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DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES "RANDY" LAZER, Plaintiff, vs. DAPHNE WILLIAMS, Defendant.	CASE NO.: A-19-797156-C DEPT NO.: XV **PLAINTIFF CHARLES "RANDY" LAZER'S OPPOSITION TO DEFENDANT DAPHNE WILLIAMS'S MOTION FOR ATTORNEYS' FEES**

Plaintiff Charles "Randy" Lazer ("**Plaintiff**" or "**Mr. Lazer**"), by and through his attorneys, TriLaw, hereby submits this opposition to Defendant Daphne Williams's ("**Defendant**" or "**Ms. Williams**") Motion for Attorneys' Fees filed December 29, 2021.

INTRODUCTION

After this Court denied both of Defendant's anti-SLAPP motions, and after the Nevada Court of Appeals, in a 3-0 decision, affirmed this Court's denials, the Nevada Supreme Court reversed those decisions. Unfortunately for Plaintiff, that reversal puts an end to this case and subjects him to Defendant's Motion for Attorneys' Fees pursuant to NRS 41.670(1).

While Plaintiff acknowledges that Defendant is entitled to recover attorney fees, Plaintiff requests this Court reduce the amount of those fees to a more reasonable amount than that requested by Defendant because Defendant failed in her first three attempts to obtain anti-SLAPP relief, because of reasons of fairness and reasonableness, and because of the other reasons stated herein.

FACTUAL AND PROCEDURAL BACKGROUND

1. Factual Background.

This matter arose from a dispute between Plaintiff and Defendant following a real estate transaction in which Plaintiff represented the buyer and Defendant was the seller acting without a real estate agent.

2. Procedural Background.

The following is the procedural timeline in this matter:

1. On June 21, 2019, Plaintiff, exasperated by statements made by Defendant, filed a pro se lawsuit against Defendant for defamation and other claims.
2. On August 9, 2019, Defendant, after having retained counsel, filed an anti-SLAPP Motion to Dismiss under NRS 41.660.
3. On August 12, 2019, Plaintiff retained undersigned counsel to represent him in this matter.
4. After full briefing and a hearing, this Court, through an order filed on October 3, 2019, denied Defendant's anti-SLAPP motion and allowed Plaintiff to amend his Complaint.
5. On October 8, 2019, Plaintiff filed his First Amended Complaint.
6. On October 22, 2019, Defendant filed her second anti-SLAPP motion.
7. After full briefing and a hearing, this Court, through an order filed on December 19, 2019, denied Defendant's second anti-SLAPP motion.
8. On December 26, 2019, Defendant filed a Notice of Appeal.
9. On November 25, 2020, after full briefing, the Nevada Court of Appeals unanimously affirmed this Court's denial of Defendant's second anti-SLAPP motion to dismiss.

10. On December 28, 2020, Defendant filed a Petition for Review with the Nevada Supreme Court.

11. On September 16, 2021, after full briefing, the Nevada Supreme Court reversed and this Court's denial of the anti-SLAPP motion.

12. On October 22, 2021, the Nevada Supreme Court denied Plaintiff's Petition for Rehearing.

13. Based on the Nevada Supreme Court's reversal, on December 9, 2021, this Court entered an order granting Defendant's second anti-SLAPP motion.

Now, Defendant seeks to recover her attorney fees based on the granting of Defendant's second anti-SLAPP motion pursuant to NRS 41.670(1)(a).

LEGAL ARGUMENT

1. Legal Standard.

NRS 41.670(1)(a), the statute under which Defendant seeks to recover her attorney fees, states in relevant part as follows:

> 1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:
>
> (a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought….

Plaintiff cannot and does not dispute that Defendant is entitled to recover attorney fees, but those fees must be "reasonable."

The Nevada Supreme Court has given guidance as to how the district court is to determine a reasonable fee:

> In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by **reason and fairness**.' Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a

> reasonable amount or a contingency fee. We emphasize that, whichever method is chosen as a starting point, however, the court must continue its analysis by considering the requested amount in light of the factors enumerated by this court in Brunzell v. Golden Gate National Bank.

Shuette v. Beazer Homes Holdings Corp. (2005) 121 Nev. 837, 864-65 (Emphasis added). Thus, although NRS 41.670(1)(a) does indeed entitle Defendant to reasonable attorney fees incurred in this matter, that does not require this Court to blindly award Defendant the amount it requests; this Court still has discretion to decide the amount of the fee and take into account reason and fairness in so deciding. Plaintiff posits that the amount of Defendant's requested attorney fees is unreasonable for the reasons set forth below.

Further, Defendant has not set forth any authority that an anti-SLAPP movant who fails before the district court is entitled to recover fees expended on appeal.

2. Randy Lazer is not a Proper Target for a Massive Judgment of Attorney Fees.

The anti-SLAPP statute is intended to prevent a litigant from strategically filing suit to discourage another party from public participation. The typical parties to cases involving anti-SLAPP litigation are people like Sheldon Adelson, Steve Wynn, Danny Tarkanian, Jacky Rosen, Wengui Guo (a Chinese billionaire against whom Marc Randazza successfully filed an anti-SLAPP motion), and others who are extremely wealthy and/or who are in the public sphere. John L. Smith, well-known Las Vegas journalist and author, stated as such in his comments at page 30 of the Minutes of the April 24, 2015, Assembly Committee on Judiciary:

> [Steve] Wynn is not the only powerful Nevadan to claim offense at critical coverage and use the courts to punish a critic. He is far from it. Around these parts, SLAPP litigation is the sport of billionaires. Nevada has one of the nation's best anti-Slapp laws, and anything less is an invitation to bullies to attempt to drive working reporters, bloggers, and anyone else with a critical comment to ruination.

See Exhibit 12 to Defendant's Motion for Attorneys' Fees.

Randy Lazer is not a billionaire. He is not a bully. And he did not file this lawsuit in order to use the courts to punish a critic. As the record of this case bears out, Mr. Lazer got into a dispute with Ms. Williams after Ms. Williams made several false statements about the subject transaction and also brutally attacked Mr. Lazer's character. Mr. Lazer was extremely distressed by this situation, particularly because Ms. Williams made those false statements to the Nevada Real Estate Division, which then threatened Mr. Lazer with professional discipline which could have derailed and possibly even ended Mr. Lazer's career. These are the reasons Mr. Lazer filed the instant lawsuit, not because he was using the courts to punish a critic or for any other vindictive purpose.

There is no evidence in this case that Mr. Lazer sued Ms. Williams for purposes of chilling her speech. It is true that Ms. Williams has no burden to show Mr. Lazer's intent or purpose in filing this suit, but Mr. Lazer posits that the evidence in this case shows he filed suit because he believed he was defamed, not to attack Ms. Williams's right to public participation. Mr. Lazer filed this lawsuit himself, at a point in time when he was unaware of the existence of Nevada's anti-SLAPP statutes. Further, if it took the Nevada Supreme Court to overturn three decisions in Mr. Lazer's favor, from four distinguished, experienced judges, then certainly Mr. Lazer could not have been aware that his lawsuit would eventually be found to have violated Nevada's anti-SLAPP laws. Additionally, Mr. Lazer was not seeking to prevent Ms. Williams from complaining to the Nevada Real Estate Division; Mr. Lazer was simply seeking $13,230.19 in damages to compensate him for time lost responding to Ms. Williams's complaints. See Exhibit 1, Mr. Lazer's December 28, 2018, email demand. Instead, Ms. Williams is now on the verge of obtaining a judgment of nearly 20 times the amount Mr. Lazer was seeking. Clearly, this case ballooned into something Mr. Lazer did not foresee when he initiated the case.

