he reasonably researched and corroborated the statements and testified that he found the sources to be credible and the statements consistent with patterns of behavior engaged in by other influencers and wealth coaches. Accordingly, the *Cornelia* Defendants have satisfied the good faith requirements of Nev. Rev. Stat. § 41.660(3)(a), and the district court erred when it found otherwise.

B. Prong Two

The second prong of Nevada's anti-SLAPP analysis is simply "collapsed" into the summary judgment standard under Fed. R. Civ. P. 56 when an anti-SLAPP motion challenges the factual sufficiency of a complaint as it does here. *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir.), *amended*, 897 F.3d 1224 (9th Cir. 2018) (discussing California anti-SLAPP law which is substantially similar to that of Nevada).[3] Since, for the reasons discussed, this panel affirms the district court's grant of summary judgment for the *Cornelia* Defendants, the second prong is satisfied. Accordingly, the *Cornelia* Defendants satisfy their burden as to their anti-SLAPP motion, and we reverse the district court's denial and remand to the district court.

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.

In Appeal No. 23-3227, Appeal No. 24-159, and Appeal No. 23-3390, the *Cornelia* Defendants shall recover their costs.

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[3] Nevada's and California's anti-SLAPP statutes are similar in structure, purpose, and language and "share a near-identical structure for anti-SLAPP review." *See Coker v. Sassone*, 432 P.3d 746, 749, 749 n.3 (Nev. 2019). *Compare* Nev. Rev. Stat. §§ 41.660, 41.670 (regarding claims based upon a communication in furtherance of the right to petition or free speech in direct connection with an issue of public concern, allowing for special motions to strike and award of attorneys' fees upon prevailing on that motion), *with* Cal. Civ. Proc. Code §§ 425.16(b), 425.16(c) (same). In fact, the Nevada legislature specifically states in its declaration regarding the plaintiff's burden of proof for anti-SLAPP special motions that the standard is the same standard required by California's statute. Nev. Rev. Stat. § 41.665.

In Appeal No. 23-16132, Plaintiffs shall recover their costs.

MEMORANDUM* OPINION, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (DECEMBER 30, 2025)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
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JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted December 9, 2025
San Francisco, California

Before: PAEZ and OWENS, Circuit Judges, and
SEEBORG, Chief District Judge.**

MEMORANDUM

Dale Buczkowski and his company Wealthy, Inc. (together, "Plaintiffs") appeal from the district court's dismissal for lack of personal jurisdiction of their claims against John Mulvehill and John Anthony Lifestyle, LLC (together, "*Mulvehill* Defendants"); summary judgment rulings for Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (together, "*Cornelia* Defendants"); and award of costs for the *Cornelia* Defendants. The *Cornelia* Defendants appeal from the district court's denial of their Special Motion to Dismiss Pursuant to Nevada Revised Statute 41.660.

As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We review de novo both a district court's dismissal for lack of personal jurisdiction and grant of summary judgment. *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066,

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

1073 (9th Cir. 2011)); *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 343 (2021). We reverse the district court's dismissal of the claims against the *Mulvehill* Defendants and affirm the district court's summary judgment rulings for the *Cornelia* Defendants. In light of that result, we need not reach the *Cornelia* Defendants' appeal.

1. Because the Mulvehill Defendants' motion to dismiss was based on written materials—specifically, interrogatory responses and deposition testimony regarding Buczkowski's state of residence—Plaintiffs "need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citation omitted). "'[W]e may not assume the truth of allegations in a pleading which are contradicted by affidavit,' but we resolve factual disputes in the plaintiff's favor." *Id.* (citations omitted).

To determine whether a defendant has sufficient minimum contacts with the forum state to warrant the court's exercise of specific personal jurisdiction, we conduct a three-part inquiry: (1) the non-resident defendant "must purposefully direct his activities" towards the forum state or "purposefully avail[] himself of the privilege of conducting activities in the forum[;]" (2) the claim must arise out of or relate to the defendant's forum-related contacts; and (3) "the exercise of jurisdiction . . . must be reasonable." *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.,* 905 F.3d 597, 603 (9th Cir. 2018).

A. Purposeful Direction

"For claims sounding in tort," like those brought by Plaintiffs, "we most often employ a purposeful direction analysis." *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2023) (en banc). Purposeful direction requires satisfaction of the three-factor test derived from *Calder v. Jones*, 465 U.S. 783, 789 (1984): the defendant must "have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citations omitted).

