

PHI THETA KAPPA HONOR SOCIETY,

Plaintiff,

v.

TONI MAREK,

Defendant.

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IN THE DISTRICT COURT

VICTORIA COUNTY, TEXAS

377th JUDICIAL DISTRICT

**DEFENDANT’S MOTION FOR COSTS, ATTORNEYS’ FEES,
AND SANCTIONS PURSUANT TO THE TCPA**

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now Defendant Toni Marek (“Defendant”), by and through undersigned counsel, and files her Motion for Costs, Attorneys’ Fees, and Sanctions Pursuant to the TCPA, and would respectfully show the Court the following:

1.0 INTRODUCTION AND BACKGROUND

This is a SLAPP suit, prohibited by the Texas Citizens Participation Act (“TCPA”), Tex. Civ. Prac. & Rem. Code § 27.001-27.011. For that reason alone, fees are mandatory. However, the plaintiff in this action has a history of censorious actions and has litigated this case in a manner that has increased the costs and fees and which warrants not just fees, but strong sanctions. Sanctions are not mandatory, but this case cries out for this Court to exercise its discretion to impose them.

The key *factual* reason PTK claimed for needing a prior restraint was that Marek was going to publish Plaintiff’s “attorney client privileged” information. The relevant information is the email attached as **Exhibit 1**. At Oral argument, PTK’s counsel argued not only that it was privileged, but that this email revealed their “legal strategy.” See Transcript of April 8, 2025, hearing on motion for temporary injunction, attached as **Exhibit 2**, at 23:19-20 (“It’s PTK’s legal strategy, attorney-client privileged communications”); 34:19-35:2. However, clearly the email is

not attorney-client privileged at all. It is not *from* an attorney, it is *not* to an attorney, it is simply from one person to three other people, none of them attorneys, about a deposition. The deposition took place in November. The email is merely about what was going to happen at *that* deposition, which is long in the past. And Plaintiff has a clearly-established right to publish. PTK was not candid with this court. It should not be rewarded for that by skipping out on sanctions.

Had PTK told the truth about this document in the first place, the *ex parte* TRO would have had no factual underpinning at all, but PTK certainly stretched the truth by neither disclosing these key facts, nor even presenting a copy of the email in question to the Court. With nobody there to challenge their characterization, the Court was only presented with one interpretation of the facts, a false one. PTK misled the court in its *ex parte* filings and sought to mislead the court at oral argument. Marek should not have had to defend against such fabrications, and engaging in such fabrications must be disincentivized.

Legally speaking, the petition for the TRO fared no better than it did factually. It never even *mentioned* a single case dealing with prior restraints, despite the fact that there is controlling law such as *Kinney v. Barnes*, 443 S.W.3d 87, 89 (Tex. 2014), and a legion of other case law that showed that PTK's requested relief was not available. It does not even take a Lexis or Westlaw account to learn this. A simple Google search for "Texas Prior Restraint Law" provides *Kinney v. Barnes* as the first result. Given that First Amendment cases appear uncommon in Victoria County, it is understandable why this Court might have signed an order that does not take this law into account, but that is why there is a heightened duty of candor and disclosure in *ex parte* proceedings. PTK was well aware of contrary case law and chose not to disclose it.

Let us do a Hanlon's Razor analysis before we fully condemn PTK.² Is it possible that PTK's counsel was unaware of contrary law, and was simply incompetent in finding it? If so, a bit of mercy might be in order. However, we have a rare situation here where we *know for a fact* that PTK was well aware of every last bit of contrary authority – all of it.

² Hanlon's Razor is the adage: "Never attribute to malice what can be attributed to incompetence."

The Court may recall that at the hearing, PTK chose not to disclose the fact that its *other* prior restraint case (that it argued gave some underpinning to this one) was smacked down by the Fifth Circuit. *See Phi Theta Kappa Honor Soc’y v. Honorsociety.Org, Inc.*, 2025 U.S. App. LEXIS 8090 (5th Cir. Apr. 7, 2025). PTK seemed to hope that Ms. Marek would be unaware of this development. **Exhibit 2** at 19:12-16. One has to ask why PTK did not candidly disclose, when it had the chance, that the only real authority in its motion had been vacated? It was no surprise to PTK, as PTK is a party to that very case. Certainly, PTK knew it had lost a Fifth Circuit case.

But let us continue the analysis. PTK was under no obligation to *agree* that its actions were wildly unconstitutional. Nobody is saying that. But for PTK to try to claim that it was unaware that there was contrary case law is provably and demonstrably false. PTK had read the brief of the Appellant in *HonorSociety.Org* and PTK also had, in its hands, the amicus brief of the First Amendment Lawyers’ Association (“FALA”) in that case. *See* FALA Amicus Brief, Dkt. No. 68, attached as **Exhibit 3**. PTK was under an obligation at an *ex parte* hearing to, at the least, state to the Court “*your honor, there is some contrary authority, we think we overcome it, but so the Court can make an informed decision, it should be advised that this case can be distinguished because ...*” But they didn’t do that. They just hoped that the Court would not notice, and that perhaps Marek would not be able to hire counsel (as she has been *pro se* in all other matters involving PTK).

PTK did wrong. PTK *really* did wrong. PTK must pay the price. If it does not, this Court will be placing an imprimatur on this conduct. The honor of this Court is well above doing that.

For that misconduct in the TRO process alone, sanctions are necessary and proper, but are not mandatory. But beyond this, Marek filed a motion to dismiss under the TCPA on April 4, 2025, which, if granted, entitles her to a *mandatory* award of attorneys’ fees. On April 8, 2025, after PTK’s application for a temporary injunction was denied, Marek informed PTK’s counsel that she would be willing to resolve the matter prior to the TCPA motion being decided. Declaration of Marc J. Randazza (“Randazza Dec.”), attached as **Exhibit 4**, at ¶ 6. The next day, PTK filed a nonsuit, perhaps under the mistaken impression that this would help it evade the consequences of

the TCPA motion. It does not. The Court must grant the TCPA motion, and then hold a hearing on the amount of fees and sanctions to be awarded under Tex. Civ. Prac. & Rem. Code § 27.009.

2.0 LEGAL STANDARD

Texas Courts typically apply eight factors when determining the reasonableness of an award, though not all factors will be relevant in every case:

- (1) the time, labor, and skill required, novelty and difficulty of the question presented;
- (2) the likelihood that acceptance of employment precluded other employment;
- (3) the fee customarily charged in the locality for similar services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer performing the services; and
- (8) whether the fee is fixed or contingent.

Arthur Andersen & Co. v. Perry Equip. Corp., 945 S.W.2d 812, 818 (Tex. 1997).

3.0 ARGUMENT

3.1 The Nonsuit Gambit Did Not Save PTK

A defendant's motion to dismiss that affords more relief than a nonsuit constitutes a claim for affirmative relief that survives nonsuit. Tex. R. Civ. P. 162; *CTL/Thompson Tex., LLC v. Starwood Homeowner's Ass'n, Inc.*, 390 S.W.3d 299, 300-01 (Tex. 2013); *Villafani v. Trejo*, 251 S.W.3d 468, 468-69 (Tex. 2008); *Klein v. Dooley*, 949 S.W.2d 307, 308 (Tex. 1997). Texas Courts universally hold that a nonsuit does not relieve the Plaintiff of the consequences of a TCPA motion.

Ms. Marek remains entitled to relief under the TCPA. *Rauhauser v. McGibney*, 508 S.W.3d 377, 381-382 (Tex. Ct. App. 2014) (reversed on other grounds). "A motion to dismiss under the TCPA survives a non-suit because a victory on the motion to dismiss, which may include attorneys' fees and sanctions, would afford the movants more relief than a non-suit would." *In re Diogu Law Firm PLLC*, No. 14-18-00878-CV, 2018 Tex. App. LEXIS 8391, *2 (Tex. App.—Houston [14th Dist.] Oct. 16, 2018, no pet.); *Abatecola v. 2 Savages Concrete Pumping, LLC*, No.

14-17-00678-CV, 2018 Tex. App. LEXIS 4653, *36 (Tex. App.—Houston [14th Dist.] 2018, pet. denied); *Diogu Law Firm PLLC v. Melanson*, No. 14-18-01053-CV, 2020 Tex. App. LEXIS 8260, *21 (Tex. App.—Houston [14th Dist.] pet. denied). This is consistent with other states’ Anti-SLAPP laws. *See* RCW 4.105.060 (Washington law providing that dismissing without prejudice entitles moving party to ruling on Anti-SLAPP); NJ Rev Stat § 2A:53A-55(b) (New Jersey law with same provision); *eCash Techs., Inc. v. Guagliardo*, 210 F. Supp. 2d 1138, 1154-55 (C.D. Cal. Oct. 30, 2000) (noting that attempt to voluntarily dismiss claims after filing of Anti-SLAPP motion did not affect moving party’s entitlement to attorneys’ fees).

If PTK intended to avoid fee liability by filing its nonsuit, it was mistaken. Marek is still entitled to TCPA relief in the form of costs, fees, and sanctions. Such an award should include *all* costs and fees incurred in responding to this suit, not just those incurred directly in connection with the TCPA motion. Tex. Civ. Prac. & Rem. Code § 27.009(a)(1) (entitling prevailing movant to an award of fees “incurred in defending against the legal action”); *Centurion Logistics LLC v. Brenner*, No. 05-23-00578-CV, 2024 Tex. App. LEXIS 9139, *55-56 (Tex. App.—Dallas Dec. 30, 2024, pet. filed) (no basis to exclude from TCPA fee award time spent on motion to transfer and motion for summary judgment that was never ruled on).³

3.2 The Requested Fees are Reasonable Under the *Arthur Andersen* Factors

Randazza Legal Group, PLLC (“RLG”) regularly litigates Anti-SLAPP cases and has a history of having its rates upheld. *See, e.g., Cheng v. Guo*, No. A-18-779172-C (Nev. Eighth Jud. Dist. Ct. June 5, 2020) (awarding hourly rates of \$800 for Randazza and \$550 for other partners); *Las Vegas Resort Holdings, LLC v. Roeben*, No. A-20-819171-C (Nev. Eighth Jud. Dist. Ct., Dec. 30, 2020) (same); *iQTAXX, LLC v. Boling*, No. A-15-728426-C, 2016 BL 154334 (Nev. Eighth Jud. Dist. Ct. May 10, 2016) (approving hourly rates of \$650 for Randazza and \$500 for other

³ The TCPA is not the only Anti-SLAPP law that allows recovery of all fees spent on defense. *See Smith v. Zilverberg*, 481 P.3d 1222, 1231 (Nev. 2021) (prevailing Anti-SLAPP movant is entitled to an award of **all** fees incurred in defending against an action).

partners). The Court should note that these rates are, at their newest, five years old. Given inflation, from \$800 per hour to \$1,000 per hour is a reasonable raise over five years.

The compensable hours recorded by RLG's attorneys and paralegals, along with their hourly rates and amounts billed, are as follows:⁴

Timekeeper	Hours	Hourly Rate	Amount Sought ⁵
Marc J. Randazza	75.4	\$1,000	\$65,500.00
Ronald D. Green	36.7	\$750	\$23,250.00
Alex J. Shepard	28.8	\$750	\$20,275.00
Cassidy Curran	17.5	\$175	\$2,870.00
Alison Gregoire	2.6	\$175	\$455.00
Totals	161		\$112,350.00

Randazza Dec. at ¶ 9. Marek's local counsel, David Griffin, charged \$3,000. *Id.* at ¶ 11. Marek additionally incurred \$2,796.63 in costs. *Id.* at ¶ 12.

To limit additional briefing on fees incurred after the filing of this motion, RLG predicts it will incur an additional \$20,000 in fees in responding to PTK's opposition to this motion, preparing a reply brief, and arguing the motion. *Id.* at ¶ 15. If PTK does not oppose this motion, however, then there would of course be no need to incur such fees.

3.2.1 Time and Labor Required

The work in this case has primarily consisted of opposing PTK's motion for a temporary injunction and filing the TCPA motion, both of which were necessary and both of which required a substantial amount of work to be performed in a very short period of time. The work related to both motions required thorough factual investigation, providing supporting evidence and declarations, and substantial briefing on First Amendment case law generally and the particulars

⁴ Other attorneys and paralegals worked on this matter, but their time has been excluded from this Motion as a matter of billing discipline.

⁵ The amount sought for each timekeeper is not simply a matter of multiplying the hourly rates by the hours worked. As shown in the billing records attached as **Exhibit 5**, some time entries were either written off or charged at a reduced rate.

of the TCPA. As TCPA motions require both the moving and responding parties to provide evidence supporting their claims and defenses, it is no exaggeration to say that the amount of work involved in preparing one is comparable to a motion for summary judgment. *See Frazier v. Maxwell*, No. 02-23-00103-CV, 2025 Tex. App. LEXIS 891, *18-21 (Tex. App.—Fort Worth Feb. 13, 2025, no pet. h.) (noting similarities between TCPA procedure and summary judgment motions). Given the amount of work that necessarily went into this motion briefing and the hearing on the temporary injunction motion, the requested fees are reasonable.

3.2.2 Likelihood of Preclusion of Other Employment

Marek’s counsel is a small law firm that can only take a limited number of cases. Randazza Dec. at ¶ 16. Taking this case precluded the firm from accepting other work which would have filled the gap. *Id.* This factor thus weighs in favor of the reasonableness of the requested fee award.

3.2.3 Fee Customarily Charged

The Adjusted Laffey Matrix, attached as **Exhibit 6**,⁶ provides some guidance as to customary rates for attorneys of comparable experience to Defendants’ counsel. Mr. Randazza bills at a rate of \$1,000 per hour and has 23 years of experience as an attorney. Randazza Dec. at ¶¶ 2, 9. According to the Adjusted Laffey Matrix, an attorney of Mr. Randazza’s experience is able to bill at a rate of \$1,141 per hour, which is higher than his hourly rate. **Exhibit 6**.

⁶ The Laffey Matrix has been used by courts as a guidepost in determining the reasonableness of attorneys’ fees. *See, e.g., Vasquez v. Libre by Nexus, Inc.*, No. 17-cv-00755 CW, 2022 U.S. Dist. LEXIS 180791, at *46 n.11 (N.D. Cal. Oct. 3, 2022) (“The Laffey Matrix is ‘a widely recognized compilation of attorney and paralegal rates based on various levels of experience’ upon which courts, including those in this district, routinely rely to determine the reasonableness of attorney hourly rates.”) (quoting *Theme Promotions, Inc. v. News Am. Mktg. FSI, Inc.*, 731 F. Supp. 2d 937, 948 (N.D. Cal. 2010)); *Rivera v. Rivera*, No. 5:10-CV-01345-LHK, 2011 U.S. Dist. LEXIS 93704, at *5-6 (N.D. Cal. Aug. 22, 2011); *Young v. Polo Retail, LLC*, 2007 U.S. Dist. LEXIS 27269, *20 (N.D. Cal. Mar. 28, 2007) (noting that “[o]ne reliable source for rates that vary by experience levels is the *Laffey* matrix used in the District of Columbia”); *In re HPL tech., Inc., Secs. Litig.*, 366 F. Supp. 2d 912, 921 (N.D. Cal. 2005) (finding that Laffey Matrix is a “well-established objective source for rates that vary by experience”); *Recouvreur v. Carreon*, 940 F. Supp. 2d 1063, 1070 (N.D. Cal. 2013). However, the Fifth Circuit has not adopted it and the Southern District of Texas has explicitly rejected it. *Novick v. Shipcom Wireless, Inc.*, No. 4:16-CV-00730, 2018 U.S. Dist. LEXIS 198446, *4-5 (S.D. Tex. 2018).

Attorney Ronald D. Green's customary hourly rate is \$750 per hour and he has 24 years of experience as an attorney. Randazza Dec. at ¶¶ 9, 29. According to the Adjusted Laffey matrix, an attorney of Mr. Green's experience is able to bill at a rate of \$1,141 per hour, which is significantly higher than his hourly rate. **Exhibit 6.**

Attorney Alex J. Shepard's customary hourly rate is \$750 per hour and he has over ten years of experience as an attorney. Randazza Dec. at ¶¶ 9, 30. According to the Adjusted Laffey matrix, an attorney of Mr. Shepard's experience is able to bill at a rate of \$839 per hour, which is higher than his hourly rate. **Exhibit 6.**

If the Court is disinclined to use the Laffey Matrix, these billing rates are in line with hourly rates approved of by other Texas courts. *See ABD Interests, LLC, v. Wallace*, Cause No. 2017-35441 (334th Dist. Ct., Harris County, Tex. Dec. 12, 2017) (awarding attorney's fees at rates of \$1,100 per hour and \$650 per hour), *attorney fee award affirmed on appeal, ABD Interests, LLC, v. Wallace*, 606 S.W.3d 413 (Tex. App. – Houston [1st Dist.] 2020, pet. filed); *Granbury SNF LLC v. Jackson*, No. 02-24-00248-CV, 2025 Tex. App. LEXIS 1711, *38-39 (Tex. App.—Fort Worth Mar. 13, 2025, no pet. h.) (finding hourly rate of \$1,000 reasonable in contingent appellate case); *Baltasar D. Cruz v. James Van Sickle, et al.*, Cause No. DC-12-09275 (160th Dist. Ct., Dallas County, Tex. March 22, 2013), *reversed on other grounds* (approving rate of \$835 for partner). In 2023, the *Texas Lawbook* reported that Texas lawyers were billing up to \$2,000 per hour for some specialties. Mark Curriden, "Texas Lawyers hit \$2,000 an Hour," THE TEXAS LAWBOOK (Sept. 25, 2023).⁷ As far back as 2012, some Texas lawyers were billing \$1,000 per hour. Mark Curriden, "Texas Lawyers Charging \$1,000 an Hour Rare, but Not Much Longer," THE TEXAS LAWBOOK (Mar. 1, 2012).⁸ In 2017, the *Houston Chronicle* reported that rates were rising to \$1,000 per hour.

⁷ Available at: <https://texaslawbook.net/texas-lawyers-hit-2000-an-hour/> (archived version at <https://archive.is/IOGRp>) (last accessed Apr. 16, 2025).

⁸ Available at: <https://texaslawbook.net/texas-lawyers-charging-1000-an-hour-rare-but-not-much-longer/> (last accessed Apr. 16, 2025).

Mark Curriden, “Texas legal rates soar as national firms rush in,” THE HOUSTON CHRONICLE (Mar. 24, 2017).⁹

However, an accurate measure of what fees are reasonable for *this case* is to examine both sides’ fees in similar cases. PTK’s Counsel, Jonathan Polak, filed a fee motion under Nevada’s Anti-SLAPP law in *Banerjee v. Continental Incorporated, Inc.*, No. 2:17-cv-00466-APG-GWF, Dkt. No. 60 (D. Nev. Feb. 27, 2018). There, he sought an overall fee award of **\$143,760**. This reflected approximately 350 hours of attorney time, though he voluntarily disclaimed 125 hours of additional time on the erroneous belief that Nevada’s Anti-SLAPP law only allowed recovery of fees directly connected to an Anti-SLAPP motion. With all respect to Judge Gordon’s position in that case, he was wrong and Polak was entitled to all of his fees. *See Zilverberg*, 481 P.3d at 1231. Texas follows Nevada in this respect. Tex. Civ. Prac. & Rem. Code § 27.009(a)(1) (entitling prevailing movant to an award of fees “incurred in defending against the legal action”); *Brenner*, 2024 Tex. App. LEXIS 9139 at *55-56. But suffice to say that RLG’s bill so far is much less than what PTK’s counsel has charged for less work at a lower rate. Here, RLG spent 161 hours on both an opposition to a motion for an injunction, oral argument, an Anti-SLAPP motion, and this instant motion. That is much more work in 161 hours than the large firm billed for, doing less work.

To pre-emptively disarm any claims that the hourly rates sought here are unreasonable, Mr. Polak and Tracy Betz, the very attorneys in this case, representing the very plaintiff in this case, sought an award of fees in *PTK v. HonorSociety.org, Inc.*, No. 3:22-cv-00208-CWR-RPM, Dkt. No. 274 (S.D. Miss. Oct. 14, 2024). In that motion, they represented the same client in a related case, where they represented a customary hourly rate of \$910. They claimed there to have racked up over \$400,000 in fees on two preliminary injunction motions and over \$60,000 on a contempt motion. The records of these fee motions, with documents unrelated to hours or amounts billed removed, are attached as **Exhibit 7**. RLG’s billing represents greater billing efficiency and lower costs, despite marginally higher hourly rates. Certainly Randazza may reasonably charge 10%

⁹ Available at: <https://www.houstonchronicle.com/business/article/Texas-legal-rates-soar-as-national-firms-rush-in-11025525.php> (last accessed Apr. 16, 2025).

more than Mr. Polak where billing records reflect nearly twice the work produced in half the amount of time, as the prevailing attorney. And if two injunction motions plus a motion for contempt is \$460,000 from PTK's counsel, the billing here is not just reasonable, but a bargain.

3.2.4 Amount Involved and Results Obtained

The results were resoundingly in Marek's favor. Following a TRO granted *ex parte* due to PTK's misrepresentations, Marek defeated PTK's attempt at censoring her speech, the principal (and perhaps only) goal of this litigation. PTK's arguments were so thoroughly trounced that they almost immediately surrendered in the face of the well-drafted Anti-SLAPP motion. Marek filed her Anti-SLAPP motion seeking a quick end to this case. Mission accomplished. This factor weighs heavily in favor of the reasonableness of the requested fees.

3.2.5 Time Limitations Imposed by the Client or Circumstances

There were time restraints in this matter that required RLG to perform a lot of work in a few days. PTK opened this case on March 26, 2025, by filing its Petition and *ex parte* motion for a TRO. RLG was retained the following day (Randazza Dec. at ¶ 17), and immediately had to begin the substantial work of opposing PTK's motion for a temporary injunction. RLG also, within the same time frame, had to draft and file a TCPA motion. Given that a TCPA motion involves roughly the amount of work required for a summary judgment motion, RLG had to perform the majority of work that would be required in a case before trial, minus discovery, in just over one week. This factor weighs heavily in favor of the reasonableness of the requested fees.

3.2.6 Nature and Length of Relationship with Client

RLG does not have a pre-existing relationship with Marek; this case is the first time the firm has represented her. Randazza Dec. at ¶ 18. To the extent this factor is relevant, it weighs in favor of the reasonableness of the requested fees, as RLG had to spend some time becoming familiar with Marek and her ongoing dispute with PTK that pre-dates this case. *Id.*

3.2.7 Experience, Reputation, and Ability of the Lawyer

Marc Randazza's hourly rate is justified, as he is an experienced attorney who specializes in First Amendment litigation and is licensed to practice in the states of Nevada, California,

Arizona, Florida, and Massachusetts. *See* Randazza Dec. at ¶ 20. Mr. Randazza was instrumental in the passage of Nevada’s 2013 Anti-SLAPP legislation and played a significant role in shaping the statute’s 2015 amendments. *See id.* at ¶ 21; *see also* Senate Committee on Judiciary Hearing on Nev. SB 286 (May 6, 2013), attached as **Exhibit 8**. When Nevada’s Anti-SLAPP statute was amended in 2015, Mr. Randazza successfully led the lobbying effort to save the statute from repeal and was instrumental in crafting the language in the statute today. *See* Randazza Dec. at ¶ 22; *see also* Minutes of Assembly Committee on Judiciary Hearing on SB 444, April 24, 2015, attached as **Exhibit 9**, at 35-38.

Mr. Randazza is a nationally recognized expert on Anti-SLAPP legislation, defamation, and free speech issues, and has assisted the legislatures in Nevada, Pennsylvania, Ohio, New York, Massachusetts, New Hampshire, and Wyoming on Anti-SLAPP legislation. Randazza Dec. at ¶ 23. He is the author of Nevada Lawyer articles on the Anti-SLAPP statute. *See* Marc Randazza, “Nevada’s New Anti-SLAPP Law: The Silver State Sets the Gold Standard,” NEVADA LAWYER (Oct. 2013), attached as **Exhibit 10**; Marc Randazza, “Nevada’s Anti-SLAPP Law Update,” NEVADA LAWYER (Sept. 2016) attached as **Exhibit 11**. He has also published numerous other law review articles on free speech issues. *See curriculum vitae* of Marc Randazza, attached as **Exhibit 12**.

Randazza has been a commentator for both Fox News and CNN on Free Speech issues. *See* Randazza Dec. at ¶ 24. Randazza holds a JD from Georgetown University Law Center, a Master’s in Mass Communications from the University of Florida (with a media/First Amendment law focus), and an international degree in the form of an LL.M. from the University of Turin, Italy, where he wrote and published a thesis on freedom of expression issues. *See* **Exhibit 12**; *see also* Marc J. Randazza, “Freedom of Expression and Morality-Based Impediments to the Enforcement of Intellectual Property Rights,” 16 Nev. L.J., 107 (Jan. 15, 2016). Randazza has been a practicing attorney for over 23 years. *See* Randazza Dec. at ¶ 2. Randazza has taught First Amendment law at the law school level. *See* **Exhibit 12**. And, he gives presentations to attorneys in CLE courses on how to handle Anti-SLAPP litigation and publishes on this issue as well. *See id.* Former senator

Justin Jones described Mr. Randazza as “one of the preeminent experts on the issue” of Anti-SLAPP litigation. *See* **Exhibit 9** at 3.

Experienced litigators within and without Texas, including the president of the First Amendment Lawyers Association (“FALA”), are familiar with Randazza’s ability and experience and have testified that his hourly rate here is justified, particularly in the absence of local litigators with comparable experience in First Amendment cases. *See* Declaration of Zach Greenberg (“Greenberg Dec.”), attached as **Exhibit 13**; Declaration of Mark Bennett (“Bennett Dec.”), attached as **Exhibit 14**.

Attorney Ronald D. Green has a JD from University of Pittsburgh School of Law and is a Nevada-licensed attorney with over 24 years of litigation experience. Randazza Dec. at ¶ 29. He has several years of experience with defamation and First Amendment cases. *Id.*

Attorney Alex J. Shepard earned his JD from Washington University School of Law, is licensed to practice in Nevada, California, and Washington, and has over 10 years of experience, having spent almost his entire career working on First Amendment, defamation, and Anti-SLAPP cases. Randazza Dec. at ¶ 30. He has also been interviewed on issues of defamation and Anti-SLAPP law. *Id.*; Spencer Cornelia, “I’m Being Sued By a Fake Guru for \$2 MILLION,” Youtube (May 15, 2023).¹⁰

Cassidy Curran and Ali Gregoire are paralegals with varying experience. Randazza Dec. at ¶¶ 31-32.

The experience, skill, and ability of Marek’s counsel directly led to a resounding success for Mark, namely, denial of PTK’s attempt to obtain a temporary injunction, PTK’s primary goal in filing suit, and nonsuit immediately thereafter. Accordingly, the experience, reputation, and ability of Mark’s attorneys weigh in favor of the reasonableness of the requested fees.

¹⁰ Available at: <https://www.youtube.com/watch?v=EkrwBYl2hiI>

3.3 The Fee Arrangement is Irrelevant

Defendant Marek does not have the funds necessary to hire her counsel at their customary hourly rates. Instead, fundraising for her defense. Randazza Dec. at ¶ 19. In negotiations, PTK took the position that the amount fundraised should offset the amount paid by PTK. Incorrect. The issue of third party payors has been addressed by multiple courts, all holding that the purpose of Anti-SLAPP laws would be frustrated by reductions in fee awards due to the existence of third party payors.

With respect to Anti-SLAPP jurisprudence across the country the majority view is that the existence of third-party payors has no influence on anti-slap fee awards. *See, e.g., Macias v. Hartwell*, 55 Cal. App. 4th 669, 64 Cal. Rptr. 2d 222, 226 (Ct. App. 1997) (“Appellant cites no authority, and we have found none, that a defendant who successfully brings an anti-SLAPP motion is barred from recovering fees if the fees were paid by a third party”); *Cornelius v. Chronicle, Inc.*, 209 Vt. 405, 406-407 (2019) (Anti-SLAPP laws do not “limit recovery to those fees that are not reimbursed by insurance. The plain language of the statute does not support this construction. The statute contains no provision limiting the recovery of attorney’s fees to those amounts that were incurred directly by the defendant as opposed to by a third party. Moreover, this construction is at odds with the remedial purpose of the statute”); *Polay v. McMahon*, 468 Mass. 379, 10 N.E.3d 1122 (Mass. 2014) (rejected SLAPP plaintiff’s argument that fees should be reduced due to payment by insurance reasoning that the fee-shifting provision “furthers the statute’s underlying purposes of broadly protecting petitioning activity and promoting resolution of ‘SLAPP’ litigation ‘quickly with minimum cost’”); *Poulard v. Lauth*, 793 N.E.2d 1120, 1124-25 (Ind. Ct. App. 2003) (“We believe the legislative purpose of the attorney’s fees provision of the anti-SLAPP statute is not advanced by allowing the award of attorney’s fees to only those parties who have directly incurred that expense and are obliged to pay it, and by denying the award of fees to those litigants whose fees are paid by insurers or other non-parties”).

Texas appellate courts have not explicitly addressed this issue in the SLAPP context. However, it is a certainty that if it ever were to reach a Texas appellate court, that court would not deviate from Texas’s sister states, given the statutory construction of the TCPA and analogous

Texas case law. As with all other states' Anti-SLAPP laws, the TCPA contains no limitation on recovery if the fees are partially paid by donations, insurers, employers, or any other third parties.

With respect to Texas case law on fees and donations or other third party payors like insurers, the law is clear: There is no “donor offset” in Texas. In *Aviles v. Aguirre*, the Texas Supreme Court held that a defendant “incurred” the fees expended on his defense despite the fact that the fees were paid by an insurer. 292 S.W.3d 648, 649 (Tex. 2009). In *McRay v. Dow Golub Remels & Gilbreath PLLC*, No. 01-21-00032-CV, 2022 Tex. App. LEXIS 9569, *21-23 (Tex. App.-Houston [1st Dist.] Dec. 29, 2022), the Texas Court of Appeals invoked *Aviles* in an analogous case, again discussing insurance. “Under *Aviles*, whether Dow Golub paid its counsel's invoices directly or its insurer paid them does not alter the fact that Dow Golub incurred the fees.” *Id.* The Texas Court of Appeals also applied the “collateral source rule” in rejecting a party’s attempt to reduce their own liability on the basis that their adversary was insured. “We further note that McRay’s effort to reduce its own liability by the amount of Dow Golub’s insurance benefits is barred by the collateral source rule which holds that a wrongdoer cannot offset its liability by insurance benefits independently procured by the injured party.” *Id.* (citing *Mid-Century Ins. Co. of Tex. v. Kidd*, 997 S.W.2d 265, 274 (Tex. 1999); *Brown v. Am. Transfer & Storage Co.*, 601 S.W.2d 931, 934 (Tex. 1980)). The Court held “McRay cannot rely on Dow Golub's separate decision to ‘purchase[] insurance’ as a basis to avoid that liability.” *Id.* (citing *Graco, Inc. v. CRC, Inc. of Tex.*, 47 S.W.3d 742, 744-46 (Tex. App.—Dallas 2001, pet. denied). If a party deserves a fee award, Texas courts appear to universally hold that payment by a third party does not provide any basis to exclude those payments from the deserving party’s fee award. *Id.*

Accordingly, although Marek does not have insurance, she did make a decision to seek donations to help defray the costs of her defense. Just like seeking insurance, that is for her benefit—not for the benefit of PTK. And while it should be irrelevant to the legal analysis, it is at least worth mentioning that should Marek recover all of her fees in this case, money she has fundraised will still be needed to fight PTK—because PTK and Marek are still involved in collateral legal proceedings in the U.S. District Court for the Southern District of Mississippi. Marek requires

counsel in that matter, but again cannot afford it. Every penny recovered will be spent on legal fees fending off PTK's continued bullying.

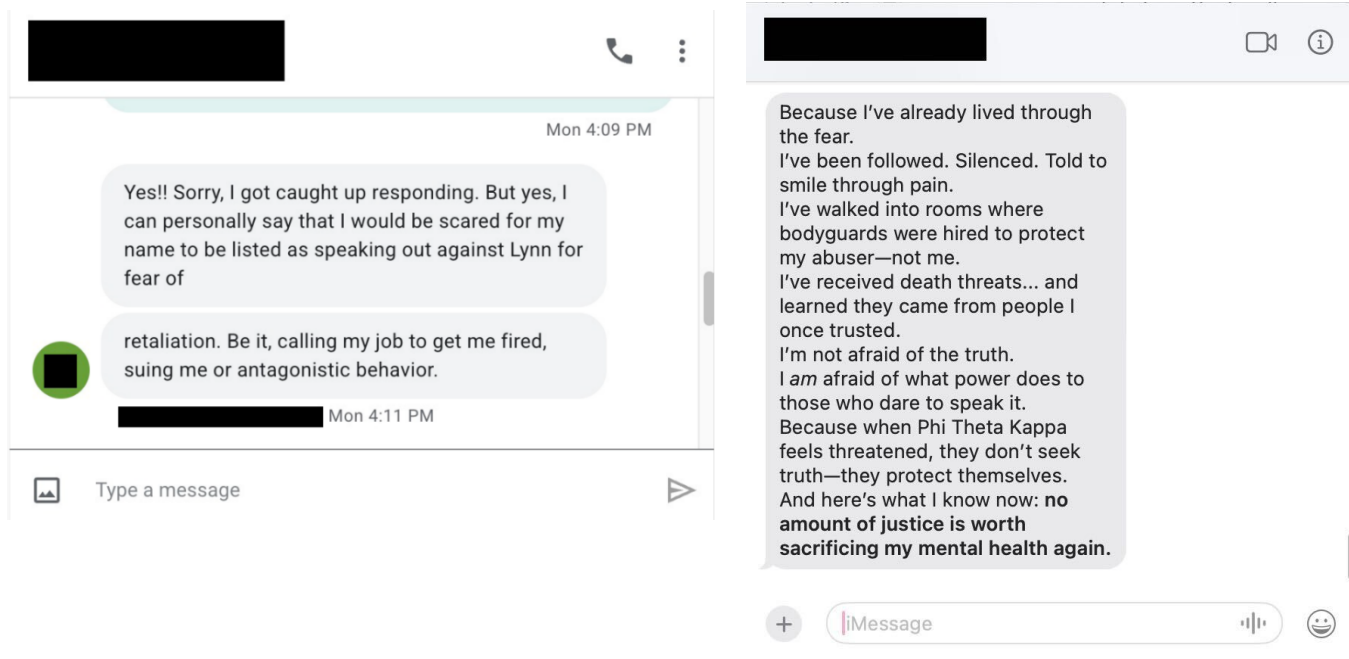
3.4 Sanctions on Plaintiff in Excess of Fees are Warranted

Texas law requires an award of all fees expended in this proceeding. Tex. Civ. Prac. & Rem. Code § 27.009(a)(1) (entitling prevailing movant to an award of fees “incurred in defending against the legal action”); *Brenner*, 2024 Tex. App. LEXIS 9139 at *55-56 (TCPA fee award applied to all motions and work in case). This is consistent with other states' Anti-SLAPP laws. *See, e.g., Zilverberg*, 481 P.3d at 1231 (prevailing Anti-SLAPP party is entitled to an award of **all** fees incurred in defending against an action). However, the TCPA also provides for discretionary sanctions, which are warranted here. Tex. Civ. Prac. & Rem. Code § 27.009 (permitting court to award sanctions “as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter”).

3.4.1 Censorship is a Pattern With PTK and Deterrence is Necessary

In determining whether to award a sanction, and how much it should be, the Court should consider whether the plaintiff has filed similar actions in the past. *1st & Trinity Super Majority, LLC v. Milligan*, 657 S.W.3d 349, 379 (Tex. App.—El Paso 2022, no pet.) (collecting cases). PTK has engaged in a campaign of censorship, not just in court but through baseless threats as well.

Not only has PTK harassed Marek to try and silence her, but uses censorship as a cornerstone of its business model. Marek has reached out to other current and former members of PTK in an attempt to show how it is not the reliable “honor society” it purports to be. Declaration of Toni Marek (“Marek Dec.”), attached as **Exhibit 15**, at ¶ 17. These members universally refused to publicly speak out against PTK, not because they disagree that it has serious problems, but because they are *terrified* of retaliation from it, particularly its President and CEO, Dr. Lynn Tincher-Ladner, who is a plaintiff in the Southern District of Mississippi case. *Id.* Below are a few examples of people Marek reached out to, but who refused to go on record due to fear of retaliation:



Id. at *Exhibit I*. When former senior staffer Wendy Flores tried to expose workplace toxicity, financial irregularities, and unethical conduct at PTK, PTK’s counsel threatened her with litigation. *Id.* at ¶ 15 & *Exhibit G*.

With respect to Toni Marek herself, PTK has engaged in multiple efforts to shut down her speech, including quite recently. *Id.* at ¶ 10 & *Exhibit A* (threatening litigation over statements made regarding Marek’s resignation from PTK); *id.* at ¶ 11 & *Exhibits B-C* (threatening litigation over allegedly defamatory statements, with no reference to allegedly confidential or privileged information); *id.* at ¶ 12 & *Exhibit D* (requesting that colleges blacklist Marek’s email accounts); *id.* at ¶ 13 & *Exhibit E* (sending email to students attempting to discredit Marek); *id.* at ¶ 14 & *Exhibit F* (same, and additionally threatening litigation over information Marek obtained through public records requests not mentioned in PTK’s Petition here); *id.* at ¶ 16 & *Exhibit H* (sent after PTK filed its Petition, and threatening litigation over allegedly false statements about PTK). For over a decade, PTK has threatened Marek with litigation based on her criticism of PTK, based on statements completely unrelated to issues of confidentiality or privilege. Meanwhile, PTK argued

at the hearing *that this was their first time trying to silence Marek herself*.¹² The mere fact that they have been engaged in a pattern of censorship against her should be enough to warrant sanctions. This departure from candor at oral argument should provide additional grounds for the necessity of sanctions. However, PTK is not only engaged in a campaign of censorship against Marek, but against anyone who might speak out against abuses and problems involved in the organization. Marek Dec. at ¶¶ 10-18.

With respect to litigation, the abusive tactics and frivolous actions in this case are not just something PTK has done recently, but something PTK is doing now in the Southern District of Mississippi case against Honorsociety.org. However, unfortunately, for the defendant in that case, there is no Anti-Slapp Law in the federal court in Mississippi. Nevertheless, the Fifth Circuit recently ruled that a preliminary injunction PTK obtained against a competing honor society constituted a grossly overbroad prior restraint on protected speech. *See Honorsociety.Org, Inc.*, 2025 U.S. App. LEXIS 8090.¹³

PTK has a pattern of intimidation against speech and seeking unwarranted injunctive relief against protected speech, and thus sanctions are necessary to deter it from doing so in the future.

3.4.2 The TRO Process Was Independently Sanctionable

PTK not only filed a frivolous claim in violation of the TCPA, but it also wrongfully applied for and was issued an *ex parte* temporary restraining order (the “TRO”) that acted as a prior restraint. Even if it had a shred of validity, it was clearly presented in bad faith, in violation of PTK’s duty of candor to the tribunal.¹⁴ This TRO was written by Plaintiff. But in the *ex parte* proceeding, Plaintiff failed to disclose contrary authority and contrary facts. This was wrong, and

¹² **Exhibit 2** at 11:2-4. Marek’s Declaration and the exhibits thereto demonstrate that this argument, like others made that day, was not entirely candid.

¹³ As PTK notes in its Petition, Marek was involved in this litigation, which gave her access to the documents that formed the alleged basis of PTK’s claims in this action. Pet. at ¶¶ 1, 10.

¹⁴ Marek specifically waives any argument that Attorney Cullen should be blamed here. It does not appear that there is any reason to believe that Attorney Cullen authored the brief, nor did he clearly have possession of the contrary authority discussed above. The presumption is that PTK itself drove the litigation, and likely did not share the contrary information with any of its attorneys.

the costs and fees incurred because PTK did wrong should be visited upon PTK, not Ms. Marek, who simply wanted to live her life as a free born American.

A party seeking an *ex parte* temporary restraining order has a *duty* to disclose all material facts and contrary legal authority to the court. This duty stems from the ethical obligations of candor toward the tribunal and the unique nature of *ex parte* proceedings, where the opposing party is not present to provide a counterargument. Plaintiff did not abide this duty – it wanted a quick TRO so that it could suppress the publication of a book so that its national convention could go off without the embarrassment that might come from the issues the book would disclose.

In its zeal to have a secret proceeding, with no notice to Defendant, for no other purpose than rank censorship, PTK declined to disclose key material facts and declined to share obviously controlling authority to the Court. It then presented a pre-written order to the Court which, not having the benefit of this required disclosure, signed it – necessitating emergency measures on Defendant’s part in order to restore her Constitutional rights. The Court was misled into signing the TRO, which it clearly would not have done had it been exposed to even a weakly-presented helping of the contrary facts and law.

Plaintiff should not be able to evade any of the costs and fees here, but should be sanctioned, as authorized by the TCPA, to disincentivize it and other parties from conducting themselves in a similar manner. Otherwise, plaintiffs in similar situations will actually be *incentivized* to comport themselves similarly. After all, PTK “won” here despite losing. It had its national conference on April 3, 2025, where Marek intended to release her book. While PTK claimed this was merely coincidental, that claim’s credibility should be evaluated under the light that PTK has shone upon itself with its lack of factual and legal candor. However, let us be generous and take PTK at its tarnished word – even if it was merely coincidental, the incentive has been laid out for other predatory plaintiffs to snack on. If PTK is allowed to rush into court, violate its duty of candor in an *ex parte* proceeding, to suppress publication of a book until (coincidentally) the event it wants to go off without embarrassment is over, then why wouldn’t companies all across Texas (at least) do the same? If a damaging news article is to come out the day before an earnings

report, get an ex parte TRO to keep the article off the front page. Why wouldn't corrupt politicians do the same before an election? The negative examples are many. The solution is solitary – let it be known that the price of such conduct shall be visited upon the wrongdoer, not the innocent. This justifies sanctions, in addition to the TCPA mandatory imposition of prevailing party fees.

3.4.3 Sanctions Should be Deterrent-Sized

The sanctions should be significant. The amount of sanctions under the TCPA is reviewed for abuse of discretion, and a trial court need not consider any specific factors in fashioning an amount; the sole required consideration is an amount large enough “to deter a party from engaging in similar conduct . . . the mere fact that an award is large does not in itself render an award excessive.” *Milligan*, 657 S.W.3d at 380. The trial court may consider the effect of a sanction on the offender, including the offender's ability to pay. *Id.* at 380-81 (upholding sanctions award of \$150,000). While PTK may not be a multinational corporation, it has funds to spare that could be used to satisfy a meaningful sanction. PTK advertises on its website that the organization itself distributes over \$1 million annually in competitive scholarships, to say nothing of millions of dollars in partner transfer scholarships, strongly suggesting it has adequate funds to pay such a sanction. “How our Scholarships Work,” Phi Theta Kappa Honor Society, attached as **Exhibit 16**.¹⁵ The Court should thus impose a sanction equal to triple the attorneys' fees and costs requested here, or \$355,050.00.

4.0 REQUEST FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court:

- A. Award Toni Marek \$118,350.00 in attorneys' fees;
- B. Award Toni Marek \$2,796.63 in costs;
- C. Impose a sanction of \$355,050.00 on PTK, to be paid to Toni Marek; and,
- D. Award Defendant such other relief as the Court deems just and proper.

¹⁵ Available at: <https://www.ptk.org/scholarships/how-our-scholarships-work/> (last accessed Apr. 16, 2025).

Dated: April 18, 2025.

Respectfully submitted,

/s/ Marc J. Randazza

David C. Griffin, State Bar No. 08456950

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Attorneys for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed with the Clerk of the Court using the court filing system, and served electronically to the following:

Tracy Betz
Taft Stettinius & Hollister LLP
<tbetz@taftlaw.com>

Kevin D. Cullen
Cullen, Carsner, Serrden & Cullen, LLP
<kcullen@cullenlawfirm.com>

Dated: April 18, 2025

/s/ Marc J. Randazza

Marc J. Randazza

EXHIBIT 1

Email containing allegedly “attorney client
privileged” information

Subject: today's deposition

From: Lynn Tincher-Ladner <lynn.tincher-ladner@ptk.org>

Date: 11/22/24, 1:02 PM

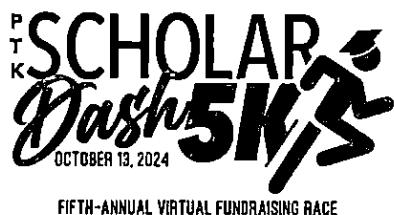
To: George Boggs <george.r.boggs@gmail.com>, "Daniel J. Phelan" <PhelanDanielJ@jccmi.edu>, Mary Linder <linderm@grayson.edu>

Everyone,

Christin Grissom (who I terminated for lying to me) is testifying under oath this morning that she questions my ethics on the number and amount of scholarships available for PTK students, and she is saying that she vehemently disagreed with me about the calculation of the scholarships available to members. She said she was only doing what she was told...etc.

I am sitting here trying not to have a stroke, because we cannot ask questions until the very end of the deposition. When we do, Jonathan is going to have her read this email aloud.

-Lynn



Go the Extra Mile for PTK!

Lynn Tincher-Ladner, Ph.D. (she/her)

President and CEO

Phi Theta Kappa Honor Society

ptk.org / ccsmart.org

—Attachments:—

9.2.21 email re Sumati and scholarship calculations.pdf

1.5 MB

EXHIBIT 2

Transcript of April 8, 2025, hearing
on motion for temporary injunction

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REPORTER'S RECORD
AMENDED VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 25-03-92211-D

PHI THETA KAPPA HONOR	§	IN THE DISTRICT COURT
SOCIETY,	§	
Plaintiff	§	
	§	
vs.	§	135TH JUDICIAL DISTRICT
	§	
TONI MAREK,	§	
Defendant	§	VICTORIA COUNTY, TEXAS

HEARING ON APPLICATION FOR A TEMPORARY INJUNCTION

On the 8th day of April, 2025, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable JUDGE KEMPER STEPHEN
WILLIAMS, Judge Presiding, held in Victoria, Victoria
County, Texas.

Proceedings reported by computerized stenotype
machine.

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Hearing on Application for a Temporary Injunction
 April 8, 2025

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Hearing on Application for a Temporary Injunction
April 8, 2025

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AMENDED VOLUME 1 OF 1 VOLUME

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMD</u>	<u>VOL</u>
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(No exhibits marked or offered.)

1 P R O C E E D I N G S

2 THE COURT: This is 25-03-92211-D,
3 PHI THETA KAPPA HONOR SOCIETY VERSUS TONI MAREK.

4 And just for the record, we have two pro
5 hac vice motions, one from Tracy Betz and one from
6 Marc --

7 Is it Randazza?

8 MR. RANDAZZA: Randazza, yes.

9 THE COURT: -- Randazza.

10 And just for the record, those are ordered
11 granted; and if you-all want to follow up with written
12 orders to confirm that, that's fine as well. So --

13 We're here on an application for a
14 temporary injunction.

15 And is it Ms. Betz? You represent the
16 movant?

17 MS. BETZ: I do, your Honor. Thank you.

18 THE COURT: All right. You may proceed.

19 MS. BETZ: Thank you, your Honor.

20 Prior to the hearing starting today, we
21 spoke with Mr. Randazza out in the hallway about the
22 possibility of stipulating to the evidence that's
23 already been placed before you, your Honor, and then
24 just really drilling down and focusing on legal
25 arguments, seeing that this is more of a question of

1 legal issue than it is a factual. If, your Honor, is
2 okay with that, then we would proceed in that manner.

3 MR. RANDAZZA: Yes, your Honor, we did
4 come to that agreement.

5 I think we didn't actually flesh out the
6 one thing, though, is that there is this e-mail that
7 neither of us had put on the record. We'd like your
8 Honor to have the benefit of looking at it in camera,
9 but we're not trying to admit it.

10 Does that sound about right?

11 MS. BETZ: We would have no objection,
12 your Honor, receiving it in camera; but we would object
13 to it being placed in the record as it is privileged.

14 THE COURT: I understand.

15 So -- all right. Well, then I guess I
16 approve that stipulation; and you may proceed.

17 MS. BETZ: Thank you, your Honor.

18 And with that stipulation, then is it fair
19 for us to assume that the materials that were attached
20 to our injunction are deemed admitted?

21 THE COURT: Yes.

22 MS. BETZ: Thank you, your Honor.

23 THE COURT: But does that also include
24 anything that was attached to the response?

25 MR. CULLEN: No.

1 THE COURT: Oh, okay.

2 MR. CULLEN: The e-mail. It doesn't
3 include the e-mail.

4 MS. BETZ: Not the e-mail.

5 THE COURT: Yeah, I understand.

6 MR. RANDAZZA: Well, we didn't attach the
7 e-mail.

8 MS. BETZ: Right. They didn't attach the
9 e-mail. That's correct.

10 THE COURT: All right. Go ahead.

11 MS. BETZ: Thank you, your Honor.

12 I want to say from the outset that no one
13 here is trying to silence -- silence an alleged victim
14 of sexual assault. That is not what why we are here.
15 PTK is not trying to silence Ms. Marek's speech in any
16 way. We're here purely on a very simple issue; and that
17 is privileged communications, attorney-client and work
18 product privileged communications.

19 And, your Honor, I -- in fact, when the
20 attorney just left this room, he said, "You're going to
21 get schooled on the First Amendment today," and you are
22 going to hear a lot of that from the other side and
23 Mr. Randazza and I believe that is his practice area.
24 We disagree that this case has anything at all to do
25 with the First Amendment.

1 Again, this has to do with the fact that
2 there are privileged communications that have been
3 inadvertently disclosed to Ms. Marek; and Ms. Marek has
4 then produced them publicly, filed them publicly in a
5 federal case, and has made statements that she intends
6 to continue to give that information in a book that she
7 had intended to produce -- or to print prior to
8 Judge Bauknight issuing her order a couple -- a week or
9 so ago.

10 And so that is what this case is about,
11 that is what we're here about, and that's what I want to
12 focus on and talk about.

13 And your Honor knows, just as well as any
14 other attorney in this room, no one is entitled to have
15 someone else's attorney-client or work product
16 privileged communications. No one. Typically not this
17 Court, except for limited exceptions -- for example, how
18 we just made an agreement for you to review in camera --
19 not the opposing counsel, certainly not an opposing
20 party, not a witness. No one is entitled to have those
21 communications, not individuals who might want to read
22 Ms. Marek's book.

23 This is a cornerstone of the legal
24 process, the privilege; and it's fiercely protected by
25 every state, by the federal courts.

1 In fact, your Honor's probably aware that
2 many confidentiality and protective orders have clawback
3 provisions that say, "If we inadvertently produce our
4 privileged materials, we get them back. You don't get
5 to keep them. You don't get to use them." That's
6 because the privilege is so important, and we protect
7 it.

8 No one is entitled to have other people's
9 communications, not even when they're accidentally
10 disclosed; and, again, it's the only reason we're here.

11 Ms. Marek sent a number of FOIA requests
12 and when doing that, she inadvertently received PTK's
13 attorney-client work product privileged information and
14 there's no dispute that she has this information.

15 She has, again, filed a piece of it with a
16 federal filing; and she has placed on websites that
17 she's going to use materials that she received in a FOIA
18 request, she's going to put those in a book that she's
19 publishing and making available for free that she refers
20 to basically as a tell-all book about PTK. "I'm going
21 to use this FOIA received information in my tell-all
22 book."

23 Well, she can't use those privileged
24 materials because she's not allowed to possess them, not
25 allowed to possess them and not allowed to publish them

1 or distribute them to others.

2 Now, in her response to the TRO that
3 Judge Bauknight entered, they -- they argue that this is
4 an order that is a constitutional abomination and that
5 it should only exist to teach a judge what not to do.

6 And then the response goes on and on and
7 strings cites and talks about how there's not enough
8 room to string cite about the First Amendment and
9 suggests that -- that Ms. Marek is free to publish
10 anything she has at any time no matter what and if
11 you're stopping her from doing that, if you say
12 Judge Bauknight was wrong and you can do -- if you don't
13 say that, that's a prior restraint. She's allowed to
14 say anything she wants.

15 And she says that PTK has been trying to
16 shut her up for ten years about this alleged sexual
17 assault ten years ago and she wants to tell the world
18 and she has a right to produce all this stuff. That's
19 an awful lot of noise, your Honor.

20 PTK has known about her allegations of
21 sexual assault for those ten years; and they have never
22 once, ever, done anything to try to stop her from
23 speaking about that.

24 She's published it on websites, she has a
25 change.org petition, she posts about it on social media,

1 and they've not done anything.

2 In fact, the first time and only time that
3 they've tried to stop her from talking about PTK is when
4 she came into possession of PTK's privileged and work
5 product documents and then went ahead and published one
6 of them and told the world she was going to publish
7 more. That's the first and only time that PTK has tried
8 to stop it.

9 And they're not trying to stop her speech.
10 What they're trying to do is simply get back the
11 materials that she has no right to possess, their
12 privileged information.

13 And it's important for you to know, your
14 Honor, we actually tried to do that. We asked
15 Ms. Marek, before she had counsel, "Please give us back
16 these privileged materials. You're not entitled to have
17 them. You shouldn't have received them."

18 She ignored it at first; and then she
19 said, "No. I'm not giving them back to you. I received
20 them as part of this records request, and I'm going to
21 keep them."

22 Well, that's not how it works. When you
23 get privileged materials that were inadvertently
24 disclosed to you, that doesn't mean you have the right
25 to keep them; and it certainly doesn't mean you have the

1 right to put them all in a book and share them with the
2 world.

3 And even the Texas Records Request Act
4 makes that clear to us, that not everything in the
5 government is something that people get access to
6 through these types of requests. There are numerous
7 exceptions, numerous exceptions that say, "But you don't
8 get this, and you don't get that." And guess what.
9 Many of those relate to privilege and work product.

10 So the fact that they were inadvertently
11 disclosed to her does not mean that she can do whatever
12 she wants to do with them.

13 Again, her whole brief and her whole
14 argument is that the First Amendment means we can't stop
15 her speech and she cites to cases that talk about
16 stopping speech, but you'll notice nothing in that brief
17 and nothing you will hear today talks about, "Whether or
18 not I received privileged information, I can publish
19 that," because those cases don't talk about publishing
20 privileged information.

21 That's not what those cases say. That's
22 not what we're here to talk -- that's not what they're
23 here to talk about. They're here to say, "This is
24 speech. I can say whatever we want"; but that's just
25 not true. That's not true at all.

1 And that's why we asked for this pause.
2 That's why Judge Bauknight granted this pause.

3 Imagine if Ms. Marek had come across
4 somewhere the secret formula for Coca-Cola. Does she
5 just get to publish that and say, "First Amendment
6 right. I get to publish anything I want"; or would
7 Coca-Cola have the right to come to a court and shut it
8 down?

9 That's the same thing here. The
10 privileged communications are protected, and she's not
11 entitled to have them. That's why we're here, your
12 Honor. That is the only right -- reason why we're here.

13 Again, your Honor, PTK is making a very
14 narrow request; and Judge Bauknight was right in
15 granting it, that until we can get this issue sorted
16 out, the question of what does she have -- which she
17 won't tell us what she has -- until we know what she
18 has, until we know that it's not in her book, that the
19 book not be published. Not that it be forever barred
20 from being published, not that she doesn't get to say
21 anything about her alleged sexual assault or her other
22 grievances with PTK. We're not asking for any of that,
23 your Honor.

24 What we're asking for is the privileged
25 materials be returned to us and that she be enjoined

1 from ever disclosing the information that was contained
2 in those privileged materials. That is narrow; it is
3 focused; and this Court has the right to enter that
4 order, just like Judge Bauknight did.

5 Again, your Honor, there's -- the single
6 question that matters today: Can she take this
7 information, information that she should never have had
8 access to, and publish it?

9 And the answer is "no."

10 This Court has the right and the power to
11 force her to return them and enjoin her from using them
12 and that is the limited issue we're here on today, your
13 Honor, and we ask that the focus remain on the issue of
14 the privileged information rather than this question of
15 Ms. Marek is being told she can't say what she wants.

16 Thank you, your Honor.

17 MR. CULLEN: Judge, let me -- let me say
18 one thing.

19 When Ms. Betz was saying
20 "Judge Bauknight's order," that was because we thought
21 the hearing was in front of Judge Bauknight.

22 It's Judge Williams' order. He signed the
23 order, but the hearing was going to be in front of
24 Judge Bauknight.

25 MS. BETZ: I'm so sorry, your Honor. My

1 apologies on that.

2 Thank you for the correction, Counsel.

3 I apologize, your Honor. I was not aware.

4 THE COURT: I take no claim to ownership
5 on it. So --

6 MR. RANDAZZA: Your Honor, may I approach?

7 THE COURT: Yes.

8 (Paperwork handed to the judge.)

9 MR. RANDAZZA: So this is the -- it really
10 shouldn't matter what this says or who it's to or who
11 it's from; but now that your Honor has the benefit of
12 seeing it, this e-mail that is claimed to be privileged
13 doesn't have a single attorney on it. So I'm not sure
14 why it's privileged.

15 I also -- you'll note at the top that it
16 is filed in a public record on the Southern District of
17 Texas docket, which would extinguish its privilege.

18 Of course, its privilege was extinguished,
19 if it had ever existed, when it was provided to whatever
20 university provided this to her as a public record.
21 It's a public record.

22 I don't know why they're so afraid of this
23 being made public. I think if you look at it, we can
24 all agree it's somewhat dull; but this is the pretext
25 that they are before you here trying to silence a victim

1 of sexual assault, despite their exhortations to the
2 contrary, despite saying this has nothing to do with the
3 First Amendment.

4 Well, when you ban a book, that is classic
5 First Amendment territory. There is not one case cited
6 that says, "Now, let's presume this is privileged." And
7 I do not admit that and I -- I think it's somewhat
8 absurd to say it is, but let's just -- feasibly let's,
9 for the sake of argument, say it was.

10 Not one case says she can't have it. If
11 she comes across it somehow -- they leave it on a bus.
12 They put it into a public record. They inadvertently
13 disclose it in litigation and fail to properly claw it
14 back under Texas procedure -- it becomes the property of
15 the person who has it.

16 I actually witnessed in Texas one of the
17 most embarrassing examples of that that I've ever seen.
18 In the Alex Jones trial, the -- in Austin, the attorney
19 for Mr. Jones inadvertently disclosed the contents of
20 his entire telephone, including attorney-client
21 privileged information; and on national TV, that poor
22 man was embarrassed when it was brought to his
23 attention.

24 And the fact was he had sent an e-mail
25 saying, "I sent it inadvertently. Please disregard,"

1 and that wasn't enough. There are very specific
2 procedures under Texas law in order to claw back an
3 inadvertent disclosure in litigation.

4 They seem to be treating her as if she's
5 an attorney in a case where there's been an inadvertent
6 disclosure. She's not. She's a journalist; and if a
7 journalist comes into possession of privileged
8 information or trade secrets or, yes, even the recipe
9 for Coca-Cola, there is a reason that recipe is so
10 strongly guarded. It's not because they can simply put
11 it out there anywhere they like, put it into a public
12 record but say no one can publish it. That's just --
13 that's not the case in any legal system I've ever
14 studied, much less the United States.

15 So with all respect to my sister, yes, the
16 secret recipe for Coca-Cola can be published. Yes, this
17 e-mail can be published. And if they looked at my cases
18 instead of simply complaining that I cited too many of
19 them, they would look at NEW YORK TIMES VERSUS UNITED
20 STATES.

21 State secrets, secret war plans, Pentagon,
22 the Pentagon Papers came into the possession of the
23 NEW YORK TIMES and the WASHINGTON POST. That was not
24 ennobled with enough magic that it could supersede those
25 papers' rights to publish that information. Not enough.

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1 But this, this extremely dull e-mail, is
2 enough to not just stop this e-mail from being published
3 but an entire book that has been suppressed now for a
4 week. That's simply not tolerable under the First
5 Amendment.

6 Not only does NEW YORK TIMES VERSUS UNITED
7 STATES say this but KINNEY VERSUS BARNES is the
8 controlling case here in Texas. And KINNEY VERSUS
9 BARNES, much to my delight, cites Walter Sobchak in
10 THE BIG LEBOWSKI, who says, "The Supreme Court has
11 roundly rejected prior restraints." So you don't even
12 need to go to law school. You just need to have seen
13 THE BIG LEBOWSKI to know that this is intolerable, but I
14 will not require you to cite the Book of Dude.

15 Once she has this information lawfully --
16 now, if she had perhaps -- well, I don't even want to go
17 into hypotheticals because it doesn't matter.

18 Once a citizen comes into possession of
19 information lawfully, whether you go all the way back to
20 1931, NEAR VERSUS MINNESOTA, NEW YORK TIMES VERSUS
21 UNITED STATES, KINNEY VERSUS BARNES -- like I said in my
22 brief, yes, I could have overwhelmed the page limits
23 with a string cite that says, "This cannot be done in
24 this country, much less in this state."

25 Now, I want to also point something else

1 out, is that just as a matter of -- the underpinnings of
2 their brief, your Honor, if I had to switch sides and
3 take over their argument, the most compelling part of
4 their argument is the fact that there was an order out
5 of the Southern District of Mississippi that was
6 somewhat similar.

7 Your Honor, I have some supplemental
8 authority, if I could approach as well?

9 THE COURT: Yes.

10 (Paperwork handed to the judge.)

11 MR. RANDAZZA: I'm sure they have it.

12 I'm -- I may have neglected to cite it;
13 but this did issue yesterday, washing away that entire
14 order upon which they rely for findings of fact and
15 conclusions of law, not that it was controlling on this
16 Court.

17 But what's really interesting about this
18 case is not only its elegance and its language talking
19 about prior restraints but this case was argued on
20 Thursday at the Fifth Circuit Court of Appeals and they
21 issued their order yesterday. I don't think I've ever
22 seen the Fifth Circuit do anything that quickly.

23 So to the extent that their argument in
24 favor of a prior restraint ever had any underpinnings at
25 all, I can't even find a hypothetical to rely on now

1 that everything they relied on there is vacated.

2 So what do you have before you now?

3 You have my client, the victim of sexual
4 assault, and we're not introducing this exhibit, but
5 their Exhibit A3 details that in painstaking --
6 painstaking terms, some that's quite shocking.

7 Now I understand why they don't want this
8 published in a book and why they didn't want this
9 published in a book the day that their national
10 convention started on April 3rd. It was very, very
11 clever timing on their part; but they cannot suppress an
12 entire book because of one supposed e-mail that isn't
13 even privileged.

14 And then, your Honor, this is -- this is
15 such a rare species of prior restraint. I mean, I first
16 learned about NEAR VERSUS MINNESOTA when I was a
17 journalism major at the University of Massachusetts in
18 1987. I spent 14 years in academia studying this and
19 I've been practicing First Amendment law for 22 years
20 and I've never seen even a hypothetical of a double
21 prior restraint.

22 This isn't just enjoining the publication
23 of a book but it's enjoining it so that the plaintiff
24 can review it, decide what else they don't want in it,
25 and then come back for another prior restraint. It is

1 truly just a remarkable species of prior restraint that
2 should meet its extinction here today.

3 Your Honor, if you have any questions.
4 Other than that, I'll rely on that and on our written
5 papers.

6 MS. BETZ: Thank you, your Honor.

7 It's always so hard to figure out where to
8 begin in reply.

9 So I would say, your Honor, that as far as
10 the timing of the filing goes, it had nothing to do with
11 the convention. The timing of the filing had to do with
12 the fact that we found out less than a week before we
13 filed this that she had the privileged materials. We
14 didn't know that before then. Until she made that
15 filing in federal court, we had no idea that she had
16 received inadvertently that information. That's why we
17 made the filing.

18 Again, we've known about her allegations
19 of sexual assault and other alleged wrongdoings for
20 quite some time. We knew this book was allegedly going
21 to come out. If we were trying to stop it before the
22 convention on those reasons, we would have filed
23 something much sooner; but when we saw the privileged
24 information, that is what drove the filing.

25 And I want to drill down, because you have

1 the e-mail in front of you, and explain why that is
2 privileged.

3 What we're dealing with here are
4 communications between individuals that serve on the
5 board of PTK; and some of those individuals that you'll
6 see on that e-mail communication also work at state
7 entities, community colleges that are state colleges.

8 They're using their e-mail addresses to
9 communicate with our client, who's the CEO of PTK; and
10 in that e-mail, they are discussing what is taking place
11 in a deposition.

12 Now, that is an example of an e-mail where
13 there's not a lot of information disclosed; but that is
14 a work product e-mail. It is work product to say, "Here
15 is what my lawyer is going to do. Here's what our
16 lawyer is going to do." You're part of this board.
17 That's work product.

18 And we don't know what else the other
19 e-mails say because, despite having asked many times,
20 we've not been given access to them by Ms. Marek. So we
21 just don't know what else and how deep it goes. Only
22 she does, and she's refused to give us access to that.

23 So we had to file a motion to strike and
24 to claw it back in the federal court because that was
25 the best way to protect it and get that communication

1 off the docket; and then, your Honor, what we did was
2 file this TRO to stop it from being produced first and
3 to stop for the dissemination.

4 No one is trying to ban a book here. This
5 isn't about banning a book. This book can go forward
6 and be published. What our concern is, making sure
7 there's nothing in it that she should have never had
8 access to.

9 And I disagree with what Mr. Randazza is
10 saying, that anyone can publish anything, basically.
11 He's saying, "It's a free-for-all. You can publish
12 anything you want; and this Court doesn't really have
13 the power to stop it, ever." Well, that's just not
14 true.

15 The courts have the power to stop speech,
16 even if this was considered speech; but this is her
17 using something that isn't hers. This isn't her speech.
18 These aren't her thoughts. They're not her opinions.
19 It's PTK's legal strategy, attorney-client privileged
20 communications.

21 And under his argument, basically any
22 paralegal in America could print off some internal
23 communications and go publish it; and there's nothing
24 the Court can do to stop that?

25 Well, that's just not true. This Court,

1 of course, can stop that; and if not, wouldn't that be
2 what just happens, everybody just goes and sells
3 privileged communications on sensitive cases and the
4 Court says, "Well, sorry. You got it. You can publish
5 it"? That's just not how it works.

6 All we're asking for, your Honor, is a
7 reasonable and narrow solution to a problem that PTK
8 didn't cause. All we're asking for is time to make sure
9 these communications are not in there. She won't even
10 say that they're not. So we have to come here to you,
11 your Honor.

12 And we think there's a couple different
13 ways you can slice this. One is the order as written,
14 where we have the opportunity to review and make sure
15 they're not in there. Another, your Honor, would be to
16 require her to return them all to us and then the order
17 say that it's not to be published containing any of the
18 information.

