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

LAS VEGAS RESORT HOLDINGS, LLC dba SAHARA LAS VEGAS, a Delaware limited liability company, Plaintiff(s), -vs- SCOTT ROEBEN dba VITALVEGAS dba VITALVEGAS.COM, and individual; and DOES I-X, inclusive, Defendant(s).	CASE NO.: DEPT. NO.:

OPPOSITION TO DEFENDANT SCOTT ROEBEN'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660

Plaintiff Las Vegas Resort Holdings, LLC dba SAHARA Las Vegas, by and through its counsel of record, hereby opposes Defendant Scott Roeben's Anti-Slapp Special Motion To Dismiss Under NRS 41.660.

This Opposition is based upon the Pleadings and Papers on file, the attached Points and Authorities with supporting Exhibits and Affidavits, and oral argument made by counsel at any Hearing of this matter.

Case Number: A-20-819171-C

DATED this 2nd day of October, 2020.

/s/ Matthew J. Weitz /s/

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

The Plaintiff, Las Vegas Resort Holdings, LLC dba SAHARA Las Vegas ("LVRH") sued Defendant for (i) publishing an article on his website "Vitalvegas.com" making the false statement that its resort-casino, SAHARA Las Vegas ("SAHARA"), was permanently closing in September, 2020 or that there was a rumor that SAHARA was closing and (ii) falsely claiming SAHARA Las Vegas discontinued offering incentives to certain players.

Defendant brought the instant motion under Nev. R. St.[1] 41.660 (together with NRS 41.635 through 41.670 collectively the "Anti-SLAPP Statute" or "Anti-SLAPP").

Defendant's motion is ill founded because (i) Mr. Roeben's is not entitled to the Anti-SLAPP Statute's protections because his statements were not a matter of public concern and Mr. Roeben knew of their falsity, and (ii) assuming Mr. Roeben meets his burden that his statements were of public concern and he did not know of their falsity, LVRH has ample evidence to support a prima facie case against Mr. Roeben.

Mr. Roeben made verifiably false statements knowing they were false and now seeks to hide behind a claim that it was merely rumor. Unfortunately for Mr. Roeben, the declarations and evidence show that his article claiming there was a rumor SAHARA was closing in September 2020 is prima facie false. There was never a rumor about the closure of SAHARA until Mr. Roeben injected it into his story which, even though sourced in a manner that shows a reckless disregard for the truth, provides no support for the claim that such a rumor exists. Mr. Roeben attempts to stand on both sides of the same fence by claiming that he had ample

[1] All future references to the Nevada Revised Statues are abbreviated "NRS."

evidence to publish the statement "SAHARA Las Vegas to close permanently, per sources" while claiming he was actually reporting truthfully that there was a rumor that the SAHARA Las Vegas was closing. Either way, both interpretations provide no quarter – if the former, then there is a prima facie case that Mr. Roeben committed the tort of defamation, and if the latter then Mr. Roeben's statement is patently false based on the meaning of the word "rumor."

What is clear, and what a reasonable trier of fact can conclude, is that Defendant had serious questions about the reliability of information provided by his source, wanted to publish the information despite those concerns, and intentionally made up the existence of a rumor for the purpose of shielding himself from culpability. In the process, he created and published a defamatory statement that was intentionally false and caused damage.

II. FACTUAL SUMMARY

On July 30, 2020, Defendant published the article Mr. Roeben reported this news on the VitalVegas Site in an article dated July 30, 2020. Declaration of Scott Roeben ("Roeben Decl.") ¶ 18; Compl. Ex. A. In the article, Defendant made the statement: "Sahara Las Vegas to Close Permanently, Per Sources." Id. Defendant also made the statement that "**[t]he rumor of a potential closure of Sahara** is all the more shocking given the incredible (and expensive) makeover the resort has received since it was purchased by Alex Murelo [sic] in 2017." Id. (emphasis added). Defendant also made the statement, "**[t]he rumored closure of the Sahara Las Vega**s would be a blow to Las Vegas and the north end of The Strip." Id. (emphasis added). Defendant also made the statement, "Sahara's closure has not been announced or confirmed, so it remains to be seen how this saga will unfold. Sources don't always get it right, and in this case, **we'd love it if the information is wrong**." Id. (emphasis added).

Despite the article, LVRH had no intention of closing the SAHARA permanently. Declaration of Paul Hobson ("Hobson Decl.") ¶¶ 7-8. As a result of the article's publication,

SAHARA was contacted by a vendor that helps source business telling me that groups with future bookings expressed concern over the article and would be asking for deposits held by SAHARA back. Declaration of Christopher Bond ("Bond Decl.") ¶ 3. At least three other vendors contacted SAHARA concerned that SAHARA was closing, and another group was ready to contract with SAHARA, but did not enter their agreement because they were concerned SAHARA would not be open as a result of the article. Bond Decl. ¶ 4-5.

Defendant claims to have a source for the article in the form of an employee of a liquidation company that stated his company was asked in or around May 2020 to bid on liquidating the entire SAHARA and that the SAHARA was closing. Roeben Decl. ¶¶ 7-14. Only three individuals at SAHARA have authority to solicit bids and hire a liquidation company. Declaration of Paul Hobson ("Hobson Decl.) ¶ 9. None of those individuals had contacted a liquidation company to bid anything in 2020. See Declaration of George Noel ("Noel Decl.") ¶ 4; see also Declaration of Richard Outram ("Outram Decl.") ¶ 4; see also Declaration of Josh Case ("Case Decl.") ¶¶ 4-5.

Plaintiff brought suit against Defendant for defamation, and other causes of action now voluntarily dismissed. Defendant filed an answer and then brought the instant special motion to discmiss.

III. LEGAL STANDARD FOR ANTI-SLAPP MOTIONS

An order granting a motion to dismiss "is subject to a rigorous standard of review on appeal." Stubbs v. Strickland, 129 Nev. 146, 150, 297 P.3d 326, 328-29 (2013) citing Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (quotations omitted). The Court presumes all factual allegations in the complaint are true and draws all inferences in favor of the plaintiff. Id. at 228, 181 P.3d at 672. Dismissal is only appropriate when "it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would

entitle [the plaintiff] to relief." Id.