Here, Plaintiffs have satisfied the *Calder* effects test. The parties agree that the first factor is satisfied. As for the second factor, Plaintiffs plausibly allege that Mulvehill made defamatory comments implicating Buczkowski and his company Larson Consulting, registered and domiciled in Nevada, in arrests, money laundering, and other controversial events that allegedly occurred in Nevada. They also plausibly allege that Mulvehill did so with the express intent that the comments would be published on a Nevada-based influencer's YouTube channel and disseminated to worldwide audiences, including those in Nevada. As "differential targeting" of Nevadans is not required, this is a sufficient prima facie showing of jurisdictional facts to satisfy the second *Calder* factor.[1] *See Briskin*, 135 F.4th at 757.

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[1] The *Mulvehill* Defendants' evidentiary showing does not contradict these allegations, and in this posture, "uncontroverted allegations in the complaint must be taken as true." *See Mavrix Photo*, 647 F.3d at 1223.

Turning to the third *Calder* factor, the parties dispute whether Buczkowski is a Nevada resident. However, "defamation causes harm to 'the subject of the falsehood' in the state where the defamatory material circulates, whether the subject of the statement resides there or not." *Burri L. PA v. Skurla*, 35 F.4th 1207, 1215 (9th Cir. 2022) (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776-77 (1984)). Furthermore, while the district court considered the evidence and found that Buczkowski was not a resident of Nevada, it is undisputed that Buczkowski spent at least "several months" in Nevada in 2021 and that Larson Consulting is a Nevada-based business. Accordingly, Plaintiffs have made a prima facie showing that the *Mulvehill* Defendants knew or should have known that their alleged conduct would cause harm in Nevada.

B. Arising Out of or Relating to

Plaintiffs' claims arise out of the *Mulvehill* Defendants' purposeful direction of activities toward Nevada, *i.e.*, their statements about Nevada-based events and a Nevada-based business on a Nevada-based influencer's YouTube channel.

C. Reasonableness

When the first two minimum contacts prongs are met, the burden shifts to the defendant to "'present a compelling case' that the exercise of jurisdiction is not reasonable." *Briskin*, 135 F.4th at 761 (citation omitted). Seven factors are considered when determining whether jurisdiction is reasonable. *Id.* While the *Mulvehill* Defendants argue that alternative fora may exist, they have not shown that any other factors render jurisdiction unreasonable. They therefore have not "carried [their] heavy burden of rebutting the strong presumption in favor of jurisdiction." *See Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Accordingly, we reverse the district court's dismissal of the claims against the *Mulvehill* Defendants for lack of personal jurisdiction and remand to the district court.

2. Clear and convincing evidence of actual malice—a statement made with knowledge of falsity or reckless disregard for the truth—is required to survive summary judgment on defamation and intentional infliction of emotional distress claims regarding limited-purpose public figures. *See New York Times Co. v. Sullivan,* 376 U.S. 254, 279-280 (1964) (defamation); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (intentional infliction of emotional distress); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (limited-purpose public figures). A showing of malice is also required to establish business disparagement under Nevada law, by proving that the defendant published with knowledge of falsity, reckless disregard for the truth, or intent to harm the plaintiff's pecuniary interests. *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 504-05 (Nev. 2009).

Plaintiffs become limited-purpose public figures when they voluntarily inject themselves into a public controversy which predates their conduct for the purpose of influencing the controversy's resolution. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022).

Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020. Plaintiffs have not made the requisite clear and convincing showing that the *Cornelia* Defendants had actual knowledge that their comments were false or acted with reckless disregard as to their falsity. Similarly, Plaintiffs have not made the requisite showing that the *Cornelia* Defendants acted with intent to harm Plaintiffs' pecuniary interests. Accordingly, we affirm the district court's dismissal of the defamation, intentional infliction of emotional distress, and business disparagement claims against the *Cornelia* Defendants.

3. The Lanham Act prohibits misrepresentations in "commercial advertising or promotion." 15 U.S.C. § 1125(a)(1)(B). Because none of the videos at issue advertise or promote the *Cornelia* Defendants' products or services, the videos are not commercial speech as a matter of law. We affirm the district court's dismissal of the Lanham Act claims.

4. Finally, there is no evidence that the district court abused its discretion in awarding costs. Accordingly, we affirm the district court's award of costs to the *Cornelia* Defendants.