19 We could review them here, your Honor, in
20 this room together, not taking photographs. Your Honor,
21 could review them in camera. There are a number of ways
22 to do this to protect her rights because, again, we are
23 not here trying to silence Ms. Marek.

24 What we are trying to do is protect what
25 is our client's privilege, which is fundamentally one of

1 the most important things an attorney is charged with
2 when representing a client.

3 Thank you, your Honor.

4 MR. RANDAZZA: If I may briefly, your
5 Honor.

6 Unequivocally, they will never get access.

7 Could you imagine if they had come in
8 here -- I mean, I understand she's not as prestigious as
9 the NEW YORK TIMES or the WASHINGTON POST or whatever
10 newspaper you like.

11 Could you imagine newspapers about to
12 write an expose and a lawyer comes in here before you
13 and says, "We need to review that expose first to see if
14 there's anything in there we don't want you to have"?
15 That would just be shockingly chilling on the practice
16 on journalism.

17 Now, if the Court does have the power to
18 do this, I still am at a loss as to which case says so.
19 There is no case that says so because it is not true,
20 that there is a legion of cases. I could bury this
21 Court in paper printing out the cases that say that no
22 court in America has the power to do this.

23 Remember, it's not even a state secret
24 stolen in violation of the espionage laws, was what the
25 NEW YORK TIMES VERSUS UNITED STATES case was about. The

1 source broke the espionage laws, but this is more
2 important.

3 I'm sorry if they think that this is
4 privileged. Again, it's not. These are on government
5 e-mails. When you use a government e-mail -- when I was
6 a graduate student at the University of Florida, they
7 told me, "Be careful. Anything you send on this e-mail
8 is a public record." Everyone knows that.

9 There's not even a lawyer on here. First,
10 it was privileged. Now it's work product because it's
11 between people who are at different universities sending
12 e-mails to one other.

13 It doesn't even have the nobility that
14 they're trying to enshrine it with; but even if it had
15 that nobility, would it rise above violating the
16 espionage laws?

17 And for the hypothetical, could any
18 paralegal steal information and go publish it?

19 Yeah, they could. They don't. There may
20 be NDAs in place. Just as they've argued here, there
21 are NDAs in place.

22 You know who hasn't signed those NDAs?

23 Her.

24 So if somebody wants to talk to her, if a
25 source wants to talk to a reporter, if a reporter,

1 through just shoe-leather reporting, gets information,
2 nobody gets to say, "This embarrasses us. So we don't
3 want it published"; and they certainly don't get to
4 suppress -- not just the one e-mail. I mean, if they'd
5 asked for that, I'd still be here and I'd still be
6 arguing the same First Amendment principles, but they
7 want to review the whole book?

8 This is -- the only legal system I can
9 think of where you can do that is I know in China they
10 have the Obscene Articles Tribunal, where they can
11 request to see a pornography movie before it gets
12 published to see if it's obscene. That just doesn't
13 exist in American jurisprudence. This would be the
14 first time it was ever upheld in a forum like this.

15 So with respect to my sister saying, "This
16 is not how it works," this is how it works. We have a
17 profound national commitment to wide-open and robust
18 debate. We have a profound commitment to protecting
19 freedom of the press. We have a profound commitment to
20 protecting freedom to petition.

21 And once you are in possession of
22 information lawfully -- in fact, even unlawfully -- I
23 cited a recent First Circuit case, just because that one
24 was off the top of my head, *BERGE VERSUS CITY OF*
25 *GLOUCESTER, MASSACHUSETTS*, where Mr. Berge was accused

1 of illegally videotaping government officials and then
2 published it; and the First Circuit not only said he can
3 publish that information, legal or not, but the First
4 Circuit wiped away qualified immunity for the government
5 officials who sought to suppress that publication.

6 I am very sorry for my sister's position,
7 as she's in an unenviable one, where there's an
8 unassailable wall of First Amendment precedent saying
9 that this book can be published and this book should be
10 published immediately.

11 In fact, again, going back to the First
12 Circuit, IN RE PROVIDENCE JOURNAL even said that she can
13 violate the order and then just challenge it
14 collaterally; but she chose to have respect for the
15 court.

16 But today, your Honor, I cannot see that
17 flag next to you meaning anything if you're going to
18 leave this prior restraint in place once your gavel
19 comes down today.

20 MR. CULLEN: Judge, could I say something
21 briefly?

22 The -- let's assume that Ms. Marek sent a
23 public information request to Citizens Medical Center,
24 which is a county hospital -- government hospital here,
25 and asked for some records, some of which were -- maybe

1 she asked for some open meeting stuff or the board of
2 managers, maybe she asked for the CEO's contract, things
3 that she could get, but that the hospital inadvertently
4 published the medical records of its patients and now
5 she says, "I've got this. I've got your patients'
6 medical records and I'm going to put it in a book and
7 I'm going to publish it to the world and violate the
8 HIPAA laws by disclosing your patients' inadvertently
9 disclosed medical records."

10 I don't think the First Amendment gets in
11 the way of that at all. I think the Court says, "Hey,
12 you shouldn't have had that. It was a mistake. You've
13 got to send it back." And that's all that we're asking
14 for here.

15 We don't need to see this book. We don't
16 need to read this book. Judge, I don't want to make you
17 read the book; but I don't know how else we get it to
18 find out are there attorney-client work product
19 privileged information in this book that -- before it
20 gets published.

21 And if it's going to be a book about what
22 a bad hospital Citizens is and, "Here, we're going to
23 show you because we're going to broadcast to the world
24 the private medical records of a patient," I think the
25 Court would need to step in; and it in no way gets in

1 way of the violation of the First Amendment.

2 That's what we've got here is
3 attorney-client privilege information we believe she has
4 that she won't turn back over to us that is in the book
5 presumably; and if it wasn't in the book, we wouldn't be
6 here.

7 And -- and so I don't know of any way
8 other than the Court looking at it in -- the book
9 in camera and deciding whether there is attorney-client
10 privilege information in there or not or letting us look
11 at it without making copies, without photographing it,
12 without making notes in their presence. Those would be
13 ways to do this with -- and let her publish the heck out
14 of that book as soon as that's done.

15 MR. RANDAZZA: Your Honor --

16 THE COURT: Y'all --

17 MR. RANDAZZA: -- I enjoy teaching the
18 First Amendment.

19 THE COURT: Y'all are here. So I'm
20 going -- I'm going to let you --

21 MR. RANDAZZA: So a great hypothetical
22 you've raised here, a great -- I'm sorry. I'll address
23 the judge, but I feel like I'm in class again.

24 Yeah. If a hospital inadvertently
25 discloses medical records, a journalist gets ahold of

1 them, they can publish them.

2 Now, there may be an invasion-of-privacy
3 suit separately -- I don't know -- but there is nothing
4 that would impede her publishing that. HIPAA doesn't
5 apply to her. HIPAA applies to health care providers.
6 If she's got that information, she can publish it; and,
7 again --

8 THE COURT: Well, I assume that the way a
9 journalist would handle it is, you know, not disclose
10 names or whatever but give the information --

11 MR. RANDAZZA: State gold, your Honor.
12 Yes, depending on --

13 THE COURT: But it would be up to the
14 discretion of the journalist, you know --

15 MR. RANDAZZA: Precisely.

16 THE COURT: -- and that's one of the
17 things I'm struggling with here, is let's say I order
18 this to be clawed back or whatever -- which apparently
19 the federal court has already done; is that correct?

20 MR. RANDAZZA: No, it is not, your Honor.

21 THE COURT: Okay.

22 MR. RANDAZZA: It remains on the Southern
23 District of Texas docket to this day. It is a public
24 record two times over.

25 THE COURT: Okay.

1 In any event, the thing I'm struggling
2 with is, without going specifically to the document,
3 your client could refer to it in some, you know, vague,
4 obscure matter -- manner to make the point that she's
5 trying to make.

6 You understand what I'm saying?

7 MR. RANDAZZA: I do, your Honor, and if
8 these are editorial suggestions for her, perhaps she'll
9 take them, but I would help --

10 THE COURT: I'm not saying -- I'm not
11 saying I would order that. I'm just saying that that's
12 one of the ways that this thing could go. So --

13 MR. RANDAZZA: It could; but, you know,
14 again --

15 THE COURT: And the other thing that
16 hasn't been mentioned is that, at this stage in the
17 proceeding, I have to make a finding, don't I, that the
18 plaintiff doesn't have any other remedies at law other
19 than this temporary injunction?

20 MR. RANDAZZA: Yes, your Honor; but I --
21 they may not.

22 THE COURT: I mean --

23 MR. RANDAZZA: It may be just too bad. I
24 mean, in FLORIDA STAR VERSUS B.J.F., a more extreme
25 example -- his example of hospital records, I'm going to

1 give you a much more extreme example, a minor victim of
2 rape, B.J.F.

3 Their name was inadvertently disclosed to
4 the FLORIDA STAR and the FLORIDA STAR published it in
5 violation of a specific state statute that did not allow
6 publication of a rape victim's identity, and the Supreme
7 Court struck down that statute.

8 There's nothing here, absolutely nothing.
9 They may not have -- I don't know what remedy they may
10 think they have to get this back, but they don't have
11 one. It's not that they don't have any other remedy.
12 Any remedy that you could try to fashion here today will
13 be wildly unconstitutional. It's a public record that
14 she possesses legally.

15 And the enjoining even that -- even this
16 one document would be unconstitutional, much less an
17 order that says that they get to be the editorial board
18 for her publication.

19 Sure, she could say that she's just going
20 to refer to it obliquely; but we don't let the
21 government, any branch of government, enter into that
22 decision when a journalist or an author wants to publish
23 something.

24 I mean, that's -- the entire existence of
25 some of perhaps our least -- our least shining examples

1 of our commitment to freedom of expression prove that
2 out: The Gawker website, NATIONAL INQUIRER. I mean,
3 people sit and take long-range photos of celebrities
4 naked on beaches in Ibiza and can publish them.

5 Yeah, we have to put up with some things
6 that really annoy us, that are distasteful, that are
7 troubling; but that's the contract that we as American
8 citizens have with our government, that it will not
9 infringe on that. They're simply asking you to tear
10 that contract up here, and I'm pretty confident that
11 you're not going to do it.

12 THE COURT: Well, I've been through the
13 file; but obviously I need to do it again.

14 So, Ms. Betz, you have the last word.

15 MS. BETZ: Thank you, sir. Appreciate it.

16 This isn't naked photos on a beach in
17 Ibiza. We're not just embarrassed. This is our
18 privilege and we go to trial, your Honor, in Mississippi
19 in 60 days and these e-mails discuss our trial strategy
20 potentially. They discuss what we're planning to talk
21 about in depositions, things of that nature.

22 This is a real problem, and there is no
23 other remedy for us. Once that toothpaste is out of the
24 tube, it cannot go back in.

25 What are we supposed to do if we have our

1 entire trial strategy published before our trial? What
2 does that do for us?

3 There is no remedy for us. There is
4 absolutely no remedy.

5 This is privilege. This isn't a vague,
6 you know, idea or picture. This is attorney-client
7 privilege, which is an important thing for this judicial
8 system to protect; and if this Court allows her to
9 retain and publish our privilege materials, that is open
10 game for anybody to try and go get attorney-client
11 privilege.

12 And we know that that's not how it works
13 because of the clawback provisions we see, because of
14 the way the courts require the return of privilege.

15 And, your Honor, we acted immediately. We
16 acted immediately and we asked her to act in good faith
17 and she refused, which is why we cannot trust that that
18 book doesn't disclose trial strategy.

19 Thank you, your Honor.

20 THE COURT: Anything y'all want to leave
21 me with to look at, I'll take it. I have plenty of
22 notebooks, but I'll take some more. So --

23 And I'll look at it today and try to get
24 something out today.

25 If y'all have proposed orders you want to

1 leave with me also, that's fine as well.

2 MR. RANDAZZA: I do not, your Honor. I
3 would just say that if -- so procedurally if this
4 continues, it becomes a preliminary injunction; and
5 there we will be findings of fact and conclusions of law
6 in that for the appellate record?

7 THE COURT: Right. I would grant a
8 temporary injunction, which we would have a -- you know,
9 a final hearing for the permanent injunction at some
10 point.

11 MR. CULLEN: Yeah. I think it would make
12 more sense, Judge, for you to make your decision, tell
13 us what it is, tell me and David. We'll get it to
14 everybody else; and then we'll fashion the orders that
15 match up with what your ruling is, because there's lots
16 of different things you could do.

17 THE COURT: Yeah.

18 MR. RANDAZZA: Your Honor, if your
19 decision is anything other than striking this down, we
20 prefer just an (inaudible) so we can file an emergency
21 appeal.

22 THE REPORTER: A what?

23 I'm sorry. A what?

24 MR. RANDAZZA: Ore tenus, an oral order,
25 so that we can file an emergency appeal.

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1 There is a book being suppressed from
2 publication right now.

3 THE COURT: No, I understand. Yeah.
4 That's why I'm going to try to get something out to
5 y'all today.

6 MR. RANDAZZA: Thank you, your Honor.

7 THE COURT: Okay.

8 MS. BETZ: Thank you, your Honor.

9 (Hearing concluded.)

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April 8, 2025

1 STATE OF TEXAS

2 COUNTY OF VICTORIA

3 I, Kimberly K. Koetter, Official Court Reporter in
4 and for the Judicial District Courts of VICTORIA, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits,
14 if any, admitted, tendered in an offer of proof or
15 offered into evidence.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$420.00 and was
18 paid by RANDAZZA LEGAL GROUP PLLC.

19 WITNESS MY OFFICIAL HAND on this, the 9th day of
20 April, 2025.

21 /s/Kimberly K. Koetter
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EXHIBIT 3

Amicus Brief of First Amendment Lawyers
Association (“FALA”) in *Phi Theta Kappa
Honor Soc’y v. Honorsociety.Org, Inc.*,
No. 24-60452, Dkt. No. 68 (5th Cir.)

No. 24-60452

In the
UNITED STATES COURT OF APPEALS
for the
FIFTH CIRCUIT

PHI THETA KAPPA HONOR SOCIETY,
Plaintiff-Appellee,

LYNN TINCHER-LADNER,
Defendant / Third-Party Defendant-Appellee,

v.

HONORSOCIETY.ORG., INCORPORATED; HONOR SOCIETY
FOUNDATION, INCORPORATED
Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Mississippi, Northern Division
No. 3:22-CV-208
HONORABLE CARLTON W. REEVES, U.S. DISTRICT JUDGE

BRIEF OF *AMICUS CURIAE*
FIRST AMENDMENT LAWYERS ASSOCIATION
IN SUPPORT OF DEFENDANTS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that—in addition to the persons and entities listed in Appellants’ Certificate of Interested Persons—the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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INTEREST OF AMICUS CURIAE

The First Amendment Lawyers Association (“FALA”) is an Illinois-based, not-for-profit organization comprised of hundreds of attorneys devoted to the protection of free expression under the First Amendment and who routinely represent businesses and individuals that engage in constitutionally-protected expression. Formed in the 1960s, FALA's members practice throughout the United States, Canada, and elsewhere in defense of the First Amendment and free speech and, by doing so, advocate against all forms of governmental censorship, whether imposed directly by the government or through the courts as part of civil litigation among private parties. Use of the courts by private parties to suppress or deter robust expression is just as detrimental to free expression as censorial statutes and censorial executive actions.

Given its objectives and membership, FALA has a substantial interest in ensuring that U.S. law involving the rights of free speech and free expression are properly developed and applied. This is particularly the case in instances where courts are restraining otherwise truthful and lawful speech or compelling parties to speak the government's preferred

message or forcing them to speak or endorse a certain viewpoint. Both are at issue in this case.

As far back as 1957 in *Alberts v. California*, 354 U.S. 476 (1957), FALA members have briefed and argued dozens of landmark free-speech cases before the Supreme Court of the United States and literally thousands of cases before federal appellate courts. FALA additionally has a tradition of submitting *amicus* briefs, including to the Supreme Court, on issues pertaining to the First Amendment. *See, e.g., Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018) (*amicus* brief submitted by FALA); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 134 S. Ct. 2334 (2014) (*amicus* brief on the importance of pre-enforcement challenges submitted by FALA); *City of Littleton v. Z.J. Gifts D-4, LLC*, 2004 WL 199239 (U.S. Jan. 26, 2004) (*amicus* brief submitted by FALA); *United States v. 12,200-ft Reels of Super 8mm Film*, 409 U.S. 909 (1972) (order granting FALA’s motion to submit *amicus* brief).

No attorney for any party authored any portion of the attached proposed brief, nor did any attorney or party contribute any money to the preparation of the brief. The brief was prepared *pro bono* by undersigned

counsel who have received no compensation, nor has the First Amendment Lawyers Association, for the preparation of the brief.¹

STATEMENT OF THE ISSUES

1. Whether the District Court misapplied the commercial speech test in finding that Defendants-Appellants' speech was commercial, and thus entitled to a lower degree of protection under the First Amendment.
2. Whether the District Court's preliminary injunction is unconstitutionally overbroad when it categorically bars and restrains truthful and merely offensive or disparaging speech and has elements of compelled speech, which is almost never constitutional.

SUMMARY OF ARGUMENT

The District Court's preliminary injunction order enjoined, as relevant to this brief, edits to Appellee Phi Theta Kappa's ("PTK") Wikipedia page, reporting on sexual harassment allegations against a former PTK officer, and a cartoon allegedly depicting Appellee Lynn

¹ Per Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief.

Tincher-Ladner. The District Court erroneously found that the speech identified as potentially tortious constituted commercial speech. None of the identified statements propose a commercial transaction, constitute advertisements, or identify particular products or services of either party, and nothing in the record demonstrates that Defendants-Appellants (“Honor Society”) had a substantial economic motive in publishing these statements. The District Court accordingly applied the wrong legal standard in issuing its preliminary injunction, as it was based on an erroneous finding that the injunction applied to commercial speech.

The District Court further erred in issuing an unconstitutional preliminary injunction against protected speech. The order categorically bars edits to PTK’s Wikipedia page, regardless of whether such edits are false or misleading. It categorically bars further reporting on sexual harassment allegations against a former PTK officer, despite the District Court making no findings that Honor Society had published anything false about such allegations. Finally, the order requires removal of speech solely on the basis that it is an “appeal to racism” and “despicable,” despite clear Supreme Court precedent that such reasons cannot form the basis of restrictions on speech.

ARGUMENT

I. The District Court’s Application of the Commercial Speech Test was Erroneous

The District Court admitted that its preliminary injunction amounts to a prior restraint, which is constitutionally suspect and only permissible under rare circumstances not present here. ECF 230 at 20-21. The Court attempted to justify this restraint on speech by erroneously categorizing Honor Society’s statements as commercial speech.

Commercial speech is “usually defined as speech that does no more than propose a commercial transaction.” *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). Where there is a “close question” as to commercial speech, “‘strong support’ that the speech should be characterized as commercial speech is found where [1] the speech is an advertisement, [2] the speech refers to a particular product, and [3] the speaker has an economic motivation.” *Hunt v. City of L.A.*, 638 F.3d 703, 715 (9th Cir. 2011) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-67 (1983)). The Court in *Bolger* found that the confluence of all three factors showed that pamphlets primarily promoting prophylactics were commercial speech, though it left open the possibility that speech could be commercial even if one of the elements were not present. 463

U.S. at 67 n.14. However, the presence of only a single factor is not sufficient to make speech commercial. *Id.* at 66-67 (noting that “the fact that Youngs has an economic motivation for mailing the pamphlets would clearly be insufficient by itself to turn the materials into commercial speech”). This Court has previously found that third factor can sometimes “collapse into” the first factor. *Procter & Gamble Co. Amway Corp.*, 242 F.3d 539, 552 (5th Cir. 2001), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

The District Court applied the *Bolger* test and concluded that the entire range of enjoined speech was commercial, and thus entitled to a lesser degree of protection under the First Amendment. This is erroneous, as (1) the speech actually in the record consists of non-commercial expressive speech, and (2) the speech enjoined is not restricted to commercial speech.

a. The Enjoined Speech is not an Advertisement and the Record Does Not Show it Was Published With an Economic Motive

The District Court did not conduct an analysis of the first *Bolger* factor, seemingly assuming that Defendant-Appellants’ speech constituted advertisements, which ordinarily would render its decision

faulty for this reason alone. Interpreting its Order charitably, however, the District Court may have followed the *Procter & Gamble* approach and combined the advertisement factor with the economic motivation factor. In *Procter & Gamble*, the Court considered whether defendant Amway was engaged in commercial speech when Amway employees repeated a rumor that the Procter & Gamble was affiliated with the Church of Satan. *Id.* The Court noted that the defendant's conduct “was not an advertisement in the classic sense,” but that it could constitute commercial speech if Amway's motivation for repeating the rumor was economic. *Id.* at 553. This brief will primarily address the third *Bolger* factor, as it appears to be the focus of the District Court’s analysis, but it is worth noting that the District Court made no attempt to explain how the speech at issue, *even if economically motivated*, constituted an advertisement.

The third *Bolger* factor is concerned with whether the speaker acted *primarily* out of economic motivation; the mere presence of *any* motivation is not sufficient. *Procter & Gamble*, 242 F.3d at 552-53 (stating that “[t]he question whether an economic motive existed is more than a question whether there was an economic incentive for the speaker

to make the speech; the *Bolger* test also requires that the speaker acted *substantially* out of economic motivation”). The kind of profit motive endemic to every commercial enterprise does not, without more, make something commercial speech. *See Tobinick v. Novella*, 848 F.3d 935, 952 (11th Cir. 2017) (finding that “[e]ven if Dr. Novella receives some profit for his quasi-journalistic endeavors as a scientific skeptic, the articles themselves, which never propose a commercial transaction, are not commercial speech simply because extraneous advertisements and links for membership may generate revenue”); *see also Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761 (1976) (holding that “Speech ... is protected ... even though it may involve a solicitation to purchase or otherwise pay or contribute money”).

Without this limitation, any publication sold in commerce would constitute commercial speech. *See, e.g., Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952, 960 (9th Cir. 2012) (finding that the financial benefit obtained from publishing yellow pages directories could not characterize the publication as commercial); *Gordon & Breach Sci. Publishers S.A. v. Am. Inst. of Physics*, 859 F. Supp. 1521, 1541 (S.D.N.Y. 1994) (holding that “[t]he fact that AIP and APS stood to benefit from

publishing Barschall's results—even that they *intended* to benefit—is insufficient by itself to turn the articles into commercial speech”); *Burstyn v. Wilson*, 343 U.S. 495, 501 (1952) (noting “that books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment”).

There are primarily five categories of statements at issue in the District Court's Order: (1) Wikipedia edits which the District Court assumed Honor Society made; (2) an article about Robin Lowe, a PTK campus advisor, who was arrested for allegedly embezzling funds; (3) Honor Society stating that it sued PTK to defend students and parents, when actually Honor Society filed a counterclaim after PTK sued it; (4) Honor Society web pages that “purport to provide a link to PTK chapters across the country,” but actually lead to “a page parroting the claims against PTK and inviting students to email the Gmail account with information about PTK's ‘alleged deceptive practices’” (ECF 230 at 13-14); and (5) an image that the District Court claimed was a racist caricature of Dr. Tincher-Ladner. The preliminary injunction also includes a limitation on reporting on “sexual harassment allegations

against [past PTK Executive Director Rod] Risley” (ECF 203 at 26), though the District Court made no findings that any of Honor Society’s reporting about Risley was false or misleading.

The District Court made no findings that *any* of the above categories of statements constituted advertisements or that they were made with an economic motivation. Instead, the District Court found Honor Society had an economic motivation because Honor Society stated it would lose business if it was “prevented from comparative advertising and informing potential members about why they should not select PTK.” ECF 230 at 22. There is no separate analysis for whether these specific statements were advertisements.

The District Court’s commercial speech analysis was quite deficient, and permitting such analysis to stand without correction will encourage parties that wish for courts to censor their critics to feel much more comfortable doing so. Assuming *arguendo* that the speech was commercial, courts must at least have to “do the work” before haphazardly simply deciding to fit speech into the “commercial” box in order to free their hands when crafting prior restraints.

First, there is neither an admission nor finding that any of the statements actually identified as actionable are advertisements. Honor Society, in the context of discussing the balance of harms in the face of a request for a sweeping injunction (an injunction that would include comparative advertising), stated that not being able to engage in comparative advertising concerning a competitor would be harmful. This is an obvious assertion applicable to any business that cannot be construed as an admission that any of the statements *at issue* are advertisements.

In essence, the District Court appears to have taken the position that any statement critical of a competitor is *per se* commercial speech. This is obviously wrong, as shown in *Novella, supra*. Just because a defendant may advertise does not automatically convert everything they say into an advertisement. In *Novella*, the operator of a science-based medicine blog was sued under the Lanham Act for publishing articles about a doctor who made dubious claims about the efficacy of a medical procedure. In finding that the articles were not advertisements, the Eleventh Circuit noted that “the first article makes no mention of Dr. Novella’s practice or medical services.” 848 F.3d at 951. Rather, “[t]he

articles ‘communicate[] information, express[] opinion, [and] recite[] grievances, ...’ *Id.* at 950 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964)). The speech at issue constituted criticisms of PTK; there are no promotions of Honor Society’s services within them. If this Circuit affirms the District Court’s decision, then it will create a split with the 11th.

Another comparable case is *Corsi v. Infowars LLC*, No. A-20-CV-298-LY, 2021 U.S. Dist. LEXIS 98486 (W.D. Tex. May 24, 2021) (report and recommendations adopted 2021 U.S. Dist. LEXIS 208688 (W.D. Tex. June 25, 2021)). There, radio host Alex Jones and his companies were sued under the Lanham Act for statements uttered primarily by Roger Stone, who appeared on Jones’s program but was not affiliated with Jones or his companies, criticizing the plaintiffs with insults and expressions of opinion. The court found that the statements were not “commercial speech or advertising, but rather expressions of opinions as commentary during a radio show. The complained of conduct at issue does not fall within the zone of interest that the Lanham Act was intended to protect.” *Id.* at *10. Similarly here, the statements actually identified as potentially actionable are no more than criticisms of PTK.

The District Court found that some of the statements were not factually accurate, but that is a separate question from whether they constitute commercial speech. This Court should not implicitly overrule the reasoned decision in *Corsi* by affirming the District Court's order here.

Neither the first nor second *Bolger* factor indicates that the speech at issue is commercial. Accordingly, even if the speech refers to a specific product, as a matter of law it does not constitute commercial speech.

b. The Enjoined Speech Does Not Refer to a Specific Product

As for the second *Bolger* factor, the District Court found that Honor Society's statements referred to specific products or services because they encouraged "students to consider 'alternative societies that may offer more transparent and genuine benefits.'" ECF 230 at 23. As Honor Society notes in its Opening Brief, though, this language only appears in some of their speech. Opening Brief at 58. But, even if every instance of allegedly actionable speech contained such a statement, that would not satisfy the *Bolger* standard, which requires a reference to a *specific* product, not just an entity's products or services in general. The District Court's order does not identify any specific products offered by PTK that any of the allegedly actionable statements reference. Rather, the

statements are at most general criticisms of PTK as a whole. The speech may have the *effect* of causing individuals not to purchase specific services of PTK, but that is not the focus of the second *Bolger* factor.

The record does not show that any of the *Bolger* factors support a finding of Honor Society's speech being commercial. The District Court's findings on this issue were erroneous, and the Court should reverse such findings to ensure uniformity of case law on the question of what constitutes commercial speech.

II. The District Court's Preliminary Injunction is Unconstitutionally Overbroad in That it Restrains Truthful and Subjectively Objectionable Speech

a. First Amendment Principles

The District Court's preliminary injunction consists of six forms of enjoined or compelled speech, of which this brief will address the first, second, and fourth. These restrictions require Honor Society to:

- 1) Immediately cease edits to PTK's Wikipedia page, and subject itself to discovery on Wikipedia edits it may have made or caused during this litigation.
- 2) Remove all images of the cartoon East Asian woman vendor from its webpages and social media posts; . . . [and]
- 4) Limit its reporting on the sexual harassment allegations against Risley to existing media articles only, rather than articles of its own creation.

ECF 230 at 26. The District Court justified its injunction against these categories of speech by finding that PTK showed a likelihood of success on its tortious interference claim. Most relevant is the third element of such a claim, that the allegedly tortious acts “were done with the unlawful purpose of causing damage and loss, and without right or justifiable cause on the part of the defendant (which constitutes malice).” *Neider v. Franklin*, 844 So. 2d, 433, 437 (Miss. 2003). While the District Court interpreted the phrase “without right or justifiable cause” liberally, it did not grapple with any of the First Amendment implications of premising tortious interference claims on speech.

The Supreme Court on multiple occasions has made it clear that a plaintiff cannot evade the First Amendment simply by bringing a specific cause of action if its claims are premised on protected speech. The Court in *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988) found that a public-figure plaintiff must prove actual malice for a tort claim based on speech, even if styled as intentional infliction of emotional distress instead of defamation.

Most relevant to the facts here, the Supreme Court has found that speech on matters of public concern enjoy particularly strong First

Amendment protections, even if they may cause emotional distress or other forms of harm. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011). “Speech deals with matters of public concern when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ or when it ‘is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.’ The arguably ‘inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.’” *Id.* at 453. The speech in *Phelps* included brandishing signs outside of the private funeral of a veteran which included messages such as “God Hates the USA” and “God Hates Fags.” The Supreme Court found that these statements highlighted “matters of public import,” that the messages were “designed . . . to reach as broad a public audience as possible,” and that even if some of the messages might have related to the deceased veteran specifically, “the overall thrust and dominant theme of Westboro’s demonstration spoke to broader public issues,” even though the speech was conducted at a funeral. *Id.* at 454-55.

While there is not a comprehensive definition of what constitutes a matter of public concern, Honor Society’s Opening Brief explains how

their statements, which discuss issues of “sexual harassment, embezzlement, and misleading students into paying money to join an organization” are issues of public concern. Opening Brief at 42. These issues overlap significantly with speech that this Court found to be on issues of public concern in *Wetherbe v. Tex. Tech Univ. Sys.*, 699 Fed. Appx. 297 (5th Cir. 2017). A college professor who was rejected tenure wrote a series of articles criticizing the tenure system amidst a backdrop of public discourse concerning the tenure system in general, which the Court found to be of public concern. *Id.* at 300-301. It is no secret that sexual misconduct on college campuses and the excessive cost of college is of great concern to the general public and the subject of intense public debate and discussion, and so the allegedly actionable statements are in connection with issues of public concern.

An injunction on expressive speech must satisfy strict scrutiny, meaning it must “further[] a compelling interest and [be] narrowly tailored to achieve that interest.” *Ariz. Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011). More generally, as the District Court noted in its order, a court “must narrowly tailor an

injunction to remedy the specific action which gives rise to the order.”

John Doe #1 v. Veneman, 380 F.3d 807, 818 (5th Cir. 2004).

b. The Preliminary Injunction Impermissibly Enjoins Truthful Speech

Having established that the categories of enjoined statements are on issues of public concern, and thus afforded heightened First Amendment protections, it is apparent that the District Court’s preliminary injunction is grossly overbroad. The first and fourth provisions of the preliminary injunction prospectively prohibit Honor Society from making any edits to PTK’s Wikipedia page, regardless of whether such edits are truthful. The purported justification for this prohibition on speech is that unidentified individuals made edits to PTK’s Wikipedia page not to post false speech, but rather to replace flattering speech with unflattering speech.

While the District Court, without citation to supporting evidence, opined that perhaps Honor Society could have made these edits to undermine a competitor, and that these edits created a “substantial likelihood of reputational harm [and] . . . prejudice to PTK.” ECF 230 at 23. First off, even if that were true, it would not justify the District Court’s injunction (or indeed *any* injunction in the absence of false or

misleading speech). “[J]ust because speech is critical of a corporation and its business practices is not a sufficient reason to enjoin the speech.” *Baker v. Deshong*, 90 F. Supp. 3d 659, 665 (N.D. Tex. 2014) (quoting *CPC Int’l, Inc. v. Skippy Inc.*, 214 F.3d 456, 462 (4th Cir. 2000)).

Second, as Honor Society notes in their Opening Brief, the much more plausible explanation for these Wikipedia edits is that the content excised from PTK’s page was not well-sourced, while the more recent edits were well-sourced, which Wikipedia editors themselves found was the case. Opening Brief at 51-52. Indeed, the battleground of Wikipedia pages and the need for rigorous standards among editors of well-sourced information has become so well-known that it is now the subject of genre fiction. *See, e.g.*, Stephen Harrison, *The Editors* (2024).

Regardless of who actually made the Wikipedia edits or the motivation for making them, the fact remains that the edits did not include any false or misleading information. Without this, there can be no possible basis for enjoining further edits. This is to say nothing of the fact that preliminary injunction is so broad that it categorically prohibits *all* edits of the PTK Wikipedia page, without any attempt to cabin its prohibition to false or misleading edits.

Similarly, the preliminary injunction prevents Honor Society from reporting on sexual harassment allegations against Risley. Honor Society is allowed to repost a subset of prior articles about these allegations, but is categorically prevented from providing any of its own new reporting or discussion on the subject. The District Court does not even attempt to justify this restriction, as its order contains no discussion of these allegations or how any of Honor Society's reporting on them is false, misleading, or otherwise actionable. Again, there is *no justification* for this portion of the injunction in the District Court's order. Even if there were some justification, this prohibition would suffer from the same problem as the Wikipedia edit prohibition: it categorically enjoins speech on a subject, regardless of whether that speech is true.

The District Court's order does not come close to satisfying strict scrutiny regarding these portions of its preliminary injunction, and makes no real effort to do so. Even under the more relaxed intermediate scrutiny standard, a categorical bar on truthful speech does not pass constitutional muster. *Central Hudson Gas & Elec. v. Public Svc. Comm'n*, 447 U.S. 557, 564 (1980) ("If the communication is neither misleading nor related to unlawful activity, the government's power is

more circumscribed”). The Court must vacate these portions of the District Court’s preliminary injunction order.

c. The Preliminary Injunction Impermissibly Enjoins “Offensive” Speech

We are left with the District Court’s requirement that Honor Society “[r]emove all images of the cartoon East Asian woman vendor from its webpages and social media posts.” ECF 230 at 26. This is likely the most unprincipled portion of the District Court’s order. The justification for this portion of the injunction is that, in the District Court’s opinion, the cartoon at issue is a racist caricature that “leans into anti-Asian, specifically anti-East Asian, tropes” and “doesn’t make sense as anything other than an appeal to racism. This behavior is without right or justifiable cause. It is despicable.” ECF 230 at 15. It may be despicable, but a District Court has no power to enjoin its speech on the basis of “despicability.”

It is rare for a Supreme Court case to be so factually on-point, but this is the very issue that the Supreme Court addressed in *Matal v. Tam*, and the District Court’s order is in contravention of that decision. 582 U.S. 218, 244 (2017). *Tam* dealt with the Lanham Act’s bar on registering racially disparaging trademarks. The plaintiff founded a band called

“The Slants,” with “slants” being a derogatory term for east-Asian people. *Id.* at 223. The Supreme Court struck down this bar as unconstitutional viewpoint-based discrimination and found that expression cannot be prohibited simply because the ideas it communicates are offensive, as “[g]iving offense is a viewpoint.” *Id.* at 243-44.²

The same jurisprudence applies here. The District Court ordered the removal of this cartoon not because it was false or misleading, but because it is “an appeal to racism” and “despicable.” In other words, the District Court found that it was offensive and racially disparaging. *Tam* is clear that such concerns cannot form the basis of a restriction on speech. This provision of the District Court’s preliminary injunction violates the First Amendment and should be reversed.

CONCLUSION

There are numerous issues of disputed fact in this case, and it is conceivable that a narrow injunction on this record might be warranted. That is not what the District Court issued, however. Its order enjoins

² The Supreme Court struck down this prohibition even after assuming that all trademarks constitute commercial speech. *Id.* at 245. This provision of the preliminary injunction is unconstitutional regardless of which level of scrutiny applies.

expressive, non-commercial speech on the flimsiest of justifications, where it bothers to provide a justification at all. The preliminary injunction order is not adequately supported and is grossly overbroad. This Court must reverse the order.

Dated: November 26, 2024.

Respectfully Submitted,

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza

Jay M. Wolman

Counsel for *Amicus Curiae*

First Amendment

Lawyers Association

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza

Counsel for *Amicus Curiae*

First Amendment

Lawyers Association

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 4,389 words, excluding the accompanying documents authorized by Rule 27(a)(2)(B).

This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook font size 14.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza

Marc J. Randazza

Counsel for *Amicus Curiae*

First Amendment

Lawyers Association

EXHIBIT 4

Declaration of Marc J. Randazza

PHI THETA KAPPA HONOR SOCIETY,

Plaintiff,

v.

TONI MAREK,

Defendant.

§
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§

IN THE DISTRICT COURT

VICTORIA COUNTY, TEXAS

377th JUDICIAL DISTRICT

DECLARATION OF MARC J. RANDAZZA

I, Marc J. Randazza, hereby declare:

1. I am over 18 years of age. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. I am an attorney licensed in the States of Nevada, California, Arizona, Massachusetts, and Florida, and have 23 years of experience as an attorney.

3. I am the managing partner of Randazza Legal Group, PLLC (“RLG”).

4. I am the attorney of record for Defendant Toni Marek in this matter. I submit this Declaration in support of Defendant’s Motion for Costs, Attorneys’ Fees, and Sanctions Pursuant to the TCPA (the “Fee Motion”).

5. The primary focus of RLG’s practice is free speech and First Amendment litigation.

6. I contacted Plaintiff Phi Theta Kappa Honor Society’s (“PTK”) counsel in an attempt to compromise on the amount of fees following PTK’s nonsuit in an attempt to limit billing in this matter. While I will not go into the details of those communications, the parties were not able to reach a compromise.

7. Three RLG attorneys worked compensable hours in this matter: Me, Ronald D. Green, and Alex Shepard.

8. Additionally, two support staff worked compensable hours in this matter: Cassidy Curran and Alison Gregoire.

9. The compensable hours and hourly rates of RLG's attorneys and paralegals are as follows:

Timekeeper	Hours	Hourly Rate	Amount Sought
Marc J. Randazza	75.4	\$1,000	\$68,500.00
Ronald D. Green	36.7	\$750	\$23,250.00
Alex J. Shepard	28.8	\$750	\$20,275.00
Cassidy Curran	17.5	\$175	\$2,870.00
Alison Gregoire	2.6	\$175	\$455.00
Totals	161		\$115,350

10. The amount sought for each timekeeper is not simply a matter of multiplying the hourly rates by the hours worked, as some time entries were either written off or charged at a reduced rate.

11. Marek's local counsel, David C. Griffin, charged \$3,000 for his representation in this matter.

12. Marek additionally incurred \$2,796.63 in costs.

13. Other attorneys and support staff also worked on this file. However, their time was minimal and, in an exercise of billing discretion, RLG is writing off their time entirely, despite the billing being necessary, proper, and reasonable to tax as well.

14. RLG attempted to work more efficiently on this matter by having lower-cost attorneys perform work such as research and drafting legal memoranda. However, given the extremely tight time constraints of this case, I had to perform the majority of attorney work.

15. To limit additional briefing on fees incurred after the filing of this motion, RLG predicts it will incur an additional \$20,000 in fees in responding to PTK's opposition to this motion, preparing a reply brief, and arguing the motion.

16. RLG is a small law firm that can only take a limited number of cases, and taking this case precluded the firm from accepting other work which would have filled the gap.

17. This case presented significant time restraints. RLG was retained on March 27, 2025. It immediately had to begin work on preparing both a TCPA motion and an opposition to PTK's motion for a temporary injunction. It drafted and filed both by April 8, 2025, a mere eight days after being retained, which required a significant amount of work to be condensed into this short period.

18. RLG does not have a pre-existing relationship with Marek; this case is the first time the firm has represented her. RLG thus had to spend some time becoming familiar with Marek and her ongoing dispute with PTK that pre-dates this case.

19. RLG charged an hourly fee for their work on this case. While RLG's retainer agreement with Marek contemplates that Marek will attempt to fundraise for her defense costs, the agreement does not obligate her to raise any particular amount and specifies that she will ultimately be responsible for paying RLG's fees.

20. My hourly rate is justified, as I am an experienced attorney who specializes in First Amendment litigation and I am licensed to practice in the states of Nevada, California, Arizona, Florida, and Massachusetts.

21. I was instrumental in the passage of Nevada's 2013 Anti-SLAPP legislation and played a significant role in shaping the statute's 2015 amendments.

22. When Nevada's Anti-SLAPP statute was amended in 2015, I successfully led the lobbying effort to save the statute from repeal and was instrumental in crafting the language in the statute today.

23. I am a nationally recognized expert on Anti-SLAPP legislation, defamation, and free speech issues, and I have assisted the legislatures in in Nevada, Pennsylvania, Ohio, New York, Massachusetts, New Hampshire, and Wyoming on Anti-SLAPP legislation.

24. I have been a commentator for both Fox News and CNN on Free Speech issues.

25. I hold a JD from Georgetown University Law Center, a Master's in Mass Communications from the University of Florida (with a media/First Amendment law focus), and an international degree in the form of an LL.M. from the University of Turin, Italy, where I wrote and published a thesis on freedom of expression issues.

26. I have been a practicing attorney for over 23 years.

27. I have taught First Amendment law at the law school level.

28. I give presentations to attorneys in CLE courses on how to handle Anti-SLAPP litigation and publish on the issue as well.

29. Attorney Ronald D. Green has a JD from University of Pittsburgh School of Law and is a Nevada-licensed attorney with over 24 years of litigation experience. He has several years of experience with defamation and First Amendment cases.

30. Attorney Alex J. Shepard earned his JD from Washington University School of Law, is licensed to practice in Nevada, California, and Washington, and has over 10 years of experience, having spent almost his entire career working on First Amendment, defamation, and Anti-SLAPP cases. He has also been interviewed on issues of defamation and Anti-SLAPP law. Spencer Cornelia, "I'm Being Sued By a Fake Guru for \$2 MILLION," Youtube (May 15, 2023).¹

31. Cassidy Curran is a paralegal employed with RLG and has approximately 5 years of experience as a paralegal.

32. Alison Gregoire is a paralegal employed with RLG and has approximately 1 year of experience as a paralegal.

33. As managing partner of RLG, I oversee the billing entries for the firm on this case. Attached as **Exhibit 5** to the Fee Motion are the billing and cost entries for Marek's case in spreadsheet format. The fee spreadsheet contains a true and correct account of the time RLG's attorneys and staff spent on the case, the hourly rates charged for this work, and the costs incurred, and has been redacted for privilege.

¹ Available at: <https://www.youtube.com/watch?v=EkrwBYl2hiI>

34. Prior to rendering these bills, RLG audited them and removed entries that I believed could be questioned. Therefore, this billing statement reflects a significant reduction in the full amount of fees incurred, but represents a reasonable attempt at compromise.

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

Dated: April 18, 2025

By: /s/ Marc J. Randazza
Marc J. Randazza

EXHIBIT 5

Time Entry Spreadsheet

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/11/25	Time Entry	01 - Attorney Time	Further drafting of memo re: initial draft of Anti-SLAPP motion.	1.2	\$750.00	\$900.00
Alex Shepard	4/11/25	Time Entry	01 - Attorney Time	Confer with MJR re: [REDACTED].	0.1	\$750.00	\$75.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Review of billing records in drafting letter re: attorneys' fees and entitlement to same in light of nonsuit.	0.1	\$750.00	\$75.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Legal research re: entitlement to fees following nonsuit under TCPA.	0.2	\$750.00	\$150.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Drafting memo re: initial draft of attorneys' fees motion under TCPA.	2.3	\$750.00	\$1,725.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Confer with team re: motion for attorneys' fees and conferring with o/c to compromise on fees.	1	\$750.00	\$750.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Revisions to draft of letter re: attorneys' fees and entitlement to same in light of nonsuit.	0.6	\$750.00	\$450.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Review of evidence for use in attorneys' fees motion.	0.3	\$750.00	\$225.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Legal research on Texas fee motions and TCPA fees for use in fee motion.	1.2	\$750.00	\$900.00
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Phone call with MJR, RDG, and client re: [REDACTED] (,6, but .4 not billed as client courtesy).	0.2	\$750.00	\$150.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/10/25	Time Entry	01 - Attorney Time	Phone call with RDG re: arguments for fee motion.	0.2	\$750.00	\$150.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Review of email correspondence between MJR and o/c re: compromise on attorneys' fees.	0.1	\$750.00	\$75.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Drafting memo to MJR re: letter to o/c responding to [REDACTED].	0.9	\$750.00	\$675.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Review of billing records and designating entries for redaction due to privilege/confidentiality issues.	0.6	\$750.00	\$450.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Review of fee motions filed by o/c in other matters, for use in letter to o/c.	0.6	\$750.00	\$450.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Review and analysis of transcript of TRO hearing.	0.5	\$750.00	\$375.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Legal research re: scope of recoverable fees under TCPA, for use in letter to o/c.	0.1	\$750.00	\$75.00
Alex Shepard	4/9/25	Time Entry	01 - Attorney Time	Confer with MJR re: preparing letter to o/c responding to [REDACTED].	0.3	\$750.00	\$225.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Phone calls with RDG re: [REDACTED].	0.2	\$750.00	\$150.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Confer with team re: notice of supp. authority.	0.1	\$750.00	\$75.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Confer with RDG re: [REDACTED].	0.1	\$750.00	\$75.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Review of proposed order on motion for injunction.	0.1	\$750.00	\$75.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Confer with team re: proposed order on application for injunction.	0.1	\$750.00	\$75.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Legal research re: Plaintiff's ability to voluntarily dismiss in the face of TCPA motion.	0.1	\$750.00	\$75.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Confer with team re: Plaintiff's ability to voluntarily dismiss in the face of TCPA motion.	0.1	\$750.00	\$75.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Drafting memo re: initial draft of notice of supp. authority.	0.3	\$750.00	\$225.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Research re: [REDACTED]	1.3	\$750.00	\$975.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Confer with team re: letter on decision denying application for injunction.	0.4	\$750.00	\$300.00
Alex Shepard	4/8/25	Time Entry	01 - Attorney Time	Review of letter re: decision denying application for injunction.	0.1	\$750.00	\$75.00
Alex Shepard	4/4/25	Time Entry	01 - Attorney Time	Confer with team re: Anti-SLAPP motion.	0.4	\$750.00	\$300.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/4/25	Time Entry	01 - Attorney Time	Revisions to draft of Anti-SLAPP motion.	0.5	\$750.00	\$375.00
Alex Shepard	4/3/25	Time Entry	01 - Attorney Time	Legal research for use in Anti-SLAPP motion.	0.6	\$750.00	\$450.00
Alex Shepard	4/3/25	Time Entry	01 - Attorney Time	Review of and revisions to draft of Anti-SLAPP motion.	1.6	\$750.00	\$1,200.00
Alex Shepard	4/2/25	Time Entry	01 - Attorney Time	Phone call with RDG re: Anti-SLAPP motion.	0.1	\$750.00	\$75.00
Alex Shepard	3/31/25	Time Entry	01 - Attorney Time	Phone call with RDG re: status of matter.	0.1	\$750.00	\$75.00
Alex Shepard	3/31/25	Time Entry	01 - Attorney Time	Confer with RDG re: TX Anti-SLAPP law.	0.1	\$750.00	\$75.00
Alex Shepard	3/31/25	Time Entry	02 - NO CHARGE	Review of internal discussion re: matter status.	0.1	\$0.00	\$0.00
Alex Shepard	4/17/25	Time Entry	01 - Attorney Time	Drafting memo re: initial draft of Marek declaration ISO Anti-SLAPP motion.	0.8	\$750.00	\$600.00
Alex Shepard	4/17/25	Time Entry	01 - Attorney Time	Revisions to drafts of fee motion and supporting declaration.	2	\$750.00	\$1,500.00
Alex Shepard	4/17/25	Time Entry	03 - Paralegal Task Performed by Attorney	Transmission of Marek declaration ISO fee motion to client for signature.	0.1	\$250.00	\$25.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/17/25	Time Entry	01 - Attorney Time	Confer with team re: finalizing fee motion and gathering exhibits to same.	0.6	\$750.00	\$450.00
Alex Shepard	4/17/25	Time Entry	01 - Attorney Time	Revisions to draft of TCPA motion to expand on sanctions arguments.	0.7	\$750.00	\$525.00
Alex Shepard	4/17/25	Time Entry	03 - Paralegal Task Performed by Attorney	Gathering and organizing exhibits to fee motion.	1.8	\$250.00	\$450.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Brief review of billing records.	0.1	\$750.00	\$75.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Drafting memo re: initial draft of MJR declaration ISO fee motion.	0.7	\$750.00	\$525.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Further drafting of and revisions to fee motion.	3.1	\$750.00	\$2,325.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Confer with team re: arguments and evidence for fee motion.	0.3	\$750.00	\$225.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Legal and factual research for use in TCPA fee motion re: PTK's financial means and standards for awarding TCPA sanctions.	0.9	\$750.00	\$675.00
Alex Shepard	4/16/25	Time Entry	01 - Attorney Time	Confer with team re: finalizing numbers for fee motion, and updating numbers in draft motion and supporting declaration.	0.4	\$750.00	\$300.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Alex Shepard	4/10/25	Time Entry	02 - NO CHARGE	Phone call with MJR, RDG, and client re: [REDACTED] (.6, but .4 not billed as client courtesy).	0.4	\$0.00	\$0.00
Alison Gregoire	4/8/25	Time Entry	04 - Paralegal Time	Draft, edit, finalize, and file Notice of Supplemental Authority.	0.7	\$175.00	\$122.50
Alison Gregoire	4/3/25	Time Entry	04 - Paralegal Time	Edit Opp to TPO.	0.5	\$175.00	\$87.50
Alison Gregoire	4/1/25	Time Entry	04 - Paralegal Time	Confer with potential local counsel for case.	0.2	\$175.00	\$35.00
Alison Gregoire	3/27/25	Hard Cost	E112 Court fees	Pro Hac Vice fee for MJR to District Court, Victoria County, TX	1	\$255.88	\$255.88
Alison Gregoire	3/27/25	Time Entry	04 - Paralegal Time	2.5 hours corresponding with local council in Victoria, TX. 1.0 hours charged as courtesy to client.	1	\$175.00	\$175.00
Alison Gregoire	3/27/25	Time Entry	04 - Paralegal Time	Research and prepare MJR Pro Hac Vice for Victoria TX.	0.2	\$175.00	\$35.00
Cassie Curran	4/11/25	Time Entry	04 - Paralegal Time	Receipt of Greenberg declaration, memo to team re same	0.1	\$175.00	\$17.50
Cassie Curran	4/11/25	Time Entry	04 - Paralegal Time	Finalize Greenberg declaration, confer with MJR	0.1	\$175.00	\$17.50
Cassie Curran	4/11/25	Time Entry	04 - Paralegal Time	Prepare declaration of Mark Bennett; transmit same via email with fees; memo to team re docket	0.3	\$175.00	\$52.50

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Cassie Curran	4/11/25	Time Entry	02 - NO CHARGE	Accounting on file; no charge	0.7	\$0.00	\$0.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Attention to order, internal docketing of same; internal docketing of amended transcript; prepare shareable links to same and memo to MJR	0.2	\$175.00	\$35.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Finalize letter to OC; redaction of billing details for transmission to OC; memo to MJR re same	0.4	\$175.00	\$70.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Finalize draft letter to OC; transmit same to client via email for approval	0.1	\$175.00	\$17.50
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Prepare case fees	0.4	\$175.00	\$70.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Finalize redaction of invoices; memo to team re same; finalize letter to OC and transmit same via email; memo to team	0.3	\$175.00	\$52.50
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Prepare declaration of David Griffin; memo to team re same	0.2	\$175.00	\$35.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Prepare declaration of Zach Greenberg; memo to team re same	0.2	\$175.00	\$35.00
Cassie Curran	4/10/25	Time Entry	04 - Paralegal Time	Edits to and finalize Greenberg delcaration; transmit same via email	0.1	\$175.00	\$17.50
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Edits to and finalize [REDACTED]	0.3	\$175.00	\$52.50

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Call to clerks office to request rush hearing transcript; left VM for court reporter; memo to team re same	0.2	\$175.00	\$35.00
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Attention to MJR return travel	0.5	\$175.00	\$87.50
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Efiling of proposed order; receipt of order denying TRO; internal docketing of same and memo to team	0.2	\$175.00	\$35.00
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Attention to MJR memo re settlement letter to OC	0.2	\$175.00	\$35.00
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Confer with court reporter via phone and email; memo to team re same	0.1	\$175.00	\$17.50
Cassie Curran	4/8/25	Time Entry	04 - Paralegal Time	Prepare proposed order; memo to team re same	0.2	\$175.00	\$35.00
Cassie Curran	4/7/25	Time Entry	04 - Paralegal Time	Prepare for hearing	1.2	\$175.00	\$210.00
Cassie Curran	4/7/25	Time Entry	04 - Paralegal Time	Prepare notice of appeal; memo to team re same and email to co-counsel	0.4	\$175.00	\$70.00
Cassie Curran	4/4/25	Time Entry	04 - Paralegal Time	Final edits to opposition; finalize exhibits and e-file same; memo to team	0.3	\$175.00	\$52.50
Cassie Curran	4/4/25	Time Entry	04 - Paralegal Time	Edits to Anti-SLAPP motion	0.3	\$175.00	\$52.50

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Cassie Curran	4/4/25	Time Entry	04 - Paralegal Time	Attention to file-stamped opp, internal docketing of same and update shareable link	0.2	\$175.00	\$35.00
Cassie Curran	4/3/25	Time Entry	04 - Paralegal Time	Edits to, finalize, and e-filing of PHV documents; internal docketing of same	0.6	\$175.00	\$105.00
Cassie Curran	4/3/25	Time Entry	04 - Paralegal Time	Edits to motion, memo to team re same; begin prepring client declaration	0.8	\$175.00	\$140.00
Cassie Curran	4/3/25	Time Entry	04 - Paralegal Time	Further edits to motion; drafting of client declaration	1.2	\$175.00	\$210.00
Cassie Curran	4/3/25	Time Entry	04 - Paralegal Time	Finalize opposition and client declaration; prepare exhibits thereto and memo to MJR; transmit draft to local counsel via email	0.5	\$175.00	\$87.50
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Confer with court clerk concerning docket file, memo to team re same and access to court records	0.3	\$175.00	\$52.50
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Edits to motion to set aside; memo to team re same	0.4	\$175.00	\$70.00
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Edits to PHV drafts and draft stipulation	0.4	\$175.00	\$70.00
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Confer with local counsel; transmit files; call to OC concerning meet and confer, left messages; draft memo to OC re PHV and stipulation for extension	1.2	\$175.00	\$210.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Call to court re scheduling availability; left VM and follow up by email	0.2	\$175.00	\$35.00
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Email client re [REDACTED]	0.1	\$175.00	\$17.50
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Attention to OC email concerning PHV; edits to and finalize documents; memo to team re same	0.4	\$175.00	\$70.00
Cassie Curran	4/2/25	Time Entry	04 - Paralegal Time	Receipt of client files; organize and internal docketing of same; memo to team	0.1	\$175.00	\$17.50
Cassie Curran	4/1/25	Time Entry	04 - Paralegal Time	Prepare motion for pro hac vice and supporting documents; memo to team re same	0.8	\$175.00	\$140.00
Cassie Curran	4/1/25	Time Entry	04 - Paralegal Time	Drafting of stipulation; memo to team re same	0.6	\$175.00	\$105.00
Cassie Curran	3/28/25	Time Entry	04 - Paralegal Time	New matter set up; attention to agreements and case financials	0.5	\$175.00	\$87.50
Cassie Curran	3/28/25	Time Entry	04 - Paralegal Time	Prepare shell pleading template to reduce future billable time	0.2	\$175.00	\$35.00
Cassie Curran	3/28/25	Time Entry	04 - Paralegal Time	Prepare opposition to application for TRO; prepare shell motion to vacate; memo to team re same	0.2	\$175.00	\$35.00
Cassie Curran	3/27/25	Time Entry	04 - Paralegal Time	Attention to new matter and set up; calendaring of hearing and confer with AG concerning local counsel search	0.5	\$175.00	\$87.50