A SLAPP lawsuit is characterized as " 'a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights.' " John v. Douglas Cty. Sch. Dist, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009) citing Dickens v. Provident Life and Ace. Ins. Co., 117 Cal.App.4th 705, 11 Cal.Rptr.3d 877, 882 (2004) (quoting Wilcox v. Superior Court (Peters), 27 Cal.App.4th 809, 33 Cal.Rptr.2d 446, 449 n. 2 (1994), abrogated on other grounds by Equilon Enterprises v. Consumer Cause, Inc., 29 Cal.4th 53, 124 Cal.Rptr.2d 507, 52 P.3d 685, 694 n. 5 (2002)).

Under Nevada's anti-SLAPP statutes, a defendant may file a special motion to dismiss if the defendant can show "by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a), Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017). That is commonly understood as prong one of the anti-SLAPP statute. If the Defendant makes such a showing, the burden then shifts to the Plaintiff to show with prima facie evidence a probability of prevailing on the claim. NRS 41.660(3)(b). That is commonly understood as prong two of the anti-SLAPP statute. In other words, anti-SLAPP statutes are pre-discovery burden shifting tools - first on the defendant to establish they are entitled to anti-SLAPP protections, and then to plaintiff's to demonstrate they have a prima facie case.

A. Prong One Analysis – Legal Standard

Defendant must first establish that they are entitled to the protections of NRS 41.650 which requires that Defendant's conduct be 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 41.637 sets forth four categories of speech for purposes of the anti-SLAPP statute:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;

> 2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
>
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
>
> 4. Communication made in direct connection with **an issue of public interest** in a place open to the public or in a public forum, **which is truthful or is made without knowledge of its falsehood.**

NRS 41.637 (emphasis added); See Coker v. Sassone, 135 Nev. Adv. Op. 2, 432 P.3d 746 (2019)(Courts determining whether conduct is protected under anti-SLAPP statute must look to statutory definitions as opposed to general principles of First Amendment Law). Defendant claims he is entitled to protection under the fourth category.

i. Defendant Knew His Statements Were False When He Published the Article Because Defendant Intentionally Fabricated the "Rumor"

Defendant is not entitled to the protections of NRS 41.660 because the reported rumor - that SAHARA would close in September - did not exist until Defendant invented it. To be protected under the anti-SLAPP statute, statements must be "truthful or … made without knowledge of [their] falsehood." NRS 41.637. As Defendant points out, "[t]he declarant must be unaware that the communication is false at the time it was made." Shapiro v. Welt, 133 Nev. 35, 38, 389 P.3d 262, 267 (2017).

Defendant attempts to characterize his statements in three, mutually-exclusive ways: (i) they are statements of opinion, (ii) the statements regarding SAHARA were substantially true, and (iii) the statement that there was a rumor about SAHARA's closure is literally true.

The statements with which LVRH holdings takes issue, that SAHARA would close in September 2020 (or that there was rumor circulating of the same), is not opinion. While there are

some statements that are likely opinion such as his desire for the information to be wrong, the writer finds the information shocking, and that the closure would be a blow to the north end of the strip, it clearly presupposes and makes the factual assertion that a rumor does exist that SAHARA would close. Def.'s Mot. Dismiss pg. 6. Expressions can be mixed, containing both fact and opinion, and where "expressions of opinion may suggest that the *speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false*." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 88 (2002)(quoting K–Mart Corporation v. Washington, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993)(italics added). There is no sentence in the entire article that portrays the existence of a rumor as an opinion. When read as a whole, the article clearly implies that a certain fact exists, that there is a rumor that SAHARA will close. Defendant repeatedly argues that opinions can be neither true nor false, because "there is no such thing as a false idea," Abrams v. Sanson, 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020); quoting Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). However, Defendant's recitation that the information could be wrong is an admission that his statement clearly and unambiguously implies the existence of the rumor. In this case, as explained below, the fact that there was a rumor SAHARA would close in September 2020 was false at the time the article was published. Therefore, Defendant is not entitled to anti-SLAPP protection because his statements are not opinion, and to the extent they are they imply the existence of a fact which is false, therefore rending the message defamatory.

The second argument, that Defendant's statement were true or he had no knowledge of their falsity, also fails. Defendant cites a plethora of articles to support his claim that he had a reasonable basis to make statements that there was a rumor circulating that SAHARA was closing in September 2020. That said, multiple times in his motion Defendant claims his statement is not false because (i) he reported the existence of a rumor and such rumor did exist, and (ii) that he

purposefully couched the story as a rumor and as unconfirmed to shield himself. See Def.'s Mot. Dismiss pg. 6:18-23; see also 14:18-20 ("The Sahara Article only speaks of a rumor of Sahara's impending closure. He repeatedly couched his statements related to this rumor with the limitation that the rumor has not been confirmed, and that it is entirely possible that his sources could be wrong."). That lies in direct opposition to his own statements on twitter wherein he said: "How would someone know if it's false? It was about something in the future." Hunt Decl. ¶5, Ex. A The rumor did or did not exist at the time of publication, therefore Defendant clearly indicates he was reporting on the actual closure of the property and not just a rumor. Ignoring this self-contradictory claim, for purposes of this analysis, it is clear that Defendant's position is that his story was true because he only reported the existence of a rumor, and had a source that told him a rumor existed. The claim that his report on the existence of a rumor is true is facially false because he was not repeating a rumor – Defendant had a source and instead created a rumor by calling it that and widely circulating it.

The word "rumor" is not defined anywhere in the Nevada Revised Statutes or existing Nevada case law. However, Nevada courts have routinely looked to dictionaries to provide definitions to interpret the meaning of words. See Lofthouse v. State, 136 Nev. Adv. Op. 44, 467 P.3d 609, 612 (2020) (repeatedly using *Merriam-Webster's New International Dictionary of the English Language* to define the words "person," "perpetrate," and "upon"); see also Gallegos v. State, 123 Nev. 289, 296, 163 P.3d 456, 460 (2007) (relying on *Webster's Third New International Dictionary* to understand the meaning of "fugitive from justice"); see also Coleman v. State, 134 Nev. 218, 219–20, 416 P.3d 238, 240 (2018) ("using Mirriam-Websters to understand the meaning of "image").

Merriam-Webster defines "rumor" as "(1) talk or opinion **widely disseminated with no discernible source**, or (2) a statement or report current **without known authority** for its truth."