5. Because we affirm the district court's summary judgment rulings, entry of judgment, and award of costs for the *Cornelia* Defendants, there is no need to address their Special Motion to Dismiss. Accordingly, we dismiss that appeal as moot.

REVERSED IN PART, DISMISSED IN PART, AFFIRMED IN PART, AND REMANDED.

In Appeal No. 23-3227, Appeal No. 24-159, and Appeal No. 23-3390, the *Cornelia* Defendants shall recover their costs.

In Appeal No. 23-16132, Plaintiffs shall recover their costs.

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NEVADA (SEPTEMBER 29, 2023)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WEALTHY, INC., ET AL.,

Plaintiff(s),

v.

SPENCER CORNELIA, ET AL.,

Defendant(s).

Case No. 2:21-CV-1173 JCM (EJY)

Before: James C. MAHAN, U.S. District Judge.

ORDER

Presently before the court is plaintiffs Wealthy, Inc. ("Wealthy") and Dale Buczkowski ("Buczkowski") (collectively "plaintiffs")' motion for partial summary judgment. (ECF No. 60). Defendants Spencer Cornelia ("Cornelia"), Cornelia Media, LLC, and Cornelia Education, LLC (collectively "defendants") filed a response (ECF No. 162), to which plaintiffs replied (ECF No. 172).

Also before the court is defendants' special motion to dismiss pursuant to NRS 41.660 (ECF No. 61) consolidated with their motion for summary judgment (ECF No. 62). Plaintiffs filed responses to these motions (ECF Nos. 78 and 79), to which defendants replied (ECF No. 182).

I. Background

This action arises out of a series of interviews published on YouTube and conducted by Cornelia that plaintiffs perceive as defamatory. Buczkowski is the owner and operator of Wealthy, described in the complaint as a "leading entrepreneurship, finance, business, real-estate and self-improvement company." (ECF No. 1 at 3). Buczkowski operates Wealthy under the name Derek Moneyberg, a federally registered trademark. (*Id.*). Buczkowski has amassed a following of 23,700 subscribers on YouTube, and his videos have garnered over 1.2 million views on the platform. (*Id.*).

Cornelia also maintains a strong social media presence, operating an eponymous YouTube channel with approximately 150,000 subscribers and publishing videos on investing, business, and fitness that have received over 13.8 million views. (*Id.* at 4). Pertinent to this case, Cornelia also published a series of videos entitled "Authentic or Charlatan" in which he claims to expose "fake gurus on social media." (*Id.*).

Between December 2020 and February 2021, defendants produced multiple interviews with another internet personality, John Mulvehill ("Mulvehill"), a dating and self-improvement coach. (*Id.* at 6-7). The statements in the videos, most of which are from Mulvehill, form the basis of plaintiffs' lawsuit. In the videos, plaintiffs allege that Cornelia and Mulvihill published five false assertions about Buczkowski. These assertions are that Buczkowski (1) lied about his educational achievement; (2) laundered money; (3) manufactured and/or sold illegal drugs; (4) framed Mulvehill for his 2013 arrest in Las Vegas, leading to four felony and four misdemeanor charges; and (5) was involved in the death of a 28-year-old woman who was the alleged victim in the arrest of Mulvehill. (*Id.* at 8, 12).

Plaintiffs' complaint includes causes of action for (1) unfair competition and false advertising under the Lanham Act, (2) defamation, (3) intentional infliction of emotional distress, and (4) business disparagement. (*Id.* at 19-22).

Plaintiffs now move the court for partial summary judgment on their defamation claim. (ECF No. 60). Defendants filed a special motion to dismiss under Nevada Revised Statute ("NRS") 41.660, Nevada's statute for strategic lawsuits against public participation ("anti-SLAPP statute"). (ECF No. 61). In conjunction with their anti-SLAPP motion, defendants filed a motion for summary judgment. (ECF No. 62).

While defendants do not satisfy each individual criterion under Nevada's anti-SLAPP statute, there is no genuine dispute of material fact as to any of plaintiffs' four causes of action. The court denies defendants' special motion to dismiss but grants their motion for summary judgment in its entirety. Such action thereby renders plaintiffs' motion for partial summary judgment on the defamation claim as moot and the court hereby dismisses the case.

II. Legal Standard

A. Special Motions to Dismiss Under NRS 41.660

An analysis involving a special motion to dismiss under Nevada's anti-SLAPP statute consists of a two-pronged approach. *See Rosen v. Tarkanian*, 453 P.3d 1220, 1223 (2019). To prevail on an anti-SLAPP motion to dismiss, a defendant must satisfy the first prong through showing "by a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." *Id.*; NRS 41.660(1)(a).

