

No. 23-3227
Cross Appeal Case No. 23-3390
No. 24-159

In the
UNITED STATES COURT OF APPEALS
for the
NINTH CIRCUIT

WEALTHY, INC. AND DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA, CORNELIA MEDIA LLC, AND
CORNELIA EDUCATION LLC,

Defendants-Appellees.

On Appeal from the
United States District Court for the District of Nevada
No. 2:21-cv-01773-JCM-EJY, consolidated with
No. 2:22-cv-00740-JCM-EJY
Honorable James C. Mahan, United States District Judge

**APPELLEES' REPLY IN SUPPORT OF
PETITION FOR PANEL AND EN BANC REHEARING**

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I. INTRODUCTION

Appellees Spencer Cornelia, Cornelia Media LLC, and Cornelia Education LLC file this Reply in support of their Petition for Panel and En Banc Rehearing (Dkt. 74.1).

Appellants' Response to the Petition (Dkt. 77.1) is breathtakingly dishonest and is overwhelmingly nonresponsive to the issue at hand. The Panel's Decision regarding Appellees' Anti-SLAPP Motion was on a very narrow issue neither raised, briefed, nor argued previously by any party: whether the Anti-SLAPP Motion was moot because the District Court's grant of summary judgment was affirmed. It was not.

Despite the narrow scope of the Petition, Appellants have decided to repeat their Anti-SLAPP arguments, and add in new ones that make no sense, and which they have waived even if they did.¹ As Appellants note in their own Response, this is improper. Dkt. 77.1 at 12-13. As the Response has raised these issues, Appellees will briefly address them *infra*, but the Court should consider Anti-SLAPP arguments based on the

¹ In a remarkable act of mendacity, Appellants claim that it is actually Appellees who are improperly reiterating their prior arguments, despite that being untrue, and, in reality, it is Appellants who do exactly that. Dkt. 77.1 at 14-17, 22-24.

parties' prior briefs and oral argument alone.

Appellees' Petition is limited to mootness, as the parties have already briefed why the District Court erred. Appellants now wish to raise new arguments they did not raise (and, therefore, waived) at the District Court nor even before this Court (and which are dishonest) as a desperate attempt to avoid having the Anti-SLAPP issue properly analyzed by this court.

The narrow issue here is not the merits of the Anti-SLAPP Motion, as that was fully briefed and the Panel did not misapprehend issues related to that analysis, given it did not engage in the analysis at all. Nevertheless, there are no other grounds on which the denial of the Anti-SLAPP motion should have been affirmed. The District Court erred as to prong one, and the lack of actual malice is itself dispositive of the question as to whether the suit was based on Appellees' good-faith communications. As to prong two, the District Court's award of summary judgment to Appellees was affirmed and no argument as to that issue is necessary.²

² Appellants have their own rehearing petition pending on that decision. If the Court calls for a response, the Prong Two arguments will be addressed therein.

II. ARGUMENT

Appellants first argue that the Panel did not overlook Appellees' potential entitlement to fees and other remedies under Nevada's Anti-SLAPP law because the District Court did not grant their Anti-SLAPP Motion. The District Court's failure is the whole point of Appellees' cross-appeal.

As explained in the Petition, the fact that these remedies are available to Appellees only if their Anti-SLAPP Motion is granted means that the Anti-SLAPP Motion is not mooted simply because the Panel chose to affirm the District Court's grant of summary judgment. The District Court could have granted *both* summary judgment and the Anti-SLAPP Motion. Appellants' response contributes nothing to this discussion.

