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11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

14 STEFAN WILHELMY, an individual; and  
15 PEARADISE, LLC, a Nevada limited  
16 liability company;

17 Plaintiffs,

18 vs.

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20 KIMBERLY ANN HAUETER and JOHN  
21 DOE HAUETER, wife and husband;  
22 ALEJANDRA JAVIER and JOHN DOE  
23 JAVIER, wife and husband; SAVANNAH  
24 BROWN and JOHN DOE BROWN, wife  
25 and husband; MONICA SANDU and JOHN  
26 DOE SANDU, wife and husband; SADIE  
27 PAISLEY DOE AND JOHN DOE  
28 PAISLEY, wife and husband; DOE  
DEFENDANTS I-X, INCLUSIVE; AND  
ROE DEFENDANTS I-X, INCLUSIVE.

Defendants.

Case No. A-21-837173-C  
Department: 2

**RESPONSE IN OPPOSITION  
TO MOTION TO DISMISS**

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**I. Introduction.**

Plaintiffs, by and through counsel, hereby respond in opposition to Defendants’ Anti-Slapp Special Motion to Dismiss (“Motion”), and hereby incorporate by reference the sworn declarations and additional evidence attached thereto.

The Defendant-TikTokers are asking this Court to allow their “trial by public opinion” to continue and to strip Plaintiffs of their due process right to adjudicate their claims in Court instead of on TikTok. Defendants desperately want the “likes” and “follows” associated with their smear campaign to grow. To wit, they shamelessly ask this Court to allow them to continue to *falsely* accuse Mr. Wilhelmy of one of the most heinous crimes on earth – rape, without any consequences. Defendants want to “convict” Mr. Wilhelmy of rape in the court of public opinion, social media, and want this Court to endorse their conduct by dismissing this case at the pleading stage.

As alleged in the Complaint, Defendants are leveraging an on-going social media campaign with persuasive “sexual assault”, “SA”, and “metoo” propaganda to entice the public with click-bate styled “reporting” to polarize the public and implant false statements about Plaintiffs into their minds. As alleged in the Complaint, Defendants’ false sexual assault statements are based on spin-doctoring, not facts. The Defendant-TikTokers knew that by publicly and falsely accusing Mr. Wilhelmy of rape that their audience would be triggered by buzzwords, not the facts, evidence, or

1 the law. This Court should not reward the Defendants’ egregious smear campaign by  
2 dismissing this case.

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4 After peeling back the layers of rhetoric and unsupported conclusions within  
5 the Motion, Defendants’ arguments are exposed and fail as a matter of law because:  
6 (1) none of the Defendants can meet their burden of showing “by a preponderance of  
7 the evidence, that the claim is based upon a good faith communication in furtherance  
8 of the right to petition or the right to free speech in direct connection with an issue of  
9 public concern”. NRS 41.660(3)(a); and (2) *even if* each Defendant can meet their  
10 lofty statutory burden, Plaintiffs’ Complaint cannot be dismissed because they have  
11 “demonstrated with *prima facie* evidence a probability of prevailing on the claim”. *Id.*  
12 (emphasis added). Plaintiffs respectfully request that the Court dismiss the frivolous  
13 Motion and award the Plaintiffs their attorneys’ fees and costs, and an additional  
14 \$10,000.00 pursuant to NRS 41.670(3).  
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## 19 MEMORANDUM OF POINTS AND AUTHORITIES

### 20 **II. Argument.**

21  
22 The anti-SLAPP statute provides a procedural mechanism to dismiss "*meritless*  
23 lawsuit[s] that a party initiates *primarily* to chill a defendant's exercise of his or her  
24 First Amendment free speech rights" before incurring the costs of litigation. *Stubbs v.*  
25 *Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013) (emphasis added). Thus,  
26 meritorious claims must proceed. *Id.* The Court must undertake a two-prong analysis.  
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1 First, it must “[d]etermine whether the moving party has established, by a  
2 preponderance of the evidence, that the claim is based upon a good faith  
3 communication in furtherance of. . . the right to free speech in direct connection with  
4 an issue of public concern.” NRS 41.660(3)(a). *Only if* the first prong is met does the  
5 inquiry move to the second prong where “the burden shifts to the plaintiff to show  
6 ‘with prima facie evidence a probability of prevailing on the claim.’” *Shapiro v. Welt*,  
7 133 Nev. 35, 39, 389 P.3d 262, 268 (2017) (quoting NRS 41.660(3)(b)). Otherwise,  
8 the inquiry ends at the first prong and this case advances. Notably, Plaintiffs only need  
9 to demonstrate that its claims have at least “minimal merit.” *Navellier v. Sletten*, 29  
10 Cal. 4th 82, 89 (2002). Here, Defendants have failed to meet their burden under the  
11 first prong. Yet, Plaintiffs have easily met their minimal burden under the second  
12 prong.

