Case No. 82216

In the Supreme Court of Nevada

LAS VEGAS RESORT HOLDINGS, LLC, d/b/a SAHARA LAS VEGAS,

Appellant,

*vs.*

SCOTT ROEBEN, d/b/a VITAL VEGAS, d/b/a VITALVEGAS.COM,

Respondent.



# RESPONSE TO ORDER TO SHOW CAUSE

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## RESPONSE TO ORDER TO SHOW CAUSE

Las Vegas Resort Holdings, LLC's ("the Sahara's") December 9, 2020 notice of appeal is not late. It is early. In an issue of first impression, respondent Scott Roeben contends that the order adjudicating his special motion to dismiss under NRS 41.660—before the mandatory award of attorney's fees under NRS 41.670—was the final judgment. But following the structure of the anti-SLAPP statutes, there is no appeal until the resolution of fees under NRS 41.670. This Court should reject the technical trap that Roeben proposes.

In addition, this Court should let the district court decide the Sahara's motions under NRCP 52(a)(5), 52(b), 59(e), and 60(b)—and let the settlement conference proceed—before assessing jurisdiction.

### A. The Notice of Appeal Was Premature, Not Late, Because only a Final Award under NRS 41.670 Is Appealable

An order granting a special motion under NRS 41.660 but reserving fees under NRS 41.670 is not independently appealable.

#### *1. A Statutory Anti-SLAPP Motion Is Different*

For appellate jurisdiction, an anti-SLAPP motion to dismiss operates differently from an ordinary motion to dismiss or motion for summary judgment. In the usual case, court procedural rules—NRCP 12(b) and NRCP 56—govern dispositive motions, and NRAP 3A(b) governs

questions of appealability. Not so for anti-SLAPP motions. The standard for dismissal is governed entirely by statute; and unlike a dismissal under NRCP 12(b), the statute specifically requires an award of attorney's fees as damages. NRS 41.670(1)(a). Since 2013, the Legislature has enacted separate statutory parameters governing questions of appealability. *See, e.g.*, *Stark v. Lackey*, 136 Nev. 38, 39, 458 P.3d 342, 344 (2020) (discussing the difference between NRCP 12(b)(5) and NRS 41.660 for appealability); *see* NRS 41.670(4)).

### *2. Prevailing under NRS 41.660 Is Not a Final Judgment*

This Court recognizes the distinction between prevailing on an anti-SLAPP motion under NRS 41.660 and resolving the case under NRS 41.670 (i.e., when attorney's fees are resolved). NRS 41.660 sets forth a defendant's "rights," while NRS 41.670 provides the "remedies":

> *If* a party to a defamation lawsuit files a special motion to dismiss under Nevada's anti-SLAPP statutes and prevails, *then* that party is entitled to a speedy resolution of the case in its favor and recovery of attorney fees incurred in defending the action.

*Kosor v. Olympia Cos.*, 136 Nev., Adv. Op. 83, 478 P.3d 390, 393 (2020) (emphasis added). Fairly read, "then" in this context means next in time, or subsequently. Because the "speedy resolution of the case . . . and recovery of attorney fees" *follow* a party's prevailing on the special

motion to dismiss, *Kosor* implies that the granting of a motion to dismiss is not itself an appealable final judgment. Although the defendant has prevailed, the remedies of NRS 41.670, including the determination of attorney's fees, constitute the appealable "resolution of the case."

41.670 is a counterclaim that the legislature created.

### *3. The Anti-SLAPP Motion Serves the Function of a Counterclaim with Attorney's Fees as Damages*

This straightforward rule makes sense considering the function of the anti-SLAPP statutory framework. The special motion to dismiss operates as a kind of counterclaim for damages from the filing of a vexatious complaint, much like a claim based on a theory of malicious prosecution or abuse of process. Indeed, it was out of a recognition that "defendants' traditional safeguards against meritless actions, (suits for malicious prosecution and abuse of process, requests for sanctions) are inadequate" that legislatures began to create more robust tools via anti-SLAPP legislation. *Wilcox v. Superior Court*, 33 Cal. Rptr. 2d 446, 450 (Ct. App. 1994), *disapproved of on other grounds by Equilon Enters. v. Consumer Cause*, Inc., 29 Cal. 4th 53, 52 P.3d 685 (Ct. App. 2002).[1]

[1] Nevada's anti-SLAPP regime provides expedited relief in the form of attorney's fees incurred in bringing the NRS 41.660 motion. Other relief, such as damages to the defendant itself caused by the SLAPP suit, are redressable in a separate action under NRS 41.670(1)(c).

Now compare how appellate jurisdiction works in these functionally analogous contexts. As in the statutory anti-SLAPP regime, attorney's fees in a claim for malicious prosecution or abuse of process are recoverable as *damages*. *Horgan v. Felton*, 123 Nev. 577, 587, 170 P.3d 982, 989 (2007) (Maupin, J., concurring). But if a defendant brings a counterclaim for that relief, the action now presents "more than one claim for relief." NRCP 54(b). Absent certification under Rule 54(b), *all* of the claims must be resolved before *any* may be appealed. So an order that merely dismisses the plaintiff's complaint is not a final, appealable judgment; the district court must resolve the abuse-of-process counterclaim, too. *Donoghue v. Rosepiler*, 83 Nev. 251, 252–53, 427 P.2d 956, 956–57 (1967); *see also Schwartz v. Eliades*, 113 Nev. 586, 588–89, 939 P.2d 1034, 1035–36 (1997).

Here, merely condemning the complaint as a SLAPP does not resolve what amounts to statutory counterclaim with an embedded request for fees as damages. It is rather akin to an order on summary judgment fixing liability (NRS 41.660) but leaving the damages (NRS 41.670) for trial: such an order is interlocutory and not appealable. *See Mid-Century Ins. Co. v. Pavlikowski*, 94 Nev. 162, 163, 576 P.2d 748,

This ignores the structure of the anti-slapp law

749 (1978) (order fixing insurer's liability for fire loss was not a final judgment where issue of damages had not been tried).

#### *4. Unlike California, Nevada Elected to Make Only the Denial of an Anti-SLAPP Motion Appealable*

Although Nevada's Legislature could have made the grant of an anti-SLAPP motion appealable, it chose not to. A comparison to California law is instructive. This Court frequently does so given the "similarity in structure[] [and] language" to Nevada's regime. *Coker v. Sassone*, 135 Nev. 8, 11 n.3, 432 P.3d 746, 749 n.3 (2019). Yet on the question of appealability, Nevada's statute turns in a markedly different direction.

In California, as in Nevada, a written order dismissing a complaint is generally appealable. *Adohr Milk Farms, Inc. v. Love*, 63 Cal. Rptr. 123, 125 (Ct. App. 1967); CAL. CIV. PROC. CODE § 581d. But in enacting its anti-SLAPP regime, California's legislature deemed it necessary to grant special permission to appeal from "[a]n order *granting* or denying a special motion to strike." CAL. CIV. PROC. CODE § 425.16(i) (emphasis added); *see also* CAL. CIV. PROC. CODE § 904.1(a)(13); *City of Colton v. Singletary*, 142 Cal. Rptr. 3d 74, 100 (Ct. App. 2012). *That* is the authority under which an order granting an anti-SLAPP motion "is, in most instances, immediately appealable." *Doe v. Luster*, 51 Cal.

Rptr. 3d 403, 404 (Ct. App. 2006).

Nevada faced the same choice in 2013, following a Ninth Circuit ruling that orders denying anti-SLAPP motions are not appealable. *See Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 802 (9th Cir. 2012). The Legislature took up the question of appealability and even considered a model statute that would have made "an order *granting* or denying a special motion to strike . . . immediately appealable." Legislative History of SB 286 from 2013, at 94, *available at* https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2013/SB286,2013.pdf (last accessed Feb. 8, 2021). *See generally id.* at 12, Sen. Comm. on Judiciary, 77th Sess., March 28, 2013, at 3 (statement of Senator Justin Jones); *id.* at 122, Ass'y Comm. on Judiciary, 77th Sess., May 6, 2013, at 3.

Yet the Legislature settled on narrower language, permitting an immediate appeal only from the *denial* of the motion under NRS 41.660:

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

2013 Nev. Stat. 624, SB 286, § 4(4) (adding NRS 41.670(4)) (emphasis added). Absent is the broader language of California's rule that would have made the mere grant of a motion under NRS 41.660 appealable.

**Why the fuck would they need a special designation to make the GRANT appealable?**

*Cf. also Animal Care Clinic, Inc. v. Eighth Judicial Dist. Court*, No. 76445, 445 P.3d 221, 2019 WL 3484154, at *1 (Nev. July 24, 2019) ("The Legislature appears to have made the deliberate policy choice to allow interlocutory review of an order denying a special motion to dismiss but not one partially granting such a motion.").

#### *5. The Placement of Appellate Rights in NRS 41.670 Confirms the Requirement that NRS 41.670 Governs Finality*

The Legislature's choice is also apparent in how it structured the right of appeal within the anti-SLAPP statutes. Rather than placing that right in NRS 41.660, the Legislature embedded it in NRS 41.670, what this Court in *Kosor* called the "remedies" statute.

This, too, makes sense. When a district court denies an anti-SLAPP motion, the plaintiff's primary relief is in that denial: the decision to award attorney's fees is discretionary under the ordinary "frivolous or vexatious" standard that mirrors NRS 18.010(2)(b). *See* NRS 41.670(2). So the appealable determination is the denial of the NRS 41.660 motion.