The "good faith communication" must be either "truthful" or "made without knowledge of its falsehood" and it must have a "direct connection with an issue of public interest." NRS 41.637(4). If the defendant satisfies this prong, the plaintiff has the burden of satisfying the second prong by demonstrating with *prima facie* evidence a probability of prevailing on his or her claims. *See Rosen*, 453 P.3d at 1223.

B. Motions for Summary Judgment

The Federal Rules of Civil Procedure allow summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims. . . ." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

For purposes of summary judgment, disputed factual issues should be construed in favor of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be entitled to a denial of summary judgment, the non-moving party must "set forth specific facts showing that there is a genuine issue for trial." *Id.*

In determining summary judgment, the court applies a burden-shifting analysis. "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). Moreover, "[i]n such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *Id.*

By contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the non-moving party's case; or (2) by demonstrating that the non-moving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If the moving party fails to meet its initial burden, summary judgment must be denied, and the court need not consider the non-moving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60 (1970).

If the moving party satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249-50.

The Ninth Circuit has held that information contained in an inadmissible form may still be considered for summary judgment if the information itself would be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (citing *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir.

2001)) ("[t]o survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rule of Civil Procedure 56.").

III. Dicussion

A. Special Motion to Dismiss and Nevada's Anti-SLAPP Statute

Defendants seek dismissal of plaintiffs' claims based on Nevada's anti-SLAPP statue, but they fail to satisfy the first prong of statutory analysis. *See Rosen*, 453 P.3d at 1223. Defendants must show, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." *Id.*; NRS 41.660(1)(a) (emphasis added).

The court agrees with defendants that their speech is directly connected to an issue of public concern or interest. Buczkowski is a public figure, as discussed in the court's defamation analysis, *infra*. By its own admission, Wealthy actively markets its courses on various social media channels, including YouTube, Instagram, Facebook, Twitter, LinkedIn, Spotify, and Apple Podcasts. (ECF No. 1 at 3). Wealthy also offers individual training sessions with Buczkowski, with prices starting at $60,000 and often exceeding $75,000. (*Id.*).

Given the amount of money individuals are paying for these services and Buczkowski's growing ubiquity on social media, prospective clients have the right to know about Buczkowski's background and form their own opinions on him, especially if they have qualms about a lack of his altruistic intent. There is no doubt that the public would be interested in Buczkowski's character. *See Nygard, Inc. v. Uusi-Kerttula*, 72 Cal. Rptr. 3d. 210, 220 (Cal. Ct. App. 2008) (defining an "issue of public interest" as "any issue in which the public is interested.").[1]

Despite defendants' speech directly connecting to an issue of public concern or interest, they fail to meet the preponderance of the evidence standard that their claim is based on a good-faith communication. Under *Rosen*, defendants must demonstrate that "the statements were made in good faith . . . because the gist or sting of the statements were substantively true." 453 P.3d at 440. Defendants fail to do so.

Instead, defendants state that "Cornelia did not know or believe any statement in any of the videos at issue, whether uttered by him or Mulvehill, was false." (ECF No. 61 at 30). Although there is evidence that Cornelia researched Mulvehill's claims and sources, which is sufficient to show there was no actual malice on his part, Cornelia does not provide sufficient proof that he was unaware such statements by Mulvehill concerning Buczkowski could be false.

Defendants thus fail to meet their requisite burden in satisfying the first prong of Nevada's anti-

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[1] Defendants are correct in stating that Nevada courts have often looked to case law applying California's anti-SLAPP statute, as the statutes are almost identical. (ECF No. 61 at 21); *see Coker v. Sassone*, 432 P.3d 746, 749 n.3 (Nev. 2019) ("California's and Nevada's statutes share a near-identical structure for anti-SLAPP review. Both statutes posit a two-step process for determining how to rule on an anti-SLAPP motion.").

SLAPP statute, and the court must deny their special motion to dismiss. (ECF No. 61). The court now must analyze their motion for summary judgment on each of plaintiffs' four causes of action.