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18 **A. Defendants’ False Statements Do Not Meet The First Prong Requirements**  
19 **Of NRS 41.660(3)(a); Therefore, Their Motion Must Be Denied.**

20 To acquire anti-SLAPP protection, Defendants must establish that the claims in  
21 the Complaint are “based upon a good faith communication in furtherance of. . . the  
22 right to free speech in direct connection with an issue of public concern.” NRS  
23 41.660(3)(a). There are four categories of communications defined in NRS 41.637  
24 that qualify. Defendants can only identify one, which is NRS 41.637(4). Defendants  
25 must meet all three prongs of this subsection, namely: (1) “[c]ommunication made in  
26 direct connection with an issue of public interest”; (2) “in a place open to the public  
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1 or in a public forum,” and (3) “which is truthful or is made without knowledge of its  
2 falsehood”. *See* [Motion at 6:9:16.] Defendants cannot meet the first two elements.

3  
4 **(1) Defendants’ Statements Were Not Made in Direct Connection with an  
5 Issue of “Public Interest” As Required Under *Shapiro*.**

6 Although what constitutes a “public interest” is defined broadly, it must still  
7 meet all five *Shapiro* factors. *Shapiro*, 133 Nev. at 39, 389 P.3d at 268. **Defendants**  
8 **utterly failed to engage in any analysis of the five *Shapiro* factors.** This mistake is  
9 fatal to the first prong of the analysis. Defendants spend nearly 2.5 pages resting only  
10 on identifying the “conduct of well-known public figures and celebrities”, “sex  
11 offenders”, and claiming Wilhelmy is a public figure in a conclusory manner. [Motion  
12 at 6:17-26; 7-8:1-10.] However, the Nevada Supreme Court has expressly rejected  
13 this incorrect analysis. *See Smith v. Zilverberg*, 481 P.3d 1222, 1227 (2021)  
14 (“However, while the public might have a heightened interest in Smith given his status  
15 as a public figure, **statements about a public figure may still concern matters that**  
16 **are private under the *Shapiro* factors.** Accordingly, we reject the notion that  
17 statements regarding public figures necessarily relate to a public interest.”) (emphasis  
18 added). Defendants’ attempt to analogize the Plaintiffs as celebrities or sex offenders  
19 is also grossly overstated; moreover, their public figure analysis is misplaced under  
20 prong one instead of prong two.

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27 Firstly, whether Mr. Wilhelmy is a public figure is not relevant to the first prong  
28 of the anti-SLAPP motion analysis. *See Annette F. v. Sharon S.*, 119 Cal. App. 4th

1 1146, 1162 (2004) (analyzing whether plaintiff is a public figure under the second  
2 prong of the anti-SLAPP motion analysis). Whether he qualifies as a public figure  
3 relates to the merits of the defamation claim and not whether the statements concern  
4 a “public interest.” See *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 92 (2002)  
5 (“Having concluded that [plaintiff] is a limited public figure, we turn to the district  
6 court's finding that [plaintiff] failed to present evidence of actual malice.”). Therefore,  
7 whether Plaintiff is a public figure cannot be dispositive under the first prong of the  
8 Motion. *Hilton v. Hallmark Cards*, 599 F.3d 894, 905 (9th Cir. 2010) (when  
9 considering whether an issue is a public concern under prong one, “[t]hat  
10 neither Hilton nor Hallmark are public officials, therefore, cannot be dispositive.”).

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15 Secondly, statements regarding public figures may still be private issues and  
16 not public interest issues. They are two distinct issues. *Smith v. Zilverberg*, 481 P.3d  
17 at 1227. The *Shapiro* factors govern whether the statements relate to a public interest.  
18 *Id.* Nevada courts have since adopted the following principles to distinguish issues of  
19 private and public interest:  
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- 22 (1) ‘public interest’ does not equate with mere curiosity;
- 23 (2) a matter of public interest should be something of concern to  
24 a substantial number of people; a matter of concern to a speaker  
25 and a relatively small specific audience is not a matter of public  
26 interest;
- 27 (3) there should be some degree of closeness between the  
28 challenged statements and the asserted public interest—the  
assertion of a broad and amorphous public interest is not  
sufficient;

1 (4) the focus of the speaker's conduct should be the public  
2 interest rather than a mere effort to gather ammunition for  
3 another round of private controversy; and

4 (5) a person cannot turn otherwise private information into a  
5 matter of public interest simply by communicating it to a large  
6 number of people.

7 *Smith*, 137 Nev. at 1227 *citing Shapiro*, 389 P.3d at 268.

8 Here, under factor 1, mere curiosity of what transpires in Wilhelmy's private  
9 home between 4 or 5 adults is not a "public interest". Under factor 2, what transpires  
10 in Wilhelmy's private home is not "something of concern to a substantial number of  
11 people". Concerns over who is extended a private invitation to Wilhelmy's home and  
12 what happens there can only be "a matter of concern to a speaker and a relatively small  
13 specific audience" and "is not a matter of public interest". *Shapiro*, 389 P.3d at 268.