In contrast, the relief a defendant seeks in invoking Nevada's anti-SLAPP regime necessarily includes attorney's fees; they are mandatory and thus part of the implied counterclaim that NRS 41.670 creates. As

*Kosor* indicates, the award of fees constitutes the "resolution" from which an appeal lies. Because the determination of fees following an order granting NRS 41.660 relief is the procedural counterpart of the order outright denying NRS 41.660 relief, it is appropriate that the question of appealability appears in the same section as the determination of fees.

### *6. Roeben's Rule Would Create Bad Policy*

Roeben's proposal to punish an appellant for awaiting the "speedy resolution" of attorney's fees that NRS 41.670 requires is extremely problematic. This Court has long favored rules of appellate jurisdiction that "avoid confusion" and "prevent harsh results for unwary parties." *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584–85, 245 P.3d 1190, 1194–95 (2010). As confirmed in *Kosor*, the Legislature's delineation between "rights" in NRS 41.660 and "remedies" in NRS 41.670—including the right of appeal in NRS 41.670(4)—is clear and easy to apply.[2] To now hold that NRS 41.670 is irrelevant to the finality of an order granting NRS 41.660 relief would sow confusion and set a new

[2] In a pre-2013 case where the timeliness of a notice of appeal was not at issue, this Court observed that "these statutes [Nevada's and California's] amount to a unique summary judgment motion, a motion that, if granted, is appealable." *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 757–58, 219 P.3d 1276, 1284 (2009). This dictum did not consider the

"technical trap for the unwary," *A.A. Primo*, 126 Nev. at 585, 245 P.3d at 1195, contrary to this Court's policy for clear guidance.

## B. This Court Should Not Decide Its Jurisdiction Now

There are compelling reasons not to determine jurisdiction yet.

### *1. This Court Should Let the District Court Rule on Pending Post-Judgment Motions*

First, the Sahara has filed motions under NRCP 52(a)(5), 52(b), 59(e), and 60(b) for relief from the district court's orders, which makes both notices of appeal premature. (Ex. A.) Among other issues, the motion challenges the district court's view of a report about the Sahara's supposedly imminent demise as protected "opinion" and its reliance on contradictory statements made for the first time in a declaration attached to a reply brief. Because a premature notice of appeal becomes valid or can be replaced with a valid notice of appeal once the district court disposes of the issues pending before it, *see* NRAP 4(a)(6), this Court traditionally gives the district court a reasonable opportunity to resolve such motions. And that is especially true here because, regard-

later enactment of NRS 41.670(4), which explicitly diverged from California's CAL. CIV. PROC. CODE § 425.16(i) in the scope of appealable orders. To the extent *John* can be read as holding that an order granting NRS 41.660 relief without resolving fees under NRS 41.670 is appealable, this Court should clarify that *John* has been superseded by statute.

less of the timeliness of the original appeal, the district court's resolution of the Rule 60(b) motion is independently reviewable.

Ironically, Roeben has asked the district court *stay* the resolution of tolling post-judgment motions pending this Court's determination on jurisdiction (Ex. B), but that gets it backward. This Court should let the district court resolve post-judgment motions first, then address jurisdiction.

### *2. This Court Should Wait for the Settlement Conference*

Likewise, this Court generally waits to assess jurisdiction until the case completes the Rule 16 settlement program. IOP 2(a)(2)(ii). That course is especially prudent because Sahara's appeal from the award of attorney's fees is unquestionably timely—as would be any appeal from the denial of Rule 60(b) relief. Rather than parsing the scope of the appeals now, the settlement conference should proceed.

## CONCLUSION

This Court should not dismiss the appeal. It should instead clarify that the Legislature has made an order granting anti-SLAPP relief appealable only upon the award of attorney's fees. Alternatively, this Court should await the outcome of the settlement conference to consider this scope of the appeal.

Dated this 8th day of February, 2021.

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## CERTIFICATE OF SERVICE

I certify that on February 8, 2021, I submitted the foregoing "Response to Order to Show Cause" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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# EXHIBIT A

# EXHIBIT A

**CONFILE**

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**EIGHT JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAS VEGAS RESORT HOLDINGS, LLC DBA SAHARA LAS VEGAS, A DELAWARE LIMITED LIABILITY COMPANY,

PLAINTIFF(S),

-VS-

SCOTT ROEBEN DBA VITALVEGAS DBA VITALVEGAS.COM, AND INDIVIDUAL; AND DOES I-X, INCLUSIVE,

DEFENDANT(S).

Case No.: A-20-819171-C

Dept. No.: 5

HEARING REQUESTED

**MOTION TO ALTER OR AMEND THE JUDGMENT AND TO ALTER OR AMEND THE FINDINGS,**
***or***
**MOTION FOR RELIEF FROM THE JUDGMENT**

**Motion**

Plaintiff Las Vegas Resort Holdings, LLC ("Sahara") moves this court for an order altering the judgment entered in this matter on December 30 and to alter or amend the findings. NRCP 52(a)(5), 52(b), 59(e). Alternatively, Sahara moves for relief from that judgment. NRCP 60(b)(6); *see also* EDCR 2.24. As explained below, this motion is prompted because the underlying ruling that led to the judgment is not supported by applicable law.

**The Motion Is Procedurally Proper**

This Court has several avenues to review an order for legal error, including Rule 59(e), Rule 60(b)(1), (2), (3), (5), and (6), Rule 52(a)(5), Rule 52(b), and EDCR 2.24.

**A. Rule 59(e) Relief Is Appropriate.**

First, under Rule 59(e) this Court may alter or amend an appealable order[1] "to correct a clear error of law or prevent manifest injustice." *Munafo v. Metro. Transp. Auth.*, 381 F.3d 99, 105 (2d Cir. 2004) (citation and internal quotation marks omitted) (collecting cases).

This motion is timely under NRCP 59(2)(e) because it is filed not more than 28 days after the entry of a final judgment. Although Sahara is aware that Roeben is contending in the Nevada Supreme Court that this Court's initial order under NRS 41.660 was the appealable "judgment" (and that an appeal or post-judgment motion would have been due a month after this original order), this is both wrong and irrelevant:

Roeben is wrong because recent Nevada Supreme Court precedent suggests that the resolution of a case under the anti-SLAPP statutes is not "final" in the sense of a final judgment until the order awarding attorney's fees: the Supreme Court drew a distinction between NRS 41.660, which sets forth a defendant's "rights," and NRS 41.670, which provides the "remedies":

> *If* a party to a defamation lawsuit files a special motion to dismiss under Nevada's anti-SLAPP statutes and prevails, *then* that party is entitled to a speedy resolution of the case in its favor and recovery of attorney fees incurred in defending the action.

[1] Although Rule 59(e) uses the word "judgment," the Supreme Court has clarified that the rule includes any appealable order. *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 926, 314 P.3d 946, 948 (2013).

*Kosor v. Olympia Cos.*, 136 Nev., Adv. Op. 83, at 4, ___ P.3d ___, ___ (Dec. 31, 2020) (emphasis added). Because the "speedy resolution of the case . . . and recovery of attorney fees" *follow* a party's prevailing on the special motion to dismiss, it appears that the "resolution of the case" triggering the deadline for post-judgment motions is not the order granting the NRS 41.660 motion itself, but rather the order that finally grants the moving party its remedies under NRS 41.670—the order granting attorney's fees.

Roeben's view is also irrelevant because he already asked the Supreme Court to weigh in on this timeliness issue. As that question is rightly the Supreme Court's to decide, this Court should not prejudge whether an anti-SLAPP motion under NRS 41.660 is reviewable in the context of an appeal from the order granting the defendant's "remedies" under NRS 41.670. This Court should simply decide the merits of the Rule 59(e) motion.

**B. Rule 52 Relief is Appropriate.**

This Court's findings on the anti-SLAPP motion, entered without a jury, are likewise reviewable under NRCP 52(a)(5), which allows a party to "later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings," and NRCP 52(b), which like Rule 59(e) allows the Court to "amend its findings—or make additional findings—and may amend the judgment accordingly." Both paths are appropriate here.

**C. Rule 60(b) Relief Is Procedurally Appropriate.**

In addition, Sahara's motion is also unquestionably timely under Rule 60(b), which requires only that relief be requested within a "reasonable time," and for certain subsections, within six months of the notice of entry of the judgment. Even under Roeben's view, the "judgment" would have been entered no earlier than October 30, 2020, making this motion well within the six-month timeframe. There is no evidence of prejudicial delay.

This Court has jurisdiction over the motion. First, although trial courts typically lose jurisdiction to consider post-trial motions when a notice of appeal has been filed, the notices of appeal here were filed only as a precaution; they are technically premature until the Court's

disposition of this Rule 59(e) motion. NRAP 4(a)(4)(C), (a)(6). Second, even when jurisdiction shifts to the Supreme Court, this Court still retains *Huneycutt* jurisdiction:

> [I]f a party to an appeal believes a basis exists to alter, vacate, or otherwise modify or change an order or judgment challenged on appeal after an appeal from that order or judgment has been perfected in this court, the party can seek to have the district court certify its intent to grant the requested relief, and thereafter he party may move this court to remand the matter to the district court for the entry of an order granting the requested relief.

*Foster v. Dingwall* (*Foster II*), 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (citing *Huneycutt v. Huneycutt*, 94 Nev. 79, 79–81, 575 P.2d 585, 585–86 (1978)). The district court expressly retains "limited jurisdiction to review motions made in accordance with this procedure." *Id.* (citing *Mack–Manley*, 122 Nev. at 855–56, 138 P.3d at 529–30; and *Huneycutt*, 94 Nev. at 80–81, 575 P.2d at 585–86). *See also* NRCP 62.1.