Thus, Mr. Lazer requests this Court take Mr. Lazer's intent and thought process into account when determining what constitutes "reasonable" attorney fees, particularly in light of the Nevada Supreme Court's holding in Shuette that the district court is to consider reason and fairness in deciding a reasonable fee amount. It would be absurd, unreasonable, extreme, and unduly punitive for Mr. Lazer, under the circumstances of this case, to be exposed to a civil liability of nearly $250,000.00. Because Mr. Lazer is nowhere near the type of litigant who the anti-SLAPP statutes are intended to combat, the spirit and purpose of Nevada's anti-SLAPP laws would simply not be served or furthered by subjecting Mr. Lazer to complete financial destruction. That is certainly not what Mr. Lazer was trying to do to Ms. Williams when he filed this suit.

3. Defendant is not Entitled to Recover Appellate Fees Because Defendant Initiated the Appeal.

Defendant is seeking to recover all fees she has incurred from the beginning of this litigation. However, Defendant's Motion for Attorneys' Fees fails to cite authority allowing an anti-SLAPP movant to recover fees for an appeal instigated by a defendant whose anti-SLAPP motion was denied in district court. Accordingly, Defendant's award of fees in this matter should be limited to fees incurred at the district court level.

Tarkanian v. Rosen has a virtually identical procedural history to the instant matter and is instructive as to the handling of a motion for fees and costs in this situation. At the district court level in Tarkanian v. Rosen, A-16-746797-C, the district court denied Defendant Jacky Rosen's anti-SLAPP motion. Rosen then filed an appeal, at the conclusion of which the Nevada Supreme Court reversed the district court's denial of Defendant Rosen's anti-SLAPP motion and ordered the district court to grant that motion. Once the case was remanded back to the district court, Rosen filed a

motion for fees. After full briefing of that motion for fees, Judge Kerry Earley limited Rosen's fee award to only those fees incurred prior to the appeal.

Judge Earley's Order on Rosen's motion for attorneys' fees in Tarkanian v. Rosen is extremely informative as relates to the instant matter because of the identical procedural histories of that case and the instant matter. That Order reads, in relevant part, as follows:

> There are reported cases from other jurisdictions granting appellate fees and costs when a plaintiff appeals a granting by a district court of a defendant(s) Anti-SLAPP Special Motion to Dismiss. Evans v. Unkow, 45 Cal. Rptr. 2d 624 (1995); Lunada Biomedical v. Nunez, 178 Cal. Rptr. 3d 784 (2014). However, **there are no reported cases in Nevada addressing the issue where the defendants Special Motion to Dismiss was denied by the district court but reversed on appeal by the Nevada Supreme Court**.
>
> It is of note that in the above referenced cases, it was the decision of the plaintiff to appeal the district court's granting of defendant(s) Special Motion to Dismiss. Under the fee shifting provision of NRS 41.670, if the plaintiff decides to appeal the district court's granting of the defendant's Special Motion to Dismiss, then the defendant is required to incur additional costs and attorney's fees due to plaintiff's actions. Therefore, it was the plaintiff's decision that compelled defendant(s) to incur appellate costs and attorney's fees. The plaintiff chose to prohibit the defendant's right to have a speedy exit to a non-meritorious action to which the fee shifting provision applies. The public policy underlying the fee shifting provision supports the granting of appellate costs and attorney's fees when a plaintiff is unsuccessful in reversing a district court's granting of a Special Motion to Dismiss pursuant to NRS 41.660.
>
> As discussed, the public policy in support of the Special Motion to Dismiss is to discourage meritless suits based on a defendant's exercise of his or her first amendment rights. The statute provides prompt review by a district court judge to provide adequate protection against frivolous cases brought to chill the exercise of those rights. The statute provides that the Special Motion to Dismiss must be filed within 60 days after service of the complaint unless extended by the court for good cause. NRS 41.660(2). The reason for the mandatory attorney fees and costs at the district court level during the initial phase of litigation is to compensate defendants expeditiously and fairly for defending meritless litigation. Metabolic Research Inc. v. Ferrell, 693 F.3d 795 (2012).
>
> Further, **NRS 41.670(1)(a) is silent regarding the issue of whether the district court is mandated to award reasonable costs and attorney's fees in the event a defendant incurs additional costs and attorney's fees during the appellate process pursuant to this fee-shifting statute**.
>
> . . .

> The Court finds that NRS 41.670(1)(a) is ambiguous as to whether this statute mandating awarding costs and attorneys' fees includes appellate costs and attorneys' fees. Therefore, the court has reviewed the enumerated public policy considerations in its interpretation of NRS 41.670(1)(a).
>
> Based on the public policy reasoning mandating costs and attorneys' fees be awarded for a defendant's Special Motion to Dismiss as enumerated herein, the Court finds that the provisions under NRS 41.670(1)(a) do not mandate the award of appellate costs and attorneys' fees to Defendants.
>
> However, **the Court finds that NRS 41.670(1)(a) mandating costs and attorneys' fees if the court grants a defendant's Special Motion to Dismiss is clear and unambiguous on its face related to the granting of an initial Special Motion to Dismiss by a district court**. Further, the public policy considerations support the granting of the costs and attorney's fees incurred at the district court level prior to an appeal.
>
> Therefore, THE COURT FINDS that Defendants are entitled to Defendants' costs and attorneys' fees incurred related to the initial Special Motion to Dismiss.

See Exhibit 2, Order Granting in Part and Denying in Part Defendants' Motion for Attorneys' Fees and Costs (Emphasis added). While counsel recognizes that this is a lengthy quotation, it is very instructive as to why a defendant who seeks to appeal a district court denial of an anti-SLAPP motion is not entitled to attorney fees associated with that appeal. When a defendant succeeds on an anti-SLAPP motion and the plaintiff appeals, the plaintiff would logically be responsible for fees associated with the appeal because the plaintiff is forcing the issue. However, the fact that a defendant who failed at the district court and Notice of Appeal levels continues to appeal is not the fault of a plaintiff (here, Mr. Lazer).

Essentially, if this Court awards Ms. Williams her attorney fees from the appeal, Mr. Lazer will have been punished for succeeding at the district court level and the Court of Appeals level. If this Court had granted Ms. Williams's first anti-SLAPP motion to dismiss, the amount of fees incurred at that time would have been $41,212.50 according to Ms. Williams's exhibits. Instead, because Mr. Lazer was successful at every level prior to the Nevada Supreme Court's decision, that amount has now

multiplied by more than six times. This is an absurd result which awards Ms. Williams and her counsel for failure at both the district court and Court of Appeals levels.

In her Motion for Attorneys' Fees, Ms. Williams has cited, in passing, to Smith v. Zilverberg, 137 Nev. Adv. Op. 7, 481 P.3d 1222 (2021). Surely, Ms. Williams will cite to Zilverberg again in her reply. However, Zilverberg demonstrates Judge Earley's logic because in Zilverberg, the defendant, who filed the anti-SLAPP motion, prevailed on that motion in the district court, and it was the plaintiff who was appealing from the granting of that motion. Thus, Zilverberg is distinguishable from the instant matter, where the defendant who filed the anti-SLAPP motion failed at the district court and was the appellant. It is much more logical for a party to pay for the cost of an appeal when that party loses in the district court and then unsuccessfully appeals. Here, Plaintiff was successful at the district court and was not the party that appealed, so he should not be forced to pay for Defendant's appeal.

Zilverberg also does not actually address the instant situation because in Zilverberg, the defendants had already been awarded fees and costs in the district court proceedings in connection with the granting of their anti-SLAPP motion. The issue on appeal was whether the defendants were entitled to all of their fees which had been incurred in the district court. The issue of fees expended on appeal was not in play in Zilverberg because the fee award came prior to the appeal in that case. Thus, Zilverberg is irrelevant in the context of the instant matter.