Rumor, Merriam–Webster https://www.merriam-webster.com/dictionary/rumor (last visited September 24, 2020)(emphasis added). At least one court, relying on Webster's dictionary definition of "rumor" has held that sourced and verifiable statements are not rumor. See Ohio Sav. Ass'n v. Bus. First of Columbus, Inc., 540 N.E.2d 320, 326 (1988)

In Ohio Savings Association, the Ohio court of appeals found that statements made by a defendant which had a source and were verifiable were not rumor. Id. at 326. The court, relying on the Mirriam-Webster's dictionary definition of "rumor" held that the defendant's statements could not be rumor because statements were "based upon a discernible source containing verifiable figures [. . .]" and, thus, "[. . .] cannot be considered to fall within the meaning of 'rumor.' " Id.

Like in Ohio Savings Association, Defendants statements have a discernable, albeit unnamed, source that provided verifiable information. There is or is not a bid to verify the source's statements. The source did not provide information of a rumor – they provided facts (there exists a liquidation bid), and claims to have first-hand knowledge of the truth or falsity of that information. See Def.'s Mot. Dismiss Ex. A. The text messages cited in Defendant's motion make no assertion that there exists a rumor. Id. Rather, the source specifically claims the existence of facts capable of verification that SAHARA is closing. Id. Additionally, the articles cited in Defendant's motion make no mention of a rumor about SAHARA closing. See Id., Ex.'s 6-11. Literally not one "source" for his story provided information that a rumor existed that SAHARA was closing – only verifiable facts from a discernable source with known authority to verify the truth of the source's statements. Therefore, under the reasoning in Ohio Savings Association, Mr. Roeben's article claiming the existence a rumor about SAHARA is literally not true.

The repeated use of the word "rumor" in his article was, by Defendant's admission, "to inform readers that rumors were circulating that this could happen." Roeben Decl. at ¶ 19, Def.'s Mot. Dismiss, Ex 1. In truth, there were no rumors circulating until the Defendant circulated it. Defendant argues that "Mr. Roeben is merely repeating a rumor he heard. Mr. Roeben did, in fact, hear this rumor from a source he considered to be trustworthy." Def.'s Mot. Dismiss at 21:3-6; see also Roeben Decl. at ¶¶ 23-26. That is quite literally not true. A "rumor" is distinct thing, the existence of which can be verified. (See *Rumor*, Merriam–Webster https://www.merriam-webster.com/dictionary/rumor (last visited September 24, 2020)(rumor is a noun). A rumor existed prior to publication or it did not. Defendant's source did not say there was a rumor. His source made a specific claim that SAHARA was liquidating based on the verifiable information that the source's company in fact submitted a bid to liquidate SAHARA and that SAHARA requested that bid. Def.'s Mot. Dismiss, Ex 2. Additionally, there was only one source – the alleged employee of the liquidation company. See Roeben Decl. at ¶ 16. Therefore, the was no widespread story that SAHARA would close – that is, until Defendant made it widespread. A rumor must start some somewhere, and the facts here establish that it started with Defendant. There was no rumor as that word has its meaning under Mirriam-Webster's definition, and Defendant knew there was no rumor because he invented it. He is the rumorer Defense counsel will likely scoff at this as quibbling over technical meanings of words; but, words have meaning and consequences, and Defendant should be held responsible for their intentional misuse.

Mr. Roeben's declaration implies that he believed there was a rumor based on the factual information provided by his source and various articles. Roeben Decl. at ¶¶ 16-20.

These facts, when looking at the first and second definition of the word "rumor," conclusively establishes that the statements in the article about the existence of a rumor were

literally false and there was nothing in Defendant's sources to create the belief of a rumor's existence. Defendant knew his claim a rumor existed were false because he (1) had no source for that claim, and (2) admits to adding that fact information in a disingenuous attempt to avoid culpability for what he knew was reckless reporting.

Because Defendant literally invented the existence of a rumor, had no source for a rumor and thus had actual knowledge that the rumor's existence was false, Defendant's statements were not made in "good faith."

ii. Whether SAHARA Would Close (or Whether A Rumor Existed SAHARA Would Close) is not a Matter of Public Concern

The impending closure of SAHARA, or the existence of a rumor about SAHARA's closure, is not a matter of public concern. It must be stressed, for purposes of this analysis, that Mr. Roeben makes two claims. Either he made the statement of fact that SAHARA would close in September 2020, or that he made the statement that such rumor existed. In Section 4.1.3 of Defendant's motion, Defendant takes the latter position. In Section 4.1.1 of Defendant's motion and Mr. Roeben's declaration, Defendant takes the former position. In essence, Defendant is picking and choosing the characterization of his statements by which suits him best for the occasion. If anything, the inconsistency with which Defendant characterizes his statements is evidence of his reckless disregard for the truth of his own article – let alone regarding the fate of SAHARA.

First, it is entirely unclear how the existence of a rumor about SAHARA would be a matter of public concern; however, Defendant claims "reliable indications that a major Las Vegas resort and casino may close is clearly a matter of public interest." Def.'s Mot. at 12:5-6. A rumor, by its definition as discussed above, is the opposite of reliable since rumors have no known source for their truth and are not based on verifiable facts. Instead, Defendant takes the

position that he was reporting on the fact that SAHARA was closing in September 2020 for purposes of "public concern" analysis under anti-SLAPP.

In analyzing whether a statement is a matter of public of private concern, Nevada has adopted the five factor test used in California and set forth in Piping Rock Partners, Inc. v. David Lerner Assocs., Inc., 946 F.Supp.2d 957, 968 (N.D. Cal. 2013). Shapiro v. Welt, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017). The guiding principles are:

> (1) "public interest" does not equate with mere curiosity;
>
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
>
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
>
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
>
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.
>
> Id.

Defendant's entire argument that the subject of his article was a public concern is:

> "The casinos and resorts on the Las Vegas strip are the lifeblood of Las Vegas's economy, and their well-being is of paramount interest to residents of Las Vegas generally, and investors in and employees of the casinos in particular. The continued viability and survival of these casinos, including Sahara, in the midst of the COVID-19 pandemic was already a subject of significant discussion and speculation. (See, e.g., Exhibits 6-11.) There was thus a pre-existing issue of substantial public interest, and Mr. Roeben's Sahara Article was directly relevant to this issue. Mr. Roeben has thus shown that his statements are in direct connection with an issue of public interest – in fact, the Complaint made that showing for him." Def.'s Mot. Dismiss at 12:5-15.