B. Unfair Competition and False Advertising Under the Lanham Act

Defendants move the court to enter summary judgment on plaintiffs' claim for unfair competition and false advertising under the Lanham Act. Under the Lanham Act, a person or business is liable for using promotion and advertising to disparage another entity to obtain business and profit. 15 U.S.C. § 1125. This circuit has defined "promotion" and "advertising" as constituting: (1) commercial speech, (2) by a defendant who is in commercial competition with a plaintiff, (3) for the purpose of influencing consumers to buy defendant's goods or services, that (4) is sufficiently disseminated to the relevant purchasing public. *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021).

The court need only analyze the commercial speech element of plaintiff's claim under the Lanham Act. The Ninth Circuit characterizes commercial speech as meeting three criteria: (1) speech that is an advertisement, (2) speech that refers to a particular product, and (3) speech in which the speaker has an economic motivation. *Id.* at 1115-16.

Plaintiffs fail to satisfy the Ninth Circuit's first guidepost regarding commercial speech, as none of the subject videos are advertisements. Plaintiffs aver that defendants utilized their platform on YouTube to advertise their products and services. (ECF No. 79 at 11-12). Specifically, they argue that there was promotion of Cornelia's "house hack expert book" and a "first 1,000 subscribers mentoring program." (*Id.* at 12). Plaintiffs commit a flaw fatal in their argument by citing Cornelia's biographical YouTube information, *not* any of the videos themselves. (ECF No. 79-6 at 2) (emphasis added). Nowhere in the videos with Cornelia and Mulvehill is there any mention of the "house hack expert" mentorship program. The subject of this action is the YouTube videos themselves, not the YouTube channel as a whole.

Moreover, plaintiffs misinterpret the evidence by claiming Cornelia's real estate business was referenced in the first video. (ECF No. 79 at 12). This statement is an exaggeration. It was Mulvehill who, during the interview and unprompted by Cornelia, said to him, "you do have some real estate stuff on the side." (*Id.*). Cornelia simply responded to the statement by saying, "right." (*Id.*).

Cornelia never expounded upon his real estate portfolio in the video when Mulvehill raised the issue, and plaintiffs fail to point to any timestamp in any video in which Cornelia advertised his own services. Plaintiffs cannot cite to a timestamp in which Cornelia advertises his services because he never did so. Cornelia's speech was thus not an advertisement and therefore not commercial speech. There is no genuine issue of material fact, and the court grants defendants' motion for summary judgment as to plaintiffs' claim for unfair competition and false advertising under the Lanham Act.

C. Defamation

Defendants seek dismissal of plaintiffs' cause of action for defamation. To establish a cause of action for defamation in Nevada, a plaintiff must allege: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *Wynn v. Smith*, 16 P.3d 424, 427 (Nev. 2001); *see Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 90 (Nev. 2002).

For public figures, there is an additional requirement to bring a defamation claim. Public figures must prove that the alleged defamer acted with actual malice. *See generally New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). A court may find that a defendant acted with actual malice when the defendant made the statement with falsity or *reckless disregard* for the truth. *Id.* at 279-80 (emphasis added).

The central question before the court is whether plaintiffs are public figures. Defendants claim plaintiffs are limited-purpose public figures, defined as people or groups who voluntarily inject themselves or are drawn into a particular public controversy and thereby become public figures for a limited range of issues. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974).

The court has no apprehension in determining that plaintiffs are, at the very least, limited-purpose public figures. Plaintiffs counter defendants' contention that they plaintiffs are limited-purpose public figures because they claim defendants only cite documents evidencing plaintiffs' pervasive fame notoriety <u>after</u> defendants filed their motion for summary judgment. (ECF No. 79 at 3-4).

Plaintiffs' contention that they are not public figures because defendants cites only to evidence filed after the videos were submitted is irrelevant. In their complaint, plaintiffs describe Buczkowski as a public figure. He is the owner and operator of Wealthy, described as a "leading entrepreneurship, finance, business, real-estate and self-improvement company." (ECF No. 1 at 3). Buczkowski also owns a federally registered trademark. (*Id.*). He has amassed a following of 23,700 subscribers on YouTube, and his videos have garnered over 1.2 million views on the platform. (*Id.*).

Plaintiffs cannot "have it both ways." Either they are public figures as they claim in describing the reach of their YouTube channel, or their claims about viewership are mere puffery designed to mislead the court. Taking plaintiffs at their word in their complaint, the court finds that they are public figures.