It is not only Zilverberg; Defendant has not cited to any precedent in Nevada or California where an anti-SLAPP movant was awarded her appellate fees after appealing a denial of an anti-SLAPP motion. To the contrary, in all of the orders Defendant has cited to in her Appendix, the district court has simply granted the movant's anti-SLAPP motion. The other cases to which Defendant cites –

Wanland v. L. Offs. of Mastagni, Holstedt & Chiurazzi, 141 Cal. App. 4th 15, 45 Cal. Rptr. 3d 633 (2006); Ketchum v. Moses, 24 Cal. 4th 1122, 17 P.3d 735 (2001); York v. Strong, 234 Cal. App. 4th 1471, 184 Cal. Rptr. 3d 845 (2015); Las Vegas Resort Holdings, LLC v. Roeben, No. A-20-819171-C; Guo v. Cheng, No. A-18-779172-C, IQTAXX, LLC v. Boling, A-728426-C and others – involve a situation where a defendant was successful on an anti-SLAPP motion in the district court. Again, Defendant has not cited to any case where, as here, the district court denied an anti-SLAPP motion, the movant successfully appealed, and the movant was then awarded its fees for the entire case. Such an outcome is unreasonable, unfair, punitive, and illogical, and thus, Defendant is not entitled to the entirety of her costs in this case.

4. In the Alternative, Defendant Should Only be Awarded Attorney Fees Expended From the Nevada Supreme Court Appeal Forward.

Logically speaking, it is arguable that Defendant should only be awarded her fees incurred from their Nevada Supreme Court appeal forward, because that portion of the case was where Defendant succeeded. If this Court is declined to go that route, Plaintiff requests Defendant only be awarded her fees from November 25, 2020, forward, as from that date forward, this case was with the Nevada Supreme Court. That amount is $38,954.50.

5. Under Brunzell, the "Result" Factor Cuts Both Ways for Defendant.

In her Motion, Defendant analyzes the Brunzell factors. However, Defendant's analysis of the fourth factor, "The Result," is interesting in the context of a motion for attorney fees.

Defendant reasons at the bottom of page 13 that she "successfully dismissed all of Plaintiff's claims against her with prejudice prior to any wasteful discovery taking place. This is the best possible outcome for a defendant, and weighs heavily in favor of granting the full amount of requested fees."

However, while Defendant and her attorneys may have avoided "wasteful discovery," they were unable to avoid two years of appellate work and the hundreds of hours of attorney fees resulting therefrom.

Plaintiff understands and respects that the ultimate result for Defendant in this case was a successful one. However, for Defendant and her counsel to claim that they achieved the best possible outcome is untrue. The best possible outcome would have been if Defendant had convinced this Court to grant Defendant's first anti-SLAPP motion.[1] The next best outcome would have been if Defendant's second anti-SLAPP motion had been granted. The third best outcome would have been if Defendant had succeeded before the Nevada Court of Appeals. What Defendant achieved, to take nothing away from her, was the fourth best outcome she could have hoped for. This analysis weighs against awarding Defendant the full amount of attorney fees she seeks by way of her Motion.

6. Defendant is not Entitled to Recover Fees for any Redacted Time Entries.

Exhibit 8 to Defendant's Motion for Attorneys' Fees is a 29 page spreadsheet of every time entry for Defendant's attorneys over the life of this case. On each and every page of Exhibit 8, there are numerous redacted time entries. These redacted time entries total in the thousands of dollars. Yet, these entries are frequently confusing and often indecipherable because they are redacted. Plaintiff requests this Court deny Defendant's request to be reimbursed for these dozens of redacted entries. Defendant has the burden to show her fees were legitimately incurred in connection with this case, and because of the redactions, Defendant cannot meet her burden as to the redacted entries.

7. A Multiplier is not Proper.

A court "may adjust the lodestar, [only on rare and exceptional occasions], upward or

[1] Although, as noted above, if this Court grants Defendant's Motion for Attorneys' Fees in full, it will have the absurd and ironic result of giving Defendant and/or her attorneys a tremendous windfall for having failed twice before the district court and once before the Nevada Court of Appeals, as those failures dramatically increased the amount of attorney fees Defendant was required to expend to achieve the end result. See, for instance, Exhibit 17 to Defendant's Motion, where this honorable Court, in a different case, granted the initial anti-SLAPP motion, resulting in a judgment of just over $40,000.00.

downward using a multiplier based on factors not subsumed in the initial calculation of the lodestar." Jablonski Enterprises, Ltd. v. Nye County, 215CV02296GMNGWF, 2017 WL 4809997, at *3 (D. Nev. Oct. 25, 2017), report and recommendation adopted, 215CV02296GMNGWF, 2018 WL 456023 (D. Nev. Jan. 16, 2018)(quoting Van Gerwen v. Guarantee Mut. Life Co., 214 F.3d 1041, 1045 (9th Cir. 2000))(brackets in original).

IQTAXX, LLC v. Boling, 2016 WL 4464284, at *3 (Nev.Dist.Ct.), which Defendant relies on for the reasonableness of his billing rates, is instructive. The Court in that case declined to award a multiplier, and the facts of this case do not present a situation where a multiplier is warranted. Although ultimately successful in this matter, Defendant was not successful in her first three attempts. Thus, this was not a case that was so frivolous that Plaintiff needs to be made an example of.

8. Mr. Lazer's Statement.

Attached hereto as Exhibit 3 is a statement made directly by Mr. Lazer, which he hopes this Court will read prior to deciding on the instant Motion.

CONCLUSION

Based on the foregoing, Plaintiff requests the following:

1. Plaintiff asks the Court to award Defendant only her attorney fees from the district court proceedings in this case, totaling $41,212.50.
2. In the alternative, Plaintiff asks this Court to award Defendant only her attorney fees from the time of Defendant's Supreme Court appeal forward, totaling $38,954.50.
3. If the Court is unwilling to award either of these requested amounts, Plaintiff requests this Court adjust the requested amount downward to an amount that is more fair and

reasonable in the view of this Court in light of the facts and circumstances presented herein.

4. Plaintiff asks the Court not to award Defendant attorney fees for redacted time entries.

DATED this 13th day of January 2022.

By: /s/ *Adam R. Trippiedi, Esq.*
Adam R. Trippiedi, Esq.
2520 St Rose Pkwy, Ste 203F
Henderson, Nevada 89074

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of January 2022, a copy of the **PLAINTIFF CHARLES "RANDY" LAZER'S OPPOSITION TO DEFENDANT DAPHNE WILLIAMS'S MOTION FOR ATTORNEYS' FEES** was served via the Court's electronic service system and/or deposited for mailing in the U.S. Mail, postage prepaid to the following:

Marc J. Randazza, Esq.
Alex J. Shepard, Esq.
RANDAZZA LEGAL GROUP, PLLC
2764 Lake Sahara Dr, Ste 109
Las Vegas, Nevada 891017

DATED this 12th day of January 2022.

/s/ *Adam R. Trippiedi, Esq.*
ADAM R. TRIPPIEDI, ESQ.

EXHIBIT 1

EXHIBIT 1

From: ran314 <ran314@aol.com>
To: dlwilliams123 <dlwilliams123@gmail.com>
Subject: Fwd: Demand letter for payment of damages from multiple acts of Defamation and Fraud for $13,230.19. Also to be sent by certified mail
Date: Fri, Dec 28, 2018 11:26 pm

To: Ms. Daphne Williams
1404 Kilamanjaro #202
Las Vegas, Nevada 89128

From: Charles "Randy" Lazer
Hecker Real Estate and Development
4955 S. Durango, Ste. 155
Las Vegas, Nevada 89113

Telephone: (702) 271-1295

Date: December 28, 2018

Subject: Demand letter as requisite for filing litigation for multiple counts of defamation and fraud, from the written words of Ms. Daphne Williams.

Per my code of ethics, Ms. Williams is advised to seek legal counsel, and, I disclose that I am not an attorney. Upon filing litigation, I may be represented by counsel, or have legal assistance, and would seek punitive damages for malicious acts of defamation and fraud, along with legal fees, and court costs.

This constitutes a demand letter for payment from Daphne Williams to Charles "Randy" Lazer of the amount of $13,230.19 due within 10 business days from receipt of certified mail.