It is clear from Defendant's argument that he asserts a broad and amorphous public interest. While Nevada has no case directly addressing whether private companies are a matter of public interest, California, on which Nevada's anti-SLAPP statute is modeled, is instructive.

In Global Telemedia Int'l, Inc. v. Doe 1, 132 F. Supp. 2d 1261, 1265 (C.D. Cal. 2001) the court held that "a publicly traded company with many thousands of investors is of public interest because its successes or failures will affect not only individual investors, but in the case of large companies, potentially market sectors or the markets as a whole." Defendant cites a for the proposition that large private companies may be a matter of public interest where the court, in dicta, gave examples of circumstances under which a large company would be a matter of public concern such as product liability suits or real estate or investment scams. See Church of Scientology v. Wollersheim, 49 Cal. Rptr. 2d 620, 633 (1996), disapproved of on other grounds by Equilon Enterprises v. Consumer Cause, Inc., 29 Cal. 4th 53 (2002). The implication of the dicta is that private companies are not de facto matters of public interest simply because they exists or are large, but require some other component to effect that transition.

In weighing the first Shapiro factor, more than mere curiosity, the facts weigh against Defendant. He admits that his reporting is on the existence of a rumor that could be wrong yet somehow argues in his Declaration that he had reliable information to claim SAHARA would actually be closing. Rumor, as discussed above, provides no real information and has no source. At best, those that may have an interest in the rumor are typically those with a special interest. See Restatement (First) of Torts § 602 (1938)("The relationship of the parties to the communication is important in determining the justification for the publication of defamatory matter of doubtful accuracy. Thus, a servant may be justified in imparting to his master even his suspicions of the honesty of a fellow employee whereas a stranger would have no justification for such a communication."). It is entirely unclear what special interest the entire world has in a rumor of admittedly doubtful accuracy, other than a mere curiosity in the subject. Therefore, factor one weighs against Defendant.

Looking at factor two of the Shapiro test, the size of the group with an interest, Defendant tries to shoehorn the entire Las Vegas populous into the smaller box of investors in and employees of the SAHARA by virtue of broad and general media coverage and overall interest in casinos. First, LVRH is not a publicly traded company. Hobson Decl. ¶ 3. Thus there are no investors whose interest might be served by Defendant's statements. The best case for the interested group would be employees. As Defendant points out, SAHARA had already filed the legally required WARN act notice. Def.'s Mot. Dismiss, Ex. 12. That group is quite specific and small in the context of the entire Las Vegas population. Indeed, by the time of that notice nearly the entire staff of SAHARA was furloughed and given notice that positions would regrettably become terminations. Id. at ¶ 5-6. That audience of employees not already without work is relatively small and specific such that it is not a public concern. Therefore, the second factor weighs against Defendant.

The third factor, some degree of closeness between the challenged statements and the asserted public interest, weighs against Defendant in this case. First, the asserted public interest, that investors, employees, and the Las Vegas community at large are interested in the viability of a single property, does not have the required degree of closeness to Defendant's statements that there is a rumor that the SAHARA is closing. In the examples given by California's courts as to when a large company may be of public interest makes clear their reasoning is based on some form of usefulness to the interested group. See Wollersheim, supra at 649-650, 633 (products liability cases, real estate investment scams). In a products liability case, the public may need to know that a certain product could be dangerous. See Id. In the case of a real estate or investment scam, the interested public needs this information to be on the look-out for solicitations from the alleged perpetrator. See Id. What is clear is that the court in that case was looking for some other public interest that is touched upon in evaluating whether a private company's activities are a matter of public concern. SAHARA is distinguishable because the statement there is a rumor that SAHARA will shut down in September 2020 is not the sort that the residents of Las Vegas

would need (other than mere curiosity) for their well-being or decision-making. As of July 30, 2020, SAHARA had already notified employees of layoffs as required by law with the WARN Act notice. See Def.'s Mot. Dismiss, Ex. 12. In reality, the only interest being served was Defendant's desire to whip up conversation amongst his small group of readers which defendant does not establish includes a group of employees that actually have an interest. Based on the dicta in Wollersheim, and because Defendant has not established that a sufficient number of his readers are within the relatively small group of employees that are actually interested in the subject of a rumor, the rumor of SAHARA's closure does not have a closeness to the public interest being served. Therefore, the third factor weighs against Defendant.

The fourth factor also weighs against Defendant. Defendant and Plaintiff have a storied history of issues, including Defendant showing up unannounced with professional photo equipment without asking for permission in advance raising serious security concerns for a casino. Hunt Decl. ¶ 2. In addition, LVRH did not invite him to renaming reveal party in June 2019 because of his past conduct when invited to another event. Hunt Decl. ¶ 4. Defendant is taking an otherwise private dispute with SAHARA over his conduct and making up rumors in an effort to exact his revenge publicly.

The fifth Shapiro factor, making something public interest by broadcasting to a large number of people, also weighs against Defendant. In this case, Mr. Roeben tries to turn an invented rumor regarding the operating decisions of a privately held company into a public concern by broadcasting it to the entire world on the internet. As discussed in the second factor analysis, the size of the group actually interested in the statements is relatively small. Defendant attempts to inflate the group's size by widely disseminating his statements and then claiming it is of public interest because a large group of people have an interest. That is a circular argument. His claim that residents, investors, and employees are interested in the well-being of casino's generally, and specifically a smaller, privately owned property because of gaming's status in Las Vegas is an amorphous appeal. Plaintiff wishes that the SAHARA was as big a player in the

local economy as the publicly traded entities owning multiple properties with ten times the hotel rooms and gaming space, but, given the marketplace, SAHARA is still a relatively small piece of the Las Vegas casino industry.

Because the size of the interested group is relatively small, the statements do not bear a closeness of relationship to the public interest of that group, the author's purpose was to gain leverage in a private dispute, and defendant made the issue one of public interest by broadcasting it to a large group of people, Defendant has not met his burden to show his statement involved a matter of public interest.

Because Defendant was not making a statement of public concern, his anti-SLAPP motion should be denied.