Here, if the Court is inclined to grant the motion, this Court can so notify the Supreme Court, which will remand the case for this Court to grant the motion. There is no scenario where the filing of a notice of appeal, premature or otherwise, prevents this Court from hearing a timely filed 60(b) motion, at all.[2]

**C. Roeben's Prejudicial Shift in the Reply Justifies Substantive Relief.**

In addition to the broad remedies allowed under Rules 52(a)(5), 52(b), and 59(e), Rule 60(b) presents several independent grounds for substantive relief.

First, paragraph (1)'s provision for "mistake, inadvertence, surprise, or excusable neglect" has been interpreted as allowing the same kind of relief as Rule 59(e). *Gila River Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966) ("[W]hy should not the trial court have the power to correct its own judicial error under 60(b)(1) within a reasonable time . . . and thus avoid the inconvenience and expense of an appeal by the party which the trial court is now convinced should prevail?" (quoting 7 MOORE, FEDERAL PRACTICE § 60.22(3), at 235–38)). Errors of law such as

[2] *See also Div. of Child and Family Servs. v. Eighth Judicial Dist. Court (J.M.R.)*, 120 Nev. 445, 453 & n.27, 92 P.3d 1239, 1244 & n.27 (2004); *State v. Kay*, 4 P.2d 498, 500 (Wash. 1931) (noting that oral announcement was not binding where a trial judge announced his ruling for the plaintiff but died before findings of fact and conclusions of law were presented to him for signature); EDCR 2.24(b) (recognizing that motions may also be brought under NRCP 50(b), 52(b), 59 or 60).

those described immediately below are expressly "cognizable under Rule 60(b)." *Brooklyn Patriots of Los Angeles, Inc. v. City of Reno,* No. 3:11–CV–00659–LRH–WGC, 2013 WL 685206, at *2 (D. Nev. Feb. 25, 2013) (applying Rule 60(b(1) (citation and internal quotation marks omitted)); *In re International Fibercom, Inc.*, 503 F.3d 933, 940 (9th Cir. 2007) (applying Rule 60(b)(6)).

Second, and more important, relief is necessary because of Roeben's decision to file an anti-SLAPP motion with a declaration admitting his report of plural "rumors" (along with various factual allegations about the Sahara's supposedly imminent demise) was based on a single source not circulated elsewhere; while in reply, after Sahara's opportunity to brief the opposition had passed, Roeben introduced new—and contradictory—evidence in a belated declaration.

This is precisely the kind of "surprise" for which Rule 60(b)(1) contemplates relief. It is also a kind of "newly discovered evidence" under Rule 60(b)(2), as Roeben alone knew the source for his defamatory posts, yet withheld that information until after Sahara's opposition deadline. In any event, the attempt to overcome a material shortcoming in Roeben's motion with new evidence in the reply is inappropriate. *E.g., Bann v. State,* No. 80303-COA, 2021 WL 89385, at *1 n.2 (Nev. Ct. App. Jan. 8, 2021). Under these circumstances, applying the judgment prospectively "is no longer equitable." Rule 60(b)(5).

Finally, even if no specific subsection of Rule 60(b) covers Roeben's conduct and the errors of law underpinning the judgment, those errors are sufficiently manifest to justify relief under the catchall of Rule 60(b)(6).

**Reasons to Grant the Motion**

The judgment that is the subject of this motion followed an initial ruling that granted an anti-SLAPP motion filed on behalf of defendant Scott Roeben dismissing defamation and related claims that Sahara had asserted. Roeben had published an article on the internet that made false statements to the effect that the Sahara would soon stop operating, which adversely affected, and in some cases ruined, business relationships between Sahara and some of its vendors, suppliers, and prospective guests [see Bond dec. (10/2/20) at 1, paras. 3-5]. The dismissal of Sahara's claims was predicated on two reasons: Roeben's article was merely the expression of a protected personal opinion, which

is not actionable, and apart from that, record evidence that publication of the article was accompanied by actual malice was insufficient.

The relevant facts as they appear in the record establish that, at most, whether Roeben's article can be characterized as an opinion is a triable issue. But, even if the contrary were true, as a matter of well-settled law, the article is not protected opinion. Moreover, when viewing record evidence in the light most favorable to Sahara, the record also fails to support a conclusion that, as a matter of law, evidence of actual malice does not exist.[3]

**A. Opinion.**

**1. Absence of an Opinion.**

It is beyond fair dispute that a statement described expressly as an opinion is nowhere to be found in Roeben's article. To put it differently, the article failed to say that any statement about the Sahara's ability to continue operating is merely the author's personal opinion. Instead, the article wavered back and forth between two factual assertions, *viz.*:

(i) Rumors were circulating in the casino industry that the Sahara would soon stop operating;[4] and

(ii) The imminent closure of the Sahara was an accomplished fact.[5]

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[3] An anti-SLAPP motion is treated in the same way as a summary judgment motion. *Coker v. Sassone,* 135 Nev. 8, 11-12 (2019) (affirming denial of anti-SLAPP motion). Here, among other things, that means that evidence in the record should be viewed in the light most favorable to Sahara. *E.g., Glover-Armont v. Cargile,* 134 Nev. 361, 365-366 (2018) (reversing summary judgment: "We review the pleadings and other proof in a light most favorable to the nonmoving party").

[4] The article referred to a "startling rumor" regarding the "permanent[]" closure of the Sahara, and "[t]he rumored closure."

[5] The article maintained that "preparation for the closure" had begun and an "announcement of the closure" had been delayed only because of "union considerations." The article also referred to "the camel's [i.e., Sahara's] back" as having been broken, as if that were true.

The article further represented that both of those purported facts were confirmed by multiple industry "sources."

First, a declaration from Roeben accompanied the anti-SLAPP motion in which he effectively conceded that the article's representations about multiple sources confirming either the existence of rumors about the Sahara's closure or that the Sahara would, in fact, soon stop operating, were false. That declaration repeatedly acknowledged that reports about purported rumors throughout the casino industry and the fact of the supposed closure were based only on a single source, and there is nothing in that declaration reciting that others in the casino industry were subscribing to that same view. [E.g., Roeben dec. (9/18/20) at 3, para. 17 (referring to "my source" (singular) as the exclusive source for information about the purported rumors and closure)][6] In other words, the article led the reader to conclude that the existence of rumors about, and actual reports of, the Sahara's closure were corroborated by multiple persons when, in fact, there is nothing in the Roeben declaration showing that to be true. And, the difference between an asserted fact being attributed to multiple sources rather than, as here, a single source, is hardly trivial. See e.g., David Godden, *Modeling Corroborative Evidence: Inference to the Best Explanation as Counter-Rebuttal*, 28 Argumentation: An International Journal on Reasoning 187 (2014) (showing that corroborative evidence not only provides "primary and direct support to some conclusion," but also "bolster[s] the probative value of some other piece of evidence" while quoting *Wigmore on Evidence* ("corroboration works by 'closing up other possible explanations'")).

To get around the concession that the existence of the reported rumors was attributable to only a single source and no one else, Roeben submitted a second declaration with his reply memorandum, which stated that "*rumors of closure* came from *many sources*, including casino executives and employees" [Roeben dec. (10/13/20) at 7, para. 25 (emphasis added)], or in other words, contrary to what the first Roeben declaration would have had one believe, at undisclosed times in undivulged ways, unidentified persons supposedly confirmed the existence of rumors

[6] See also *id.* at 2, para. 8 (referring to "[m]y source" (singular)); *id.* at 2, para. 9 (same); *id.* at 2, para. 10 (same)] *id.* at 2, para. 10 (same); *id.* at 3, para. 11 (same); *id.* at 3, para. 12 (same); *id.* at 3, para. 13 (same); *id.* at 3, para. 14 (same); *id.* at 3, para. 15 (same); *id.* at 3, para. 16 (referring to "this source").

regarding closure. Even if one were to graciously characterize that nonspecific statement as something to be considered, its submission amounts to a new argument supported by new evidence that was submitted with a reply memorandum, which, by any reasonable standard, could have been presented with the original motion. Saving that evidence for submission with a reply memorandum denied Sahara a fair opportunity to contest it, and therefore, the purported existence of additional industry sources who were supposedly knowledgeable about rumors regarding the Sahara's closure should be disregarded. *See Bann v. State*, No. 80303-COA, 2021 WL 89385, at *1 n.2 (Nev. Ct. App. Jan. 8, 2021) (recognizing that an argument raised for the first time in a reply "is improper, and we decline to consider it"); *Duarte v. University of Nev., Las Vegas*, 469 P.3d 194 at *3 (stating that "new arguments raised in reply need not be considered"); *see also Galassini v. Town of Fountain Hills*, No. CV–11–02097–PHX–JAT, 2013 WL 5445483, at *26 n.8 (D. Ariz. Sept. 30, 2013) ("The Town first raised this argument in its reply in support of its motion for summary judgment, depriving Plaintiff of the opportunity to respond. Arguments raised for the first time in a reply brief are waived" (citing *Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010)).[7]

Second, contrary to what the article represented, nothing in the Roeben declaration stated that the single source ever repeated rumors attributed "to industry sources familiar with the [Sahara]." As such, the Roeben declaration also conceded, in effect, that the article's reference to a

[7] To be sure, Roeben's motion (at 14-15) did attribute "rumors" of "Sahara's impending closure" to "insider contacts and a confidential source." But, correctly understood, that contention was not supported by the record that Roeben created. The motion relied on only the Roeben declaration (at paras. 6-20, 24, 27) as support for the contention. Although the cited paragraphs revealed that others may have reported financial challenges being experienced by the Sahara and resulting cost-cutting measures, only one source, and not many, said anything about a purported closure. Thus, for the Roeben reply to retreat to a different story, *viz.*, that Roeben confirmed the existence of the rumored closure with multiple sources, was a new argument because what was a previously unsupported contention in the motion was being supported by previously undisclosed evidence in the reply. Nevertheless, if the court is compelled to consider the Roeben reply's first-time disclosure about additional sources, then fairness warrants vacating the initial dismissal ruling and treating that reply as an amended motion for which Sahara should now be allowed a response.

purportedly "unconfirmed rumor" about the Sahara's "permanent[]" closure was also false because Roeben's single source repeated no such rumor.[8]

Roeben has taken the position that, when publishing the article, he did not use the word "rumor" in what most people would consider the conventional sense. [Roeben dec. (10/13/20) at 7, para. 23] Whatever Roeben intended by his choice of words is beside the point. The issue is what a reasonable person would understand "rumor" to mean when reading the article. *See Wynn v, Smith*, 117 Nev. 6, 17 (2001). And, a reasonable person standard typically presents a jury question. *See e.g., Reyburn Lawn & Landscape Design., Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 341 (2011) (reversing decision to grant judgment as a matter of law); *Banks v. Sunrise Hosp.*, 120 Nev. 822, 839 (2004) (affirming denial of directed verdict motion).