Appellants attempt to distinguish the cases that conflict with the Panel's finding of mootness, namely *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003) and *Planned Parenthood Fed'n of Am. v. Ctr. For Med. Progress*, 890 F.3d 828 (9th Cir. 2018), claiming they are distinct because they dealt with Anti-SLAPP motions filed as Rule 12(b)(6) motions instead of motions for summary judgment. Appellants

fail to explain how this is a meaningful difference; these cases dealt with entitlement to attorneys' fees upon an Anti-SLAPP motion being granted, which is the focus of the Petition. Whether entitlement to fees arises by virtue of prevailing under Rule 12(b)(6) or Rule 56 does not matter. And while there are some distinctions between California and Nevada's Anti-SLAPP laws, Appellants fail to explain how any of them are salient to the question of whether a party can be denied entitlement to a fee award simply because there is an alternate ground for dismissal—one that is a necessary prerequisite for establishing entitlement to fees in the first place. Appellees do not seek a "subsequent declaration of immunity," as Appellants disingenuously claim (Dkt. 77.1 at 13); they want their Anti-SLAPP Motion to be granted so that they may obtain substantive relief at the District Court *beyond* what the grant of summary judgment allows.

Appellants proceed to make the brand new, never-before raised, and, frankly, bizarre argument that the Anti-SLAPP law's entitlement to attorneys' fees conflicts with the Lanham Act's fee provision and, thus, does not apply here. Whether state fee statutes are consistent with federal statutes is irrelevant; in the Anti-SLAPP context, the "conflicts" federal courts are concerned with are between *procedural* state laws and

Federal *rules*. If the Lanham Act provides for a fee award, that standard under the Lanham Act claim applies to the Lanham Act claim, not the state law claims. *See Tobinick v. Novella*, 884 F.3d 1110, 1118-19 (11th Cir. 2018) (awarding fees under both Lanham Act and California’s Anti-SLAPP statute). Appellants are subject to Federal substantive consequences for their improper Federal claims and to state substantive consequences for their improper state claims.

Indeed, the very case Appellants cite, *Gopher Media LLC v. Melone*, 154 F.4th 696, 706 (9th Cir. 2025) (Bennet, J., concurring), notes that Anti-SLAPP fee entitlement applies in federal court because no federal *rule* answers the question of entitlement to fees.

The fact that Appellants brought an additional frivolous claim under a federal *statute* that addresses fees has no relevance. Otherwise, it would be trivially easy to preclude an Anti-SLAPP fee award simply by tacking on a losing federal claim under a statute that mentions fees.³ Every SLAPP defamation case should simply be accompanied by a

³ Just as they do when reiterating their Anti-SLAPP arguments, Appellants inappropriately argue in their Response that this is not an “exceptional” case under the Lanham Act, moving even further afield of the scope of the Petition.

frivolous claim under ERISA or the Social Security Act. The fact that they made this argument at all should scream to this Court that they know they are wrong.

While some courts in other Circuits may have been hostile to the notion of *different* Anti-SLAPP laws applying in federal court at all have entertained this notion, this Circuit is not one of them. *See Tracy Anderson Mind & Body, LLC v. Roup*, No. 2:22-cv-04735 PSG (Ex), 2023 U.S. Dist. LEXIS 189055, *10-14 (C.D. Cal. Sept. 11, 2023) (awarding fees under both Lanham Act and California's Anti-SLAPP law, with no mention of one precluding the other).⁴ This Circuit recognizes that the substantive right to fees is not procedural and applies in federal court. *Melone*, 154 F.4th at 707-08 (collecting cases) (Bennett, J. Concurring).

Appellants' argument on this point is incoherent for another reason. Because the Anti-SLAPP law is a state statute, it cannot be used to dismiss *federal* claims. *Doe v. Gangland Prods.*, 730 F.3d 946, 955 n.3

⁴ Appellants' citation to *Hubbard v. SoBreck, LLC*, 554 F.3d 742, 745 (9th Cir. 2008), is misguided. That case dealt with the conflict between the federal Americans with Disabilities Act and a California state analogue, meaning both statutes governed the same type of claim. That is not remotely the situation here, as the Anti-SLAPP law does not even apply to Lanham Act claims, and the elements of Appellants' Lanham Act claim are completely different from their state-law claims.