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Cassie Curran	4/17/25	Time Entry	04 - Paralegal Time	Prepare fees for fee motion, memo to AJS re same	0.7	\$175.00	\$122.50
Cassie Curran	4/17/25	Time Entry	04 - Paralegal Time	Attention to declarations for fee motion; email to Griffin re same and memo to AJS	0.2	\$175.00	\$35.00
Cassie Curran	4/16/25	Time Entry	02 - NO CHARGE	Memo to MJR re fees, no charge	0.4	\$0.00	\$0.00
Grean Añonuevo	4/8/25	Time Entry	02 - NO CHARGE	Attention to MJR Letter to Atty Betz, sent correspondence to Atty Betz and to Client	0.2	\$0.00	\$0.00
Grean Añonuevo	4/16/25	Time Entry	02 - NO CHARGE	Attention to Letter of MJR to Atty Polak and Atty Betz and send copy to both opposing counsels, Client and local counsel.	0.1	\$0.00	\$0.00
Jay Wolman	4/17/25	Time Entry	02 - NO CHARGE	Confer with team re edits to fee motion	0.1	\$0.00	\$0.00
Jay Wolman	4/10/25	Time Entry	02 - NO CHARGE	Confer with team and identify citations for response to notice by o/c	0.1	\$0.00	\$0.00
Jay Wolman	4/10/25	Time Entry	02 - NO CHARGE	Attention to matter status	0.1	\$0.00	\$0.00
Jay Wolman	4/8/25	Time Entry	02 - NO CHARGE	Confer with team re matter needs.	0.1	\$0.00	\$0.00
Jay Wolman	4/1/25	Time Entry	02 - NO CHARGE	Confer with team re PHV application	0.1	\$0.00	\$0.00
Jay Wolman	4/17/25	Time Entry	02 - NO CHARGE	Research Texas collateral source jurisprudence and confer with team re same.	0.2	\$0.00	\$0.00
Kylie Werk	4/8/25	Time Entry	02 - NO CHARGE	Draft motion to recover bond payment.	1	\$0.00	\$0.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Kylie Werk	4/8/25	Time Entry	02 - NO CHARGE	Review case law for bond payment cases.	0.3	\$0.00	\$0.00
Kylie Werk	4/2/25	Time Entry	02 - NO CHARGE	Editing opposition to TRO petition.	0.4	\$0.00	\$0.00
Kylie Werk	3/28/25	Time Entry	02 - NO CHARGE	Drafting fee agreement, discussing in Slack, and reviewing document signing options.	0.3	\$0.00	\$0.00
Kylie Werk	3/27/25	Time Entry	02 - NO CHARGE	Drafting correspondence to client concerning [REDACTED].	0.3	\$0.00	\$0.00
Kylie Werk	3/27/25	Time Entry	02 - NO CHARGE	Discussion with MJR concerning fee arrangement	0.7	\$0.00	\$0.00
Kylie Werk	3/27/25	Time Entry	02 - NO CHARGE	Drafting correspondence to client concerning [REDACTED].	0.7	\$0.00	\$0.00
Kylie Werk	3/26/25	Time Entry	02 - NO CHARGE	Reviewing and editing fee agreement for Toni Marek. No charge as courtesy to client.	0.4	\$0.00	\$0.00
Marc Randazza	4/14/25	Time Entry	01 - Attorney Time	Communicating with Jonathan Polak.	0.1	\$1,000.00	\$100.00
Marc Randazza	4/11/25	Time Entry	01 - Attorney Time	Calls with client and REDACTED, review of progress in motion for fees and sanctions; negotiation with o/c re same	2	\$1,000.00	\$2,000.00
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	Attention to nonsuit and updating letter to make demand of PTK and research concerning effect of nonsuit to add case law; multiple conferences with client.	1.9	\$1,000.00	\$1,900.00
Marc Randazza	4/10/25	Hard Cost	Outside Counsel	Local counsel fees; paid by RLG for client reimbursement	1	\$3,000.00	\$3,000.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	Calls with outside counsel and client and multiple calls re [REDACTED]	1.5	\$1,000.00	\$1,500.00
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	(POST 2:00, no tax to P) review and revise motion for fees.	1	\$1,000.00	\$1,000.00
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	Drafting motion for fees and sanctions; confer with opposing counsel	1.4	\$1,000.00	\$1,400.00
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	revising letter to Polak regarding attorney fees, reviewing Marek motion to recover bond, and managing communications via Slack and email.	2.2	\$1,000.00	\$2,200.00
Marc Randazza	4/10/25	Time Entry	01 - Attorney Time	Reviewing email correspondence in Randazza Legal Group Mail.	0.2	\$1,000.00	\$200.00
Marc Randazza	4/9/25	Hard Cost	Transcript Fees	Transcript fees for 4/8/2025 hearing on rush basis.	1	\$420.00	\$420.00
Marc Randazza	4/9/25	Time Entry		Reviewing legal articles on case, drafting Marek motion for fees and drafting for fee demand from PTK, and communicating with colleagues via messages and Slack.	3.1	\$1,000.00	\$3,100.00
Marc Randazza	4/9/25	Time Entry	01 - Attorney Time	communications re case	0.5	\$1,000.00	\$500.00
Marc Randazza	4/9/25	Time Entry	01 - Attorney Time	Communicating with Ronald Green via messaging.	0.1	\$1,000.00	\$100.00
Marc Randazza	4/9/25	Time Entry	01 - Attorney Time	Communicating with Ronald Green via Messages.	0.1	\$1,000.00	\$100.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	4/9/25	Time Entry	01 - Attorney Time	Communicating with Ronald Green via Messages.	0.1	\$1,000.00	\$100.00
Marc Randazza	4/9/25	Time Entry	01 - Attorney Time	Drafting letter to Polak regarding attorney fees.	0.6	\$1,000.00	\$600.00
Marc Randazza	4/8/25	Time Entry	01 - Attorney Time	Prep for and argue motion and post motion activity for court	4	\$1,000.00	\$4,000.00
Marc Randazza	4/8/25	Time Entry	01 - Attorney Time	travel back from hearing. Time includes actual billable time drafting motion for sanctions, but time billed at travel time anyway to subsume billable time into lower travel time rate (bill at 1/2 time)	7	\$500.00	\$3,500.00
Marc Randazza	4/8/25	Hard Cost	Hotel / Lodging	Stay at Victoria Courtyard for hearing attendance	1	\$183.51	\$183.51
Marc Randazza	4/8/25	Hard Cost	E110 Out-of-town travel	Car rental for hearing	1	\$107.24	\$107.24
Marc Randazza	4/8/25	Hard Cost	Parking	Airport parking for MJR	1	\$87.00	\$87.00
Marc Randazza	4/8/25	Hard Cost	Flights / Plane Tickets	MJR return flight from hearing	1	\$1,069.49	\$1,069.49
Marc Randazza	4/8/25	Hard Cost	Transportation		1	\$137.22	\$137.22
Marc Randazza	4/7/25	Time Entry	01 - Attorney Time	Drafting outline for oral argument and prep for oral argument	5	\$1,000.00	\$5,000.00
Marc Randazza	4/7/25	Time Entry	01 - Attorney Time	Travel (bill at 1/2 time)	7	\$500.00	\$3,500.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	4/6/25	Time Entry	01 - Attorney Time	Communicating with Kylie W. and Toni M., prep for hearing	0.8	\$1,000.00	\$800.00
Marc Randazza	4/5/25	Time Entry	01 - Attorney Time	Communicating with Toni M. and Kylie W., drafting notes, and making hearing preparations.	1.3	\$1,000.00	\$1,300.00
Marc Randazza	4/4/25	Time Entry	01 - Attorney Time	Reviewing urgent First Amendment threat email, drafting anti-SLAPP document, and engaging in Slack discussions; finalizing antislapp	1.5	\$1,000.00	\$1,500.00
Marc Randazza	4/3/25	Time Entry	01 - Attorney Time	Extensive revisions to opposition including new legal research to add in, comms with client, comms with outside counsel, review of 5th cir arguments to lock in PTK positions. Review and revise declaration. (Actual time 5.6 hours, reduced as client courtesy)	4.3	\$1,000.00	\$4,300.00
Marc Randazza	4/3/25	Time Entry	01 - Attorney Time	Reviewing urgent email on First Amendment threat, messaging Toni M, and checking Slack channel for updates.	0.2	\$1,000.00	\$200.00
Marc Randazza	4/3/25	Time Entry	01 - Attorney Time	Reviewing email regarding urgent ex parte prior restraint issues affecting whistleblower's FOIA-based book.	0.3	\$1,000.00	\$300.00
Marc Randazza	4/3/25	Time Entry	01 - Attorney Time	final revisions to opposition to injunction; call with client, extensive communications and coordination with client, team, and with local counsel (one email exchange) review and revise document (actual time 2.4, reduced as client courtesy)	1.5	\$1,000.00	\$1,500.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	4/3/25	Time Entry	01 - Attorney Time	Review and revise draft of TCPA motion	0.4	\$1,000.00	\$400.00
Marc Randazza	4/2/25	Time Entry	01 - Attorney Time	Drafting stipulation to continue hearing and reviewing Slack channel updates.	0.2	\$1,000.00	\$200.00
Marc Randazza	4/2/25	Time Entry	01 - Attorney Time	Research writing and editing opposition to TRO; communications with client; call with client and fielding press for client.	2.5	\$1,000.00	\$2,500.00
Marc Randazza	4/2/25	Time Entry	01 - Attorney Time	attention to PHV	0.2	\$1,000.00	\$200.00
Marc Randazza	4/2/25	Time Entry	02 - NO CHARGE	Reviewing 172 new items in the Randazza Legal Group channel on Slack.	0.5	\$0.00	\$0.00
Marc Randazza	4/2/25	Hard Cost	Flights / Plane Tickets	MJR flight to TX for hearing.	1	\$536.29	\$536.29
Marc Randazza	4/1/25	Time Entry	01 - Attorney Time	Communicating with Toni Marek; interview and retention of local counsel, work on PHV and continuance and research for use in anti-slapp and TRO dissolution.	1.6	\$1,000.00	\$1,600.00
Marc Randazza	3/31/25	Time Entry	01 - Attorney Time	Confer with client (multiple conferences) and research for providing info to local counsel, confer with same; providing information and research to team.	2.2	\$1,000.00	\$2,200.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
				Call with client [REDACTED] [REDACTED], discussions with client about [REDACTED]			
Marc Randazza	3/31/25	Time Entry	01 - Attorney Time	[REDACTED]	1.3	\$1,000.00	\$1,300.00
Marc Randazza	3/31/25	Time Entry	01 - Attorney Time	Reviewing updates in the toni_marek_adv_ptk channel on Slack.	0.1	\$1,000.00	\$100.00
Marc Randazza	3/31/25	Time Entry	01 - Attorney Time	Communicating with Toni Marek and potential local counsel in Victoria	0.4	\$1,000.00	\$400.00
				Communicating with Toni M via Messages (.1); call with Marek and local counsel (.5); confer with Marek after local counsel call (.4); review of TCPA motion provided by colleague to incorporate arguments (and save on billing) (.3)			
Marc Randazza	3/30/25	Time Entry	01 - Attorney Time		1.3	\$1,000.00	\$1,300.00
Marc Randazza	3/30/25	Time Entry	02 - NO CHARGE	Delegating tasks to lower cost paralegal	0.2	\$0.00	\$0.00
Marc Randazza	3/29/25	Time Entry	02 - NO CHARGE	Reviewing message from client, message to client	0.2	\$0.00	\$0.00
				research for potential adverse case law, [REDACTED] [REDACTED]. Confer with client; and drafting messages with case citations into client file for lower-cost colleague(s) to run down research trails.			
Marc Randazza	3/29/25	Time Entry	01 - Attorney Time		0.5	\$1,000.00	\$500.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	3/29/25	Time Entry	01 - Attorney Time	Reviewing case law on prior restraint, including Kinney v. Barnes, and other cases, communication with RDG	0.4	\$1,000.00	\$400.00
Marc Randazza	3/28/25	Time Entry	01 - Attorney Time	Reviewing gag order on book about PTK harassment, drafting letter and agreement, and engaging in Slack discussions; research to get TRO dissolved, confer with RDG, drafting outline of same, multiple calls with (PRIVILEGED) and setting up accounts on client file. Multiple interviews with local counsel candidates.	3.6	\$1,000.00	\$3,600.00
Marc Randazza	3/27/25	Time Entry	01 - Attorney Time	Attention to prior restraint, communications with client, communications with third parties (PRIVILEGED); communications with local counsel candidates; review of case law and review of case foundations; setting up file and handling complicated negotiations (Actual time 4.4 hours, cut as client courtesy)	3.2	\$1,000.00	\$3,200.00
Marc Randazza	3/26/25	Time Entry	01 - Attorney Time	Intake meeting. No charge	2	\$0.00	\$0.00
Marc Randazza	4/17/25	Time Entry	01 - Attorney Time	Research on cases involving third party payors, research on sanctions , review of case documents including transcript to include in fee motion. Review and revise AJS draft.	2	\$1,000.00	\$2,000.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Marc Randazza	4/17/25	Time Entry	01 - Attorney Time	Reviewing Slack channel updates, drafting more on TCPA fee motion, and researching case law on [REDACTED].	1	\$1,000.00	\$1,000.00
Marc Randazza	4/17/25	Time Entry	01 - Attorney Time	Drafting TCPA fee motion and declaration, reviewing Macias and Poulard cases, and engaging in communications via Messages and Slack.	1.5	\$1,000.00	\$1,500.00
Marc Randazza	4/17/25	Time Entry	01 - Attorney Time	Drafting declaration, call regarding coordination of filing, review and revise motion for sanctions,.	0.2	\$1,000.00	\$200.00
Marc Randazza	4/17/25	Time Entry	01 - Attorney Time	Reviewing case BOBULINSKI v. TARLOV in District Court, SD New York via Google Scholar.	0.3	\$1,000.00	\$300.00
Marc Randazza	4/16/25	Time Entry		Reviewing emails on Anti-SLAPP fee award, drafting motion to recover bond, and letter re settlement, and reviewing related legal research.	1.3	\$1,000.00	\$1,300.00
Marc Randazza	4/16/25	Time Entry	01 - Attorney Time	Reviewing amended document and TCPA fee motion.	0.4	\$1,000.00	\$400.00
Marc Randazza	4/16/25	Time Entry	01 - Attorney Time	Drafting letter to Polak regarding [REDACTED]; revising same.	0.2	\$1,000.00	\$200.00
Ron Green	4/15/25	Time Entry	02 - NO CHARGE	Instruct staff re: [REDACTED]. No charge.	0.1	\$0.00	\$0.00
Ron Green	4/14/25	Time Entry	01 - Attorney Time	Follow up re: status of [REDACTED].	0.1	\$750.00	\$75.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	4/11/25	Time Entry	02 - NO CHARGE	Review [REDACTED] and analysis of same. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/11/25	Time Entry	02 - NO CHARGE	Discuss [REDACTED] with MJR. No charge.	0.1	\$0.00	\$0.00
Ron Green	4/10/25	Time Entry	01 - Attorney Time	Review notice of nonsuit and assist with attorney fee motion.	0.2	\$750.00	\$150.00
Ron Green	4/10/25	Time Entry	02 - NO CHARGE	Review and comment upon attorney fee letter to opposing counsel. No charge.	0.3	\$0.00	\$0.00
Ron Green	4/10/25	Time Entry	01 - Attorney Time	Conference call with team and client re: strategy and recovery of attorney fees.	0.6	\$750.00	\$450.00
Ron Green	4/10/25	Time Entry	02 - NO CHARGE	Discuss court procedure and TRO hearing with team. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/10/25	Time Entry	02 - NO CHARGE	Assist with assembly of fee motion. No charge.	0.4	\$0.00	\$0.00
Ron Green	4/10/25	Time Entry	01 - Attorney Time	Confer with MJR re: status of case and strategy. No charge.	0.2	\$750.00	\$150.00
Ron Green	4/9/25	Time Entry	02 - NO CHARGE	Discuss fee motion and grounds for same with AJS. Review opposing counsel prior fee motion. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/9/25	Time Entry	02 - NO CHARGE	Review transcript of hearing on Temporary Injunction and analysis of same.	0.3	\$0.00	\$0.00
Ron Green	4/8/25	Time Entry	01 - Attorney Time	Preemptive draft and research re: [REDACTED] [REDACTED]. Discuss same with AJS.	1.8	\$750.00	\$1,350.00
Ron Green	4/8/25	Time Entry	01 - Attorney Time	Discuss results of injunction hearing with MJR and analysis of same.	0.2	\$750.00	\$150.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	4/8/25	Time Entry	01 - Attorney Time	Draft proposed Order denying request for temporary injunction.	1.3	\$750.00	\$975.00
Ron Green	4/8/25	Time Entry	02 - NO CHARGE	Make final revisions to proposed order denying preliminary injunction at MJR request. Instruct staff re: transmission to court and opposing counsel. No charge.	0.3	\$0.00	\$0.00
Ron Green	4/8/25	Time Entry	01 - Attorney Time	Review letter from Court denying Temporary Injunction requested by Plaintiff.	0.1	\$750.00	\$75.00
Ron Green	4/8/25	Time Entry	02 - NO CHARGE	Review [REDACTED] prepared by AJS. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/8/25	Time Entry	02 - NO CHARGE	Review Marek billing. No charge.	0.3	\$0.00	\$0.00
Ron Green	4/7/25	Time Entry	01 - Attorney Time	Research re: [REDACTED].	0.9	\$750.00	\$675.00
Ron Green	4/7/25	Time Entry	01 - Attorney Time	Review/revise [REDACTED].	0.2	\$750.00	\$150.00
Ron Green	4/7/25	Time Entry	01 - Attorney Time	Instruct CSC re: email service in case.	0.1	\$750.00	\$75.00
Ron Green	4/7/25	Time Entry	02 - NO CHARGE	Review 5th Circuit decision re: injunction against HonorSociety. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/7/25	Time Entry	01 - Attorney Time	Ensure MJR had all necessary materials for injunction hearing. Instruct staff re: same.	0.2	\$750.00	\$150.00
Ron Green	4/4/25	Time Entry	02 - NO CHARGE	Review changes to Anti-SLAPP motion. No charge.	0.2	\$0.00	\$0.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	4/4/25	Time Entry	01 - Attorney Time	Finalize anti-SLAPP motion and discuss filing of same with team.	0.5	\$750.00	\$375.00
Ron Green	4/3/25	Time Entry	01 - Attorney Time	Final research and edit of Motion to Dissolve TRO/Opposition to Motion for Temporary Injunction.	0.4	\$750.00	\$300.00
Ron Green	4/3/25	Time Entry	03 - Paralegal Task Performed by Attorney	Pull documents requested by MJR for finalizing filings.	0.6	\$250.00	\$150.00
Ron Green	4/3/25	Time Entry	02 - NO CHARGE	Review and analysis of final Motion to Dissolve/Opposition to Motion for Temporary Injunction prior to filing. No charge.	0.3	\$0.00	\$0.00
Ron Green	4/3/25	Time Entry	01 - Attorney Time	Draft anti-SLAPP motion pursuant to Texas law. Research re: same. Complete draft of anti-SLAPP.	3.2	\$750.00	\$2,400.00
Ron Green	4/3/25	Time Entry	01 - Attorney Time	Review and revise Marek declaratoin.	0.2	\$750.00	\$150.00
Ron Green	4/3/25	Time Entry	03 - Paralegal Task Performed by Attorney	Final review, format, and edit of anti-SLAPP draft.	1.2	\$250.00	\$300.00
Ron Green	4/3/25	Time Entry	02 - NO CHARGE	Instruct KRW re: finalizing anti-SLAPP. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/3/25	Time Entry	02 - NO CHARGE	Analysis of [REDACTED] at MJR request. No charge.	0.2	\$0.00	\$0.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	4/2/25	Time Entry	01 - Attorney Time	Final review and edit of Opposition to Temporary Injunction/Motion to Dissolve TRO.	0.3	\$750.00	\$225.00
Ron Green	4/2/25	Time Entry	02 - NO CHARGE	Discuss filing with CSC. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/2/25	Time Entry	01 - Attorney Time	Finalize Motion to Dissolve TRO/Opp. to Motion for Temporary Injunction.	1.2	\$750.00	\$900.00
Ron Green	4/2/25	Time Entry	02 - NO CHARGE	Review formatted document and instruct re: correction of same. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/2/25	Time Entry	01 - Attorney Time	Discuss Texas motion to dissolve and anti-SLAPP with MJR. Discuss same with AJS. Commence research into same. Draft statement of facts for anti-SLAPP motion.	1.3	\$750.00	\$975.00
Ron Green	4/1/25	Time Entry	01 - Attorney Time	Edit Motion to Dissolve TRO.	0.6	\$750.00	\$450.00
Ron Green	4/1/25	Time Entry	02 - NO CHARGE	Instruct KRW re: MJR PHV admission in Texas. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/1/25	Time Entry	01 - Attorney Time	Telephone conference with client re: [REDACTED].	0.5	\$750.00	\$375.00
Ron Green	4/1/25	Time Entry	01 - Attorney Time	Review and edit Motion to Dissolve TRO and Opposition to request for temporary injunction.	3.4	\$750.00	\$2,550.00
Ron Green	3/31/25	Time Entry	01 - Attorney Time	Discuss merits of matter with AJS and strategize re: same. Brief research re: facts.	0.2	\$750.00	\$150.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	3/31/25	Time Entry	01 - Attorney Time	Texts with client re: [REDACTED]. Work on finalizing motion to dissolve TRO. Research re: same.	1.5	\$750.00	\$1,125.00
Ron Green	3/31/25	Time Entry	01 - Attorney Time	Email to client re: [REDACTED].	0.2	\$750.00	\$150.00
Ron Green	3/30/25	Time Entry	01 - Attorney Time	Complete rough draft of facts and law argument for Motion to Dissolve TRO. Research re: same. Review client documents re: same.	4.6	\$750.00	\$3,450.00
Ron Green	3/29/25	Time Entry	01 - Attorney Time	Research re: requirements for Texas court to issue an injunction that acts as a prior restraint against speech.	1.1	\$750.00	\$825.00
Ron Green	3/28/25	Time Entry	01 - Attorney Time	Review of materials pertaining to emergency relief for unconstitutional injunctions, including prior briefing to limit time spent drafting here. Review of Kinney v. Barnes (2014) for guidance in setting up motion to vacate TRO / opposition to preliminary injunction.	2	\$750.00	\$1,500.00
Ron Green	3/28/25	Time Entry	01 - Attorney Time	Strategy discussion with MJR. Review materials suggested by MJR.	1.2	\$750.00	\$900.00
Ron Green	3/28/25	Time Entry	01 - Attorney Time	Draft introduction and legal introduction to motion to quash TRO/Opp to motion for injunctive relief.	1.5	\$750.00	\$1,125.00
Ron Green	4/17/25	Time Entry	01 - Attorney Time	Discuss finalization of Marek fee motion with AJS.	0.1	\$750.00	\$75.00

User	Date	Activity Type	Description	Note	Quantity	Rate	Total
Ron Green	4/17/25	Time Entry	01 - Attorney Time	Review and comment upon cited caselaw re: fee motion.	0.2	\$750.00	\$150.00
Ron Green	4/16/25	Time Entry	02 - NO CHARGE	Discuss billing and matter status with paralegals. No charge.	0.2	\$0.00	\$0.00
Ron Green	4/16/25	Time Entry	01 - Attorney Time	Review and comment upon fee motion.	0.3	\$750.00	\$225.00
						Total	\$118,146.63

Amounts Per Timekeeper

Timekeeper	Hours	Total
AJS	28.8	\$20,275.00
AAG	2.6	\$455.00
CSC	17.5	\$2,870.00
MJR	75.4	\$65,500.00
RDG	36.7	\$23,250.00

EXHIBIT 6

Adjusted Laffey Matrix

LAFFEY MATRIX

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/24- 5/31/25	1.080182	\$258	\$473	\$581	\$839	\$948	\$1141
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389

6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

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

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

EXHIBIT 7

Fee Motions and supporting evidence filed by
PTK's counsel in *Banerjee v. Continental
Incorporated, Inc.*, No. 2:17-cv-00466-APG-
GWF, Dkt. No. 60 (D. Nev. Feb. 27, 2018) and
PTK v. HonorSociety.org, Inc., No. 3:22-cv-
00208-CWR-RPM, Dkt. No. 274 (S.D. Miss.
Oct. 14, 2024)

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ADRISH BANERJEE, an individual, and YAN
HE, an individual,

Plaintiffs

vs.

CONTINENTAL INCORPORATED, INC., d/b/a
CONTINENTAL ENTERPRISES, an Indiana
Corporation, LEAPERS, INC., a Michigan
Corporation, and DOES 1-10, inclusive,

Defendants.

Case No.: 2:17-cv-00466-APG-GWF

**DEFENDANTS' MOTION FOR AWARD
OF MANDATORY ATTORNEY'S FEES,
COSTS, AND STATUTORY DAMAGES
PURSUANT TO Nev. Rev. Stat. § 41.670
(ANTI-SLAPP)**

Defendants Continental Incorporated, Inc. d/b/a Continental Enterprises ("Continental") and Leapers, Inc. ("Leapers") (collectively the "Defendants"), hereby move this Court for entry of a final and enforceable judgment awarding them attorney's fees and costs pursuant to Nevada's Anti-SLAPP statute, Nev. Rev. Stat. § 41.670, and Indiana statute, Ind. Code § 34-7-7-7, incurred in connection with defending against Plaintiffs' now-dismissed claims. Defendants also seek statutory damages of \$10,000 to be awarded to each Defendant. This Motion is made and based on the pleadings and papers on file,

the evidence filed contemporaneously herewith, and the Memorandum of Points and Authorities stated herein.

MEMORANDUM OF POINTS OF AUTHORITIES

I. REMEDIES AVAILABLE TO DEFENDANTS UNDER THE ANTI-SLAPP STATUTE

A. An Award of Attorney's Fees is Mandatory.

An award of attorney's fees to a prevailing defendant under the anti-SLAPP statute is mandatory. *See* Nev. Rev. Stat § 41.670(a), (“[i]f the court grants a special motion to dismiss filed pursuant to NRS 41.660: The court *shall* award reasonable costs and attorney’s fees to the person against whom the action was brought....” (emphasis added)); Ind. Code § 34-7-7-7 (“A prevailing defendant on a motion to dismiss made under this chapter is entitled to recover reasonable attorney’s fees and costs.”). Not only are Defendants entitled to recover their attorney’s fee against Plaintiffs for defending against this action, they are also entitled to fees incurred in filing this motion for fees, also referred to as “fees on fees.” *See Wysocki v. Dourian*, No. 217-CV-00333-JAD-NJK, 2017 WL 4767145, at *2 (D. Nev. October 20, 2017); *SOC-SMG, Inc. v. Christian & Timbers, LLC*, No. 3:08-CV-00392-ECR-VPC, 2010 WL 2085076, at *7 (D. Nev. May 20, 2010); *Anderson v. Dir., Office of Workers Comp. Programs*, 91 F.3d 1322, 1325 (9th Cir. 1996) (“Such compensation must be included in calculating a reasonable fee because uncompensated time spent on petitioning for a fee automatically diminishes the value of the fee eventually received.”).

The mandatory award of fees is an important element of the anti-SLAPP statutes as fee shifting provisions strengthen the enforcement of constitutional rights, such as petitioning the government for redress.¹ A mandatory award of fees places the financial burden of defending against SLAPP actions on the party abusing the judicial system, and encourages private representation. *See Poulard v. Lauth*, 793 N.E.2d 1120, 1124 (Ind. Ct. App. 2003) (citing *Ketchum v. Moses*, 17 P.3d 735, 737 (Cal. 2001)),

¹ The basis for Plaintiffs’ claims against Defendants was Defendants’ actions in reporting (what they believed to be criminal behavior) to law enforcement.

1 *reh'g denied.*

2 Here, Defendants seek the recovery of attorney's fees spent in connection with litigating their
3 anti-SLAPP motion in the amount of \$143,760.² Defendants recognize the amount of attorney's fees is
4 significant and might appear high where it represents litigating a single motion, however, as discussed
5 *infra*, the research for and briefing of the anti-SLAPP motion was an extensive and drawn-out process,
6 largely due to the volume of Plaintiffs' claims, involving multiple state laws, and Plaintiffs' lengthy and
7 voluminous response to the anti-SLAPP motion, which consisted of over 505 pages of exhibits, the
8 majority of which were unauthenticated, untranslated documents written in Chinese. Further, Plaintiffs
9 continued the anti-SLAPP briefing beyond their reply brief with a supplemental filing resulting in an
10 additional two rounds of briefing. Notably, while the amount of fees requested is large, this number
11 represents a significant cut from the actual time and fees expended by Defendants litigating against
12 Plaintiffs' complaint in general (of which eight of the ten claims were dismissed pursuant to the anti-
13 SLAPP motion).

14
15 Nev. Rev. Stat § 41.670 does not address whether attorney's fees are recoverable as to the entire
16 case or if the recovery is limited to fees expended in connection to the anti-SLAPP motion. In an effort
17 to be fair and reasonable in this Motion, Defendants seek only reimbursement for fees related to the anti-
18 SLAPP statute, including those expended in connection with this Motion. That is, in their request for
19 attorney's fees, Defendants do not seek reimbursement for an additional 125.2 hours of billed time
20 related to the following work performed by their attorneys in this case: (1) early case administration; (2)
21 filing of a motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6); (3) efforts related to opposing
22 Plaintiffs' motion to consolidate the instant case with a separate cause of action filed by Defendants in
23 the Southern District of Indiana; and (4) case administration related to requesting a status conference
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26 ² This amount is calculated at 275.7 hours of partner time at the reasonable rate of \$450, 74.4
27 hours of associate time at the reasonable rate of \$250, and 7.3 hours of paralegal time at the reasonable
28 rate of \$150.

1 with the Court. Inclusion of these additional tasks increase the total amount of hours billed to 482.6,
 2 compared to the 357.4 hours related to the anti-SLAPP motion for which Defendants seek
 3 reimbursement in this Motion.³ Defendants request for reimbursement is \$40,080 less than the total
 4 amount of fees expended in connection with the entire case.

5 *1. Calculating Attorney's Fees Under Nevada Law.*

6 Where attorney's fees are recoverable under state anti-SLAPP statutes, state law governs the fee
 7 award. *Graham-Sult v. Clainos*, 756 F.3d 724, 751 (9th Cir. 2014). "In Nevada, 'the method upon
 8 which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only
 9 by reason and fairness.' Accordingly, in determining the amount of fees to award, the court is not limited
 10 to one specific approach; its analysis may begin with any method rationally designed to calculate a
 11 reasonable amount...." *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 548–49 (Nev. 2005)
 12 (quoting *Univ. of Nev. v. Tarkanian*, 879 P.2d 1180, 1188, 1186 (Nev. 1994)); *see also Branch Banking*
 13 *& Tr. Co. v. Regena Homes, LLC*, No. 2:12-cv-00451-APG-GWF, 2016 WL 4644477, at *1 (D. Nev.
 14 Sept 6, 2016).

15 The preferred method employed by Nevada courts to determine a reasonable attorney fee is the
 16 "lodestar" method. *Shuette*, 124 P.3d at 549; *Branch*, 2016 WL 4644477 at *1. Under that approach, the
 17 court "must multiply the number of hours reasonably spent on the case by a reasonable hourly rate to
 18 reach what is termed the lodestar amount." *Herbst v. Humana Health Ins. of Nevada, Inc.*, 781 P.2d 762,
 19 764 (Nev. 1989). "Generally, when determining a reasonable hourly rate, the relevant community is the
 20 forum in which the district court sits." *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th
 21 Cir. 2010) (internal quotation marks omitted). Rate determinations in other cases filed in the District of
 22 Nevada have found prevailing market hourly rates in this forum to be as much as \$450 for partners and
 23 \$250 for an experienced associate. *See Perrigo v. Premium Asset Servs., LLC*, No. 2:14-CV-1052-
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 26 ³ See Exhibit 2, Declaration of Jonathan Polak, ¶ 26.
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GMN-PAL, 2015 WL 4597569, at *10 (D. Nev. July 28, 2015). The actual fee agreement itself does not necessarily cap the lodestar amount. *See United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 755 (9th Cir. 2011) (“[T]he actual fee agreement does not act as a cap on the amount of statutory fees awarded.”); *Corder v. Gates*, 947 F.2d 374, 378 n.3 (9th Cir. 1991) (“[I]t is clear that an award of a ‘reasonable’ attorney’s fee may be made to a prevailing plaintiff notwithstanding the fact that the plaintiff’s attorney agreed to accept a smaller fee or even no fee at all.”); *Nadarajah v. Holder*, 569 F.3d 906, 916 (9th Cir. 2009).

Once a court determines the lodestar, it may adjust it upward or downward based on the factors set forth in Local Rule 54-14(b)(3). *Liguori v. Hansen*, No. 2:11-CV-00492-GWF, 2017 WL 627219, at *11 (D. Nev. Feb. 15, 2017).

2. *Defendants’ Counsel’s Hours and Rates are Reasonable and in Line with Comparable, Prevailing Rates.*

Application of pertinent case authority and the factors set forth in Local Rule 54-14 establish the reasonableness of the requested attorney fees in this matter.

a. A Reasonable Itemization and Description of the Work Performed and Summary of the Time and Labor Required.

The evidence needed to satisfy the lodestar inquiry, as well as the requirements of Local Rule 54-14, is found in the Declarations of Defendants’ counsel of record, Daniel McNutt (attached as Exhibit 1) and Jonathan Polak (attached as Exhibit 2). The McNutt and Polak Declarations include chronological billing entries (the “Billing Entries”) that describe, in detail, the particular tasks performed, the date on which they were performed, and the time devoted to the tasks⁴. Courts have held that computer-generated chronological lists of tasks performed and times devoted to those tasks are sufficient to provide “adequate and specific descriptions of services” of the purpose of determining a

⁴ The Billing Entries have been edited to remove time entries as to tasks unrelated to the anti-SLAPP motion.

1 reasonable fee. *Washington v. Philadelphia Cty. Court of Common Pleas*, 89 F.3d 1031, 1038 (3d Cir.
2 1996) (citation omitted).

3 In determining the amount of time that is reasonable to spend on tasks, “[b]y and large, the
4 [district] court should defer to the winning lawyer's professional judgment as to how much time he [or
5 she] was required to spend on the case.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
6 2008). Here, the reasonableness of the time recorded in the Billing Entries is confirmed by both McNutt
7 and Polak. McNutt, admitted to the bar in 2001, is a prominent Las Vegas, Nevada attorney with a
8 substantial commercial litigation practice. [Exhibit 1, McNutt Dec. ¶ 6.] McNutt has litigated hundreds
9 of cases in his career, including in this district, and is aware of the amount of time required to perform
10 the tasks described on the Billing Entries. [*Id.* at ¶ 10.] Polak is a prominent Indianapolis attorney with
11 a nationwide practice in intellectual property litigation. [Exhibit 2, Polak Dec. ¶ 6.] Polak has litigated
12 hundreds of cases nationwide, including cases involving anti-SLAPP motions, and is aware of the
13 amount of time required to perform the tasks described on the Billing Entries. [*Id.*] Each has opined that
14 the time expended on the anti-SLAPP motion was reasonable. [Exhibit 1, McNutt Dec. ¶ 18; Exhibit 2,
15 Polak Dec. ¶ 26.]
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17 The time set forth in the statements is also reasonable on its face. The briefing on the anti-
18 SLAPP motion in this case took considerable effort, research, and skill. Plaintiffs’ complaint asserted
19 eight separate state law claims against Defendants. In filing the anti-SLAPP motion, Defendants were
20 required to consider questions involving choice of law, analyze two separate state anti-SLAPP statutes,
21 and marshal deposition testimony and declarations to support the motion. Further, as recognized by this
22 Court in its Order granting the anti-SLAPP motion [Dkt. No. 52], in their response, Plaintiffs failed to
23 present admissible evidence in support of their contentions, and attached voluminous, unauthenticated,
24 untranslated documents written in Chinese. These documents consisted of 505 pages of exhibits,
25 requiring Defendants to analyze the record on this case as well as other related cases, research questions
26 related to evidentiary issues, review the voluminous exhibits, and further locate additional evidence to
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1 support their motion. Additionally, Plaintiffs' response to the anti-SLAPP motion contained significant
2 misstatements of the record. After the briefing on the motion, Plaintiffs sought leave to file a
3 supplemental brief to provide this Court an opinion issued in the Eastern District of Michigan which
4 bore no precedential value to this case, necessitating a response by Defendants. When the
5 aforementioned opinion was later overturned by the 6th Circuit, Defendants filed their own motion to
6 supplement the briefing on the anti-SLAPP motion to ensure this Court was aware that the Eastern
7 District of Michigan case had been abrogated. The amount of time, labor, and attention Defendants'
8 attorneys afforded the anti-SLAPP motion was reasonable in light of the legal analysis performed, depth
9 of research required, amount of evidence to consider, and sheer number of filings related to the anti-
10 SLAPP motion.

11 Finally, as discussed *supra*, the amount of time for which Defendants seek reimbursement is
12 reasonable where Defendants have limited their motion for fees as to the time spent litigating the anti-
13 SLAPP motion rather than time spent litigating the entirety of the issues in the lawsuit.

14 b. The Results Obtained and the Amount Involved.

15 Plaintiffs' Complaint asserted a total of ten claims against Defendants, both state and federal,
16 seeking a significant amount of damages, including attorney's fees, treble damages, and punitive
17 damages. Defendants moved to dismiss all eight state claims under the Nevada and Indiana anti-SLAPP
18 statutes. The motion was a complete success and the Court dismissed all eight claims in their entirety.
19 No better result was available to Defendants under the statute.

20 c. The Experience, Reputation, and Ability of the Attorneys, and Skill
21 Requisite to Perform the Legal Services Properly.

22 Taft, Stettinius, & Hollister, LLP ("Taft") is a Midwest law firm with more than 400 lawyers
23 across 8 offices. Taft served as lead counsel in this case. McNutt Law Firm ("MLF") is a Las Vegas
24 law firm with two lawyers. MLF served as local counsel in this case.
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1 Jonathan Polak. Polak is a partner at Taft with more than 23 years' experience. [Exhibit 2, Polak
2 Dec. ¶ 6.] He is a nationally-recognized trial attorney handling high stakes cases for both large and small
3 companies around the United States. [Id.] He serves as chair of Taft's 60+ lawyer intellectual property
4 practice group. [Id.] Polak has appeared before state and federal courts in 25 of the 50 U.S. states, as
5 well as the Trademark Trial and Appeals Board. [Id.] Polak's work and reputation have earned him the
6 title "Super Lawyer" and inclusion in *Best Lawyers in America*®. [Id.]

7 Tracy Betz. Betz is a partner at Taft with more than 13 years' experience. [Id. at ¶ 7.] Betz has
8 extensive first chair experience in both state and federal commercial litigation. [Id.] She is the recipient
9 of numerous awards including "Super Lawyer" from 2015-2018, "Rising Star" from 2010-2012, 2014,
10 and she has been included in *Best Lawyers in America*®. [Id.]

11 Anne Cowgur. Cowgur is a partner at Taft with more than 18 years' experience. [Id. at ¶ 8.] She
12 focuses her practice in the areas of appellate, business litigation, labor & employment, and media law.
13 [Id.] She has extensive experience as a trial lawyer and has been named one of the Top 25 Women and
14 Top 50 Indiana "Super Lawyers" and is also recognized in *Best Lawyers in America*®. [Id.]

15 Jeffrey Stemerick. Stemerick is an associate with Taft with almost 7 years of experience. Prior
16 to private practice, Stemerick served as a law clerk for the chief justice of Indiana. He focuses his
17 practice on complex commercial and environmental litigation in both trial and appellate courts. [Id. at
18 ¶ 9.]

19 Manny Herceg. Herceg is an associate with Taft with over 6 years of experience. [Id. at ¶ 10.]
20 Herceg is a litigation attorney focusing his practice on general commercial matters. [Id.] He has been
21 recognized as a "Rising Star" by Indiana Super Lawyers. [Id.]

22 Cristina Costa. Costa is an associate with Taft with over 4 years of experience. Ms. [Id. at ¶
23 11.] Costa is a litigation and intellectual property attorney handling a wide range of issues involving a
24 full range of IP-related issues, including trademark, trade dress, patent, copyright, and trade secret
25 matters. [Id.]
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1 Brittany Shaw. Shaw is an associate with Taft with over 2 years of experience in commercial
2 litigation. [*Id.* at ¶ 12.] She has been recognized as a “Rising Star” by Indiana Super Lawyers. [*Id.*]

3 Dan McNutt. McNutt is a partner with MLF with over 16 years of experience in commercial
4 litigation. [Exhibit 1, McNutt Dec. ¶¶ 3, 6, 12.] Prior to starting MLF he was a litigation attorney at
5 Nevada’s largest law firm, Lionel Sawyer & Collins. [*Id.* at ¶ 6.] McNutt represents clients in a wide
6 range of complex business, commercial, and civil litigation. [*Id.*]

7 Matt Wolf. Wolf is a senior associate with MLF with over 10 years of experience in commercial
8 litigation. [*Id.* at ¶ 7.] He practices in the areas of general civil litigation, tort, personal injury, products
9 liability, and bad faith. [*Id.*]

10 Lisa Heller. Heller is a paralegal with MLF with over 6 years of litigation experience. [*Id.* at ¶
11 8.]

12
13 d. The Customary Fee and Awards in Similar Cases.

14 When determining a reasonable hourly rate, the relevant community to consider is the forum in
15 which the district court sits, here, Nevada. *Prison Legal News*, 608 F.3d at 454. “Affidavits of
16 the...[petitioning] attorneys regarding prevailing fees in the community, and rate determinations in other
17 cases, particularly those setting a rate for the [petitioning] attorney, are satisfactory evidence of the
18 prevailing market rate.” *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1224 (9th Cir.
19 2016) (quoting *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir.
20 1990)). Courts in the District of Nevada have found reasonable rates in this market to be as much as
21 \$450 for partners and \$250 for an experienced associate. *See Liguori*, 2017 WL 627219, at *11; *Perrigo*,
22 2015 WL 4597569, at *10; *CLM Partners LLC v. Fiesta Palms, LLC*, No. 2:11-CV-01387-PMP, 2013
23 WL 6388760, at *5 (D. Nev. Dec. 5, 2013). In addition, courts in this district have found reasonable
24 hourly rates of \$75 to \$125 for paralegals. *See Crusher Designs, LLC v. Atlas Copco Powercrusher*
25 *GmbH*, No. 214-CV-01267-GMN-NJK, 2015 WL 6163443, *2 (D. Nev. Oct. 20, 2015).
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1 Here, the requested \$143,760 in fees is based on fixed, hourly rates. As discussed *supra*, McNutt
2 is a long-standing Las Vegas, Nevada attorney with a prominent litigation practice. [Exhibit 1, McNutt
3 Dec. ¶ 6.] McNutt has significant experience with the standard market rates in Nevada and has litigated
4 fee petitions in the past. [*Id.* at ¶ 10.] Here, the McNutt Declaration establishes that prevailing rates for
5 similar litigation in Nevada are \$450 from partners and \$250 for associates. [*Id.* at ¶ 11.] Further, the
6 McNutt Declaration establishes rate determinations of his own rate from previous litigation in Nevada
7 in the amount of \$450 for partners and \$250 for associates. [*Id.* at ¶¶ 11-12.] The rates charged by MLF
8 in this case, \$450 for partners, \$275 for associates, and \$150 for paralegals, are consistent with rates
9 customarily charged in the Las Vegas, Nevada market by attorneys at law firms of similar size and/or
10 reputation for similar legal services and experience levels. [*Id.*]

11 Taft serves as lead litigation counsel in this case. [Exhibit 2, Polak Dec. ¶ 13.] The rates charged
12 by Taft in this case, \$350 for partners and \$250 for associates, were discounted from their usual billing
13 rates which typically range from \$390-615 for a partner and \$300-350 for an associate. [*Id.* at ¶ 14.]
14 Pursuant to case law, Defendants seek recovery of Taft's attorney fees at the Nevada market rate of \$450
15 for partners and \$250 for associates. The rate actually billed by Taft on this case does not limit
16 Defendants' recovery to that amount for several reasons. First, again, the relevant market for
17 determining the reasonableness of the rate is Nevada, not Indiana. *See Prison Legal News*, 608 F.3d at
18 454. Second, under Nevada law, the actual fee agreement itself does not necessarily cap the lodestar
19 amount. *See id.*; *Corder*, 947 F.2d at 378 n.3 ("[I]t is clear that an award of a 'reasonable' attorney's fee
20 may be made to a prevailing plaintiff notwithstanding the fact that the plaintiff's attorney agreed to
21 accept a smaller fee or even no fee at all."); *Nadarajah*, 569 F.3d at 916. Finally, the Taft partner rate
22 does not reflect the customary rate even for Indianapolis litigation partners, which ranges from \$390-
23 615, or litigation associates, which ranges from \$300-350. Rather, it reflects a discounted rate offered
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1 to the client.⁵ Both the length of the attorney-client relationship, which has been ongoing with
 2 Continental since 2002 and Leapers since 2015, as well as the high volume of cases being handled by
 3 Taft on behalf of Defendants justified a discounted rate on this matter. [*Id.* at ¶ 15.]

4 This case presents a situation where it is necessary, equitable, and fair to adjust the Taft attorney
 5 hourly partner rate from \$350 to \$450 because the “lodestar” market rate is much higher than the actual
 6 rate charged to Defendants. It should be noted that Defendants do not seek an enhancement of the rate
 7 above lodestar. Rather, they seek an upward adjustment of the actual billed rate to correspond to the
 8 market rate.

9 e. The Novelty and Difficulty of the Questions Involved.

10 Anti-SLAPP motions are not routine to most cases. Further, as discussed *supra*, the motion
 11 required researching, analyzing, and briefing choice of law issues and two state anti-SLAPP statutes as
 12 applied to activities that took place in multiple states. Further, Plaintiffs significantly increased the
 13 difficulty and complexity of the motion by misstating the facts in the record, using inadmissible evidence
 14 in support of their response, and making a supplemental filing that prolonged briefing of the anti-SLAPP
 15 motion.

16 f. The Time limitations imposed by the client or the circumstances.

17 The anti-SLAPP statute requires any motion be filed within 60 days of service of the complaint
 18 with supporting evidence. As a result, Defendants’ counsel was required to act quickly in developing a
 19 litigation strategy, researching two state anti-SLAPP laws, gathering evidence needed to support the
 20 motion, including affidavits, and drafting multiple rounds of briefing. These time constraints increased
 21 attorney fees where counsel was forced to expedite research and briefing and involve additional
 22 attorneys, as necessary, to timely complete the work.

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 ⁵ For example, Mr. Polak’s standard hourly rate in 2017 was \$535. [Exhibit 2, Polak Dec. ¶ 14.]
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g. Preclusion of Other Employment by the Attorney Due to Acceptance of the Case and the “Undesirability” of the case.

These factors were minimally present in this case.

h. The Nature and Length of the Professional Relationship with the Client.

As set forth, *supra*, and his Declaration, Polak has represented defendant Continental since 2002 and defendant Leapers since 2015, providing them with legal counsel in intellectual property and other related cases across the United States. [Exhibit 2, Polak Dec. ¶ 15.] Defendants rely on Polak, his expertise and his knowledge of their businesses, to represent them in multiple cases at one time, often times in locations across the Country. Due to the nature of his relationship with both Defendants, and the high volume of their cases with Taft, Polak offers a unique and unmatched understanding and insight to the Defendants’ cases.

3. Calculation of the Lodestar Amount of Defendants’ Attorney’s Fees.

Consistent with the McNutt and Polak Declarations, the Billing Entries, and the case law cited above, the reasonable, market rate for this case is \$450 for partners, \$250 for associates, and \$125 for paralegals. Counsel in this case reasonably spent 357.4 hours litigating the anti-SLAPP motions, including 275.7 hours for partners, 74.4 hours for associates, and 7.3 hours for a paralegal. Using the lodestar method for calculating the award, Defendants seek a total award of attorney’s fees in the amount of \$143,760.

B. The Award of Defendants’ Costs is Mandatory.

Nev. Rev. Stat. § 41.670 also requires reimbursement of Defendants’ recovery of costs. Costs are limited to those set forth in Nev. Rev. Stat. § 18.005. Defendants seek reimbursement solely for their costs associated with deposition transcripts of two individuals (prosecutor Malcolm Gwinn and detective Robert Weis), travel to and from those same depositions, legal research, and copies. [Exhibit 2, Polak Dec. ¶ 27 and Exhibit 2-C attached thereto.] All of these costs are recoverable under the statute and are directly related to the anti-SLAPP motion. These amounts total \$2,068.14.

C. This Court May, and Should, Award Defendants Statutory Damages in the Amount of \$10,000.

In addition to its fees and costs, the Court may also award each Defendant statutory damages up to \$10,000. Nev. Rev. Stat. § 41.670.⁶ Here, an award of \$10,000 to each Defendant is reasonable and warranted based on the unique facts and circumstances of this case. Especially in light of the fact that Defendants incurred an additional \$40,080 of fees related to this lawsuit, which are not requested in Defendants' request for reimbursement of attorney's fees.

Neither the statute nor the case law provide this Court (or the litigants) much guidance in what should or may be awarded by this Court. In fact, Defendants located only two cases (using Westlaw) where the statutory damages issue was even mentioned – and in those cases, there was no analysis of facts or law. *See Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262 (Nev. 2017); *Jablonski Enterprises, Ltd. v. Nye Cty.*, No. 215-CV-02296-GMN-GWF, 2017 WL 3775396 (D. Nev. Aug. 30, 2017), *report and recommendation adopted sub nom. Jablonski Enterprises, Ltd. v. Nye Cty., Nevada*, No. 215-CV-02296-GMN-GWF, 2017 WL 4103052 (D. Nev. Sept. 14, 2017). In the absence of such instructions, this Court appears vested with great discretion in making the award of these statutory damages. What is clear from the statute is that there are no requirements that must be followed in making this determination. Accordingly, in making this award of statutory damages, the Court need not require evidence of actual harm, real expenses, or any other form of objective proof. Of course, such evidence is before the court, but it should inform, not restrict, this Court's determinations as to the proper amount to award.

⁶ Section 41.670 provides that “[t]he court may award, in addition to reasonable costs and attorneys’ fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought.” Accordingly, it appears that each Plaintiff would be jointly and severally liable for any award to any individual Defendant. So, here, if the Court were inclined to award the maximum statutory damages penalty, then both Plaintiffs would be jointly and severally liable to Defendant Continental for \$10,000, and also jointly and severally liable to Defendant Leapers for \$10,000.

1 The basis for an award of statutory damages is rooted in the history of the dispute between the
2 parties. This is not the only complaint Plaintiffs filed against Defendants for essentially the exact same
3 claims, relying on the same set of facts. Plaintiffs first filed a nearly identical action against Defendants
4 on February 24, 2016 in Nevada state court. Defendants removed that action to the District of Nevada
5 and were successful in obtaining a complete dismissal of the complaint pursuant to Fed. R. Civ. Proc.
6 12(b)(6). Defendants incurred significant fees in defending against Plaintiffs' first complaint.
7 Defendants do not seek reimbursement of these fees as part of the request for attorneys' fees and costs,
8 nor are they otherwise referenced in this motion, but suffice it to say those fees greatly exceed \$20,000.
9 [Exhibit 2, Polak Dec. ¶ 16.]

10 After the dismissal of their first complaint, on February 13, 2017, Plaintiffs filed the, nearly
11 identical, instant action. This is despite having those very same claims dismissed under Fed. R. Civ.
12 Proc. 12(b)(6). Once again, Defendants, were forced to expend attorney fees to defend against the
13 meritless lawsuit. Defendants filed another motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6),
14 and also filed the special motion to dismiss under the anti-SLAPP statute. Defendants were completely
15 successful in their attempts to dismiss all eight state court causes of action pursuant to the anti-SLAPP
16 statute and, as to one of the two remaining federal causes of action pursuant to the Fed. R. Civ. Proc.
17 12(b)(6) motion.

18 This litigation has been anything but straightforward. In fact, Banerjee and He, through their
19 counsel, have seemed to deliberately make this matter anything but simple. Certainly, the refiling of
20 non-revised claims already dismissed by another Judge in this District is, itself, consternating. But, in
21 addition to having to defend against the same lawsuit for a second time, Defendants were also forced to
22 address Plaintiffs' efforts to consolidate this action with a separate proceeding filed by Defendants
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1 against Plaintiffs.⁷ Although the Court granted Plaintiffs' motion to consolidate the two actions, it is
2 reasonable to assume this Court would not have consolidated the cases if the eight state causes of action
3 had already been dismissed pursuant to the anti-SLAPP statute. In other words, if Plaintiffs had not
4 filed their SLAPP lawsuit in the first place, Defendants likely would not have been forced to expend
5 fees on the motion to consolidate. Again, Defendants have not sought reimbursement of these fees in
6 their request for attorney's fees.

7 There is also the issue of the manner in which the Anti-SLAPP motion was litigated. Plaintiffs
8 started this case by filing a second complaint in which they malign Defendants, calling them liars, and
9 accusing them of making false statements to police and prosecutors. [Dkt. No. 2.] In response to the
10 anti-SLAPP motion, Plaintiffs again accuse Defendants of being liars, telling half-truths, failing to give
11 dispositive information to law enforcement and prosecutors, and they inform the Court that "[n]othing
12 Defendants say can be taken for face value." [Dkt. No. 37.] While Plaintiffs made all of these serious,
13 disparaging statements about Defendants in public filing, when the time came to buttress those
14 statements, *Plaintiffs utterly failed to provide any evidence whatsoever* to support their allegations
15 against Defendants. One can only assume Plaintiffs never had any evidence to support their claims, and
16 they were brought purely to harass Defendants. If Plaintiffs would have made these same statements
17 outside of the litigation context, they would have been actionable. While Defendants ultimately
18 prevailed against Plaintiffs, the derogatory statements nonetheless sit in the public record. This is
19 precisely why the legislature provides a mechanism to sanction a party abusing the judicial system: to
20 put the financial burden on the abusing party and discourage such unwarranted lawsuits.
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24 ⁷ Defendants filed affirmative claims against Plaintiffs in the Southern District of Indiana as a
25 result of Plaintiffs' infringement of Defendants' markings and symbols of identification. Plaintiffs
26 successfully sought transfer of that case to the District of Nevada. Plaintiffs then sought to have that
27 case consolidated with the instant action. At the time of consolidation, the anti-SLAPP motion was
28 pending and awaiting a ruling from this Court.

1 Further, as part of opposing the anti-SLAPP motion, rather than keeping the proceedings
2 streamlined, Plaintiffs filed with their response a ridiculously voluminous amount of unauthenticated,
3 untranslated documents written in Chinese with no real explanation as to their relevance or content. This
4 required a considerable amount of client review (Leapers' principals speak Chinese), which is of course
5 not compensable under the attorney fee recovery statute. Further, there is the considerable distraction
6 to Leapers and Continental from the proceeding itself. Whether it be attorney-client conferences, or
7 other background work assisting counsel of record in preparing the response, time spent litigating is
8 meaningful and a distraction from Leapers' business operations. That time has a value. Admittedly, no
9 time records were kept, but it is not unreasonable to believe that, where Leapers and Continental incurred
10 more than six-figure sums in attorney's fees, the time value of client efforts could meet or exceed
11 \$20,000.
12

13 If all of this were not enough, the parties now find themselves in a procedural quagmire caused
14 by the eleventh hour withdrawal of Mr. Pitegoff and his former law firm as Plaintiffs' counsel of record.
15 Defendants have been forced to incur even more attorney's fees where Plaintiffs' counsel sought to
16 withdraw from this case only two days after this Court granted Defendants' motion to dismiss. Mr.
17 Pitegoff and his former law firm know that the end is likely nigh on claims that they are believed to have
18 taken on under a contingency fee arrangement with the Plaintiffs. Although the Court wisely stayed the
19 withdrawal while this motion is pending, this series of events require the undersigned and their local
20 counsel to continue to appear at hearings, prepare and file motions or responses, and deal with issues
21 that are not typically encountered in the ordinary course of litigation. While Defendants seek
22 reimbursement for the attorney fees expended opposing the motion to withdraw, in the event this Court
23 determines they are not reimbursable under the anti-SLAPP statute, it would be reasonable to consider
24 Defendants' fees in connection with these events in making a statutory damages award.

25 The Nevada legislature, in enacting §41.660, intended to send a strong message to plaintiffs such
26 as Banerjee and He – claims seeking to chill petitions to the government for redress will not be tolerated.
27
28

Banerjee and He made the claims in this suit in peril of \$41,670 and its award of attorney fees and statutory damages. This Court should also be mindful of the need for sending a message to other potential plaintiffs considering claims against parties like Continental and Leapers who were merely exercising their First Amendment rights to report a crime. An award of statutory damages in this case would send such a message and be consistent with the public policy behind the Nevada anti-SLAPP statute and similar statutes across the country.

II. CONCLUSION

The purpose of an anti-SLAPP motion is to allow a defendant to quickly end meritless litigation. In fact, the statute actually stays discovery in an effort to eliminate the need for the defendant to expend any additional attorney's pending the outcome of the anti-SLAPP motion. Unfortunately, Plaintiffs' actions in this case required Defendants to spend significant attorney's fees in connection to the filing of their anti-SLAPP motion, where Plaintiffs engaged in a pattern designed to besmirch the name of Defendants, increase costs, and keep Defendants and their attorneys' working on this meritless case.

For the foregoing reasons, Defendants respectfully request that the Court enter an order awarding them their reasonable attorney's fees incurred in connection with their anti-SLAPP motion, in the amount of \$143,760, costs in the amount of \$2,068.14, and the statutory penalty amount of \$10,000 to each Defendant, and for all other just and proper relief.

DATED February 27, 2018.

MCNUTT LAW FIRM, P.C.

/s/ Dan McNutt

DANIEL R. MCNUTT (SBN 7815)
MATTHEW C. WOLF (SBN 10801)
625 South Eighth Street
Las Vegas, Nevada 89101

*Attorneys for Defendants Continental Incorporated, Inc.,
and Leapers, Inc.*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that pursuant to F.R.C.P. 5 on February 27, 2018, I caused service of the foregoing **DEFENDANTS' MOTION FOR AWARD OF MANDATORY ATTORNEY'S FEES, COSTS, AND STATUTORY DAMAGES PURSUANT TO Nev. Rev. Stat. § 41.670 (ANTI-SLAPP)** by mailing a copy by United States Postal Service, postage prepaid, via email, and/or via electronic mail through the United States District Court's CM/ECF system to the following at their last known address or e-mail:

WILL LEMKUL (SBN 6715)
MORRIS, SULLIVAN, LEMKUL & PITEGOFF, LLP
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JEFFREY I. PITEGOFF (SBN 5458)
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Las Vegas, Nevada 89169
Tel. (702) 808-7976
Attorney for Plaintiffs

/s/ Lisa Heller
An Employee of McNutt Law Firm

Exhibit 2 – Declaration of Jonathan Pollack

DECLARATION OF JONATHAN G. POLAK, ESQ.

JONATHAN G. POLAK, hereby states as follows, under the penalty of perjury:

1. I am an adult and competent to testify to all matters herein and have personal knowledge of all issues and papers herewith.

2. I am a duly licensed attorney at law and am admitted to practice in all courts in the State of Indiana, as well as the State of Texas. I have been admitted to the District of Nevada pro hac vice for this matter.

3. I am an attorney with Taft, Stettinius, & Hollister, LLP, counsel for Defendants.

4. I make this Declaration in support of Defendants' Motion for Award of Mandatory Attorney's Fees, Costs, and Statutory Damages Pursuant to N.R.S. § 41.670.

I. QUALITIES OF DEFENDANTS' COUNSEL WITH TAFT.

5. The following professionals associated with Taft performed work on this case: (i) partner Jonathan G. Polak, (ii) partner Tracy N. Betz, (iii) partner Anne M. Cowgur, (iv) Jeffrey Stemerick, (v) associate Manny Herceg, (vi) associate Cristina Costa, and (vii) associate Brittany Shaw.

6. I am a partner at Taft with more than 23 years' experience. I am a nationally-recognized trial attorney, handling high stakes cases for both large and small companies around the United States. I have litigated hundreds of cases nationwide, including cases involving anti-SLAPP motions. I serve as chair of Taft's 60+ lawyer intellectual property practice group. I have appeared before state and federal courts in 25 of the 50 U.S. states, as well as the Trademark Trial and Appeals Board. I have been awarded the honor of "Super Lawyer" and have been included in *Best Lawyers in America*®.

7. Tracy Betz is a partner at Taft with more than 13 years' experience. Ms. Betz has extensive first chair experience in both state and federal commercial litigation and has experience litigating anti-SLAPP motions. She is the recipient of numerous awards including "Super Lawyer" from 2015-2018, "Rising Star" from 2010-2012, 2014, and she has been included in *Best Lawyers in America*®.

1 8. Anne Cowgur is a partner at Taft with more than 18 years' experience. She focuses
 2 her practice in the areas of appellate, business litigation, labor & employment, and media law.
 3 She has extensive experience as a trial lawyer and has been named one of the Top 25 Women and
 4 Top 50 Indiana "Super Lawyers" and is also recognized in *Best Lawyers in America*®.

5 9. Jeffrey Stemerick is an associate with Taft with almost 7 years of experience. Prior
 6 to private practice, Mr. Stemerick served as a law clerk for the chief justice of Indiana. He focuses
 7 his practice on complex commercial and environmental litigation in both trial and appellate
 8 courts.

9 10. Manny Herceg is an associate with Taft with over 6 years of experience. Mr.
 10 Herceg is a litigation attorney focusing his practice on general commercial matters. He has been
 11 recognized as a "Rising Star" by Indiana Super Lawyers.

12 11. Cristina Costa is an associate with Taft with over 4 years of experience. Ms. Costa
 13 is a litigation and intellectual property attorney handling a wide range of issues involving a full
 14 range of IP-related issues, including trademark, trade dress, patent, copyright, and trade secret
 15 matters.

16 12. Brittany Shaw is an associate with Taft with over 2 years of experience in
 17 commercial litigation. She has been recognized as a "Rising Star" by Indiana Super Lawyers.

18 **II. THE FEES AND AMOUNT OF WORK PERFORMED BY TAFT.**

19 13. Taft serves as lead litigation counsel in this case and other related cases involving
 20 Leapers, Inc. and Continental Incorporated, Inc.

21 14. The rates charged by Taft in this case, \$350 for partners and \$250 for associates,
 22 were discounted from their usual billing rates which typically range for a partner from \$390-615
 23 and \$300-\$350 for an associate. For example, my customary rate in 2017 was \$535 per hour and
 24 is \$565 in 2018.

25 15. Both the length of the attorney-client relationship with Continental (ongoing since
 26 2002) and Leapers (ongoing since 2015), as well as the multiple cases being handled by Taft on
 27 behalf of Defendants, justified charging a discounted rate for this matter.
 28

16. This is the second lawsuit filed by Plaintiffs against Defendants. The first complaint was dismissed in its entirety pursuant to Fed. R. Civ. Proc. 12(b)(6). Defendants incurred more than \$20,000 in defending against Plaintiffs' first lawsuit.

17. From February 22, 2017, to the present date, the total amount of time Taft has billed for representing Defendants for matters related to the anti-SLAPP motion is 346.2 hours.

18. A breakdown of the billing is as follows:

Name	Hours Related to Anti-SLAPP Motion
Jonathan G. Polak	73.3
Tracy N. Betz	172
Anne M. Cowgur	30.4
Jeffrey Stemerick	19.2
Manny Herceg	12.3
Cristina Costa	28.1
Brittany Shaw	10.9
TOTALS	346.2

19. Below is a brief synopsis of some of the tasks performed by Taft in this Nevada action related to the anti-SLAPP motion. Detailed billing entries are attached as Exhibit 2-A.¹

- a. Extensive research of several state anti-SLAPP laws;
- b. Multiple rounds of briefing the anti-SLAPP motion including the initial brief, reply brief, opposition to Plaintiffs' supplemental brief, and Defendants' own supplemental filing;
- c. Conducting depositions relied upon in anti-SLAPP motion;
- d. Marshalling exhibits in support of anti-SLAPP motion including the drafting of several declarations;
- e. Reviewing Plaintiffs' filings, conducting a review of the record and research regarding same;

¹ The billing entries have been edited to remove time entries for tasks unrelated to the anti-SLAPP motion.

- f. Opposing Plaintiff counsel's motion to withdraw prior to filing of motion for attorney's fees pursuant to anti-SLAPP statute, including traveling to and attendance at hearing regarding same; and
- g. Researching and drafting the fee motion.

20. In support of the anti-SLAPP motion, Defendants relied upon the depositions of Malcolm Gwinn and Robert Weis, depositions that were conducted in a different, related cause of action pending in Indiana. Detailed billing entries as to those depositions are attached as Exhibit 2-B.

III. THE FEES AND AMOUNT OF WORK PERFORMED BY MLF.

21. MLF served as local counsel in this action. I have worked with MLF on this and related matters since 2016.

22. MLF represented Defendants on an hourly rate of \$450 for partners and \$275 for associates.

23. I have had the opportunity to review the MLF time records in this case. It is my belief, based on his review of those time records, as well as my own experiences with Mr. McNutt and Mr. Wolf, they have been diligent and efficient in their role as local counsel in this action.

24. Below is a brief synopsis of some of the tasks performed by MLF as local counsel as related to the anti-SLAPP motion:

- a. Conducting research related to the anti-SLAPP motion to dismiss;
- b. Providing general advice regarding local practice;
- c. Assisting lead counsel with drafting and revising anti-SLAPP briefing, including initial brief, reply brief, response to Plaintiffs' motion to supplement briefing and Defendants' motion to supplement briefing;
- d. Assisting with opposition to Plaintiffs' counsel's motion to withdraw prior to filing of motion for attorney's fees pursuant to anti-SLAPP statute, including attendance at hearing regarding same;
- e. Assisting with drafting of the fee motion.

IV. THE TOTAL AWARD.

25. Defendants seek reimbursement of the Taft partners' time at the rate of \$450 per hour rather than \$350 per hour which is my understanding to be the market rate in Nevada.

26. Using those rates set forth in paragraph 22 for all time billed in this case by both Taft and MLF for their fees related to the anti-SLAPP motion, Defendants seek a total award of attorney's fees of \$143,760. Based on my experience, it is my opinion that the time expended on the anti-SLAPP motion and the fees requested are reasonable.²

27. Defendants also incurred costs in connection with litigating the anti-SLAPP motion. Defendants seek reimbursement for certain costs including:

- a. Travel to and from depositions used in connection with the anti-SLAPP motion;
- b. Deposition transcripts for the aforementioned depositions;
- c. Copies; and
- d. Legal Research.

A more detailed summary of the costs attributable to the anti-SLAPP motion is attached as Exhibit 2-C. In total, Defendants seek reimbursement for \$2,068.14 in costs.

On February 27, 2018, in the United States, it is declared under penalty of perjury under the law of the United States that the foregoing is true and correct.

/s/ Jonathan G. Polak
Jonathan G. Polak, ESQ.

² Defendants do not seek reimbursement for over 125.2 hours' worth of billed time related to the following additional work performed by their attorneys in this case: (1) early case administration; (2) filing of a motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6); (3) efforts related to opposing Plaintiffs' motion to consolidate the instant case with a separate cause of action filed by Defendants in the Southern District of Indiana; and (4) case administration related to requesting a status conference with the Court. Inclusion of these additional tasks result in a total amount of hours spent to 482.6.

Exhibit 2-A – Taft Billing Entries

Time Report

CONTINENTAL ENTERPRISES, INC. / Banerjee NV II & Michigan Combined Spreadsheet

Date	Attorney Name	Description	Rev Hrs Narrative
02/22/2017	TNBE Betz, Tracy N.	Partner	0.20 Conference with Karl Manders; review of complaint filed.
02/23/2017	TNBE Betz, Tracy N.	Partner	0.20 Emails regarding refilling of Banerjee; review of filing.
02/24/2017	JGPO Polak, Jonathan G.	Partner	1.10 Review complaint; work on strategy for dismissal; confer with Karl Manders and Carl Brizzi regarding same.
03/23/2017	JGPO Polak, Jonathan G.	Partner	0.10 Exchange emails with Jeff Pitegoff regarding waiver of service and agreement on deadline for responsive pleading; confer with Tracy Betz regarding same.
04/04/2017	JGPO Polak, Jonathan G.	Partner	1.30 Continue work on anti-slapp motion to dismiss; confer with Tracy Betz regarding same.
04/20/2017	JGPO Polak, Jonathan G.	Partner	1.20 Receive and review memo from Manny Herceg regarding status and strategy issues related to ANTI-SLAPP; evaluate issues related to same.
05/02/2017	JGPO Polak, Jonathan G.	Partner	0.40 Receive and review email from Tina Ding regarding status; prepare response to same.
05/04/2017	TNBE Betz, Tracy N.	Partner	0.80 Conference with Karl Manders regarding Anti-SLAPP motion.
05/11/2017	JGPO Polak, Jonathan G.	Partner	0.40 Confer with Karl Manders regarding status.
05/15/2017	JGPO Polak, Jonathan G.	Partner	1.40 Continue work on Anti-SLAPP motion; confer with Tracy Betz regarding same; continue work on motion to dismiss; telephone conference with Dan Leidell providing update and information on status and strategy.
05/15/2017	TNBE Betz, Tracy N.	Partner	2.20 Work on motion to dismiss and Anti-SLAPP;
5/16/2017	JGPO Polak, Jonathan G.	Partner	0.80 Confer with Tracy Betz regarding depositions of Gwinn and Weiss; consider issues related to Weiss and Gwinn depositions and possible use in connection with anti-slapp motion to be filed in Nevada and Michigan.
05/16/2017	JGPO Polak, Jonathan G.	Partner	0.10 Prepare email to Karl Manders and Tina Ding regarding update; continue work on Anti-SLAPP motion.
5/17/2017	JGPO Polak, Jonathan G.	Partner	1.90 Continue evaluation of anti-slapp motion viability in light of motion to dismiss and other research; confer with Karl Manders and Tracy Betz regarding same; receive and review email from Tina Ding regarding same; prepare email to all counsel and clients regarding need for telephone conference to discuss anti-slapp motion; receive and review email from Brian Wassom regarding: answer date; prepare email to Brian Wassom regarding same; prepare email to Jeff Pitegoff.
05/18/2017	TNBE Betz, Tracy N.	Partner	11.70 Work on Anti-SLAPP motion to dismiss;
05/18/2017	JGPO Polak, Jonathan G.	Partner	2.30 Confer with Tracy Betz regarding motion to dismiss and Anti-SLAPP motion; telephone conference with Karl Manders regarding same; continue work on motion to dismiss; continue work on Anti-SLAPP motion.
05/18/2017	0563 Costa, Cristina	Associate	6.90 Continue drafting significant revisions to brief in support of special motion to dismiss; research and analyze proper standard for Anti-SLAPP action in 9th circuit; finalize bring in support of special motion to dismiss.
05/19/2017	TNBE Betz, Tracy N.	Partner	3.10 Continued work on Anti-SLAPP.
05/19/2017	JGPO Polak, Jonathan G.	Partner	Review deposition transcripts taken of Malcolm Gwinn and Detective Weis for use in connection with Anti-SLAPP motion; prepare brief outline of testimony to be used in connection with that; confer with Tracy Betz; continue work on revised brief in support of motion to dismiss; continue work on revised brief in support of motion to dismiss based on
05/19/2017	0662 Shaw, Brittany L.	Associate	2.50 Anti-SLAPP; continue evaluation of Anti-SLAPP issues.
05/20/2017	TNBE Betz, Tracy N.	Partner	1.50 Research examples of privilege or justification in Anti-SLAPP cases
05/21/2017	TNBE Betz, Tracy N.	Partner	0.90 Work on Anti-SLAPP; call with Karl Manders.
05/21/2017	0662 Shaw, Brittany L.	Associate	9.50 Continue working on Anti-SLAPP motion.
05/22/2017	TNBE Betz, Tracy N.	Partner	2.00 Research examples and format for Special Motion to Dismiss in 9th Circuit or Nevada courts specifically including the second prong of Anti-SLAPP statute
			12.90 Call with clients regarding Anti-SLAPP; continue drafting briefs.

05/22/2017	0644	Herceg, Manuel	Associate	1.10	Conference call with client regarding issues related to Indiana anti-SLAPP in Michigan and Nevada anti-SLAPP. Continue work on motion to dismiss; continue work on motion under anti-slapp; prepare declaration for Karl Manders;
05/22/2017	JGPO	Polak, Jonathan G.	Partner	8.20	prepare declaration for Tina Ding; multiple conferences with Tracy Betz regarding same.
05/22/2017	JGPO	Polak, Jonathan G.	Partner	1.40	Prepare for telephone conference with client regarding status and Anti-SLAPP motion; telephone conference with client regarding same.
05/22/2017	0662	Shaw, Brittany L.	Associate	2.40	Research standard Plaintiff must show in Anti-SLAPP cases in Nevada or 9th Circuit; Research 4th Amendment claims in Anti-SLAPP cases in Nevada and 9th Circuit
05/22/2017	0644	Herceg, Manuel	Associate	2.60	Review pleadings, research and analyze case law and Indiana Anti-SLAPP statute; summarize findings regarding the same.
05/22/2017	0644	Herceg, Manuel	Associate	4.50	Prepare section in brief addressing Indiana Anti-SLAPP law and its application to malicious prosecution claim. Revise the same and incorporate additional case law regarding malice and qualified privilege.
05/22/2017	ALCO	Cowgur, Anne L.	Partner	0.80	Confer with Jonathan Polak regarding question about unpublished authority; review relevant federal rules; follow up with Polak about same.
05/23/2017	TNBE	Betz, Tracy N.	Partner	5.10	Continue working on Anti-SLAPP motion; Multiple conferences with briefing team to discuss issues coming up in connection with motion to dismiss and Anti-SLAPP motion; continue work on Anti-SLAPP brief; multiple conferences with clients regarding same; continue work on declaration of Karl Manders and multiple conferences with Karl Manders regarding same; continue work on declaration of Tina Ding and multiple conferences regarding same; continue work on strategy around draft motions to dismiss.
05/23/2017	JGPO	Polak, Jonathan G.	Partner	5.00	dismiss.
05/23/2017	0662	Shaw, Brittany L.	Associate	2.30	Draft citations in memorandum of support of special motion to dismiss
05/23/2017	0644	Herceg, Manuel	Associate	0.70	Revise Brief in Support of Special Motion to Dismiss (Anti-SLAPP motion) focusing on issue of public concern. Revise Anti-SLAPP Motion to Dismiss incorporating additional arguments related to Indiana Anti-SLAPP issues.
05/23/2017	0644	Herceg, Manuel	Associate	2.20	Confer with Tracy Betz and Jonathan Polak regarding the same.
05/24/2017	0662	Shaw, Brittany L.	Associate	1.10	Update deposition summaries for Wies and Gwinn
05/24/2017	TNBE	Betz, Tracy N.	Partner	0.00	Work on issues related to pro hac; work on issue related to oral argument;
05/30/2017	TNBE	Betz, Tracy N.	Partner	0.20	Work on issues related to Anti-SLAPP filings.
05/30/2017	JGPO	Polak, Jonathan G.	Partner	0.30	Confer with Karl Manders regarding status and update; review.
06/05/2017	TNBE	Betz, Tracy N.	Partner	0.40	Work on issues related to anti-SLAPP and status of case; review of scheduling order; Exchange emails with Tracy Betz regarding status of various projects and guidance on next steps; telephone conference with Tracy Betz regarding same.
06/07/2017	JGPO	Polak, Jonathan G.	Partner	0.40	conference with Tracy Betz regarding same.
06/28/2017	TNBE	Betz, Tracy N.	Partner	1.10	Review response to anti-Slapp.
06/28/2017	JGPO	Polak, Jonathan G.	Partner	1.20	Receive and review Banerjee and He's responses to Anti-Slapp motion and Rule 12(b)(6) motion; begin work on strategy for reply.
06/29/2017	JGPO	Polak, Jonathan G.	Partner	0.40	Confer with Tracy Betz regarding pending motions; final review of response to motion to consolidate.
06/29/2017	TNBE	Betz, Tracy N.	Partner	0.60	Review of response to special motion to dismiss.
06/30/2017	JGPO	Polak, Jonathan G.	Partner	0.80	Continue work on reply to anti-SLAPP motion; confer with Tracy Betz regarding same.
06/30/2017	JDST	Stemerick, Jeffrey D.	Associate	0.20	Confer with Tracy Betz regarding briefing schedule.
06/30/2017	TNBE	Betz, Tracy N.	Partner	1.00	Work on reply in support of anti-SLAPP motion; review of deadlines; email client update regarding same; conferences with Jeff Stemerick and Jonathan Polak regarding same; email with opposing counsel regarding enlargement.
07/02/2017	TNBE	Betz, Tracy N.	Partner	0.30	Email with client regarding reply to anti-SLAPP motion and factual information needed. Draft motion to enlarge reply deadline; email with opposing counsel regarding same; finalize and prepare for filing; conference with Jonathan Polak regarding pending deadline and strategy for reply; email update to all clients regarding deadlines and strategies.
07/03/2017	TNBE	Betz, Tracy N.	Partner	1.10	deadlines and strategies.
07/05/2017	TNBE	Betz, Tracy N.	Partner	0.50	Work on issues related to reply to anti-SLAPP; review of brief and notes.