Third, the Roeben declaration effectively refuted the article's representations that closure was a foregone conclusion. Giving Roeben every benefit of the doubt (to which he is not entitled on an anti-SLAPP motion[9]), the most that can be said is that Roeben's single source reported that, in his view alone, closure was highly likely but not certain. As such, the Roeben declaration amounted to a concession that statements in the article about closure being underway (closure preparations

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[8] The article described the rumor as "unconfirmed," which was meaningless. "Unconfirmed rumor" is redundant: if the truth of a rumor is confirmed, it is not a rumor, and if the truth is not confirmed, it remains a rumor. Correctly understood, moreover, what made Roeben's report of the rumor defamatory in this case is not whether its truth had been confirmed but the fact that it existed, and not only that, but it was supposedly circulating among "casino executives and employees," thus creating the illusion that, substantively, it had legitimacy. Stated otherwise, on one hand, we are dealing here with a published article, which stated that a rumor had acquired, or at least was gaining, currency because it was circulating among knowledgeable industry personnel, with no indication that anyone had denied or even questioned its validity. On the other hand, we have a declaration that, in effect, conceded that the rumor was, at the time of publication, circulating among no one, and instead, it was attributable to a single person who identified no one else as the source of, or even as one familiar with, the rumor.

[9] See note 1, above.

had begun) and a formal announcement regarding closure awaiting only "union considerations" were not erroneous opinions but, instead, objectively false factual assertions.[10]

An anti-SLAPP motion to dismiss "functions like a summary judgment motion procedurally," which means that a defendant must "establish[] its entitlement to prevail as a matter of law." *Coker v. Sassone*, 135 Nev. 8, 11-12 (2019) (affirming denial of anti-SLAPP motion (citations and internal quotation marks omitted)). Here, Roeben's anti-SLAPP motion did not permit a ruling as a matter of law because a fair reading of Roeben's article in its entirety allows a reasonable reader to accept the following as factually true even though it is not:

> A rumor about the Sahara's closure is circulating among knowledgeable persons within the casino industry, and that rumor is credible because "preparation for the closure" has begun, and an announcement of that closure awaits only the resolution of some "union considerations."

At the very least, whether the article can be viewed that way is an issue that is genuinely disputed. And, therefore, deciding whether the article amounted to the mere expression of an opinion is a matter for a jury. *E.g., Lubin v. Kunin*, 117 Nev. 107, 111, 113 (2001) (reversing dismissal of defamation action because whether statements constituted fact or opinion was a jury question: "[W]here a statement is susceptible of different constructions, one of which is

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[10] According to the Roeben declaration submitted with his motion, he was told nothing more by his lone source other than that a request for a liquidation bid typically results in the closure of a business, meaning that there are some occasions when the solicitation of a bid is not accompanied by a desire to cease operations. [Roeben dec. (9/18/20) at 3, para. 13 (stating that liquidation was guaranteed "virtually," but not unconditionally)] Nothing in the record suggests that Roeben experienced any impediment had he wanted to find out whether reasons other than a decision to discontinue operations could explain a business's request for a liquidation bid. To be sure, record evidence establishes that the Sahara did not request a liquidation bid in aid of a planned closure. [Noel dec. (10/2/20) at 1, para. 4; Case dec. (10/2/20) at 1, para. 5; see also Hobson dec. (10/2/20) at 1, para. 7] But leaving that aside, the record here establishes that a decision to go out of business does not explain all requests for assistance from liquidation companies. [See e.g., Noel dec. (10/2/20) at 1, para. 1 (Sahara used liquidation company in the past "to clear out portions of the property for construction"); Case dec. (10/2/20) at 1, para. 4 (Sahara engaged liquidation company in the past to liquidate furnishings in a hotel tower undergoing renovation)]

defamatory, resolution of the ambiguity is a question of fact for the jury"); *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410 (1983) (affirming trial court's decision to allow jury to determine whether statement was fact or opinion: "It cannot be said as a matter of law that the statement cannot also be interpreted as factual"); *see also Wynn*, 117 Nev. at 17 ("The rule for distinguishing an opinion from an assertion of fact is whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact").

**2. Absence of a Protected Opinion.**

Even if one were to assume, albeit erroneously, that the Roeben article can be read only as the expression of an opinion, that does not end the inquiry. To be sure, "[u]nder the First Amendment there is no such thing as a false idea. . . . But there is no constitutional value in false statements of fact." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339–340 (1974) (footnote omitted)). Thus, an opinion that pertains to a matter of public concern is protected under the United States and Nevada constitutions only when that opinion is not based on "a provably false factual connotation." *People for Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 626 (1995) (quoting *Milkovich*, 497 U.S. at 20), *overruled on other grounds, City of Las Vegas Downtown Redev. Auth.*, 113 Nev. 644, 650 (1997). Stated otherwise, "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false." *Wynn*, 117 Nev. at 17 (citations and internal quotation marks omitted).

As outlined above, reduced to its essence, the article recited two facts, both of which were false: the existence of an industry-wide rumor about the Sahara's closure, and a closure that would, as a matter of fact, take place imminently. Thus, even if the article were treated as the expression of an opinion, that opinion remains actionable because it implies the existence of facts that were untrue. *Id.*

**B. Actual Malice.**

"Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth." *Nevada Indep. Broad. Corp.*, 99 Nev. at 414. If prima facie evidence of actual malice appears in the record, an anti-SLAPP motion may

not be granted. *E.g., Kinsella v. Kinsella*, 45 Cal.App.5th 442, 457 (2020) (reversing trial court decision to grant anti-SLAPP motion); see also NRS 41.665(2) (prima facie standard in Nevada is the same as the California standard).

The prima facie showing requirement does not mean that a plaintiff is required to prove the existence of actual malice; instead, a plaintiff merely must show that evidence in the record is sufficient to create a triable issue. *Kinsella*, 45 Cal.App.5th at 457 (distinguishing a prima facie showing, which is required, from proof, which is not). When deciding whether that showing has been made, moreover, a court does not weigh the evidence. *Coker*, 135 Nev. at 11 (citation omitted). Instead, unless the record establishes that a defendant is entitled to judgment as a matter of law, actual malice becomes an issue for a jury. *Id.* To put it differently, actual malice fails to become a triable issue in this case only if the facts in the record, when viewed in the light most favorable to Sahara[11], would not yield a judgment in Sahara's favor, even if those facts are uncontradicted[12].

It is no exaggeration to say that, when a prima facie standard is applied to the record here, the denial of this motion is warranted *only* if one first accepts as correct each of the following, but truly absurd, statements:

> (i) Roeben published the article while excusably ignorant of the fact that he was relying on only one source, and not multiple "industry sources familiar with the [Sahara]" as he reported, for the factual assertion that the Sahara's imminent closure

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[11] See note 1, above.

[12] *See e.g., St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993) (stating that a prima facie case is one that "produces a required conclusion in the absence of explanation"); *Murphy v. I.N.S.*, 54 F.3d 605, 610 (9th Cir. 1995) ("Prima facie evidence is evidence which, if left unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence" (citing *Black's Law Dictionary*, internal quotation marks omitted); *see also* Bryan A. Garner, *Black's Law Dictionary* (11th ed. 2019) (defining prima facie: "Sufficient to establish a fact . . . unless disproved or rebutted"); *id.* (defining prima facie case: "A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in a party's favor").

was the subject of an industry-wide rumor, nor was he reckless in reporting that multiple sources, instead of only one source, confirmed the existence of that rumor.

(ii) Roeben published the article while excusably ignorant of the fact that, instead of multiple corroborating industry sources, as he reported, he was relying on only one source for the article's statements that the Sahara's closure was underway (preparation had begun) and that an announcement to that effect was about to be made (awaiting only the resolution of union considerations), nor was he reckless in saying that multiple sources confirmed the truth of either of those facts.

(iii) Roeben published what he described as the existence of an industry-wide rumor regarding the Sahara's closure while excusably ignorant of the fact that neither his single source nor anyone else told him about the any such rumor, and he was not reckless in reporting that the contrary was true.

Evidence of the inconsistencies between what the article says and what Roeben concedes he was told (and not told) by his lone source about the existence of a rumor regarding the Sahara's closure and about the fact that, without qualification, closure was underway and would occur, are sufficient to go to a jury on the issue of actual malice because, at a minimum, reasonable people who view those inconsistencies can reach different conclusions.

**C. Limited Discovery Should Be Permitted**

"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." NRS. 41.660(4). Given the inconsistencies in Roeben's declarations, the presentment of new evidence in his reply, and because Defendant's subjective state of mind is relevant to the matter, Sahara made a good faith showing that additional information that is solely in his or third parties possession is necessary to oppose this motion. Allow Roeben to

present new evidence in a reply while denying Sahara the opportunity to seek discovery on the matters raised in Roeben's reply declarations deprived Sahara a fair opportunity to contest the statements made therein, and therefore, good cause existed to allow Sahara to perform limited discovery probing self-serving and inconsistent statements by Roeben.