This amount includes in large part, compensation for 52.5 hours, spent defending my 26 year real estate career, my ability to earn future income and provide for myself and my family, my outstanding reputation, and the operations of Hecker Real Estate and Development. This 52.5 hours was spent in defending myself from a knowingly fraudulent complaint submitted by Ms. Williams to the Nevada Real Estate Division, which alleged racist, sexist, unethical, and unprofessional behavior. The Nevada Real Estate Division had no such findings, opted not to have a hearing, and closed the case.

Also, an additional 6 hours and 43 minutes were expended in compliance with my code of ethics, for a knowingly fraudulent text message sent by Ms. Williams on June 27, 2017. This threatened my career and the operations of Hecker Real Estate and Development, and likely constituted an act of extortion, for which detailed information is provided in the section of this demand letter headed by "Fraud as a Cause of Action".

These accusations of prejudice were so heinous, that if they were not addressed, with great likelihood, I would have had my real estate license revoked. This would have lead to the loss of my 26 year career in real estate, my future income, and of my exceptionally caring, and outstanding reputation, which is substantiated by receiving many awards for service, and charitable endeavors. Additionally, if I did not respond to the knowingly fraudulent complaint submitted by Ms. Williams, I could have been ordered to appear before the Nevada Real Estate Commission, charged up to $30,000 for a hearing, and likely fined between $10,000 and $50,000.

As a synopsis, the text message Ms. Williams sent on June 27, 2017, falsely stated that I had acted in a racist, sexist, unethical and unprofessional manner with respect to emails and texts that I had sent, when no such texts or emails were ever sent, and for which the written word is not of dispute. In fact, Ms. Williams had a record of texts and emails, and knew no such writings were ever sent by me.

Then, on or about August 23, 2017, Ms. Williams maliciously filed a knowingly fraudulent complaint with the Nevada Real Estate Division, alleging racism, sexism, prejudice, unethical and unprofessional conduct. This when Ms. Williams had full knowledge no such conduct had ever occurred.

EXHIBIT 2

EXHIBIT 2

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CLERK OF THE COURT

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Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

DANNY TARKANIAN,

Plaintiff,

vs.

JACKY ROSEN, an individual; ROSEN FOR NEVADA, a 527 Organization; the DEMOCRATIC CONGRESSIONAL COMMITTEE; and DOES I-X and ROES ENTITIES VI-X

Defendant.

Case No: A-16-746797-C
Dept. No.: IV

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS

THIS MATTER came before the court for hearing on July 2, 2020, at 9:00 a.m. on Defendants' Motion for Attorneys' Fees and Costs filed on March 20, 2020; Plaintiff's Opposition to Defendants' Motion for Attorneys' Fees and Costs filed on May 29, 2020; and Defendants' Reply in Support of Motion for Attorneys' Fees and Costs filed on June 18, 2020, with Bradley S. Schrager, Esq. and Daniel Bravo, Esq. of the law firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, and Elisabeth C. Frost, Esq. of the law firm Perkins Coie LLP, appearing on behalf of

Defendants Jacky Rosen, and Rosen for Nevada, and Marcus D. Risman, Esq. appearing on behalf of Plaintiff Danny Tarkanian.

THE COURT having reviewed the matter including all points and authorities, and exhibits, having heard argument of counsel, and for good cause appearing, the Court finds the following facts and states the following conclusions of law[1], and orders as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. APPELLATE COSTS AND ATTORNEYS' FEES

NRS 41.660(2) permits defendant(s) to file a Special Motion to Dismiss early in the proceedings, and if that motion is granted, mandates that defendant(s) shall be awarded reasonable costs and attorneys' fees pursuant to NRS 41.670(1)(a).

A Special Motion to Dismiss must be filed within 60 days after service of the complaint. NRS 41.660(2). A Special Motion to Dismiss may be filed as the initial responsive pleading of defendant(s) to address SLAPPs (Strategic Lawsuits Against Public Participation) that are an abuse of the judicial process in that they are used to censor, chill, intimidate, or punish a person for involving themselves in public affairs. *See* Preamble to Legislative Acts 1997, ch. 387, which enacted NRS 41.635 and NRS 41.637.

Pursuant to NRS 41.660, if a court hears a Special Motion to Dismiss and finds that under the standard enumerated in NRS 41.660(3) a Special Motion to Dismiss should be granted, then defendant(s) may file a motion for reasonable costs and attorney s fees under NRS 41.670. *See* NRS 41.660.

In the present case, Judge Jerry A. Wiese II, entered an Order denying Defendants' initial Special Motion to Dismiss which was filed on January 25, 2017. Judge Wiese ruled that Defendants did not meet their burden under NRS 41.660(3) and, therefore, denied Defendants' Special Motion to Dismiss. Defendants appealed the Order denying their Special Motion to Dismiss and the Nevada Supreme Court reversed with instructions to this Court to grant the special motion to dismiss filed by Defendants. *See Rosen v. Tarkanian*, 135 Nev. 436, 453 P.3d

[1] If any finding herein is in truth a conclusion of law, or if any conclusion is stated is in truth a finding of fact, it shall be deemed so.

1220 (2019).

Defendants' Motion for Attorneys' Fees and Costs requests an award of attorneys' fees and costs incurred during the appeal. The first basis asserted by Defendants for this Court to award appellate costs and attorney's fees is the Nevada Supreme Court's decision of *In Re Estate of Miller*, 125 Nev. 550, 216 P.3d 239 (2009). In *Estate of Miller*, the Supreme Court held that a litigant who receives a more favorable result than an offer of judgment after appellate proceedings is entitled to appellate costs and attorney's fees under NRS 17.115 and NRCP 68. *Id.*, 125 Nev. at 554, 216 P.3d at 243.

In *Estate of Miller*, a party challenged the distribution of an estate and a more favorable result at trial was achieved than an offer of judgment. However, that judgment was reversed on appeal as a matter of law. On remittitur, the district court denied defendants motion for appellate costs and attorney's fees finding that the statute did not apply to a judgment achieved by an appellate reversal. In a second appeal, the Supreme Court held that the relevant judgment was not the trial court's determination but the final judgment achieved after appeal. Therefore, the Nevada Supreme Court granted costs and attorneys' fees incurred by the offeror after the offer was made including appellate fees.

The purpose of an offer of judgment under former NRS 17.115 and NRCP 68 is to facilitate and encourage a settlement by placing a risk of loss on the offeree who fails to accept the offer, with no risk to the offeror, thus encouraging both offers and acceptance of offers. *Mendenhall v. Tassinari*, 133 Nev. 614, 626, 403 P.3d 364, 374 (2017) (citing *Matthews v. Collman*, 110 Nev. 940, 950, 878 P.2d 971, 978 (1994)); *see also Marek v. Chesny*, 473 U.S. 1, 5 (1985) (noting that the primary purpose behind offers of judgment is to encourage the compromise and settlement of litigation and that they prompt both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits); 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure 3001 (2014) (stating that by encouraging compromise, offers of judgment discourage both protracted litigation and vexatious lawsuits); *Dillard Dep t Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999) (highlighting that [t]he purpose of … NRCP 68 is to save time and money and to reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer).

However, NRS 41.660 permits defendant(s) to file a Special Motion to Dismiss and that motion must be filed within 60 days after service of the complaint unless extended by the court for good cause shown. NRS 41.660 statutorily provides defendant(s) a speedy exit ramp in the initial phase of litigation to challenge non-meritorious litigation. The public policy in support of the Special Motion to Dismiss is to discourage meritless suits based on a defendant's exercise of his or her first amendment rights. The statute provides prompt review by a district court judge to provide adequate protection against frivolous cases brought to chill the exercise of those rights.