14 Under factor 3, the challenged statements, that Wilhelmy sexually assaulted  
15 Savy and Ally, is light-years away from the public interest Defendants assert, i.e., "a  
16 significant issue of public interest, namely a pattern of allegations of sexual assault  
17 against a public figure". [Motion at 8:3-4.] The alleged concern over the so-called  
18 pattern of "sexual assault against a public figure" is precisely the type of "broad and  
19 amorphous public interest [that] is not sufficient". *Shapiro*, 389 P.3d at 268.

20 Under factors 4 and 5, the Defendant-speakers' conduct here is purely a  
21 character assassination scheme against Wilhelmy by four individuals who are engaged  
22 in a "mere effort to gather ammunition for another round of private controversy".  
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1 *Shapiro*, 389 P.3d at 268. Therefore, Defendants cannot meet these public interest  
2 factors either.

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4 The *private* controversy created by the Defendants is about two individuals in  
5 Las Vegas on a 12-day sleep-over, wherein adult females were naked together,  
6 engaging in physical contact, and skinny-dipping. The Defendants, particularly,  
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8 Kimberly Haueter aka “Piggy Stardust” has continued her smear campaign almost  
9 daily, from May 26, 2021, to throughout this litigation. *See* Declaration of S.  
10 Wilhelmy, **Exhibit 6**, ¶ 20. Defendant Haueter is using the sexual assault allegations  
11 as ammunition by widely disseminating the accusations on social media to thousands  
12 or people simply to harm Wilhelmy. [*Id.* at ¶ 20.] This includes passing around the  
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14 Motion in random Instagram comments to Wilhelmy’s friends. [*Id.*] Her statements  
15 are nothing more than ammunition. Defendants have done nothing by way of true  
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17 victim’s advocacy, education, counseling, therapy, financial assistance, or other forms  
18 of public interest work. Defendants have done just the opposite, and have even  
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20 traumatized actual victims of sexual assault. [*Id.* at ¶ 21.]  
21

22 The facts in *Smith*, with the TV personality “thrifters” who teach people around  
23 the world how to conduct a thrift business and who do thrifting business with members  
24 of the public, do not exist here. Most of the Discord members will never be in direct  
25 contact with or stay overnight at Wilhelmy’s home. Plaintiffs simply created an online  
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1 support group for women in the BBW<sup>1</sup> community. [*Id.* at ¶ 15.] The number of  
2 TikTok followers on the Pearadise TikTok account is irrelevant to the *Shapiro* analysis  
3 for public interest issues. [Motion at 8:10-12.] Members of the Pearadise Discord chat  
4 server do not rely on Plaintiff for advice, do not look to Plaintiff for approval, or use  
5 Discord to conduct business with Plaintiff. [*Id.* at ¶ 16.] Any member of the Pearadise  
6 Discord who has ever met Plaintiff did so for personal reasons. Furthermore, the  
7 conduct in *Smith*—bullying and retaliation—is conduct that can occur through digital  
8 communications, whereas the conduct alleged about Plaintiff—sexual assault—could  
9 only occur in person.  
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13           Plaintiff’s conduct did not occur in connection with his position as the founder  
14 of the Pearadise discord. Although Defendants try and use sensationalism to baselessly  
15 describe a salacious purpose of the Pearadise discord, the Pearadise discord was  
16 founded as a way to promote body positivity and to connect like-minded people in the  
17 BBW community of all “race, size, age (18+) or gender.” [*Id.* at ¶ 15.] Plaintiff did  
18 not create the BBW community. [*Id.*]The BBW community was around long before  
19 Plaintiff created the Pearadise discord. At the very most, it could be argued that the  
20 sexual assault allegations were of interest to members of the Pearadise discord who  
21 intended to meet or have met Plaintiff in person; however, this does not make it a  
22 public interest simply because Defendants shared the allegations on TikTok. Members  
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28 <sup>1</sup> “BBW” is an acronym for big, beautiful, women.

1 do not join the Pearadise discord to date, have sexual relations with, or even meet  
2 Plaintiff. [*Id.* at ¶ 16.] Members join the Pearadise discord to connect with other  
3 people in the BBW community who understand what it is like to be a big, beautiful  
4 woman and those who appreciate and praise the figures of big, beautiful women.  
5

6 **(2) Defendants’ False Statements Were Not Made in “Good Faith” Because**  
7 **the False Sexual Assault Allegations Are Not True and Contradictory**  
8 **Evidence Shows the Defendants Knew The Statements Were False.**

9 Defendants argue that their false statements are protected because they are  
10 either truthful or without knowledge of falsity. [Motion at 9:22-25.] However,  
11 Defendants fail to articulate the complete standard and facts to be considered. In 2019,  
12 the Nevada Supreme Court noted: “NRS 41.660's burden-shifting framework evolved  
13 in 2015 when the Legislature *decreased* the plaintiffs burden of proof from ‘clear and  
14 convincing’ to ‘prima facie’ evidence. 2015 Nev. Stat., ch. 428, 13, at 2455. As  
15 amended, the special motion to dismiss again functions like a summary judgment  
16 motion procedurally. . .” *Coker v. Sassone*, 432 P.3d 746, 748, 135 Nev. Adv. Op. 2,  
17 11 (2019) (emphasis in original). Therefore, “under the preponderance standard, an  
18 affidavit stating that the defendant believed the communications to be truthful or made  
19 them without knowledge of their falsehood is sufficient to meet the defendant's burden  
20 *absent contradictory evidence in the record.*” *Stark v. Lackey*, 458 P.3d 342, 347, 136  
21 Nev. Adv. Op. 4, 44 (emphasis added). Therefore, the Court must consider whether  
22 evidence to the contrary exists when considering whether it is *more likely than not*  
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1 that the communications were truthful or made without knowledge of their falsehood.