The court need not analyze each individual element of defamation and can instead determine if plaintiffs acted with actual malice. As stated, *supra*, actual malice may be found only when a statement is made with falsity or reckless disregard for the truth. *Sullivan*, 376 U.S. 254 at 279-80. Reckless disregard requires that a publisher "entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). A publisher does not have to investigate personally, but may rely on the investigation and conclusions of reputable sources. *Reader's Digest Ass'n v. Sup. Ct. of Marin Cnty.*, 690 P.2d 610, 617-18 (Cal. 1984).

Here, all of the allegedly defamatory statements were uttered by Mulvehill, not Cornelia. Cornelia was simply interviewing Mulvehill. Thus, plaintiffs' claim is more appropriately directed at Mulvehill. Regardless of this fact, the evidence in the record shows that Cornelia did not act with reckless disregard in conducting his interview with Mulvehill. As described, *infra*, Cornelia published his videos based on reasonable information he received from reliable sources.

For example, in his deposition, Cornelia testified that he received information from Mulvehill, prior to publishing the first or second videos, about the plaintiffs' allegedly unscrupulous business practices, such as not authoring their own content in the self-help videos. (ECF No. 62-3 at 34-35). This information included a video from a former employee of plaintiffs who corroborated claims about plaintiffs' unethical business practices and their using young, unqualified people to write the instructional and promotional material for plaintiffs' courses. (*Id.* at 34-35, 114). Additionally, Cornelia received numerous emails about plaintiffs' character. (*Id.* at 34-35). He never had any information contradicting negative claims about plaintiffs when the videos were published. (*Id.* at 116). Even if Cornelia were mistaken, his conduct is not remotely close to constituting reckless disregard. Thus, defendants did not act with actual malice, and the court grants their motion for summary judgment as plaintiffs' claim for defamation.

By granting this portion of defendants' motion for summary judgment, plaintiffs' motion for partial summary judgment (ECF No. 60) is denied as moot.

D. Intentional Infliction of Emotional Distress

Defendants move the court to grant summary judgment on plaintiffs' claim for intentional infliction of emotional distress. To establish this cause of action for intentional infliction of emotional distress under Nevada law, a plaintiff must establish that: (1) the defendant's conduct was extreme and outrageous; (2)

the defendant either intended or recklessly disregarded the causing of emotional distress; (3) the plaintiff actually suffered severe or extreme emotional distress; and (4) the defendant's conduct actually or proximately caused the distress. *Olivero v. Lowe*, 995 P.2d 1023, 1025 (Nev. 2000). "Extreme and outrageous conduct is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

Public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication such as the one at issue without showing, in addition to the four elements of the claim listed above, that the publication contains a false statement of fact which was made with actual malice. *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988).

In its analysis of plaintiffs' defamation claim, the court has already shown that the statements made in the YouTube videos between Cornelia and Mulvehill were not done so with actual malice. Plaintiffs fail to demonstrate any evidence that they suffered severe emotional distress.

In defendants' interrogatories to plaintiffs, defendants ask them to identify all facts that support the contention that they have suffered damages, including in the form of emotional distress. (ECF No. 62-4 at 21). Plaintiffs answer this interrogatory by claiming they received "reports from their clients and potential clients that they have been contacted on Instagram by accounts with zero posts or followers that repeat the false and defamatory statements." (*Id.* at 22). The answer to this interrogatory does not contain any specific evidence that plaintiffs suffered emotional distress. There is no genuine issue of material fact, and the court grants defendants' motion for summary judgment as to plaintiffs' claim for intentional infliction of emotional distress.

E. Business Disparagement

Finally, defendants move the court for summary judgment on plaintiffs' claim for business disparagement. The court can analyze this claim succinctly. Nevada courts have consistently held that a claim for business disparagement requires falsity and a higher malice requirement that incorporates the actual malice standard and proof of special damages. *See Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 503-04 (Nev. 2009).

Yet again, the crux of this claim hinges on whether defendants acted with actual malice. The court has already concluded that they did not. Plaintiffs further fail to show any proof of special damages. No reasonable jury could find that defendants committed business disparagement towards plaintiffs, and the court thus grants defendants' motion for summary judgment as to this cause of action.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs' motion for partial summary judgment (ECF No. 60) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that defendants' special motion to dismiss (ECF No. 61) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (ECF No. 62) be, and the same hereby is, GRANTED.

The clerk is instructed to enter judgment and close the case.

An order from the court regarding defendant Optimized Lifestyle, LLC's, motion for attorneys' fees (ECF No. 236) is forthcoming.[2]

/s/ James C. Mahan
United States District Judge

DATED September 29, 2023.