A statutory offer of judgement provides for efficient settlement of claims for all parties at nearly any time in the litigation up to 21 days prior to trial. The public policy considerations supporting the offer of judgment provisions as discussed are not analogous to the public policy considerations supporting NRS 41.660. Therefore, this Court does not find the fee-shifting provision and decision in *Estate of Miller* granting appellate fees as persuasive in this case.

The second basis asserted by Defendants for this Court to award appellate costs and attorney's fees is NRS 41.670. There are reported cases from other jurisdictions granting appellate fees and costs when a plaintiff appeals a granting by a district court of a defendant(s) Anti-SLAPP Special Motion to Dismiss. *Evans v. Unkow*, 45 Cal. Rptr. 2d 624 (1995); *Lunada Biomedical v. Nunez*, 178 Cal. Rptr. 3d 784 (2014). However, there are no reported cases in Nevada addressing the issue where the defendants Special Motion to Dismiss was denied by the district court but reversed on appeal by the Nevada Supreme Court.

It is of note that in the above referenced cases, it was the decision of the plaintiff to appeal the district court's granting of defendant(s) Special Motion to Dismiss. Under the fee shifting provision of NRS 41.670, if the plaintiff decides to appeal the district court's granting of the defendant's Special Motion to Dismiss, then the defendant is required to incur additional costs and attorney's fees due to plaintiff's actions. Therefore, it was the plaintiff's decision that compelled defendant(s) to incur appellate costs and attorney's fees. The plaintiff chose to prohibit the defendant's right to have a speedy exit to a non-meritorious action to which the fee shifting provision applies. The public policy underlying the fee shifting provision supports the granting of appellate costs and attorney's fees when a plaintiff is unsuccessful in reversing a district court's granting of a Special Motion to Dismiss pursuant

to NRS 41.660.

As discussed, the public policy in support of the Special Motion to Dismiss is to discourage meritless suits based on a defendant s exercise of his or her first amendment rights. The statute provides prompt review by a district court judge to provide adequate protection against frivolous cases brought to chill the exercise of those rights. The statute provides that the Special Motion to Dismiss must be filed within 60 days after service of the complaint unless extended by the court for good cause. NRS 41.660(2). The reason for the mandatory attorney fees and costs at the district court level during the initial phase of litigation is to compensate defendants expeditiously and fairly for defending meritless litigation. *Metabolic Research Inc. v. Ferrell*, 693 F.3d 795 (2012).

Further, NRS 41.670(1)(a) is silent regarding the issue of whether the district court is mandated to award reasonable costs and attorney's fees in the event a defendant incurs additional costs and attorney's fees during the appellate process pursuant to this fee-shifting statute.

The Nevada Supreme Court will not look beyond a statute's plain language when it is clear on its face. *D.R. Horton, Inc. v. Betsinger*, 130 Nev. 842, 846, 335 P.3d 1230, 1232-33 (2014). *See also GC Wallace, Inc. v. District Court*, 127 Nev. 701, 705, 262 P.3d 1135, 1138 (2011) ("When a statute is clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of construction."). We interpret clear and unambiguous statutes based on their plain meaning. *Cromer v. Wilson*, 126 Nev. 106, 225 P.3d 788 (2010).

Although the Nevada Supreme Court has held that when the words of a statute are clear and unambiguous they will be given their plain and ordinary meaning. However, if a statute is susceptible to more than one natural or honest interpretation, it is ambiguous. *State v. Friend*, 118 Nev. 115, 120, 40 P.3d 436, 439 (2002). When the meaning of a statute is ambiguous the Nevada Supreme Court will interpret the statute in accord with reason and public policy to avoid an absurd result. *Id*.

The Court finds that NRS 41.670(1)(a) is ambiguous as to whether this statute mandating awarding costs and attorneys' fees includes appellate costs and attorneys' fees. Therefore, the court has reviewed the enumerated public policy considerations in its interpretation of NRS 41.670(1)(a).

Based on the public policy reasoning mandating costs and attorneys' fees be awarded for a

defendant's Special Motion to Dismiss as enumerated herein, the Court finds that the provisions under NRS 41.670(1)(a) do not mandate the award of appellate costs and attorneys' fees to Defendants.

However, the Court finds that NRS 41.670(1)(a) mandating costs and attorneys' fees if the court grants a defendant's Special Motion to Dismiss is clear and unambiguous on its face related to the granting of an initial Special Motion to Dismiss by a district court. Further, the public policy considerations support the granting of the costs and attorney's fees incurred at the district court level prior to an appeal.

Therefore, THE COURT FINDS that Defendants are entitled to Defendants' costs and attorneys' fees incurred related to the initial Special Motion to Dismiss.

Plaintiff also asserts that since a third-party to the action paid the costs and attorneys' fees incurred by the Defendants, NRS 41.670(1)(a) does not apply as it provides that reasonable costs and attorneys' fees are awarded to the party against whom the action was brought.

The Court finds that the plain language in NRS 41.670(1)(a) awarding reasonable costs and attorneys' fess to the person against whom the action was brought is clear and unambiguous. It is undisputed that the Defendants are the persons against whom this action was brought by Plaintiff.

Therefore, there is no legal basis to deny the awarding of costs and attorneys' fees based upon a third-party payor.

II. ATTORNEY S FEES

The reasonability of an award of attorney's fees is determined by the application of the *Brunzell* factors. The *Brunzell* factors are: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

Applying the *Brunzell* factors to the attorneys' fees submitted by counsel for the Defendants regarding the initial Special Motion to Dismiss, THE COURT FINDS that the amount

of $50,025.50 is awarded to the law firm Perkins Coie LLP, and the amount of $16,800 is awarded to the law firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, on behalf of Defendants.

III. COSTS

The costs to be awarded are delineated by NRS 18.005.

A. Costs awarded to Defendants' firm Perkins Coie LLP

1. Postage

NRS 18.005(14) allows for reasonable costs for postage. Defendants' firm Perkins Coie requested $37.02 in costs pursuant to NRS 18.005(14). THE COURT FINDS that these costs are reasonable and necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

2. Copying and Printing Fees

NRS 18.005(11) and NRS 18.005(12) allows for reasonable costs for telecopies and photocopies. Defendants' firm Perkins Coie requested $739.87 in costs pursuant to NRS 18.005(11) and NRS 18.005(12). THE COURT FINDS that $88.14 of these costs are reasonable and necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

3. Miscellaneous Costs

NRS 18.005(17) allows for any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research. Defendants' firm Perkins Coie requested $4,832.96 in costs pursuant to NRS 18.005(17). THE COURT FINDS that $3,640.46 of these costs are reasonable and necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

Therefore, THE COURT FINDS that Defendants' firm Perkins Coie is entitled to an award of costs in the total amount of $3,765.62.

A. Costs awarded to Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

1. Filing Fees

NRS 18.005(1) allows costs of Clerk's fees. Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP requested $1,126.31 in costs pursuant to NRS 18.005(1). THE COURT FINDS that $327.09 of these costs are reasonable and necessarily incurred prior to the denial of

the initial Special Motion to Dismiss.

2. Court Reporter Fees

NRS 18.005(8) allows costs for compensation for the official reporter or reporter pro tempore. Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP requested $236.28 in costs pursuant to NRS 18.005(8). THE COURT FINDS that $180.28 of these costs are reasonable and necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

3. Postage

NRS 18.005(14) allows for reasonable costs for postage. Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP requested $64.43 in costs pursuant to NRS 18.005(14). THE COURT FINDS that $36.91 of these costs are reasonable and necessarily incurred prior to the denial of the Initial Special Motion to Dismiss.

4. Photocopies

NRS 18.005(12) allows for reasonable costs for photocopies. Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP requested $219.20 in costs pursuant to NRS 18.005(12). THE COURT FINDS that these costs were not reasonable or necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

5. Miscellaneous Costs

NRS 18.005(17) allows for any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research. Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, requested $91.60 in costs pursuant to NRS 18.005(17). THE COURT FINDS that $72 of these costs were reasonable and necessarily incurred prior to the denial of the initial Special Motion to Dismiss.