2 *Id.*

3 **(a) Defendants Cannot Show That Their Statements, That Wilhelmy**  
4 **Committed Sexual Assault Against Them, Are Truthful. However,**  
5 **Plaintiff Can Easily Demonstrate By a Preponderance of the Evidence**  
6 **That Their Statements Are False.**

7 Defendants' inability to meet their burden under this element of prong one  
8 means the Court's inquiry ends, and the Motion must be denied. *See Shapiro v. Welt,*  
9 389 P.3d at 268. ("[N]o communication falls within the purview of NRS 41.660 unless  
10 it is truthful or made without knowledge of its falsehood." (internal quotation marks  
11 omitted)).

12 First, as a preliminary matter, this Court should strike all of Defendants' written  
13 statements because they are not evidence, which they were required to produce. *Stark*  
14 *v. Lackey*, 458 P.3d at 347. Defendants were required to produce factual contentions  
15 under the penalty of perjury, in conformance with N.R.C.P. 56(e), otherwise they may  
16 be stricken. Civil Practice Rule 2.21; *see also* NRS 53.045 (use of unsworn declaration  
17 in lieu of an affidavit requires the affiant to "declare under penalty of perjury that the  
18 foregoing is true and correct.) Anyone could have created the statements, they lack  
19 foundation, and are certainly not evidence.

20 Second, Defendant incorrectly state that Defendants "Ms. Brown **and Ms.**  
21 **Sandu** both made statements that Mr. Wilhelmy had sexually assaulted them during  
22 an April visit to Wilhelmy's Las Vegas home." [Motion at 10:21-22] This is a  
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1 complete lie. Defendants fail to cite anywhere in the evidentiary record where Ms.  
2 Sandu claims she was sexually assaulted or that she even visited Wilhelmy’s home.  
3 Defendant Sandu has never claimed that *she* was sexually assaulted or that she has  
4 even been to Wilhelmy’s home—nor does her unsworn statement say this. *See* Motion,  
5 Ex. H. The evidence shows the opposite. Wilhelmy has never met Sandu. [Ex. 6 at ¶  
6 4]. Defendants have once again resorted to folklore.  
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9 Third, Defendants Savy and Ally rest on their unsworn statements for the  
10 proposition that they were sexually assaulted and that they believe their statements to  
11 be truthful. Savy claims there were multiple instances of Wilhelmy touching her,  
12 spanking her butt, and caressing her stomach without her consent, and that she  
13 “believed that Wilhelmy sexually assaulted me by touching me in a sexual manner  
14 without my consent.” [Motion, Ex. A, ¶¶ 6-8, 14.] Similarly, Ally claims Wilhelmy  
15 touched her stomach, never asked for consent, and that she “felt that Wilhelmy  
16 sexually assault me by touching me in a sexual manner without my consent.” [Motion,  
17 Ex. D, ¶¶ 6, 8, 9.] However, the Court must consider the contradictory evidence in the  
18 record before determining whether Defendants have met their burden. *Stark v. Lackey*,  
19 458 P.3d at 347.  
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25 The surveillance videos provide sufficient contradictory evidence for this Court  
26 to summarily conclude that Defendants have failed to meet their burden, by a  
27 preponderance, that they were sexually assaulted. [Ex. 6. at ¶ 7.] Editorializing “facts”  
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1 in an unsworn statement stands no chance in front of undeniable video surveillance of  
2 the alleged incidents.

3 Numerous females who were either physically present during the physical  
4 contact or who spoke to both Savy and Ally about their gripes have declared *under*  
5 *the penalty of perjury*, that there was no sexual assault or non-consensual touching.  
6  
7 Period. [See Declarations of: Ashley Zimmerman in **Exhibit 1**; Jesse James Corrao in  
8 **Exhibit 2**; Kassandra Paredes in **Exhibit 3**; Keneta Dietz in **Exhibit 4**; Cipreanna  
9 Ford in **Exhibit 5**. In stark contrast, the witnesses describe consensual and mutual  
10 physical contact, the welcoming of smacking butts – including Savy herself smacking  
11 witness Kassandra Paredes’ butt so hard that it echoed even on the surveillance  
12 camera’s audio. [See video in Ex. 6, ¶.]