07/12/2017	TNBE	Betz, Tracy N.	Partner	0.20	Work on reply in support of anti-SLAPP; conference with Jonathan Polak regarding same.
07/12/2017	JGPO	Polak, Jonathan G.	Partner	0.80	Telephone conference with Tracy Betz regarding status of reply brief to Anti-SLAPP; work on strategy.
07/13/2017	TNBE	Betz, Tracy N.	Partner	1.10	Work on reply in support of anti-SLAPP motion; work on issues related to confidentiality of evidence filed by Banerjee; emails with client regarding same.
07/14/2017	TNBE	Betz, Tracy N.	Partner	7.20	Continued working on reply in support of anti-SLAPP; conferences with Jonathan Polak regarding same;
07/15/2017	TNBE	Betz, Tracy N.	Partner	3.80	Continue drafting reply in support of anti-SLAPP; conferences with Jonathan Polak regarding legal arguments.
07/16/2017	TNBE	Betz, Tracy N.	Partner	4.10	Continue drafting reply in support of anti-SLAPP; legal research regarding same.
07/17/2017	TNBE	Betz, Tracy N.	Partner	7.50	Continue drafting reply in support of anti-SLAPP; conference with Manny Hercog regarding disputed factual issues; conference with Jonathan Polak regarding arguments; Conference with Karl Manders regarding brief and legal theories; email with clients regarding same.
7/17/2018	MHE	Hecceg, Manuel	Associate	1.20	Review argument for Reply in Response to Anti-Slapp Motion; revise the same.
07/17/2017	JGPO	Polak, Jonathan G.	Partner	1.90	Review draft Reply brief in support of Anti-SLAPP motion; prepare revisions to same; prepare email to Tracy Betz regarding same; confer with Tracy Betz; receive and review reply brief in support of Motion to Consolidate filed by Plaintiffs.
07/17/2017	0563	Costa, Cristina	Associate	3.30	Review, consolidate, and cross-references notes from client regarding evidence of ownership
07/17/2017	0563	Costa, Cristina	Associate	4.90	Review and analyze case law regarding use of interested party as interpreter and need for authorization regarding same; identify testimony by Malcom Gwinn needed for reply brief; review and analyze case law regarding self-authenticating evidence; review relevant probable cause affidavits for purposes of drafting reply brief; review and analyze case law regarding plaintiff's request for additional discovery; review and analyze plaintiff's cites to factual record in opposition to anti-slapp motion; review file to determine which depositions have been taken; review public records obtained from opposing counsel to determine scope of investigation materials obtained.
07/18/2017	0563	Costa, Cristina	Associate	1.50	Correspondence to/from client regarding translations of chinese court documents; review chinese court translations provided by client; conference with J. Polak and T. Betz regarding same.
07/18/2017	TNBE	Betz, Tracy N.	Partner	2.90	Work on revisions to anti-SLAPP motion; Cont'd work on reply to Anti-SLAPP motion; review revisions to same from Tina Ding and Brian Wassom; telephone conference with Tracy Betz regarding same; receive and review Chinese court proceeding documents from Cristina
07/18/2017	JGPO	Polak, Jonathan G.	Partner	1.30	Costa and consider use of same in connection with Anti-SLAPP motion.
07/19/2017	TNBE	Betz, Tracy N.	Partner	3.60	Continue working on revisions to reply in support of anti-SLAPP; review order from court regarding hearing.
07/19/2017	0563	Costa, Cristina	Associate	0.50	Correspondence with client regarding translations and declaration authenticating same; review translations provided by client
07/20/2017	0563	Costa, Cristina	Associate	3.10	Draft declaration of Tina Ding in support of reply brief; prepare exhibits 1-3 for same; conference with T. Betz regarding reply brief; cite check reply brief
07/20/2017	TNBE	Betz, Tracy N.	Partner	2.50	Revisions to reply brief; emails regarding translations; emails with team regarding same; continue finalizing anti-SLAPP reply.
07/21/2017	0563	Costa, Cristina	Associate	4.00	Finalize case cites in reply brief; finalize exhibits in support of reply brief; correspondence to/from client regarding finalized declaration
07/21/2017	TNBE	Betz, Tracy N.	Partner	5.10	Review and revise brief for filing; review all exhibits; file brief.
07/27/2017	JGPO	Polak, Jonathan G.	Partner	0.40	Receive and review email from B. Wassom regarding fee order and reconsideration; consider same in context of issues related to pending Anti-SLAPP motion; prepare email to B. Wassom regarding same.
08/01/2017	JGPO	Polak, Jonathan G.	Partner	1.20	Telephone conference with Karl Manders regarding Anti-SLAPP reply; telephone conference with Tracy Betz regarding same; final review of reply brief and revisions related to same.
10/16/2017	JGPO	Polak, Jonathan G.	Partner	0.40	Receive and review motion to file supplemental authority; review emails with local counsel regarding same; consider issues related to object; confer with T. Betz regarding same.
10/16/2017	TNBE	Betz, Tracy N.	Partner	0.40	Review of filing of motion to supplement authority by Banerjee; email local counsel regarding same.
10/17/2017	JGPO	Polak, Jonathan G.	Partner	1.90	Continue evaluation of strategy related to response to motion for leave; prepare email to client regarding same; exchange emails with M. Wolf, local counsel; regarding same; confer with K. Manders regarding same; confer with A. Cowgur regarding response to motion for leave; begin work on same.

10/17/2017	TNBE	Betz, Tracy N.	Partner	0.60	Strategize regarding response to motion for leave to file supplemental brief; emails with local counsel regarding same.
10/17/2017	ALCO	Cowgur, Anne L	Partner	0.80	Conference Jonathan Polak regarding motion for leave to file supplemental authority; follow up email regarding same.
10/18/2017	ALCO	Cowgur, Anne L	Partner	3.00	Review, analyze and annotate motion for leave to supplement and proposed submissions; note questions for Karl Manders and additional related materials needed.
10/19/2017	ALCO	Cowgur, Anne L	Partner	2.80	Conference Karl Manders regarding factual arguments and rebuttal points relevant to motion for leave to supplement; conference Jonathan Polak regarding sources of relevant information, key arguments, approach to responding; conduct research relevant to motion.
10/23/2017	JGPO	Polak, Jonathan G.	Partner	0.90	Confer with A. Cowgur regarding strategy on pending motion for leave response; continue work on response to motion for leave.
10/23/2017	ALCO	Cowgur, Anne L	Partner	5.80	Research local rule 7-2(g) and cases applying standard; review, analyze recent Nevada Court Opinion; review, analyze Michigan District Court orders; review analyze Indiana District Court opinion; confirm what documents have already been filed with the Anti-SLAPP motion; review, analyze proposed declaration of Janet Watson; conference Jonathan Polak and Jacob Mendelsohn regarding same.
10/24/2017	JGPO	Polak, Jonathan G.	Partner	2.50	Confer with A. Cowgur regarding response to motion for leave; consider issues related to same; continue work on response.
10/24/2017	ALCO	Cowgur, Anne L	Partner	6.30	Continue work on response to motion for leave and companion motion for leave to file rebuttal evidence; consider sources of evidence other than the declarations of Vanderburgh County representatives; work with Jonathan Polak and Jacob Mendelsohn regarding same; work on reconciling the addition of evidence with arguments against their filing; work on portion of opposition related to the Nevada Supreme Court case.
10/25/2017	ALCO	Cowgur, Anne L	Partner	4.80	Work with Jacob Mendelsohn on Declarations; conference Jonathan Polak about concern that there is not enough evidence available to justify filing a separate motion for leave; work regarding revisions and additions to motion to prepare for client review; send motion to Karl Manders and Jacob Mendelsohn; telephone conference with Karl Manders to discuss concerns with approach of trying to rebut select portions of the Michigan Order.
10/26/2017	JGPO	Polak, Jonathan G.	Partner	2.40	Continue work on response to motion for leave; make revisions to same; confer with A. Cowgur and K. Manders regarding same; respond to T. Ding email regarding due date for same; prepare email to client and others regarding draft response to motion for leave.
10/26/2017	ALCO	Cowgur, Anne L	Partner	2.50	Review Jacob Mendelsohn's edits to brief; work regarding preparing response brief for review for full team; review email correspondence related to same.
10/27/2017	ALCO	Cowgur, Anne L	Partner	0.80	Review additional correspondence, comments on response; conference Jonathan Polak about any remaining issues to prepare for filing.
10/30/2017	ALCO	Cowgur, Anne L	Partner	2.80	Work on final revisions, additions to response to motion for leave to file supplemental authority; finalize for filing; communicate with Matt Wolf, Jonathan Polak regarding filings; confirm filing.
10/31/2017	TNBE	Betz, Tracy N.	Partner	0.40	Review response to motion for leave to file supplemental authority.
12/28/2017	TNBE	Betz, Tracy N.	Partner	0.20	Conference with Jonathan Polak regarding status conferences and strategy regarding anti-SLAPP.
01/10/2018	JGPO	Polak, Jonathan G.	Partner	1.20	Receive and review 6th Circuit order and consider effect of same on Nevada proceeding; confer with T. Betz regarding same; prepare email to K. Manders regarding same; telephone conference with K. Manders regarding same.
01/10/2018	TNBE	Betz, Tracy N.	Partner	0.70	Review of 6th Circuit opinion on functionality; worked on supplemental filing regarding same.
01/19/2018	TNBE	Betz, Tracy N.	Partner	1.50	Review Sixth Circuit opinion; strategize regarding response to supplement; begin drafting same.
01/21/2018	TNBE	Betz, Tracy N.	Partner	2.20	Work on supplement to brief in opposition to motion to supplement.
01/22/2018	JGPO	Polak, Jonathan G.	Partner	1.10	Review draft motion for leave to supplement response in opposition; consider revisions to same; review 6th Circuit opinion for same; confer with T. Betz regarding same; consider issues related to proper approach with court for presentation of reversal opinion.
01/22/2018	TNBE	Betz, Tracy N.	Partner	3.40	Revision supplement to briefing regarding anti-SLAPP; emails with Jonathan Polak regarding same.
01/23/2018	JGPO	Polak, Jonathan G.	Partner	1.30	Continue work on supplemental brief regarding 6th Circuit opinion; prepare revisions to same and email to T. Betz.
01/23/2018	TNBE	Betz, Tracy N.	Partner	0.10	Email with Karl Manders regarding supplemental filing.

01/24/2018	TNBE	Betz, Tracy N.	Partner	0.70	Conference with Jonathan Polak regarding supplemental filing; email with local counsel to finalize for filing.
02/02/2018	JGPO	Polak, Jonathan G.	Partner		Receive and review Order on motion to dismiss (Anti-SLAPP); prepare email to client regarding same; confer with T.
02/05/2018	JDST	Stemerick, Jeffrey D.	Associate	0.90	Betz regarding same and next steps; review Nevada statute regarding attorneys' fees and recovery of costs.
02/06/2018	JDST	Stemerick, Jeffrey D.	Associate	2.30	Research what attorney fees are recoverable under anti-slap statute.
				8.00	Research what attorney's fees are recoverable under anti-slap statute.
					Research what fees are recoverable under Indiana and Nevada anti-slap statutes; draft email to Jonathan Polak
02/07/2018	JDST	Stemerick, Jeffrey D.	Associate	4.20	regarding same.
02/07/2018	TNBE	Betz, Tracy N.	Partner	0.20	Review research regarding recovering of attorneys' fees.
					Continue work on analysis of issues related to fee recovery; confer with J. Stemerick regarding same; review authorities
02/07/2018	JGPO	Polak, Jonathan G.	Partner	0.90	related to fee recovery; confer with T. Betz regarding results of telephone conference with opposing counsel.
02/08/2018	JDST	Stemerick, Jeffrey D.	Associate	1.90	Research whether fee award under anti-slap statute can be recovered from counsel.
					Confer with K. Manders regarding fee recovery and withdrawal of Pitegoff; confer with T. Betz regarding same; review email from Continental regarding fees incurred in connection with Anti-SLAPP; several communications with client regarding same; several communications with opposing counsel regarding same; confer with court r hearing on 2/13; consider broader strategic issues raised by hearing change and withdrawal of counsel; conf w/ T. Betz authorizing work on motion to recover fees; review caselaw concerning recovery of lodestar fees; receive and review new order vacating withdrawal order; exchange numerous emails with J. Pitegoff regarding same; prepare email to client regarding same.
02/08/2018	JGPO	Polak, Jonathan G.	Partner	3.90	
02/12/2018	JDST	Stemerick, Jeffrey D.	Associate	0.10	Research deadline to file fee petition.
02/12/2018	TNBE	Betz, Tracy N.	Partner	6.7	Prepare for hearing; travel to hearing.
02/13/2018	TNBE	Betz, Tracy N.	Partner	9.1	Prepare for hearing; attend hearing; return travel from hearing.
					Continue preparation for hearing; pre-hearing conference with local counsel; attend hearing; post-hearing conference
2/13/2018	JGPO	Polak, Jonathan G.	Partner	9.20	with all counsel regarding settlement and next steps; travel back to Indianapolis, IN.
2/14/2018	JGPO	Polak, Jonathan G.	Partner	0.30	Confer with K. Manders regarding status of matter and results of hearing.
02/16/2018	TNBE	Betz, Tracy N.	Partner	0.20	Work on motion for fees
					Exchange emails with client regarding status; continue work on application for attorneys' fees; prepare email to T. Betz
02/16/2018	JGPO	Polak, Jonathan G.	Partner	2.80	with outline of argument and facts for same.
02/19/2018	TNBE	Betz, Tracy N.	Partner	2.70	Work on fee motion; conference with Jonathan Polak regarding same.
					Continue drafting petition for fees under anti-SLAPP statute; conduct legal research regarding same; conferences with
02/20/2018	TNBE	Betz, Tracy N.	Partner	6.50	Jonathan Polak regarding same; emails regarding same.
					Continue work on attorneys' fee motion; confer with T. Betz regarding same; confer with K. Manders regarding
02/20/2018	JGPO	Polak, Jonathan G.	Partner	1.3	research on Banerjee assets and issues related to attorneys' fee motion.
					Research 9th circuit case law regarding attorney's fees, reasonability, documentation provided, and is Nev. Rev. Stat.
02/21/2018	0662	Shaw, Brittany L.	Associate	1.6	41.670.
02/21/2018	JDST	Stemerick, Jeffrey D.	Associate	2.5	Research attorney fee issues related to recoverability of fees for the entire case.
					Respond to series of email requests from T. Betz for information related to past billing and other information needed for
					motion for recovery of fees and costs per Anti-SLAPP motion; continue work on motion; review and revise draft
02/21/2018	JGPO	Polak, Jonathan G.	Partner	2.2	regarding same; confer with T. Betz regarding same.
02/21/2018	TNBE	Betz, Tracy N.	Partner	7.90	Continue drafting fee motion; continue review of invoices; conferences with Jonathan Polak regarding same.
					Continue work on motion for fee and statutory damages award; lengthy conference with T. Betz regarding same to
02/22/2018	JGPO	Polak, Jonathan G.	Partner	0.90	discuss revisions to same.
					Calculate attorney's fees for motion; revisions to brief; draft declarations; conferences with Jonathan Polak; review fee
02/22/2018	TNBE	Betz, Tracy N.	Partner	7.50	statements; email clients.
					Confer with K. Manders regarding status and pending motion for recovery of fees and statutory damages; continue
02/23/2018	JGPO	Polak, Jonathan G.	Partner	1.30	work on brief and review revised brief; confer with T. Betz regarding same.

02/23/2018	TNBE	Betz, Tracy N.	Partner	1.70	Email clients regarding fee petition; work on revisions to same; work on declarations; conferences with Jonathan Polak. Confer with T. Betz regarding need for further research and argument on \$10,000 statutory damages request; continue work on same; review caselaw regarding same; consider arguments for statutory damages and nature of arguments
02/25/2018	JGPO	Polak, Jonathan G.	Partner	1.10	supporting request for same.
02/25/2018	TNBE	Betz, Tracy N.	Partner	4.90	Conference with Jonathan Polak regarding fee motion; revisions to fee motion; continue work on affidavits; email local counsel regarding same; review of invoices.
02/26/2018	TNBE	Betz, Tracy N.	Partner	1.90	Review edits to declaration; conference with Jonathan Polak regarding fee motion; revisions to fee motion related to statutory damages award; review of invoices for privilege and relevance to motion; finalize exhibits for filing; email status update to local counsel and Jonathan Polak regarding filing of fee motion.
2/26/2018	563	Costa, Cristina	Associate	1.70	Cite check brief in support of motion for fees.
2/27/2018	TNBE	Betz, Tracy N.	Partner	6.20	Continue making edits to brief and declarations; review citations; conference with Jonathan Polak regarding same; finalize exhibits and review of same; file brief.
2/27/2018	563	Costa, Cristina	Associate	2.20	Finalize citations in brief in support of motion for fees in preparation of filing.
			Total:	329.7	

Exhibit 2-B –Billing Entries re: Gwinn and Weiss Depositions

Time Report

Leapers, Inc. / Presma, Inc. and Chuanwen Shi (LEA12-02000)

Date	Attorney Name	Description	Orig Hrs	Rev Hrs	Narrative
05/15/2017	TNBE Betz, Tracy N.	Partner	2.60	2.60	Work on preparation for depositions of Gwinn and Weiss;
05/16/2017	TNBE Betz, Tracy N.	Partner	13.90	13.90	Prepare for and attend depositions of Robert Wies and Malcolm Gwinn.
			16.50	16.50	

Exhibit 2-C – Costs Attributable to Anti- SLAPP Motion

Cost Report

Date	SM/T ask	Description	Amt
5/16/2017	TNBE	Roundtrip mileage to deposition of Weiss.	\$177.62
05/23/2017		Lexis search charge	\$515.11
05/23/2017		Lexis search charge	\$20.28
		Conner Reporting Invoice- Deposition	
6/1/2017	TNBE	Transcripts of Gwinn and Weiss	\$953.30
07/16/2017		Lexis search charge	\$7.33
07/17/2017		Lexis search charge	\$82.72
07/17/2017		Lexis search charge	\$1.05
07/17/2017		Lexis search charge	\$1.05
07/17/2017		Copying/printing	\$6.15
07/18/2017		Lexis search charge	\$165.44
07/18/2017		Lexis search charge	\$7.33
07/18/2017		Lexis search charge	\$123.56
07/19/2017		Copying/printing	\$2.10
07/21/2017		Copying/printing	\$3.90
07/21/2017		Copying/printing	\$0.45
02/09/2018		Copying/printing	\$0.75
Total:			\$2,068.14

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-RPM
)	
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
)	
-----)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

**PHI THETA KAPPA HONOR SOCIETY’S
MOTION FOR SANCTIONS/ATTORNEY’S FEES**

Phi Theta Kappa Honor Society (“PTK”) submits its motion for attorney’s fees, seeking sanctions against HonorSociety.org, Inc. and Honor Society Foundation, Inc. (collectively “Honor Society”) for their vexatious, harassing, and bad-faith misconduct against PTK and its CEO, Dr. Lynn Tincher-Ladner. Honor Society has caused PTK to prepare and file two motions seeking injunctions, a motion for contempt, and this Motion for Sanctions/Attorney’s Fees. Honor Society’s out-of-state counsel has also made misrepresentations to the Court. The attorney’s fees

incurred by PTK would not have been incurred but for the misconduct of Honor Society and its counsel.

Based on the Court's invitation and Honor Society's continued bad-faith conduct, PTK seeks its reasonable and necessary attorney's fees in the amount of \$533,662.50 incurred through September 30, 2024, as follows:

	Taft		Wise Carter		TOTAL AMOUNT
	<u>Hours:</u>	<u>Amounts:</u>	<u>Hours:</u>	<u>Amounts</u>	
First Motion for Preliminary Injunction	159.10	\$82,839.50	5.90	\$2,738.00	\$85,577.50
Reply in Support of Motion for Preliminary Injunction	74.10	\$41,663.50	2.50	\$952.50	\$42,616.00
Hearing travel time	26.00	\$16,480.00	0.00	0.00	\$16,480.00
Hearing prep time	42.70	\$23,481.50	22.00	\$8,537.00	\$32,018.50
Hearing testimony time	12.20	\$7,828.50	7.00	\$2,975.00	\$10,803.50
SUBTOTAL:	314.10	\$172,293.00	37.40	\$15,202.50	\$187,495.50
Second Motion for Preliminary Injunction	284.40	\$133,217.00	6.90	\$2,481.50	\$135,698.50
Reply in Support of Motion for Preliminary Injunction	80.50	\$39,660.50	24.30	\$8,017.50	\$47,678.00
Hearing travel time	0	\$0	0	\$0	\$0
Hearing prep time	27.20	\$19,294.00	17.20	\$4,951.00	\$24,245.00
Hearing testimony time	43.00	\$27,047.50	36.20	\$13,383.00	\$40,430.50
Supplemental Declaration and Response to Motion to Strike	20.10	\$10,232.00	3.90	\$1,580.50	\$11,812.50
SUBTOTAL:	455.20	\$229,451.00	88.50	\$30,413.50	\$259,864.50
Motion for Contempt/Preliminary Injunction Compliance Investigation	74.90	\$37,225.50	5.00	\$1,927.00	\$39,152.50
Reply in Support of Motion for Contempt	50.70	\$26,584.50	6.20	\$2,241.50	\$28,826.00
SUBTOTAL:	125.60	\$63,810.00	11.20	\$4,168.50	\$67,978.50
Motion for Attorney's	39.40 ¹	\$18,324.00	0	\$0	TBD

¹ As of the filing of this Motion, PTK has not yet calculated the full amount of its attorney's fees incurred in connection with the Motion. PTK reserves the right to discount its time in connection with the Motion well as the right to include additional fees incurred as a result of preparing the Motion and the reply.

	Taft		Wise Carter		TOTAL AMOUNT
	<u>Hours:</u>	<u>Amounts:</u>	<u>Hours:</u>	<u>Amounts</u>	
Fees					
Reply in Support of Motion for Attorney's fees	TBD	TBD	TBD	TBD	TBD
SUBTOTAL					
TOTALS:	934.30	\$483,878.00	137.10	\$49,784.50	\$533,662.50

PTK also seeks \$17,602.77 in costs incurred through September 30, 2024.

PTK intends to supplement its request and evidence on reply to include additional fees incurred on preparing its Motion for Attorney's Fees as well as fees and costs incurred relating to the Rule 30(b)(6) deposition of Honor Society on October 1, which was limited to Honor Society's revisions to PTK's Wikipedia page. PTK also reserves its right to seek additional fees incurred as a result of preparing its Appellee's Response to Honor Society's Motion to Stay the Injunction, which PTK recently filed with the Fifth Circuit, in connection with its counsels' work performed primarily in October.

Along with the accompanying memorandum brief, PTK is submitting the following exhibits in support of the instant motion:

- Ex. A - Declaration of Jonathan G. Polak
- Ex. B - Declaration of Michael B. Wallace
- Ex. C - Declaration of Rachel Smoot
- Ex. D - Declaration of Dr. Lynn Tincher-Ladner

PTK requests the Court grant its Motion for Sanctions/Attorney's Fees.

Respectfully submitted this 14th day of October 2024.

/s/ Jonathan G. Polak
Jonathan G. Polak (Pro Hac Vice)
W. Michael Etienne (Pro Hac Vice)

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/s/ Charles E. Cowan
Michael B. Wallace, MSB # 6904
Charles E. Cowan, MSB # 104478
Beau M. Bettiga, MSB #105905
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WISE CARTER CHILD & CARAWAY, P.A.
Post Office Box 651
Jackson, Mississippi 39205
Phone 601-968-5500

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Jonathan G. Polak, do hereby certify that I have this day electronically filed the foregoing pleading or other paper with the Clerk of Court using the ECF system which sent notification to all counsel of record.

Dated: October 14, 2024

/s/ Jonathan G. Polak
Jonathan G. Polak

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-
)	RPM
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
)	
-----)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

DECLARATION OF JONATHAN G. POLAK

I, Jonathan G. Polak, declare as follows:

1. I am over the age of eighteen and competent to testify to the matters in this declaration. I have personal knowledge and access to information on the matters discussed in this declaration, as counsel of record for the Plaintiff/Counter-Defendant Phi Theta Kappa Honor Society (“PTK”) and Third-Party Defendant Dr. Lynn Tincher-Ladner in this lawsuit. My

declaration is based on my personal knowledge and investigation into the information and documents discussed in this declaration.

A. The Procedural History Demonstrates Honor Society's Bad Faith.

2. In early March 2024, Honor Society launched a malicious campaign against PTK. Honor Society harassed PTK's partner colleges with 280+ records requests originating from a disguised email address and subject line appearing to associate with PTK. Honor Society also sent malicious, misleading, PTK-related survey questions to 450,000+ recipients, including community college students in PTK's market, to tarnish PTK's reputation.

3. PTK investigated Honor Society's conduct related to the surveys and the records request. PTK's counsel then contacted Honor Society's counsel seeking to have Honor Society cease sending the surveys and records requests to avoid the need for Court intervention. After failed discussions, PTK was forced to prepare and file a motion seeking injunctive relief from the deceptive records requests and malicious survey along with an amended complaint, and a motion for expedited discovery into the conduct, with each having supporting briefs, declarations, replies, and numerous exhibits. *See, e.g.*, ECF Nos. 112, 112-4, 114, 113, 115, 116, 117, 124, 125, 126 and 126-1. PTK's attorney's fees in connection with this legal work detailed in Ex. A-1 attached hereto, the contents of which are described in more detail below.

4. On March 27, 2024, the Court held an in-person evidentiary hearing on PTK's motion for injunctive relief and related filings. Ex. A-2 attached hereto is a true and accurate copy of the Evidentiary Hearing Transcript dated March 27, 2024. As shown in the transcript, in the first injunction hearing, Honor Society's out-of-state counsel stated, "Honor Society sent a onetime survey out . . . It doesn't need to send the survey again" and "the survey was a onetime deal . . . They received the results from that survey; they are done." Ex. A-2 at 98:22-100:22. Michael

Moradian, Honor Society's Executive Director, sat at his counsel's table when that representation was made and offered no objection or correction.

5. On March 28, 2024, the Court issued an Order granting PTK injunctive relief and admonishing Honor Society's malicious and deceptive conduct. ECF No. 130. The Order also permitted PTK to file an amended complaint to add its claims of tortious interference. *Id.* The Order also permitted PTK to conduct discovery in accordance with the existing discovery schedule. *Id.* As a part of that discovery, PTK deposed Moradian, who testified he disagreed with the Order and that Judge Reeves was "misinformed" and did not have "the chance to have a truly objective analysis." *See* Ex. A-3, 5/3/2024 Moradian Dep. Tr. at 47:1-63:22 and 212:18-22, a true and accurate copy of which is attached hereto.

6. As part of that discovery, PTK also deposed David Asari, the same individual who laundered the records requests through a personal email account. Asari testified that the voluminous March records requests were issued to "get an idea of if PTK's claims of 10 percent were – being in the top 10 percent were correct" and "if those claims were correct." Ex. A-14, 5/2/24 Asari Dep. Tr. at 227:19-228:14. In other words, the records requests were used to collect information as evidence in this litigation.

7. In May 2024, Honor Society expanded its malicious attack on PTK. This time Honor Society reframed the allegations of its now-enjoined survey questions as alleged facts and published the maligning, misleading material across the Internet for all to see. Specifically, Moradian created approximately 5,000 AI-generated webpages and related publications maligning PTK by publishing false, misleading, deceptive, malicious material intended to destroy the reputations of PTK and its CEO, Dr. Tincher-Ladner. While the webpages parroted Honor Society's counterclaims in the litigation, they did so in misleading ways. For example, they failed

to state that author was a not neutral party, and was in fact the counterclaimant in the litigation, used racist tropes in the illustrations and otherwise falsely suggested PTK's and Dr. Tinchler-Ladner's association with embezzlement and sexual harassment allegations. Honor Society linked the maligning webpages to its websites, social media accounts, and other websites owned by Moradian.

8. PTK was forced to spend extensive time and effort investigating both the vast volumes of material published by Honor Society and the damage to PTK. The investigation was complex because Honor Society cross-linked its 5,000 webpages to its website and the websites and social media accounts of Moradian's other companies as well. Not to mention, throughout the rapid investigation, Honor Society edited the webpages and constantly created new ones. The number of pages grew in just days from hundreds to thousands and at its height totaled approximately 5,000 malicious webpages. Again, PTK contacted Honor Society's counsel seeking to have Honor Society take down the malicious publications to avoid the need for Court intervention. And again, after failed discussions, PTK was forced to prepare and file a second motion seeking injunctive relief from the 5,000 maligning, bad-faith publications with a supporting, brief, declarations, and reply, each having many exhibits. *See, e.g.*, ECF Nos. 220, 221, 221-1, 221-48, 231-1, 231. PTK and its counsel moved at a grueling pace to investigate Honor Society's mass-publications and prepare its motion and supporting papers. Its goal was to obtain relief as fast as possible to stop the harm that 5,000 malicious webpages tied to each of its community colleges had already caused it. PTK's attorney's fees incurred in connection with this legal work are detailed in Ex. A-4 attached hereto, the contents of which are described in more detail below.

9. PTK was confident that its papers (including Dr. Tincher-Ladner's declarations and 60+ exhibits detailing Honor Society's conduct and PTK's damages) would provide the Court the information it needed to reach its decision. That said, over PTK's objection, Honor Society requested a full in-person evidentiary hearing with live witness testimony from Mr. Moradian and Dr. Tincher-Ladner. The in-person hearing lasted two-full days. Ex. A-5 attached hereto is a true and accurate copy of the Evidentiary Hearing Transcript (Volumes 1 and 2) dated July 12, 2024 and July 17, 2024.

10. While waiting for the Court to rule on the pending (second) motion for injunctive relief, on August 19, 2024, PTK brought to Honor Society's attention that Honor Society's survey, which was the subject of the first preliminary injunction proceedings, was still in use, albeit without the six questions called out in the Court's First Preliminary Injunction Order. PTK asked for an explanation for why the Court was told in March that the survey was no longer being used, but it was still in use months later. Ex. A-6 attached hereto is a true and accurate copy of PTK's correspondence to Honor Society dated August 19, 2024.

11. Honor Society's out-of-state counsel responded that it was some "other survey" that was now in use. Honor Society's out-of-state counsel also stated, "At no point did either HonorSociety or I represent to the Court that HonorSociety would not send other surveys or other survey questions." This response avoided the question, but the clear intent was to state the survey at issue was "new" and thus different from the old survey. But in a deposition taken of Moradian on October 1, 2024, he clearly stated that this survey referenced in his out-of-state counsel's letter was the "same" survey as was the subject of the injunction (just without the six questions at issue). Ex. A-7 attached hereto is a true and accurate copy of Honor Society's response to PTK dated August 30, 2024. This is important not only for the misrepresentations of out-of-state counsel but

also to show that survey language still had negative questions about PTK intended to elicit only negative responses, or to suggest that only negative responses would be true. (For example, one question continuing to be fielded read: “Please elaborate on why you are dissatisfied with PTK. The truth is important and your opinion matters!”).

12. On August 22, 2024, the Court issued an Order granting PTK injunctive relief and strongly admonished Honor Society for its bad-faith conduct. *See* ECF No. 230. The Order expressly identifies Honor Society’s conduct, which it found to be misleading. Honor Society was ordered to subject itself to discovery to determine whether it was responsible for edits to PTK’s Wikipedia page that the Court said “suggest an intentional scheme to delete favorable content about PTK and introduce unfavorable content about PTK, rather than speak the truth.” *See* ECF No. 230 at 10. In the Order, the Court invited PTK to seek its fees after its Wikipedia discovery. Specifically, the Court recognized its “inherent power to assess attorney’s fees,” for example “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” and it “believes that standard has been met as to certain online posts.” *See* ECF No. 230 at 24.

13. Even still, Honor Society failed to comply with the Second Preliminary Injunction Order. PTK spent extensive time and effort investigating the thousands of publications that failed to comply with the Order. In some cases, Honor Society made no attempt at to comply with the Order. For example, its PTK Lawsuit support webpages lacked disclaimers entirely. In other instances, Honor Society complied with the express language of the Order but deliberately violated its spirit. For example, most of Honor Society’s disclaimers were smaller than required 12-point font. Most egregiously, Honor Society also enlarged the surrounding text to further the very confusion the disclaimer was intended to dispel. Where Honor Society did comply with the Order, it did so only because of PTK’s efforts to force compliance.

14. PTK wrote Honor Society's counsel demanding Honor Society comply with Order. Honor Society's out-of-state counsel wrote back denying any wrongdoing. Through that correspondence and Moradian's declaration after-the-fact, it became clear that Honor Society and its out-of-state counsel believed it was PTK's job to identify any failures of Honor Society to comply with the Court's Order, and that Honor Society's role in compliance with the Order was reactive, not proactive. PTK offered Honor Society the ability to avoid litigating the contempt issues by complying with the Order, but Honor Society rejected the offer, and PTK was forced to file its motion and supporting papers. *See* ECF Nos. 242, 242-1, 261-1, 243, 261. PTK's attorney's fees in connection with this legal work are detailed in Ex. A-8 attached hereto, the contents of which are described in more detail below.

15. PTK was forced to spend significant resources to defend itself and preserve its reputation in the face of Honor Society's smear campaign. Every aspect of this side-show, satellite litigation was Honor Society's doing, and at every turn Honor Society could have stood down, removed the offensive content, and avoided the costs incurred to date. At the relevant points, out-of-state counsel could have been truthful as to their intentions and the facts, but for whatever reason did not do so. As a result, PTK now moves for fees. PTK's attorney's fees in connection with this legal work are detailed in Ex. A-9 attached hereto, the contents of which are described in more detail below. PTK anticipates filing a reply in support of its motion for fees, for which it reserves the right to seek its fees.

B. The Rule 30(b)(6) Deposition Demonstrates Honor Society's Bad Faith.

16. After the Court's entry of its Second Preliminary Injunction Order, on August 22, the day of Order, and pursuant to the Court's instruction that it do so, PTK issued a Rule 30(b)(6) Deposition Notice to Honor Society. The Notice listed three discrete topics, each of which was

related to the revisions to PTK's Wikipedia entry. A true and accurate copy of the 30(b)(6) Deposition Notice served on Honor Society on August 22, 2024, is attached hereto as Ex. A-10.

17. Honor Society only produced objections and declined to produce a witness at that time. Honor Society contended that PTK was only entitled to a single Rule 30(b)(6) deposition in the case, and so any deposition on the Wikipedia revisions must be addressed in that context and within the total time limitations of the rule. This was despite the Court's Order for Honor Society to "subject itself to discovery" on the matter so that PTK may report back quickly on the facts related to the Wikipedia revisions. *See* ECF No. 230 at 26. As a result, PTK raised this issue, among many others, in a discovery conference with Magistrate Judge Myers on September 28th. During this conference, Magistrate Judge Myers ordered Honor Society to produce a witness in response to PTK's Rule 30(b)(6) deposition notice, without prejudice to issuing a second notice on other issues in the case at a later time. Magistrate Judge Myers also expressly refused to limit the time for the deposition to anything less than the seven (7) hour limit, despite Honor Society's request to limit the deposition to only a few hours. PTK's objection to any reduced time limit was based on prior experience in deposing Moradian, his repeated non-responsiveness during those depositions, and his likely use of the "clock" to avoid answering all relevant questions. These concerns turned out to be well founded because during the October 1 Rule 30(b)(6) deposition, it became clear that had the deposition been limited to only a few hours, Moradian would have run out the clock without providing PTK with any substantive information.

18. Of course, PTK's intention was not to depose Mr. Moradian for the full time. In fact, it was expected the deposition (assuming a cooperative and responsive witness) would only take around two (2) hours. On October 1st, I deposed Honor Society via Zoom for approximately seven (7) hours. For this deposition, Honor Society designated Michael Moradian, its Executive

Director and Founder, as its corporate witness. A true and accurate copy of the 30(b)(6) Deposition Transcript of Honor Society conducted on October 1, 2024 is attached hereto as Ex. A-11.

19. PTK needed to use the entire seven hours due to Moradian's evasiveness, inconsistent testimony, and unwillingness to answer questions asked. This was Moradian's fourth deposition in this matter. In my opinion, Moradian's goal throughout the deposition was to intentionally not answer the questions being asked. To demonstrate this, I would point to his testimony, which was sometimes absurd and sometimes personal attacks towards me, but rarely responsive:

- "Well, the implication is mischaracterization, which is a perpetual habit of your legal style or maybe some would say chicanery . . ." Ex. A-11 at 9:4-6.
- "So I'm very familiar with the way you operate. And you know, the way I answer that question will be -- set up to be used against me either way and, you know, this is just the way that you frame your arguments." *Id.* at 51:17-21.
- "And I would say to Judge Reeves or any interested party that leaders can come from anywhere. Heros [sic] can come from anywhere. Just because you're litigated does not mean you cannot stand up for the rights of students and for the general public. Facts are facts and Wikipedia arbitrates and determines that and these are their determinations, not mine." *Id.* at 77:2-83:4
- "I'm sorry, I'm just trying my best to help you here, but what I would say is, like a broken record, you're bending the space time continuum." *Id.* at 158:23-25
- "I don't know if I'm qualified to answer that. I'm just one person contributing to Wikipedia. I'm not a Wikipediaian." *Id.* at 191:16-18.

20. In my decades of experience as a litigator, I have never been a part of a deposition where the witness was so abusive of the deposition process. Over *thirty* questions had to be repeated to Moradian, either by myself or the court reporter, based on his unwillingness to answer the question. For example, I had to ask Moradian *nine* times if he was the one responsible for removing Fred Haise's name from the PTK Wikipedia page, despite his obligation to prepare for this deposition, before he confirmed he was. *Id.* at 10:10-13:14. I also had to ask Moradian *eight*

times if he ever disclosed to any Wikipedia moderator that he was the executive director for Honor Society, before he confirmed he had not. Ex. A-11 at 69:15-72:15. Further, I had to ask Moradian *ten* times if he recalled the Court found Honor Society's enjoined survey questions to be malicious before Moradian confirmed that he did. *Id.* at 77:9-80:8. It took *eleven* times for Moradian to respond as to whether he agreed with the Court's ruling that there is no factual basis for referring to Robin Lowe as a PTK employee. *Id.* at 216:13-222:21. Including these questions and dozens of others, I noted over fifty instances when Moradian's answers were non-responsive to my questions.

21. Despite claiming to be a great fan of Wikipedia for nearly twenty years, Moradian only recalled creating one account: WikiObjectivity. *Id.* at 38:5-11, 39:4-12, 74:21-75:22. This account was created on April 16th, mere weeks after the Court entered its First Preliminary Injunction Order and days after Honor Society filed its Second Amended Counterclaims. *Id.* And despite Moradian's position that the account was meant to bring objectivity to the honor society space, he made more edits to PTK's Wikipedia page than any other. He attempted to justify his edits because PTK's account was "advertorial" in nature, which Moradian alleges is improper. *Id.* at 108:4-22, 113:5-117:4. For example, Moradian claimed that the history section on the page and PTK's claim of an affiliation to Phi Beta Kappa were unfounded and advertorial, despite PTK producing a licensing agreement between the two honor societies in this case months ago. *Id.* at 73:19-24, 117:22-118:18, 119:3-22; *see also* Ex. A-12, PTK0132046, a true and accurate copy of which is attached hereto. He also claimed that the words "Phi Theta Kappa was born" is "advertorial" and somehow improper. Ex. A-11 at 116:2-20. He stated, "You know, the tone there is not an objective encyclopedic tone and somebody could, you know, take exception to an encyclopedia, you know, claiming, you know, this is the birth of Venus here. This is just -- this is not an appropriate tone for Wikipedia." *Id.* at 117:9-16.

22. Moradian claimed that he was making these changes as the curator of the Honor Society museum, a function of the Honor Society Foundation. Ex. A-11 at 29:19-29:25.

23. Moradian confirmed he removed the majority of the “Notable members” from the article because he claimed he was unable to verify their membership. He said there was no corresponding reference footnote nor was he able to find any information online (i.e., PTK’s website). Ex. A-11 at 13:22-14:21, 122:8-16, 122:25-123:16, 124:2-126:24; 131:8-21. 132:12-133:4. Of course, this did not stop Moradian from including his own additions to PTK’s Wikipedia page without any footnote references. *Id.* at 166:7-167:12 (revising PTK’s Founder’s day description, and testifying: “No, there is not a footnote to any of this changes, and no, it’s not necessary [to include a footnote].”). Moradian did not feel he needed to confirm the members were in fact members; he felt his only obligation were to delete them – and hypocritically, he did not feel that the footnote “rule” applied to him, only PTK because there was text he added that contained no cited authority in any footnote. *Id.* at 125-8 (“The lack of a footnote is really all that’s required [to delete notable members].”).

24. When questioned as to whether he had looked for any other notable members of PTK, Moradian responded incredulously that he had spent “Probably between a hundred to a thousand hours . . . Closer to a thousand” searching for other notable members and was essentially unable to locate anyone else besides two prior PTK presidents and Thomas Matthew Crooks. Ex. A-11 at 127:4-130:8, 134:4-137:2. Specifically when asked what was notable about Thomas Matthew Crooks, Moradian responded that he was famous for “being a PTK member.” *Id.* at 131:25-132:3. According to Moradian, Crooks’ association with PTK “was viewed notable, reliable and relevant by media sources.” *Id.* at 132:12-133:4. But only a single media outlet (TMZ)

reported said affiliation. Moradian also testified that when PTK attempted to revert this change and add the Notable members back, he caused that change to be reversed. *Id.* at 143:5-17.

25. Moradian also testified that he revised PTK's article in compliance with Wikipedia's policies and without "bias" – but obviously that is not the case. Ex. A-11 at 49:5-50:1. Three minutes later, he revised his testimony to admit he did act with bias, it was just "lesser" than PTK's "bias." *Id.* at 50:20-51:25. But Wikipedia's Conflict of Interest ("COI") page notes that editors should disclose "*any* COI," including in instances where an editor is in a legal dispute with the page's subject or when an editor is a competitor. *See* Ex. A-13, Wikipedia Conflict of Interest Policy. An editor can note the conflict at the top of the affected "talk page," in the "edit summary" of any of his contribution, or on his user page. *Id.* Yet Moradian made no note of his conflict on any page or comment, nor did he tell any other Wikipedia user that he had a conflict of interest or was the adverse party to PTK in the lawsuit noted in PTK's article. Ex. A-11 at 69:15-72:15. Nor did Moradian have any reasonable response for why he included Honor Society's litigation contentions but not PTK's in his revisions. *Id.* at 170:25-180:3.

26. I also asked Moradian about Wikipedia's Universal Code of Conduct on "content vandalism and abuse of the projects," which is defined as "[d]eliberately introducing biased, false, inaccurate or inappropriate content, or hindering, impeding or otherwise hampering the creation (and/or maintenance) of content." Ex. A-11 at 97:19-100:6, 100:21-101:12 (emphasis added). In response, Moradian claimed that all of the descriptors must be met, regardless of the "or" connective. *Id.* In other words, Moradian testified that because his revisions did not deliberately introduce biased and false and inaccurate and inappropriate content that did not hinder and impede and hamper the creation and maintenance of PTK's page, he had not violated Wikipedia's

Code of Conduct. *Id.* This tortured reading of the provision reinforces the lengths to which Moradian will go to defend his otherwise bad-faith behavior in this case.

27. Moradian also confirmed that, despite the Court’s prior findings of malice and its finding that there is “no factual basis” for Honor Society’s claim of embezzlement by PTK, he saw no problem repeating the unfounded allegations in his Wikipedia edits. Ex. A-11 at 215:2-216:2. And indeed, he still maintains that these allegations are true. *Id.* Moradian also acknowledged he was aware of the sexual harassment allegations against Risley as early as 2015 but made no revisions to PTK’s Wikipedia page until 2024, when he was in active litigation with PTK. Ex. A-11 at 83:25-89:21. He had no reasonable explanation for his delay and deflected with misguided personal attacks against me. *See, e.g., id.* (“It’s a broad-based coverup and you are the main proponent of that.”). Yet he also testified that “but once I became aware of it, it is our duty, once you’re aware, to add context, add information to help make the page more objective.” *Id.* at 75:19-22.

28. Moradian also maintained that his Wikipedia edits that present Honor Society as the party that began the “lawsuit” are accurate, alleging that each time an amended complaint or counterclaim is filed, those pleadings “can be interpreted as a new lawsuit.” Ex. A-11 at 155:7-163:10. Obviously, Moradian is not a lawyer. Yet because the Court made clear in its Second Preliminary Injunction Order that Honor Society misleads the public when it presents itself as the plaintiff or the initiator of the lawsuit. Moradian has no excuse for continuing to argue that he believes it is permissible to repeat this legally incorrect mischaracterization.

29. Most telling of Moradian’s disdain for this Court was his multiple implications that he views Wikipedia as the trier of fact, not the Court or a jury. Ex. A-11 at 81:19-82:1; 83:22-24 (“Facts are facts and Wikipedia arbitrates and determines that and these are their determinations,

not mine.”). Namely, Moradian alleges that because Wikipedia permitted his revisions to remain (and removed those of PTK), these edits are not misleading and instead speak the truth, despite the Court’s findings to the contrary. *See, e.g., id.* at 202:3-21. In context, Moradian admits that he never told any Wikipedia contributor of his own bias – as President of Honor Society, PTK’s competitor and opposing party in this litigation – so Wikipedia (while certainly not the trier of fact) had no reasonable basis for assessing the credibility of Moradian’s edits.

C. PTK’s Fees Are Reasonable.

30. I have been lead counsel in this lawsuit since PTK filed its complaint on April 20, 2022. I am submitting this Declaration in support of PTK’s Motion for Attorney’s Fees (the “Motion”).

31. I am a member of the Indiana Bar and am admitted to the Bars of the Indiana Supreme Court, the Texas Supreme Court, the United States District Court for the Southern District of Indiana, the Northern District Court of Indiana, the Northern District of Texas, the Eastern District of Texas, the Eastern District of Michigan, the United States Court of Appeals for the Fifth Circuit, the Sixth Circuit, and the Federal Circuit. I have been practicing law for more than 30 years.

32. I am a 1991 graduate of Southern Methodist University and a 1994 graduate of Southern Methodist University School of Law.

33. I have been an attorney in the Indianapolis office of Taft Stettinius & Hollister LLP (“Taft”) since 2008 by way of merger and a Partner that entire time. Taft is an AmLaw 100 firm, with over nearly 1,000 lawyers in offices located throughout Indiana, Illinois, Ohio, Kentucky, Minnesota, Michigan and Washington D.C. Also, at Taft, I am the Practice Group Leader for the

intellectual property practice, presently overseeing the activities of over 100 attorneys and other professionals at the firm. I have served in that capacity for approximately seven (7) years.

34. I have been the recipient of a number of recognitions in my legal career, including: Indiana Super Lawyers, for Intellectual Property Litigation (from 2014 to the present); Honoree for Best Lawyers in America (2012 to the present); Honoree, World Trademark Review, WRT 1000 (2021 to the present); Honoree, IP Stars (2023); and Honoree, Chambers USA, for Intellectual Property (2019 to the present), as well others included in my biography on Taft's website: <https://www.taftlaw.com/people/jonathan-g-polak/>.

35. I have represented clients in over one-hundred different intellectual property-related lawsuits and proceedings in federal and state courts around the country and before the United States Patent and Trademark Office, and countless more that never made it that far. I have monitored litigation matters in the European Union and Australia. In addition to my litigation work, I also assist clients with business-side intellectual property matters, including advising on trademark portfolios, protecting and licensing intellectual property, and intellectual property issues relating to merger or acquisition transactions. I have litigated matters in over 20 states.

36. My areas of practice primarily relate to litigation involving copyrights, patents, trademarks, and software and technology, although I have also litigated insurance disputes, shareholder disputes, construction, engineering, and general commercial matters, among other subject matter. I have a unique specialization in trademark litigation, which forms the basis for several of the recognitions and awards recognized, for example, on Taft's website. I was approached by PTK to represent it in this litigation based on that specialty and my, and my team's, depth of experience with trademark litigation matters. I understand that PTK connected with Taft in part because PTK was unable to identify a law firm in Mississippi that met all its needs for this

litigation. I understand Mississippi is not a hotbed for trademark litigation. For example, since 2022, when this lawsuit was filed, it appears (per PACER statistics) that there have only been 8 trademark cases filed in the Southern District of Mississippi. By comparison, the North District of Illinois has had 3,600 trademark cases in that time, and the Central District of California, where the Newman firm practices locally, has had around 1,600 such cases in that time.

37. In 2024, my hourly rate charged to PTK is \$825. This rate is discounted from my strategic hourly rate for new clients, for complex litigation matters, or for disputes involving a national scope, which is \$910. I am billing PTK at this discounted rate in-part because it a non-profit organization. This is approximately a 10% discount. I have applied that same discount to all members of my team that have worked on PTK-related matters. Even without this discount, my rate is reasonable in the community of intellectual property litigators with comparable skills, reputation, and experience. I base this opinion on my experience in the legal community, my communications with similarly experienced attorneys about fees being charged, and my knowledge of my law firm's hundreds of clients.

38. The volume of work associated with this litigation, and in particular with Honor Society's tortious, malicious, and contemptuous conduct, has been usually high – even relative to other complex cases with a national scope. Certainly, even where the work in complex cases has been substantial, my experience has been that it was at least “on the issues,” and not on satellite issues that are unrelated to the core claims in the case. Undoubtedly, each time keeper who has worked on PTK's First Motion for Temporary Restraining Order and Preliminary Injunction (“First Preliminary Injunction Motion”), PTK's Second Motion for Temporary Restraining Order and Preliminary Injunction and/or Gag Order (“Second Preliminary Injunction Motion”), PTK's Motion for Contempt and Sanctions (“Contempt Motion”), and PTK's Motion for Attorney's Fees

(“Fee Motion”) has done so the exclusion of their ability to work on other matters, as is common with rapid, involved proceedings such as these (e.g., injunctions, instance of contempt, and seeking of associated fees).

39. That said, Taft is well-suited to handle this exceptionally high volume of work based on the significant number of attorneys in its ranks and its support staff, whose time has not been billed to PTK. To be clear, PTK has not requested compensatory fees here for non-billing support staff in its Motion, despite the significant amount of time these people have spent preparing exhibits, intaking Honor Society’s document productions (including the results of its records requests and surveys), assisting with filings, and collecting information used by the billing timekeepers. If PTK ultimately prevails in this litigation, PTK reserves the right to seek reimbursement from Honor Society for all fees incurred. This accommodation is solely for purposes of the pending motion.

40. I am familiar with the timekeeping records kept and maintained by Taft on client matters. Taft keeps those records in the course of its regularly conducted business activities, and it is the regular practice of our law firm to keep such records. All time entries are made at or near the time of the act or events described in them, based on information transmitted by a person with knowledge of those time entries – i.e., timekeepers and/or their assistants. I personally review the bills sent to PTK every month and am aware of all activities of all professionals working on behalf of PTK.

41. Taft’s work in connection with First Preliminary Injunction Motion, Second Preliminary Injunction Motion, Contempt Motion, and Fee Motion has been handled by several timekeepers in addition to me including: Rachel Smoot, Mike Etienne, Hannah Fereshtenkhov, Christine Walsh, Alex Matthews, Haley Sears, Neil Peluchette (all of whom are associates) and

Alexis Rose (who is a paralegal). Like me, each of these timekeepers has a preferred hourly rate, which is higher than the rate at which their time was billed to PTK. In each case, the rate billed to PTK is an approximate 10% discount.

42. Ms. Smoot's hourly rate for PTK has been \$470 throughout this litigation (compared to \$515 strategic). Mr. Etienne's hourly rate for PTK has been \$465 (compared to \$510 strategic). Mr. Peluchette's hourly rate for PTK has been \$420 (compared to \$460 strategic). Ms. Fereshtenkhov's hourly rate for PTK has been \$375, as has Ms. Sears's, Mr. Matthew's, and Ms. Walsh's (compared to \$415 strategic). Ms. Rose's hourly rate for PTK has been \$100. Again, I believe these fees to be reasonable in the field of intellectual property litigation attorneys and paralegals with comparable skills, reputation, and experience, based on my extensive experience in this field. Based on my body of experience working with each of these attorneys, they no doubt have the abilities and competencies to provide excellent services to PTK – as do the attorneys at Wise-Carter. This does not appear to be challenged by out-of-state counsel, who said in a discovery conference with Judge Myers that someone told him Mike Wallace is the best lawyer in Mississippi. (That has been PTK's and Taft's experience as well.) As to Taft, based on my experience, I also can confirm the reasonableness of the Taft associates' and paralegal's hourly rates.

43. As demonstrated, I staffed the First Preliminary Injunction Motion, Second Preliminary Injunction Motion, Contempt Motion, and Fee Motion with associates and a paralegal, which is a cost saving measure and justifies the reasonableness of the aggregate fees.

44. I made a conscientious effort to assign suitable legal work to associates whenever possible to further reduce PTK's attorney's fees. For example, when preparing the motions, either

Ms. Smoot or Mr. Etienne typically handled the primary drafting responsibilities. Taft made a conscientious effort not to duplicate legal work.

45. Attached as Exhibits A-1, A-4, A-8, A-9 to this Declaration are true and correct copies of accounting records summarizing billing data of Taft for representation of PTK in connection with PTK's First Preliminary Injunction Motion, PTK's Second Preliminary Injunction Motion, PTK's Contempt Motion, and PTK's Fee Motion. It should be appreciated that the legal work in connection with each motion includes investigation into Honor Society's conduct prior to the motion, the motion and supporting papers (e.g., briefs, declarations, exhibits) replies and their supporting papers, hearing preparation, travel required for the hearing, and the hearing itself. The legal work also includes responding to Honor Society's motions and responses filed in response to PTK's Motions, including Honor Society's Motion to Strike. These documents have been redacted or edited to protect the privilege that may be contained in some entries but have not been so edited that it is impossible to understand at least the general nature of the work.

46. As explained in more detail below, Exhibits A-1, A-4, A-8, A-9 (each a "Time Report"), summarizes the total amount of fees Taft billed to PTK in connection with each motion based on hours worked by Taft timekeepers and their respective hourly rates. The total fees billed to PTK by Taft for each motion are:

- Ex. A-1: First Preliminary Injunction Motion: \$172,293.00.
- Ex. A-4: Second Preliminary Injunction Motion: \$229,451.00.
- Ex. A-8: Contempt Motion: \$63,810.00.
- Ex. A-9: Fees Motion: \$18,324.00 (through September 30).

47. In each Time Report, the "Invoice" column identifies the unique invoice number for each invoice that Taft provided to PTK. The "Orig Hours" column describes the number of

hours that each timekeeper worked in providing a particular service, recorded in tenths of an hour. The “Orig Amount” is the amount of fees generated (but not necessarily billed) for a service provided by a timekeeper. The Orig Amount is calculated by multiplying the Orig Hours by a timekeeper’s hourly rate for PTK, which is reflected in the “Rate” column.

48. The “Rev Hours” column describes the actual number of hours that PTK was invoiced for a service provided by a timekeeper. This is often less than the Orig Hours. The “Rev Amount” column is the amount actually billed to PTK for a service provided by a timekeeper. The Rev Amount is calculated by multiplying the Rev Hours by the Rate for each timekeeper.

49. To further ensure the reasonableness of Taft’s attorney’s fees, I made discretionary write-offs of hours recorded by timekeepers. The write-offs are reflected in the Rev Amount and Rev Hours columns. The total discount resulting from the write-offs is \$61,294.00. This is an additional 11.2% reduction from the amount of fees generated by the timekeepers, including myself, on top of our already discounted rates.

50. Similar to the Time Reports, Exhibit A-15 summarizes the total costs Taft billed to PTK in connection with each motion. In total, through September 30, 2024, Taft billed \$17,602.77 in costs to PTK. As with the Exhibits A-1, A-4, A-8, and A-9, the Cost Report identifies the unique invoice number for each invoice that Taft provided to PTK. The “Orig Amt” column describes the costs incurred (but not necessarily billed) in connection with a particular service. The “Rev Amt” columns describes the actual costs that PTK was invoiced for a service, which is often less than “Orig Amt.”

51. PTK also incurred \$4,613.57 in court reporter costs associated with the Rule 30(b)(6) deposition taken on October 1, 2024. *See* Exhibit A-16. We do not yet have the videographer costs for that deposition but expect to receive them soon. PTK will supplement its

evidence with that invoice once it is received. Because this 30(b)(6) deposition took place on October 1, 2024, the court reporter costs associated with the deposition are not included in the costs shown in Ex. A-15, which are current only through September 30.

52. Like I did with the Time Reports, I made discretionary write-offs of costs, which are reflected in the Rev Amt column. The total discount from the write-offs of costs is \$5,430.54. This is a 23.6% reduction in costs from the original costs of \$23,033.31, to arrive at only \$17,602.77 in costs billed to PTK, which speaks to the reasonableness of the costs PTK seeks.

53. For each Invoice dated through August 31, PTK has paid its fees in full. Each time, PTK has paid its fees promptly without dispute, further demonstrating the reasonableness of the fees. I do not anticipate any issue with the September invoice, which has not yet been issued.

54. In my experience and training, as described above, as well as my personal observations from my involvement in the work, it is my opinion that the fees incurred in connection with these described activities are reasonable. They were also necessarily incurred. Because of the maliciousness of Honor Society's activities described in the underlying motions, PTK had to seek the relief it did. At every turn, we offered Honor Society an "off ramp" to avoid motion practice on the issues. At no time did Honor Society accept our offers or otherwise withdraw from their conduct. Making matters worse, we have found out-of-state counsel for Honor Society to garble the truth from time to time, whether it be outright falsities or shaded offers of partial truths. And even in where we have obtained explicit relief from this Court, Honor Society has taken what appear to be intentional acts to avoid compliance with those orders. All of this demonstrates a pattern of conduct that required immediate action by PTK. Unfortunately, the repeated nature and high volume of this misconduct has led to the incurrence of substantial attorney's fees and costs

that would not have been incurred but for Honor Society's bad faith. The fees incurred were, in my view, absolutely necessary to avoid further damage to PTK.

55. PTK also anticipates seeking fees based on issues not fully ripe before this Court and reserves the right to do so along with seeking its fees in connection with the appellate proceedings.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on: October 14, 2024

/s/ Jonathan G. Polak
Jonathan G. Polak

EXHIBIT A-1

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Narrative
03/04/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Call with client regarding FOIA requests. Review message from L. Tincher-Ladner regarding FOIA-type requests made by HS.org to colleges; consider strategy on same; conference with L. Tincher-Ladner regarding same; conference with R. Smoot regarding same.
03/05/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client regarding recent emails to college presidents by HS.org.; consider strategy on same; review draft email from L. Tincher-Ladner regarding same; prepare revisions to same.
03/06/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Prepare for and attend conference with M. Bernet and D. Linke regarding status of various discovery issues and concerns over recent FOIA requests; prepare email to M. Bernet and D. Linke confirming conversation and depositions; address various issues raised in conference requested by M. Bernet.
03/06/2024	Polak, Jonathan G.	Partner	1.50	1,237.50	825.00	1.50	1,237.50	6304101	Prepare for and attend conference with client and B. Mansfield to discuss situation with FOIA requests and related other issues.
03/06/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Call with client regarding FOIA requests and ongoing email security issue.
03/06/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Attention to email from client regarding PTK email systems.
03/06/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Call and email to Mailchimp's counsel.
03/06/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Confer with IT and co-counsel regarding email security issues.
03/07/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Call and email to Mailchimp counsel.
03/07/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6304101	Research case law preventing vexatious use of FOIA requests to seek information; prepare written explanation of same.
03/07/2024	Etienne, William M.	Associate	3.60	1,674.00	465.00	3.60	1,674.00	6304101	Research case law regarding improper use of third party discovery devices generally to harass customer of party to litigation; prepare written explanation of same.
03/07/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00	6304101	Continue work on issues related to HS.org's communications to colleges; consider strategy on same; prepare email to counsel for HS.org regarding intent to seek a hearing and protective order; conference with M. Wallace regarding same; conference with M. Etienne regarding scope of legal research; review email from Z. Linke regarding same; multiple communications with client regarding emails to colleges.
03/07/2024	Polak, Jonathan G.	Partner	2.50	2,062.50	825.00	0.00	0.00	6304101	
03/08/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Continue to assess case law regarding FOIA requests in pending district court litigation; discuss strategy for PO, TRO, and/or state law claims in view of same.

03/08/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue work on strategy for addressing FOIA requests; conference with M. Etienne regarding same; conference with B. Mansfield regarding same. Multiple calls with co-counsel and local counsel related to pending FOIA requests; review and analyze research and case law related to same.
03/08/2024	Smoot, Rachel A.	Associate	1.40	658.00	470.00	1.40	658.00	6304101	Multiple calls with client related to pending email security issues and FOIA requests.
03/08/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6304101	Follow up call to Mailchimp counsel.
03/08/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Review survey monkey emails, records request emails, and related correspondence.
03/11/2024	Etienne, William M.	Associate	0.30	139.50	465.00	0.30	139.50	6304101	
03/11/2024	Etienne, William M.	Associate	2.70	1,255.50	465.00	2.70	1,255.50	6304101	Research MS case law regarding tortious interference. Identify template for PTK's motion for leave to file supplemental complaint and memorandum in support of same.
03/11/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Attention to issues related to FOIA, email hack and consumer survey related to HS.org; multiple conferences with client to discuss same; consider issues related to possible supplemental claims on same; multiple communications and conferences with local counsel regarding same.
03/11/2024	Polak, Jonathan G.	Partner	2.50	2,062.50	825.00	2.50	2,062.50	6304101	Call with client and co-counsel related to honor society survey; multiple emails regarding same.
03/11/2024	Smoot, Rachel A.	Associate	0.90	423.00	470.00	0.90	423.00	6304101	Amend Exhibit A to Mailchimp subpoena; send same to client for review.
03/11/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Confer with co-counsel regarding records requests.
03/11/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	
03/11/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6304101	Review Honor Society production for gmail addresses. Strategize regarding filing supplemental pleading, temporary restraining order, motion for expedited discovery, and response to motion to amend scheduling order.
03/11/2024	Fereshtenkhou, Hannah S.	Associate	0.70	262.50	375.00	0.00	0.00	6304101	Analyze Federal Rule of Civil Procedure 15(d) regarding process for filing supplemental pleading; draft supplemental amended complaint to include claims for tortious interference with contracts and prospective business advantage; research and analyze case law regarding sufficiency of allegations for same.
03/11/2024	Fereshtenkhou, Hannah S.	Associate	3.20	1,200.00	375.00	3.20	1,200.00	6304101	Confer with co-counsel regarding Motion for Leave to File Supplemental First Amended Complaint and David Asari's agency; compile documents in support of same.
03/12/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6304101	Attention to email from client regarding survey.
03/12/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Call with Mailchimp counsel regarding direct complaint.
03/12/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6304101	
03/12/2024	Etienne, William M.	Associate	2.10	976.50	465.00	2.10	976.50	6304101	Prepare supplemental complaint.

03/12/2024	Etienne, William M.	Associate	4.90	2,278.50	465.00	4.90	2,278.50	6304101	Review comments and edits to supplemental complaint; prepare revisions in view of same.
03/12/2024	Etienne, William M.	Associate	5.90	2,743.50	465.00	5.90	2,743.50	6304101	Revise memorandum in support of motion to amend scheduling order based on comments and edits; prepare additional section of same.
03/12/2024	Polak, Jonathan G.	Partner	0.70	577.50	825.00	0.70	577.50	6304101	Review emails forwarded from L. Tincher-Ladner regarding open records requests and communications with colleges; continue work on strategy for same.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	2.20	825.00	375.00	2.20	825.00	6304101	Draft declaration of L. Tincher-Ladner in support of motion for temporary restraining order.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	1.00	375.00	375.00	0.00	0.00	6304101	Strategize regarding supplemental amended complaint and elements of tortious interference with contract; revise supplemental amended complaint based on same.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	1.60	600.00	375.00	1.60	600.00	6304101	Draft memorandum of law in support of motion for leave to supplement amended complaint; research and analyze case law regarding factors supporting supplementation for same.
03/13/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Review additional comments to supplemental complaint; provide additional revisions based on same.
03/13/2024	Etienne, William M.	Associate	11.40	5,301.00	465.00	11.40	5,301.00	6304101	Prepare portions of memorandum in support of motion for TRO and PI.
03/13/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6304101	Continue work on Supplemental Complaint; conference with M. Etienne; work on related documents for TRO and related relief.
03/13/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Confer with co-counsel regarding next steps related to Motion to Supplement Complaint, Motion for Temporary Restraining Order, and all related documentation.
03/13/2024	Smoot, Rachel A.	Associate	1.10	517.00	470.00	1.10	517.00	6304101	Revise and edit First Amended Supplemental Complaint; confer with co-counsel regarding same.
03/13/2024	Fereshtenkhov, Hannah S.	Associate	1.00	375.00	375.00	1.00	375.00	6304101	Proofread and revise supplemental amended complaint; strategize regarding temporary restraining order and motion for leave to supplement amended complaint.
03/13/2024	Fereshtenkhov, Hannah S.	Associate	5.20	1,950.00	375.00	5.20	1,950.00	6304101	Continue drafting memorandum of law in support of motion for leave to supplement amended complaint; research and analyze case law regarding Federal Rule of Civil Procedure 15(d) as support for supplementing pleading with new claims and parties for same.
03/14/2024	Etienne, William M.	Associate	8.80	4,092.00	465.00	8.80	4,092.00	6304101	Research additional case law; revise memorandum in support of motion for leave to file supplemental complaint based on same.
03/14/2024	Etienne, William M.	Associate	2.10	976.50	465.00	2.10	976.50	6304101	Review further comments and edits to supplemental complaint; prepare additional revisions in view of same.
03/14/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50	6304101	Prepare motion for supplemental complaint.