Therefore, THE COURT FINDS that Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP is entitled to an award of costs in the total amount of $652.84.

ORDER

IT IS HEREBY ORDERED that Defendants' Motion for Attorney Fees and Costs is GRANTED IN PART and DENIED IN PART as noted herein.

IT IS FURTHER ORDERED that Defendants' firm Perkins Coie LLP, are awarded

attorneys' fees in an amount of $50,025.50, and Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP are awarded attorneys' fees in an amount of $16,800.

IT IS FURTHER ORDERED that Defendants' firm Perkins Coie LLP, are awarded costs in an amount of $3,765.62, and Defendants' firm Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP are awarded costs in an amount of $652.84.

IT IS SO ORDERED this _____ day of _____, 2020.

Dated this 12th day of November, 2020

DISTRICT COURT JUDGE

B0A 072 25C8 8130
Kerry Earley
District Court Judge

Submitted and Approved by:

DATED this 12th day of November, 2020.

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DATED this 12th day of November, 2020.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Danny Tarkanian, Plaintiff(s)	CASE NO: A-16-746797-C
vs.	DEPT. NO. Department 4
Jacky Rosen, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 11/12/2020

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EXHIBIT 3

EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES "RANDY" LAZER,

Plaintiff,

vs.

DAPHNE WILLIAMS,

Defendant.

CASE NO.: A-19-797156-C
DEPT NO.: XV

STATEMENT OF CHARLES "RANDY" LAZER

The following is a written statement from Charles "Randy" Lazer, which he desires Judge Joe Hardy to read prior to deciding on Defendant Daphne Williams's Motion for Attorneys' Fees:

This litigation was originally filed pro se, for $13,230 in damages. The Plaintiff had to spend 52 hours to defend his 26 year career and outstanding reputation from a knowingly false complaint made by the Defendant, to the Nevada Real Estate Division. She accused the Plaintiff under penalty of perjury, of sending racist and sexist texts and emails, of engaging in a racist and sexist dialogue, of racist and sexist conduct with herself, of racist conduct with her loan officer, and of acting to sabotage a transaction, and to have colluded with an appraiser.

Even one wrongful finding of these alleged violations could have cost the Plaintiff his 26 year career, his outstanding reputation, and likely at least $50,000 in administrative fees and fines. Additionally, the Defendant accused the Plaintiff of lying, of failing to send her a copy of the contract, of causing delay of the transaction, and of violating the seller's confidentiality (NRS645.252), while the accusations of racist and sexist conduct constituted multiple violations of Fair Housing Laws.

Yet, the Nevada Real Estate Division did not uphold any of these accusations by the Defendant, and closed the case. The Plaintiff had to spend approximately 52 hours to defend his career, livelihood, and his reputation, throughout 8 very stressful months, and filed this litigation to recover damages from fraud and defamation by the Defendant.

The Defendant had submitted this complaint just two days before she knew that the Plaintiff was filing small claims litigation against her of $1381 for her knowingly fraudulent text message of extortion,

which threatened the Plaintiff's real estate business and that of his broker, and which required the Plaintiff to spend 6 hours and 43 minutes of his time in compliance with his code of ethics of notifying all parties to the transaction, and contacting the real estate division.
This was a very simple case, as it pertained strictly to the written words of the Defendant in her complaint submitted to the Nevada Real Estate Division, under penalty of perjury. The Plaintiff filed this rather small litigation of $13,230 pro se to minimize costs, and quite simply, this case should have immediately gone to discovery.

Instead, the Defendant filed a motion to dismiss, which required the Defendant to demonstrate that she had acted in good faith, which is exactly what the litigation filed by the Plaintiff was about, and which contained proof that the Defendant had made many knowingly false statements in her complaint that again, was submitted under penalty of perjury.

This was no case of Freedom of Speech, as advocated by the Defense, and subsequent Amicus briefs submitted by the ACLU and FALA. The Defendant is completely free to file any complaint with the Nevada Real Estate Division that she desires, but does so under the penalty of perjury. There was no disagreement by the Plaintiff of the statute cited in both motions to dismiss, the appeal to the Supreme Court, and the Petition, all of which required the Defendant to meet the statutory requirement of acting in good faith.

So, submitting two motions to dismiss, after which both were denied, and then an appeal to the Nevada Supreme Court, on a twice denied motion to dismiss, which was denied, and then a Petition to the Supreme Court, all of which concerned the Defendant meeting the statutory requirement of acting in good faith, which was the focus of the Plaintiff's litigation. These motions, appeal, and petition, were not only unnecessary, but in apparent violation of Rule 11 (B) 1 of the Nevada Rules of Civil Procedure of causing unnecessary delay and needless expense. Discovery could and should have allowed the Defense to present their evidence that the Defendant had acted in good faith, instead of dragging a case out for approximately 2 years from when it should be involved and with astronomically greater expense.

Again, this was a litigation of $13,230 filed pro se. To defend against two very lengthy motions to dismiss, in which numerous cases were cited, and for which both motions were denied, and an appeal to the Nevada Supreme Court, which all three judges denied, and then a petition to the Supreme Court after denial, cost the Plaintiff approximately $55,000 in attorney's fees, which is more than 4 times the amount he was suing for.

Even though the Plaintiff prevailed on two motions to dismiss and an appeal to the Supreme Court, he was not awarded attorney's fees, for which being consistent, the Defense should not be awarded attorney's fees. Particularly as this case could have been resolved two years earlier merely by advancing to Discovery which was involved with the same statutory citations in both motions, the appeal, and petition, of the Defendant acting in good faith. Then, in advancing to discovery, over two years ago, had the Plaintiff had lost, his expenses would likely have been $30,000 less than what was involved to pay for attorneys fees to prevail on two motions to dismiss and an appeal to the Supreme Court, and for the submission of a response to a petition.

An additional reason for not awarding attorneys fees to the Defense for violations of NRCP rule 11 (B) 1, of causing unnecessary delay and needless expense, are multiple violations of the Nevada Rules of Professional Conduct, of the Defense attorney making many knowingly false statements to the court, in attempts to mislead the court. This will be detailed in the last section of this opposition.

The facts are that after spending more than 4 times the amount of the $13,230 litigation for attorneys fees, for a simple case based on the written words of the Defendant, that the Plaintiff filed pro se, and prevailing upon two motions to dismiss and an appeal to the Supreme Court, the Plaintiff was denied discovery.

Discovery was denied despite overwhelming proof that the Defendant made many knowingly false statements. This was substantiated the by Declaration of the Seller, in which she stated she never spoke of the Plaintiff acting to sabotage the transaction, and of stating the Defendant had denied access to her movers, for which the Plaintiff didn't lie of that. The seller also stated in her declaration that she had provided confidential information to the Defendant, which the Defendant had accused the Plaintiff of doing.

But there was far more proof that the Defendant failed to act in good faith, substantiated by the text and email record, for which NRED had no findings of any violations of the Plaintiff. This includes the Defendant's accusation the Plaintiff sent sent racist and sexist texts and emails, while to this day the Defendant has has never identified one racist or sexist text or email which she stated the Plaintiff sent her, and was her basis for accusing the Plaintiff of acting with racism and sexism towards her, and of racism to her lender. Without basis for submitting a complaint of multiple counts of racist and sexist conduct that jeopardized the Plaintiff's career, livelihood, and reputation, the Defendant failed to act in good faith.

The email record also substantiated the Defendant failed to act in good faith by accusing the Plaintiff of acting to sabotage a transaction. In fact, the Plaintiff had delivered an addendum extending escrow for 17 days per the Defendant's request with the seller's signed signature, at approximately 8 am, on the very date the Defendant claimed the Plaintiff had acted to sabotage the transaction, for which the seller refuted the Defendant's claim in her Declaration. The email record also showed the Plaintiff drafted three addendums extending the close of escrow per the Defendant's requests, which is the exact opposite of sabotage.