(9th Cir. 2013). This was clear in the briefing below. Accordingly, a grant of Appellees' Anti-SLAPP Motion only entitles Appellees to an award of fees on the state-law claims. *Novella*, 884 F.3d at 1119. The Lanham Act does not permit Appellees to recover fees on the state law claims, and Appellees did not seek to dismiss the Lanham Act under the Anti-SLAPP statute. Appellants attempt to confuse this issue by noting that much of Appellees' counsel's labors to obtain a dismissal the Lanham Act claim are intertwined with the labors needed to dismiss the state claims, but apportioning which fees are compensable under which statute is an exercise for the District Court when considering a fee motion. Overlapping entitlements to fees under multiple statutes is common⁵ and the District Court is well-equipped to address the issue. It is not an issue that precludes recovery under the Anti-SLAPP statute entirely.

Finally, Appellants are incorrect as to their Prong One arguments. The District Court did not err in finding the statements about Appellants' scam operation were on a matter of public interest. While Appellants are cherry picking statements about a possible drug operation and the death

⁵ For example, nearly every prevailing Title VII plaintiff also prevails under a state analog and is entitled to fees under both.

of a woman, Appellants fail to show they were not, in context, tied to the overall warnings made without actual malice as to Appellants' operations. Appellants' citation to *Rivero v. Am. Fed'n of State, Cty. & Mun. Emps., AFL-CIO*, 105 Cal. App. 4th 913, 924, 130 Cal. Rptr. 2d 81, 89-90 (2003), is inapposite, as eight custodians were not public figures, whereas the District Court found Appellants are public figures. The same holds for *World Fin. Grp., Inc. v. HBW Ins. & Fin. Servs., Inc.*, 172 Cal. App. 4th 1561, 1570-71, 92 Cal. Rptr. 3d 227, 234-36 (2009), which was also about a private workplace dispute. In contrast, statements regarding a potential scam directed at the public are typically held to be matters of public concern. *See, e.g., Glob. Telemedia Int'l, Inc. v. Doe 1*, 132 F. Supp. 2d 1261, 1265 (C.D. Cal. 2001) citing *Church of Scientology of Cal. v. Wollersheim*, 42 Cal. App. 4th 628, 651, 49 Cal. Rptr. 2d 620, 633 (1996) (matters of public interest "include product liability suits, real estate or investment scams, etc.").

As to Prong Two, Appellants' cross-petition for rehearing offers no arguments warranting reversal of the determination that Appellants are limited public figures. To the extent that the Court wishes to entertain such argument, Appellees will address them if the Court calls for a

response. Nevertheless, Appellees also otherwise note that both summary judgment and Prong Two favor Appellees because not only did Appellants fail to demonstrate actual malice, they failed to demonstrate negligence—the District Court held that Appellees published the “videos based on reasonable information [Cornelia] received from reliable sources.” (ER-016). Where a defendant’s statements are based on reliable sources, the defendants could “hardly be accused of gross negligence, much less actual malice.” *Miller v. News Syndicate Co.*, 445 F.2d 356, 358 (2d Cir. 1971). Thus, even if the District Court erred in finding Appellants to be limited public figures (which was not error), Appellees would still prevail in the Prong Two analysis.

III. CONCLUSION

The Court should grant Appellees’ Petition, find that the Panel erred in deciding that the appeal of the District Court’s denial of the Anti-SLAPP Motion was moot, reverse the District Court’s denial of the Anti-SLAPP Motion, and remand with instructions for the District Court to grant that motion.

Date: February 2, 2026.

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Form 11. Certificate of Compliance for Petitions for
Rehearing/Responses**

9th Cir. Case Number(s): 23-3227; 23-3390; 24-159

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 40-1, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is
(select one):

Prepared in a format, typeface, and type style that complies with Fed. R. App. P.32(a)(4)-(6) and **contains the following number of words: 1,832.**

(Petitions and responses must not exceed 4,200 words)

OR

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

Signature /s/ Marc J. Randazza

Date February 2, 2026.

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system.

Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

Date: February 2, 2026.

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