03/14/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6304101	Revise Tincher-Ladner declaration and circulate for comments.
03/14/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Continue work on Supplemental Complaint, TRO and related papers and strategy; multiple email communications regarding same.
03/14/2024	Smoot, Rachel A.	Associate	6.10	2,867.00	470.00	0.00	0.00	6304101	Draft Motion for Leave to Conduct Expedited Discovery and memo in support of same, expedited discovery requests, and Rule 26 Notice for HonorSociety.org.
03/14/2024	Smoot, Rachel A.	Associate	5.10	2,397.00	470.00	0.00	0.00	6304101	Draft Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction.
03/14/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Revise and edit Declaration of Lynn Tincher-Ladner.
03/14/2024	Fereshtenkhov, Hannah S.	Associate	1.50	562.50	375.00	0.00	0.00	6304101	Continue drafting fact section for memorandum of law in support of motion for leave to supplement amended complaint; revise declaration for L. Tincher-Ladner.
03/14/2024	Fereshtenkhov, Hannah S.	Associate	2.10	787.50	375.00	0.00	0.00	6304101	Research and analyze case law regarding temporary restraining order factors; draft argument regarding temporary restraining order factors for memorandum in support of motion for temporary restraining order based on same.
03/15/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Continue to prepare memorandum in support of motion for leave to supplement amended complaint.
03/15/2024	Etienne, William M.	Associate	6.30	2,929.50	465.00	6.30	2,929.50	6304101	Review and provide comments on memorandum in support of motion for TRO and PI.
03/15/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00	6304101	Provide edits to Tincher-Ladner declaration in support of PTK's motions.
03/15/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00	6304101	Continue work on TRO, supplemental complaint and related documents; exchange emails with team regarding same.
03/15/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Attention to SurveyMonkey Support email received from client; respond to client regarding same.
03/15/2024	Smoot, Rachel A.	Associate	6.10	2,867.00	470.00	0.00	0.00	6304101	Continue to draft Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction; revise and edit same.
03/15/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Revise and edit Declaration of Lynn Tincher-Ladner; send same to client for review.
03/15/2024	Fereshtenkhov, Hannah S.	Associate	1.50	562.50	375.00	0.00	0.00	6304101	Research and analyze case law regarding public interest in privacy and public interest factor for motion for temporary restraining order.
03/16/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Revise Tincher-Ladner declaration; related information to supplement pleadings.
03/16/2024	Polak, Jonathan G.	Partner	3.20	2,640.00	825.00	3.20	2,640.00	6304101	Continue work on TRO and related papers and discovery.

03/16/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Confer with co-counsel regarding preparation of remaining documents to be filed (i.e., Motion for Temporary Restraining Order and Preliminary Injunction, Motion for Leave to Conduct Expedited Discovery, Motion for Leave to file Supplemental First Amended Complaint).
03/16/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00	6304101	Revise and edit Motion for Leave to Conduct Expedited Discovery and Memorandum in Support of Same; draft Rule 30(b)(6) Notice to HonorSociety.org.
03/17/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00	6304101	Revise PTK's memo in support of motion for leave to file supplemental complaint based on comments.
03/17/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Revise Tincher-Ladner declaration to align with revised motions.
03/17/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50	6304101	Revise supplemental amended complaint based on comments.
03/17/2024	Etienne, William M.	Associate	3.50	1,627.50	465.00	3.50	1,627.50	6304101	Review and prepare edits to memo in support of motion for expedited discovery.
03/17/2024	Etienne, William M.	Associate	3.90	1,813.50	465.00	3.90	1,813.50	6304101	Review and provide additional edits to motion and memo in support of motion for TRO and PI.
03/17/2024	Etienne, William M.	Associate	0.70	325.50	465.00	0.70	325.50	6304101	Prepare correspondence to local counsel regarding filing of PTK's three motions, memoranda in support, and exhibits.
03/17/2024	Polak, Jonathan G.	Partner	7.90	6,517.50	825.00	7.90	6,517.50	6304101	Continue work on TRO and supplemental complaint documents; exchange emails with litigation team on same; exchange emails with L. Tincher-Ladner on same; prepare draft email to counsel regarding intentions on filing and need for conference.
03/17/2024	Smoot, Rachel A.	Associate	7.50	3,525.00	470.00	7.50	3,525.00	6304101	Revise and edit Motion for Temporary Restraining Order and Memorandum in Support of same; multiple calls with co-counsel regarding same; revise and edit Motion for Leave to Conduct Expedited Discovery and Memorandum in Support of same as well as limited discovery requests and Notices of Rule 30(b)(6) depositions; revise and edit Declaration of Lynn Tincher-Ladner.
03/18/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Prepare revised version of motion for supplemental complaint based on comments.
03/18/2024	Etienne, William M.	Associate	2.60	1,209.00	465.00	2.60	1,209.00	6304101	Prepare revised version of memorandum in support of motion for expedited discovery based on comments.
03/18/2024	Etienne, William M.	Associate	4.60	2,139.00	465.00	4.60	2,139.00	6304101	Prepare revised version of memorandum in support of motion for TRO and PI based on comments.
03/18/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Prepare revised version of Tincher-Ladner declaration based on comments.
03/18/2024	Etienne, William M.	Associate	1.40	651.00	465.00	1.40	651.00	6304101	Prepare instructions for exhibits; review finalized versions of same.
03/18/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Participate in meet and confer with local counsel regarding PTK's forthcoming motions.

03/18/2024	Polak, Jonathan G.	Partner	3.50	2,887.50	825.00	3.50	2,887.50	6304101	Continue work on Supplemental Pleading and TRO-related documents; numerous emails exchanged with team regarding same; finalize same for filing.
03/18/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Hold conference with counsel for Honor Society and Honor Society Foundation to discuss supplemental pleading and TRO papers; consider next steps in light of same.
03/18/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6304101	Conference with M. Wynne (Grayson College) regarding public records request; prepare email to L. Tincher-Ladner regarding same.
03/18/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00	6304101	Prepare for hearing on TRO and motion for leave to file supplemental pleading; review file materials for same.
03/18/2024	Smoot, Rachel A.	Associate	1.20	564.00	470.00	1.20	564.00	6304101	Revise and edit Memorandum in Support of Motion for Leave to Conduct Expedited Discovery.
03/18/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Revise and edit Declaration Lynn Tincher-Ladner.
03/18/2024	Rose, Alexis	Staff	2.50	250.00	100.00	2.50	250.00	6304101	Finalize motions and exhibits for TRO filing, prepare and organize documents for telephonic conference scheduled on 3/19.
03/19/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50	6304101	Prepare case law summary and comments regarding TRO briefing for use during conference with Court.
03/19/2024	Etienne, William M.	Associate	1.60	744.00	465.00	1.60	744.00	6304101	Participate in conference with Court.
03/19/2024	Etienne, William M.	Associate	0.30	139.50	465.00	0.30	139.50	6304101	Discuss exhibits and strategy regarding TRO and PI hearing for Wednesday, 3/27.
03/19/2024	Polak, Jonathan G.	Partner	2.30	1,897.50	825.00	2.30	1,897.50	6304101	Prepare for and attend conference with court to discuss scheduling of TRO and related issues; post-hearing conference with local counsel; prepare email updating client on events; conference with B. Mansfield regarding status.
03/19/2024	Polak, Jonathan G.	Partner	1.30	1,072.50	825.00	1.30	1,072.50	6304101	Begin preparation for TRO hearing; identify exhibits to be used at hearing; conference with L. Tincher-Ladner regarding hearing agenda and preparation.
03/19/2024	Smoot, Rachel A.	Associate	1.60	752.00	470.00	1.60	752.00	6304101	Attend status conference with Court related to Motions for Leave to File Supplemental First Amended Complaint, Temporary Restraining Order/Preliminary Injunction, and Conduct Expedited Discovery; confer with co-counsel regarding same.
03/19/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Prepare for hearing presentation.
03/20/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6304101	Prepare exhibit list for TRO hearing.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client on public records requests; review emails from colleges regarding same.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue preparation for hearing on TRO; exchange emails with M. Wallace regarding same.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Conference with M. Etienne regarding: exhibit list preparation and strategy on same.

03/20/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Conference with D. Newman and D. Linke regarding approach to TRO hearing and related issues; prepare email to client regarding same.
03/20/2024	Smoot, Rachel A.	Associate	1.20	564.00	470.00	1.20	564.00	6304101	Draft outline for Hearing on Temporary Restraining Order; confer with co-counsel regarding same.
03/21/2024	Etienne, William M.	Associate	3.40	1,581.00	465.00	3.40	1,581.00	6304101	Review LTL Declaration; continue to identify and prepare exhibits for hearing.
03/21/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client on public records requests; review emails from colleges regarding same.
03/21/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue preparation for hearing on TRO; exchange emails with M. Wallace regarding same.
03/21/2024	Smoot, Rachel A.	Associate	5.10	2,397.00	470.00	5.10	2,397.00	6304101	Continue to draft outline for Hearing on Temporary Restraining Order; compile exhibits in support of same.
03/21/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Request additional information from client related to records requests and survey.
03/21/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Follow up email to Natasha Gill regarding Mailchimp direct complaint.
03/22/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6304101	Exchange emails w/ D. Newman regarding: TRO hearing.
03/22/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Continue work on TRO hearing preparation.
03/22/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	communications with schools on public records requests.
03/22/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Receive and review email with proposed objections to PTK evidence; consider same.
03/22/2024	Fereshtenkhov, Hannah S.	Associate	0.10	37.50	375.00	0.00	0.00	6304101	Strategize regarding research for reply in support of motion for temporary restraining order, including case law regarding public records requests in the context of protective orders or temporary restraining orders.
03/22/2024	Fereshtenkhov, Hannah S.	Associate	1.30	487.50	375.00	1.30	487.50	6304101	Research and analyze case law regarding protective orders or temporary restraining orders for party making public records requests to third-parties.
03/23/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50	6304101	Review HS's motion to exclude evidence of Tinchel-Lader declaration; prepare notes regarding same.
03/23/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Research case law for memorandum in opposition to HS's motion to exclude evidence.
03/23/2024	Etienne, William M.	Associate	5.70	2,650.50	465.00	5.70	2,650.50	6304101	Prepare memorandum in support of PTK's opposition to HS's motion to exclude evidence.
03/23/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00	6304101	Review HS's response to PTK's motion for TRO and PI; prepare notes regarding same.
03/23/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50	6304101	Prepare reply in support of PTK's motion for TRO.
03/23/2024	Polak, Jonathan G.	Partner	6.50	5,362.50	825.00	6.50	5,362.50	6304101	Review filings made by HS.org in response to TRO and related motions; work on strategy for responding to same; work on reply briefs; multiple communications with M. Etienne regarding same.

03/23/2024	Smoot, Rachel A.	Associate	4.60	2,162.00	470.00	4.60	2,162.00	6304101	Attention to Defendants' Response to Motion for Leave to Conduct Expedited Discovery; draft Reply Brief in Support of PTK's Motion for Leave to Conduct Expedited Discovery.
03/23/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Draft rebuttal facts section related to survey questions for Motion for Temporary Restraining Order and Preliminary Injunction.
03/23/2024	Rose, Alexis	Staff	1.00	100.00	100.00	1.00	100.00	6304101	Prepare binders of 3/23/2024 filings for TRO hearing. Continue to prepare reply brief in support of motion for TRO and PI.
03/24/2024	Etienne, William M.	Associate	8.50	3,952.50	465.00	8.50	3,952.50	6304101	Continue working on replies to Honor Society's Responses and motion to exclude; internal communications regarding same.
03/24/2024	Polak, Jonathan G.	Partner	8.60	7,095.00	825.00	8.60	7,095.00	6304101	Attention to Michael Moradian Declaration; draft Supplemental Declaration of Lynn Tincher-Ladner.
03/24/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6304101	Draft Reply Brief in Support of Motion for Temporary Restraining Order and Preliminary Injunction.
03/24/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6304101	Continue to draft Reply in Support of Motion for Expedited Discovery; revise and edit same.
03/24/2024	Smoot, Rachel A.	Associate	1.90	893.00	470.00	1.90	893.00	6304101	Attention to draft email to opposing counsel.
03/24/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Revise and edit Response to Motion to Exclude Evidence.
03/24/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Review and respond to email correspondence from M. Etienne and J. Polak; Research precedent cited by Defendants in opposition to our TRO; Research precedent in support of our alleged harm.
03/24/2024	Walsh, Christine	Associate	2.60	975.00	375.00	2.60	975.00	6304101	Travel from IND to JAN for hearing on temporary restraining order and preliminary injunction.
03/25/2024	Etienne, William M.	Associate	7.70	3,580.50	465.00	0.00	0.00	6304101	Revise reply briefing in support of motion for TRO and PI based on comments.
03/25/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6304101	Research relevant case law in furtherance of motion for TRO and PI.
03/25/2024	Etienne, William M.	Associate	1.50	697.50	465.00	1.50	697.50	6304101	Revise response in memorandum in support of opposition to HS's motion to exclude evidence based on comments.
03/25/2024	Etienne, William M.	Associate	2.30	1,069.50	465.00	2.30	1,069.50	6304101	Prepare opposition to HS motion to exclude evidence. Identify additional case law regarding tortious interference with contracts in preparation for TRO and PI hearing.
03/25/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6304101	Continue work on TRO-related papers and finalize same for filing.
03/25/2024	Polak, Jonathan G.	Partner	5.40	4,455.00	825.00	5.40	4,455.00	6304101	Travel to Jackson for hearings.
03/25/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	6.00	4,950.00	6304101	Travel to Jackson from Columbus.
03/25/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00	6304101	Revise and edit Reply Brief in Support of Motion for Expedited Discovery; finalize same, including exhibit.
03/25/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Revise and edit Response in Opposition to Objections to portions to Tincher-Ladner Declaration.
03/25/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6304101	

03/25/2024	Smoot, Rachel A.	Associate	1.30	611.00	470.00	1.30	611.00	6304101	Revise and edit Reply Brief in Support of Motion for Leave to File First Amended Supplemental Complaint.
03/25/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Attention to response received from SurveyMonkey. Prepare for hearing in Jackson, including reviewing additional case law related to interference with contract.
03/25/2024	Smoot, Rachel A.	Associate	2.20	1,034.00	470.00	2.20	1,034.00	6304101	Revise and edit Supplemental Declaration of Lynn Tincher-Ladner.
03/25/2024	Smoot, Rachel A.	Associate	0.90	423.00	470.00	0.90	423.00	6304101	Call to Natasha Gill regarding Mailchimp subpoena. Review and respond to email correspondence from J. Polak; Research case relied on by opposing counsel, and potential counter-cases.
03/25/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Prepare case law outline for TRO hearing. Review outlined arguments and discuss overall strategy and case law for TRO hearing.
03/25/2024	Walsh, Christine	Associate	0.50	187.50	375.00	0.50	187.50	6304101	Conduct review of image files of survey responses produced to PTK ahead of hearing.
03/26/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Prepare for TRO hearing; conference with M. Wallace and team to discuss and strategize on same; respond to various client communications on same.
03/26/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00	6304101	Conference with community college representative regarding recent consumer survey requests.
03/26/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Call to Natasha Gill regarding Mailchimp subpoena. Prepare for hearing on all pending PTK Motions, including drafting table of inconsistencies in Moradian deposition; attend Temporary Restraining Order preparation session; attention to emails from President of Colby Community College related to multiple records requests.
03/26/2024	Polak, Jonathan G.	Partner	3.50	2,887.50	825.00	3.50	2,887.50	6304101	Review additional documents of 17,000 produced to PTK ahead of TRO hearing.
03/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Continue pre-hearing preparation; participate in same. Review documents produced by HS.org related to TRO hearing; conference with R. Smoot and M. Etienne regarding same; prepare for hearing based on same.
03/26/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Continue preparation generally for hearing on TRO and related motions; attend same.
03/26/2024	Smoot, Rachel A.	Associate	3.00	1,410.00	470.00	3.00	1,410.00	6304101	Post-hearing evaluation of presentation and evidence and consider related discovery issues in connection with larger part of the case.
03/27/2024	Etienne, William M.	Associate	3.80	1,767.00	465.00	3.80	1,767.00	6304101	Attend hearing on pending motions for temporary restraining order/preliminary injunction, leave to file supplemental first amended complaint, and expedited discovery; attend post-hearing meeting regarding same.
03/27/2024	Etienne, William M.	Associate	5.10	2,371.50	465.00	0.00	0.00	6304101	Travel JAN to IND subsequent to TRO hearing.
03/27/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6304101	Travel back to Indianapolis.
03/27/2024	Polak, Jonathan G.	Partner	5.00	4,125.00	825.00	5.00	4,125.00	6304101	
03/27/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	
03/27/2024	Smoot, Rachel A.	Associate	6.30	2,961.00	470.00	6.30	2,961.00	6304101	
03/28/2024	Etienne, William M.	Associate	8.10	3,766.50	465.00	0.00	0.00	6304101	
03/28/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	6.00	4,950.00	6304101	

03/28/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00	6304101	Travel from Jackson to Columbus.
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Totals			361.70	194,792.50		314.10	172,293.00		
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EXHIBIT A-4

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
05/09/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6349699	Billed	Attention to social media posts by Honor Society concerning counterclaims; evaluate strategy on same; conference with Lynn Tincher-Ladner regarding same; prepare email to counsel on same.
05/09/2024	Smoot, Rachel A.	Associate	1.50	705.00	470.00	1.50	705.00	6349699	Billed	Call with client regarding false advertising issues.
05/09/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6349699	Billed	Call with co-counsel regarding latest social media posts and press release by Defendants.
05/10/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6349699	Billed	Call with co-counsel regarding latest developments as it relates to false advertising claim.
05/13/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6349699	Billed	Call with client regarding latest social media posts by Defendants.
05/14/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6349699	Billed	Conference with Dr. Tincher-Ladner regarding status of case and recent public communications by HS.org; review and exchange emails regarding same with client.
05/19/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6349699	Billed	Review issues related to mailing of press release; consider legal strategy on same; exchange emails with client and Rachel Smoot regarding same.
06/06/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client regarding recent records requests made by Honor Society; review preliminary injunction to determine compliance; respond to emails from client.
06/06/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client regarding recent advertisements and solicitations by Honor Society; evaluate strategy on same; respond to emails from client.
06/10/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6376040	Billed	Review and analyze latest posts and press releases by Honor Society; confer with co-counsel regarding same.
06/11/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review recent records requests brought to attention of client by community colleges; review injunction order; prepare email to client with evaluation of same.
06/12/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00	6376040	Billed	Review recent social media posts by Honor Society; consider strategies for addressing same, including injunctive relief; conference with C. Cowan regarding same; conference with Rachel Smoot regarding same; conference with Mike Etienne regarding same; conference with Lynn Tincher-Ladner regarding same
06/12/2024	Etienne, William M.	Associate	3.90	1,813.50	465.00	3.90	1,813.50	6376040	Billed	Research case law regarding PTK motion to cause HS to cease publications characterizing the lawsuit.
06/12/2024	Etienne, William M.	Associate	1.90	883.50	465.00	1.90	883.50	6376040	Billed	Prepare outline including case law on Motion for Gag Order.
06/12/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00	6376040	Billed	Continue to outline Memo in support of Motion for Gag Order; prepare Introduction and portion of Statement of Facts.
06/12/2024	Kendall, Kristina	Paralegal	0.10	43.50	435.00	0.00	0.00	6376040	Billed	Perform PageVault capture for Rachel Smoot.
06/12/2024	Sears, Hayley A.	Associate	1.20	450.00	375.00	1.20	450.00	6376040	Billed	Discuss with preliminary injunction and gag order with Mike Etienne and partake in call on document review.
06/12/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6376040	Billed	Confer with co-counsel regarding preparation of Motion for Gag Order; review and analyze case law regarding same.
06/13/2024	Matthews, Alex M.	Associate	8.70	3,262.50	375.00	8.70	3,262.50	6376040	Billed	Drafting and revising motion for preliminary injunction regarding Honor Society press releases and social media posts; reviewing and analyzing Honor Society publicly released materials; reviewing and analyzing motion for PI briefing and ruling
06/13/2024	Polak, Jonathan G.	Partner	3.20	2,640.00	825.00	3.20	2,640.00	6376040	Billed	Continue work on preliminary injunction/gag order strategy and related papers; conference with Mike Etienne regarding same; review cases and other relevant authorities for same; review file materials for same; review and exchange communications with client regarding same.
06/13/2024	Etienne, William M.	Associate	8.20	3,813.00	465.00	8.20	3,813.00	6376040	Billed	Continue to prepare Memo in Support of Motion for Gag Order.
06/13/2024	Sears, Hayley A.	Associate	5.20	1,950.00	375.00	5.20	1,950.00	6376040	Billed	Review exhibits containing twitter accounts, articles, independent sources, and HS website and draft statement of facts.
06/13/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6376040	Billed	Confer with co-counsel regarding additional evidence in support of emergency motion to stop Defendants' publications.
06/14/2024	Matthews, Alex M.	Associate	9.30	3,487.50	375.00	9.30	3,487.50	6376040	Billed	Drafting and revising motion for PI regarding HS' website & social media postings; reviewing and analyzing docket, exhibits, and transcripts for same; internal team conference regarding same
06/14/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6376040	Billed	Continue work on TRO papers and strategy; conference with Mike Etienne regarding same.
06/14/2024	Etienne, William M.	Associate	8.40	3,906.00	465.00	8.40	3,906.00	6376040	Billed	Continue to prepare Memorandum in support of Gag Order and Preliminary Injunction based on Defendants misleading publications.
06/14/2024	Sears, Hayley A.	Associate	5.30	1,987.50	375.00	5.30	1,987.50	6376040	Billed	Read draft motion for preliminary injunction and gag order, draft Jonathan Polak declaration, review new exhibits, and research case law on gag order.
06/14/2024	Sears, Hayley A.	Associate	0.30	112.50	375.00	0.30	112.50	6376040	Billed	Call with Mike Etienne to get update on next steps for briefing.
06/15/2024	Sears, Hayley A.	Associate	4.00	1,500.00	375.00	4.00	1,500.00	6376040	Billed	Review new twitter accounts, Facebook posts, and instagram posts and send to Mike and draft Lynn's declaration.
06/15/2024	Sears, Hayley A.	Associate	0.80	300.00	375.00	0.80	300.00	6376040	Billed	Edit statement of facts to incorporate new information and caricatures of Lynn.
06/16/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client on social media postings by Honor Society; prepare email to Mike Etienne regarding inclusion of same in moving papers.
06/16/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6376040	Billed	Discuss Statement of Facts and Declaration in support of Motion for Preliminary Injunction and Gag Order.
06/17/2024	Matthews, Alex M.	Associate	13.20	4,950.00	375.00	13.20	4,950.00	6376040	Billed	Editing and revising motion for PI & gag order; reviewing and analyzing HS discovery requests and associated pleadings; reviewing and coding documents for production
06/17/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00	6376040	Billed	Continue work on memo and related papers in support of Motion for Preliminary Injunction; internal conferences regarding same; exchange emails with local counsel regarding same.
06/17/2024	Etienne, William M.	Associate	4.70	2,185.50	465.00	4.70	2,185.50	6376040	Billed	Revise Statement of Facts for Motion for Preliminary Injunction and Gag Order.
06/17/2024	Etienne, William M.	Associate	5.20	2,418.00	465.00	5.20	2,418.00	6376040	Billed	Prepare additional portions of Gag Order Argument for brief in support of same; provide comments regarding Tortious Interference claims for same.
06/17/2024	Smoot, Rachel A.	Associate	6.30	2,961.00	470.00	6.30	2,961.00	6376040	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction and Gag Order and documents in support of same; review and analyze latest public statements by Defendant for the purpose of including into Memorandum.
06/17/2024	Sears, Hayley A.	Associate	0.20	75.00	375.00	0.20	75.00	6376040	Billed	Check in with Mike Etienne about preliminary injunction statement of facts and document review.
06/18/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50	6376040	Billed	Review additional publications by Defendants in last two days and review HS and HS Foundation Twitter and Instagram accounts in connection with preparation of additional exhibits.
06/18/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6376040	Billed	Discuss comments and revise brief in support of motion for gag order and preliminary injunction in view of comments and new offending conduct.
06/18/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6376040	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction and Gag Order; revise and edit Lynn Tincher-Ladner Declaration in support of same.
06/18/2024	Sears, Hayley A.	Associate	2.20	825.00	375.00	2.20	825.00	6376040	Billed	Research case law on witness intimidation for gag order brief, look for new material on twitter, facebook, linkedin, and instagram, and communicate with mike about next steps to finalize brief and declarations.
06/19/2024	Etienne, William M.	Associate	4.70	2,185.50	465.00	4.70	2,185.50	6376040	Billed	Review examples of Defendants' 1,244 AI-generated college-specific articles; incorporate facts regarding same in preliminary injunction and gag order facts.
06/19/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00	6376040	Billed	Prepare Motion for Preliminary Injunction and Gag Order including Prayer for Relief and request for attorneys' fees; identify case law in support of same.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt Invoice	Status	Narrative
06/19/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6376040	Billed	Review correspondence and provide suggested edits to same regarding Defendants' alleged motion to compel discovery.
06/19/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00 6376040	Billed	Revise introduction of preliminary injunction briefing based on discovery of AI-generated articles.
06/19/2024	Smoot, Rachel A.	Associate	6.40	3,008.00	470.00	6.40	3,008.00 6376040	Billed	Revise and edit Memorandum in Support of Motion for TRO/PI/Gag Order and supporting documents; confer with co-counsel regarding same.
06/19/2024	Sears, Hayley A.	Associate	3.00	1,125.00	375.00	3.00	1,125.00 6376040	Billed	Research case law about tortious interference preliminary injunction where social media was enjoined
06/19/2024	Polak, Jonathan G.	Partner	3.40	2,805.00	825.00	3.40	2,805.00 6376040	Billed	Continue work on motion to TRO and related papers; exchange emails with local counsel regarding same; exchange emails with client regarding same; review new evidence.
06/19/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6376040	Billed	Conference with Lynn Tincher-Ladner regarding status of TRO papers and other recent activities related to social media postings by Honor Society.
06/19/2024	Peluchette, Neil R.	Associate	8.20	3,444.00	420.00	8.20	3,444.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website.
06/20/2024	Nienhouse, Hillary	Clerk	4.50	1,170.00	260.00	4.50	1,170.00 6376040	Billed	Meet with Neil Peluchette; Take Page Vault captures of web articles about client Phi Theta Kappa
06/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6376040	Billed	Conference with local counsel on strategy for TRO.
06/20/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00 6376040	Billed	Continue work on TRO and related paperwork and strategy.
06/20/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6376040	Billed	Prepare slides for hearing on preliminary injunction and board presentation demonstrating HS's wrongful publications.
06/20/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 6376040	Billed	Review additional AI-generated articles created by HS to disparage PTK, which now total nearly 5,000.
06/20/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50 6376040	Billed	Meet with local counsel to discuss strategy for preliminary injunction and gag order briefing.
06/20/2024	Peluchette, Neil R.	Associate	8.90	3,738.00	420.00	8.90	3,738.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website.
06/21/2024	Etienne, William M.	Associate	0.70	325.50	465.00	0.70	325.50 6376040	Billed	Attend meeting with PTK board regarding HS's malicious conduct.
06/21/2024	Peluchette, Neil R.	Associate	3.80	1,596.00	420.00	3.80	1,596.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website; correspondence with PageVault regarding the mass capture of the Honor Society's website; call with PageVault regarding same; collection of prior captured content for production.
06/24/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6376040	Billed	Review newly published social media websites; consider issues related to motion for TRO; exchange communications with client regarding same.
06/24/2024	Peluchette, Neil R.	Associate	1.20	504.00	420.00	1.20	504.00 6376040	Billed	Receipt of PageVault downloads from PageVault; collection of same and providing to litigation support for processing and production.
06/24/2024	Peluchette, Neil R.	Associate	0.70	294.00	420.00	0.70	294.00 6376040	Billed	PageVault capture of two newly published articles.
06/24/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00 6376040	Billed	Confer with co-counsel regarding Motion for Temporary Restraining Order and additional evidence in support of same.
06/25/2024	Etienne, William M.	Associate	1.50	697.50	465.00	1.50	697.50 6376040	Billed	Review new Honor Society publications disparaging PTK; print and prepare publications and related correspondence as demonstratives for discovery hearing.
06/25/2024	Sears, Hayley A.	Associate	3.00	1,125.00	375.00	3.00	1,125.00 6376040	Billed	Search for new articles, tweets, and news sources; compare new ones to original documents; and converse with Mike Etienne about next steps.
06/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00 6376040	Billed	Review recent changes to social media sites; conference with Rachel Smoot regarding same.
06/26/2024	Peluchette, Neil R.	Associate	0.40	168.00	420.00	0.40	168.00 6376040	Billed	PageVault capture of newly published web article.
06/26/2024	Sears, Hayley A.	Associate	2.10	787.50	375.00	2.10	787.50 6376040	Billed	Search for additional articles and create exhibit table outlining all of the exhibits and their content.
06/27/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6376040	Billed	Meet to discuss TRO briefing regarding Defendants' malicious publications, PTK's interrogatory responses, Defendants' protective order violations, and document productions.
06/27/2024	Etienne, William M.	Associate	12.80	5,952.00	465.00	12.80	5,952.00 6376040	Billed	Revise brief in support of Motion for TRO and Gag Order including sections on tortious interference, gag order, and introduction, conclusion, and statement of facts.
06/27/2024	Smoot, Rachel A.	Associate	1.60	752.00	470.00	1.60	752.00 6376040	Billed	Call with co-counsel regarding Motion for Temporary Restraining Order/ Gag Order.
06/28/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00 6376040	Billed	Revise brief to include additional examples of injury to PTK; prepare demonstrative chart in furtherance of same.
06/28/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00 6376040	Billed	Confer with co-counsel regarding evidence for Motion for Temporary Restraining Order.
06/28/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6376040	Billed	Revise Motion for PI based on newly discovered evidence; circulate same with comments in conjunction with brief to local counsel for further review.
06/28/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00 6376040	Billed	Review legal research related to unauthorized access of PTK information; confer with co-counsel regarding same.
06/29/2024	Smoot, Rachel A.	Associate	2.50	1,175.00	470.00	2.50	1,175.00 6376040	Billed	Revise and edit Tincher-Ladner Declaration in Support of Motion for Temporary Restraining Order/Gag Order.
06/30/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00 6376040	Billed	Continue work on TRO and injunction papers.
06/30/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50 6376040	Billed	Revise brief to include proper exhibit citations; address further comments regarding same.
06/30/2024	Matthews, Alex M.	Associate	9.40	3,525.00	375.00	9.40	3,525.00 6376040	Billed	Editing and revising motion for PI; gathering exhibits and cited materials; editing and revising declarations; internal team conference regarding finalizing brief and exhibits
07/01/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revise motion for preliminary injunction based on comments regarding gag order.
07/01/2024	Matthews, Alex M.	Associate	8.20	3,075.00	375.00	8.20	3,075.00 6402281	Billed	Coordinate exhibits for LTL declaration and brief in support of motion for preliminary injunction; review citations in brief in furtherance of same.
07/01/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revising and editing brief for PI motion; drafting and revising Polak decl; reviewing and coding documents for production
07/01/2024	Smoot, Rachel A.	Associate	4.40	2,068.00	470.00	4.40	2,068.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Temporary Restraining Order and Gag Order; revise and edit Tincher-Ladner Declaration in Support of same; multiple calls and emails with co-counsel regarding same; messages with client regarding same.
07/01/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00 6402281	Billed	Continue work on TRO and related papers; internal communications regarding same.
07/02/2024	Matthews, Alex M.	Associate	7.70	2,887.50	375.00	7.70	2,887.50 6402281	Billed	Revising and editing exhibits for motion for PI; reviewing and coding documents for production
07/02/2024	Balthazor Jr., O J.	Associate	0.60	288.00	480.00	0.60	288.00 6402281	Billed	Review and analyze emails from Rachel Smoot and Mike Etienne regarding screenshots for motion; phone call with Rachel Smoot regarding the same; pull screenshots of Google search results pages for purposes of attaching to motion; email Rachel Smoot and Mike Etienne regarding the same.
07/02/2024	Smoot, Rachel A.	Associate	4.10	1,927.00	470.00	4.10	1,927.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction, Temporary Restraining Order and/or Gag Order; revise and edit Tincher-Ladner Declaration in Support of the same; revise and edit Polak Declaration in Support of the same; multiple emails and calls with client and co-counsel regarding same.
07/02/2024	Polak, Jonathan G.	Partner	2.70	2,227.50	825.00	2.70	2,227.50 6402281	Billed	Continue work on motion for TRO and related papers; internal conferences regarding same; exchange of emails with local counsel regarding same.
07/02/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to align requested relief with that of Motion and to highlight PTK's need for right to a fair trial.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt Invoice	Status	Narrative
07/02/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Review Search Engine Optimization case law and revise PTK brief in support of TRO / GO to include discussion of same.
07/02/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include discussion of additional, quantified harm.
07/02/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include discussion of Defendants' conduct being far more than a protectable press-release .
07/02/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include updated exhibit reference; prepare additional material for exhibits in furtherance of same.
07/02/2024	Etienne, William M.	Associate	8.60	3,999.00	465.00	8.60	3,999.00 6402281	Billed	Revise all portions of PTK brief in support of TRO and Gag Order to reduce length and provide more persuasive requests for relief; revise Motion to achieve same.
07/03/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Temporary Restraining Order, Preliminary Injunction, and/or Gag Order; revise and edit supporting documents in support of same; draft, revise, and edit Motion to Seal and Proposed Order granting same.
07/03/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Confer with local counsel regarding scheduled hearing; draft Notice of Hearing.
07/03/2024	Polak, Jonathan G.	Partner	4.30	3,547.50	825.00	4.30	3,547.50 6402281	Billed	Continue work on TRO and related papers; internal conferences regarding same.
07/03/2024	Etienne, William M.	Associate	9.60	4,464.00	465.00	9.60	4,464.00 6402281	Billed	Revise brief in support of motion for TRO/PI and GO based on comments from local counsel; revise same to include pin citations for exhibits A1-46; revision motion and declaration in view of same; coordinate filing of same.
07/04/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Attention to multiple emails from opposing counsel.
07/04/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00 6402281	Billed	Receive and review email from D. Linke regarding confidentiality designations under motion to seal; consider response to same; prepare response.
07/05/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00 6402281	Billed	Finalize and file Notice of Hearing.
07/05/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00 6402281	Billed	Attention to multiple emails from opposing counsel; confer with co-counsel regarding same; redact Tincher-Ladner Declaration and send same to opposing counsel.
07/05/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50 6402281	Billed	Prepare status email to Lynn Tincher-Ladner on pending motions and anticipated schedule for next week.
07/07/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Attention to Response in Opposition to Motion to Seal.
07/07/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6402281	Billed	Review Defendants' Response to PTK's Motion to Seal.
07/08/2024	Polak, Jonathan G.	Partner	1.50	1,237.50	825.00	1.50	1,237.50 6402281	Billed	Prepare for court hearing; review file materials for same; attend court hearing; post-hearing conference with co-counsel to discuss status and strategy.
07/08/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6402281	Billed	Exchange emails with client regarding hearing status and strategy; conference with client regarding same.
07/08/2024	Polak, Jonathan G.	Partner	1.60	1,320.00	825.00	1.60	1,320.00 6402281	Billed	Begin preparation for hearing on July 12th; review file materials for same; identify exhibits to be used at hearing; begin work on exhibit list for same; conference with client to discuss hearing strategy.
07/08/2024	Etienne, William M.	Associate	1.30	604.50	465.00	1.30	604.50 6402281	Billed	Research and review case law regarding Reply in support of motion to seal in 5th Circuit.
07/08/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6402281	Billed	Participate in scheduling hearing for TRO hearing and motion to seal.
07/08/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 6402281	Billed	Review and provide comments regarding initial draft of Reply to motion to seal; provide comments on additional case needs in support of same.
07/08/2024	Matthews, Alex M.	Associate	7.70	2,887.50	375.00	7.70	2,887.50 6402281	Billed	Reviewing and analyzing case law regarding motion to seal; drafting and revising reply to motion to seal
07/08/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00 6402281	Billed	Prepare for and attend status conference; coordinate delivery to Court of Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order and supporting papers; coordinate drafting of Reply.
07/09/2024	Etienne, William M.	Associate	5.20	2,418.00	465.00	5.20	2,418.00 6402281	Billed	Prepare PTK reply brief in support of motion to seal; research case law in furtherance of same.
07/09/2024	Polak, Jonathan G.	Partner	8.50	7,012.50	825.00	8.50	7,012.50 6402281	Billed	Continue preparation for TRO and injunction hearing; review file materials for same; begin preparation of examination outline of Dr. Tincher-Ladner.
07/09/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50 6402281	Billed	Work on identifying exhibits for use at injunction hearing; work with administrative team on same.
07/10/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00 6402281	Billed	Travel to Jackson for injunction hearing.
07/10/2024	Polak, Jonathan G.	Partner	4.00	3,300.00	825.00	4.00	3,300.00 6402281	Billed	Continue work on preparation for injunction hearing; continue work on Lynn Tincher-Ladner direct examination; work on M. Moradian cross- examination.
07/10/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6402281	Billed	Continue work on reply to motion to seal; provide comments and revisions to Mike Etienne.
07/10/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6402281	Billed	Review response brief; consider reply brief arguments and strategy.
07/10/2024	Etienne, William M.	Associate	2.90	1,348.50	465.00	2.90	1,348.50 6402281	Billed	Revise Reply brief in support of motion to seal based on comments and additional case law and exhibit citations.
07/10/2024	Etienne, William M.	Associate	2.80	1,302.00	465.00	2.80	1,302.00 6402281	Billed	Review brief in opposition to PTK's motion for injunction relief; review case law and compose arguments to rebut same.
07/10/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6402281	Billed	Review Defendants' Opposition to PTK's Motion seeking injunctive relief; research case law and provide notes regarding Rebuttal to same.
07/10/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50 6402281	Billed	Review declarations of Marek, Linke, and Moradian; review exhibits in support of same to identify potential issues/objections.
07/10/2024	Matthews, Alex M.	Associate	9.80	3,675.00	375.00	9.80	3,675.00 6402281	Billed	Editing and revising motion to seal; reviewing and analyzing case law for same
07/10/2024	Smoot, Rachel A.	Associate	6.40	3,008.00	470.00	6.40	3,008.00 6402281	Billed	Review and analyze Response in Opposition to Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order and supporting documents; confer with co-counsel regarding same; confer with client regarding same; draft Rebuttal Facts section; review and analyze outline of direct examination of Lynn Tincher-Ladner.
07/11/2024	Polak, Jonathan G.	Partner	14.50	11,962.50	825.00	9.50	7,837.50 6402281	Billed	Continue work on reply brief; internal communications regarding same, including with local counsel; conference with D. Newman regarding exhibits and protocol; work on related papers including motions to seal and supplemental declarations; conference with client to prepare for hearing; continue work on examination outlines for hearing.
07/11/2024	Etienne, William M.	Associate	7.50	3,487.50	465.00	0.00	0.00 6402281	Billed	Travel to Jackson, MS for hearing on PTK's Motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	2.30	1,069.50	465.00	2.30	1,069.50 6402281	Billed	Prepare motion to seal reply in support of motion to seal motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	4.30	1,999.50	465.00	4.30	1,999.50 6402281	Billed	Revise reply in support of motion to seal motion seeking injunctive relief based on comments and decision seeking open courtroom with prohibition on publication of witness testimony; identify and incorporate case law in support of same.
07/11/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00 6402281	Billed	Evaluate Defendants' exhibits in support of Opposition to PTK's Motion seeking injunction relief; prepare objections (e.g., hearsay, authentication) regarding same.
07/11/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 6402281	Billed	Review supplemental declaration of Dr. Tincher-Ladner; provide suggested edits to rebuttal in support of Motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 6402281	Billed	Review direct examination outline of Dr. Tincher-Ladner.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
07/11/2024	Smoot, Rachel A.	Associate	10.20	4,794.00	470.00	10.20	4,794.00	6402281	Billed	Draft Supplemental Tincher-Ladner Declaration; draft Motion to Seal Rebuttal Brief in Support of Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order; revise and edit Declaration and Rebuttal Briefs; compile and finalize exhibits for Supplemental Tincher-Ladner Declaration; confer with co-counsel regarding Defendants' exhibits and preparation of objections to same; revise and edit objections to Defendants' exhibits; attention to response to PTK's objections to Defendants' exhibits and Defendants' objections to PTK's exhibits; review and analyze case law related to self-authentication of Page Vault documents; draft timeline of most recent productions in advance of hearing.
07/11/2024	Sears, Hayley A.	Associate	6.70	2,512.50	375.00	6.70	2,512.50	6402281	Billed	Participate in call with Mike regarding exhibits, draft objections to Defendants 50 exhibits used in response to Pl/gag order motion, discuss various objections with Mike Etienne, incorporate Jonathan Polak's edits into draft, and email DeAnn to get filed.
07/12/2024	Polak, Jonathan G.	Partner	9.00	7,425.00	825.00	9.00	7,425.00	6402281	Billed	Continue preparation for hearing; attend hearing.
07/12/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel back to Indianapolis.
07/12/2024	Etienne, William M.	Associate	1.30	604.50	465.00	1.30	604.50	6402281	Billed	Organize all documents related to PTK's briefing in support of TRO and Defendants briefing opposing same to offer as exhibits during hearing.
07/12/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6402281	Billed	Review Fifth Circuit case law regarding "editorialization" of claims in connection with PTK's proposed language for injunction; provide argument for hearing regarding same.
07/12/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6402281	Billed	Obtain and organize cases cited in PTK's briefing in support of injunctive relief and in Defendants' briefing in opposition.
07/12/2024	Etienne, William M.	Associate	7.80	3,627.00	465.00	7.80	3,627.00	6402281	Billed	Participate in hearing regarding PTK's Motion seeking injunctive relief, including supporting direct examination of Dr. Tincher-Ladner and objections to Defendants' cross examination of same; discuss strategy regarding same.
07/12/2024	Etienne, William M.	Associate	7.40	3,441.00	465.00	0.00	0.00	6402281	Billed	Travel from Jackson, Mississippi to Indianapolis, IN after first portion of hearing on PTK's Motion seeking injunctive relief.
07/12/2024	Smoot, Rachel A.	Associate	7.50	3,525.00	470.00	0.00	0.00	6402281	Billed	Prepare for and attend hearing on Motion for Temporary Restraining Order, Preliminary Injunction, and/or Gag Order.
07/12/2024	Peluchette, Neil R.	Associate	0.60	252.00	420.00	0.60	252.00	6402281	Billed	Researching affidavit process for PageVault if needed for hearing; email correspondence regarding same.
07/15/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6402281	Billed	Receive and review motion to de-designate AEO materials; consider response; exchange emails with D. Newman regarding resolution of same; conference with Lynn Tincher-Ladner regarding same; prepare draft order and circulate same to D. Newman; finalize and file same.
07/15/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6402281	Billed	Attention to Emergency Motion to De-Designate AEO Documents.
07/16/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel to Jackson for TRO hearing.
07/16/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6402281	Billed	Continue work on M. Moradian cross-examination for TRO hearing.
07/16/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6402281	Billed	Email Court regarding Zoom link for upcoming hearing.
07/17/2024	Polak, Jonathan G.	Partner	10.50	8,662.50	825.00	10.50	8,662.50	6402281	Billed	TRO hearing and client conferences.
07/17/2024	Smoot, Rachel A.	Associate	6.50	3,055.00	470.00	6.50	3,055.00	6402281	Billed	Prepare for and attend hearing on motion for temporary restraining order, preliminary injunction, and/or gag order.
07/17/2024	Etienne, William M.	Associate	9.20	4,278.00	465.00	9.20	4,278.00	6402281	Billed	Prepare for and participate in injunctive relief hearing.
07/18/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel back to Indianapolis.
07/19/2024	Etienne, William M.	Associate	6.50	3,022.50	465.00	0.00	0.00	6402281	Billed	Travel from Jackson, Mississippi to Indianapolis.
07/23/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	6402281	Billed	Confer with client and co-counsel regarding latest Honor Society online attacks; review and analyze latest publicly available information; draft Supplemental Declaration of Lynn Tincher-Ladner; draft Notice of Filing Supplemental Exhibits.
07/23/2024	Peluchette, Neil R.	Associate	2.70	1,134.00	420.00	2.70	1,134.00	6402281	Billed	Review of PTK Wikipedia page; Edits to same; Correspondence with Wikipedia regarding security access to page.
07/24/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00	6402281	Billed	Continue attention to Wikipedia changes; exchange multiple communications with client; review and revise draft Declaration from Tincher-Ladner on same.
07/24/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6402281	Billed	Continue work on notice of supplemental evidence.
07/24/2024	Smoot, Rachel A.	Associate	1.70	799.00	470.00	1.70	799.00	6402281	Billed	Revise and edit Supplemental Tincher-Ladner Declaration; multiple emails with client and co-counsel regarding same; compile Exhibits for same.
07/24/2024	Peluchette, Neil R.	Associate	2.90	1,218.00	420.00	2.90	1,218.00	6402281	Billed	Additional review of PTK Wikipedia page; Edits to same; Correspondence with Wikipedia regarding security access to page.
07/26/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	6402281	Billed	Review and analyze Motion to Strike; confer with co-counsel regarding same; draft Response to Motion to Strike, including reviewing and analyzing case law in support of Response.
07/27/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6402281	Billed	Revise and edit Response in Opposition to Motion to Strike; confer with co-counsel regarding same.
07/27/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6402281	Billed	Continue work on response to motion to strike; exchange emails with Rachel Smoot regarding same.
07/28/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6402281	Billed	Attention to email from co-counsel regarding Opposition to Motion to Strike; revise and edit same.
07/29/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6402281	Billed	Continue work on response to motion to strike; circulate draft on same.
07/29/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6402281	Billed	Revise and edit Response to Motion to Strike; confer with co-counsel regarding same.
07/30/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6402281	Billed	Confer with co-counsel regarding Response to Motion to Strike; revise and edit Memorandum in Support of Motion to Strike; draft Response to Motion to Strike; revise and edit same.
08/07/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	0	Unbilled	Receive and review reply in support of motion to strike; prepare email to client regarding same.
Totals:			513.20	266,895.50		455.20	229,451.00			

EXHIBIT A-8

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
08/23/2024	Peluchette, Neil R.	Associate	0.60	252.00	420.00	0.60	252.00	6431362	Billed	Review of Court order; email correspondence with J. Polak regarding same; review of Wikipedia page.
08/23/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Review updates to Honor Society website; consider same in context of text of order; exchange emails with Lynn Tincher-Ladner regarding same.
08/23/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Conference with Mike Wallace regarding status issues related to TRO and possible need to enforce.
08/23/2024	Sears, Hayley A.	Associate	3.20	1,200.00	375.00	1.60	600.00	6431362	Billed	Conduct research regarding causal connection and send research to J. Polak and read court's preliminary injunction order.
08/24/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6431362	Billed	Review Honor Society and Honor Society Foundation websites for compliance with injunction; exchange emails with co-counsel regarding same.
08/24/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6431362	Billed	Review and analyze Defendants' publicly available posts referencing PTK in light of injunction order; confer with co-counsel regarding same.
08/26/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	6431362	Billed	Discuss strategy underlying Motion to Show Cause regarding Contempt of Court; gather evidence regarding same and review case law regarding same.
08/26/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6431362	Billed	Attention to injunction compliance; review present status of HS.org and HSF websites; conference with Mike Etienne regarding same; review draft email on contempt from Mike Etienne; exchange communications with client regarding same.
08/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6431362	Billed	Receive and review email from D. Newman regarding request for consent to stay injunction; prepare email to D. Newman regarding same; review file materials for same; exchange further communications from D. Newman regarding same.
08/26/2024	Sears, Hayley A.	Associate	5.50	2,062.50	375.00	3.50	1,312.50	6431362	Billed	Work on motion for contempt and sanctions, call with Mike and Rachel, and research and outline.
08/27/2024	Etienne, William M.	Associate	7.60	3,534.00	465.00	7.60	3,534.00	6431362	Billed	Prepare initial draft of Memorandum in support of Motion for Contempt and Sanctions.
08/27/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Receive and review letter from counsel addressing identified issues of contempt; consider same and provide instructions and guidance in connection with same.
08/27/2024	Polak, Jonathan G.	Partner	1.00	825.00	825.00	1.00	825.00	6431362	Billed	Review and continue work on motion for contempt; prepare email to Mike Etienne regarding same.
08/27/2024	Sears, Hayley A.	Associate	0.10	37.50	375.00	0.10	37.50	6431362	Billed	Check-in with Mike and Rachel on motion for contempt and sanctions and discuss recent HS filing.
08/27/2024	Smoot, Rachel A.	Associate	4.50	2,115.00	470.00	4.50	2,115.00	6431362	Billed	Review and analyze publicly available Honor Society webpages for compliance with Preliminary Injunction; draft Motion for Contempt and Declaration of W. Etienne in support of same; confer with co-counsel regarding same; attention to correspondence from opposing counsel regarding contempt; confer with co-counsel regarding same; multiple emails with client regarding Defendants' compliance with Preliminary Injunction.
08/27/2024	Smoot, Rachel A.	Associate	1.30	611.00	470.00	1.30	611.00	6431362	Billed	Review and analyze Motion to Stay Preliminary Injunction and supporting documents; confer with co-counsel regarding same.
08/28/2024	Etienne, William M.	Associate	8.10	3,766.50	465.00	8.10	3,766.50	6431362	Billed	Prepare revised version of Memorandum in support of Motion for Contempt and Sanctions based on comments; review and cite additional case law in furtherance of same; conduct additional investigations in HS conduct in furtherance of same.
08/28/2024	Polak, Jonathan G.	Partner	4.10	3,382.50	825.00	4.10	3,382.50	6431362	Billed	Attention to injunction enforcement; work on motion for contempt; conference with Mike Etienne to review various HS.org and HSF websites and social media for compliance and issues to raise in contempt motion; review and respond to emails from client on same; continue work on brief in support of motion for contempt; circulate same for comment with revisions.
08/28/2024	Rose, Alexis	Paralegal	2.30	644.00	280.00	2.30	644.00	6431362	Billed	Discuss motion and exhibits with Mike Etienne, take page vaults and exhibits still needed to prepare for filing.
08/28/2024	Sears, Hayley A.	Associate	0.60	225.00	375.00	0.60	225.00	6431362	Billed	Review HS motion for stay.
08/28/2024	Smoot, Rachel A.	Associate	3.30	1,551.00	470.00	3.30	1,551.00	6431362	Billed	Draft Motion for Contempt; revise and edit Memorandum in Support of Same; confer with co-counsel regarding same; revise and edit Declaration of W. Michael Etienne in support of same; revise and edit Memorandum in Support of same.
08/29/2024	Etienne, William M.	Associate	11.50	5,347.50	465.00	11.50	5,347.50	6431362	Billed	Revise Memorandum in Support of Motion for Contempt and Sanctions in view of additional comments; revise Motion; revise Etienne Declaration in support of same; obtain and review Exhibits 1-55 in support of same; manage filing of same.
08/29/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00	6431362	Billed	Continue work on motion for contempt; communicate with co-counsel regarding same.
08/29/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6431362	Billed	Multiple emails with co-counsel regarding Motion for Contempt; call with M. Etienne regarding same.
09/04/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00	0	Unbilled	Exchange emails with C. Cowan regarding status of response to motion to stay injunction.
09/06/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	0	Unbilled	Review draft response in Opposition to Motion to Stay; prepare email to C. Cowan regarding same and with comments; prepare email to Lynn Tincher-Ladner regarding same; multiple emails to co-counsel regarding same.
09/06/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	0	Unbilled	Revise and edit Memorandum in Support of Response in Opposition to Defendants' Motion to Stay Preliminary Injunction and Appeal; draft Smoot Declaration in support of same; draft Tincher-Ladner Declaration in support of same; email client for potential exhibits and attention to response; finalize exhibits for Declarations; revise and edit Declarations; multiple emails and calls with local counsel regarding finalization.
09/06/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	0	Unbilled	Draft Motion to Seal; multiple emails with co-counsel and opposing counsel regarding same.
09/09/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00	0	Unbilled	Consider need to seek court hearing on contempt motion; exchange emails with co-counsel regarding same.
09/11/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Review recent communications over discovery disputes; prepare list of outstanding issues; prepare email to co-counsel regarding same along with strategy for presentation to Magistrate Judge Myers.
09/13/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Preliminary review of response to motion for contempt; review email exchanges with co-counsel regarding strategy for responding to same.
09/13/2024	Smoot, Rachel A.	Associate	2.80	1,316.00	470.00	2.80	1,316.00	0	Unbilled	Review and analyze Response in Opposition to Motion for Contempt; draft Reply Brief.
09/14/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	0	Unbilled	Prepare draft email to court on outstanding discovery issues; review file materials for same; circulate for comment with co-counsel; receive same; prepare final email to court.
09/14/2024	Smoot, Rachel A.	Associate	3.10	1,457.00	470.00	3.10	1,457.00	0	Unbilled	Continue to draft Reply in Support of Motion for Contempt.
09/15/2024	Smoot, Rachel A.	Associate	3.50	1,645.00	470.00	3.50	1,645.00	0	Unbilled	Continue to draft Reply in Support of Motion for Contempt.
09/16/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	0	Unbilled	Review HS Response to PTK's Motion for Contempt.
09/16/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	0	Unbilled	Review HS and HSF websites to determine whether Defendants have now complied with the Court's Second Preliminary Injunction Order; prepare outline and exhibits for Reply brief for Contempt Motion citing failures to comply with same.
09/16/2024	Etienne, William M.	Associate	1.60	744.00	465.00	1.60	744.00	0	Unbilled	Review case law regarding civil motion for contempt where attorneys fees were granted merely from having to file the motion.
09/16/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	0	Unbilled	Review draft reply in support of motion for contempt; review file documents for same; prepare revisions to reply brief; conference with Mike Etienne regarding comments to same.
09/16/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Receive communication from court on hearing; receive communication from D. Linke regarding hearing; prepare for court hearing.
09/16/2024	Rose, Alexis	Paralegal	0.30	84.00	280.00	0.30	84.00	0	Unbilled	Discussion with M. Etienne regarding page vaults and captures needed for Thursday's filing.
09/16/2024	Rose, Alexis	Paralegal	0.60	168.00	280.00	0.60	168.00	0	Unbilled	Capture page vaults and snap shots for Thursday's filing.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt Invoice	Status	Narrative
09/17/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 0	Unbilled	Investigate 2500 AI-generated articles revised since Second Preliminary Injunction Order and stored on HS Foundation website; coordinate PageVault evidentiary capture of same.
09/17/2024	Etienne, William M.	Associate	8.30	3,859.50	465.00	8.30	3,859.50 0	Unbilled	Prepare revised version of Reply brief in support of PTK's Motion to compel; continue to review and incorporate Fifth Circuit case law regarding same.
09/17/2024	Fereshtenkhov, Hannah S.	Associate	1.30	487.50	375.00	1.30	487.50 0	Unbilled	Research and analyze Fifth Circuit case law regarding motion for contempt, including instances of finding contempt when party complied only after filing of motion for contempt.
09/17/2024	Polak, Jonathan G.	Partner	3.40	2,805.00	825.00	3.40	2,805.00 0	Unbilled	Receive and review communication from D. Linke to Court on issues raised by PTK with court; consider same in preparation for conference with Magistrate Judge Myers; attend conference.
09/17/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50 0	Unbilled	Continue work on reply to motion for contempt; conference with Mike Etienne regarding same; prepare email to co-counsel with draft and comments.
09/17/2024	Rose, Alexis	Paralegal	3.50	980.00	280.00	3.50	980.00 0	Unbilled	Prepare and organize exhibits for reply in support of motion for contempt, review exhibits, finalize for filing.
09/17/2024	Smoot, Rachel A.	Associate	1.80	846.00	470.00	1.80	846.00 0	Unbilled	Prepare for and attend status conference with Magistrate.
09/18/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 0	Unbilled	Prepare motion to file additional pages in connection with Reply in support of Motion for Contempt and Sanctions.
09/18/2024	Etienne, William M.	Associate	3.60	1,674.00	465.00	3.60	1,674.00 0	Unbilled	Revise Reply in support of Motion for Contempt and Sanctions based on comments and edits.
09/18/2024	Etienne, William M.	Associate	4.60	2,139.00	465.00	4.60	2,139.00 0	Unbilled	Prepare and revise Etienne Declaration in support of Reply in support of Motion for Contempt and Sanctions.
09/19/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00 0	Unbilled	Review proposed edits and revise Reply in support of Motion for Contempt and Sanctions, Declaration and Exhibits, and Motion for Excess Pages; correspond with opposing counsel regarding non-opposition of Motion for Excess Pages.
09/19/2024	Fereshtenkhov, Hannah S.	Associate	1.00	375.00	375.00	1.00	375.00 0	Unbilled	Research and analyze Fifth Circuit case law regarding hearing requirement for civil contempt.
09/19/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 0	Unbilled	Continue work on reply to motion for contempt; review revised declaration from Mike Etienne; exchange emails with Mike Etienne regarding same.
09/19/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00 0	Unbilled	Attention to Reply Brief in Support of Motion for Sanctions.
09/24/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 0	Unbilled	Outline motion and review related caselaw for attorneys' fees related to PTK's first injunction proceeding, second injunction proceeding, motion for contempt.
Totals:			129.20	65,160.00		125.60	63,810.00		

EXHIBIT A-9

Time Report

Phi Theta Kappa Society / Trademark Infringement

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Narrative
09/14/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	Continue work on fee motion; exchange emails with Rachel Smoot regarding same.
09/14/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	Attention to email from co-counsel regarding motion for fees. Discuss PTK fee application; review draft and comments regarding same.
09/23/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50	Confer with co-counsel regarding Motion for Attorney Fees. Outline motion and review related caselaw for attorneys' fees related to PTK's first injunction proceeding, second injunction proceeding, motion for contempt.
09/23/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	Review task list of pending matter in this litigation and update with additional items.
09/24/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50	Discuss motion for fees; revise outline regarding same. Research and analyze case law regarding awarding attorneys' fees based on court's inherent power, contempt, and section 1927.
09/24/2024	Etienne, William M.	Associate	0.20	93.00	465.00	0.20	93.00	Continue work on motion for fees; review file documents for same and identify possible exhibits.
09/25/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	Review Taft's fees March - September 2024 to calculate total attorneys' that Honor Society should pay to PTK based on the first preliminary injunction work; create exhibit for Fee Motion based on same.
09/26/2024	Fereshtenkhou, Hannah S.	Associate	3.60	1,350.00	375.00	3.60	1,350.00	Continue researching and analyzing case law regarding awarding attorneys' fees based on courts' inherent power, contempt, and section 1927; review and analyze case law regarding lodestar method for calculating reasonable attorneys' fees.
09/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	Breakdown and calculate fees for Motion for Contempt; confer with co-counsel regarding same.
09/27/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	Review Taft's fees March - September 2024 to calculate total attorneys' that Honor Society should pay to PTK based on the contempt motion work; create exhibit for Fee Motion based on same.
09/27/2024	Fereshtenkhou, Hannah S.	Associate	3.00	1,125.00	375.00	3.00	1,125.00	Email to co-counsel regarding Motion for Fees. Continue researching and analyzing Fifth Circuit and Southern District of Mississippi case law regarding calculation of attorneys' fees through the lodestar method and Johnson factors.
09/27/2024	Smoot, Rachel A.	Associate	5.80	2,726.00	470.00	5.80	2,726.00	Continue work on fee application. Confer with co-counsel regarding Motion for Fees; calculate fees in connection with Motion for Contempt and First Motion for Temporary Restraining Order.
09/28/2024	Etienne, William M.	Associate	1.00	465.00	465.00	1.00	465.00	Prepare revised draft of motion for fees based on First Preliminary Injunction Order.
09/28/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	Draft Declaration of Jonathan Polak in Support of Motion for Attorney Fees.
09/29/2024	Fereshtenkhou, Hannah S.	Associate	2.00	750.00	375.00	2.00	750.00	
09/29/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	
09/29/2024	Smoot, Rachel A.	Associate	3.00	1,410.00	470.00	3.00	1,410.00	
09/30/2024	Etienne, William M.	Associate	5.40	2,511.00	465.00	5.40	2,511.00	
09/30/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00	
			39.40	18,324.00		39.40	18,324.00	

EXHIBIT A-15

Cost Report

Phi Theta Kappa Society / Trademark Infringement

Date	Description	Attorney	Orig Amt	Rev Amt	Vendor	Voucher	Check No.	Invoice	Narrative
03/13/2024	Westlaw search - in contract	1079	25.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/13/2024	Westlaw search - in contract	2973	100.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/13/2024	Westlaw search - in contract	0983	89.23	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/17/2024	Westlaw search - in contract	0983	25.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/18/2024	Westlaw search - in contract	0983	267.68	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/19/2024	Westlaw search - in contract	0983	178.46	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/20/2024	Westlaw search - in contract	2973	150.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/21/2024	Travel	JGPO	400.00	400.00	Jonathan G. Polak	2861589	999105764	6304101	Travel, Jonathan G. Polak, J. Polak receipt for flight for 3/27/2024 Evidentiary Hearing.
03/21/2024	Westlaw search - in contract	2973	350.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/23/2024	Westlaw search - in contract	0983	25.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/24/2024	Westlaw search - in contract	0983	25.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/25/2024	Westlaw search - in contract	1079	1,175.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/26/2024	Westlaw search - in contract	1079	150.00	0.00		0		6304101	WESTLAW CHARGES MARCH, 2024
03/27/2024	Deposition/transcript	JGPO	829.25	829.25	Candice Simmons Crane	2867921	30351	6304101	Deposition/transcript, Candice Simmons Crane, Payment for transcript of March 27, 2024 hearing.
03/28/2024	Travel	JGPO	1,969.48	1,969.48	Jonathan G. Polak	2864219	999106142	6304101	Travel, Jonathan G. Polak, J. Polak reimbursement for Westin Hotel stay March 25-28, 2024 for March 27, 2024 hearing.
03/28/2024	Travel	JGPO	25.18	25.18	Jonathan G. Polak	2864220	999106142	6304101	Travel, Jonathan G. Polak, J. Polak reimbursement for uber on March 28, 2024 from hotel to airport.
04/01/2024	Travel	0960	1,610.68	0.00	William Michael Etienne	2864215	999106186	6330424	[Delete] Travel, William Michael Etienne, Attorney Reimbursement for Travel Expense 25Mar2024
06/12/2024	Westlaw search - in contract	0983	50.00	0.00		0		6376040	WESTLAW CHARGES JUNE, 2024
07/06/2024	Westlaw search - in contract	0983	75.00	0.00		0		6402281	WESTLAW CHARGES JULY, 2024
07/11/2024	Westlaw search - in contract	0983	75.00	0.00		0		6402281	WESTLAW CHARGES JULY, 2024

7/10/2024	Travel	JGPO	400.00	400.00	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Indianapolis to Jackson, 7-12-24
7/12/2024	Uber	JGPO	67.31	67.31	Jonathan G. Polak				Evidentiary Hearing Uber charges, Jonathan G. Polak, July
7/12/2024	Travel	JGPO	548.97	548.97	Jonathan G. Polak				Evidentiary Hearings
7/13/2024	Travel	JGPO	950.12	950.12	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Jackson to Indianapolis, 7-12-24
07/13/2024	Deposition/transcript	JGPO	286.20	286.20	Teri Barker Norton, RMR, FCRR, RDR	2901111	34821	6431362	Evidentiary Hearing Travel, Jonathan G. Polak, Hotel Charge for 7-12-24 Evidentiary Hearing Deposition/transcript, Teri Barker Norton, RMR, FCRR, RDR, Evidentiary Hearing transcript, V. 1 (7/12/24)
07/17/2024	Federal Express	9911	102.07	102.07	Federal Express Corp	2895327	8112575	6402281	Federal Express Sent: 07/09/2024 FROM Taft Service Center, TO Mike Wallace, Airbill#: 777303067784
07/17/2024	Federal Express	9911	229.63	229.63	Federal Express Corp	2895327	8112575	6402281	Federal Express Sent: 07/10/2024 FROM DeeAnn Cassady, TO Kelly S. Hatter, Airbill#: 777322449417
07/18/2024	Deposition/transcript	JGPO	1,452.00	1,452.00	Teri Barker Norton, RMR, FCRR, RDR	2901112	34821	6431362	Deposition/transcript, Teri Barker Norton, RMR, FCRR, RDR, Evidentiary Hearing transcript, V. 2 (7/12/24)
07/18/2024	Travel	JGPO	771.15	771.15	Jonathan G. Polak	2902373	999115046	6431362	Travel, Jonathan G. Polak, Hotel Charge for 7-17-24 Evidentiary Hearing
7/18/2024	Airfare	JGPO	400.00	400.00	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Jackson to Indianapolis, 7-17-27 Evidentiary Hearing
07/19/2024	Airfare	0960	1,718.92	1,718.92	William Michael Etienne	2896072	999113446	6402281	Airfare, William Michael Etienne, Attorney Travel Reimbursement for Wm Michael Etienne; Travel date July 11-13 and 16-19, 2024, arrival Jackson, MS.; TRO Hearing.
07/19/2024	Travel	0960	1,406.78	1,406.78	William Michael Etienne	2896072	999113446	6402281	Travel, William Michael Etienne, Hotel stays
07/22/2024	Westlaw search - out of contract	DRW	5.39	0.00		0	0	6402281	WESTLAW CHARGES JULY, 2024
08/05/2024	Westlaw search - in contract	0983	1,004.10	0.00		0	0	6431362	WESTLAW CHARGES August, 2024
08/31/2024	Westlaw search - in contract	DRW	50.00	0.00		0	0	6431362	WESTLAW CHARGES August, 2024
09/09/2024	Westlaw search - in contract	0983	893.45	893.45		0	0	0	WESTLAW CHARGES September, 2024
09/10/2024	Westlaw search - in contract	0983	1,473.03	1,473.03		0	0	0	WESTLAW CHARGES September, 2024
09/11/2024	Westlaw search - in contract	0983	89.23	89.23		0	0	0	WESTLAW CHARGES September, 2024
09/16/2024	Westlaw search - in contract	1079	25.00	25.00		0	0	0	WESTLAW CHARGES September, 2024
09/17/2024	Westlaw search - in contract	1079	75.00	75.00		0	0	0	WESTLAW CHARGES September, 2024

09/17/2024	Westlaw search - in contract	0983	50.00	50.00		0	0	0	WESTLAW CHARGES September, 2024
09/18/2024	Professional services	JGPO	3,265.00	3,265.00	Page Vault, Inc.	2908116	0	0	Professional services, Page Vault, Inc., preservation of Honor Society Foundation May and June blog posts with affidavit
09/23/2024	Westlaw search - in contract	2369	175.00	175.00		0	0	0	WESTLAW CHARGES September, 2024
			23,033.31	17,602.77					

EXHIBIT A-16

Veritext, LLC - Midwest Region

Tel. 800-554-3376 Email: billing-midwest@veritext.com
 Fed. Tax ID: 20-3132569



Bill To: Jonathan G. Polak
 Taft Stettinius & Hollister LLP
 One Indiana Square
 Suite 3500
 Indianapolis, IN, 46204

Invoice #: 7771876
 Invoice Date: 10/10/2024
 Balance Due: \$4,613.57

Case: Phi Theta Kappa Honor Society v. Honorsociety.Org Inc Et Al (3:22-cv-00309-cwr-rpm)

Proceeding Type: Depositions

Job #: 6946296 | Job Date: 10/1/2024 | Delivery: Expedited

Location: Los Angeles, CA

Billing Atty: Jonathan G. Polak

Scheduling Atty: Jonathan G. Polak | Taft Stettinius & Hollister LLP

Witness: Michael Moradian	Amount
Transcript Services	\$1,731.45
Transcript Services - Priority Request	\$1,038.87
Rough Draft	\$589.05
Professional Attendance	\$715.00
Exhibits	\$25.20
Logistics, Processing & Electronic Files	\$25.00
Virtual Services	\$390.00
Smart Summary - Over 100 Transcript Pages	\$99.00

Notes:

Invoice Total: \$4,613.57
 Payment: \$0.00
 Credit: \$0.00
 Interest: \$0.00
 Balance Due: \$4,613.57

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-
)	RPM
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
)	
-----)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

DECLARATION OF MICHAEL B. WALLACE

I, Michael B. Wallace, an attorney for Phi Theta Kappa Honor Society (“PTK”) and Dr. Lynn Tincher-Ladner, make the following declaration based on personal knowledge:

1. I am over the age of eighteen and competent to testify to the matters in this declaration.

2. I am an attorney duly licensed to practice law in Mississippi state and federal courts.

3. I am a shareholder with the law firm of Wise Carter Child & Caraway and have represented PTK and Dr. Tincher-Ladner throughout this action.