The email record also proved that the Defendant failed to act in good faith, per her claim that the Plaintiff had lied of her denial of access to the seller's movers. This was documented in an email to the Defendant's lender on July 18, 2017, and which also was refuted by the seller in her Declaration. The email record also proved the Defendant failed to act in good faith by claiming that the Plaintiff had failed to deliver the fully executed contract (which he sent to her lender 37 days prior to the close of escrow, per the Defendant's request he send that and other forms to her lender, who was acting as a facilitator), while her lender emailed the Plaintiff requesting the contract and another form.

The written record also proved the Defendant failed to act in good faith by accusing the Plaintiff of delaying the transaction, when the Defendant admitted she failed to order and pay for the condo documents required by her lender in a timely manner, and failed to pay for a rush, while the settlement

statement showed that she had breached the terms of the contract by providing a down payment of 5%, instead of 20%, which required mortgage insurance, and significantly caused the delay of closing.

In fact if the Defendant truly believed everything she stated in the complaint was true.....that the Plaintiff sent racist and sexist texts and emails, and had a racist and sexist dialogue, and acted with racism and sexism to the Defendant and her lender, and acted to sabotage a transaction, while colluding with an appraiser (that could have her overpaying by $10,000 on an $86,000 condo), and that the Plaintiff had lied, violated the seller's confidentiality, and failed to send a copy of the contract to the Defendant, and had caused delay of the transaction.....it is inconceivable that the Defendant would not have contacted an attorney, the police, or the real estate division, prior to authorizing the close of escrow.

Yet, that is what the Defendant did, closing the escrow without every contacting an attorney, NRED, or the police, which demonstrates she didn't believe her accusations of racism, sexism, sabotage of a transaction, collusion with an appraiser, lying, and other violations of professional conduct to be true.

When one reviews rule 11 (B) 1, it is quite clear that this case filed pro se, and with literal proof of the Defendant failing to act in good faith, that this should have immediately gone to Discovery, while the Plaintiff had significant evidence and basis for filing the litigation, particularly with no findings of any violations by the Nevada Real Estate Division. In fact one literally couldn't have a stronger case of Defamation and fraud when a governmental agency has no findings of any violations, and closes the case.

Quite simply with the evidence the Plaintiff submitted, and the litigation of a very small amount of $13,230, the case should have gone to discovery, as again, there was no dispute of the legal standard of the Defendant acting in good faith, which was cited in both motions to dismiss, the appeal to the Nevada Supreme Court, and the Petition.

The violations of NRCP 11 (B) 1 of causing unnecessary delay and needless expense came initially from the filing of the first motion to dismiss, for which the Plaintiff did not dispute the legal standard cited requiring the Defendant to act in good faith as noted in the motion by the Defense, as the Plaintiff's litigation involved the Defendant making knowingly false statements under penalty of perjury.

Then, instead of immediately proceeding to Discovery, additional violations of NRCP Rule 11 (B) 1 occurred after the denial of the first motion to dismiss, of filing a nearly identical motion to dismiss, in which neither the facts nor the written words of the Defendant and Plaintiff had changed. Instead of advancing to discovery, particularly given the evidence cited in the litigation and response, this second motion to dismiss was filed, and subsequently denied.

Again, instead of advancing to Discovery, further violations of causing unnecessary delay and needless expense, as noted in NRCP rule 11 (B) 1 occurred, as after the denial of two similar motions to dismiss, the Defense submitted an appeal to the Nevada Supreme Court, in which the facts of the case had not changed, and for which there was no denial of the Defendant's Freedom of Speech.

This appeal was remanded to the Circuit court, and denied by all three judges, for which this $13,230 litigation filed pro se, never should have advanced to this point, but should have gone to Discovery, which would allow the Defense to submit their evidence of the Defendant acting in good faith. Yet after two denials from Judge Hardy, and the denial by all three judges of the circuit court, a petition to the Supreme Court was filed, along with Amicus briefs, when the written words of the Defendant and the email and text record of communications had never changed, and this case again should have gone to Discovery.

Instead of this case immediately advancing to Discovery where it would have been resolved over two years ago, in which had the Plaintiff lost, he likely would have incurred costs of $25,000 continuing pro se, we now have a disposition that occurs two years after the case should have been resolved, and where for a $13,230 litigation, the Plaintiff has paid $56,500 of attorney's fees while being denied Discovery, despite overwhelming evidence in his favor, including third party testimony.

Yet now, the Defense requests $250,000 of attorney's fees for a $13,230 litigation, which again, should have been resolved two years ago, and, had the Plaintiff lost the costs would have been less than half of what he has paid, while being denied discovery.

A huge point, is that if every litigation for such a relatively low amount of $13,230, or for that matter $20,000 or $50,000, or $100,000 or maybe even $250,000, where a party suffered severe damage by violation of law, and sought to obtain compensation for malicious and fraudulent actions; that only the very wealthy would be able to seek justice. Virtually all Americans would be denied justice if they had to pay attorneys fees to defend against two motions to dismiss, an appeal to the Supreme Court, and a petition, while they would knowingly have to risk their life savings...merely to seek compensation from damages they suffered from the terrible actions of others.

Again, with the Plaintiff prevailing upon two motions to dismiss, and an appeal to the Supreme Court, without being allowed reimbursement for attorneys fees, it seems the same standard of consistency should be applied to the Defense, that should have allowed this case to resolve two years ago, and for a fraction of the costs, and far less hours for the defense on a small litigation of $13,230. With that in mind, it might seem fair that the Plaintiff shouldn't be exposed to attorneys fees from the Defense for having prevailed over two motions to dismiss and an appeal to the Supreme Court. Again, this case should have been resolved almost two years ago, and without the Plaintiff having paid $55,000 of attorney's fees for a small litigation filed pro se and with denial of discovery, for which the Plaintiff has now paid over 4 times the amount of the litigation, in attorneys fees.

KNOWINGLY FALSE STATEMENTS OF DEFENSE ATTORNEY RANDAZZA, FILED IN 2 MOTIONS TO DISMISS, AN APPEAL TO THE SUPREME COURT AND A PETITION, with his submission of 2 Amicus briefs, which also contained knowingly false statements, all of which are in violation of NRCP rule 11 B, and NRPC 8.4 C.

These knowingly false statements include his filings to the Supreme Court of stating the Plaintiff was racist, despite his knowledge from the Plaintiff's email on June 27, 2017 to the Defendant's lender that the Plaintiff had given years of his life in charitable endeavors to helping minorities including providing food and clothing to impoverished black families in Detroit, and having spoken to raise

funds for minority scholarships, and then volunteering to renovating homes for disabled minority seniors. Please see point 8 for the exact words of Mr. Randazza, and the proof they were knowingly false, and slanderous for stating to the Nevada Supreme Court that Mr. Lazer was racist.

Of additional importance was the knowingly false statements throughout the motions, appeal and petition that Attorney Randazza filed claiming the Plaintiff agreed with the Defendant, or did not present evidence of disagreement. It is clear that if the Supreme Court believed these statements and others cited below that were knowingly false, and written by Attorney Randazza, that would be a likely basis for overturning the circuit court's ruling that denied the appeal to dismiss the case.

The following contains proof of some of the knowingly false statements submitted to the court by Attorney Randazza, in order to mislead the court, which are taken from the Second Motion to Dismiss;

1) Page 2 line 23 “Plaintiff either admits to the truth or does not dispute most statements in Ms. Williams complaint”. To qualify, the “truth” is implied of the Defendant’s written statements in her NRED complaint.

That is a knowingly false statement, as attorney Randazza was deemed to review the 32 page litigation the Plaintiff submitted. In that litigation the Plaintiff provided evidence as cited in section 2 of this letter, proving the Defendant made many knowingly false statements. This proves Attorney Randazza’s claim that the Plaintiff “does not dispute most statements in Ms. Williams complaint” to be false.