B. Prong Two Analysis –Even If Defendant Could Meet His Threshold Burden, Plaintiff Can Demonstrate a Prima Facie Case

Even assuming Defendant could meet his burden for anti-SLAPP protection – which he cannot – Defendant's motion should be denied because LVRH has sufficient evidence to make a prima facie case. It should be noted that Plaintiff and Defendant have stipulated to a voluntary request for dismissal of four of the five causes of action to focus the issues this Court must address. Plaintiff only intends to move forward on the cause of action for defamation involving the statement that there was a rumor that SAHARA Las Vegas will permanently close in September 2020. The following addresses those claims.

i. Legal Standard

"If the court determines that the moving party has met the burden pursuant to paragraph (a), [the court needs to] determine whether the plaintiff has demonstrated with *prima facie evidence* a probability of prevailing on the claim." NRS 41.660 (italics added). Review of the granting or denial of an anti-SLAPP motion is subject to de novo review on appeal. Coker v.

Sassone, 135 Nev. 8, 10, 432 P.3d 746, 749 (2019). The burden that Plaintiff must meet under the second prong is lower than the standard under the pre-2015 version of the anti-SLAPP statute, which formerly required clear and convincing evidence. Id. The lower standard, "prima facie evidence" does not require that plaintiff prove their case, but rather to demonstrate that "plaintiff met his or her burden of production to show that a *reasonable trier of fact could find* that he or she would prevail." Taylor v. Colon, 136 Nev. Adv. Op. 50, 468 P.3d 820, 824 (2020) (italics added). Opposing counsel's repeated claims that Plaintiff must provide "substantial evidence" are not legally supported in Nevada - all Defendant cites is California case law which is not controlling. Taylor makes clear that burden is *prima facie* evidence. Id. see also Smith v. Craig, 219CV00824GMNEJY, 2020 WL 1065715, at *7 (D. Nev. Mar. 4, 2020). Nevada, in adopting California's holding for the standard of review in anti-SLAPP suits, requires the Court to "not [. . .] weigh the evidence, but accept plaintiff's submissions as true and consider only whether any contrary evidence from the defendant establishes its entitlement to prevail as a matter of law." Coker, 135 Nev. At 11, 432 P.3d at 749 (2019)(quoting Park v. Bd. of Trustees of California State Univ., 2 Cal. 5th 1057, 1066 (2017)).

In this case, through Defendant's own declarations and evidence submitted with his motion, and the declarations of submitted herewith, Plaintiff easily meets its burden.

ii. Defamation

"In order to establish a *prima facie* case of defamation, a plaintiff must prove: (1) a false and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. Restatement (Second) of Torts, § 558 (1977). Chowdhry v. NLVH, Inc., 109 Nev. 478, 483–84, 851 P.2d 459, 462–63 (1993)(italics in original). If the defamation tends to injure the plaintiff in his or her business or profession, it is deemed defamation per *484 se, and damages will be presumed. See Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 409, 664 P.2d 337, 341 (1983.)

iii. Defendant made a false and defamatory statement about Plaintiff

Defendant made the statement, "Sahara Las Vegas to Close Permanently, Per Sources." Compl. at Ex. A. Defendant also made the statement that "**[t]he rumor of a potential closure of Sahara** is all the more shocking given the incredible (and expensive) makeover the resort has received since it was purchased by Alex Murelo [sic] in 2017." Id. (emphasis added). Defendant also made the statement, "**[t]he rumored closure of the Sahara Las Vega**s would be a blow to Las Vegas and the north end of The Strip." Id. (emphasis added). Defendant also made the statement, "Sahara's closure has not been announced or confirmed, so it remains to be seen how this saga will unfold. Sources don't always get it right, and in this case, **we'd love it if the information is wrong**." Id. (emphasis added). While some of this may be couched as opinion, such as the writer finds the information shocking and that the closure would be a blow to the north end of the strip, it clearly presupposes and makes the factual assertion that the rumor does exist, thus making the article defamatory if false. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 88 (2002)(quoting K–Mart Corporation v. Washington, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993) ("expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false."). Defendant repeatedly disclaims that the rumor is unconfirmed and might not be true, but that statement alone presumes and implies that there factually exists a rumor.

When read in context with entire article, the clear import of Defendant's statements can be read in two ways: (1) that SAHARA was actually closing in September 2020, or (2) there was a rumor circulating that SAHARA was closing in September 2020. Defendant's declaration makes clear it is the latter. Roeben Decl. ¶ 19. Either way, Defendant suggests that there is some underlying fact about SAHARA's permanent closure.

iv. The Statements are False

First, the SAHARA is still open and this opposition is filed on October 2, 2020. Hobson Decl. ¶ 8. At no time since the change in ownership in 2018 has there been any discussion of

permanently closing the SAHARA, and SAHARA did not close in September 2020. Id. at ¶ 7. Therefore, if the statement is characterized as one that SAHARA is permanently closing in September 2020, then it is false.

If we take Defendant's interpretation that the statements conveyed the existence of an unconfirmed rumor that SAHARA is closing in September 2020, then it is also false. The arguments for why there was no rumor are well explicated in Section III(A)(i) of this Opposition. Plaintiff directs to the Court thereto, so as not to unreasonably increase this Opposition's length. By the plain meaning of the word rumor, such a rumor did not exist until Mr. Roeben invented it. See Opp. To Def.'s Mot. Dismiss at pp. 6-9. Oddly enough, Mr. Roeben could have truthfully reported the actual claims made by the source thus providing the reader context. He could have reported "Source believes SAHARA Las Vegas will close in September 2020" which, even if the source is unreliable, would be an accurate report based on the text messages. Instead, he chose to intentionally add the false statement a rumor existed that SAHARA was permanently closing.

The Statements are Defamatory Per Se

Defendant's statements are defamatory, per se.

"Whether a statement is capable of a defamatory construction is a question of law." Chowdhry v. NLVH, Inc., 109 Nev. 478, 484, 851 P.2d 459, 463 (1993)(accord Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981)). "A jury question arises when the statement is susceptible of different meanings, one of which is defamatory." Id. "In reviewing an allegedly defamatory statement, '[t]he words must be reviewed in their entirety and in context to determine whether they are susceptible of a defamatory meaning.' " Hardy v. Chromy, 126 Nev. 718, 367 P.3d 777 (2010), (quoting Chowdhry, 109 Nev. At 484, 851 P.2d at 463 [quoting Lubin v. Kunin, 117 Nev. 107, 111, 17 P.3d 422, 426 (2001)]).

Nevada has long recognized that statements are "per se [defamatory] when they 'naturally tend to degrade [the plaintiff] in the estimation of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business, occupation or profession." Flowers

v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff'd, 161 Fed. Appx. 697 (9th Cir. 2006)[quoting Talbot v. Mack, 41 Nev. 245, 169 P. 25, 34 (1917)](second explanatory brackets in original).