4. I received my *juris doctor* degree from the University of Virginia School of Law in 1976. I was admitted to the Mississippi bar that same year.

5. From 1976 to 1977, I served as a law clerk for Justice Harry G. Walker, Supreme Court of Mississippi, and from 1977 to 1978, I served as a law clerk for Associate Justice William H. Rehnquist, Supreme Court of the United States. For nearly 50 years I have been engaged continuously in the practice of law. I have both trial and appellate experience, including in many relevant cases featured on Wise Carter's website. I have extensive experience in brief writing, legal research, and oral argument, which I have drawn on for the work I have performed in this case.

6. My hourly rate for PTK has been \$425, which is reasonable in this community for attorneys with comparable skills, reputation, and experience. I base this opinion on my experience in the legal community, my communications with similarly experienced attorneys about fees being charged, and my knowledge of my law firm's hundreds of clients.

7. I have personal knowledge of the attorney's fees incurred by PTK in connection with preparing and filing their First Motion for Preliminary Injunction, Second Motion for Preliminary Injunction, Motion for Contempt, and Motion for Fees as well as their supporting documents including many briefs, declarations, and exhibits. None of Wise Carter's work on the Motion for Fees took place until October 2024. PTK reserves the right to seek its fees for the time worked in October, for example, at the time it files a Reply in support of its Motion for Fees, for which it also reserves the right to seek its fees. Likewise, PTK reserves the right to seek fees in connection with its work on its Appellee's Response in Opposition to Motion For Stay, the vast majority of which was performed in October 2024. This Declaration may be supplemented to

include such additional information, for example, at the time of PTK's Reply in support of its Motion for Fees.

8. Based on the complexities and volume of Honor Society's conduct causing PTK to file its motions described above, three other Wise Carter attorneys and three Wise Carter paralegals have assisted with PTK's motions and related filings: Charles M. Cowan (shareholder), Becky Hawkins (senior special counsel), Kathleen Sullivan (paralegal), Kelly Hatter (paralegal), and Angel Jones (paralegal). Based on my experience working with those individuals, I know that they are skilled attorneys and paralegals with the abilities and experience required to represent PTK effectively throughout these proceedings. The Wise Carter attorneys and paralegals, including myself, have opportunities to serve many clients and have engaged in this work to defend PTK against Honor Society's malicious campaigns to the exclusion of other work for other clients.

9. To that end, the Taft law firm has been necessary in PTK's representation, including in its role performing a large majority of the work required to seek injunctive relief, seek a finding of contempt, seek fees based on Honor Society's conduct. Taft's rates, while higher than Wise Carter rates, are reasonable in view of the magnitude of Honor Society's conduct, the complexities it has introduced, the unique specialization of Mr. Polak and his team, and their relationship with the client. After all, while this case has expanded on a continuous basis to include claims of tortious interference and contempt, that results from Honor Society's own conduct. The case began as (and still is at its core) a trademark infringement case, in which Mr. Polak's specialized skillset is critical for PTK's representation. It would have been unreasonable and inefficient to bring new attorneys in the local community up to speed on all the facts and context of the case learned over the last two-and-a-half years in an effort to employ multiple local firms in PTK's representation in the injunction and contempt proceedings. Additionally, I understand that Taft has billed PTK at a

discounted rate across the board and further discounted its fees by writing off fees before billing PTK each month to ensure the reasonableness of the fees ultimately billed to PTK for these matters. Taft's fees are described in Mr. Polak's declaration provided herewith.

10. As for the others at Wise Carter, Mr. Cowan's hourly rate for PTK has been \$315. Ms. Hawkins's hourly rate for PTK has been \$350. Ms. Sullivan's hourly rate for PTK has been \$180, as has Ms. Hatter's and Ms. Jones's. I also believe these hourly rates to be reasonable in this community for attorneys and paralegals with comparable skills, reputation, and experience. I base that on my experience in the legal community, my communications with similarly experienced attorneys about fees being charged, and my knowledge of my law firm's hundreds of clients.

11. Exhibits B-1, B-2, and B-3 to this declaration constitute a log of the Wise Carter attorneys' and paralegals' time spent working on PTK's motions and related filings described above as well as preparing for and appearing at the associated hearings. The log includes Date, Name, Description, Hours, Amount, Rate, Invoice, and Narrative columns. I believe the meaning of these columns is self-evident. The Hours multiplied by the Rate equals the Amount in each instance. The Amount reflects the fees that were billed to PTK on the corresponding Invoices.

12. Based on my legal experience, I believe that the time incurred, and the legal services provided by Wise Carter were reasonable and necessary. The total amount of fees PTK requests for the work performed through September 30 by the Wise Carter firm in connection with the issues described above is \$49,784.50. Because PTK is also seeking its fees incurred in preparing its Motion for Fees, I expect to supplement this amount on reply.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on: October 14, 2024

/s/ MICHAEL B. WALLACE
MICHAEL B. WALLACE, ESQ.

EXHIBIT B-1

Date	Name	Description	Hours	Amount	Rate	Invoice	Narrative
03/07/24	Wallace, Michael B.	Partner	1.50	637.50	425.00	242650	Telephone conference with J. Polak regarding emergency relief; study emails regarding discovery; office conference with JPS regarding public records law.
03/11/24	Wallace, Michael B.	Partner	0.40	170.00	425.00	242650	Receipt and review of multiple Survey Monkey screen shots; receipt and review of emails from client and co-counsel regarding same; reply to same.
03/11/24	Wallace, Michael B.	Partner	0.20	85.00	425.00	242650	Telephone conference with clients and co-counsel regarding TRO.
03/11/24	Wallace, Michael B.	Partner	0.10	42.50	425.00	242650	Receipt and review of order setting hearing.
03/11/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	242650	Review client's evidence in support of motion for injunctive relief.
03/11/24	Cowan, Charles E.	Partner	0.60	189.00	315.00	242650	Attend strategy conference with outside counsel regarding emergency injunctive relief.
03/11/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	242650	Conduct research into prior examples of TRO and PI motions in Mississippi federal courts.
03/11/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	242650	Email exchanges with counsel regarding strategy on injunctive relief issue.
03/12/24	Wallace, Michael B.	Partner	0.20	85.00	425.00	242650	Email co-counsel regarding Wednesday hearing.
03/12/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	242650	Review client's draft motions necessary to weigh in on contents.
03/13/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	242650	Conference with counsel to discuss motion for TRO and supplemental complaint.
03/14/24	Cowan, Charles E.	Partner	1.30	409.50	315.00	242650	Draft suggested revisions to client's motion for expedited discovery and supporting brief.
03/18/24	Wallace, Michael B.	Partner	1.50	637.50	425.00	242650	Receipt and review of multiple drafts and emails from co-counsel regarding TRO, expedited discovery and supplemental complaint; reply to same.
03/18/24	Wallace, Michael B.	Partner	0.20	85.00	425.00	242650	Telephone conference with Judge Reeves's chambers.
03/18/24	Wallace, Michael B.	Partner	0.10	42.50	425.00	242650	Receipt and review of notice of hearing from Judge Reeves.

03/19/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	242650 Address issues with pending TRO hearing and preparation for it.
03/19/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	242650 Conference with counsel to discuss plans for expedited briefing on client's motions in advance of hearing next week.
03/19/24	Wallace, Michael B.	Partner	1.10	467.50	425.00	242650 Hearing by telephone regarding setting motion for hearing.
03/19/24	Wallace, Michael B.	Partner	0.60	255.00	425.00	242650 Telephone conference with co-counsel regarding pending motion.
03/20/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	242650 Email exchanges with outside counsel regarding current TRO procedure.
03/22/24	Wallace, Michael B.	Partner	0.20	85.00	425.00	242650 Receipt and review of email from M. Bernet and J. Polak regarding TRO.
03/24/24	Wallace, Michael B.	Partner	0.50	212.50	425.00	242650 Legal research on Judge Reeves preliminary injunction opinion; email co-counsel regarding same.
03/24/24	Wallace, Michael B.	Partner	0.20	85.00	425.00	242650 Receipt and review of order setting hearing; email co-counsel regarding same.
03/25/24	Cowan, Charles E.	Partner	1.00	315.00	315.00	242650 Draft revisions to client's reply brief in support of motion for TRO.
03/25/24	Hatter, Kelly S.	Paralegal	1.00	180.00	180.00	242650 Assist MBW in research regarding cites in preparation for the 3/27 hearing.
03/25/24	Wallace, Michael B.	Partner	1.50	637.50	425.00	242650 Edit multiple rebuttal briefs; email co-counsel regarding same.
03/25/24	Wallace, Michael B.	Partner	0.60	255.00	425.00	242650 Prepare for and attend hearing by telephone with Judge Reeves.
03/25/24	Wallace, Michael B.	Partner	1.60	680.00	425.00	242650 Prepare oral argument regarding motions.
03/25/24	Wallace, Michael B.	Partner	2.50	1,062.50	425.00	242650 Legal research regarding tortious interference.
03/26/24	Hatter, Kelly S.	Paralegal	1.30	234.00	180.00	242650 Assist MBW in research regarding cites in preparation for the 3/27 hearing.
03/26/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	242650 Review issues related to delinquent production and aspects of TRO hearing.

03/26/24 Cowan, Charles E.	Partner	0.20	63.00	315.00	242650 Plan and strategize with outside legal counsel regarding upcoming TRO hearing.
03/26/24 Wallace, Michael B.	Partner	10.00	4,250.00	425.00	242650 Prepare for TRO hearing.
03/27/24 Hatter, Kelly S.	Paralegal	0.30	54.00	180.00	242650 Assist MBW with exhibits in preparation for the 03/27 hearing.
03/27/24 Wallace, Michael B.	Partner	7.00	2,975.00	425.00	242650 Attend hearing on temporary restraining order.

Totals:		37.40	15,202.50		
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EXHIBIT B-2

Date	Name	Description	Hours	Amount	Rate	Invoice	Narrative
07/01/24	Wallace, Michael B.	Partner	1.00	425.00	425.00	254096	Receipt and review of motion for TRO and supporting brief; email co-counsel regarding same.
07/01/24	Cowan, Charles E.	Partner	1.50	472.50	315.00	254096	Draft proposed revisions to client's memorandum brief in support of motion for injunction and gag order.
07/02/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Correspondence with outside counsel regarding PI brief.
07/02/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Conference with outside counsel regarding plan for PI motion and for gag order.
07/03/24	Wallace, Michael B.	Partner	1.00	425.00	425.00	254096	Receipt and review of draft affidavit, motion, and brief; email co-counsel regarding same.
07/03/24	Wallace, Michael B.	Partner	0.50	212.50	425.00	254096	Telephone conference with Judge Reeves's chambers regarding hearing date; email co-counsel regarding same; receipt and review of replies from same.
07/03/24	Cowan, Charles E.	Partner	0.40	126.00	315.00	254096	Conference with outside counsel regarding motion filings.
07/03/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Email exchanges with outside counsel regarding litigation issues.
07/03/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Draft proposed revisions to motion to seal.
07/03/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Telephonic conference with Rachel Smoot regarding motion to seal and court processes.
07/04/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	254096	Email exchanges with counsel regarding anticipated PI hearing.
07/05/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Confer with outside counsel regarding aspects of motion for PI.
07/05/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	254096	Correspondences with the Court regarding submission of PI motion.
07/08/24	Wallace, Michael B.	Partner	0.30	127.50	425.00	254096	Receipt and review of email opposing motion to seal.
07/08/24	Wallace, Michael B.	Partner	1.20	510.00	425.00	254096	Attend Zoom hearing with Judge Reeves.
07/08/24	Cowan, Charles E.	Partner	0.40	126.00	315.00	254096	Conference with outside counsel regarding preparations on reply in suppon of motion for preliminary injunction.
07/09/24	Cowan, Charles E.	Partner	0.30	94.50	315.00	254096	Plan and strategize regarding reply in support of motion for preliminary injunction.
07/10/24	Wallace, Michael B.	Partner	1.00	425.00	425.00	254096	Receipt and review of Tinchler-Ladner outline; email co-counsel regarding same.
07/10/24	Wallace, Michael B.	Partner	1.20	510.00	425.00	254096	Receipt and review of HonorSociety's responsive paper; email co-counsel regarding same; receipt and review of reply from J. Polak.
07/10/24	Hawkins, Rebecca W.	Partner	0.20	70.00	350.00	254096	Conference with C. Cowan re research needed for rebuttal brief.
07/10/24	Hawkins, Rebecca W.	Partner	4.80	1,680.00	350.00	254096	Researching issues for rebuttal brief.
07/10/24	Hawkins, Rebecca W.	Partner	0.10	35.00	350.00	254096	Email C. Cowan re research results.
07/10/24	Cowan, Charles E.	Partner	1.50	472.50	315.00	254096	Review Plaintiffs' opposition to motion for PI necessary to draft rebuttal.
07/10/24	Cowan, Charles E.	Partner	6.00	1,890.00	315.00	254096	Draft portions of rebuttal in support of motion for preliminary injunction.
07/10/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	254096	Telephonic conferences with outside counsel regarding rebuttal brief issues.
07/11/24	Sullivan, M. Kathleen	Paralegal	2.00	360.00	180.00	254096	Assist attorneys with trial preparations and exhibits.

					Email correspondence with C. Cowan regarding additional research
07/11/24	Hawkins, Rebecca W.	Partner	0.10	35.00	350.00 254096 needed.
07/11/24	Hawkins, Rebecca W.	Partner	1.30	455.00	350.00 254096 Research regarding public interest element.
07/11/24	Hawkins, Rebecca W.	Partner	0.10	35.00	350.00 254096 Email research results to C. Cowan.
07/11/24	Cowan, Charles E.	Partner	6.00	1,890.00	315.00 254096 Draft additional portions of and revisions to client's rebuttal brief.
					Finalize client's rebuttal brief in support of motion for temporary
07/11/24	Cowan, Charles E.	Partner	1.00	315.00	315.00 254096 restraining order.
					Draft motion requesting leave to file additional pages in support of
07/11/24	Cowan, Charles E.	Partner	0.70	220.50	315.00 254096 rebuttal brief in support of motion for temporary restraining order.
07/11/24	Cowan, Charles E.	Partner	0.50	157.50	315.00 254096 Draft revisions to client's reply in support of motion to seal.
07/11/24	Cowan, Charles E.	Partner	1.00	315.00	315.00 254096 Assist in preparation for preliminary injunction hearing.
					Prepare notebooks with Declarations of Derek Linke, Toni Marek, and
07/11/24	Jones, Angel R.	Paralegal	2.50	450.00	180.00 254096 Michael Moradian.
					Prepare notebook with Honor Society.org response to PTK Motion for
					Temporary Restraining Order, Preliminary Injunction and/or Gag Order,
07/11/24	Jones, Angel R.	Paralegal	0.50	90.00	180.00 254096 Honor Society.Org Memorandum in Suppon of Response to PTK Motion
07/11/24	Jones, Angel R.	Paralegal	2.50	450.00	180.00 254096 Assist attorneys with trial preparation.
					Pull case cites for PTK's Rebunal in Support of Motion for Temporary
07/11/24	Hatter, Kelly S.	Paralegal	0.70	126.00	180.00 254096 Restraining Order, Preliminary Injunction and/or Gag Order
07/11/24	Hatter, Kelly S.	Paralegal	0.40	72.00	180.00 254096 Prepare hearing notebook for 07 /12 hearing .
07/12/24	Wallace, Michael B.	Partner	9.00	3,825.00	425.00 254096 Attend preliminary injunction hearing.
					Attend preliminary injunction hearing before Judge Reeves in federal
07/12/24	Cowan, Charles E.	Partner	9.00	2,835.00	315.00 254096 court.
07/12/24	Jones, Angel R.	Paralegal	0.40	72.00	180.00 254096 Additional preparation of documents for trial.
07/15/24	Wallace, Michael B.	Partner	0.10	42.50	425.00 254096 Receipt and review of' email from Judge Reeves regarding start time.
07/16/24	Wallace, Michael B.	Partner	2.00	850.00	425.00 254096 Email co-counsel regarding same preliminary injunction.
07/16/24	Wallace, Michael B.	Partner	2.50	1,062.50	425.00 254096 Prepare closing argument.
07/17/24	Wallace, Michael B.	Partner	9.00	3,825.00	425.00 254096 Prepare for and attend preliminary injunction hearing.
07/17/24	Cowan, Charles E.	Partner	9.00	2,835.00	315.00 254096 Attend PI hearing before Judge Reeves in district court.
					Correspondence with the court reporter to answer her inquiries for
07/19/24	Cowan, Charles E.	Partner	0.20	63.00	315.00 254096 hearing transcript.
					Receipt and review of draft supplemental submission; email co-counsel
07/24/24	Wallace, Michael B.	Partner	1.00	425.00	425.00 254096 regarding same; receipt and review of replies from same.
					Review proposed supplemental filing on motion for PI and confer with
07/24/24	Cowan, Charles E.	Partner	0.40	126.00	315.00 254096 outside counsel regarding strategy and contents.
07/26/24	Wallace, Michael B.	Partner	0.50	212.50	425.00 254096 Receipt and review of motion to strike and supporting brief.
07/27/24	Wallace, Michael B.	Partner	0.10	42.50	425.00 254096 Receipt and review of order regarding motion to strike
07/28/24	Wallace, Michael B.	Partner	0.50	212.50	425.00 254096 Email co-counsel regarding motion to strike.
07/29/24	Wallace, Michael B.	Partner	0.70	297.50	425.00 254096 Edit response to motion to strike.
					Receipt and review of revised draft response to motion to strike; email
07/29/24	Wallace, Michael B.	Partner	0.40	170.00	425.00 254096 co-counsel regarding same.
07/30/24	Cowan, Charles E.	Partner	0.30	94.50	315.00 254096 Draft proposed revisions to response in opposition lo motion to strike.
Total:			88.50	30,413.50	

EXHIBIT B-3

Date	Name	Description	Hours	Amount	Rate	Invoice	Narrative
08/26/24	Wallace, Michael B.	Partner	0.40	190.00	475.00	255364	Receipt and review of email from M. Etienne regarding contempt; reply to same.
08/26/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	255364	Plan and strategize with co-counsel regarding contents of motion for contempt and prior similar motions on which to base.
08/27/24	Wallace, Michael B.	Partner	0.30	142.50	475.00	255364	Email to co-counsel regarding contempt motion; receipt and review of replies from R. Smoot and M. Etienne.
08/29/24	Wallace, Michael B.	Partner	0.90	427.50	475.00	255364	Receipt and review of draft brief regarding contempt and multiple emails from co-counsel; email co-counsel regarding same.
08/29/24	Wallace, Michael B.	Partner	0.60	285.00	475.00	255364	Receipt and review of multiple emails regarding contempt motion and rules for co-counsel; reply to same.
08/29/24	Cowan, Charles E.	Partner	1.70	535.50	315.00	255364	Draft revisions to brief and motion for contempt.
08/29/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	255364	Confer with co-counsel regarding process for requesting hearing.
08/30/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	255364	Telephonic conferences with the Court regarding hearing requests.
08/30/24	Cowan, Charles E.	Partner	0.20	63.00	315.00	255364	Email exchanges with co-counsel regarding contempt motion.
09/13/24	Wallace, Michael B.	Partner	0.60	285.00	475.00	256833	Receipt and review of brief opposing contempt; email co-counsel regarding same.
09/17/24	Wallace, Michael B.	Partner	0.20	95.00	475.00	256833	Receipt and review of emails from CEC to M. Etienne regarding contempt; reply to same.
09/18/24	Wallace, Michael B.	Partner	0.50	237.50	475.00	256833	Receipt and review of draft rebuttal regarding contempt; reply to same.
09/18/24	Wallace, Michael B.	Partner	0.30	142.50	475.00	256833	Receipt and review of multiple emails from co-counsel regarding contempt hearing; reply to same.
09/18/24	Cowan, Charles E.	Partner	0.30	64.50	315.00	256833	Correspondence with co-counsel regarding motion for contempt issues.
09/18/24	Cowan, Charles E.	Partner	0.50	257.50	315.00	256833	Draft revisions to clients' reply brief in support of motion for contempt.
09/19/24	Wallace, Michael B.	Partner	0.20	95.00	475.00	256833	Receipt and review of multiple emails from co-counsel regarding contempt hearing; reply to same.
09/19/24	Cowan, Charles E.	Partner	1.70	535.50	315.00	256833	Work on revisions related to reply in support of motion for contempt and supporting declaration and other motions.
09/19/24	Cowan, Charles E.	Partner	0.50	157.50	315.00	256833	Conduct follow up legal research on necessity of hearing for finding of civil contempt.
09/19/24	Kihm, Charles W.	Associate	0.90	198.00	220.00	256833	Researched Fifth Circuit precedent regarding due process requirements for civil contempt.
09/20/24	Cowan, Charles E.	Partner	0.40	126.00	315.00	256833	Correspondence with co-counsel regarding issues with reply in support of motion for contempt.
09/23/24	Wallace, Michael B.	Partner	0.10	47.50	475.00	256833	Receipt and review of revised filed rebuttal brief regarding contempt.
Totals:			11.20	4,168.50			

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-RPM
)	
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
-----)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

**PHI THETA KAPPA HONOR SOCIETY’S MEMORANDUM
IN SUPPORT OF MOTION FOR SANCTIONS/ATTORNEY’S FEES**

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I. INTRODUCTION

In early March 2024, Honor Society: (i) harassed PTK's partner colleges with 280+ records requests originating from a disguised email address and subject line appearing to associate with PTK, and (ii) tarnished PTK's reputation by sending malicious, misleading, PTK-related survey questions to 450,000+ recipients, including community college students in PTK's market. ECF No. 221 at 6. PTK and its attorneys spent substantial time and effort investigating Honor Society's conduct, preparing the motion seeking injunction relief, and addressing the matters with the Court at the hearing. Ultimately, "The [First] Preliminary Injunction found that Honor Society was directly engaging with Phi Theta Kappa's ("PTK") members and collegiate partners in misleading ways." ECF No. 230 at 2. As the Court expressly acknowledged, "[t]he survey questions and public records requests were intentional and willful," "the content of . . . the survey show[s] malicious intent to harm PTK's lawful business, and . . . Mr. Asari laundered his public records requests through his personal email account." ECF No. 130 at 4. The "misleading" conduct, "malicious" survey questions and "laundered" records requests demonstrate bad faith and entitle PTK to its attorney's fees in connection with the first preliminary injunction. At the invitation of the Court, PTK also seeks its fees based on Moradian and Honor Society's out-of-state counsels' misrepresentations to the Court regarding the litigation purpose behind the records requests. *See* ECF No. 230 at n.14.

Despite the First Preliminary Injunction Order, Honor Society's malicious conduct did not stop – it intensified. Michael Moradian, Honor Society's Executive Director, flooded the Internet with 5,000+ AI webpages including "venom[ous]" rhetoric about PTK's CEO and "misleading" webpages that mirrored the enjoined March 2024 survey questions. *See* ECF No. 230 at 4, 12-14. PTK and its counsel were again forced to spend substantial time and effort to identify Honor Society's widespread conduct and present it to the Court in a two-day evidentiary hearing

(requested by Honor Society). While PTK did not initially move for contempt as to the first injunction, the Court acknowledged Honor Society acted in bad faith and invited PTK to seek its fees. *See id.* at 24 (“The Court believes that [“bad faith”] standard has been met as to certain online posts. A full ruling on fees may need to be issued.”).

The Court’s Second Preliminary Injunction Order is narrow. It requires Honor Society to take down its racist caricatures (which are misleadingly associated with PTK) and its misleading sexual harassment and embezzlement articles. *See* ECF No. 230 at 26. It also requires Honor Society to cease its misleading edits to PTK’s Wikipedia page, add contact information for its otherwise misleading “PTK Chapter Directory” and post a 12-point font disclaimer on its anti-PTK webpages to dispel confusion. *Id.* Alternatively, Honor Society could take down the webpages. *Id.* Because correcting misinformation about PTK (or not displaying it at all) could cause Honor Society to lose money, the Court also required PTK to post a \$100,000 bond. *Id.* The also Order sternly admonished Honor Society’s bad-faith conduct.¹

Even still, Honor Society was not deterred. Rather than comply with the Second Preliminary Injunction Order, Honor Society continued to treat this litigation as a game – to the reputational and financial detriment of PTK. In some instances, Honor Society failed to comply with the Order at all (e.g., lacking disclaimers entirely). In other instances, Honor Society complied with the express language of the Order but deliberately violated its spirit (e.g., inclusion of small disclaimer with enlarged surrounding text to minimize the disclaimer’s effect and/or further the confusion the disclaimer was intended to dispel). Where Honor Society did comply with the Order,

¹ *See* ECF No. 230 at 3-4 (“This electronic version of ‘I’m not touching you,’ approaches a violation of the [First] Preliminary Injunction”); *id.* at 2 (“what can only be described as Honor Society’s ‘trolling’”); *id.* at 27 (“the totality of its online behavior paints a picture of a petulant cyberbully fixated on destroying a competitor”); *id.* at 19 (“The Court finds the notion that PTK is the party engaging in ‘scorched-earth litigation tactics’ to be gaslighting. Moradian will reduce his litigation costs and have more time for his family if he doesn’t create 5,000 webpages with false information about his opponents.”).

it did so only because of PTK's efforts to force compliance. Therefore, PTK seeks its attorney's fees in each instance.

Without sanctions, Honor Society's bad-faith conduct will not stop, nor will PTK's bleeding. PTK (a non-profit) seeks to serve students, not to profit off them. Honor Society, on the other hand, has profited off students by misleading hundreds of them into join their faux "honor society," thinking it was PTK. That is why PTK filed this lawsuit. The merits of the lawsuit alone (Honor Society's trademark infringement and false advertising) have been distraction enough from PTK's mission. But in retaliation for the lawsuit, Honor Society launched the malicious, tortious attacks described above to ruin PTK's name, as well as Dr. Tincher-Ladner's. So PTK has been forced into months of bad faith, vexatious, satellite litigation – at its own expense and at the expense of the students it set out to protect. What started as a lawsuit to dispel confusion for community college students has turned into PTK's self-preservation efforts against Honor Society's ugly, misleading smear-campaigns. Honor Society has not been shy about its disdain for the Court's Orders – and without being held accountable for the litigation fees it has forced on PTK, why would it stop? In fact, Honor Society continues to profit from its conduct causing PTK's reputational demise. That is the definition of bad faith, and PTK should receive its fees as a result.

II. LEGAL AUTHORITY

A. Bad Faith and the Court's Inherent Power

As it stated in the Second Preliminary Injunction Order, the Court has "inherent power to assess attorney's fees." ECF No. 230 at 24 (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991)). It may use that inherent power "when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *NASCO*, 501 U.S. at 45-46; ECF No. 230 at 24. "[B]ad faith [includes] delaying or disrupting the litigation or [] hampering enforcement of a court order." *NASCO*, 501 U.S. at 32. The Fifth Circuit has affirmed sanctions upon findings of bad faith in several instances.

See, e.g., In re First City Bancorporation of Texas Inc., 282 F.3d 864, 867 (5th Cir. 2002) (affirming sanctions under inherent power for “rude and insulting comments” and “personal attacks”); *Devine v. Wal-Mart Stores, Inc.*, 52 F. Supp. 2d 741, 746, 746 n.6 (S.D. Miss. 1999) (specifically finding bad faith where a party “deliberately attempted to mislead the court”); *White v. Reg'l Adjustment Bureau, Inc.*, 641 F. App'x 298, 299 (5th Cir. 2015) (affirming bad faith finding for making misrepresentations to the district court).

B. Contempt of a Court Order

An award of attorney's fees is also appropriate if a party acts in contempt of a court's injunction order. The fee award “restores the . . . parties to where they were before they incurred attorneys' fees in an attempt to ensure compliance with the injunction.” *Matter of Skyport Glob. Commc'ns, Inc.*, 661 F. App'x 835, 841 (5th Cir. 2016); *see also Cook v. Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977) (observing that courts may “order[] the award of attorneys' fees for compensatory purposes” where a party “necessarily expended [fees] in bringing an action to enforce” an existing court order).

C. The Lodestar Method and the Fifth Circuit's *Johnson* Factors

The Fifth Circuit courts apply a two-step method for determining a reasonable attorney's fee award. *Monroe v. Houston Indep. Sch. Dist.*, 2023 WL 1434280, at *4 (5th Cir. Feb. 1, 2023) (quoting *Combs v. City of Huntington, Texas*, 829 F.3d 388, 391-92 (5th Cir. 2016)). First, the court must calculate the lodestar amount, “which is equal to the number of hours reasonably expended multiplied by the prevailing hourly rate in the community for similar work.” *Combs*, 829 F.3d at 392. Second, although the lodestar is presumed reasonable, a court may enhance or decrease it based on the 12 *Johnson* factors, which are: (1) “the time and labor required”; (2) “the novelty and difficulty of the questions”; (3) “the skill requisite to perform the legal service properly”; (4) “the preclusion of other employment by the attorney due to acceptance of the case”;

(5) “the customary fee”; (6) “whether the fee is fixed or contingent”; (7) “time limitations imposed by the client or the circumstances”; (8) “the amount involved and the results obtained”; (9) “the experience, reputation, and ability of the attorneys”; (10) “the ‘undesirability’ of the case”; (11) “the nature and length of the professional relationship with the client”; and (12) “awards in similar cases.” *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). “[T]he most critical factor’ in determining a reasonable fee ‘is the degree of success obtained.’” *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V.*, 23 F.4th 408, 415 (5th Cir. 2022) (citation omitted).

III. PTK’S ATTORNEY’S FEES ARE WARRANTED BASED ON HONOR SOCIETY’S CONDUCT DESCRIBED IN THE INJUNCTION PROCEEDINGS.

A. Honor Society’s Bad-Faith Conduct, which the Court admonished in the Second Preliminary Injunction Order, Justifies PTK’s Fees.

Pursuant to the Court’s inherent authority and based on Honor Society’s bad-faith conduct, PTK is entitled to its attorney’s fees. As the Court recognized in the Second Preliminary Injunction Order, it has “inherent power to assess attorney’s fees . . . when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *NASCO*, 501 U.S. at 45-46; *see also* ECF No. 230 at 24. “The Court believes that standard has been met as to certain online posts.” *Id.* And the Court stated, “A full ruling on fees may need to be issued.” *Id.* In its Order, the Court identified of Honor Society’s bad faith conduct. Thus, in response to the Court’s invitation, PTK seeks its fees in connection with investigating Honor Society’s conduct and in connection with PTK’s second preliminary injunction motion.

i. Honor Society’s Misleading Embezzlement Allegations

The Court recognized that Honor Society’s embezzlement allegations were made in bad faith, and PTK seeks its associated fees on this basis. The Court’s Second Preliminary Injunction Order states, “Misrepresentations to the Court may also be relevant to any renewed Motion for

Attorney’s Fees.” In that same footnote, the Court stated it “is also troubled by Honor Society’s brief’s continued assertion that Lowe was PTK’s employee, after the evidence was known.” To be exceedingly clear about the bad faith demonstrated by Honor Society, the Court further stated:

There is no factual basis for Honor Society’s claim. . . . Honor Society’s claim is a lie. Honor Society knows it is a lie. . . . Throughout his testimony, Moradian claims he created the webpages for the sake of transparency to students. Transparent they are not. At best, they are there to deceive those who read them.

PTK was forced to police Honor Society’s bad faith articles regarding the alleged embezzlement. *See, e.g.*, ECF Nos. 221-1, 221-9. And in response to identifying that the articles were misleading (deceptive lies – as the Court put it), PTK was forced to move for injunctive relief to prevent Honor Society from spreading these lies further. PTK seeks its fees as a result.

ii. Honor Society’s Misleading Representation of Itself as the Plaintiff

The Court recognized that “Honor Society misleads again when it frames itself as the plaintiff in this litigation This lawsuit was, of course, filed by PTK. Honor Society knows this. There is no justification for this conduct.” ECF No. 230 at 13. Honor Society falsely has alleged that it initiated this lawsuit against PTK. *See, e.g.*, ECF Nos. 221-2, 221-3, 221-4, 221-5, 221-6, 221-7, 221-10, 221-10, 221-15, 221-16, 221-21, 221-22, 221-29, 221-34, 221-35, 221-36, 221-40, 221-41. For example, it is undoubtedly misleading to state, “Honor Society has filed a federal lawsuit against Phi Theta Kappa (PTK)” *See* ECF No. 221-40. In what is essentially the remainder of PTK’s exhibits – including Honor Society’s 5,000 AI-generate webpages – Honor Society parrots the allegations of the lawsuit without acknowledging they are only allegations and without acknowledging that Honor Society itself made the allegations to begin with. *See* ECF No. 230 at 26 (requiring a disclaimer to dispel Honor Society’s false narratives). Honor Society acted in bad faith by repeatedly suggesting that it is the plaintiff and by otherwise obscuring both its roles in the litigation and as the author of the webpages. PTK seeks its fees as a result.

iii. Honor Society’s Misleading “PTK Chapter Directory” – i.e., the 5,000 AI Webpages

The Court recognized that “Honor Society’s PTK ‘Chapter Directory’ and ‘Alerts by Community College’ pages also mislead without any justification This is misleading to students and PTK’s partners because it is not an actual ‘Chapter Directory.’ Rather, it is an attempt to direct persons interested in PTK to a page ‘informing potential members about why they should not select PTK[.]’” ECF No. 230 at 13-14. Honor Society posted approximately 5,000 AI-generated webpages (each maligning PTK) – under the guise of PTK’s “Chapter Directory” and “Alerts by Community College.” Five thousand times over, these webpages are evidence of Honor Society’s bad faith and vexatious conduct. Repeatedly alleging in the AI webpages that “[s]chools that host PTK chapters could face potential liability if they are found to be complicit in or unaware of these deceptive practices” demonstrates bad faith as well. *See, e.g.*, ECF No. 221-3. There is no good-faith basis for these untrue, fear-mongering statements. Nor is there a good-faith basis for portraying apocalyptic imagery of students fleeing PTK buildings with distinguished PTK alumni looking onward. This was a smear campaign against PTK and was rightfully curtailed by the Court.



Moreover, the fact that Honor Society posted the maligning webpages 5,000 times (approximately 4 times for each PTK chapter) is in and of itself, vexatious. Thus, PTK seeks its attorney's fees in

connection with the 5,000 bad faith AI webpages – a core component of PTK’s motion for injunctive relief.

iv. Honor Society’s Racist and Bad Faith East Asian “Parody” of PTK’s CEO

On at least three occasions, Honor Society published offensive images of an Asian woman (a so-called “parody”) in connection with misleading allegations about PTK and its CEO, Dr. Tincher-Ladner.² See ECF Nos. 221-4, 221-27, 221-31. There is nothing funny or clever about these webpages. As the Court stated, “This image leans into anti-Asian, specifically anti-East Asian, tropes. It doesn’t make sense as anything other than an appeal to racism. This behavior is without right or justifiable cause. It is despicable.” See ECF No. 230 at 15. Honor Society’s actions were undertaken in bad faith. Thus, PTK seeks its fees in connection with its motion, which was required to enjoin Honor Society from posting the despicable content at issue.

v. Honor Society’s Misleading Sexual Harassment Allegations

The Court has acknowledged that Honor Society’s sexual harassment allegations, as to PTK’s former Executive Director, lack objectivity. See ECF No. 230 at 26; *id.* n.15 (Honor Society must “[l]imit its reporting on the sexual harassment allegations” to articles published by others, which are “more objective factual narratives about the alleged harassment than articles created by Honor Society”). Honor Society could have published objective explanations of the sexual harassment allegations, but instead it chose to entangle its allegations in a misleading manner with PTK’s current CEO, Dr. Tincher-Ladner (who had nothing to do with the matters) and with Honor Society’s unrelated counterclaims – both demonstrating bad faith. See, e.g., ECF No. 221-18 (Honor Society alleged “serious allegations of sexual harassment . . . have surfaced alongside ongoing concerns about the organization’s deceptive advertising practices.”).

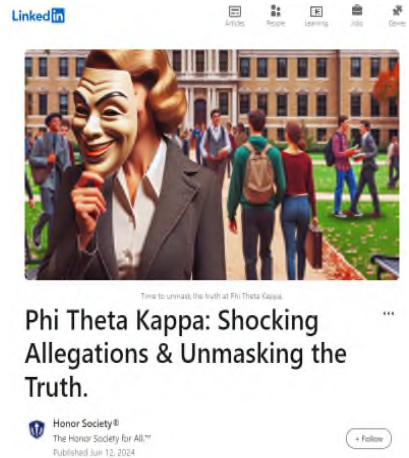
² See ECF No. 230 at 5 (stating, “a caricature of [Dr. Tincher-Ladner] has been racialized to make her appear of East Asian descent. To this Court’s knowledge, Dr. Tincher-Ladner is not of East Asian descent.”)

The Court stated, “Dr. Tincher-Ladner arguably receives the most online venom from Honor Society.” ECF No. 230 at 4. That is correct. Be it wrongful entanglement with unrelated sexual harassment allegations, misleading articles, or the misguided caricatures, Honor Society has attacked Dr. Tincher-Ladner personally, and in bad faith.

Phi Theta Kappa Sexual Harassment:
Stunning Allegations Revisited



LYNN TINCHER-LADNER: ALLEGED
MISLEADING MASTERMIND



For ECF No. 221-18 (left), Honor Society edited a video to obtain the exact frame in which PTK’s former executive director and Dr. Tincher-Ladner align and appear in close proximity to one another. *See* Polak Decl. ¶ 9, Ex. A-5, 7/17/2024 Hearing Tr. at 184:19-187:11. Honor Society then chose to couple this manufactured image with an unrelated sexual harassment headline about PTK, misleadingly implying that Dr. Tincher-Ladner was somehow involved. This demonstrates bad faith. Honor Society repeatedly posted the manufactured images in other unrelated (but otherwise maligning) PTK articles as well. *See, e.g.*, ECF No. 242-1 at Exs. A-14, A-16, A-23, A-24, A-28, A-33. Honor Society also repeatedly portrayed Dr. Tincher-Ladner as a money-grabbing, masked villain to reinforce the misleading idea that PTK is wrongfully misappropriating students’ dues. *See, e.g.*, ECF No. 221-20 (center); ECF No. 221-21 (right). Honor Society’s conduct has no justifiable purpose and is evidence of bad faith. Thus, PTK seeks its resulting fees on these bases as well.

vi. Honor Society's Malicious Wikipedia Edits to PTK's Webpage.

a. The Court Acknowledged Honor Society's Bad Faith.

In the Second Preliminary Injunction Order, the Court stated, “When the edits are considered together, they suggest an intentional scheme to delete favorable content about PTK and introduce unfavorable content about PTK, rather than speak the truth.” *See* ECF No. 230 at 10. The Court added that it is unjustifiable to edit PTK’s “Wikipedia [page] to cast PTK in a damning light.” *Id.* at 12. The Court has acknowledged that the edits, considered together, do not “speak the truth” and are “unjustifiable” – in other words, the edits were made in bad faith. Moradian admitted to making those edits revisions to PTK’s Wikipedia page. *See* ECF No. 240-1 ¶¶ 3, 9-10, 12-14, 17. Thus, PTK seeks its fees in connection with having to seek injunctive relief based on Moradian’s bad-faith Wikipedia edits.

b. Moradian and Honor Society Handled the Deposition Itself in Bad Faith.

PTK seeks its fees in connection with the deposition, which it took to confirm why Moradian made the malicious edits to PTK’s Wikipedia page – i.e., to confirm the bad faith nature of the edits. PTK deposed him on October 1, 2024 for approximately seven hours pursuant to Rule 30(b)(6).³ Polak Decl. ¶ 17-19. Despite the limited nature of the deposition, PTK was required to use the entire seven hours and reserve the right to request another hour due to Moradian’s evasiveness, inconsistent testimony, and unwillingness to answer questions being asked. *Id.*

³ On August 22, 2024, the day of the Court’s Second Preliminary Injunction Order, PTK served its Rule 30(b)(6) deposition notice, which was limited to only Wikipedia-revision related topics. Polak Decl. ¶ 15, Ex. A-10. Despite the Court’s Order, Honor Society objected and refused to produce a witness in part because it believed PTK was not permitted to take a standalone Rule 30(b)(6) deposition specific to the Wikipedia revisions – despite this Court’s Order. *Id.* ¶ 16. PTK raised this issue in a discovery conference with Magistrate Judge Myers on September 17. *Id.* Magistrate Judge Myers ordered Honor Society to produce a witness for deposition consistent with this Court’s Second Preliminary Injunction Order. *Id.* In view of this Court’s Order, a discovery conference should not have been required to obtain the deposition. PTK seeks its related fees.

Several questions had to be repeated ad nauseam, (e.g., whether he recalled the Court referring to the enjoined survey questions as “malicious”; whether he ever disclosed to any Wikipedia moderator that he was the executive director for Honor Society, in active litigation with PTK – which he did not; and countless others). *Id.* ¶ 20. There were over *thirty* instances where questions needed to be asked repeatedly, often times being read back by the Court reporter, and over *fifty* instances where Moradian’s answers were non-responsive to the questions. *Id.* In fact, most of the questions were not answered or answered non-responsively. *Id.* As such, PTK seeks its fees on the deposition that was required to confirm the bad-faith nature of Moradian’s edits and because Moradian handled the deposition itself in bad-faith.⁴

c. The Deposition Confirms Moradian’s Edits Were Made in Bad Faith.

The deposition confirms Moradian’s “intentional scheme to delete favorable content about PTK and introduce unfavorable content about PTK, rather than speak the truth.” *See* ECF No. 230 at 10. For example, Moradian admitted to repeatedly removing the majority of individuals listed under the “Notable members” section, claiming he was unable to verify their membership. *See* Polak Decl. ¶¶ 23-24; *see also* ECF No. 240-1 ¶ 12. These are PTK’s members – the fact that Moradian could not verify their membership is no justification for assuming they are not members and removing them. Worse, it is likely untrue that he could not verify their PTK memberships. He incredulously testified that he spent “Probably between a **hundred to a thousand hours** . . . Closer to a thousand” searching for other notable members of PTK (beyond Thomas Matthew Crooks).⁵

⁴ With the deposition transcript in hand, PTK has elected to file its motion for fees; however, it reserves right to provide the deposition video when it is received. The full deposition transcript is attached for the Court’s review as Exhibit A-11 to the Polak Declaration.

⁵ Moradian added Thomas Matthew Crooks to PTK’s Notable members section, and when asked why he was famous, Moradian said: for “being a PTK member.” *See id.* at Ex. A-11 at 127:4-130:8, 134:4-137:2, 131:25-132:3. This is laughable. He is in(famous) for being the attempted assassin of Donald Trump, not for being a PTK member. Moradian’s testimony to the contrary demonstrates his continued bad faith.

Polak Decl. ¶ 24, *id.* at Ex. A-11 at 136:22-137:2 (emphasis added). Yet a simple Google search reveals a number of webpages, excluding those of PTK, which list notable PTK members. Smoot Decl. ¶ 5. Further, Moradian testified that he made these changes as the curator of the Honor Society Museum. Polak Decl., Ex. A-11 at 29:3-12. This same “museum” owned and displayed the 2001 PHI THETA KAPPA INTERNATIONAL HONOR SOCIETY MEMBERSHIP DIRECTORY (at least as of February 23, 2023), which contains a list of PTK’s notable members, including many whom Moradian removed from PTK’s Wikipedia page. Smoot Decl. ¶ 2-4. Thus, Moradian acted in bad faith by deleting PTK’s notable members.

Moradian testified that he made the edits to PTK’s Wikipedia webpage in compliance with Wikipedia’s policies and without bias.⁶ *See* Polak Decl. Ex. A-11 at 49:5-50:1. This is not true. His edits are obviously not neutral, and, in fact, they violate Wikipedia’s conflicts of interest (“COI”) policy. *See* Wikipedia: Conflict of Interest,⁷ (“If you become involved in an article where you have any COI, you should always let other editors know about it.”). Wikipedia expressly identifies a “legal” dispute COI as well as a COI if a person is “writing on behalf of a competitor or opponent of the page subject.” *Id.* “How close the relationship needs to be before it becomes a concern on Wikipedia is governed by common sense.” *Id.* Common sense dictates that as the President of Honor Society, the opposing party here, Moradian has a conflict of interest as to PTK’s Wikipedia page. Moradian admitted his conflict of interest. *See* Polak Decl. ¶ 25, *id.* at Ex. A-11 at 39:14-41:10 (“Q: Would it be a conflict of interest for someone who's involved in a lawsuit with

⁶ It should be noted that minutes after testifying he was “unbiased” in his revisions, Moradian attempted to walk back the statement and instead alleged that his edits are merely “less biased” than PTK’s. *See* Polak Decl. Ex. A-11 at 53:2-16.

⁷ Available at https://en.wikipedia.org/wiki/Wikipedia:Conflict_of_interest#How_to_disclose_a_COI (last accessed Oct. 4, 2004).

somebody else to go and edit their opponent's Wikipedia page to put forth the narrative or legal theory they're relying on in the lawsuit; would that be a conflict of interest? . . . A: As I described in depth, it is a *lesser* conflict in interest than what was presented on Wikipedia in terms of an owner or leader of a page editing their own page.”⁸ (emphasis added). Moradian made no note of his conflict of interest or his affiliation with Honor Society anywhere, even though his revisions include a description of Honor Society’s litigation contentions.⁹ *See id.* at 69:15-72:15. And, even a “lesser” conflict of interest is still a *known*, and undisclosed, conflict (similar to what the Court saw in connection with Honor Society’s misleading webpages that led to the Court-ordered disclaimer). Thus, Moradian acted in bad faith and violated Wikipedia’s COI policy by disguisedly revising a competitor’s Wikipedia page while engaged in ongoing litigation with it.¹⁰

Moradian has repeatedly regurgitated the contents of the malicious survey questions, despite the Court enjoining their distribution in the First Preliminary Injunction. His Wikipedia edits (after that injunction) are no exception, and they demonstrate bad faith for this reason as well. The Court’s *Second* Preliminary Injunction Order stated the following about Honor Society’s repeated embezzlement allegations:

“One post created without right or justifiable cause was Honor Society’s article about Robin Lowe... Honor Society’s post makes Lowe appear as a PTK employee, when in fact PTK campus advisors are employees of community colleges. The advisor role is an unpaid volunteer. Dr. Tincher-Ladner testified to this in her February deposition. Moradian was

⁸ The eventual answer came after a largely non-responsive soliloquy and PTK’s counsel having to repeatedly ask the question. *Id.*

⁹ On the same *Wikipedia: Conflict of Interest* page, Wikipedia identifies three ways an author can identify a conflict of interest: 1) “at the top of the affected talk page”; 2) in the “edit summary” of any of his contribution; and 3) on an author’s user page. Moradian failed in each respect.

¹⁰ Perhaps most representative of Moradian’s bad faith is his testimony that Wikipedia (not the Court or jury) determines what is fact in this case. *See* Polak Decl. ¶ 29; *id.* at Ex. A-11 at 81:19-82:1; 83:22-24. In other words, it is Moradian’s contention that, if Wikipedia permits his edits to PTK’s page, the edits are not misleading or malicious, even with multiple Court Orders finding the opposite. Wikipedia is not the finder of fact, nor did it have sufficient information to identify the bias or untruthfulness in Moradian’s revisions.

present when she explained it. There is no factual basis for Honor Society's claim." ECF No. 230 at 12.

- "Honor Society's claim is a lie. Honor Society knows it is a lie." *Id.* at 13.

- "Moradian claims he created the webpages for the sake of transparency to students. Transparent they are not. At best, they are there to deceive those who read them." *Id.*

- Regarding Honor Society's claim that "past PTK Executive Director Rod Risley was allowed to take a 'golden parachute' retirement payment following accusations of sexual harassment," other "articles present more objective factual narratives about the alleged harassment than articles created by Honor Society" *Id.* at 3; *id.* at n.15.

Even still, Moradian testified after the Second Preliminary Injunction Order that he saw no issue with repeating the unfounded allegations on Wikipedia.¹¹ *See, e.g.,* Polak Decl. Ex. A at 77:2-83:4 (defending the Wikipedia edits by stating, "And I would say to Judge Reeves or any interested party that leaders can come from anywhere. Heros [sic] can come from anywhere. Just because you're litigated does not mean you cannot stand up for the rights of students and for the general public. Facts are facts and Wikipedia arbitrates and determines that and these are their determinations, not mine."); *see also id.* at 89:13-20 ("The preliminary injunction was about a survey, and that was well established. . . . And Wikipedia is a forum for that, for notable, verifiable, objective information. So I don't really, you know, follow the implications that you're trying to, you know, cast on me. I think it's extremely a stretch."). Thus, Moradian maintains the veracity of the false allegations even in light of the Court's first and second injunction orders. His justification? The "space time continuum."¹² He believes that because the Court's second injunction order was issued after he made the Wikipedia edits, it does not speak to whether those

¹¹ The Wikipedia allegations, which mirror the enjoined survey and the later-enjoined Internet publications state: PTK's honor "society has experienced embezzlement" and Risley's "abrupt retirement was marked by a multi-million dollar compensation package, which cast further doubt on the legitimacy of governance practices of" PTK. *See* ECF No. 200-5 at 4 (quoting Moradian's Wikipedia edits).

¹² *See* Polak Decl., Ex. A-11 215:12-216:2 ("[S]o this is a space time continuum issue again, but I wouldn't have been aware of what was -- what I'm about to say at the time of Wikipedia because it didn't exist at that time.").

edits are misleading. This is non-sensical because Moradian's Wikipedia edits are the very same allegations made in the Honor Society's malicious online publications enjoined by the Court's second injunction and the very same allegations made in Honor Society's malicious survey enjoined by the Court's first injunction. And, ultimately, he never disavowed at his deposition any of the edits he made to PTK's Wikipedia page – instead doubling down on their validity despite the clear admonitions from the Court that similar conduct was malicious, misleading, and to be enjoined. All this too demonstrates the bad faith of Moradian's revisions and his disdain for this Court's Orders.

In sum, Moradian's testimony provides clear evidence of his bad faith and a pattern of disregard and disdain for this Court's Orders. PTK should be awarded its requested attorney's fees.

B. Honor Society's Bad-Faith Conduct, which the Court admonished in the First Preliminary Injunction Order, Justifies PTK's Fees.

In early March 2024, Honor Society launched a malicious attack on PTK. The disparaging information was curated for PTK's existing and potential members as well as its college partners, on which PTK relies for gaining new members. ECF No. 112-3 ¶¶ 4-35. Among other admonishments, "The [First] Preliminary Injunction found that Honor Society was directly engaging with Phi Theta Kappa's ("PTK") members and collegiate partners in misleading ways" (*see* ECF No. 230 at 2), that Honor Society's conduct was "malicious" (*see* ECF No. 130 at 4), and that it "misrepresent[ed] to the Court," the motives for its conduct. PTK seeks its attorney's fees for Honor Society's bad-faith and misrepresentations, which required PTK to prepare and file its first motion for injunctive relief.

i. Honor Society's Malicious Survey, Moradian's Bad Faith, and Misrepresentations to the Court

Honor Society sent the following misleading survey questions to over 450,000 recipients (aiming it at community college students)¹³ to tarnish PTK's reputation:

- Does it hurt the reputation of Phi Theta Kappa (PTK) that a chapter advisor was arrested in February 2024 for allegedly embezzling funds?
- Does it hurt the reputation of Phi Theta Kappa (PTK) that their last executive director resigned after alleged sexual harassment of multiple members of the society?
- Does it hurt the reputation of Phi Theta Kappa (PTK) that their last executive director took a \$3 million golden parachute of non-profit student dues while resigning?
- If PTK falsely claimed it was the OFFICIAL honor society for community colleges, would that make you skeptical/wary of PTK?
- If PTK falsely claimed the average member gets \$2,500 in scholarships, would that make you skeptical/wary of PTK?
- If PTK falsely claimed you were in the Top 10% of students, would that make you skeptical/wary of PTK?

The Court declared, "The content of and hyperlinks within the survey show malicious intent to harm PTK's lawful business." *See* ECF No. 130 at 4. The Order is clear that Honor Society's survey was conducted in bad faith. On this basis alone, PTK should receive its attorney's fees, which were required to stop Honor Society's malicious conduct.

Moradian disagrees with the Court's Order, but that is of no consequence, and it fails to show any justification for his conduct. *See* Polak Decl. ¶ 5, Ex. A-3 at 212:18-22 ("While I admire Judge Reeves . . . , in that TRO hearing he was very misinformed, and I don't think that he has had the chance to have a truly objective analysis.").

Moradian's inspiration for his survey was Dr. Tinchler-Ladner's deposition, which was the very same deposition in which he learned that the accusations he later published in the survey are

¹³ *See* ECF No. 120-1 ¶¶ 51-52. ("Since March 11, 2024 at 11:00 p.m. Central, HonorSociety [sic] has been conducting a consumer survey directed at currently enrolled students in two-year colleges.").

untrue. *See* ECF No. 230 at 12 (“Dr. Tincher-Ladner testified to this in her February deposition. Moradian was present when she explained it. There is no factual basis for Honor Society’s claim.”). Thus, PTK requests its attorney’s fees in connection with the first injunction based on Honor Society’s survey, which was created and conducted in bad faith.

In Honor Society’s most recent deposition, PTK confirmed additional misrepresentations to the Court. In the first injunction hearing, Honor Society’s out-of-state counsel stated, “Honor Society sent a onetime survey out . . . It doesn’t need to send the survey again” and “the survey was a onetime deal . . . They received the results from that survey; they are done.” Polak Decl. ¶ 4, *id.* at Ex. A-2 at 98:22-100:22. But this was not true, because PTK became aware in July 2024 that the survey continued to be in service (without the six offensive questions). PTK brought that to Honor Society’s attention and requested an explanation for why the Court was told in March that the “survey” was no longer being used, but it was clearly still in use months later. Out-of-state counsel responded that it was a different survey. *Id.* ¶ 10. But this too was untrue, just as the representation to the Court, because Moradian confirmed in his 30(b)(6) deposition that it in fact was the “same survey.” *See id.* at Ex. A-11 at 76:5-11 (“Q: And that survey continued to be used up through mid-March, correct? A: Through and beyond, yes. Q: Is that same survey in some -- a reduced portion of that survey continues to be in effect now, right? A: That is right.”). Thus, Honor Society continued to send out the survey (albeit without the six enjoined questions) after the hearing, after the Court’s Order, and continues to do so today.¹⁴ Playing fast and loose with the truth is never appropriate, especially not in the evidentiary hearing held to inform the Court of the “facts” on which it based its Order.

¹⁴ PTK is unable to confirm if the survey is still active, as the survey link now leads to a page stating “You have already taken this survey.”

ii. Honor Society’s Vexatious, Harassing Records Requests and Misrepresentations to the Court

a. Honor’s Society Records Requests Are Made in Bad Faith.

“The [First] Preliminary Injunction . . . enjoined Honor Society from . . . submitting public records requests to PTK’s college partners that appeared as if they were coming from PTK.” ECF No. 230 at 2. The Court acknowledged that Mr. Asari, on behalf of Honor Society “laundered his public records requests through his personal email account.” ECF No. 130 4-5. Laundering the requests was misleading and caused confusion, which was likely the intent.¹⁵ *Id.* at 5 (“[a]ctual consumer confusion may be the best indicator of the existence of a likelihood of deception.”). “The subject line of the requests was ‘PTK Records Request’” – not Honor Society Records Request. *Id.* at 3. This too was likely meant to confuse PTK’s college partners as to the origin of the requests – and it had the intended effect. *Id.* at 5. PTK seeks its fees in connection with pursuing injunctive relief for 280+ records requests Honor Society disguisedly sent to PTK’s college partners.

b. Honor Society’s and its Out-of-State Counsel’s Misrepresentations to this Court.

The Court invited PTK to seek its fees for Honor Society’s misrepresentations to the Court regarding its records requests to PTK’s partner college. *See* ECF No. 230 at 24, n. 14:

Misrepresentations to the Court may also be relevant to any renewed Motion for Attorney’s Fees. . . . Moradian and Honor Society, through counsel, informed the Court at the March 27 hearing that “Honor Society sends out public records requests not for discovery in this case, but for competitive reasons.” Docket No. 135 at 89. Yet, Honor Society has attached the public records responses as exhibits, Moradian Decl. Ex. 8 at 7-10, and relies on them as proof that PTK misrepresents that it takes “the top 10%” of community college students. Moradian Decl. at ¶40-57. It is not clear how Honor Society can use these records for litigation purposes after it’s counsel represented that it would not. *See* ABA Model Rule 3.3(a) (“A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct

¹⁵ *See* ECF No. 230 at 4 (“The survey questions and public records requests were intentional and willful . . .”)

a false statement of material fact or law previously made to the tribunal by the lawyer.”); *see also* ABA Model Rule 4.1(a).

Honor Society’s counsel, Mr. Newman misrepresented to the Court, on multiple occasions, during the injunction hearing that Honor Society was not using the records requests for discovery in this case. *See* Polak Decl. Ex. A-2 at 89:13-16, 92:1-4, 92:8-14, 92:15-23:

- “I would like to take a step back and note that Honor Society sends out public records requests not for discovery in this case, but for competitive reasons. And so those would not all relate to discovery in this matter.”
- Honor Society would not “serve a subpoena on PTK asking for this information because it’s not relevant to this litigation.”¹⁶
- “That’s not why Honor Society sends out public records requests. They’ve been doing it forever, and its’ to gain a competitive advantage freely under their right under law.”
- “My client is not entitled to information in discovery for competitive purposes that don’t relate to the lawsuit. For that, my client turns to public records requests, which it has every right to send.”
- “The records requests and surveys are not discovery devices. They’re done for competitive reasons, to gain intelligence, to provide better services, to understand the market, and so they don’t relate to Rule 26 or the federal rules.”

Yet, just a few months later, Honor Society submitted over a dozen *responses* to its records requests in support of its own false advertising claims, directly contradicting Mr. Newman’s representations. *See, e.g.*, ECF No. 226-2 ¶¶ 43-57. And Moradian testified at the July 17 Evidentiary Hearing using these same records requests responses to help explain his claim. Polak Decl. ¶ 9, *id.* at Ex. A-5, 134:13-136:11. Further, Asari testified that the records requests were made to collect information to be used in this case. *See* Polak Decl. ¶ 6, *id.* Ex. A-14 at 227:19-228:7 (Q: “Yeah. So why? Why then, in March of 2024? You’d never done it before. Why then? . . . A: Well we wanted to get an idea of if PTK’s claims of 10 percent were – being in the top 10 percent were correct.”).

¹⁶ This is also misleading for a separate reason; immediately following the first injunction order, Honor Society sent 48 subpoenas to PTK’s college partners requesting the same or similar information as the records requests.

In deciding the narrow scope of its First Preliminary Injunction Order, the Court likely relied on Honor Society and its out-of-state counsel's misrepresentations that the records requests were not being used for discovery in this case. If it did, the Court relied on lies. Honor Society is using the records requests for this litigation. Thus, PTK requests the appropriate sanctions, including its attorney's fees in connection with the first preliminary injunction proceeding.

Out-of-state counsel for Honor Society also alleged several times that it had "regularly" used records requests for business purposes, which is also untrue, since [REDACTED] and then sent over 280 [REDACTED] in March 2024 alone. *Compare* Polak Decl., Ex. A-3 at 47:1-63:22 ([REDACTED] [REDACTED]) with Polak Decl. Ex. A-2 at 89:1-5, 91:6-10, 111:16-24, stating:

- "Honor Society has been sending public records requests since its first day in business years ago, ten years ago. Regularly sends public records requests and is very familiar with the way of doing that." Ex. A-2 at 89:1-5.
- "First, I don't know. I haven't seen all the records requests. My understanding is that Honor Society has sent records requests for 12 years and does so on a weekly basis. Long before this lawsuit ever began, and so I don't know." *Id.* at 91:6-10.
- "Honor Society has been sending public records requests for 12 years. They are experts at it. They gain a lot of competitive intelligence by that. Their service offerings are based a lot on what they get from records requests..." *Id.* at 111:16-24.

At minimum, it is untrue that Honor Society "has sent records requests for 12 years and does so on a weekly basis." *Id.* at 91:6-10. For those reasons too, PTK seeks sanctions as the Court deems appropriate for these bad faith misrepresentations.

IV. PTK'S ATTORNEY'S FEES ARE WARRANTED BASED ON HONOR SOCIETY'S CONTEMPT.

As explained in PTK's Motion for Contempt and Sanctions and supporting documents (ECF Nos. 242, 242-1, 243, 264, 261-1), Honor Society initially failed to abide by the Court's Second Preliminary Injunction Order. And even after PTK's motion, Honor Society continued to

defy the spirit of the Order.¹⁷ For example, Honor Society subverts the Court’s clear instructions when it uses smaller font for the Court-ordered disclaimer and increased font size for the surrounding language, which includes messaging contrary to the Court-ordered disclaimer, to ensure its misleading statements overshadow the disclaimer. *See* ECF No. 264 at 4. To that end, Honor Society flouts the Order in the approximately 2,000 AI-generated webpages, which have remained on the Internet since the Court’s Second Preliminary Injunction Order. *Id.* Separately, misleading article titles of Honor Society’s own creation, which entangle PTK with embezzlement and sexual harassment allegations and maligning images of Dr. Lynn Tincher-Ladner remain prevalent. *Id.* To the extent Honor Society edited any of its webpages identified in PTK’s Motion, it did so only because of PTK’s costly investigation and filing of its motion and supporting documents. Thus, PTK seeks its associated fees. *See Cook*, 559 F.2d 270 at 272.

A. Honor Society’s Disclaimers Remain Non-Compliant with the Court’s Order.

Honor Society’s “Phi Theta Kappa Lawsuit” support webpages initially included no disclaimer at all. *See* ECF No. 243 at 12-14 (Exs. A-37, A-38, A-39, A-40, A-41, A-42). This is particularly egregious because the webpages bear directly on the lawsuit and were a focus of the second injunction proceeding. *See, e.g.,* ECF No. 230 at 17-18. Even today, Honor Society refuses to increase the font size of the disclaimers on such pages to 12-point font and, in fact, has enlarged the surrounding font to overshadow the disclaimers. *See* ECF No. 264 at 4-5. To be clear, Honor Society increased the surrounding font size after the Court’s second injunction order to reduce the effect of the disclaimer. *Id.* This is evidence of intentional contempt for the Court’s Order.

¹⁷ To PTK’s knowledge, since PTK filed its Reply in Support of its Motion for Contempt and Sanctions and the related declaration and exhibits (ECF No. 264, 261-1), Honor Society has made no changes to its webpages, which were identified as contemptuous in PTK’s motion and supporting documents.

Similarly, Honor Society has revised over 2,000 of its PTK-chapter-specific, AI-generated webpages to include disclaimers that are a fraction of the size of the surrounding text, which disparages PTK by painting Honor Society's allegations as facts and misleads readers as to who initiated the lawsuit and whether the article is written by a neutral party. *See* ECF No. 264 at 6-7. Honor Society's conduct furthers the very confusion the disclaimer was intended to dispel. *See* ECF No. 230 at 26. This too demonstrates contempt for the Court's Order. Thus, PTK seeks its fees associated with forcing compliance with the Court's Order as to the disclaimer.

B. Honor Society's Webpages Still Mislead as to Sexual Harassment and Embezzlement and Wrongly Portray Dr. Tincher-Ladner.

Honor Society's 2,000 AI-generated webpages still advertise: "Phi Theta Kappa Sexual Harassment: Stunning Allegations Revisited" and "Phi Theta Kappa Embezzlement: A Deep Dive into the Allegations."¹⁸ *See* ECF No. 264 at 12-13. The references violate the Court's Order requiring Honor Society to remove "all false subject matter from its webpages" on the embezzlement arrest and "[l]imit its reporting on the sexual harassment allegations . . . to existing media articles only, rather than articles of its own creation." *See* ECF No. 230 at 26. Honor Society acts in bad faith by refusing to remove the references, and PTK seeks its fees as a result.

Honor Society also continues to display several articles that misleadingly portray Risley and Dr. Tincher-Ladner in awkwardly close proximity to each other. *See* ECF No. 264 at 12-13. The images were manufactured deliberately by Honor Society – at an instant in time from a video clip – and were originally used as cover images for Honor Society's sexual harassment allegation articles. If Honor Society's continued use of these images does not violate the letter of the Court's

¹⁸ Honor Society deleted several of its webpages that misleadingly entangled PTK and Honor Society's counterclaims with unrelated allegations of sexual harassment and embezzlement. But even for the webpages Honor Society deleted, PTK was forced to move for contempt and sanctions to cause Honor Society's compliance with the injunction. Thus, PTK seeks its associated fees. *See Cook*, 559 F.2d at 272.

Order, it at least violates the “spirit and intent” and demonstrates Honor Society’s “bad faith” in this litigation. *See Diamond Consortium, Inc. v. Manookian*, 2017 WL 3301527, at *9-10 (E.D. Tex. Aug. 3, 2017). PTK seeks compensatory fees on this basis as well.

C. Where Honor Society Complied with the Court’s Order as a Result of PTK’s Efforts to Force Compliance, PTK Seeks its Related Attorney’s Fees.