[2] Optimized Lifestyle, LLC is a defendant in a consolidated case.

ORDER DENYING APPELLANTS' WEALTHY ET AL. PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 3, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.*

The panel has voted to deny Appellants' petition for panel rehearing, Dkt. No. 76.

Appellants' petition for panel rehearing is DENIED.

* The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

ORDER ENTERING SUPERSEDING OPINION AND APPELLEE DENYING CORNELIA PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 25, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, ET AL.,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees.

No. 24-159

D.C. No. 2:21-cv-01173-JCM-EJY

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.**

The Memorandum Disposition filed on December 30, 2025, is withdrawn and replaced with a superseding Memorandum Disposition filed concurrently with this order. With this superseding disposition, the panel unanimously voted to deny the Petition for Rehearing.

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

The Petition for Rehearing/En Banc by Appellee Spencer Cornelia, et al., filed January 8, 2026, is DENIED. No future petitions for rehearing or rehearing en banc will be entertained.

ORDER DENYING APPELLANTS' ET AL. MOTION FOR LEAVE TO FILE PETITION FOR REHEARING EN BANC, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (MARCH 16, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA, ET AL.,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, ET AL.

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY
District of Nevada, Las Vegas

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

JOHN MULVEHILL and
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees.

No. 24-159

D.C. No. 2:21-cv-01173-JCM-EJY

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.*

The panel has voted to deny Appellants' motion for leave to file petition for rehearing en banc, Dkt. No. 86.

Appellants' motion is DENIED.

* The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment I

Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .

FEDERAL STATUTES

15 U.S.C. § 1121
Jurisdiction of Federal courts; State and Local Requirements that Registered Trademarks be Altered or Displayed Differently; Prohibition

(a) The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

15 U.S.C. § 1125
False designations of origin, false descriptions, and dilution forbidden

(a) Civil Action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

28 U.S.C. § 1652
State Laws as Rules of Decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. § 2072
Rules of Procedure and Evidence; Power to Prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

FEDERAL PROCEDURAL RULES

Fed. R. Civ. P. 8(a)
General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 12
Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

[. . .]

(6) failure to state a claim upon which relief can be granted;

[. . .]

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Fed. R. Civ. P. 56
Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

[. . .]

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

STATE STATUTES

Nev. Rev. Stat. § 41.660

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

(a) The person against whom the action is brought may file a special motion to dismiss; and

[. . .]

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

[. . .]

(e) Except as otherwise provided in subsection 4, stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within 20 judicial days after the motion is served upon the plaintiff.

4. Upon a showing by a party that information necessary to meet or oppose the burden pursuant

to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.

7. As used in this section:

(a) "Complaint" means any action brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, including, without limitation, a counterclaim or crossclaim.

(b) "Plaintiff" means any person asserting a claim, including, without limitation, a counterclaim or crossclaim.

Nev. Rev. Stat. § 41.665

The Legislature finds and declares that:

1. NRS 41.660 provides certain protections to a person against whom an action is brought, if the action is based upon a good faith communication in furtherance of the right to petition or the right

to free speech in direct connection with an issue of public concern.

2. When a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff "has demonstrated with prima facie evidence a probability of prevailing on the claim" the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015.

Nev. Rev. Stat. § 41.670

1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

(a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to $10,000 to the person against whom the action was brought.

(c) The person against whom the action is brought may bring a separate action to recover:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Attorney's fees and costs of bringing the separate action.

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, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.

3. In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:

(a) An amount of up to $10,000; and

(b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

4. If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.

D.C. Code § 16-5502
Special Motion to Dismiss

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)

(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

D.C. Code § 16-5504
Fees and Costs

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

O.C.G.A. § 9-11-11.1
Exercise of Rights of Freedom of Speech and to Petition Government for Redress of Grievances; Legislative Findings; Verification of Claims; Definitions; Procedure on Motions; Exception; Fees and Expenses

(a) The General Assembly of Georgia finds and declares that it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance and public interest through the exercise of their constitutional rights of petition and freedom of speech. The General Assembly of Georgia further finds and declares that the valid exercise of the constitutional rights of petition and freedom of speech should not be chilled through abuse of the judicial process. To accomplish the declarations provided for under this subsection, this Code section shall be construed broadly.

(b)

(1) A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the non-moving party has established that there is a

probability that the nonmoving party will prevail on the claim.