It is rational, even self-evident, that statements involving the permanent closure of a business are the sort that tend to injure the reputation of a plaintiff. Even if viewed as an unsubstantiated and hedged report of rumor, the mere allegation of the existence of a rumor can instill concern within customers, vendors, and banks as to the reputation and reliability of a plaintiff. If someone head a rumor that their bank was going under, a reasonable person would rightfully be concerned and possible move banks. One need only think about the run on banks during the Great Depression or Great Recession, or even the Savings and Loan Crisis to understand the concept of reputation for a financial institution. In this case, reputation actually was harmed when a third party vendor that helps solicit convention business for SAHARA told LVRH that certain groups lost confidence in SAHARA and one would request the return of its deposits and re-evaluate the relationship in a year. Bond Decl. ¶ 3. There were at least three other incidents where vendors that assist with convention and group bookings reached out expressing concern over Defendant's article. Id. ¶ 4. Another group decided not to enter into an agreement out of concern the property would not be open when their event occurred. Id. ¶ 5.

Regardless if interpreted as a statement that there are rumors of SAHARA's closure or that SAHARA actually would close, the gravamen of Defendant's statements are the kind that would tend to injure Plaintiff's business reputation, and in this case actually did.

Because Defendants statements are the sort that tend to injure the reputation of Plaintiff, and Defendant's statements were false, Plaintiff has produced prima facie evidence to meet its burden on the first element.

v. The Element of Privilege is not Part of a Prima Facie Case

Privileges are defenses and not part of the prima facie case for defamation. Simpson v. Mars Inc., 113 Nev. 188, 191, 929 P.2d 966, 968 (1997) [adopting Restatement (Second) of

Torts §§ 593–96 (1977)]. Therefore, it is the Defendant's burden of proving that his publication is privileged. Moonin v. Nevada ex rel. Dep't of Pub. Safety Highway Patrol, 960 F. Supp. 2d 1130, 1143 (D. Nev. 2013); see Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277, 284 (2005). For purposes of the second prong of anti-SLAPP, Plaintiff is only required to demonstrate prima facie evidence a probability of prevailing on the claim. NRS 41.660. The Court does not weigh the evidence, but considers defendant's evidence only if it establishes Defendant should prevail as a matter of law. Coker, 135 Nev. at 11, 432 P.3d at 749 (2019). Defendant makes no argument and provides no evidence in his motion that his statements are entitled to a privilege that would allow him to prevail as a matter of law.

Nonetheless, it should be noted that there is one particular privilege, though not yet expressly recognized by Nevada, that the republication of defamatory rumors may be protected. The Restatement (First) of Torts § 602 (1938), Publication of Defamatory Rumors, Comment 1 states:

> There are occasions on which there is a legal duty or social obligation to communicate defamatory matter as to which the publisher has had no opportunity to make the investigation necessary to determine its truth or falsity. In such a case, **the publisher is protected only so long as he merely communicates the current rumor as rumor and not as fact. Even in such a case, to justify the publication, the publisher's doubt of the truth of the rumor may require him to make known the basis for such doubt.** (emphasis added)

As Mr. Roeben himself admits:

> In writing and publishing the Sahara Article, I did not intend to tell readers that Sahara was definitively planning to close the Sahara casino and resort. Rather, I wanted to inform readers that rumors were circulating that this could happen. While I believed, based on the information available to me, that Sahara was planning to close the Sahara casino and resort, I was aware that the rumors I heard could turn out to be inaccurate and wanted my readers to be aware of this.

Roeben Decl. ¶ 19

The article itself does identify the claim as a rumor, while offering some hedging as to the potential truth or falsity of the underlying rumor's truth and its unconfirmed nature. The author, however, provides no basis for his doubt in the truth of the alleged rumor, other than a

circular appeal to the fact that rumors can be wrong in the general sense. His declaration actually provides ample support for him to have stated the opposite, that he believed the rumor was true. Roeben Decl. ¶¶ 6-20. Clearly Mr. Roeben had doubts as to the truth of the Rumor since he expressed them multiple times in the article, but he did so without explaining the basis for those doubts except for the circular argument that rumors may not to be true, thus the basis for the doubt is that it is a rumor.

Because the second element is not Plaintiff's burden to prove a prima facie case, and Plaintiff presents evidence that demonstrates a prima facie case that the statement was not privileged, the second element is satisfied.

vi. There is Prima Facie Evidence of Fault – Regardless of the Standard of Culpability

Negligence Standard

The third element for defamation is fault, amounting to at least negligence. Chowdhry, 109 Nev. at 483–84, 462–63. Applying the negligence standard, Defendant's own declaration and supporting exhibits are sufficient evidence to establish a prima facie case. The text messages from Defendant's source appended to his motion as Exhibit A, although inadmissible for the truth of the matters stated therein as hearsay (NRS 51, et seq.), show that the source provided information the exact same day that Defendant published the article. See Def.'s Mot. Dismiss at Ex. A. It is important to note that there are no time stamps on the texts, so it is unclear the time differential between Defendant's receipt and publishing which is an important factor in determining how much true investigation Defendant did. Nonetheless, Defendant's own texts in that conversation show a limited form of inquiry challenging the sources statements, but then there are two weeks of nothing followed by a message on August 18, 2020 providing an answer to a question seemingly missing from the exhibit. Def.'s Mot. Dismiss at Ex. A. ("Hi Scott. To answer your question, no it's usually a verbal request to companies to come in and inventory and

then bid is issue. But it's all confidential."). The fact that Defendant published his article while there will still unanswered questions that bear directly on the veracity of the sources claims is sufficient for a reasonable person to conclude Defendant acted negligently. It appears Defendant only tried to obtain evidence to substantiate the source's claims after being called out for the falsity of his article.

Additionally, on July 30, 2020 the text message begins with what appears to be an introduction: "I work for company [redacted] We are #1 company that does large liquidation sales. We did [redacted] and many others." Id. The reasonable conclusion to draw is that Defendant was not at all familiar with his source, and that this text message exchange was the first time they had ever communicated. The source even requested information on another property in exchange for providing the SAHARA information. Id. Yet, somehow, Defendant asserts in his declaration that "I considered this source to be inherently reliable and trustworthy[. . .]." Roeben Dec. at ¶ 16. That statement is conclusory and seems to have no support. It is clear that Defendant knew nothing of his source as evidenced by the introduction in the text messages, yet defendant took a stranger's word without further investigation.