**D. Attorney's Fees Are Unreasonable**

Attorneys' fees that are unrelated to an anti-SLAPP special motion to dismiss are not recoverable under the statutory fee-shifting provisions. *See, e.g., Mireskandari*, 2014 WL 12586434, at *5 ("Fees and costs unrelated to the special motion to strike are not recoverable under [anti-SLAPP statute]"); *Critical Care Diagnostics, Inc. v. Am. Ass'n for Clinical Chemistry, Inc.*, No. 13-cv-1308, 2014 WL 2779789, at *3 (S.D. Cal. June 19, 2014); *Blackburn v. ABC Legal Servs.*, Inc., No. 11-cv-01298, 2012 WL 1067632, at *2 (N.D. Cal. Feb. 24, 2012) ("Reasonable attorneys' fees and costs shall be awarded only for work performed in connection with the anti-SLAPP motion and associated motion for fees. The Court will deny fees that are not unambiguously associated with the anti-SLAPP motion and associated motion for fees."). *Rebel Commc'ns, LLC v. Virgin Valley Water Dist.*, No. 2:10-CV-0513-LRH-GWF, 2012 WL 5839048, at *1 (D. Nev. Nov. 16, 2012)(holding that defendants' "request for attorneys' fees encompassing work unrelated to the renewed special motion to dismiss is inappropriate.") (internal citation omitted); *Dalidio Family Trust v. San Luis Obispo Downtown Ass'n*, No. 07-cv-6446, 2008 WL 11342593, at *3 (C.D. Cal. July 14, 2008) (recognizing that "mere common issues of fact are insufficient to award all fees when legal theories do not overlap or are not inextricably intertwined.") (citation and quotation marks omitted).

Counsel for Defendant provided billing records in their motion for attorney's fees which include several entries which were either unrelated to the special motion and in many cases, such as discovery, were objectively not necessary based on the discovery stay in the anti-SLAPP statute. As noted above, much of that work related to evidence first presented in Defendant's reply to the opposition to the special motion. As such, this evidence ought have been excluded. *See Bann v. State, supra*, at *1 n.2; *Duarte v. University of Nev., Las Vegas*, 469 P.3d at *3.

Because such argument and evidence ought have been excluded as being newly presented in a reply, discovery work and work on the supplemental declaration of Scott Roeben, upon which the majority of the reply to opposition is based, is work that is not reasonable and should not be compensated. To permit recovery of such fees would reward work on matters that should not be rightly considered.

Furthermore, the expenditure of 63.4 hours on a single motion is unreasonable under the circumstances where the Defendant's burden is a "low burden of proof for the defendant to show he or she did not have knowledge of falsity of his or her statements and made them in good faith." *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (2019). "In calculating the hours reasonably expended, a court should not include 'padding' in the form of inefficient or duplicative efforts." Suretec Ins. Co. v. BRC Const., Inc., 2:11-CV-2813 KJM AC, 2013 WL 6199021, at *4 (E.D. Cal. Nov. 27, 2013)2013 WL 6199021, at *4 (citation and quotation marks omitted). As a general rule, where a task can be accomplished by two or more means, it is unreasonable to use the most extreme. By way of example, in war combatants have a choice of weapons and tactics – using a nuclear weapon to accomplish what could be done by a platoon would not be reasonable. With the burden on Defendant being so low, it was unreasonable to expend over 63 hours of work, and extraneous efforts on discovery, memo writing, or attendance at hearings not related.

**E. Relief Requested.**

The motion should be granted. The court should vacate the December 30 judgment and the October 30 ruling precipitating that judgment, and allow this matter allowed to proceed with a view to setting it for trial.

Dated this 3rd day of February, 2021.

BY: _____*/s/ Matthew J Weitz*_____

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 3rd day of February, 2021, a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND THE JUDGMENT** was served on all persons registered for service in the Court's Electronic Filing system, including but not limited to:

Marc J. Randazza, Esq
Ronald D. Green, Esq
Alex J. Shepard, Esq
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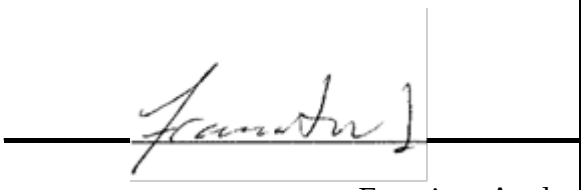

Francisca Avalos

# EXHIBIT B

# EXHIBIT B

**MSTY**
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Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,

Plaintiff,

vs.

**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,

Defendants.

Case No. A-20-819171-C

Dept. No. 5

**MOTION TO STAY MOTION TO ALTER OR AMEND THE JUDGMENT AND TO ALTER OR AMEND THE FINDINGS, or MOTION FOR RELIEF FROM THE JUDGMENT ON AN ORDER FOR SHORTENING TIME**

HEARING REQUESTED

**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that the hearing on Defendant Scott Roeben's Motion to Stay Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment on an Order Shortening Time shall be heard on the 18th day of February, 2021 at the hour of 9:30 a.m./~~p.m.~~ in Department 5 of this Court;

**IT IS FURTHER ORDERED THAT** Plaintiff shall file an opposition to the Motion to Stay Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment on or before the 12th day of February, 2021 at 5:00 ~~a.m.~~/p.m. and shall serve a copy of same on counsel for Defendant Scott Roeben by electronic mail on that same date.

**IT IS FURTHER ORDERED THAT** Defendant Scott Roeben may file a reply in support of his Motion to Stay Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment on or before the 17th day of February, 2021 at noon ~~a.m./p.m.~~ and shall serve a copy of same on counsel for Plaintiff by electronic mail on that same date.

Dated this _____ day of _____, 2021.

Dated this 7th day of February, 2021

District Court Judge

909 5AF 6DE1 9368
Veronica M. Barisich
District Court Judge

Submitted by:

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
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RANDAZZA | LEGAL GROUP

**DECLARATION OF MARC J. RANDAZZA IN SUPPORT OF MOTION TO STAY**

I, MARC J. RANDAZZA, being first duly sworn, now depose and declare:

1. I am one of the attorneys for Defendant Scott Roeben in the above-captioned matter. I am over the age of 18 years and competent to testify to the matters set forth herein.

2. I am submitting this Declaration in Support of Defendant Scott Roeben's Motion to Stay Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment. I make this Declaration based upon my personal knowledge of the facts and matters of this action, and to establish good cause justifying a shortening of time for the hearing on the Motion to Stay.

3. There exists good cause to hear the instant Motion on shortened time. This request for an order shortening time is made in good faith and without dilatory motive.

4. This Motion is made on an order shortening time because Roeben's response to Plaintiff's Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment is due no later than February 10, 2021. If the Motion is heard in the ordinary course, that deadline will have passed prior to the Court's ruling on this Motion.

5. As explained in greater detail in the accompanying Memorandum of Points and Authorities, there is a pending motion in the Supreme Court of Nevada by Defendant to dismiss Plaintiff's appeal, No. 82216, and resolution of that motion to dismiss will significantly affect the merits of Plaintiff's Motion, specifically whether the Motion is timely.

6. If the District Court adjudicates Plaintiff's Motion, there is the potential for the Nevada Supreme Court to simultaneously make a determination inconsistent with the District Court's decision. For similar reasons, arguments in Roeben's forthcoming opposition to Plaintiff's Motion would be dependent on how the Supreme Court of Nevada decides the motion to dismiss the 82216 appeal.

7. Roeben respectfully requests that this Court permit his Motion to be heard on an order shortening time. There is not adequate time to have the Motion heard in the ordinary course, and it

is therefore necessary for the Court to shorten the time for said hearing. Therefore, Defendant respectfully requests that this Court set a shortened hearing date for his Motion so that such a hearing will take place prior to February 10, 2021.

8. I attempted to resolve this without the need for a motion. I spoke to counsel for Sahara, Matthew Weitz, on 4 February. I followed up with a text on 4 February. I followed up again with another text on 5 February. Mr. Weitz represented that he was unable to speak to his client about the matter, and thus could not agree to the motion.

9. I will continue to attempt to resolve this without the need for a hearing, however, I am not optimistic, given the fact that if an in-house attorney is "unable to speak to his client" I presume facts that deflate my optimism.

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

Executed on February 5, 2021.

/s/ Marc J. Randazza
Marc J. Randazza

**MOTION TO STAY MOTION TO ALTER OR AMEND THE JUDGMENT AND TO ALTER OR AMEND THE FINDINGS, or MOTION FOR RELIEF FROM THE JUDGMENT ON AN ORDER FOR SHORTENING TIME**

Defendant Scott Roeben hereby Moves this Court for an order staying all briefing and any hearing on Plaintiff Las Vegas Resort Holdings, LLC's ("Sahara") Motion to Alter or Amend the Judgment and to Alter or Amend the Findings, or Motion for Relief from the Judgment (the "Motion") until after the pending motion to dismiss Sahara's appeal in this matter is resolved. An order shortening time is necessary because Roeben's response to Plaintiff's Motion is due on February 10, 2021. If this motion is heard in the ordinary course, that deadline will have passed. Plaintiff's counsel has indicated via phone and text that he has been unable to speak to his client, despite the fact that he is an in-house attorney, and thus has not consented to Roeben's Motion to Stay, thus necessitating the instant motion.