16 Moreover, the Defendants never claimed or believed they were sexually  
17 assaulted, raped, touched non-consensually, or even made uncomfortable at any time  
18 during their stay. [Id. at ¶¶ 5-7.] Instead, the evidence shows that they both enjoyed  
19 themselves for 9 to 10 more days in Wilhelmy’s home, despite having the ability to  
20 leave in a van parked in the garage (or with Uber/Lyft), and despite having the  
21 opportunity to not come back after they both left on their own to get tattoos together.  
22 [Ex. 3, ¶ 12.]. Savy and Ally apparently enjoyed themselves so much that the tattoo  
23 parlor owner, Jesse James Corrao, declared under oath they raved to him about how  
24 much fun they were having. [Ex. 2.] Savy and Ally even invited Mr. Corrao to  
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1 Wilhelmy’s home to have fun. [*Id*] This was days after the alleged incidents had  
2 occurred. [*Id.*]

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4 Witness Ashley Zimmerman, an actual sex assault survivor, has also declared  
5 under oath that over a month after the alleged incidents she, Savy, Ally, and Wilhelmy  
6 had a Facetime call wherein their sole concern was that they felt uncomfortable. [*Ex.*  
7  
8 1.] They never said they were raped or sexually assaulted. [*Id.*] They both were also  
9 conciliatory, and felt their concerns were heard and they both stated they were ready  
10 to move on. [*Id.*]

11  
12 Notably absent from the unsworn statements are any of the facts this Court  
13 would expect to see, given the egregious allegations of a sex crime being committed—  
14 no allegations of sex, no allegations of penetration of, or by, any body part, no  
15 allegation of touching skin, no allegations of touching breasts or genitals, no  
16 allegations of lewdness, no bodily fluids, no specifics, *nothing*. The unsworn  
17 statements are devoid of any details; they are conveniently broad overgeneralizations.  
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21 It follows logically, that if Savy and Ally’s statements were false, then they  
22 published their statement with knowledge of falsity. As such, they cannot satisfy the  
23 good faith communication requirements within NRS 41.637(4).  
24

25 **(b) The Accusation of “Sexual Assault” Is An Actionable Statement Of**  
26 **Fact, Not An Opinion.**

27 Defendants argue that opinions, ideas, and “evaluative opinions” are non-  
28 actionable. [*Motion at 10:9-20.*] But the facts before this Court do not involve

1 statements of opinion, ideas, and evaluation; they involve repeated false statements of  
2 fact, i.e., sexual assault.

3 “In determining whether a statement is actionable for purposes  
4 of defamation suit, court must ask whether a reasonable person would be likely to  
5 understand the remark as an expression of the source's opinion or as a statement of  
6 existing fact; if such published statements could be construed  
7 as defamatory statements of fact, and therefore actionable, jury should resolve  
8 matter.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).  
9 False assertions of objective facts are actionable. *See Pacquiao v. Mayweather*, 803  
10 F. Supp. 2d 1208, 1213 (D. Nev. 2011) (“defendants' alleged statements are actionable  
11 defamatory statements because they falsely assert an objective fact".)

12 Defendants shockingly reduce the accusation of sexual assault and rape to a  
13 flexible definition that can be thrown around haphazardly and without consequences:  
14 “‘sexual assault’ is a subjective term to the average layperson that can have a vast  
15 number of different meanings and cover a broad range of conduct.”; [Motion at 10:23-  
16 24.]; and “Defendants here use the term ‘sexual assault’ to describe unconsented  
17 touchings.” Motion at 10:26-27. This Court should not reward Defendant’s for their  
18 manufactured standards. Under Defendants’ standard anyone could face life in prison  
19 for a pat on the back – a prosecutor’s dream and public defender’s nightmare.  
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1           **Sexual assault is an egregious crime that carries a life sentence in prison**  
2 **without the possibility of parole.** NRS 200.366. Nevada law defines it as  
3 “penetrative sex with a person who does not consent or is not capable of consenting.”  
4

5 *Id.* Moreover, the plain meaning of “sexual assault” according to Webster’s  
6 Dictionary is:

7  
8           illegal sexual contact that usually involves force upon a person  
9           without consent or is inflicted upon a person who is incapable of  
10           giving consent (as because of age or physical or mental incapacity)  
11           or who places the assailant (such as a doctor) in a position of trust  
          or authority.

12 Any reasonable person hearing Defendants’ sexual assault accusations identifying  
13 Wilhelmy as a “predator”, repeatedly, and urging others take action against him would  
14 believe that some form of sex, sexual force, or penetration occurred, not “unconsented  
15 touching”.  
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18           Whether sexual assault occurred can be objectively proven. It’s done in every  
19 day in courtrooms around the country. Therefore, this factual accusation is actionable  
20 as defamation if proven false, and a jury should resolve this matter. *Pegasus v. Reno*  
21 *Newspapers, Inc.*, 57 P.3d at 88; *see also Pacquiao v. Mayweather*, 803 F. Supp. 2d  
22 at 1213.  
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25           Finally, by arguing that they believe sexual assault carries “different meanings”,  
26 “over a broad range of conduct” (Motion at 10:23-24), which by inference would  
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1 include defamatory meanings, Defendants admit that this inquiry should be left to the  
2 jury. *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d at 88.