Because Defendant apparently had no reason to believe his source was trustworthy, had only become acquainted with his source on the same day he published the article, expressed concern as to the sources trustworthiness be asking questions, and only attempted to validate the source's claims after the article was published, Plaintiff has met the "burden of production to show that a reasonable trier of fact could find that he or she would prevail." Taylor v. Colon, 136 Nev. Adv. Op. 50, 468 P.3d 820, 824 (2020).

Actual Malice Standard

Defendant asserts that negligence is not the proper standard because Plaintiff is a general purpose public figure. Def.'s Mot. Dismiss at 21:18-23. However, to be a general public figure,

a Plaintiff must "achieve such pervasive fame or notoriety that [they] become[ ] a public figure for all purposes and in all contexts." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 719, 57 P.3d 82, 91 (2002) quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 342–43, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). Defendant makes the same argument for that position that he asserts for why his statements were a matter of public concern for protection under anti-SLAPP, namely that there is general reporting about SAHARA related to the pandemic, with the addition that SAHARA is one of the oldest properties in Las Vegas. Def.'s Mot. Dismiss at 21:16-23. Defendant asserts the same argument in opposition set forth above in Section III(a)(ii) – that the interested group was too small, that the alleged public interest was amorphous, that the interest in existence of rumor is mere curiosity, and that the challenged statements are not closely connected to the public interest.

Defendant also asserts that SAHARA is a limited public person. Whether a plaintiff is a limited-purpose public figure is a question of law. Bongiovi v. Sullivan, 122 Nev. 556, 572, 138 P.3d 433, 445 (2006) (citing Schwartz v. American College of Emergency Phys., 215 F.3d 1140, 1145 (10th Cir.2000)). Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue or public controversy for a limited range of issues. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 720, 57 P.3d 82, 91 (2002). However, it is possible Plaintiff is a limited public figure despite not injecting itself into the controversy regarding its business operations and COVID-19. For example, establishments that actively advertise and seek commercial patronage have been held to be public figures, for the purpose of consumer reporting. Pegasus, 118 Nev. at 720–21, 57 P.3d at 92 (quoting Journal–Gazette Co. v. Bandido's, 712 N.E.2d 446 (Ind.1999)).

Assuming this Court determines that the SAHARA is a limited public person and subject to the actual malice standard, Plaintiff produces sufficient evidence for a reasonable trier of to

find Plaintiff would prevail. See Taylor, supra at 50, 824. However, limited discovery is necessary to gather additional information not in Plaintiff's possession regarding Defendant's state of mind and information to gauge his subjective doubts in the truth of his source's claims.

"Actual malice (or more appropriately, constitutional malice) is defined as knowledge of the falsity of the statement or a reckless disregard for the truth." Nevada Indep. Broad. Corp. v. Allen, 99 Nev. 404, 414, 664 P.2d 337, 344 (1983)(citing New York Times Co. v. Sullivan, 84 S. Ct. 710, 726 (1964)). Defendant asserts that he did not act with actual malice because his "statements exclusively repeat rumors he heard from sources Mr. Roeben found reliable concerning Sahara's plans to shut down the Sahara casino and resort." Def.'s Mot. 23:1-3, see also Roeben Decl. ¶¶ 16, 20

Pegasus set forth concisely what reckless disregard for the truth means and how it can be established:

> [A]ctual malice is proven when a statement is published with knowledge that it was false or with reckless disregard for its veracity. Reckless disregard for the truth may be found when the "defendant entertained serious doubts as to the truth of the statement, but published it anyway." This test is a subjective one, relying as it does on "what the defendant believed and intended to convey, and not what a reasonable person would have understood the message to be." **93 Recklessness or actual **malice may be established through cumulative evidence of negligence, motive, and intent**.

Pegasus, 118 Nev. at 722, 92–93. (fn. omitted)(emphasis added)(quotations in original).

The United States Supreme Court, in St. Amant v. Thompson, 88 S. Ct. 1323 (1968) provides context into the subjectivity component of actual malice:

> [A defendant] cannot, however, automatically insure a favorable verdict by testifying that he published with a belief that the statements were true. The finder of fact must determine whether the publication was indeed made in good faith. **Professions of good faith will be unlikely to prove persuasive, for example, where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call**. [. . .] Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.

Id. at 1325. (emphasis added).

In this case, Defendant's argument is based entirely on his own declaration of good faith that he believed the statements were true. Roeben Decl. ¶ 20 ("I subjectively believe that every single statement in the Sahara Article, to the extent it amounts to a factual statement, is true and accurate, and I had this belief at the time I published it.") However, the remainder of his declaration, and the text messages with his source, show that defendant's assertion of the existence of a rumor was entirely fabricated, and there were obvious reasons to doubt the veracity of his report's accuracy.

First, defendant made the factual claim in his article that he had "sources," plural, for the existence of a rumor. Def.'s Mot. Dismiss at 6:3. "Sahara is expected to close permanently in September 2020, per our **sources**.")(emphasis added). In reality, he admits he only had one source, the employee of the liquidation company. Roeben Decl. ¶ 7 ("I spoke with **a source**"), ¶ 8 ("**My source**" singular), ¶¶ 8-14 ("**My source**" singular). While Defendant will characterize this as a minor inaccuracy not giving rise to defamation, when the alleged fact is the existence of a rumor, the number of sources for that claim is highly relevant. See *Rumor*, Merriam–Webster https://www.merriam-webster.com/dictionary/rumor (last visited September 24, 2020) ("(1) talk or opinion **widely disseminated with no discernible source**") (emphasis added). A single source is not widely disseminated, and there was a source for the information. A statement of multiple sources when there is only one gives false credibility to his claim and in fact makes it appear widely disseminated when it is not. Defendant knew he had only one source, yet published that he had more than one. That is evidence that he knew the statement was false. Indeed, the Defendant's use of "sources" in his article but only

claims a single "source" in his declaration is circumstantial evidence that he intended to misrepresent what the evidence actually supported.