Dated: February 5, 2021

Respectfully Submitted,

/s/ Marc J. Randazza

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Attorneys for Defendant
Scott Roeben

## MEMORANDUM OF POINTS AND AUTHORITIES

### 1.0 INTRODUCTION AND FACTUAL BACKGROUND

In its Motion, Sahara seeks relief under NRCP 52(b), 59(e), and 60(b). It seeks to have this court give it a "do over" on a judgment that was fully briefed, argued, and decided.

Sahara does not like that it lost both the Court's October 30, 2020 order granting Roeben's Anti-SLAPP Motion and the December 30, 2020 order granting Roeben's Fee Motion. The Anti-SLAPP order dismissed all of Sahara's claims with prejudice, and Roeben filed notice of entry of that order on October 30, 2020. (*See* Notice of Entry of Order of Anti-SLAPP Motion, attached as **Exhibit 1**.) This was an appealable order and final judgment, and Sahara had 30 days in which to file a notice of appeal. It did not do so until well past the deadline. On December 15, 2020, Roeben filed a motion in the Supreme Court of Nevada to dismiss that appeal, No. 82216, due to Sahara's failure to file a timely notice of appeal. (*See* Motion to Dismiss Appeal for Lack of Jurisdiction, attached as **Exhibit 2**.) That motion to dismiss is currently pending in the Supreme Court of Nevada.

Sahara's Motion in the District Court is untimely for the same reason the appeal was; the Anti-SLAPP order is a final judgment and appealable order, and Sahara filed its Motion 89 days after being served with written notice of entry of the order. The establishment of October 30, 2020 as the date on which the final judgment was entered is also the basis of Roeben's motion to dismiss the 82216 appeal. The Anti-SLAPP order's classification as a final judgment is an issue the Nevada Supreme Court must decide to resolve that motion to dismiss. Sahara recognizes this in its Motion. (*See* Motion at 1-2.) This issue is also determinative as to the timeliness of Sahara's Motion.

Because the classification of an order granting an Anti-SLAPP Motion is an issue before a pending appeal in this matter, and the Nevada Supreme Court is well-suited to decide this issue, the Court should stay resolution of Sahara's Motion until after the motion to dismiss the appeal is resolved. Doing so will ensure this Court does not issue an order that is in direct contravention to a decision of the Nevada Supreme Court.

## 2.0 ARGUMENT

Nev. R. Civ. P. 6(b)(1)(B) permits this Court to extend time for "good cause." There is good cause for the deadline to respond to Sahara's Motion and the hearing be extended until after the Supreme Court of Nevada adjudicates the pending motion to dismiss. Roeben has argued in that motion, and would argue here, that the Anti-SLAPP Order entered on October 30, 2020 was a final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (Nev. 2000) (holding that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs"). The finality of an order is determined by "what the order or judgment actually does, not what it is called." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994); *Taylor v. Barringer*, 75 Nev. 409, 410 (1959) (finding that an order styled as "an order" granting a motion to dismiss "is in effect a final judgment").

An Anti-SLAPP motion is a summary judgment motion. *Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013); *see also Coker v. Sassone*, 432 P.3d 746, 748-49 (Nev. 2019). A dismissal under the Anti-SLAPP statute "operates as an adjudication on the merits." NRS 41.660(5). Sahara argues that the October 30, 2020 order was not a final judgment. Sahara is wrong and cites no authority to support this argument. At best, this is an issue that the Nevada Supreme Court will necessarily need to resolve in deciding the pending motion to dismiss the 82216 appeal.

Resolution of this issue at the Supreme Court will moot much of the instant motion, no matter how the Supreme Court rules. Therefore, it makes no sense for this Court to rule on this frivolous motion, only to have this Court's decision potentially wiped away by the Supreme Court. And in the unlikely event that the Supreme Court upends its entire jurisprudence on final judgments in favor of Sahara, then they will have the right to argue their positions on appeal. Meanwhile, if this Court decides that nearly three months after Sahara lost, that it wants to reverse itself, this matter will *also* go to the Supreme Court for appeal, as a matter of right under the Anti-SLAPP law. Accordingly, the only purpose of this motion is to delay and for Sahara to try to force Roeben to spend more money on fees. This is not only foolish, but sanctionable.

Further, even if the common sense of Roeben's approach is not apparent, the merits make it clear that this Court should abstain from hearing the motion until the Supreme Court has ruled. NRCP 52(b) requires a party to seek amendment of a judgment within 28 days of written notice of entry of the judgment. NRCP 59(e) states that "[a] motion to alter or amend a judgment may be filed no later than 28 days after service of written notice of entry of judgment." Sahara filed this Motion **89 days** after notice of entry of the Anti-SLAPP order. The Court does not have discretion to entertain a late-filed motion seeking relief under these rules, either. NRCP 6(b)(2) specifies that "[a] court *must not extend the time to act* under Rules . . . 52(b), 59(b), (d), and (e) . . . ." (emphasis added). The Court does not have discretion to allow a late-filed motion under Rules 52(b)[1] or 59(e). Accordingly, for the same reason that would make the Anti-SLAPP order a final judgment, it would necessarily determine that Sahara's motion is also untimely.

Similarly, NRCP 60(c)(1) provides that "[a] motion under rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3), no more than 6 months after the date of . . . service of written notice of entry of the judgment or order . . . ." Contrary to Sahara's argument, this rule does not mean that every order has a six month "do over period" under Rule 60(b), but rather establishes that such a motion absolutely cannot be filed after six months. Even if filed within six months, the motion must still be "made within a reasonable time." *See Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 338-39 (1980) (noting that Rule 60(b) motions must be made within a reasonable amount of time, and that the six-month period in the rule represents "the extreme limit of reasonableness" which will not apply in all cases); *see also Rodriguez v. Fiesta Palms, LLC*, 428 P.3d 255 (Nev. 2018) (finding that pro se plaintiff waiting almost six months to file Rule 60(b) to set aside dismissal did not bring motion within a reasonable time). While denial of the Motion on Rule 60(b) grounds is not mandated if the motion to dismiss the 82216 appeal is granted, the question of "reasonableness" would depend on whether Sahara filed its Motion 89 days after a final judgment or 28 days after a final

[1] Sahara implies a motion under Rule 52(a)(5) is distinct from a Rule 52(b) motion, but this is wrong. Rule 52(a)(5) does not create a statutory mechanism for amending an order or findings; only Rule 52(b) does that. Rule 52(a) merely identifies potential grounds for requesting amendment of a judgment.

judgment. Again – a question that the Supreme Court will answer for us, thus meaning that it makes no sense for this Court to engage in this frivolity until the Supreme Court gives us instructions.

If the District Court required Roeben to answer Sahara's motion and, thereafter, found Sahara's Motion is timely, only for the Nevada Supreme Court to later make a contemporaneous or subsequent determination that the October 30 order was the key date for finality, there will have been additional, unnecessary practice in this Court and mandate even further motion or appellate practice to address an inconsistency by this Court. The same holds even for Sahara's benefit, as this Court might agree with Roeben, but the Nevada Supreme Court might not. The best course, then, is for the District Court to stay resolution of, and all briefing on, Sahara's Motion until after the Nevada Supreme Court has made findings that will be determinative as to the issue of timeliness.

As an additional consideration, the motion was filed in violation of RPC 1.7. The Court has set a hearing for March 16, 2021 on the motion to disqualify Lewis & Roca (LRRC). Arguing this motion before that motion is heard and ruled upon places Roeben and his counsel in a position of arguing about matters of professional responsibility against RLG's very counsel. This would certainly compound LRRC's already-clear ethical violations. Accordingly, forcing this matter to be argued, at this point, would greatly multiply an ethical violation - and thus, at the very least, a response should be delayed until after the motion to disqualify is decided. Once LRRC has withdrawn or is disqualified, it is possible that a new law firm, one that may not have tried to use information gained as a result of representing RLG, will think better of the accusations in the motion.

## 3.0 CONCLUSION

For the foregoing reasons, the Court should stay resolution of, and briefing on, Sahara's Motion until after the Nevada Supreme Court has made findings that will be determinative as to the issue of timeliness. Roeben proposes his Opposition to Sahara's Motion should be due no later than 14 days following the Nevada Supreme Court's decision on the motion to dismiss the 82216 appeal or until 14 days following the resolution of the Motion to Disqualify LRRC, whichever is later.

Dated: February 5, 2021.

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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2764 Lake Sahara Drive Suite 109
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Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendant
Scott Roeben

# EXHIBIT 1

Notice of Entry of Order
of Anti-SLAPP Motion

**NEOJ**
Marc J. Randazza, NV Bar No. 12265
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Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,

Plaintiff,

vs.

**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,

Defendants.

Case No. A-20-819171-C

Dept. No. 8

**NOTICE OF ENTRY OF ORDER**

**NOTICE OF ENTRY OF ORDER**

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on October 30, 2020, the Court entered its Order Granting Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660.

A true and correct copy of the Order is attached hereto as **Exhibit A**.

Dated: October 30, 2020.

Respectfully Submitted,

/s/ Alex J. Shepard

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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2764 Lake Sahara Drive Suite 109
Las Vegas, NV 89117
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendant
Scott Roeben

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this October 30, 2020, I caused a true and correct copy of the foregoing document to be served via the Eighth Judicial District Court's Odyssey electronic filing system.

Employee,
Randazza Legal Group, PLLC

# EXHIBIT A

Order

ELECTRONICALLY SERVED
10/30/2020 1:37 PM

Electronically Filed
10/30/2020 1:37 PM
CLERK OF THE COURT

**ORDR**
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
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ecf@randazza.com

Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| **LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,<br><br>Plaintiff,<br><br>vs.<br><br>**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,<br><br>Defendants. | Case No. A-20-819171-C<br>Dept. No. 8<br><br>**ORDER** |

**ORDER GRANTING DEFENDANT SCOTT ROEBEN'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660, commencing on October 20, 2020 at 9:30 a.m., the Court having read and considered Defendant's motion, the opposition, and the reply on file and exhibits thereto, and it appearing, upon argument of counsel and for good cause shown, the Court grants Defendant's motion and finds as follows:

1. Defendant Roeben satisfied his burden under NRS 41.660(2), as his statements were expressions of opinion and thus could not have been made with knowledge of their



Case Number: A-20-819171-C

falsity. *See Rosen v. Tarkanian*, 453 P.3d 1220 (Nev. 2019); *Abrams v. Sanson*, 458 P.3d 1062 (Nev. 2020).