3  
4 **(c) Defendants Cannot Meet Their Burden of Proving By A Preponderance**  
5 **That Defendants Haueter and Sandu Published Their False Statement**  
6 **Without Knowledge Of Falsity.**

7 Defendants' unsworn statements that they published the sexual assault  
8 accusations without knowledge of their falsehood are easily rebuffed by *contradictory*  
9 *evidence in the record*. *Stark v. Lackey*, 458 P.3d at 347. As such, Defendants cannot  
10 conclude that their communications were, more likely than not, made without  
11 knowledge of falsity, and therefore the Motion must be dismissed. *Id.*

12  
13 The record shows that Defendant Kimberly Haueter's actions are not consistent  
14 with her current statements that "[p]rior to publishing my statements complained of in  
15 Plaintiffs Complaint, I had concerns about the Pearadise community and I felt that it  
16 was dangerously fetishizing plus-size women." [Motion, Ex. G, ¶ 4.] For example,  
17 on February 2, 2021, she published a video on TikTok that **was in support of Stefan**  
18 **Wilhelmy, telling everyone to "go follow him" and that "her heart breaks for him**  
19 **because he just lost his 75,000-follower account", and that "we're going to get**  
20 **your people back, I swear, we're going to get it back and we're going to get to**  
21 **275,000 followers. I love you. Stay strong."** The video was published on February  
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26 12, 2021. [Ex. 6, ¶ 18.]  
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1 Defendant Haueter is also lying to the public, stating on TikTok that *she is suing*  
2 *Plaintiff Wilhelmy* when she knows that she is being sued for defamation. *See* [Ex. 6,  
3 ¶ 18.] (“actually you would be wrong, we are suing him. if [sic] you don’t even know  
4 that, maybe you don’t know as much as you think.”)

6 Defendant Haueter is also feigning ignorance, and taunting that she can say  
7 whatever she wants, so long as she *represents* that she believed Savy and Ally were  
8 truthful. On Instagram, Haueter confronted the mother of Wilhelmy’s twins, witness  
9 Cipreanna Ford, about Haueter accusation of being raped by Wilhelmy. [Ex. 5.]  
10 Within these comments Haueter brags, “All I have to do is prove that without a doubt  
11 I believe my claims whixh [sic] you also just stated you belive [sic] me to believe  
12 them. Thanks for that ss too” *Id.*

16 Moreover, Defendant Haueter’s unsworn statement claims that she was  
17 contacted by Savy and Ally prior to posting her statements and “they shared their  
18 experiences with Plaintiff Stefan Wilhelmy”. [Motion, Ex. G, ¶ 5.] Haueter continues  
19 to state that she had no reason to doubt Savy or Ally’s “account of events” and that  
20 she believed their “stories” and the “details” were credible. *Id.* at ¶¶ 6,7. In short,  
21 Haueter’s claim to lack of knowledge of falsity relies entirely on statements made by  
22 Savy and Ally to her. There are insurmountable issues here are two-fold: (1) Savy  
23 and Ally’s false accusations of sexual assault are decimated by the controverting facts  
24 produced by Plaintiffs; and (2) Haueter’s unsworn statements are conclusory and fail  
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1 to identify *what the specific statements she relied upon were*, when they were received,  
2 and what specific first-hand knowledge she has. *See* NRS 50.025(1)(a) ("A witness  
3 may not testify to a matter unless ... [e]vidence is introduced sufficient to support a  
4 finding that he has personal knowledge of the matter.").

5  
6         Astonishingly, Haueter’s unsworn statement does not even purport to claim  
7 that Ally and Savy told her they were sexually assaulted. [Motion, Ex. G.] Nor does  
8 Haueter’s statement say that Savy and Ally even told Haueter that they were touched  
9 in a non-consensual manner, touched on the belly, or tapped on the butt. In short,  
10 Haueter cannot claim she believed her statements to be true when there is no record  
11 of what those statements were. What were the experiences that were shared? Was it  
12 the amount of cuddling that Ally and Savy did with other women there? Was it their  
13 trip to the tattoo parlor or other positive experiences? The only independent evidence  
14 of what actually transpired that day, are the records produced by Plaintiffs herein. All  
15 of the unsworn statements suffer from these same fatal defects. *See* Motion, Exs. A,  
16 D, G, H.  
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22         Defendant Sandu falsely stated that the allegation of sexual assault are not  
23 “allegations” because they are true, and there are texts and screen shots in videos to  
24 “prove” it happened. (Compl. ¶43.) Sandu’s unsworn statement provide no  
25 substantiation for this baseless claim. There are descriptions of the alleged texts or  
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1 videos that “prove” an sexual assault occurred, and Sandu has certainly not produced  
2 them. [Motion, Ex. H.]