Second, Defendant entertained serious doubts as to the truth of the statement. The claim that there were rumors is literally not true as explained earlier in this Opposition. This claim only found its way into the article because Defendant made it up. Defendant's source makes no mention of rumor, only statements supported by verifiable facts. Mr. Roeben's own disclaimers as to the possibility that the statements were false, demonstrates he harbored doubts as to its truthfulness. Roeben Decl. ¶ 19 ("I was aware that the rumors I heard could turn out to be inaccurate and wanted my readers to be aware of this."), Def's Mot. Dismiss at 14:19-21 ("He repeatedly couched his statements related to this rumor with the limitation that the rumor has not been confirmed, and that it is entirely possible that his sources could be wrong.") See also Complaint at Exhibit A (multiple references to the existence of a rumor). Defendant claims he had ample information to actually believe the truth of his statements, however. See Roeben Decl. ¶¶ 6-17. Despite this, he included none of the facts provided by his source, which he believed to be credible, in the article. The fact that he intentionally excluded that information evidences that he harbored doubts as to its credibility.

There is sufficient evidence for a reasonable trier of fact to conclude that the "rumor" reported on was invented by Defendant because of his doubt for the accuracy of his source's information. The disparity between his declaration, the text messages, twitter statements, and the definitive statement he had sources that a rumor existed are evidence from which a reasonable trier of fact could conclude that he harbored serious doubts as to the truth of the statement yet published them anyway.

Third, Defendant has admitted in the past he publishes statements even when he has doubts as to their truth. For example, Mr. Roeben, under the Twitter account "@vitalvegas" has said "I'm not invested in being right. I'm invested in the conversation. So, thank you." Hunt Decl. ¶ 5, Ex. A. That is clear evidence of how he thinks, and sheds light on his intent when publishing statements. It is reasonable to infer that his publications are frequently made despite concerns for their truth for an ulterior purpose.

Fourth, repeated incidents with Plaintiff demonstrate he had a motive report the existence of a rumor when he knew there was none and had reason to doubt the truth of his article. Specifically, . Hunt Decl. ¶ 2-3.

vii. There is Prima Facie Evidence Damages

Defendant's statements are defamatory, per se.

Nevada has long recognized that statements are "per se [defamatory] when they 'naturally tend to degrade [the plaintiff] in the estimation of his fellow men, or hold him out to ridicule or scorn, or would tend to injure him in his business, occupation or profession." Flowers v. Carville, 292 F. Supp. 2d 1225, 1232 (D. Nev. 2003), aff'd, 161 Fed. Appx. 697 (9th Cir. 2006)[quoting Talbot v. Mack, 41 Nev. 245, 169 P. 25, 34 (1917)](second explanatory brackets in original).

The analysis for how the Statements are per se defamatory and damages should be presumed are forth in Section III(B)(iv), above. For those reasons, Plaintiff has produced sufficient evidence to meet its burden on this element.

What this evidence demonstrates, and what a reasonable trier of fact can conclude, is that Defendant had serious questions about the reliability of information provided by his source, wanted to publish the information despite those concerns, and intentionally made up the

existence of a rumor for the purpose of shielding himself. In the process, he created and published a defamatory statement with actual malice that is false and caused damage.

As an aside, Mr. Roeben's own counsel, Mr. Rendazza, has argued in an article he wrote for CNN in 2016 involving an author's publication about a story regarding First Lady Melania Trump that reporting on rumors can and should be actionable: "he [defendant] raises the defense that he was 'only repeating rumors' about Melania Trump. While 'rumors' are not a reasonable source, some courts recognize the defense of 'neutral reportage.' That defense lets you get away with sourcing a 'rumor,' but only if you report it as such, and the publication is 'reasonable.' " "Does Melania Trump's libel suit really threaten a free press?" December, 29, 2016, www.CNN.com, available at https://www.cnn.com/2016/12/29/opinions/melania-trump-lawsuit-freedom-of-press-randazza/index.html (last visited September 24, 2020). Given the facts presented by Mr. Roeben in his declaration and supporting exhibits, it is clear he was not reasonable in reporting on rumors, especially ones he made up. Thus, it is truly confusing how counsel can make the argument that his client should be protected for doing the exact same thing.

C. DISCOVERY IS NEEDED AS ADDITIONAL FACTS ARE IN THE POSSESSION OF DEFENDANT

"Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information." NRS. 41.660(4). In this case, because Defendant's subjective state of mind is relevant to the matter, additional information that is solely in his or third parties possession is necessary to oppose this motion. Declaration of Matthew Weitz ("Weitz Decl.") ¶ 2. Specifically, the following types of information: (i) Defendant's basis for claiming his source is reliable, (ii) what facts support defendants claim that he believed the source could be wrong, (iii) his reasons for using the word "rumor" when his source never

claimed there was a rumor, (iv) the circumstances surrounding Defendant's introduction to the source, (v) the time periods between communicating with the source and publication of the article, (iv) what discussions occurred with his source between July 30, 2020 and August 18, 2020. Weitz Decl. ¶ 3.

Although Plaintiff has sufficient facts to meet its burden, Plaintiff has shown that there is additional information in the possession of Defendant and third parties to oppose Defendant's motion and meet its burden. Therefore, the Court should continue the hearing on this motion and permit limited discovery on the above referenced matters to obtain those facts.

IV. CONCLUSION

Because there is evidence that Defendant purposefully falsified information in his article, made clear claims he doubted the truth of facts reported in his article, there is evidence that he invented the concept of rumor, has made statements he does not care about the truth or falsity of his statements, and had motive to publish such statements about Plaintiff, Plaintiff has met its burden to produce evidence to show that a reasonable trier of fact could find that it would prevail.

Respectfully submitted:

DATED this 2nd day of October, 2020.

/s/ Matthew J. Weitz /s/

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CERTIFICATE OF SERVICE

The undersigned certifies that, on the 2nd day of October, 2020, a true and correct copy of the foregoing OPPOSITION TO DEFENDANT SCOTT ROEBEN'S ANTI-SLAPP SPECIAL MOTION TO DISMISS UNDER NRS 41.660 was served on all persons registered for service in the Court's Electronic Filing system, including but not limited to:

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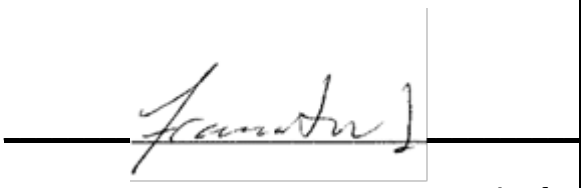

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