2. The Court finds Plaintiff has not established, with prima facie evidence, a probability of prevailing on its claim, as the statements on which Plaintiff's claim is based are statements of opinion. *See Tarkanian*, 453 P.3d 1220; *Sanson*, 458 P.3d 1062. The way the statements were couched on the facts here, not viewing them as statements of opinion would inhibit and dull free speech.
3. The Court further finds that, if the statements on which Plaintiff's claim is based are not statements of opinion, Plaintiff has not established with prima facie evidence evidence a probability of prevailing on its claim because it has not provided sufficient evidence of actual malice.

Accordingly, **IT IS HEREBY ORDERED:**

That Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's claims are dismissed with prejudice.

**IT IS HEREBY FURTHER ORDERED** that Defendant Scott Roeben is entitled to reasonable attorneys' fees and costs.

DATED this _____ day of _____, 2020.

Dated this 30th day of October, 2020

DISTRICT COURT JUDGE

8C9 EF0 7C21 B772
Trevor Atkin
District Court Judge

Submitted by:
/s/ *Marc J. Randazza*
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
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Attorneys for Defendant
Scott Roeben

Approved as to form and content:
/s/ *Matthew J. Weitz*
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Attorney for Plaintiff
Las Vegas Resort Holdings, LLC

RANDAZZA
LEGAL GROUP

**Alex Shepard <ajs@randazza.com>**

# LVRH v. Roeben | Proposed Order on Anti-SLAPP Motion

**Matthew Weitz** <MWeitz@meruelogroup.com> Tue, Oct 27, 2020 at 11:03 AM
To: Alex Shepard <ajs@randazza.com>
Cc: Trey Rothell <tar@randazza.com>, Jasmyn Montano <jbm@randazza.com>, Marc Randazza <mjr@randazza.com>

Alex,

You have consent to use my esignature on this most recent draft of the order.

-Matt

**From:** Alex Shepard <ajs@randazza.com>
**Sent:** Monday, October 26, 2020 11:05 AM

[Quoted text hidden]

[Quoted text hidden]

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Las Vegas Resort Holdings, LLC, Plaintiff(s)<br><br>vs.<br><br>Scott Roeben, Defendant(s) | CASE NO: A-20-819171-C<br><br>DEPT. NO. Department 8 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/30/2020

| | |
|---|---|
| Marc Randazza | ecf@randazza.com |
| Ronald Green | ecf@randazza.com |
| Alex Shepard | ecf@randazza.com |
| Francisca Avalos | francisca.avalos@meruelogroup.com |
| Chris Davis | Chris.Davis@SaharaLasVegas.com |
| Matthew Weitz | mweitz@meruelogroup.com |

# EXHIBIT 2

Motion to Dismiss Appeal
for Lack of Jurisdiction

# In the
# Supreme Court of the State of Nevada

Electronically Filed
Dec 15 2020 09:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

LAS VEGAS RESORT HOLDINGS, LLC,

*Plaintiff-Appellant*,

vs.

SCOTT ROEBEN,

*Defendant-Respondent*.

**Supreme Court No. 82216**

Appeal from the
Eighth Judicial District Court
for Clark County, Nevada

District Court Case No.
A-20-819171-C

## MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

Marc J. Randazza (NV Bar No. 12265)
Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)
RANDAZZA LEGAL GROUP, PLLC
2764 Lake Sahara Drive, Suite 109
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Telephone: 702-420-2001
Facsimile: 702-297-6584
ecf@randazza.com

*Attorneys for Respondent*

## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Respondent Scott Roeben is an individual, and thus there is no parent corporation or publicly held company that owns 10% or more of her stock.

2. The following law firm represented Respondent in the district court proceedings leading to this appeal and represents Respondent in this appeal:

RANDAZZA LEGAL GROUP, PLLC
2764 Lake Sahara Drive, Suite 109
Las Vegas, NV 89117

No other law firm is expected to appear on Respondent's behalf in this appeal.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
Marc J. Randazza (NV Bar No. 12265)
Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)
*Attorneys for Respondent*

## 1.0 Introduction

Appellant filed its Notice of Appeal in this matter in bad faith nine days after the deadline passed for it to properly do so. This Court lacks jurisdiction to hear this appeal and it should be summarily dismissed.

## 2.0 Procedural History

This appeal stems from a SLAPP[1] suit filed by Appellant Las Vegas Resort Holdings, LLC ("Sahara"), owner of the Sahara Las Vegas resort, against Respondent Scott Roeben ("Mr. Roeben"), operator of VitalVegas.com, a news website that publishes news and information about the Las Vegas entertainment and hospitality industry.

Mr. Roeben filed an Anti-SLAPP Special Motion to Dismiss Under NRS 41.660, which the District Court granted on October 30, 2020. *See* Exhibit 1, Notice of Entry of Order Granting Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 (the "Anti-SLAPP Order"). All of Sahara's pending claims against Mr. Roeben were dismissed by this Order, and the case was dismissed with prejudice. *Id.* After Mr. Roeben moved for attorneys' fees and costs in

[1] "SLAPP" is an acronym for Strategic Lawsuits Against Public Participation. These are suits filed not for the purpose of ultimately prevailing, but rather to silence and intimidate critics by burdening them with the costs of litigation.

the District Court, Sahara belatedly filed a notice of appeal on December 9, 2020, appealing the District Court's Anti-SLAPP order. *See* Exhibit 2, Notice of Appeal.

## 3.0 Legal Argument

An appeal may be taken where "[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." NRAP 3A(b)(1). A notice of appeal relating to a final judgment must be filed within 30 days from when notice of entry of the written order is served. NRAP 4(a)(1).

### 3.1 The Anti-SLAPP Order was a Final Judgment

The Anti-SLAPP Order entered by the District Court on October 30, 2020 was a final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (Nev. 2000) ("[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."). Here, all claims brought by Sahara against Mr. Roeben were disposed of by the Anti-SLAPP Order, and the only remaining issue was the determination of attorney's fees and costs. *See* Exhibit 1.

"[The Nevada Supreme court has] consistently considered appeals from summary judgment orders disposing of the entire action." *GNLV*, 116 Nev. at 428. An Anti-SLAPP motion is a summary judgment motion. *Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013); *see also Coker v. Sassone*, 432 P.3d 746, 748-49 (Nev. 2019).

Because the only thing remaining for the lower court to do is to determine fees and costs, and there is nothing else remaining for the future consideration of the court, the Anti-SLAPP Order was an appealable final judgment.

### 3.2 Sahara Failed to Timely File the Notice of Appeal

A notice of appeal must be filed within 30 days from when notice of entry of the written order is served. NRAP 4(a)(1). Here, written notice of the Anti-SLAPP Order was served on October 30, 2020. *See* Exhibit 1. Accordingly, the deadline for Sahara to appeal the Anti-SLAPP Order was December 1, 2020. Sahara, however, waited until December 9, 2020, to file its Notice of Appeal. *See* Exhibit 2. The Notice of Appeal was untimely.

### 3.3 The Court Has No Jurisdiction to Hear This Appeal

The failure to timely file a notice of appeal does not properly give the Court jurisdiction to hear the appeal. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (Nev. 1987) ("[T]he proper and timely filing of a notice of appeal is jurisdictional."). Sahara's failure to timely file a notice of appeal in this matter does not give this Court jurisdiction.

## 4.0 Conclusion

The Anti-SLAPP Order was an appealable final judgment, and Sahara failed to timely file its Notice of Appeal. This Court lacks jurisdiction to hear this appeal, and it should be summarily dismissed.

Dated: December 15, 2020.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
Ronald D. Green (NV Bar No. 7360)
Alex J. Shepard (NV Bar No. 13582)
*Attorneys for Respondent*

## CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2020, a true and correct copy of the foregoing Motion to Dismiss Appeal for Lack of Jurisdiction was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Respectfully Submitted,

Employee,
Randazza Legal Group, PLLC

# EXHIBIT 1

Notice of Entry of Order Granting
Defendant Scott Roeben's Anti-SLAPP
Special Motion to Dismiss Under NRS 41.660

**NEOJ**
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,

Plaintiff,

vs.

**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,

Defendants.

Case No. A-20-819171-C

Dept. No. 8

**NOTICE OF ENTRY OF ORDER**

**NOTICE OF ENTRY OF ORDER**

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on October 30, 2020, the Court entered its Order Granting Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660.

A true and correct copy of the Order is attached hereto as **Exhibit A**.

Dated: October 30, 2020.

Respectfully Submitted,

/s/ Alex J. Shepard

Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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2764 Lake Sahara Drive Suite 109
Las Vegas, NV 89117
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendant
Scott Roeben

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this October 30, 2020, I caused a true and correct copy of the foregoing document to be served via the Eighth Judicial District Court's Odyssey electronic filing system.