(2) In making the determination as provided for in paragraph (1) of this subsection, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based; provided, however, that if there exists a claim that the nonmoving party is a public figure plaintiff, then the nonmoving party shall be entitled to discovery on the sole issue of actual malice whenever actual malice is relevant to the court's determination under paragraph (1) of this subsection.

(3) If the court determines that the nonmoving party under paragraph (1) of this subsection has established a probability that he or she would prevail on the claim, neither that determination nor the fact of such determination shall be admissible in evidence at any later stage of the case or in any subsequent action and no burden of proof or degree of proof otherwise applicable shall be affected by such determination in any later stage of the case or in any subsequent proceeding.

(b.1) In any action subject to subsection (b) of this Code section, a prevailing moving party on a motion to strike shall be granted the recovery of attorney's fees and expenses of litigation related to the action in an amount to be determined by the court based on the facts and circumstances of the case. If the court finds that a motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award attorney's fees and expenses of litigation to the nonmoving party prevailing on the motion for the attorney's fees and expenses of litigation associated with the motion in an amount to be determined by the court based on the facts and circumstances of the case.

(c) As used in this Code section, the term "act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern" shall include:

(1) Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

(2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or

(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

(d) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section until a final decision on the motion. The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection.

(e) An order granting or denying a motion to dismiss or a motion to strike shall be subject to direct appeal in accordance with subsection (a) of Code Section 5-6-34.

(f) Nothing in this Code section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, law, or rule.

(g) This Code section shall not apply to any action brought by the Attorney General or a prosecuting attorney, or a city attorney acting as a prosecutor, to enforce laws aimed at public protection.

(h) Attorney's fees and expenses of litigation under this Code section shall be requested by motion at any time during the course of the action but not later than 45 days after the final disposition, including but not limited to dismissal by the plaintiff, of the action.

Tex. Civ. Prac. & Rem. Code Ann. § 27.003 (LexisNexis 2017)—Motion to Dismiss

(a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Tex. Civ. Prac. & Rem. Code Ann. § 27.005 (LexisNexis 2017)—Ruling

(a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

(1) the right of free speech;

(2) the right to petition;

(3) or the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Tex. Civ. Prac. & Rem. Code Ann. § 27.008 (LexisNexis 2017)—Appeal

(a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) [Repealed by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5, effective June 14, 2013.]

Tex. Civ. Prac. & Rem. Code Ann. § 27.009 (LexisNexis 2017)—Damages and Costs

(a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient

to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

Cal Code Civ Proc § 425.16
(LexisNexis 2026) Legislative Findings; Special Motion to Strike Action Arising from "Act in Furtherance of Person's Right of Petition or Free Speech Under United States or California Constitution in Connection with a Public Issue"

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)

(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that

the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)

(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 11130, 11130.3, 54960,

or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title 1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to Section 7923.115, 11130.5, or 54960.5 of the Government Code.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

Me. Rev. Stat. tit. 14, § 556
Act Protecting a Citizen's Right of Petition under the Constitution

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. The court shall advance the special motion so that it may be heard and determined with as little delay as possible. The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on the special motion.

All discovery proceedings are stayed upon the filing of the special motion under this section, except that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery remains in effect until notice of entry of the order ruling on the special motion.

The special motion to dismiss may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms the court determines proper.

If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. This section does not affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, "a party's exercise of its right of petition" means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Nev. Rev. Stat. Ann. § 41.660 (LexisNexis 2007)—Attorney General or Chief Legal Officer of Political Subdivision May Defend or Provide Support to Person Sued for Engaging in Right to Petition; Special Counsel; Filing Special Motion to Dismiss; Stay of Discovery; Adjudication Upon Merits

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition:

(a) The person against whom the action is brought may file a special motion to dismiss; and

[. . .]

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Treat the motion as a motion for summary judgment;

(b) Stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(c) Rule on the motion within 30 days after the motion is filed.

4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

N.M. Stat. Ann. § 38-2-9.1
Special Motion to Dismiss Unwarranted or Specious Lawsuits; Procedures; Sanctions; Severability

A. Any action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Fla. Stat. § 768.295
Strategic Lawsuits Against Public Participation (SLAPP) Prohibited

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to

petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

NY CLS Civ R § 70-a (LexisNexis 2026)—Actions Involving Public Petition and Participation; Recovery of Damages

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and attorney's fees shall be recovered upon a demonstration, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

(c) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

2. The right to bring an action under this section can be waived only if it is waived specifically.

3. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.