PTK raised other issues in its motion for contempt and sanctions, which Honor Society has now resolved. *See, e.g.*, ECF No. 264 at 10-13 (discussing noncompliant and/or lacking disclaimers on Medium, PR Newswire, Google cache, Twitter, and College Budget). Because PTK’s investigation, notice/demand correspondence, motion and supporting documents were required to force Honor Society’s compliance with the Court’s Order, PTK seeks its related fees. *See Ozmun v. Portfolio Recovery Assocs., LLC*, 2018 WL 912286, at *2-3 (W.D. Tex. 2018) (“finding an award of Defendants’ expenses incurred in filing the motion for contempt is appropriate” where the plaintiff complied with the Court Order “only after Defendants filed their motion for contempt”).

V. UNDER THE LODESTAR METHOD, PTK IS ENTITLED TO ITS REQUESTED ATTORNEY’S FEES IN FULL

In this brief and the supporting declarations, PTK demonstrates the reasonableness of its fees in view of the Fifth Circuit’s *Johnson* factors, and a clear calculation of the lodestar amount based on the hours expended – because of Honor Society’s malicious conduct – multiplied by the prevailing rates. PTK is entitled to the full lodestar amount as shown below.

A. The Fifth Circuit’s 12 *Johnson* Factors Support Awarding PTK’s Requested Attorney’s Fees in Full.

i. Honor Society’s Conduct Put Substantial Demands on PTK’s Counsel.

(1) Time and labor; (2) novelty and difficulty; (3) skill required; and (7) time limitations imposed by client or circumstances – these factors weigh in favor of awarding PTK’s requested

attorney's fees in full. For both injunctions and Honor Society's contempt, PTK's counsel investigated a vast web of malicious information posted by Honor Society, Honor Society Foundation, College Budget, and Campus Buddy, among others. And it did so at a grueling pace, which was required to mitigate the growing reputational damage to PTK and Dr. Tincher-Ladner. *See* Polak Decl. ¶¶ 8, 38-39. Because Honor Society repeatedly posted, revised, and restructured 5,000+ anti-PTK webpages and crosslinked that rhetoric among its websites and across its social media platforms, the investigation into multiple levels of tortious interference was complex – as was the briefing. *See id.*¹⁹ Volume aside, the legal issues were made more complex by the 40+ cases that Honor Society cited in each injunction opposition alone. *See* ECF Nos. 120, 226. Honor Society's demand for a full evidentiary hearing significantly amplified the time and labor required as well. Polak Decl. ¶ 9. The Court acknowledged Honor Society is multiplying the costs and complexity of this bad faith, sideshow litigation. *See* ECF No. 230 at 19 (“The Court finds the notion that PTK is the party engaging in ‘scorched-earth litigation tactics’ to be gaslighting. Moradian will reduce his litigation costs and have more time for his family if he doesn’t create 5,000 webpages with false information about his opponents.”). Therefore, these factors weigh heavily in favor of awarding PTK's requested attorney's fees in full.

ii. The Amount Involved is Substantial; The Results Obtained are Meaningful.

¹⁹ PTK's papers included a motion seeking to amend its pleadings to add claims of tortious interference (ECF No. 112), a supporting declaration (ECF No. 112-4), a motion for expedited discovery (ECF No. 115), a first motion seeking injunctive relief (ECF No. 116), each with supporting briefs (ECF No. 113, 115, 117) and replies (ECF Nos. 124, 125, 126 – one with a declaration, ECF No. 126-1), a second motion seeking injunctive relief (ECF No. 220), multiple supporting declarations (ECF Nos. 221-1, 221-48, 231-1), a supporting brief (ECF No. 221) and a reply (ECF No. 231), a motion for contempt (ECF No. 242), multiple supporting declarations (ECF Nos. 242-1, 261-1), a supporting brief (ECF No. 243) and a reply (ECF No. 261), as well as its motion for fees and supporting documents – not to mention several filings on motions to seal and strike and hundreds of exhibits.

From March 2024, when Honor Society’s conduct began, through June 2024, PTK lost over \$80,000 in membership revenue. *See* ECF No. 230 at 17. Through August 2024, as the malice of 5,000+ smearing webpages took their toll, PTK’s loss increased to over \$265,000. *See* Ex. D Tincher-Ladner Decl. ¶ 5. But while PTK’s loss in this short time has been substantial – a factor weighing in favor of granting PTK’s requested fees in full – it would have been more substantial (now and in the future) without the Court’s Order of Injunction. The Court enjoined several aspects of Honor Society’s conduct and required a disclaimer to dispel confusion for Honor Society’s remaining anti-PTK webpages, should Honor Society choose to keep them online. *See* ECF No. 230 at 26. PTK has been granted meaningful relief. This is the most significant *Johnson* factor, and it weighs in favor of awarding PTK’s requested fees in full. *See Fessler v. Porcelana Corona De Mexico, S.A. DE C.V.*, 23 F.4th 408, 415 (5th Cir. 2022) (“[T]he most critical factor in determining a reasonable fee is the degree of success obtained.”). “A preliminary injunction is ‘an extraordinary and drastic remedy’” (*see* ECF No. 230 at 6 quoting *Black Fire Fighters Ass’n of Dall. v. City of Dall.*, Tex., 905 F.2d 63, 65 (5th Cir. 1990)), yet it was ordered TWICE in this case, demonstrating the high degree of success PTK has obtained.

That said, PTK’s relief came at a substantial cost. To date, PTK’s attorney’s fees for the motions seeking injunctive relief, the contempt motion, the required investigations leading to the motions, the hearings, the travel and the related costs, and this fee application total \$551,265.27. This too is a substantial amount, weighing heavily in favor of granting PTK’s request.²⁰

iii. The Remaining Factors Further Support PTK’s Fee Request.²¹

²⁰ These amounts reflect only those billed and/or incurred through September 30, 2024. PTK reserves the right to seek its remaining fees in connection with this fee motion, its reply, and “reasonably incurred in defending” the preliminary injunction, e.g., against Honor Society’s appeal and motion to stay.

²¹ The remaining factors include: (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent.; (9) the experience, reputation,

PTK’s counsel has charged discounted fees on an hourly basis, the reasonableness of which are confirmed by PTK’s prompt payments each month. *See* Polak Decl. ¶¶ 59-53. PTK’s counsel has the proper experience, reputation, and ability. *See, e.g., id.* ¶ 42 (citing in-person discovery conference, in which Mr. Newman stated someone told him Mike Wallace is the best lawyer in Mississippi). PTK’s out-of-state counsel, Taft, is led by Jonathan Polak, who chairs the firm’s IP practice and is a true national litigator (having litigated in over 20 states and internationally), with a unique specialization in trademark litigation that forms the basis of many recognitions and awards.²² This case began as a trademark infringement action, where PTK requires Polak’s specialized skill and experience.²³ Since then, it has rapidly evolved into encompass a multitude a claims, counterclaims, and complexities.²⁴ So as this case has borne out, out-of-state counsels’ specialization and volume of available resources have been necessary to properly represent PTK against Honor Society’s “scorched earth” tactics. *See* ECF No. 230 at 19 (noting Honor Society, not PTK, has been the cause of the requested fees and protracted litigation). The astonishing volume of Honor Society’s malicious conduct is undeniable, and the side-show nature of the proceedings – distracting from the merits of the case – makes these aspects of the case particularly

and ability of the attorneys; (10) the ‘undesirability’ of the case; (11) the professional relationship with the client; and (12) awards in similar cases.

²² *See, e.g.,* Polak, Jonathan Biography at: <https://www.taftlaw.com/people/jonathan-g-polak/>.

²³ Mississippi is not a hotbed for trademark litigation. For example, since 2022, when this lawsuit was filed, there have only been 8 trademark cases filed in this district. *See* Polak Decl. ¶ 36 (citing PACER statistics). By comparison, the North District of Illinois has had 3,600 trademark case in that time, and the Central District of California, where the Newman firm practices locally, has had around 1,600 such cases. Honor Society having out-of-state counsel speaks to this point as well.

²⁴ Honor Society has also acknowledged “[t]his case is complex . . . PTK’s Second Amended Complaint (Dkt. 136) added new false-advertising claims and tortious interference claims” and that its own amended pleadings added a plethora of counterclaims too. *See* ECF No. 184 at 3. The demands of the case – especially in view of the face-paced nature of injunction and contempt proceedings – have stretched resources thin, further demonstrating the need for PTK’s full counsel.

undesirable, especially since PTK’s counsel has engaged in these matters to the exclusion of other work.²⁵ *See* Wallace Decl. ¶ 8; *see also* Polak Decl. ¶ 38.

PTK’s requested fees are also reasonable in view of similar cases granting such fees. *See, e.g., Sierra Club v. Energy Future Holdings Corp.*, 2014 WL 12690022 (W.D. Tex. Aug. 29, 2014) (awarding \$6,446,019.56 in attorney’s fees where moving party: “participate[d] in a market . . . which is national in scope,” . . . “hire[d] local counsel who assisted in the case,” and hired the firm also working to defend a similar case” such that “[r]etaining two separate teams strictly composed of local counsel in each case would have been highly inefficient and a waste of resources.”); *see also Doe v. Fitch*, 2022 WL 4002326 (S.D. Miss. Aug. 1, 2022), *aff’d*, 2023 WL 2882717 (5th Cir. Apr. 11, 2023) (awarding \$352,143.20 in attorney’s fees where “Mississippi attorneys . . . are willing to assist as local counsel on matters like the present one, [but] many do not have the support staff or access to substantial resources needed for a case like this”). Similarly, PTK participates in a market that is national in scope (e.g., 1,200+ chapters across the U.S. and internationally). And its out-of-state counsel represents it in a related Trademark Trial and Appeal Board matter seeking to cancel Honor Society’s seemingly generic “Honor Society” trademark (*see* TTAB Cancellation No. 92085323). Therefore, hiring multiple local firms would have been a waste of resources when Taft is already sufficiently sized and situated to represent PTK efficiently, especially in view of the particular specialization core litigation and complexities and volume associated with the claims of the amended pleadings – most of which are of Honor Society’s own design.

Thus, each of the *Johnson* factors support that PTK’s fee request should be granted in full.

²⁵ Honor Society’s out-of-state counsel has acknowledged the extreme workload associated with these proceedings as well. *See* 3/27/2024 Hearing Tr. at 134:13-17 (“...that required our staff to be pulled off of all their other cases, to stay up all night long, to research and analyze the papers...”); *id.* at 135:11-12 (“I would like to start getting seven hours of sleep again.”).

B. PTK's Attorney's Fees Calculations.²⁶

As outlined below, PTK seeks \$533,662.50 in attorney fees incurred through September 30 with respect to four discrete motions (Polak Decl. ¶¶ 46, Wallace Decl. ¶¶ 7, 11):

	Taft		Wise Carter		TOTAL AMOUNT
	Hours:	Amounts:	Hours:	Amounts	
First Motion for Preliminary Injunction	159.10	\$82,839.50	5.90	\$2,738.00	\$85,577.50
Reply in Support of Motion for Preliminary Injunction	74.10	\$41,663.50	2.50	\$952.50	\$42,616.00
Hearing travel time	26.00	\$16,480.00	0.00	0.00	\$16,480.00
Hearing prep time	42.70	\$23,481.50	22.00	\$8,537.00	\$32,018.50
Hearing testimony time	12.20	\$7,828.50	7.00	\$2,975.00	\$10,803.50
SUBTOTAL:	314.10	\$172,293.00	37.40	\$15,202.50	\$187,495.50
Second Motion for Preliminary Injunction	284.40	\$133,217.00	6.90	\$2,481.50	\$135,698.50
Reply in Support of Motion for Preliminary Injunction	80.50	\$39,660.50	24.30	\$8,017.50	\$47,678.00
Hearing travel time	0	\$0	0	\$0	\$0
Hearing prep time	27.20	\$19,294.00	17.20	\$4,951.00	\$24,245.00
Hearing testimony time	43.00	\$27,047.50	36.20	\$13,383.00	\$40,430.50
Supplemental Declaration and Response to Motion to Strike	20.10	\$10,232.00	3.90	\$1,580.50	\$11,812.50
SUBTOTAL:	455.20	\$229,451.00	88.50	\$30,413.50	\$259,864.50
Motion for Contempt/Preliminary Injunction Compliance Investigation	74.90	\$37,225.50	5.00	\$1,927.00	\$39,152.50
Reply in Support of	50.70	\$26,584.50	6.20	\$2,241.50	\$28,826.00

²⁶ PTK seeks its fees associated with the time spent on the fee application itself as part of the attorney's fees award. See *Thomas v. Reeves*, No. 3:18-CV-441-CWR-FKB, 2021 WL 517038, at *10 (S.D. Miss. Feb. 11, 2021) citing *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 336 (5th Cir. 1995) ("The Court has discretion to include time spent on the fee application itself as part of the attorneys' fee award."). Further, because PTK was still working on its Motion for Fees past September 30, it anticipates updating its fees request with respect to the motion itself as well and as to include its work on the reply. PTK also reserves the right to seek its fees and costs incurred in connection with its Appellee's Response to Honor Society's Motion to Stay the Injunction because PTK's fees were "reasonably incurred in defending" the preliminary injunction. See *Kiva Kitchen & Bath, Inc. v. Capital Distrib., Inc.*, 681 F. Supp. 2d 807, 810 (S.D. Texas 2010) (citing and finding persuasive *JCW Inv., Inc. v. Novelty, Inc.*, 509 F.3d 339, 341-42 (7th Cir. 2007)).

	Taft		Wise Carter		TOTAL AMOUNT
	Hours:	Amounts:	Hours:	Amounts	
Motion for Contempt					
SUBTOTAL:	125.60	\$63,810.00	11.20	\$4,168.50	\$67,978.50
Motion for Attorney's Fees	39.40 ²⁷	\$18,324.00	0	\$0	TBD
Reply in Support of Motion for Attorney's fees	TBD	TBD	TBD	TBD	TBD
SUBTOTAL					
TOTALS:	934.30	\$483,878.00	137.10	\$49,784.50	\$533,662.50

In addition, PTK also requests \$17,602.77 in costs at this time. Polak Decl. ¶¶ 50.

PTK's requested attorney's fees and costs are reasonable. Taft's attorney's fees billed to PTK reflect a 10% discount across the board and additional write-offs, with the additional write-offs totaling \$61,294.00 or 11.2% of the total fees generated by Taft. *Id.* ¶¶ 37, 41, 42, 49. Taft has also discounted its costs billed to PTK, writing off \$5,430.54 from the \$23,033.31 total costs generated by Taft, reflecting a 23.6% reduction in costs. *Id.* ¶ 52. PTK has paid in full its fees billed through August 31, further evidencing the reasonableness of PTK's fees request. *Id.* ¶ 53.

In sum, PTK requests \$551,265.27 in fees and costs, as a result of Honor Society's conduct.

VI. CONCLUSION

There was nothing inadvertent or justifiable about Honor Society's conduct – it was tortious, malicious, misleading, and contemptuous. It was intentional and willful. It was intended to hurt PTK and Dr. Tincher-Ladner. PTK was forced to spend significant resources (time and money) to defend itself and preserve its good name in the face of Honor Society's smear campaign.

²⁷ As of the filing of this Motion, PTK has not yet calculated the full amount of its attorney's fees incurred in connection with the Motion. PTK reserves the right to discount its time in connection with the Motion well as the right to include additional fees incurred as a result of preparing the Motion and the reply. PTK also reserves its right to seek additional fees incurred as a result of preparing its Appellee's Response to Honor Society's Motion to Stay the Injunction, which PTK recently filed with the Fifth Circuit, in connection with its counsels' work performed primarily in October.

Every aspect of this side-show, satellite litigation was Honor Society's doing. For these reasons, PTK's requested attorney's fees should be awarded in full.

Dated: October 14, 2024

Respectfully submitted,

/s/ Jonathan G. Polak

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CERTIFICATE OF SERVICE

I, Jonathan G. Polak, do hereby certify that I have this day electronically filed the foregoing pleading or other paper with the Clerk of the Court using the ECF system which sent notification to all counsel of record.

Dated: October 14, 2024

/s/ Jonathan G. Polak
Jonathan G. Polak

EXHIBIT 8

Senate Committee on Judiciary
Hearing on Nev. SB 286
(May 6, 2013)

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

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

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

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblyman Wesley Duncan (excused)

GUEST LEGISLATORS PRESENT:

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

Minutes ID: 1059



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

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

Chairman Frierson:

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

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

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

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

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

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

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

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

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

Chairman Frierson:

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

Senator Jones:

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

Chairman Frierson:

I would like to hear from him.

Marc J. Randazza, Attorney, Randazza Legal Group:

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

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

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

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

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

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

Assemblywoman Spiegel:

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

Marc Randazza:

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

Senator Jones:

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

Assemblywoman Spiegel:

Would you entertain a discussion of making it higher?

Senator Jones:

I certainly would.

Assemblywoman Spiegel:

Thank you.

Chairman Frierson:

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

Senator Jones:

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

Chairman Frierson:

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

James McGibney, CEO, ViaView, Inc.:

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

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

Chairman Frierson:

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

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

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

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

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

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

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

Chairman Frierson:

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

Wayne Carlson:

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

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

Chairman Frierson:

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

Wayne Carlson:

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

Chairman Frierson:

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

Wayne Carlson:

Yes. I am sorry.

Chairman Frierson:

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

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

Senator Jones:

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

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

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

Chairman Frierson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairman Frierson:

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

Scott Anderson:

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

Chairman Frierson:

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

Scott Anderson:

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

Chairman Frierson:

Thank you very much.

Assemblywoman Spiegel:

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

Scott Anderson:

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

Assemblywoman Diaz:

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

Scott Anderson:

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

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

Assemblyman Carrillo:

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

Scott Anderson:

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

Assemblyman Carrillo:

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

Scott Anderson:

There has not.

Assemblyman Ohrenschall:

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

Scott Anderson:

What is the page?

Assemblyman Ohrenschall:

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

Scott Anderson:

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

Assemblyman Carrillo:

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

Scott Anderson:

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

Assemblyman Carrillo:

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

Scott Anderson:

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

Chairman Frierson:

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

Scott Scherer, representing the Nevada Registered Agent Association:

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

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

Chairman Frierson:

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

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

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

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

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

Assemblyman Ohrenschall:

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

Robert Kim:

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

Scott Scherer:

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

Chairman Frierson:

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairman Frierson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Assemblyman Wheeler:

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

Robert Eglet:

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

Assemblyman Ohrenschall:

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

Robert Eglet:

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

Assemblyman Hansen:

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

Peter Neumann:

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

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

Assemblyman Hansen:

Why civil only? Why not criminal and civil?

Peter Neumann:

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

Assemblyman Hansen:

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

Peter Neumann:

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

Assemblywoman Dondero Loop:

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

Robert Eglet:

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

Peter Neumann:

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

Robert Eglet:

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

Chairman Frierson:

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

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

Peter Neumann:

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

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

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

Chairman Frierson:

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

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

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

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

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

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

Assemblywoman Cohen:

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

Stephanie Allen:

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

Chairman Frierson:

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

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

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

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

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

Chairman Frierson:

You are talking about the proposed amendment?

Chris Frey:

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

Chairman Frierson:

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

Senator Segerblom:

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

Chairman Frierson:

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

Senator Segerblom:

Yes.

Chairman Frierson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Assemblyman Hansen:

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

Robert Kim:

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

Assemblyman Hansen:

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

Patterson Cashill, representing the Nevada Justice Association:

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

Assemblyman Hansen:

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

Chairman Frierson:

Mr. Kim, you can continue your introductory remarks.

Robert Kim:

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

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

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

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

Assemblywoman Spiegel:

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

Robert Kim:

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

Assemblywoman Spiegel:

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

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

Robert Kim:

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

Assemblywoman Spiegel:

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

Robert Kim:

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

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

Assemblywoman Spiegel:

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

Robert Kim:

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

Assemblywoman Cohen:

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

Robert Kim:

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

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

Chairman Frierson:

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

Robert Kim:

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

Assemblyman Wheeler:

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

Robert Kim:

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

Chairman Frierson:

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

Robert Kim:

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

Chairman Frierson:

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

Patterson Cashill:

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

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

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

Chairman Frierson:

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

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

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

Chairman Frierson:

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

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

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 6, 2013

Time of Meeting: 8:19 a.m.

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

EXHIBIT 9

Minutes on Assembly Committee on Judiciary
hearing on SB 444
April 25, 2015

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

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

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

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblyman David M. Gardner (excused)

GUEST LEGISLATORS PRESENT:

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

Minutes ID: 930



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

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

Chairman Hansen:

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

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

Senator Pete Goicoechea, Senate District No. 19:

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

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

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

Assemblyman Nelson:

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

Senator Goicoechea:

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

Assemblyman Trowbridge:

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

Senator Goicoechea:

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

Chairman Hansen:

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

Senator Goicoechea:

Assemblyman Munford and I carried the same bill last session.

Assemblyman Ohrenschall:

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

Senator Goicoechea:

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

Henry Krenka, President, Nevada Outfitters and Guides Association:

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

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

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

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

Mitch Buzzetti, Private Citizen, Lamoille, Nevada:

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

Walt Gardner, Private Citizen, Ruby Valley, Nevada:

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

Danny Riddle, Private Citizen, Ruby Valley, Nevada:

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

Chairman Hansen:

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

Walt Gardner:

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

Chairman Hansen:

What about the predator situation?

Walt Gardner:

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

Danny Riddle:

Ditto.

Henry Krenka:

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

Mitch Buzzetti:

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

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

Assemblyman Jones:

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

Walt Gardner:

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

Chairman Hansen:

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

Assemblyman Ohrenschall:

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

Walt Gardner:

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

Assemblyman Trowbridge:

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

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

Henry Krenka:

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

Assemblyman Trowbridge:

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

Henry Krenka:

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

Assemblyman Trowbridge:

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

Chairman Hansen:

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

Alex Tanchek, representing Nevada Cattlemen's Association:

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

Chairman Hansen:

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

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

Senator Greg Brower, Senate District No. 15:

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

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

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

Assemblyman Ohrenschall:

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

Senator Brower:

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

Chairman Hansen:

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

Senator Brower:

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

Chairman Hansen:

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

Regan Comis, representing Nevada Judges of Limited Jurisdiction:

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

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

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

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

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

Kristin Erickson, representing Nevada District Attorneys Association:

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

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

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

Chairman Hansen:

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

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

Senator Greg Brower, Senate District No. 15:

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

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

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

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

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

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

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

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

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

Mitchell Langberg, Private Citizen, Los Angeles, California:

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

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

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

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

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

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

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

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

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

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

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

Assemblyman Elliot T. Anderson:

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

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

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

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

Mitchell Langberg:

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

Chairman Hansen:

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

Senator Brower:

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

Assemblyman Elliot T. Anderson:

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

Mitchell Langberg:

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

Assemblyman Ohrenschall:

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

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

Mitchell Langberg:

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

Assemblyman Ohrenschall:

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

Mitchell Langberg:

Under old law, you mean current law right?

Assemblyman Ohrenschall:

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

Mitchell Langberg:

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

Assemblyman Ohrenschall:

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

Mitchell Langberg:

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

Assemblyman Ohrenschall:

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

Mitchell Langberg:

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

Assemblyman Ohrenschall:

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

Mitchell Langberg:

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

Assemblyman Nelson:

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

Mitchell Langberg:

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

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

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

Assemblyman Araujo:

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

Mitchell Langberg:

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

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

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

Assemblywoman Diaz:

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

Mitchell Langberg:

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

Senator Brower:

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

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

Assemblyman Jones:

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

Mitchell Langberg:

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

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

Senator Brower:

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

Assemblyman Jones:

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

Mitchell Langberg:

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

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

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

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

Chairman Hansen:

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

Allen Lichtenstein, Private Citizen, Las Vegas, Nevada:

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

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

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

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

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

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

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

Chairman Hansen:

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

Allen Lichtenstein:

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

Chairman Hansen:

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

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

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

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

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

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

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

Assemblyman Elliot T. Anderson:

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

Allen Lichtenstein:

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

Assemblyman Ohrenschall:

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

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

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

Allen Lichtenstein:

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

Assemblywoman Diaz:

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

John Smith:

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

Chairman Hansen:

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

Trevor Hayes, representing Nevada Press Association:

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

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

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

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

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

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

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

Joseph Guild, representing Motion Picture Association of America:

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

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

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

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

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

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

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

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

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

Marc Randazza, Private Citizen, Las Vegas, Nevada:

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

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

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

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

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

Chairman Hansen:

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

Assemblyman Jones:

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

Marc Randazza:

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

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

Assemblyman Elliot T. Anderson:

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

Marc Randazza:

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

Ron Green, Private Citizen, Las Vegas, Nevada:

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

Chairman Hansen:

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

Ron Green:

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

Theresa Haar, Private Citizen, Las Vegas, Nevada:

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

Joe Johnson, representing Toiyabe Chapter, Sierra Club:

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

Anne Macquarie, Private Citizen, Carson City, Nevada:

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

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

John Mehaffey, Private Citizen, Las Vegas, Nevada:

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

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

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

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

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

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

Heather Snedeker, Private Citizen, Las Vegas, Nevada:

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

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

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

Chairman Hansen:

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

Homa Woodrum, Private Citizen, Las Vegas, Nevada:

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

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

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

Chairman Hansen:

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

Senator Brower:

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

Mitchell Langberg:

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

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

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

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

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

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

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

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

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

Senator Brower:

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

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

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

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

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

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

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

Chairman Hansen:

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

Ed Uehling, Private Citizen, Las Vegas, Nevada:

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

Chairman Hansen:

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

Ed Uehling:

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

Chairman Hansen:

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

Assemblyman Elliot T. Anderson:

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

Chairman Hansen:

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

RESPECTFULLY SUBMITTED:

Janet Jones
Recording Secretary

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: April 24, 2015

Time of Meeting: 8 a.m.

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

EXHIBIT 10

Marc Randazza,
“Nevada’s New Anti-SLAPP Law:
The Silver State Sets the Gold Standard,”
NEVADA LAWYER (Oct. 1, 2013)

NEVADA'S NEW ANTI-SLAPP LAW: THE SILVER STATE SETS THE GOLD STANDARD

BY MARC J. RANDAZZA, ESQ.



A Strategic Lawsuit Against Public Participation, or SLAPP suit, is abusive litigation where a plaintiff brings a legally questionable claim in order to punish the defendant for exercising his or her First Amendment rights. Often, these suits are based upon defamation and other claims arising from expressive conduct. The purpose of a SLAPP suit is not necessarily to win, but to inflict the punishment of litigation itself. Because of SLAPP suits, many people find themselves facing the harsh reality that free speech is not necessarily “free.”

Laws commonly known as “anti-SLAPP statutes” provide special protection against this kind of suit. During the last legislative session, the Nevada Legislature passed Senate Bill 286 into law, making sweeping changes to Nevada’s existing anti-SLAPP statutes, which are found in Chapter 41 of the Nevada Revised Statutes (NRS). On October 1, 2013, the new law’s changes took effect, and Nevadans now have the strongest free speech protections in the United States.

The Origin of SLAPP Suits

In the most important SLAPP suit of all time, John Peter Zenger criticized the colonial governor of New York. (This was 1733, long before the First Amendment existed as a glimmer in the founding fathers’ eyes). In response, the governor had Zenger arrested and tried for the crime of “seditious libel.” The jury was charged only with deciding whether or not Zenger had published the words. Zenger’s attorney, Andrew Hamilton, argued that if a man speaks the truth, no law should punish him for doing so. After 10 minutes of deliberation, the jury rendered a not guilty verdict, establishing one of the first and most fundamental defenses to claims for defamation: truth is an absolute defense to liability.

The Digital Age Makes SLAPP Suits, and Anti-SLAPP Laws, Matter to More of Us

Until recent times, it was difficult for the ordinary citizen to find himself or herself the victim of a SLAPP suit. However, with almost everyone living online at this point, reality has changed. In *Reno v. ACLU*, the Supreme Court noted that on the internet, anyone can become “a town crier or a pamphleteer.”¹ But, what the court did not predict was that now every one of us could become the victim of a SLAPP suit – and even for conduct many may consider innocuous.

Along with California, Nevada was one of the first states to enact an anti-SLAPP statute. These laws allow for special motions that dismiss SLAPP suits early on, without subjecting

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NEVADA'S NEW ANTI-SLAPP LAW

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defendants to costly discovery, and resulting in an adjudication of the SLAPP suit on its merits (akin to a motion for summary judgment). Additionally, a staple of anti-SLAPP measures is awarding a prevailing movant his or her costs and reasonable attorneys' fees in bringing the anti-SLAPP motion.

While California and Nevada enacted anti-SLAPP laws around the same time, the parallels between the states' laws ended there. Unlike California's broad anti-SLAPP statute, Nevada's anti-SLAPP law initially protected only "good faith communication in furtherance of the right to petition." NRS 41.637. This limited the law's application to suits based on a speaker's communications with a government entity in order to comment upon an issue before it, or to procure its official action – an exceedingly limited scope.² Consequently, Nevada's anti-SLAPP statutes have been relatively unused, despite the problem of SLAPPs within the state. Meanwhile, Oregon, Washington, Texas and the District of Columbia all enacted strong anti-SLAPP laws,³ with Oregon revising its law even further when it was determined to be weaker than California's.⁴

NEVADA AWAKENS

This past legislative session, State Senator Justin Jones introduced Senate Bill 286 (SB 286) in an effort to make Nevada's anti-SLAPP laws among the best in the nation. The bill strengthened the law enough to make it truly meaningful, encompassing a broad

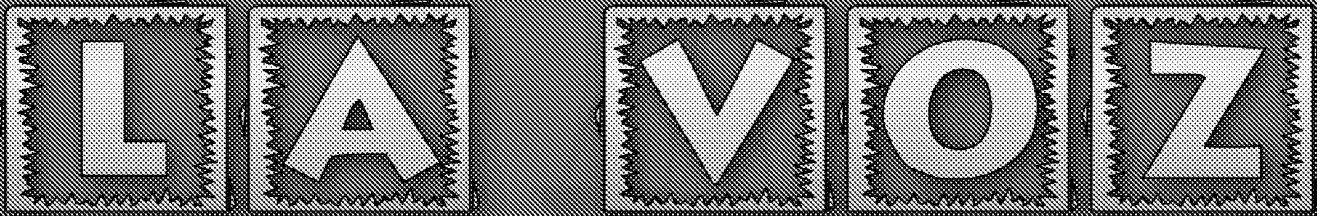
array of First Amendment-protected speech, not merely communication made to the government. Rather than simply replicating other states' laws, SB 286 made specific changes to Nevada's anti-SLAPP statutes, while maintaining provisions that were uniquely Nevadan. A summary of these changes follows:

Expands the Breadth and Scope of Protected Speech

SB 286 broadens NRS 41.637 from just protecting good faith communication in furtherance of the right to petition, to also include "the right to free speech in direct connection with an issue of public concern." Within NRS 41.637's prior subsections, good faith communication in furtherance of the right to petition was constrained to communication seeking to procure or influence government action. SB 286 adds a fourth definition for the expanded types of protected conduct, which

Unlike California's broad anti-SLAPP statute, Nevada's anti-SLAPP law initially protected only "good faith communication in furtherance of the right to petition."

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HISPANIC LAW STUDENTS ASSOCIATION

WILLIAM S. BOYD SCHOOL OF LAW
UNIVERSITY OF NEVADA, LAS VEGAS

NEVADA'S NEW ANTI-SLAPP LAW

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includes any “communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,” so long as the statement is truthful or made without knowledge of falsehood. Rather than being restricted to matters under government consideration, Nevada’s anti-SLAPP statutes now cover all matters of public interest, so long as they are truthful and made in a place open to the public.

Allows For an Immediate Appeal of a Denied Anti-SLAPP Motion

Under prior Nevada law, NRS 41.650 provided immunity only from liability, rather than the underlying lawsuit. Therefore, if a movant’s special motion to dismiss was denied, he or she had to wait until the end of trial to appeal the denial of an anti-SLAPP motion. *See, e.g., Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 796 n. 1 (9th Cir. 2012). SB 286 modifies NRS 41.650 so that a movant is immune from any civil action – not just liability – from claims arising from his or her protected speech. Accordingly, any denial of an anti-SLAPP motion is immediately appealable.

Expedites Judicial Consideration of Anti-SLAPP Motions

Nevada’s existing anti-SLAPP laws stayed all discovery within the proceeding and required the court to rule on the movant’s motion within a defined, short period of time after it was filed. Currently, Nevada requires courts considering an anti-SLAPP motion to rule on those motions within 30 days of their filing. After SB 286, this time is reduced to seven judicial days after the motion is served upon the plaintiff.

Creates a \$10,000 Penalty to Deter Frivolous Claims

An inherent characteristic of anti-SLAPP statutes is the award of costs and reasonable attorneys’ fees to a prevailing movant. This mechanism serves to encourage attorneys to file meritorious anti-SLAPP motions that might not otherwise be filed, and to incentivize the protection of the First Amendment. In addition to allowing for a movant’s recovery of costs and attorneys’ fees, SB 286’s change to NRS 41.670 gives the court discretion to award a successful movant up to \$10,000 in addition to his or her reasonable costs and attorneys’ fees. This discourages questionable attempts to silence successful movants’ First Amendment rights.

Creates “SLAPP-Back” Provision to Prevent Frivolous Anti-SLAPP Motions

Because of the additional powers SB 286 infuses into Nevada’s anti-SLAPP laws, the legislature incorporated a mechanism to prevent its abuse. Harkening to California’s Civil Procedure Code § 425.17, SB 286 amends NRS 41.670 so that a court denying an anti-SLAPP motion must award the non-movant (i.e., the plaintiff) his or her costs and reasonable attorneys’ fees upon finding that the anti-SLAPP motion was “frivolous or vexatious.” This prevents frivolous anti-SLAPP motions from burdening the courts and becoming a basis for limiting the law’s protections.

Retains Key Elements from Nevada’s Existing Laws

Despite SB 286’s changes, Nevada’s existing statutes have, and retain, powerful provisions that are unique among anti-SLAPP laws. First, the Nevada Attorney General or the “chief legal officer or attorney of a political subdivision” in Nevada may “defend or otherwise support the person against whom the action is brought.” NRS 41.660(1)(b). Simply stated, the Nevada Attorney General’s Office, or the office of a municipal attorney, may act as counsel for a defendant in order to bring an anti-SLAPP motion for him or her.

Also unique to Nevada is its creation of a separate cause of action for prevailing on an anti-SLAPP motion. Thus, not only may successful anti-SLAPP movants recover their attorneys’ fees and costs in dismissing the action against them, they may also pursue their own new claim against the party filing a SLAPP suit, with the statutory right to recover a wide range of costly damages under NRS 41.670.

Conclusion

So long as there are people willing to file vexatious lawsuits to shut down public debate, SLAPP suits will continue. However, SB 286 means that the victims of those cases are no longer certain to be victims, whether they win or lose.

All attorneys take an oath to uphold the Constitution, including the First Amendment. Unfortunately, previously, there was no downside to taking a limited view of this duty. While Rule 11 stands as a possible obstacle to the most frivolous claims, such sanctions are rare, and no impediment to a creative litigator’s tools. However, this is not a sufficient protection when the possible victim is not just a citizen, but our most cherished Constitutional right. By adopting SB 286’s changes to its anti-SLAPP statutes, Nevada enters the realm of states that treat its citizens’ First Amendment rights like the sacred protections they truly are. ■

- 1 *Reno v. ACLU*, 521 U.S. 844, 870 (1997) “Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.”
- 2 *See Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 797 (9th Cir. 2012).
- 3 Cal. Civ. P. Code § 425.16 (West 2012); D.C. Code § 16-5502 (2012); Ore. Rev. Stat. §§ 31.150–31.155 (2012); Tex. Civ. Prac. & Rem. Code Ann. §§ 27.001–27.011 (West 2011); W.R.C. §§ 4.24.500–4.24.525 (2012).
- 4 Ore. Rev. Stat. §§ 31.150–31.155 (2012) (revising the Oregon anti-SLAPP law after *Englert v. MacDonell*, 551 F.3d 1099, 1106–07 (9th Cir. 2009), which interpreted Oregon’s prior anti-SLAPP law as protecting defendants from liability but not from prosecution. Therefore, denying the defendant a right to an interlocutory appeal).

MARC J. RANDAZZA is the managing partner of the Randazza Legal Group, a law firm with offices in Las Vegas and Miami dedicated to the protection of free expression nationwide. Randazza is licensed in Arizona, California, Florida, Massachusetts and Nevada.

EXHIBIT 11

Marc Randazza,
“Nevada’s Anti-SLAPP Law Update,”
NEVADA LAWYER (Sept. 2016)

BACK STORY

NEVADA'S ANTI-SLAPP LAW UPDATE

BY MARC J. RANDAZZA, ESQ.

A Strategic Lawsuit Against Public Participation, or SLAPP suit, is a meritless lawsuit against someone for exercising his or her First Amendment rights. The objective of these suits is not to win, but to silence or make examples of critics by imposing large legal bills upon them.¹

Last summer, the Nevada Legislature revisited the state's Anti-SLAPP law. The call for amendments to the law originally arose from efforts to cripple the statute. The Legislature did not ratify these amendments, but those who sought to kill the old law, ironically, allowed for a timely revision to the statute, making it more balanced and less vulnerable to constitutional challenge.

Nevada's Anti-SLAPP Framework

At the heart of the law is a two-step process. A defendant can file a Special Motion to Dismiss under NRS 41.660, which has a low burden requiring him or her to show that the suit is "based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). If the defendant makes this showing, the plaintiff must then make an evidentiary showing demonstrating that he or she has a probability of prevailing on the claims. In the 2013 version of the statute, the plaintiff had to show by "clear and convincing evidence" a probability of prevailing.

Changing the Plaintiff's Burden

The Legislature passed revisions to the statute in May 2015, as part of Senate Bill 444 (SB 444). There was previously some ambiguity as to a plaintiff's evidentiary burden, so it was changed to prima facie evidence. The statute's definition of prima facie evidence is consistent with California case law. Thus, Nevada's statute is more in line with California's, so Nevada courts have a large body of interpretive case law upon which to rely.

This change to a plaintiff's evidentiary burden had the additional benefit of distancing itself from Washington's Anti-SLAPP statute, which the Washington Supreme Court struck down in *Davis v. Cox*, 183 Wn.2d 269 (2015) in May 2015. Washington's statute imposed a "clear and convincing evidence" burden on the plaintiff, with no possibility of discovery being taken by the plaintiff. The Washington Supreme Court found this burden unconstitutionally high, and the *Cox* decision would have made the 2013 version of Nevada's statute vulnerable to challenge.

Permitting Discovery in Anti-SLAPP Proceedings

The other substantial change introduced by SB 444 is the ability to take discovery to support or oppose an Anti-SLAPP motion. The 2013 statute imposed a stay on discovery while an Anti-SLAPP motion was pending. The current version, however, allows a party to take limited discovery "[u]pon 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." NRS 41.660(4).

This is not a free-wheeling fishing expedition license, however; a party must affirmatively file a motion for discovery, specify the discovery needed and why the party has, thus far, been unable to acquire it. In this way, Anti-SLAPP proceedings are even more like summary judgment proceedings, as parties are permitted to take summary judgment discovery under similar circumstances via NRCP 56(f).

Since the 2015 revisions, there have been quite a few Anti-SLAPP cases, handled with varying degrees of competence. One of the biggest mistakes I have witnessed is attorneys trying to litigate under the 2013 version of the statute. Other mistakes include plaintiffs' attorneys treating an Anti-SLAPP motion as a motion to dismiss under Rule 12(b)(5) or failing to request discovery by way of separate motion. On the defense side, some attorneys don't understand that the Anti-SLAPP motion is its own creature, not simply a statute to be invoked in a 12(b)(5) motion. Further, under the new statute, even the defense can take limited discovery, if requested by separate motion.

Nevada's Anti-SLAPP law remains the gold standard nationwide. However, it has undergone some significant changes since it was enacted. Whichever side of an anti-SLAPP case you are on, you should be aware of the various changes, and how to use the law's various components. **NL**

1. In 2013, I wrote an article discussing Nevada's Anti-SLAPP statute (NRS 41.635-670), after it was amended to become one of the strongest such laws in the country. See Marc J. Randazza, "Nevada's New Anti-SLAPP Law: The Silver State Sets the Gold Standard," Nevada Lawyer Vol. 21, Issue 10 (October 2013).

MARC J. RANDAZZA is a Las Vegas-based First Amendment attorney. Randazza Legal Group (RLG) has offices in Miami, San Francisco and Hartford, with correspondent offices in Italy and France. RLG handles First Amendment matters nationwide and intellectual property matters internationally.



EXHIBIT 12

Curriculum Vitae of Marc Randazza

Legum Magister (LLM)

2014 | Università di Torino Facoltà di Giurisprudenza
International Intellectual Property Law
LLM program administered by the University of
Turin, the U.N.'s International Labour Organization
and the World Intellectual Property Organization.

Juris Doctor (JD)

2000 | Georgetown University Law Center
Focus on First Amendment and media law

Master of Arts in Mass Communication (MAMC)

2003 | University of Florida
*Focus on research in media studies, branding,
public relations, and advertising as well as
publication and teaching in First Amendment studies*

Bachelor of Arts in Journalism (BA) with honors

1994 | University of Massachusetts
Focus on media law studies

LEGAL PRACTICE EXPERIENCE

RANDAZZA LEGAL GROUP, Managing Partner | July 2009 to Present

Litigation and Appellate Practice

- First Amendment litigation and appeals
- Intellectual property litigation and appeals
- Anti-SLAPP litigation and appeals
- Intermediary liability litigation under the CDA (47 U.S.C. § 230) and the DMCA (17 U.S.C. § 512)
- Litigation consulting in foreign actions in order to ensure enforceability of foreign defamation claims under 28 U.S.C. §§ 4101-4105
- International arbitrations involving intellectual property disputes

Transactional Practice

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

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

Litigation and Appellate Practice

- First Amendment litigation and appeals
- Intellectual property litigation
- International intellectual property arbitrations

Transactional Practice

- Trademark registrations and administrative appeals.
- Negotiating and drafting intellectual property agreements including right of publicity transactions, non-competition agreements, and trade secret protection agreements

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

Litigation and Appellate Responsibilities

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

Real estate/corporate/community association practice

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

CLERKSHIPS

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

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

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

- Writing memoranda of law for Justice Denise Johnson
- Writing draft opinions that were later adopted and published by the Supreme Court

LEGAL TEACHING EXPERIENCE

Università di Torino Facoltà di Giurisprudenza | Turin, Italy, October 2015 to present

- Serve as thesis advisor to LLM Students in the International Intellectual Property Law program sponsored by the World Intellectual Property Organization and teach Freedom of Expression and International Intellectual Property Rights on an annual basis
- Teach *Freedom of Expression and International Intellectual Property Rights* course annually

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

Courses Taught:

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

Additional Activities and Responsibilities:

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

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

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

ACADEMIC AND LEGAL PUBLICATIONS

- *The Freedom to Film Pornography*, 17 NEVADA L.J. 99 (2017)
- *Lenz v. Universal: Reform § 512(f) of the DMCA*, 18 VANDERBILT J. ENT. & TECH LAW 4 (2016)
- *Ulysses - A Mighty Hero in the Fight for Freedom of Expression*, 11 U. MASS. L. REV. 268 (2016)
- *Kosovo's Digital Independence: Time for Kosovo's ccTLD*, WISCONSIN INT'L L.J., Vol. 33, No. 4 (2016)
- *Freedom of Expression and Morality-Based Impediments to the Enforcement of Intellectual Property Rights*, 16 NEVADA L.J. 107 (2015)
- "War of the Words": *Differing Canadian and American Approaches to Internet Defamation*, in Todd L. Archibald and Randall Scott Echlin, eds., ANNUAL REVIEW OF CIVIL LITIGATION IN CANADA 2015, Toronto: Thomson Carswell, 2015, 403 (co-authored with Antonin I. Pribetic)
- *The Legal Status of Making Adult Films in Nevada*, 23 NEVADA LAWYER 20 (May 2015)
- *Nevada's New Anti-SLAPP Law: The Silver State Sets the Gold Standard*, 21 NEVADA LAWYER 7 (Oct. 2013)
- *The Need for a Unified and Cohesive National Anti-SLAPP Law*, 91 OR. L. REV. 627 (2013)
- *Gambling in America's Senior Communities*, 8 MARQ. ELDER ADVISOR 343 (2007)
- *The Florida Supreme Court Dulls the Edge of Rule 1.420(e)*, 80 FLA. B.J. 39 (2006)
- *Condo Casino! Gambling in Florida Community Associations*, 79 FLA. B.J. 8 (2005)
- *The Other Election Controversy of Y2K: Core First Amendment Values and High-Tech Political Coalitions*, 82 WASH. U. L. Q. 143 (2004)
- *Getting to Yes with Terrorists*, 2002 L. REV. M.S.U.-D.C.L. 823. (2002)
- *Breaking Duverger's Law is not Illegal: Strategic Voting, the Internet and the 2000 Presidential Election*, 2001 UCLA J.L. & TECH. 6. (2001)
- *The Constitutionality of Online Vote Swapping*, 34 LOYOLA L.A. L. REV. 1297 (2001)

CNN LEGAL COLUMN

- *Scottish comedian's Nazi salute dog video was awful. But it wasn't a crime*, CNN, March 22, 2018
- *Even Trump has a right to free speech*, CNN, November 7, 2017
- *The best way to respond to Las Vegas massacre*, CNN, October 2, 2017
- *Outrage over Google memo goes too far*, CNN, August 8, 2017

- *Rock band The Slants' victory in court secures your rights*, CNN, June 20, 2017
- *Why Turkish embassy violence is unforgivable*, CNN, May 19, 2017
- *Jail for laughing protester is an outrage*, CNN, May 5, 2017
- *Dear Berkeley: Even Ann Coulter deserves free speech*, CNN, April 24, 2017
- *Does Melania Trump's libel suit really threaten a free press?*, CNN, December 29, 2016
- *Is Peter Thiel right about Gawker?*, CNN, May 26, 2016
- *Texting cop a victim of thought police?*, CNN, April 28, 2016
- *Defend Donald Trump's right to free speech*, CNN, Mar. 14, 2016
- *Is the First Amendment safe from Donald Trump?*, CNN, Feb. 28, 2016
- *For Missouri Professor, the Law Bites Back*, CNN, Jan. 27, 2016
- *Passenger Who Beat His Uber Driver Should Drop His Countersuit*, CNN, Jan. 21, 2016
- *We Don't Shoot People For Bigoted Views*, CNN, May 4, 2015
- *Decision on Asian-American Band's Name is Wrong*, CNN, Apr. 23, 2015
- *What's Wrong with Saying the Pledge in Arabic?* CNN, Mar. 23, 2015
- *What We Risk When We Ban Racists Speech*, CNN, Mar. 20, 2015
- *Why Schools Should Observe "Day of the Dude,"* CNN, Mar. 6, 2015
- *Should We Always Believe the Victim?* CNN, Dec. 7, 2014
- *ESPN's Stephen Smith is Entitled to His Opinions*, CNN, Aug. 4, 2014
- *Why Redskins Decision is Wrong*, CNN, June 21, 2014
- *Posting Elliot Rodger's Video is Legal, but is it Right?* CNN, May 29, 2014
- *We Need a "Right to be Forgotten,"* CNN, May 15, 2014
- *What Happened to Sterling was Wrong*, CNN, Apr. 30, 2014
- *N.J. Texting Ruling is Not What You Think*, CNN, Aug. 30, 2013
- *Chick-fil-A and Free Speech*, CNN, July 31, 2012
- *It's Un-American to Silence Rush Limbaugh*, CNN, Mar. 12, 2012

SPEAKING ENGAGEMENTS

- Freedom of Expression and Anti-SLAPP statutes, New Hampshire Liberty Forum (Manchester, NH, Mar. 5, 2022)
- First Amendment Day, University of North Carolina (Chapel Hill, NC, Sept. 29, 2021)
- Saper Law Immersion Program, First Amendment Law for High Schools, (Chicago, IL, Aug. 4, 2021)
- World Intellectual Property Organization ("WIPO") LLM Program, *Intersection of Freedom of Expression and International Intellectual Property Rights* (Turin, Italy, May 24, 2021)
- ABA 24th Annual Conference of the Forum on Communications Law, *Fifty Years after Brandenburg v. Ohio* (Miami, Feb. 2, 2019)
- *Copyright Enforcement Issues in the Digital Age, an American Perspective* (Pristina, Kosovo, Dec. 5, 2018)

- World Intellectual Property Organization (“WIPO”) LLM Program, *Intersection of Freedom of Expression and International Intellectual Property Rights* (Turin, Italy, Nov. 16, 2018)
- University of New Hampshire Student Intellectual Property Association, *Section 2(a), In re Tam, and “Problematic” Speech* (New Hampshire, April 20, 2017)
- European Law Students’ Association Conference (Trieste, Italy, May 2016)
- First Amendment Lawyers Association, *Morality and IP Rights* (Austin, TX, Feb. 12, 2016)
- Internet Law Leadership Conference, *Anti-SLAPP Statutes and Litigation Strategies* (Las Vegas, Nov. 19, 2015)
- European Law Students’ Association Summer Law Institute, *Freedom of Expression and Morality-Based Impediments to the Enforcement of Intellectual Property Rights* (Trieste, Italy, July 28, 2015)
- European Law Students’ Association Summer Law Institute, *Global Freedom of Expression and New Media, an American Perspective* (Trieste, Italy, July 27, 2015)
- James Joyce School, *Joyce’s Ulysses, an Unsung Hero in the Fight for Freedom of Expression* (Trieste, Italy, July 3, 2015)
- Virgin Islands Bar Association, *Keynote Speech – Anti-SLAPP laws and freedom of speech in the Virgin Islands* (US Virgin Islands, Dec. 13, 2014)
- Virgin Islands Bar Association, *The Law and Ethics of Social Media* (US Virgin Islands, Dec. 13, 2014)
- First Amendment Lawyers Association, *A Comparative Analysis of Canadian and American Defamation Law* (Toronto, Canada, July 2014)
- Beverly Hills Bar Association *Panel: Pornography, Coercion, and the Courts: The Rise and Fall of Copyright Trolling*, Discussion with Morgan Pietz on ethical enforcement of copyright and Prenda Law (Los Angeles, CA, May 2, 2014)
- The Stanford Technology Law Review 2013 Symposium: *Privacy Challenges in the Internet Age*, Lecture on Internet Torts & Cybercrimes (Stanford, CA, April 11, 2014)
- Above The Law Attorney@Blog Conference, Lecture on copyright, trademark, defamation, and general Internet issues to numerous attorneys and members (New York, NY, Mar. 2014)
- First Amendment Lawyers’ Association, Lecture on updates in defamation law and related litigation in prominent cases across the country (Philadelphia PA, July 2013)
- Nevada Legislative Session 2013, *Drafted, lobbied, and successfully argued for the passage of a revised anti-SLAPP statute in Nevada and revision to proposed human trafficking law with potential First Amendment implications for production of adult entertainment* (Carson City, NV, May 2013)
- Nevada Libertarian Party Convention, Lecture on freedom of expression and First Amendment matters (Las Vegas, NV, Apr. 2013)
- First Amendment Lawyers’ Association, Lecture on updates, development, and application on Anti-SLAPP statutes and defamation cases across the country (New Orleans, LA, Feb. 2013)
- First Amendment Lawyers’ Association, Lecture on updates, development, and application on Anti-SLAPP statutes across the country (Chicago, IL, July 2012)
- CineKink Film Festival, Lecture on First Amendment and intellectual property issues in the adult entertainment industry (Las Vegas, NV, June 2012)
- American Intellectual Property Law Association, Lecture on updates, development, and application

- on Anti-SLAPP statutes across the country (Austin, TX, Spring Meeting 2012)
- First Amendment Lawyers' Association, Lecture on updates, development, application of Anti-SLAPP statutes (San Diego, CA, Feb. 2012)
- First Amendment Lawyers' Association, Lecture on issues in BitTorrent litigation (Minneapolis, MN, July 2011)
- First Amendment Lawyers' Association, Lecture on copyright litigation and the errors present in current anti-piracy litigation models (Washington, D.C., Feb. 2011)
- XBIZ LA Conference, Lecture on intellectual property law and piracy litigation issues (Los Angeles, CA, Feb. 2011)
- InterNext Conference, Panel discussion concerning online adult entertainment issues, focusing on antipiracy litigation trends and strategies (Las Vegas, NV, Jan. 2011)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (San Antonio, TX, Feb. 2010)
- International Trademark Association, Table topics leader (Boston, MA, May 2010)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (Vancouver, BC, July 2009)
- First Amendment Lawyers' Association, Lecture on the intersection of intellectual property law and free speech (New Orleans, Feb. 2009)
- Adult Entertainment Expo, Lecture on intellectual property, brand management, free speech issues and section 2257 (Las Vegas, NV, Jan. 2009)
- First Amendment Lawyers' Association, Lecture on U.S. trademark law and domain name disputes (San Francisco, CA, July 2008)
- Seminole County Inns of Court, Lecture judges and lawyers on defamation law issues (Orlando, FL, Feb. 10, 2008)
- The International Institute of Communications Annual Meeting, Lecture on US media law to an audience of international businesspeople, government officials, and academics. (Singapore, Oct. 1–4, 2001)
- Friedrich Ebert Stiftung and Nanyang Technological University *Conference on "Media, Civil Society and Good Governance in Southeast Asia,"* Lecture on media law in the post-September 11th United States. (Singapore, Nov. 7–9, 2001)
- Association for Education in Journalism and Mass Communication (AEJMC) southeast colloquium, Lecture on Internet law (Columbia, SC, Mar. 8–10, 2001)

OTHER PUBLICATIONS

- *Stormy Daniels Was Arrested Because of a Terrible Law That Threatens Free Expression*, Reason, July 13, 2018
- *2016 Presidential Race: A Closer Look*, AVN, Mar. 2016
- *What the Slants Case Means for the Adult Industry*, AVN, Feb. 16, 2016
- *What the Adult Industry Owes to James Joyce*, XBiz, Dec. 11, 2015
- *Adult Biz & the Law: Violations and the Violated*, XBiz, Jan. 23, 2015
- *Is It Legal to Shoot Porn in Your State?*, XBiz, Mar. 30, 2014

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

TELEVISION & RADIO GUEST APPEARANCES

- *Morningstar Ministries addresses discrimination lawsuit against York County*, WBTV Charlotte (Nov. 29, 2018)
- *"Defending The Indefensible," On the Media*, NPR (Aug. 10, 2018)
- *This guy is trying to hunt down one of the most notorious Neo-Nazis*, Vice News (Jan. 31, 2018)
- *Real Estate Agent Says She Was Neo-Nazi Website Devotees' 'Troll Storm' Target*, ABC Nightline (Aug. 24, 2017)
- *Meet the lawyer defending notorious neo-Nazi trolls*, Vice News (Aug. 3, 2017)
- *"Billionaires And Free Speech," On Point with Tom Ashbrook*, NPR, (June 1, 2016)
- *Peel Off Labels* (America Matters Media Mar. 7, 2016)
- *CBS News, Roca Labs Case*, (CBS Oct. 1, 2015)
- *The Daily Share: Discussing the Redskins Trademark Decision* (Headline News Network July 9, 2015)
- *Ralston Reports: Anti-SLAPP?* (Apr. 23, 2015)
- *Ralston Reports: First Amendment and SLAPP Cases* (Aug. 7, 2014)

- *Michael Smerconish Show: Sterling, Sam and Free Speech* (CNN May 17, 2014)
- *CNN Newsroom: Was Leak of NBA Owner's Rant 'Morally Wrong'* (CNN May 1, 2014)
- *Legal View with Ashleigh Banfield: What's Next for Donald Sterling?: The First Amendment and a Technological Surveillance Society* (CNN Apr. 30, 2014)
- *Democracy Now!: Steubenville Rape Trial* (Feb. 2013)
- *CNN, Discussing the Steubenville Rape Case* (Feb. 2013)
- *Reason TV: Discussing Steubenville Rape Case* (Feb. 2013)
- *Crime, Inc.: Discussing Copyright Law* (CNBC Aug. 29, 2012)
- *NBC Las Vegas: Internet providers turn to attorneys to protect content* (KSNV July 25, 2013)
- *NBC Bay Area: Porn Copyright Trolls* (July 3, 2012)
- *National Public Radio: On the Media, Combating "Bad" Speech with More Speech* (Apr. 6, 2012)
- *KLAS-TV: Economic Diversity By Legalizing Marijuana* (Mar. 26, 2012)
- *State of Nevada, The End of Righthaven*, (Nevada Public Radio Mar. 22, 2012)
- *Michael Savage: First Amendment Att'y Speaks About Freedom of Speech* (Mar. 14, 2012)
- *Cyber Law and Business Report: Randazza, Righthaven, and Roger Williams* (Dec. 21, 2011)
- *Congress Weighs Law Against Some Lawsuits* (National Public Radio Apr. 2, 2010)
- *Cyber Harassment and the Law* (National Public Radio Mar. 3, 2009)
- *Fox 35 Orlando: Kids Can't Play Outside Condos* (Mar. 3, 2009)
- *Fox 35 Orlando: New Year's Festivities and the Law* (Dec. 30, 2008)
- *Fox 35 Orlando: Teacher to Blame Hormones* (Nov. 19, 2008)
- *Fox 35 Orlando: Target Mis-prices Car Seats* (Nov. 18, 2008)
- *Lisa Macci's The Justice Hour: Discussing new Sex Laws and The Theory of Intentional Sex Torts* (WWNN July 14, 2008)
- *The Curtis Sliwa Show, discussing the Bauer v. Wikipedia defamation case, and Section 230* (WABC: New York July 1, 2008)
- *Lisa Macci's The Justice Hour: Discussing the Connection Distribution case and Section 2257* (WWNN May 5, 2008)
- *Fox and Friends: The First Amendment and the "Lyrical Terrorist"* (Fox News Nov. 10, 2007)
- *Fox and Friends: Discussing Bradenton High School "Body Painting" Issue* (Fox News Oct. 18, 2007)
- *Lisa Macci's The Justice Hour: SLAPP suits and attorney ethics* (WWNN Jul. 2, 2007)
- *Fox and Friends: Discussing Don Imus' Comments about the Rutgers' Basketball Team* (Fox News Apr. 10, 2007)
- *Lisa Macci's The Justice Hour: Restrictions on Attorney Speech* (WWNN Jan. 22, 2007)
- *CNBC: On the Money, Discussing online gambling and prosecutions* (Jan. 16, 2007)
- *Domain Masters: Discussing domain law, gaming law, and First Amendment law with Monte Cahn*. (Dec. 22, 2006)
- *Bess Kargman: "Blogsuits" What Effect will Libel Threat Have on the Blogosphere?* (Oct. 23, 2006)
- *The Lineup: Video Games and the First Amendment* (Fox News Sept. 30, 2006)
- *The Lineup: First Amendment and Prisons* (Fox News Sept. 9, 2006)

- *Heartland with John Kasich: First Amendment Issues and Public Schools* (Fox News Dec. 30, 2005)
- *Dayside: Commentary on Church-State Issues* (Fox News Nov. 9, 2005)
- *Heartland with John Kasich: Commentary on Separation of Church and State* (Fox News Oct. 15, 2005)
- *Live: Commentary and Debate on Online Vote Pairing* (Fox News Oct. 17, 2004)
- *Bob Frantz Show: News/Talk 1370: Discussing Election Law Issues* (Oct. 10, 2004)

REPORTED CASES

- *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79 (D. Me. 2022)
- *TGP Communs., LLC v. Sellers*, 2022 U.S. App. LEXIS 33641 (9th Cir. Dec. 5, 2022)
- *St. Michael's Media, Inc. v. Mayor & City Council of Balt.*, 566 F. Supp. 3d 327 (D. Md. 2021)
- *Williams v. Lazer*, 495 P.3d 93 (Nev. 2021)
- *Brown v. Maxwell*, 929 F.3d 41 (2d Cir. 2019)
- *Shapiro v. Welt*, 133 Nev. 35, 389 P.3d 262 (2017) Counsel for amicus curiae
- *Op. Corp. v. Roca Labs, Inc.*, 2016 U.S. Dist. LEXIS 8507 (M.D. Fla. Jan. 25, 2016)
- *In re Tam*, No. 14-1203 (Fed. Cir. Dec. 22, 2015) Counsel for amicus curiae
- *Ellora's Cave Publ., Inc. v. Dear Author Media Network, LLC*, 308 F.R.D. 160 (N.D. Ohio 2015)
- *Van Voorhis v. Comins*, 178 So. 3d 970 (Fla. 5th DCA 2015)
- *Tobinick v. Novella*, 2015 U.S. Dist. LEXIS 150083 (Sept. 30, 2015)
- *Roca Labs, Inc. v. Consumer Op. Corp.*, 2015 U.S. Dist. LEXIS 143107 (Oct. 21, 2015)
- *Tobinick v. Novella*, 108 F. Supp. 3d 1299 (S.D. Fla. 2015)
- *NML Capital, Ltd. v. Republic of Argentina*, 2015 U.S. Dist. LEXIS 20722 (D. Nev. Feb. 19, 2015)
- *Roca Labs, Inc. v. Consumer Opinion Corp.* 2014 U.S. Dist. LEXIS 161132 (Oct. 28, 2014)
- *Chevaldina v. R.K./FL Mgmt.*, 133 So. 3d 1086 (Fla. 3d DCA 2014)
- *Expert Witness Case: Calista Enters. v. Tenza Trading*, 43 F. Supp. 3d 1099 (D. Or. 2014)
- *Jones v. Dirty World Entm't Recordings*, 755 F.3d 398; 42 Media L. Rep. 1984 (6th Cir. 2014). Counsel for amicus curiae.
- *Comins v. VanVoorhis*, 135 So. 3d 545; 42 Media L. Rep. 2021 (Fla. 5th DCA 2014)
- *Liberty Media Holdings v. Henson*, 516 F. App'x. 673 (9th Cir. 2013)
- *Righthaven LLC v. Hoehn*, 716 F.3d 1166 (9th Cir. 2013)
- *Rakofsky v. Washington Post*, 971 N.Y.S.2d 74, 2013; 41 Media L. Rep. 1863 (N.Y. 2013)
- *Katz v. Chevaldina*, 900 F. Supp. 2d 1314 (S.D. Fla. 2012)
- *AIRFX.com v. AirFX*, 2012 U.S. Dist. LEXIS 31541, 2012 WL 780941 (D. Ariz. 9 Mar. 2012)
- *Liberty Media Holdings v. Vinigay.com*, 2012 U.S. Dist. LEXIS 24978, 2012 WL 641579 (D. Ariz. 28 Feb. 2012)
- *Sanchez v. Joel*, 94 So. 3d 594, (Fla. 2d DCA 2012)
- *Liberty Media Holdings, LLC v. BitTorrent Swarm*, 277 F.R.D. 669 (S.D. Fla. 2011)

- Righthaven v. Hoehn, 792 F. Supp. 2d 1138, (D. Nev. 2011)
- Righthaven v. Wolf, 813 F. Supp. 2d 1265, (D. Colo. 2011)
- Doe v. Fry, 22 Fla. L. Weekly 378, (M.D. Fla. 2010)
- Ricks v. BMEzine.com, 727 F. Supp. 2d 936, (D. Nev. 2010)
- Internet Solutions v. Marshall, 39 So. 3d 1201 (Fla. 2010)
- Internet Solutions v. Marshall, 611 F.3d 1368 (11th Cir. 2010)
- Internet Solutions v. Marshall, 557 F.3d 1293 (11th Cir. 2009)
- Solid Host, NL v. Namecheap, Inc., 652 F. Supp. 2d 1092 (C.D. Cal. 2009)
- Porter v. Bowen, 496 F.3d 1009 (9th Cir. 2007)
(Not counsel in case, but my law review article was cited in the decision)
- Salle v. Meadows, 2007 U.S. Dist. LEXIS 92343, 2007 WL 4463920 (M.D. Fla. Dec. 17, 2007)

ADMITTED TO PRACTICE

States

- Massachusetts (2002)
- Florida (2003)
- California (2010)
- Arizona (2010)
- Nevada (2012)

Federal Courts

- United States Supreme Court
- 1st Circuit Court of Appeals
- 2nd Circuit Court of Appeals
- 4th Circuit Court of Appeals
- 5th Circuit Court of Appeals
- 6th Circuit Court of Appeals
- 7th Circuit Court of Appeals
- 9th Circuit Court of Appeals
- 10th Circuit Court of Appeals
- 11th Circuit Court of Appeals
- U.S. Court of Appeals for the Federal Circuit
- U.S. District Court – District of D.C.
- U.S. District Court - District of Arizona
- U.S. District Court – North. District of California
- U.S. District Court – East. District of California
- U.S. District Court - Central District of California
- U.S. District Court - Southern District of California
- U.S. District Court - District of Colorado
- U.S. District Court - District of Columbia
- U.S. District Court - Middle District of Florida
- U.S. District Court - Northern District of Florida
- U.S. District Court - Southern District of Florida
- U.S. District Court - Northern District of Ohio
- U.S. District Court - District of Massachusetts
- U.S. District Court - Eastern District of Michigan
- U.S. District Court - Western District of Michigan

- U.S. District Court - District of Nevada
- U.S. District Court – Western District of Texas
- U.S. District Court - Northern District of Texas
- U.S. District Court – Eastern District of Texas
- U.S. District Court - Eastern District Wisconsin
- U.S. District Court – District of Connecticut
- U.S. District Court - Northern District of New York
- U.S. District Court – Western District of Michigan
- U.S. Bankruptcy Court - Eastern District of California

EXHIBIT 13

Declaration of Zach Greenberg

PHI THETA KAPPA HONOR SOCIETY,

Plaintiff,

v.

TONI MAREK,

Defendant.

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IN THE DISTRICT COURT

VICTORIA COUNTY, TEXAS

377th JUDICIAL DISTRICT

DECLARATION OF ZACH GREENBERG

I, Zach Greenberg, hereby declare:

1. I am over 18 years of age. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. I am the president of the First Amendment Lawyers Association (“FALA”).

3. As such, I am familiar with First Amendment lawyers across the United States.

4. Among the First Amendment lawyers, Mr. Randazza is considered to be one of the most effective advocates in this area of law, and is certainly at the top of my list when it comes to referring First Amendment litigation.

5. He is particularly attuned to how to litigate Anti-SLAPP and prior restraint cases, and is famous for doing so.

6. FALA itself has retained Mr. Randazza to be counsel, and he has served as president of the organization in the past. While Mr. Randazza does his work for FALA pro bono, I am aware of the value of his services.

7. I am aware that his hourly rate is \$1,000 per hour, which is actually less than I would expect from someone like him.

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

Dated: April 10, 2025

By: 
Zach Greenberg

EXHIBIT 14

Declaration of Mark Bennett

PHI THETA KAPPA HONOR SOCIETY,

Plaintiff,

v.