3  
4 Defendants have the burden, by a preponderance of the evidence, and they have  
5 utterly failed to meet it. Therefore, the Motion must be denied.

6 **B. *Even If Defendants Met Their Burden on Prong 1 By A Preponderance of***  
7 ***the Evidence, on Prong 2, Plaintiffs’ Have Demonstrated With Prima Facie***  
8 ***Evidence A Probability Of Prevailing on Their Claims. Therefore, The***  
9 ***Anti-SLAPP Motion Must Be Denied Under NRS 41.660(3)(b)).***

10 If, and *only if*, Defendants have met their lofty burden does the Court shift its  
11 attention to the Plaintiffs to show “with prima facie evidence a probability of  
12 prevailing on the claim.” *Shapiro v. Welt*, 389 P.3d at 268; *see* NRS 41.660(3)(b).  
13 The correct standard is articulated in *Navellier*<sup>2</sup>: “[P]laintiffs may defeat the anti-  
14 SLAPP motion by establishing a probability of prevailing on their claim. *Navellier v.*  
15 *Sletten*, 52 P.3d at 713. “As our emerging anti-SLAPP jurisprudence makes plain, the  
16 statute poses no obstacle to suits that possess **minimal merit**.” *Id.* at 52 P.3d 703, 712.  
17 (emphasis added). Plaintiffs “need only have stated and substantiated a legally  
18 sufficient claim.” *Id.* at 708. *See also* *Willbanks v. Wolk*, 121 Cal. App.4th 883, 905  
19 (App. 2004) (“It is enough that the plaintiff demonstrates that the suit is viable, so that  
20 court should deny the special motion to strike and allow the case to go forward.”)  
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27 <sup>2</sup> *Navellier* has been cited over 10,000 times and it is *the* standard for the second prong  
28 under California’s anti-SLAPP statute, which is incorporated into Nevada’s statute  
per NRS 41.665(2).

1 Defendants quote language from two cases requiring “substantial evidence”.  
2 This is not the correct standard. The *Mendoza* case cited by Defendants related to an  
3 underlying malicious prosecution claim, wherein the plaintiff was required to submit  
4 substantial evidence that a reasonable attorney would not have thought that the  
5 underlying defamation claim was viable and therefore malicious. *Mendoza v.*  
6 *Wichmann*, 194 Cal. App. 4th 1430, 1449 (2011). Similarly, the *S. Sutter, LLC* case  
7 cited by Defendants was an action for declaratory judgment, which also required  
8 substantial evidence. *S. Sutter, LLC. v. LJ Sutter Partners, L.P.*, 193 Cal. App. 4th  
9 634, 670 (2011). These are not the facts or issues at bench here.

13 **(1) Plaintiff Can Show a Probability of Prevailing on their Defamation**  
14 **Claim.**

15 Plaintiffs have stated and substantiated a legally viable claim for defamation  
16 per se. *See Pope v. Motel 6*, 114 P.3d 277, 282 (2005) (“A false statement involving  
17 the imputation of a crime has historically been designated.”) Plaintiffs hereby  
18 incorporate by reference the allegations within the Complaint ¶¶ 34-43.  
19

20  
21 The voluminous record produced by Plaintiffs, including videos, Defendants’  
22 public statements, and five separate declarations under the penalty of perjury avowing  
23 to the falsity of Defendants’ statements more than exceed the “probability of  
24 prevailing” standard. Defendants’ sexual assault accusations carry the presumption  
25 of harm and therefore no damages are required to be proved. *Pope v. Motel 6*, 114  
26 P.3d at 282.  
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1                                   **(a) Defendants’ False Sexual Assault Accusations Are Not Opinions**  
2                                   **and Not Protected Speech.**

3                   Plaintiffs incorporate by reference the facts and analysis within Section 2(a) and  
4 (b) above as if fully set forth herein. As discussed, *ad nauseum*, above, Defendants  
5 accusations of sexual assault are not truthful, nor are they opinions. They are false  
6 statements of fact that are capable of being proven. Factual accusations, like sexual  
7 assault, are actionable as defamation if proven false, and a jury should resolve this  
8 question. *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d at 88; *see also Pacquiao v.*  
9 *Mayweather*, 803 F. Supp. 2d at 1213. Defendants’ argument that people on TikTok  
10 do not “expect non-literal expression” is comical, because as discussed above, sexual  
11 assault means rape; it does not mean a belly rub or butt-tap.  
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15                                   **(b) Plaintiffs Are Not Limited Purpose Public Figures and Do Not**  
16                                   **Have to Meet the Actual Malice (i.e., Knowledge or Serious**  
17                                   **Doubt) Standard.**

18                   The correct standard to be applied is articulated in *Gertz v. Robert Welch, Inc.*  
19 – where “absent clear evidence of general fame or notoriety in the community and  
20 pervasive involvement in ordering the affairs of society, an individual should not be  
21 deemed a public figure for all aspects of his life. Rather, the public-figure question  
22 should be determined by reference to the individual's participation in the particular  
23 controversy giving rise to the defamation.” 418 U.S. 323, 324 (1974). We must “look  
24 to nature and extent of his participation in particular controversy”. *Id.* Therefore the  
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1 question is two-fold: what was the particular controversy giving rise to the defamation  
2 and what was the nature and extent of Plaintiff's participation in it?