Employee,
Randazza Legal Group, PLLC

# EXHIBIT A

Order

ELECTRONICALLY SERVED
10/30/2020 1:37 PM

Electronically Filed
10/30/2020 1:37 PM
CLERK OF THE COURT

**ORDR**
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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Las Vegas, NV 89117
Telephone: 702-420-2001
ecf@randazza.com

Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| **LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,<br><br>Plaintiff,<br><br>vs.<br><br>**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,<br><br>Defendants. | Case No. A-20-819171-C<br>Dept. No. 8<br><br>**ORDER** |

**ORDER GRANTING DEFENDANT SCOTT ROEBEN'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660, commencing on October 20, 2020 at 9:30 a.m., the Court having read and considered Defendant's motion, the opposition, and the reply on file and exhibits thereto, and it appearing, upon argument of counsel and for good cause shown, the Court grants Defendant's motion and finds as follows:

1. Defendant Roeben satisfied his burden under NRS 41.660(2), as his statements were expressions of opinion and thus could not have been made with knowledge of their



Case Number: A-20-819171-C

falsity. *See Rosen v. Tarkanian*, 453 P.3d 1220 (Nev. 2019); *Abrams v. Sanson*, 458 P.3d 1062 (Nev. 2020).

2. The Court finds Plaintiff has not established, with prima facie evidence, a probability of prevailing on its claim, as the statements on which Plaintiff's claim is based are statements of opinion. *See Tarkanian*, 453 P.3d 1220; *Sanson*, 458 P.3d 1062. The way the statements were couched on the facts here, not viewing them as statements of opinion would inhibit and dull free speech.
3. The Court further finds that, if the statements on which Plaintiff's claim is based are not statements of opinion, Plaintiff has not established with prima facie evidence evidence a probability of prevailing on its claim because it has not provided sufficient evidence of actual malice.

Accordingly, **IT IS HEREBY ORDERED:**

That Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's claims are dismissed with prejudice.

**IT IS HEREBY FURTHER ORDERED** that Defendant Scott Roeben is entitled to reasonable attorneys' fees and costs.

DATED this _____ day of _____, 2020.

Dated this 30th day of October, 2020

DISTRICT COURT JUDGE

8C9 EF0 7C21 B772
Trevor Atkin
District Court Judge

Submitted by:
/s/ *Marc J. Randazza*
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
RANDAZZA LEGAL GROUP, PLLC
2764 Lake Sahara Drive Suite 109
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Attorneys for Defendant
Scott Roeben

Approved as to form and content:
/s/ *Matthew J. Weitz*
Matthew J. Weitz, NV Bar No. 13277
9550 Fireston Blvd. Ste 105
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Attorney for Plaintiff
Las Vegas Resort Holdings, LLC

RANDAZZA
LEGAL GROUP

**Alex Shepard <ajs@randazza.com>**

# LVRH v. Roeben | Proposed Order on Anti-SLAPP Motion

**Matthew Weitz** <MWeitz@meruelogroup.com> Tue, Oct 27, 2020 at 11:03 AM
To: Alex Shepard <ajs@randazza.com>
Cc: Trey Rothell <tar@randazza.com>, Jasmyn Montano <jbm@randazza.com>, Marc Randazza <mjr@randazza.com>

Alex,

You have consent to use my esignature on this most recent draft of the order.

-Matt

**From:** Alex Shepard <ajs@randazza.com>
**Sent:** Monday, October 26, 2020 11:05 AM

[Quoted text hidden]

[Quoted text hidden]

**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Las Vegas Resort Holdings, LLC, Plaintiff(s)<br><br>vs.<br><br>Scott Roeben, Defendant(s) | CASE NO: A-20-819171-C<br><br>DEPT. NO. Department 8 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/30/2020

| | |
|---|---|
| Marc Randazza | ecf@randazza.com |
| Ronald Green | ecf@randazza.com |
| Alex Shepard | ecf@randazza.com |
| Francisca Avalos | francisca.avalos@meruelogroup.com |
| Chris Davis | Chris.Davis@SaharaLasVegas.com |
| Matthew Weitz | mweitz@meruelogroup.com |

# EXHIBIT 2

Notice of Appeal

**NOAS (CIV)**
Matthew J. Weitz
Nevada Bar No. 13277
9550 Firestone Blvd. Ste 105
Downey, CA 90241
(562) 745-2312
(562) 745-2341 Fax
mweitz@meruelogroup.com
Attorneys for Plaintiff
LAS VEGAS RESORT HOLDINGS, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA

LAS VEGAS RESORT HOLDINGS, LLC dba SAHARA LAS VEGAS, a Delaware limited liability company,

Plaintiff(s),

-vs-

SCOTT ROEBEN dba VITALVEGAS dba VITALVEGAS.COM, and individual; and DOES I-X, inclusive,

Defendant(s).

Case No.: A-20-819171-C

Dept. No.: VIII

**NOTICE OF APPEAL**

## NOTICE OF APPEAL

Please take notice that Plaintiff LAS VEGAS RESORT HOLDINGS, LLC dba SAHARA Las Vegas ("SAHARA") hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Notice of Entry of Order Granting Defendant Scott Roeben's ANTI-SLAPP Special Motion to Dismiss Under NRS 41.660," attached hereto as Exhibit 1;
3. All judgments, rulings and interlocutory orders made appealable by the foregoing.

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/ / /

Dated: December 9, 2020 **MATTHEW J WEITZ, ESQ.**

By: */s/ Matthew J Weitz*
Matthew J. Weitz, Esq.
Nevada Bar No. 13277
Associate General Counsel
9550 Firestone Blvd. Ste 105
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Attorney for Defendants LV-PCPS LLC,
LV-AM LLC, LV-MRPC LLC and

Las Vegas Resort Holdings, LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the 9th day of December, a true and correct copy of the foregoing **NOTICE OF APPEAL,** was served on all persons registered for service in the Court's Electronic Filing system, including but not limited to:

Rendazza Legal Group, PLLC
Marc Randazza
2764 Lake Sahara Drive Suite 109
Las Vegas, NV 89117
ecf@randazza.com

DATED this 9th day of December, 2020

*/s/ Francisca Avalos /s/*

# Exhibit 1

Notice of Entry of Order Granding Defendant Scott Roeben's ANTI-SLAPP Special Motion to Dismiss

**NEOJ**
Marc J. Randazza, NV Bar No. 12265
Ronald D. Green, NV Bar No. 7360
Alex J. Shepard, NV Bar No. 13582
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Attorneys for Defendant
Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,

Plaintiff,

vs.

**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,

Defendants.

Case No. A-20-819171-C

Dept. No. 8

**NOTICE OF ENTRY OF ORDER**

**NOTICE OF ENTRY OF ORDER**

**TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

PLEASE TAKE NOTICE that on October 30, 2020, the Court entered its Order Granting Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660.

A true and correct copy of the Order is attached hereto as **Exhibit A**.

Dated: October 30, 2020.

Respectfully Submitted,

/s/ Alex J. Shepard

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Attorneys for Defendant
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this October 30, 2020, I caused a true and correct copy of the foregoing document to be served via the Eighth Judicial District Court's Odyssey electronic filing system.

Employee,
Randazza Legal Group, PLLC

# EXHIBIT A

Order

ELECTRONICALLY SERVED
10/30/2020 1:37 PM

Electronically Filed
10/30/2020 1:37 PM
CLERK OF THE COURT

**ORDR**
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Scott Roeben

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| **LAS VEGAS RESORT HOLDINGS, LLC** dba SAHARA LAS VEGAS, a Delaware limited liability company,<br><br>Plaintiff,<br><br>vs.<br><br>**SCOTT ROEBEN** dba VITALVEGAS dba VITALVEGAS.COM, an individual; and **DOES I-X**, inclusive,<br><br>Defendants. | Case No. A-20-819171-C<br>Dept. No. 8<br><br>**ORDER** |

**ORDER GRANTING DEFENDANT SCOTT ROEBEN'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660**

This matter, having come before the Court on Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660, commencing on October 20, 2020 at 9:30 a.m., the Court having read and considered Defendant's motion, the opposition, and the reply on file and exhibits thereto, and it appearing, upon argument of counsel and for good cause shown, the Court grants Defendant's motion and finds as follows:

1. Defendant Roeben satisfied his burden under NRS 41.660(2), as his statements were expressions of opinion and thus could not have been made with knowledge of their



Case Number: A-20-819171-C

falsity. *See Rosen v. Tarkanian*, 453 P.3d 1220 (Nev. 2019); *Abrams v. Sanson*, 458 P.3d 1062 (Nev. 2020).

2. The Court finds Plaintiff has not established, with prima facie evidence, a probability of prevailing on its claim, as the statements on which Plaintiff's claim is based are statements of opinion. *See Tarkanian*, 453 P.3d 1220; *Sanson*, 458 P.3d 1062. The way the statements were couched on the facts here, not viewing them as statements of opinion would inhibit and dull free speech.
3. The Court further finds that, if the statements on which Plaintiff's claim is based are not statements of opinion, Plaintiff has not established with prima facie evidence evidence a probability of prevailing on its claim because it has not provided sufficient evidence of actual malice.

Accordingly, **IT IS HEREBY ORDERED:**

That Defendant Scott Roeben's Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Plaintiff's claims are dismissed with prejudice.

**IT IS HEREBY FURTHER ORDERED** that Defendant Scott Roeben is entitled to reasonable attorneys' fees and costs.

DATED this _____ day of _____, 2020.

Dated this 30th day of October, 2020

DISTRICT COURT JUDGE

8C9 EF0 7C21 B772
Trevor Atkin
District Court Judge

Submitted by:
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**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Las Vegas Resort Holdings, LLC, Plaintiff(s)<br><br>vs.<br><br>Scott Roeben, Defendant(s) | CASE NO: A-20-819171-C<br><br>DEPT. NO. Department 8 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/30/2020

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**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Las Vegas Resort Holdings, LLC, Plaintiff(s)<br><br>vs.<br><br>Scott Roeben, Defendant(s) | CASE NO: A-20-819171-C<br><br>DEPT. NO. Department 5 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Shortening Time was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/7/2021

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