TONI MAREK,

Defendant.

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IN THE DISTRICT COURT

VICTORIA COUNTY, TEXAS

377th JUDICIAL DISTRICT

DECLARATION OF MARK W. BENNETT

I, Mark W. Bennett, hereby declare:

1. I am over 18 years of age. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.
2. I have been a Texas lawyer since 1995. I am also admitted to practice before the Eastern, Southern, and Western Districts of Texas as well as the Fifth Circuit Court of Appeals and the United States Supreme Court. I am board certified in criminal law and criminal appellate law.
3. I have reviewed some of the plaintiff's filings, the defendant's filings, and the fees in this case.
4. I am familiar with the skill and knowledge and experience that must go into work like this.
5. With no slight intended toward the Victoria market, there are no lawyers there who have this level of experience and knowledge in First Amendment matters.
6. To find a lawyer able to defend this case, Ms. Marek needed to look outside the direct area.
7. Marc Randazza has a national reputation. He is the past president of the First Amendment Lawyers' Association, he argues First Amendment cases nationwide, and he was an obvious choice

to defend this matter in which the plaintiff, an organization with a seemingly unlimited budget, brought in a mega-firm with multiple lawyers on the matter.

8. Since 2003 a substantial portion of my docket has been cases—civil and criminal, trial and appellate and habeas, in Texas and elsewhere—dealing with the defense of free speech. I have prevailed on such cases in trial courts, courts of appeals, the Texas Court of Criminal Appeals, and the Georgia Supreme Court. And still, in matters of free-speech litigation, Randazza is the lawyer I call for advice.

In 2023, The Texas Lawbook reported that Texas lawyers were hitting \$2,000 an hour for some specialties. <https://texaslawbook.net/texas-lawyers-hit-2000-an-hour/>. In 2017, the Houston Chronicle reported that rates were rising to \$1,000 per hour: <https://www.houstonchronicle.com/business/article/Texas-legal-rates-soar-as-national-firms-rush-in-11025525.php>. Even as far back as 2012, there were Texas lawyers billing \$1,000 per hour: <https://texaslawbook.net/texas-lawyers-charging-1000-an-hour-rare-but-not-much-longer/>. I understand that Randazza’s opposing counsel in this case, based in Indianapolis, customarily bills \$910 per hour.

9. Randazza’s rate of \$1,000 per hour is eminently reasonable, given the differential in levels of success—opposing counsel won only an uncontested hearing to stifle free speech, in contrast to Randazza’s victory, which was decisive and final—and in what I perceive as levels of advocacy in this matter.

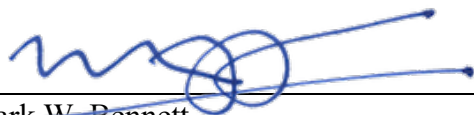
10. I have reviewed Randazza’s billing in this matter. I observe that he delegates tasks to lower-cost timekeepers where appropriate, bills efficiently, and avoids reinventing the wheel. He appears to benefit from his experience by producing the highest quality work.

11. Given the emergency of the matter, and the very short time frame in which he had to work, Randazza's organization and efficiency are particularly impressive.

12. In short, as a Texas First Amendment litigator, I find Randazza's rates and billing entries appropriate.

My name is Mark W. Bennett, my date of birth is August 23, 1970, and my address is 917 Franklin Street, Fourth Floor, Houston, Texas, 77002, and United States of America. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 11th day of April 2025.



Mark W. Bennett

EXHIBIT 15

Declaration of Toni Marek

PHI THETA KAPPA HONOR SOCIETY,

Plaintiff,

v.

TONI MAREK,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

VICTORIA COUNTY, TEXAS

377th JUDICIAL DISTRICT

DECLARATION OF TONI MAREK

I, Toni Marek, hereby declare:

1. I am over 18 years of age. I have knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.
2. I am the Defendant in the above-captioned proceeding.
3. I make this declaration in support of Defendant's Motion for Costs, Attorneys' Fees, and Sanctions Pursuant to the TCPA.
4. I am an alumna of Phi Theta Kappa ("PTK").
5. I was elected as an officer in the honor society.
6. My relationship with PTK soured over ten years ago at a gathering where I sat next to Rod Risley. At the time, Mr. Risley was PTK's executive director.
7. Despite the presence of his wife, Mr. Risley sexually assaulted me by reaching under the table and jamming his hand between my legs.
8. This was not the first time Mr. Risley had acted inappropriately towards me, but it was the most brazen and the most offensive time.
9. When I complained, PTK retaliated by forcing me to resign.

10. On February 26, 2014, after I privately disclosed that I had been sexually assaulted by Risley, PTK issued a legal threat through its outside counsel. A true and correct copy of a cease and desist letter they sent me regarding my allegations about Risley is attached to this Declaration as **Exhibit A**. This marked the beginning of a consistent and egregious pattern of retaliatory silencing by PTK against me.

11. In January 2025, I submitted a detailed whistleblower letter to the PTK Board of Directors, exposing deceptive scholarship advertising, leadership nepotism, and misuse of member funds. On January 22 and 23, 2025, PTK's attorney, Jonathan Polak, responded with cease and desist letters, reframing my documented concerns as malicious defamation, labeling me a "proxy" for HonorSociety.org, a competing honor society, and dismissing my lived experiences without evidence. True and correct copies of these cease and desist letters are attached to this Declaration as **Exhibits B & C**.

12. On February 7, 2025, PTK encouraged colleges to blacklist my personal and professional email accounts, citing my whistleblower outreach as justification. A true and correct copy of the February 7, 2025, email from PTK requesting this blacklisting is attached to this Declaration as **Exhibit D**.

13. On February 13, 2025, PTK advisors at Edgecombe Community College sent an email warning students to dismiss my communications and Change.org petition, describing them as part of a discredited "movement." A true and correct copy of this email from PTK is attached to this Declaration as **Exhibit E**.

14. On March 14, 2025, PTK sent another cease and desist letter to me, threatening me with liability for "tortious interference" and referencing my forthcoming whistleblower book as

grounds for legal action. This letter also falsely linked my advocacy to a “Ponzi scheme” to discredit me. A true and correct copy of this letter is attached as **Exhibit F**.

15. PTK’s retaliatory conduct extended beyond me. Former senior staffer Wendy Flores emailed the PTK Board on March 13, 2025, exposing workplace toxicity, financial irregularities, and unethical conduct. In response, PTK’s counsel, Jonathan Polak, threatened Ms. Flores with legal action in an email and implied that PTK would publicly explore “all other possible causes” of her emotional distress if she continued speaking out. This coercive tactic constitutes retaliatory intimidation. True and correct copies of this email and Polak’s response are attached to this Declaration as **Exhibit G**.

16. On March 26, 2025, PTK filed a request for an *ex parte* Temporary Restraining Order (“TRO”) to block the publication of my whistleblower book, mischaracterizing my possession of public and whistleblower documents as theft. On March 29, 2025, PTK sent me an email demanding that I cease making “false” statements, which were in no way false, on my GiveSendGo fundraiser, which I set up in an attempt to raise funds for my legal defense. This email falsely implied I had fraudulent motives and repeated the “Ponzi scheme” smear. A true and correct copy of the March 29, 2025, email is attached to this Declaration as **Exhibit H**.

17. Additional evidence from former PTK employees and insiders confirms a pattern of organizational retaliation, deceit, and suppression under PTK’s executive leadership, led by Dr. Lynn Tincher-Ladner. I reached out to other current and former members of PTK in an attempt to show how it is not the reliable “honor society” it purports to be. These members universally refused to publicly speak out against PTK, not because they disagree that it has serious problems, but because they are *terrified* of retaliation from it, particularly its President and CEO, Dr. Lynn Tincher-Ladner. True and correct copies of some of my communications with these individuals,

with the identities of the other parties redacted, are attached to this Declaration as **Exhibit I**. These documents validate that PTK maintained an internal apparatus of intimidation to silence criticism, discredit survivors, and punish truth-tellers, consistent with the treatment I endured.

18. PTK's actions represent a coordinated effort to suppress my free speech and whistleblower activities through legal threats, character assassination, and institutional coercion. These actions violate protections under anti-SLAPP statutes, which are designed to deter such abuses. I have a legal and constitutional right to speak out, and PTK's conduct must not be permitted to continue unchecked.

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

Dated: 04 / 17 / 2025


By: 
Toni Marek

EXHIBIT A

February 26, 2014, cease and desist letter
from PTK to Toni Marek



Toni Marek <tonimarek@gmail.com>

FW: Marek-Confidential

1 message

Walter Brand <wbrand@watkinseager.com>
To: "tonimarek@gmail.com" <tonimarek@gmail.com>

Wed, Feb 26, 2014 at 5:31 PM

Please see attached correspondence.


Thank you,

Walter Brand

From: Tracy Graham
Sent: Wednesday, February 26, 2014 5:21 PM
To: Walter Brand
Subject: Marek-Confidential

Tracy Graham
Watkins & Eager PLLC
P.O. Box 650
Jackson, MS 39205
(P) 601-965-1895
(F) 601-965-1901

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 **01465[2-26-2014 17-19]tgraham.pdf**
149K

Mailing Address:
P.O. Box 650
Jackson, Mississippi 39205
Telephone: (601) 965-1900
Facsimile: (601) 965-1901



WALTER J. BRAND
DIRECT DIAL: (601) 965-1863
E-MAIL ADDRESS:
wbrand@watkinseager.com

February 26, 2014

VIA EMAIL (tonimarek@gmail.com) AND FEDERAL EXPRESS
PERSONAL AND CONFIDENTIAL
Ms. Toni Marek
329 Golden Eye Loop
Victoria, TX 77905-0710

Dear Ms. Marek:

This firm represents Phi Theta Kappa Honor Society.

Phi Theta Kappa has received evidence indicating that you have made certain statements to one or more third parties about Phi Theta Kappa and its Executive Director, Dr. Rod Risley, in relation to your January 2014 resignation as an International Officer of Phi Theta Kappa. Review of this matter to date indicates that such statements as reported to Phi Theta Kappa are untrue. We thus request that you immediately cease and desist from such conduct. You should also be aware that publication of false and defamatory statements about Phi Theta Kappa or Dr. Risley may result in appropriate legal action against you.

Please also be reminded that your Phi Theta Kappa Honor Code for International Officers (copy enclosed) provides an appropriate procedure for expression of disagreement with the cessation of your term as an officer. You have 30 days from receipt of this notice to invoke this process. If you desire to take advantage of this process, you may contact Mr. Kip C. Johnson, Phi Theta Kappa's Board Chair, at 202-637-2260.

If you are represented by counsel concerning the above matters, please have your counsel contact me concerning this correspondence.

Very truly yours,

WATKINS & EAGER, PLLC

A handwritten signature in blue ink, appearing to read "Walter J. Brand", is written over the printed name.

Walter J. Brand

WJB/tg
enclosure

PHI THETA KAPPA HONOR CODE FOR INTERNATIONAL OFFICERS

Mission Statement

The purpose of Phi Theta Kappa shall be to recognize and encourage scholarship among two-year college students. To achieve this purpose, Phi Theta Kappa shall provide opportunity for the development of leadership and service, for an intellectual climate for exchange of ideas and ideals, for lively fellowship for scholars, and for stimulation of interest in continuing academic excellence.

Introduction

In support of the Society's Mission Statement, the Phi Theta Kappa Board of Directors adopts this Honor Code as a declaration of the high standards of conduct to which International Officers are held. This Honor Code is not simply a set of rules and procedures governing International Officers' academic conduct; it is an opportunity to put personal responsibility and integrity into action. As International Officers abide by this code, they liberate themselves to serve the Society in an atmosphere of mutual confidence and respect. The success of the Code depends upon the support of the Society. When members and advisors become aware of infractions, they are obligated to report them. Members should report any infractions to their chapter advisor who may communicate them to the Executive Director.

HONOR CODE

As an International Officer...

I will conduct myself at all times in a manner that reflects positively on myself, my chapter, and the Society.

I place as a priority continued academic excellence.

I am committed to maintaining an environment, which recognizes the dignity of each individual member and encourages appreciation of diverse backgrounds, opinions and goals in life.

I am committed to honesty and integrity in personal, social, and academic endeavors.

I recognize that a successful Executive Committee requires a team effort, and I pledge to work together to promote the Society's Mission.

I will work with the Society's leaders in the same spirit of cooperation I display in my dealings with others.

I will respond promptly, courteously, and positively to the concerns and requests of the Society's constituents.

I will fulfill my responsibilities in an effective, efficient, and timely manner.

I will conduct myself in a manner, which is respectful of others and worthy of respect

from others.

I will dress appropriately for any and all occasions.

I will not engage in any conduct which may bring shame or disrepute to myself or diminish the reputation of Phi Theta Kappa.

I will not engage in any illegal activity or violate any stated policies of the Society.

I will not consume and will discourage the consumption of alcohol at Phi Theta Kappa functions.

I will not use or possess nor tolerate the use or possession of controlled substances.

HONOR CODE FOR INTERNATIONAL OFFICERS STATEMENT

I have read, understood and agree to the terms and conditions of the Phi Theta Kappa Honor Code. I further understand and agree that violation of this code will subject me to discipline determined appropriate by the Executive Director or his designees. Additionally, I understand that pursuant to the procedures outlined by the Board of Directors, I have the right to appeal disciplinary action, which results in my suspension from office.

Candidate's

Name: _____

Candidate's Signature: _____

Date: _____

EXHIBIT B

January 22, 2025, cease and desist letter
from PTK to Toni Marek



Toni Marek <tonimarek@gmail.com>

Phi Theta Kappa

1 message

Cassady, DeeAnn <DCassady@taftlaw.com>
To: "tonimarek@gmail.com" <tonimarek@gmail.com>
Cc: "Polak, Jonathan" <JPolak@taftlaw.com>

Wed, Jan 22, 2025 at 2:36 PM

Ms. Marek,

Please see the attached correspondence with accompanying exhibits, sent on behalf of Jonathan Polak regarding the above-referenced subject matter.

If you have any issues accessing the PDF documents, let me know.

Thank you,

DeeAnn Cassady

DeeAnn Cassady

Legal Assistant to Jonathan Polak

4 attachments

 **Response to Marek Board Communication 1-22-2025.pdf**
236K

 **Ex. A - (First) Preliminary Injunction.pdf**
181K

 **Ex. B - (Second) Preliminary Injunction.pdf**
389K

 **Ex. C - Order Granting in Part PTK's Motion for Contempt.pdf**
7675K

JONATHAN G. POLAK
317.713.3532
JPolak@taftlaw.com

January 22, 2025

Via Email

Toni Marek
tonimarek@gmail.com

Re: Response to false allegations-Phi Theta Kappa

Ms. Marek,

I am counsel to Phi Theta Kappa Honor Society (“PTK”) and write to respond to your communication to the PTK Board on or about January 16, 2025, which you titled as an “Urgent Open Letter.” The Board has reviewed your letter and authorized me to provide you this response. It takes allegations like those identified in your letter seriously, but the statements you make are misinformed, and appear to us to be the result of manipulation by our current litigation opponent, HonorSociety.org, Inc. (“Honor Society”), and its President, Michael Moradian.

As you know, PTK filed a trademark infringement and unfair competition lawsuit against Honor Society in 2022 (the “Lawsuit”). Honor Society has since brought claims against PTK alleging, in part, false advertising claims that mirror those asserted in your letter. At no time prior to Honor Society making those allegations has anyone complained of the veracity of PTK’s advertising. It was only after Honor Society chose to assert meritless claims in the lawsuit that PTK has had to explain the basis of its advertising. The timing and substance of your letter demonstrate a relationship to Honor Society and Mr. Moradian that cannot be ignored when considering your allegations.

PTK’s public statements are true.

The Top 10% claim.

PTK rightly advertises that its membership is in the top 10% of students at the community colleges it serves. While it is true that PTK’s Constitution, written in 1918, requires colleges to set their criteria no lower than 3.0 GPA, PTK’s data shows that the overwhelming majority of the PTK chapters, in consultation with the colleges themselves, require a 3.5 GPA or higher to become a PTK member.

PTK’s advertisement that it invites the top 10% of students stems from a careful analysis of publicly available data regarding the number of students attending community colleges verses

the number of students invited to join PTK each year. PTK's research has determined that it is inviting students are in the top 10% of their college's student population, and PTK has been thoroughly transparent in communicating this to the public by documenting that analysis on this page of its website: <https://www.ptk.org/benefits/prestigious-recognition/> which links to this report: https://www.ptk.org/wp-content/uploads/Percentage-Of_Students_Invited_PTK.pdf. In our assessment of this datapoint, PTK takes into account the comprehensive mission of community colleges in providing the first two years of a four-year degree as well as their work in workforce development, career and technical skills training, and dual enrollment/dual credit education. PTK includes all such students in its analysis, and relies on the colleges to report "top" grade earners to PTK as nominations of student names and contact information for their PTK chapter. PTK provides email invitations to students as a service to the colleges.

Given that nearly all research on community colleges is directed towards their high (nearly 50%) drop-out rates, poor retention and completion rates at the two-year, and even lower at the four-year level; how would it even appear as though PTK is untruthful in its 10% assertion? Community colleges do their very best to serve the highest levels of minority, low income, first generation, and underrepresented student populations—groups that are not always poised to have success in college. Mr. Moradian does his best to tie grade inflation to his claims—relying only on available research on GPA and student performance that is based solely on datasets from four-year colleges. I will note that there is research-based evidence that community colleges do not suffer "grade inflation" as their four-year counterparts do. (<https://www.insidehighered.com/news/2016/03/29/survey-finds-grade-inflation-continues-rise-four-year-colleges-not-community-college>).

You make reference to a "FOIA" request in your letter, and information you claim you received from Grayson College. We have seen similar FOIA requests by Mr. Moradian and Honor Society that are being used in the Lawsuit. The data for Grayson College provided to you by Ms. Hicks is inconsistent with IPEDS data that is publicly available. For that reason, we believe that the information you are relying on is flawed. Also, Professor Mary Linder, who sits on the Board of Directors and oversees the invitations to PTK for Grayson College confirms this, and stated Grayson was not inviting the percent of students indicated in your email.

I note that you have submitted similar documentation to Attorneys General in Illinois and Florida. We reviewed those documents as well, and they too evidence the same "bad math" employed by Mr. Moradian in making his similar false advertising claims against PTK. They incorrectly sought only full-time enrollees at the various community colleges, not the count for all students enrolled in the school. For example, your submission to those Attorneys General as to Holyoke Community College suffers this defect. The college's response states clearly on the table that it refers to "GPA statistics of all students who completed 12 hour credits in a semester." That metric excludes all other enrollees in community college and is not the population that is the subject of PTK's "top 10%" claim. The Coast Community College District information you provided to the Attorneys General also does not provide any information as to what population is measured, but through the litigation we have seen that it also fails to pull data from the entire proper universe of students. Triton College similarly did not provide any information as to what

data set it was comparing against – total population of enrollees for the entire semester, or a snapshot in time of full-time enrollees.

In short, PTK’s public statements around the “top 10%” claim are true, and we do not find your arguments compelling because they are based on flawed or unreliable information.

The scholarship claims.

Your characterization of the average and total scholarships available to PTK members is also a false recast of Honor Society’s claims in the lawsuit. The reality is that PTK members, on average, receive far more than the \$2,500 referenced your letter. In fact, it is closer to \$4,500, based on PTK’s analysis. PTK offers a database of scholarships (PTK Connect) that contains hundreds of member-exclusive scholarships. Additionally, the database contains all scholarship opportunities open to any community college transfer student (with or without PTK status), because many of these scholarships can stack, and students should and need to be aware of all scholarship opportunities to maximize their financial aid during the transfer process. PTK’s exclusive scholarship offerings come from a variety of sources, including the PTK Foundation , PTK’s corporate partners, and PTK’s four-year collegiate partners.

PTK is extremely proud of being the largest scholarship provider to community college students, and without question, it can and has demonstrated the availability of hundreds of millions of dollars in scholarships both in its testimony in court, and to all students interested in joining PTK for these benefits. PTK’s exclusive scholarship offerings come from a variety of sources, including the PTK Foundation, PTK’s corporate partners and donors, and PTK’s four-year collegiate partners. PTK discloses at length how its scholarships are structured, the requirements for each, and how PTK membership affects eligibility. See <https://www.ptk.org/scholarships/how-our-scholarships-work/>. The total amount of transfer scholarships by PTK’s four-year colleges and university partners is significant. See https://www.ptk.org/wp-content/uploads/ptk_exclusive_scholarship_study.pdf.

PTK offers to its members a database of scholarships (PTK Connect) that contains hundreds of member-exclusive scholarships. Additionally, the database contains all scholarship opportunities open to any community college transfer student (with or without PTK status), because many of these scholarships can stack, and students should and need to be aware of all scholarship opportunities to maximize their financial aid during the transfer process. PTK’s exclusive scholarship offerings come from a variety of sources, including the PTK Foundation, PTK’s corporate partners and donors, and PTK’s four-year collegiate partners. PTK estimates the scholarships to its students based on the methodology and calculations published here: https://www.ptk.org/wp-content/uploads/ptk_exclusive_scholarship_study.pdf. You should note that the statements are researched, evidenced and clear. Further, PTK discloses at length how its scholarships are structured, the requirements for each, and how PTK membership affects eligibility. See <https://www.ptk.org/scholarships/how-our-scholarships-work/>.

Furthermore, PTK's four-year collegiate partners log in to PTK Connect and report all scholarships for PTK members. This includes the title, amount, and requirements of each scholarship. Collegiate partners must indicate if any scholarship is a member-exclusive scholarship. Currently, PTK Connect contains 3,587 scholarships. Of those scholarships, 806 are exclusive to PTK members. The average of all member-exclusive scholarship is \$4,617, making PTK's advertisements and promotions containing said statement factual (or at best, an understatement, and certainly far more than \$2,500).

In contrast to this documentation, you offer no evidence that supports your claim that "many counted scholarships are publicly available to all transfer students [and] not exclusive to PTK members." Your naked allegation is simply untrue and easily disprovable, as shown above. You also claim that "the true average PTK member receives no scholarships at all . . .", another claim that is entirely baseless. This statement is similarly unevidenced and undocumented. Mr. Moradian has made the same false claims in the Lawsuit, and we have shown to him that the claims are unprovable as well. Ironically, you have falsely reported in the past that you received no scholarship from PTK, yet that is also demonstrably untrue. You received a scholarship and we have documentation to prove it.

Alleged financial mismanagement.

The Board reviews the financial statements of PTK on an annual basis. While it is aware of declining revenues, those declines are directly attributable to Honor Society. That is part of the damages that we are seeking in PTK's lawsuit. The lawsuit has also been expensive, but the fight is worth it since the fight is to prevent further deception by Honor Society of community college students.

Dr. Tincher-Ladner's salary is reviewed annually and approved by the Board. The Board is satisfied that her salary is consistent with industry standards and is reasonable compensation under the circumstances of her employment.

Alleged nepotism.

The claim that PTK, and Dr. Tincher-Ladner in particular, has engaged in nepotism is also false. Dr. Courtney Lange, Dr. Tincher-Ladner's wife, is currently serving as the Senior Director of Special Initiatives with the Phi Theta Kappa Foundation, an entirely separate nonprofit organization from PTK, and her position is fully funded through a grant received by the PTK Foundation in 2023. Dr. Tincher-Ladner has no operational role with the Phi Theta Kappa Foundation, and also had no authority over the decision to hire Dr. Lange. The Phi Theta Kappa Foundation has its own Executive Director and senior leadership team, and it was their decision to hire Dr. Lange. Moreover, Dr. Lange's salary is not paid for by membership dues in PTK, since they are separate organizations.

Dr. Lange has had a distinguished career in the community college space in her own right. She has worked in that space for nearly 15 years. (<https://www.linkedin.com/in/courtney-lange->

bb1a75211/). She served as the Marketing Communications Specialist for Holmes Community College in Hinds County, Mississippi from 2010 to 2013. She then joined PTK (the honor society, not the Foundation) in 2013 as its Director of Regional and Chapter Development, prior to when Dr. Tincher-Ladner was elevated to the CEO position. Dr. Lange left PTK in 2016 to become the Director of Communications and Impact with the Woodward Hines Education Foundation, a non-profit assisting community college students to move on to four-year institutions. In 2023, on this long history of employment helping community college students, she then joined Phi Theta Kappa Foundation as described above. She was hired by Dr. Monica Marlowe, the Executive Director, who has known Dr. Lange for nine (9) years.

There is no prohibition against Dr. Lange's employment with Phi Theta Kappa Foundation, or PTK before that. Your complaint does not recite any authority either. Under these circumstances, there is no basis to the accusation that PTK's member dues have been misrouted for Dr. Tincher-Ladner's personal benefit.

PTK is highly transparent, consistent with its obligations as a 501(c)(3) organization. Its financials are audited by a respected accounting firm in Jackson, Mississippi, the location of its headquarters. And PTK publishes its audited financials as required by law. Further, it regularly accomplishes its mission of serving the interest of community college students in the United States, and where applicable, internationally. There is no credible criticism of its integrity as an organization.

Allegations concerning workplace culture.

Your allegations concerning the culture at PTK are also unfounded. Your letter offers us no specificity as to the allegations, other than anonymous postings on the Glassdoor website. Also, your attached documents do not make any reference to the far more numerous positive postings about PTK. Under these circumstances, your letter offers no real evidence of the culture you describe in your letter.

Influence of Michael Moradian.

We strongly believe that your letter to the Board is as Mr. Moradian's proxy, and the strength of your complaints must be evaluated in that context. It is concerning that you choose to attack PTK and at the same time align yourself with an organization that has a true track record of deceiving students. As you know, we have attempted to obtain your communications with Mr. Moradian, but you have ignored our subpoena for the records.

Honor Society is actually not an honor society, despite its efforts to market itself otherwise. It is a for-profit, money making scheme hatched by Mr. Moradian over ten years ago. No minimum academic performance (or even enrollment) of any sort is required to join its membership, although it is likely many misled students may believe that membership in Honor Society has some academic significance when it does not (likely due to its misleading name). All that is required to join is an email address and a credit card, with those credit card charges often times being

challenged as unauthorized. In fact, it was because of these allegedly unauthorized charges that PTK learned of actual consumer confusion. Those same students would contact PTK to complain about the subsequent charges because they understood PTK to only charge a single fee, only to learn that they had joined the wrong organization. Honor Society is marketing itself to community college students using the same branding scheme (i.e., “trade dress”) as PTK, which PTK believed was and still is leading students to join Honor Society thinking they were joining PTK. This confusion persists to today because Honor Society has refused to change its marketing and membership solicitation practices.

PTK had a recent situation where Honor Society had charged a student’s credit card over \$900, where that student had mistakenly joined Honor Society thinking it was PTK. It is unclear whether the student was able to secure a complete refund – Honor Society will typically only refund charges made within the last 90 days. <https://www.honorsociety.org/cancel>. And as Honor Society charges its members every sixth months, refunds beyond the most recent charge are unlikely.

Truth in Advertising recognized the predatory marketing practices of “Honor Society” in April of 2020 (See: <https://truthinadvertising.org/articles/honorsociety-org/>). The Association of College Honor Societies has issued a warning to the public about Honor Society. <https://www.achshonor.org/is-this-invitation-legit> A simple internet search for HonorSociety.org reviews reveals a long history of public complaints about that organization and its business practices. (<https://www.bbb.org/us/nv/las-vegas/profile/professional-organizations/honorsocietyorg-inc-1086-90026685/complaints>) We include some of those here for your review. These online warnings, unfortunately, has not deterred Honor Society to change its behavior.

Honor Society’s misconduct in this case has not been limited to merely meritless allegations in the lawsuit. It has also engaged in harassing and misleading extra-judicial conduct that included a malicious survey about PTK sent to hundreds of thousands of community college students, and the use of generative artificial intelligence to create overnight 5,000+ websites containing the same deceptive, false and meritless allegations contained in Honor Society’s claims against PTK and reflected in your letter to PTK.

In response to these tactics, PTK has had to go to court not once, but twice, to obtain the extraordinary remedy of preliminary injunctive relief. In both instances, PTK has prevailed and Honor Society has lost. In the court’s first Order, the Judge found the survey referenced above to be “malicious” and designed only to cause PTK damage. In the most recent injunction order, District Court Judge Carlton Reeves condemned the use of generative AI to malign PTK on such a large scale, especially where the web pages were as misleading and deceptive as they were. At the conclusion of his Order, Judge Reeves identified Executive Director, Michael Moradian, as a “petulant cyberbully” in his misconduct.

Notwithstanding two injunction orders, both powerfully worded by the court, Honor Society appears to have learned no lessons. PTK also had to file a motion for contempt against

Honor Society on August 29, 2024, on Honor Society and Moradian's failure to comply with the Court's second preliminary injunction order. On December 23, 2024, the Court found Honor Society and Mr. Moradian in contempt, and sanctioned Honor Society \$1,000 for every day it remained in contempt. Notably, the timing of your letter correlates with Honor Society's continued efforts to hurt PTK. There also is pending a motion for "death penalty" sanctions against Honor Society for its misconduct in this litigation, including alleged perjury and witness tampering.

I raise these facts concerning Honor Society's litigation record in this lawsuit because you need to understand who you have aligned yourself with and where you are getting your information from.

Change.org Postings and Communications with PTK Members.

We are also aware of your recent creation of a posting at www.change.org, where you not only repeat the same false allegations in your letter to the Board, but you also invite others to join you in repeating those same false claims. Those postings must cease immediately and we require you to take down the false statements made in them. Further, you are instructed to immediately cease in your communications with past and current PTK members where you are repeating this same false information.

Efforts to Depose You.

We have also attempted to obtain your communications with Honor Society as well as your deposition. You have wholly ignored the subpoena served by my office, other than filing a baseless Motion to Quash. This is despite clearly injecting yourself in the lawsuit as a witness. It is odd that you would avoid the deposition we seek, while at the same time send this letter making the demands that you have of PTK. I invite you to contact me so that we may arrange the date and time of your deposition.

Cease and Desist.

Demand is made upon you by PTK to immediately cease and desist in making the false and defamatory statements contained in your letter about PTK and Dr. Tincher-Ladner. This includes but is not limited to online postings, emails, text messages and any other efforts to distribute your misinformation. Both PTK and Dr. Tincher-Ladner reserve all rights, legal and equitable, concerning your misconduct. Failure by you to abide by this demand will lead to legal action against you.

Very truly yours,

A handwritten signature in blue ink, consisting of several loops and a trailing line, representing Jonathan G. Polak.

Jonathan G. Polak
Counsel to Phi Theta Kappa

JGP
Encls.

Ex. A. First Preliminary Injunction
Ex. B. Second Preliminary Injunction
Ex. C. Civil Contempt Order

EXHIBIT C

January 23, 2025, Email
from PTK to Toni Marek



Toni Marek <tonimarek@gmail.com>

Phi Theta Kappa

1 message

Polak, Jonathan <JPolak@taftlaw.com>

Thu, Jan 23, 2025 at 6:33 PM

To: Toni Marek <tonimarek@gmail.com>

Cc: "Etienne, Mike" <MEtienne@taftlaw.com>, "Smoot, Rachel A." <RSmoot@taftlaw.com>

Ms. Marek,

The PTK Board notified me of your communication to them this afternoon wherein you claim that it never responded to your email dated January 16, 2024. That is untrue. I responded on behalf of the Board on Wednesday of this week (the 22nd). I attach that communication hereto for your reference. It was sent to the same email you are using in your communications to the Board so there is no reason to believe you have not seen it.

If you have further communications concerning this matter, please direct them to my attention and not the Board. I remind you of the cease and desist demand made of you in my correspondence from earlier this week as well. Further failures to comply with that demand may lead to legal action against you. PTK reserves all rights.

----- Forwarded message -----

From: "Cassady, DeeAnn" <DCassady@taftlaw.com>

To: "tonimarek@gmail.com" <tonimarek@gmail.com>

Cc: "Polak, Jonathan" <JPolak@taftlaw.com>

Bcc:

Date: Wed, 22 Jan 2025 20:36:03 +0000

Subject: Phi Theta Kappa

Ms. Marek,

Please see the attached correspondence with accompanying exhibits, sent on behalf of Jonathan Polak regarding the above-referenced subject matter.

If you have any issues accessing the PDF documents, let me know.

Thank you,

DeeAnn Cassady

DeeAnn Cassady

Taft/ **DeeAnn Cassady**, Legal Assistant
Direct: 317.713.9441 | Office Ext: 69441
Taft Office: Indianapolis



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5 attachments






-  **Response to Marek Board Communication 1-22-2025.pdf**
236K
-  **Ex. A - (First) Preliminary Injunction.pdf**
181K
-  **Ex. B - (Second) Preliminary Injunction.pdf**
389K
-  **Ex. C - Order Granting in Part PTK's Motion for Contempt.pdf**
7675K
-  **Phi Theta Kappa**
11621K

EXHIBIT D

February 7, 2025, Email from PTK Requesting
Blacklisting of Toni Marek Email Accounts

From: Jon Ambrosia
Sent: Wed, 12 Feb 2025 00:55:02 +0000
To: Jordan Sage;Areeluck Parnsoonthorn;DL for IT Enterprise Networking Staff
Subject: Re: PTK :: Whitelist Document

I agree with Jordan. I don't remember a time that we had whitelisted any domain / IP. Especially when the vendor is telling us they use multiple relays / providers. If something gets caught as spam we can submit to Proofpoint as a false positive.

Jon Ambrosia * Manager, Network and PC Services, San Diego Community College District * 9315 Hillery Drive, San Diego, CA 92126 * Tel 619-388-1164 * jambrosi@sdccd.edu



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Community College District

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Belong.
Become.**

CONFIDENTIALITY: This email (including any attachments) may contain confidential, proprietary and privileged information, any unauthorized disclosure or use is prohibited. If you received this email in error, please notify the sender and delete this email from your system. Thank you.

From: Jordan Sage <jmsage@sdccd.edu>
Sent: Tuesday, February 11, 2025 4:19 PM
To: Areeluck Parnsoonthorn <aparnsoonthorn@sdccd.edu>; DL for IT Enterprise Networking Staff <dlforitenterprisenetworkingstaff@sdccd.edu>
Subject: RE: PTK :: Whitelist Document

We do not whitelist anyone and haven't for many years (over a decade) as it circumvents our security measures. We cannot control what comes from third party senders.

From: Areeluck Parnsoonthorn <aparnsoonthorn@sdccd.edu>
Sent: Tuesday, February 11, 2025 4:14 PM
To: DL for IT Enterprise Networking Staff <dlforitenterprisenetworkingstaff@sdccd.edu>
Subject: Fw: PTK :: Whitelist Document

Jordan and Team,

Please provide feedback on this request, when you have a moment.

Thanks,

Areeluck "Rose" Parnsoonthorn
District Director of IT Operations, Information Technology Services
San Diego Community College District
Phone: 619-388-1159
Email: aparnsoonthorn@sdccd.edu

From: Kurt Hill <khill@sdccd.edu>
Sent: Tuesday, February 11, 2025 1:36 PM
To: Areeluck Parnsoonthorn <aparnsoonthorn@sdccd.edu>
Cc: Carmen (Carrasquillo) Jay <cjay@sdccd.edu>
Subject: FW: PTK :: Whitelist Document

Hi Rose,

Could you review this email and request. PTK is “Phi Theta Kappa”, the International College Honor Society. They are asking that we help ensure they do not get blocked as purveyors of spam. Carmen Carrasquillo Jay is our Honors Faculty if you have more questions.

Thanks,
Kurt

From: Carmen (Carrasquillo) Jay <cjay@sdccd.edu>
Sent: Friday, February 7, 2025 1:41 PM
To: Kurt Hill <khill@sdccd.edu>
Subject: Fw: PTK :: Whitelist Document

This is a new one for me. PTK - the honor society - is asking us to fwd this info to IT.

From: Dr. Jamie Mahlberg <jamie.mahlberg@ptk.org>
Sent: Friday, February 7, 2025 9:29 AM
Subject: PTK :: Whitelist Document

[EXTERNAL Email: Do not click any links or open attachments if you do not trust the sender and know the content is safe.]

Hello [again this week], Contact Advisors!

It's that time of year! I am sharing our **Whitelist Document** (attached) with you in hopes that you'll please pass it on to your IT departments. With International Officer elections right around the corner, we want to make sure that you and your students are receiving all emails from us 😊

Additionally, a favor to ask: we've been alerted that some students are receiving unsolicited emails from the following email addresses: tonimarek@gmail.com, thenshespokeup@gmail.com, or andthenshespokeup@228594178.mailchimpapp.com. We also request that you share these email addresses with your IT department and ask them to **block all communication** being sent from them.

To offer some (possibly helpful) context:

1. Please see the attached email from PTK's lawyer, Jonathan Polak.
2. This letter was sent via email to all contact advisors in October 2024: [PTK-Information-Letter-10-10-24.pdf](#)

3. This article may also be helpful: [Phi Theta Kappa Honor Society Sues Las Vegas Company for Trademark Infringement](#)

Finally, if your students should receive unsolicited emails from the above Mailchimp address, we encourage them to **report the email** to Mailchimp directly [at this website](#).

Thank you so much for your time and consideration.

Happy Friday!

~Jamie ☺



[Powering Up April 3 in Kansas City, MO.](#)

Jamie Mahlberg, Ed.D. (she/her)

Senior Director of Student Engagement - Division IV

Phi Theta Kappa Honor Society

(P) 601-984-3575

EXHIBIT E

February 13, 2025, Email from PTK Advisors
at Edgecombe Community College



Toni Marek <tonimarek@gmail.com>

Fwd: Unsolicited Emails - Be Aware

1 message

Thu, Apr 17, 2025 at 11:52 AM

To: "tonimarek@gmail.com" <tonimarek@gmail.com>

Here you go. These advisors are the ones we now use as examples on "plagiarism and why not to do it."

----- Forwarded message -----

From: **PTK Advisor** <ptkadvisor@edgecombe.edu>

Date: Thu, Feb 13, 2025 at 1:55 PM

Subject: Unsolicited Emails - Be Aware

To: Phi Theta Kappa <PTK@edgecombe.edu>

Good afternoon all,

We have been made aware of some unsolicited emails coming through to PTK members. This appears to be one of those change.org messages and reflects the personal views of whomever the author is. Your status as a member in the Alpha Omega Nu Chapter of PTK here at ECC is not affected by this movement; you have earned the honor student distinction based on your academic prowess, and your affiliation with our Chapter as far as we're concerned is not affected on a national level by this movement. This movement is not affiliated with our Chapter, nor do we have any grave concerns that lead us to want to support the views of "Toni". You can "unsubscribe" so you do not receive these messages moving forward.

Thank you,

--

Mrs. Karin Ruffin
Ms. Jordan Carter
PTK Advisors

E-mail correspondence to and from this sender may be subject to the North Carolina Public Records law and may be disclosed to third parties.

--

You received this message because you are subscribed to the Google Groups "Phi Theta Kappa" group.
To unsubscribe from this group and stop receiving emails from it, send an email to PTK+unsubscribe@edgecombe.edu.
To view this discussion visit https://groups.google.com/a/edgecombe.edu/d/msgid/PTK/CALy7cpXhK1DHugzgFGN8Cq%3DbDfvZ5sLkzRai%2Bud_JECoQS%2Bw7Q%40mail.gmail.com.

E-mail correspondence to and from this sender may be subject to the North Carolina Public Records law and may be disclosed to third parties.

EXHIBIT F

March 14, 2025, cease and desist letter
from PTK to Toni Marek



Toni Marek <tonimarek@gmail.com>

Cease and Desist Correspondence

1 message

Cassady, DeeAnn <DCassady@taftlaw.com>

Fri, Mar 14, 2025 at 12:02 PM

To: "tonimarek@gmail.com" <tonimarek@gmail.com>

Cc: "Polak, Jonathan" <JPolak@taftlaw.com>

Ms. Marek,

Please see the attached correspondence, sent on behalf of Jonathan Polak.

Thank you,

DeeAnn Cassady

Legal Assistant to Jonathan Polak

Taft/ **DeeAnn Cassady**
Legal Assistant
DCassady@taftlaw.com
Dir: 317.713.9441
Tel: 317.713.3500 | Fax: 317.713.3699
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

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 **March 11, 2025 Letter to Toni Marek re Cease and Desist.pdf**
219K

JONATHAN G. POLAK
317.713.3532
JPolak@taftlaw.com

March 14, 2025

Via Email

Toni Marek
tonimarek@gmail.com

Re: Cease and Desist

Ms. Marek,

You have to date ignored the cease and desist letter we sent you on January 22, 2025. In that regard, you have continued propagating false and misleading statements concerning PTK. We have provided you the data showing that your statements are both false and misleading. You have not changed course.

Rather than withdrawing your false statements, you appear to be doubling down. All of your communications appear to be with one goal – to tortiously interfere in PTK's relationships with its existing and potential members, its grantors and its other business partners. I want to make clear that you will be held personally responsible for any damages caused to PTK or Dr. Tinchler-Ladner.

It is unfortunate you have taken such extreme steps against an organization whose present leadership has done you no harm. I do not believe that you have ever had any meaningful interaction with Dr. Tinchler-Ladner. Yet, you publish such extreme statements about her, her family and her leadership on facts that are demonstrably untrue. You have never been involved in any way in the marketing of PTK, so your understanding of the issues is at best, uninformed. You appear to be relying entirely on information fed you by Mr. Moradian, or otherwise accumulated with his guidance or instruction. Your interpretation of that data is flawed, of course. It is clear that Mr. Moradian and his organization have convinced you to take up their flag and to engage in conduct on their behalf that is otherwise enjoined by the Court. We will be holding him accountable as well. But your decision to parrot his false and misleading accusations has ultimately created liability for you. The damages you will be held accountable for continue to accumulate so long as your actions persist.

You must stop sending emails with this misleading information to PTK's membership, college partners and prospective students. This is about the clearest case of tortious interference I have encountered in my near 30 year legal career. We have provided you the data showing the

falsity of what you are sending these various constituencies, yet you continue doing it. You claim some higher goal, but that it is clear that it is only your own malice against the organization and Dr. Tincher-Ladner that appears to be driving you. This makes you a willing pawn to be used by Mr. Moradian to achieve his own business and litigation goals.

Also, your stated intention to self-publish a book about PTK and Dr. Tincher-Ladner, may result in liability to you as well. We strongly caution you against publication of information that has been demonstrated to you to be false, or otherwise is known to you to be false or misleading. Again, this appears to be nothing more than an orchestrated effort to carry Mr. Moradian's litigation message and to otherwise further interfere in PTK's charitable mission for students. Should you move forward with publishing defamatory and otherwise tortious material, you will be held accountable.

You have repeatedly demanded conversations with PTK's board and Dr. Tincher-Ladner, but you have at the same time refused to sit down, under oath, to discuss those concerns. We believe that such a conversation will be helpful, and we encourage you to work with us to set a date for the production of the requested documents as well as your deposition. We believe the structure of a deposition is the best way for us to learn, with candor, the basis and scope of your concerns for the organization. This is a reminder of course that you should be preserving and not destroying any documents relevant to PTK, Mr. Moradian, Honor Society or the allegations you have made against PTK, including email, text, social media direct messages, etc.

Finally, we are interested in learning more about your relationship with Megan Lynch and the VyB "business." Our review of internet materials indicate you serve or have served as the Chief Marketing Officer for that company, which some have accused as being nothing more than a "ponzi scheme." https://dehek.substack.com/p/megan-and-ragan-lynchs-scheme-unmasked?utm_campaign=post&utm_medium=web. See also <https://www.tiktok.com/@queensofschemes/photo/7480570251709664517>; <https://www.youtube.com/watch?v=ODEBYAulzLQ>. We are concerned that your efforts to promote your issues with PTK may have some financial connection to these efforts with Ms. Lynch, and to drive traffic to that business. You have accumulated a larger number of student email addresses and other personally identifying information through your public records requests, and we intend to determine whether you have used that information to promote VyB. So, please also preserve all documents related to that relationship, including all email, text, social media direct messages, etc.

This letter is sent with full reservation of all rights and waiver of none. If you truly wish to have a conversation around your concerns, please contact me directly so that we may discuss how that is best accomplished inside the context of the lawsuit with Honor Society.

Very truly yours,

A handwritten signature in blue ink, consisting of several loops and a trailing line, representing Jonathan G. Polak.

Jonathan G. Polak

JGP

EXHIBIT G

March 13, 2025, email from Wendy Flores
and response from Jonathan Polak

Dear Phi Theta Kappa Board Members,

I hope this message finds you well, though I write with sincere disappointment, as I have not yet received any acknowledgment or response from my previous emails. Your silence is deeply troubling.

George, Mary, Michael, and Dan, during my quarter of a century tenure with Phi Theta Kappa I have worked with you all in one capacity to many related to the Annual Convention, Honors Institute, Regional Meetings, Membership, Chapter Advisor Institute, Board of Directors Meetings (especially when I worked as Rod's Executive Assistant), Leadership Certification Sessions, All-USA Academic Team Ceremony at AACC, President's Breakfast at AACC, Shirley B. Gordon Award Recognition, visits to headquarters and the list goes on. I genuinely value our shared commitment and passion for Phi Theta Kappa. I miss working for the mission of the organization and the genuine fulfillment of knowing I was helping students. I would not have walked out on December 14, 2021, at 2:14pm, if I didn't have to. I had to remove myself from the toxic work environment as it was affecting my health.

There were serious issues with Lynn's leadership before I left, and they continue to this day. There are many former employees that worked for me and alongside me that can witness to you examples of bullying, unprofessionalism, dysfunction, low morale, lack of trust, gaslighting, manipulation, and unethical conduct. And, in case you are not aware, when Lynn joined PTK as a staff member, I was the first person to befriend her and ask her to help me calculate a membership acceptance rate for each of the touch points sent to the eligible students. We became personal friends, spent weekends together, vacationed together and we were so close personally, my ex-husband married Lynn and Courtney. Lynn changed over the years and so did her leadership.

Actions speak louder than words and her actions appear increasingly driven by personal agendas and vendettas rather than a sincere dedication to PTK's students or organizational integrity. There is no one holding Lynn accountable. Investigate and you will uncover things that will shock you about how membership fees are spent. One small example is Lynn purchasing a set of International Officers custom made jeans from Blue Delta <https://www.bluedeltajeans.com>. Blue Delta came to HQ to take measurements of the International Officers and Lynn informed the staff that if they wanted to purchase a pair, they were more than welcome to get measured while Blue Delta was visiting HQ for the IOs. The staff were dumbfounded that Lynn would think they could afford a pair of \$450 jeans.

It took me years to heal from the toxic workplace and finally speak out about it. I can sleep at night now knowing I tried to do my part in healing PTK. Public criticism is rapidly

intensifying, clearly illustrated by the more than 16,000 signatures on the Change.org petition, with PTK members themselves voicing significant concerns about Phi Theta Kappa. I strongly encourage you to review the petition and carefully read the sincere and thoughtful comments from PTK's own members, supporters and especially the other former employees who I do not know, as they came and went after me, but our stories are similar.

Petition Link: <https://www.change.org/p/protect-students-and-restore-integrity-save-phi-theta-kappa-by-demanding-reform>

Link to read the petition comments: <https://www.change.org/p/stand-up-for-students-stop-misleading-students-toxic-bullying-by-phi-theta-kappa-hq/feed>

Additionally, it has come to my attention that PTK's attorney, Jonathan Polak, reportedly informed you he would issue a cease-and-desist against me for privately raising these legitimate concerns. No such action was ever taken, likely because he recognized it would have been inappropriate. Polak's misleading communication to you calls into serious question his intentions and honesty toward you and the organization. My messages to you have always been respectful, responsible, and motivated by genuine care for PTK's future.

As board members, you hold the critical responsibility of stewarding Phi Theta Kappa's integrity and reputation. Your decisions now will directly shape the organization's legacy. Addressing—or neglecting—these deeply concerning issues is ultimately your moral responsibility.

I sincerely urge you to please not be blind to this. Do a surprise visit to HQ and talk to staff, look over the financials, or hire a 3rd party to assist you in this effort. The cost would be minimal compared to the past and future employee lawsuits you may or may not know about. You have a responsibility to ensure PTK remains a trusted and student-focused society truly dedicated to public benefit.

Thank you for your prompt attention and I look forward to a response. I would be happy to provide more information or insight if needed.

Sincerely,

Wendy Flores

FW: Email to PTK Board

1 message

mrsflores0419@gmail.com <mrsflores0419@gmail.com>
To: tonimarek@gmail.com

Fri, Mar 14, 2025 at 2:16 PM

Wendy Flores**601-832-8341**

From: Polak, Jonathan <JPolak@taftlaw.com>
Sent: Thursday, March 13, 2025 11:52 PM
To: mrsflores0419@gmail.com
Subject: Email to PTK Board

Ms. Flores,

I understand that you have once again contacted the PTK Board directly, despite our cease and desist sent to your attorney on January 22, 2025. If your lawyer failed to forward it to you, I have attached it here. I am communicating with you directly since it appears he no longer represents you. If that is not the case and I should be communicating with him, please advise immediately.

PTK's board stands firmly behind Dr. Tincher-Ladner and her leadership of the organization. Your efforts to defame her are unfounded. From all appearances, your complaints are motivated by Michael Moradian and Honor Society. He is manipulating you and others like you, whether you appreciate that fact or not.

Again, please stand down from your public efforts to interfere in PTK's charitable mission for students and to otherwise defame it and its leadership. You are not doing anyone any good, other than Honor Society. Failure to do so will lead to future legal action against you. PTK intends to hold all persons accountable for any

damages to its operations, including lost membership fees due to your false and misleading public statements. Consider this your second notice so there is no question of your intentional misconduct here.

Finally, if you feel you have been emotionally harmed by your employment at PTK and choose to continue publicly complaining about it, we of course reserve the right to also publicly explore all other possible causes of those alleged damages.

PTK reserves all rights and waives none.

Taft/ **Jonathan G. Polak**
Partner
JPolak@taftlaw.com
Dir: 317.713.3532
Tel: 317.713.3500 | **Fax:** 317.713.3699
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

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----- Forwarded message -----
From: "Cassady, DeeAnn" <DCassady@taftlaw.com>
To: <jjones@hickmanlaw.com>
Cc: "Polak, Jonathan" <JPolak@taftlaw.com>
Bcc:
Date: Wed, 22 Jan 2025 22:20:05 -0400
Subject: Phi Theta Kappa Board (Wendy Flores)

Mr. Jones,

Please see attached correspondence with accompanying exhibits, sent on behalf of Jonathan Polak regarding the above-referenced subject.

If you have any difficulties opening the attached PDFs, let me know.







Thank you,

DeeAnn Cassady

DeeAnn Cassady

Legal Assistant to Jonathan Polak

6 attachments

-  **Response to Flores Board Communication 1-22-25.pdf**
217K
-  **Ex. A - Flores Communication.pdf**
126K
-  **Ex. B - (First) Preliminary Injunction.pdf**
181K
-  **Ex. C - (Second) Preliminary Injunction.pdf**
450K
-  **Ex. D - Order Granting in Part PTK's Motion for Contempt.pdf**
7675K
-  **Phi Theta Kappa Board (Wendy Flores).eml**
11843K

JONATHAN G. POLAK
317.713.3532
JPolak@taftlaw.com

January 22, 2025

Via Overnight Mail & Email: jjones@hickmanlaw.com

John Griffin Jones
Hickman, Goza & Spragins PLLC
1305 Madison Ave.
P.O. Box 668
Oxford, MS 38655

Re: Wendy Flores communication to Phi Theta Kappa Board

Mr. Jones,

As you know, I am counsel to Phi Theta Kappa Honor Society (“PTK”). I understand that you represent Ms. Wendy Flores. I direct this letter to you as her counsel.

On Friday, January 17th, Ms. Flores contacted the PTK Board by email. I attach that communication here. In her email, she makes a variety of unevidenced allegations concerning PTK, its workplace culture and Dr. Tincher-Ladner, personally. She also makes reference to a set of “three binders of evidence against Lynn.” I can only conclude she is referencing the binders that Ms. Grissom referred to at her deposition. Since that is the case, Ms. Grissom likely violated the terms of her Severance Agreement And Release agreement (the “Agreement”) by disclosing confidential information of PTK to others, including Ms. Flores, and otherwise spreading disparaging and defamatory information.

Ms. Flores makes other claims in her email communication that are false. For example, she claims that there have been “two lawsuits filed by former employees against her (both won) . . .” We are unaware of any such lawsuits. She also claims that PTK’s finances have “nosedived” due to Dr. Tincher-Ladner’s leadership. While PTK’s financial condition has suffered recently, it has been because of the unfair business practices of Honor Society, an organization that Ms. Flores has chosen to align herself with. We know of this alignment because of the production of communications between Ms. Flores and Honor Society’s President, Michael Moradian. We also know that Ms. Flores has been actively campaigning, in coordination with Mr. Moradian, to interfere with Dr. Tincher-Ladner’s employment at PTK. This email communication is just another of those efforts orchestrated by Mr. Moradian.

Ms. Flores also makes false allegations concerning Dr. Tincher-Ladner's wife, Courtney Lange. Dr. Lange is currently serving as the Senior Director of Special Initiatives with the Phi Theta Kappa Foundation, an entirely separate organization from PTK, and her position is fully funded through a grant received by the PTK Foundation in 2023. The Phi Theta Kappa Foundation has its own Executive Director and senior leadership team, and it was their decision to hire Dr. Lange. Moreover, Dr. Lange's salary is not paid for by membership dues in PTK, since they are separate organizations.

Dr. Lange has had a distinguished career in the community college space in her own right. She has worked in that space for nearly 15 years. (<https://www.linkedin.com/in/courtney-lange-bb1a75211/>). She served as the Marketing Communications Specialist for Holms Community College in Hinds County, Mississippi from 2010 to 2013. She then joined PTK (the honor society, not the Foundation) in 2013 as its Director of Regional and Chapter Development, prior to when Dr. Tincher-Ladner was elevated to the CEO position. Dr. Lange left PTK in 2016 to become the Director of Communications and Impact with the Woodward Hines Education Foundation, a non-profit assisting community college students to move on to four-year institutions. In 2023, on this long history of employment helping community college students, she then joined Phi Theta Kappa Foundation as described above. She was hired by Dr. Monica Marlowe, the Executive Director, who has known Dr. Lange for nine (9) years.

There is no prohibition against Dr. Lange's employment with Phi Theta Kappa Foundation, or PTK before that. Your complaint does not recite any authority either. Under these circumstances, there is no basis to the accusation that PTK's member dues have been misrouted for Dr. Tincher-Ladner's personal benefit.

Ms. Flores also makes false allegations concerning Dr. Tincher-Ladner's salary. First, her compensation is reviewed annually and approved by the Board. The Board is satisfied that her salary is consistent with industry standards and is reasonable compensation under the circumstances of her employment. The Board also reviews the financial statements of PTK on an annual basis. PTK is highly transparent, consistent with its obligations as a 501(c)(3) organization. Its financials are audited by a respected accounting firm in Jackson, Mississippi, the location of its headquarters. And, PTK publishes its audited financials as required by law. Further, it regularly accomplishes its mission of serving the interest of community college students in the United States, and where applicable, internationally. There is no credible criticism of its integrity as an organization.

We strongly believe that Ms. Flores's letter to the Board is as Mr. Moradian's proxy, and the strength of her complaints must be evaluated in that context. It is concerning that she choose to attack PTK and at the same time align herself with an organization that has a true track record of deceiving students. If it is true that Ms. Flores has also communicated Ms. Grissom's documents concerning PTK in the binders, then that is even more evidence of the harm done to PTK by Ms. Flores.

Honor Society is actually not an honor society, despite its efforts to market itself otherwise. It is a for-profit, money making scheme hatched by Mr. Moradian over ten years ago. No minimum academic performance (or even enrollment) of any sort is required to join its membership, although it is likely many misled students may believe that membership in Honor Society has some academic significance when it does not (likely due to its misleading name). All that is required to join is an email address and a credit card, with those credit card charges often times being challenged as unauthorized. In fact, it was because of these allegedly unauthorized charges that PTK learned of actual consumer confusion. Those same students would contact PTK to complain about the subsequent charges because they understood PTK to only charge a single fee, only to learn that they had joined the wrong organization. Honor Society is marketing itself to community college students using the same branding scheme (i.e., “trade dress”) as PTK, which PTK believed was and still is leading students to join Honor Society thinking they were joining PTK. This confusion persists to today because Honor Society has refused to change its marketing and membership solicitation practices.

PTK had a recent situation where Honor Society had charged a student’s credit card over \$900, where that student had mistakenly joined Honor Society thinking it was PTK. It is unclear whether the student was able to secure a complete refund – Honor Society will typically only refund charges made within the last 90 days. <https://www.honorsociety.org/cancel>. And as Honor Society charges its members every sixth months, refunds beyond the most recent charge are unlikely.

Truth in Advertising recognized the predatory marketing practices of “Honor Society” in April of 2020 (See: <https://truthinadvertising.org/articles/honorsociety-org/>). The Association of College Honor Societies has issued a warning to the public about Honor Society. <https://www.achshonor.org/is-this-invitation-legit-> A simple internet search for HonorSociety.org reviews reveals a long history of public complaints about that organization and its business practices. (<https://www.bbb.org/us/nv/las-vegas/profile/professional-organizations/honorsocietyorg-inc-1086-90026685/complaints>) We include some of those here for your review. These online warnings, unfortunately, has not deterred Honor Society to change its behavior.

Honor Society’s misconduct in this case has not been limited to merely meritless allegations in the lawsuit. It has also engaged in harassing and misleading extra-judicial conduct that included a malicious survey about PTK sent to hundreds of thousands of community college students, and the use of generative artificial intelligence to create overnight 5,000+ websites containing the same deceptive, false and meritless allegations contained in Honor Society’s claims against PTK and reflected in her letter to PTK.

In response to these tactics, PTK has had to go to court not once, but twice, to obtain the extraordinary remedy of preliminary injunctive relief. In both instances, PTK has prevailed and Honor Society has lost. In the court’s first Order, the Judge found the survey referenced above to be “malicious” and designed only to cause PTK damage. In the most recent injunction order, District Court Judge Carlton Reeves condemned the use of generative AI to malign PTK on such

a large scale, especially where the web pages were as misleading and deceptive as they were. At the conclusion of his Order, Judge Reeves identified Executive Director, Michael Moradian, as a “petulant cyberbully” in his misconduct.

Notwithstanding two injunction orders, both powerfully worded by the court, Honor Society appears to have learned no lessons. PTK also had to file a motion for contempt against Honor Society on August 29, 2024, on Honor Society and Moradian’s failure to comply with the Court’s second preliminary injunction order. On December 23, 2024, the Court found Honor Society and Mr. Moradian in contempt, and sanctioned Honor Society \$1,000 for every day it remained in contempt. Notably, the timing of your letter correlates with Honor Society’s continued efforts to hurt PTK. There also is pending a motion for “death penalty” sanctions against Honor Society for its misconduct in this litigation, including alleged perjury and witness tampering.

I raise these facts concerning Honor Society’s litigation record in this lawsuit because you need to understand who Ms. Flores has aligned herself with and where she is getting her information from.

Cease and Desist

Demand is made upon Ms. Flores to immediately cease and desist in making the false and defamatory statements contained in her communication about PTK and Dr. Tincher-Ladner. Both PTK and Dr. Tincher-Ladner reserve all rights, legal and equitable, concerning your client’s misconduct. Failure by Ms. Flores to abide by this demand will lead to legal action against her.

Very truly yours,



Jonathan G. Polak
Counsel to Phi Theta Kappa

JGP
Encls.

- Ex. A. Flores Communication to Board (1-17-25)
- Ex. B. First Preliminary Injunction
- Ex. C. Second Preliminary Injunction
- Ex. D. Civil Contempt Order

EXHIBIT H

March 29, 2025, cease and desist email
from PTK to Toni Marek



Toni Marek <tonimarek@gmail.com>

Cease and Desist

1 message

Polak, Jonathan <JPolak@taftlaw.com>

Sat, Mar 29, 2025 at 1:09 PM

To: Toni Marek <tonimarek@gmail.com>, "admin@tonimarek.com" <admin@tonimarek.com>, "AndThenSheSpokeUp@gmail.com" <AndThenSheSpokeUp@gmail.com>

Cc: "Smoot, Rachel A." <RSmoot@taftlaw.com>, "Betz, Tracy" <TBetz@taftlaw.com>

Ms. Marek,

We have been monitoring your public statements concerning PTK. You continue to make demonstrably false statements concerning PTK's efforts to protect its intellectual property and confidential documents, and demand is made upon you to immediately cease in those false statements.

For example, your posting at the GiveSendGo site has multiple false or misleading statements. <https://www.givesendgo.com/savephithetakappa>. There is no effort, nor has there ever been any effort, to silence you on your "sexual harassment allegations" against Dr. Risley. You have been making those allegations for nearly 10 years, in a very public way, in multiple media platforms – and never once has PTK taken any steps to remove that content. You also suggest that your status as an "Army veteran" has relevance to PTK's efforts here. That is obviously untrue. I don't know that anyone at PTK was even aware of your military status, and more importantly it has never been made an issue by any communication or public statement by PTK.

PTK's efforts in connection with obtaining the TRO were based, primarily, on the fact that you had obtained PTK's attorney-client and attorney work product communications concerning the lawsuit with Honor Society. We asked you to not publish those materials. You refused. Under those circumstances, we had no choice but to move the Court for the order that we did. I have reached out to you repeatedly over the last several months to discuss your more general concerns with PTK. You have similarly refused those communications. Instead, you have published false statements online about PTK and its efforts to protect its privileged information. That needs to stop. You are deliberately and intentionally misleading people on what is actually at issue, and taking donations from those people that you are misleading.

We note also that there appears to be some relationship between your efforts to malign PTK and your association in an accused "ponzi scheme." <https://www.dehek.com/general/ponzi-scheme-scamalerts/toni-marek-exposed-gag-orders-200k-fundraisers-and-the-fall-of-vyb/> We are still investigating that connection. But to the extent that is true, it appears that you have used online commercial activities to mislead others into donating money to your causes.

Please immediately remove the false and misleading content from your public statements concerning PTK's efforts to protect its confidential information.

Taft/ **Jonathan G. Polak**
Partner
JPolak@taftlaw.com
Dir: 317.713.3532
Tel: 317.713.3500 | Fax: 317.713.3699
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

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EXHIBIT I

Communications with individuals frightened of
retaliation from PTK



Mon 4:09 PM

Yes!! Sorry, I got caught up responding. But yes, I can personally say that I would be scared for my name to be listed as speaking out against Lynn for fear of

retaliation. Be it, calling my job to get me fired, suing me or antagonistic behavior.

Mon 4:11 PM



Type a message





Extra security for chats



Messenger's evolving security with end-to-end encryption for some calls and chats.

[Learn More](#)

I am so sorry but I really cannot talk. I came home from conference to find out I have lost my job. I was asked to resign based on rumors and now face losing my house. I am sorry but cannot get involved with anything else and just desperately want to have my life be my own again.



I am sorry - so very sorry.



Type a message...





Because I've already lived through the fear.

I've been followed. Silenced. Told to smile through pain.

I've walked into rooms where bodyguards were hired to protect my abuser—not me.

I've received death threats... and learned they came from people I once trusted.

I'm not afraid of the truth.

I *am* afraid of what power does to those who dare to speak it.

Because when Phi Theta Kappa feels threatened, they don't seek truth—they protect themselves.

And here's what I know now: **no amount of justice is worth sacrificing my mental health again.**



iMessage





I'm really sorry, I wish I could help but I can't. There is a long history of silencing those who speak against PTK, preventing them from getting jobs, revoking scholarships, preventing admissions offers, and so many other things that I can't sacrifice in my life right now. I hope you can understand.



iMessage



1:08 PM

I appreciate all of your hard work on trying to save PTK from itself. As a student with a similar experience to yours, it's been challenging. Few people want to believe harassment and abuse still happens within PTK. But it does, and it continues.

The smart play would be for me to walk away from PTK entirely, and let things continue in the manner that they are currently. However, the right thing to do is never the easiest thing.

My advisor has offered to release me from my chapter obligations, if I want to walk away from PTK entirely. I may need to, for my mental health. I want to graduate from community college, transfer to a university setting, and earn my degree.

Nobody should have to face harassment and abuse alone. I'm not the only one. I know of four others besides myself, and been directly involved with two individuals at other institutions while their situations were transpiring, assisting them with legal processes and paperwork.

I'm sorry. I do not need PTK to come after me and derail what I've worked so hard for. One of my professors has taught at my college since before you were an International Officer, and when they heard about my and others' experiences, remarked they had heard this before, and that I needed to run quickly away in the opposite direction.


Thank you for listening to my story. At least you believed me without my having to jump through multiple hoops first.



Type a message...

EXHIBIT 16

“How Our Scholarships Work”
page of PTK’s website




Future Members | Members | Alumni | Advisors | Donors

LOG IN

Join | Member Benefits | Scholarships | Events | News | Shop | Search

HOW OUR SCHOLARSHIPS WORK

SCHOLARSHIP, LEADERSHIP, SERVICE & FELLOWSHIP




How Our Scholarships Work

Joining PTK means access to scholarships to help you finish your education. We have resources to help you apply for scholarships, including ones outside of PTK. There are many millions of dollars in university partner transfer scholarships and over \$1 million in competitive scholarships available annually. Your membership gets you exclusive access to these PTK-only scholarships and transfer opportunities at four-year colleges. PTK scholarship opportunities are organized into three types. Click the links below for more information about each type.

Types of Scholarships



Competitive Scholarships

Phi Theta Kappa offers competitive scholarships that recognize and reward academic excellence and leadership among its members. These transfer scholarships provide significant financial support for community college students, helping them achieve their educational and career goals. By offering community college scholarships and funding high-achieving students, PTK eases the financial burden of college, allowing members to focus on their studies and future careers.

EXPLORE



Need-Based Scholarships

Phi Theta Kappa offers need-based scholarships and financial aid for community college students facing significant challenges. These cash awards are designed to help students stay enrolled and avoid dropping out due to financial hardships. By providing crucial financial assistance, PTK ensures that students have the resources they need to continue their education, access community college scholarships, and pursue their academic and career goals without disruption.

EXPLORE



University Partner Scholarships

University partner scholarships provide essential financial aid for community college transfer students, helping to make the transition to a four-year college more affordable. Hundreds of four-year institutions offer transfer scholarships specifically for Phi Theta Kappa (PTK) members, recognizing your academic excellence and leadership. These community college scholarships are designed to support your educational journey and ensure that you have access to financial resources as you pursue your bachelor's degree.

EXPLORE



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CCSmart
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International Officers
Executive Council
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Presidential Advisory Board
Regional Coordinators
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