3  
4 First, the particular "controversy" was non-existent, until Defendants published  
5 their defamatory statements. The controversy here is sexual assault, and Plaintiffs  
6 certainly did not inject themselves into the sexual assault controversy, nor is there any  
7 evidence to show that Plaintiffs sought out notoriety in the BBW / plus size  
8 community. There are many BBW groups that are substantially larger and more well-  
9 known than Pearadise. [Cite] For example, there exists XLencePlus.com in Las  
10 Vegas; CurvyVentures; online app Feabie.com; Curvage.com; and Kik. Wilhelmy has  
11 only one account on TikTok for BBW/plus-size women. He don't hold public events,  
12 and he does not open his personal life up to the entire Pearadise community, only a  
13 select group of friends. Defendants do not cite to any case law to substantiate their  
14 argument that having hundreds of thousands of followers mandates a finding of being  
15 a limited purpose public figure.  
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21 **(c) *Even If The Actual Malice Standard Applied, Plaintiffs Can***  
22 ***Demonstrate That the Defendants Published Their Statements***  
23 ***With Knowledge of Falsity or At least Had Serious Doubts.***

24 Plaintiffs incorporate by reference the facts and analysis contained within  
25 Section 2(a) above. Defendants Ally and Savy both are well-aware, by virtue of  
26 common sense, common English, and a basic understanding of sex, that a belly rub  
27 and butt-tap are not rape or sexual assault. Moreover, the video surveillance proves  
28

1 no sexual assault occurred. Likewise, both Defendant Sandu and Haueter entertained  
2 serious doubts as to what transpired –because neither one of their unsworn statements  
3 makes any mentioned of statements by Ally or Savy that they told either one they  
4 were sexually assaulted.  
5

6 **(2) Plaintiff Wilhelmy’s Claim for False Light Survives.**  
7

8 Plaintiffs incorporate by reference the facts and analysis above. Plaintiffs’ have  
9 fully and completely plead all of the requirements for a claim of false light. Only  
10 Plaintiff Wilhelmy seeks damages for his emotional distress caused by being  
11 portrayed in a false light. Moreover, the First Amended Complaint clarifies that this  
12 claim is only being brought by Wilhelmy. Defendants cite to no other reasons why  
13 this claim cannot proceed, other than merely concluding that it fails for the same  
14 reasons the defamation claim fails. Therefore, Plaintiffs incorporate by reference their  
15 defamation analysis herein.  
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19 **(3) Plaintiffs’ Intentional with Prospective Economic Advantage Survives.**  
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21 Plaintiffs incorporate by reference the facts and analysis discussed above as if  
22 fully set forth herein, given that Defendants reference the failure of this claim for the  
23 same reasons as the defamation claim. Additionally, as discussed above, the  
24 accusations at issue here are not privileged opinion or truthful statements, and  
25 therefore, this claim must survive.  
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1                   **(4) Plaintiffs’ Intentional Interference Claim Also Survives.**

2                   As stated in Plaintiffs’ Declaration, Defendants also intentionally interfered  
3 with a pending deal that Plaintiff Wilhelmy had with producers for a reality television  
4 show (“Deal”). Plaintiff signed preliminary agreements for the Deal. On April 21,  
5 2021, Plaintiff Wilhelmy signed a talent agreement (“Agreement”) for a television  
6 docuseries (“Program”) which was “intended for initial exhibition by a US television  
7 network,” such as TLC. Defendants discussed Plaintiff’s Deal, how to contact the  
8 producers, and encouraged each other and others to get the Program cancelled, which  
9 they successfully did. In or about early September 2021, Wilhelmy learned that the  
10 producer cancelled the Agreement and Program because of the Defendants’  
11 interference. Plaintiffs’ clarified these facts in their First Amended Complaint since  
12 these cancelation occurred in September.  
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18                   **(5) Plaintiffs’ Aiding and Abetting and Conspiracy Claims Survive.**

19                   Once again, Defendants sole basis for arguing for dismissal here is premised  
20 on their argument that the sexual assault allegations are truthful or non-actionable  
21 opinion. But as discussed above in the sections on defamation, Plaintiffs have  
22 substantiated a legally sufficient claim based on the allegations in the Complaint  
23 (Compl. ¶¶ 34-56, 104-119), and the evidence provided herewith.  
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**III. CONCLUSION.**

For all of the foregoing reasons, Plaintiffs request the Motion to be denied, so that this critical case of false sexual assault can move forward. Plaintiffs respectfully request that the Court dismiss the frivolous Motion and award the Plaintiffs their attorneys' fees and costs, and an additional \$10,000.00 pursuant to NRS 41.670(3).


Dated this September 30, 2021.

Submitted by:

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