In fact, the Plaintiff provided detailed disputes of the Defendant’s claims in pages 2-6 of the opposition to the first motion to dismiss, and from submitting the seller’s declaration, that refuted many statements of the Defense.

This would include the Plaintiff not only disputing, but submitting overwhelming evidence that he never sent racist and sexist emails, or engaged in racist and sexist dialogue, or colluded with an appraiser, or acted to sabotage a transaction, or lied, or violated his duties of confidentiality to the seller, or failed to deliver forms or caused delays, while the Plaintiff cited the findings of the Nevada Real Estate Division, that did not uphold any of the accusations made by the Defendant.

In fact, the Plaintiff disputed this statement, when he initially represented himself in an email to attorney Randazza on August 11, 2019, stating on the 6th line that “In the latter part of this letter I cite 7 statements of the Defendant in her complaint that were defamatory, and for which she knew they were false”, while the Plaintiff provided great evidence that noted in the litigation and in the responses to both motions to dismiss and the appeal, and petition, again disputing that he had ever engaged in racist or sexist conduct, or had acted to sabotage a transaction, or colluded with an appraiser, or lied, or violated his duties of confidentiality to the seller or failed to deliver forms or caused delay. This email is attached, informing the court that Mr. Randazza had knowledge over two years ago of the Plaintiff disputing virtually everything the Defendant had written in her complaint.

Thus it is quite clear that attorney Randazza made a knowingly false statement to mislead the court .

2) Page 7 of the second motion to dismiss, lines 5&6 state that the Plaintiff tried to mislead the court, which Mr. Randazza knew was a wholly false statement.

The 32 page litigation was quite detailed in which the Defendant's complaint was submitted as an exhibit, along with documentation of the real estate transaction, and the findings of the Nevada Real Estate Division, and subsequently the Seller's Declaration, along with the relevant email and text record. So none of that was of misleading the court. In fact, attorney Randazza cannot back his words, and should be sanctioned for making a knowingly false claim of the Plaintiff acting to mislead the court.

3) Additionally, aside from the 7 different accusations of racist and sexist conduct in the complaint, the Defendant's attorney states on page 7 of the Second Motion to Dismiss, line 17, that the rest of the complaint was merely "nits" that the Plaintiff was proceeding with.

No, it is not a "nit" to be accused of sabotaging a transaction, which would likely lead to the revocation of one's real estate license, which the Defense attorney would be deemed to have knowledge of.
Nor is it a "nit" to be accused of multiple counts of lying, which is in violation of NRS 645.252 and could subject the Plaintiff to fines for each count, while it is not a "nit" to be accused of breaching a fiduciary responsibility of confidentiality, for which the Plaintiff could have his license suspended and be fined. It also is not a "nit" that the Plaintiff was accused of colluding or seeking to wrongfully influence an appraisal, as that would constitute loan fraud and a violation of NRS 645.252, and could result in the loss of license. Mr. Randazza knew that none of these are nits, and made knowingly false statements, seeking to mislead the court.

4) Page 13 ...lines 3,4 and 5 of the second motion to dismiss are knowingly false, for which it was written that the Plaintiff made "no allegation and provides no evidence that Ms. Williams made her statements regarding this conversation that were false", when she alleged in her complaint to NRED that Mr. Lazer had engaged in a racist and sexist conversation. This was actually repeated from Page 7 lines 19-22, in which Mr. Randazza wrote that the "Plaintiff does not contest" of what he stated to Ms. Williams in this conversation.

The allegations of falsity were detailed not only on pages 3 and 4 of the Opposition of the first motion to dismiss, but also in the Plaintiff's email to Attorney Randazza on August 19, 2019. The Plaintiff informed that much of the conversation was omitted by Ms. Williams, that the Plaintiff didn't speak in the manner that she had cited. Most significantly, the Defendant had omitted the fact that she had informed the Plaintiff that her brother was a licensed real estate agent who was assisting her with this transaction.

So it was quite clear that Mr. Randazza had lied to the court stating that Mr. Lazer made no allegation and provided no evidence that Ms. Williams made her statements regarding this conversation that were false.

In fact, the Plaintiff provided great evidence that Ms. Williams committed perjury in her complaint to NRED of stating that was a racist and sexist dialogue. Particularly as there was no mention of sex

or gender, but it was a dialogue of congratulations of the Defendant, and of the Plaintiff offering to work with her in the future, which is the exact opposite of being racist and sexist.

5) Yet, Mr. Randazza made similar statements that were knowingly false of this conversation in the appeal, on the last paragraph of page 5 of this conversation by stating that "Mr. Lazer does not dispute that he said this", when that dialogue had been disputed as noted in Mr. Lazer's answer, in every response of Mr. Lazer's, and in the opposition to the first motion to dismiss on pages 3-4, and in the Plaintiff's August 11, 2019 email to attorney Randazza.

6) Then Attorney Randazza made a similar knowingly false statement of this dialogue that Mr. Lazer did not dispute this in the Petition filed to the Supreme Court, on Page 9, line 2, writing that "Lazer never rebutted this. Again, rebutted since August 11, 2019, and in every answer or response to the filings of motions to dismiss, an appeal and a petition, for which pages 3-4 of the opposition for the first dismissal, and page 5 of the opposition of the second motion to dismiss, and pages 23-24 of the Answer to the Appeal to the Supreme Court.

7) Attorney Randazza allowed this knowingly false statement to be submitted in the ACLU's Amicus brief in the second paragraph of Page 2, of the citation of the conversation alleged by the Defendant, and the statement "Although Lazer does not dispute that he uttered the offending remarks". This again, despite Attorney Randazza's knowledge that the Plaintiff disputed this conversation in the August 11, 2019 email, and in pages 3-4 of the opposition of the first motion to dismiss, and page 5 of the opposition of the second motion to dismiss, and pages 23-24 of the Answer to the appeal.

Points 4-7 demonstrate the knowingly false statements of Attorney Randazza of claiming the Plaintiff did not contest or dispute the claimed conversation he had with the Defendant, when the reality is that Mr. Randazza had knowledge that the Plaintiff did dispute and contest the Defendant's statement, not only from his email to attorney Randazza of August 19, 2019, but in multiple responses submitted to the court. Yet Mr. Randazza continued with this knowingly false narrative to the Supreme Court.

8) On page 9 of the Petition to the Supreme Court, which was submitted after the Circuit Court had denied the appeal, Mr. Randazza should be sanctioned for wrongfully putting into quotes, words that Mr. Lazer never stated "I can't be racist because I play jazz" and then wrote "that was a shockingly racist statement". Mr. Randazza continued proclaiming that Mr. Lazer was proven by this statement to be a racist, with his writing "if "racist is capable of being objectively true or false, it is proven by this record. that then writing that effectively stated Mr. Lazer a racist, and placing words that Mr. Lazer did not write in quotation marks. Mr. Lazer had sent an of June 27, 2017 to the Defendant's loan officer, Mr. Jolly, as Mr. Lazer had a duty to notify all parties to the transaction of material facts under NRS 645.254.

The material fact that Mr. Lazer was notifying Mr. Jolly of, was of the accusations by the Defendant of racist, sexist, unethical, and unprofessional conduct, including sending racist and sexist texts and emails.

Mr. Randazza omitted the vast bulk of the email which shared a life history of the Plaintiff of standing against hate at an early age from having members of his family murdered in the Holocaust, and of

giving years of his life to supervising students with food and clothing drives to help impoverished black families in the Detroit area, and speaking to raise money for minority scholarships, and then later of volunteering to renovate homes for disabled minority seniors, while producing and performing in a show for 13 years that benefited hundreds of minorities.

Mr. Randazza took the exact wording of this email, citing the Plaintiff's words that "I also play and write jazz, which is truly at the very heart of black/African culture, and I have an incredible love and respect for that." (II-AA 382) (emphasis added), that were written in defense of knowingly false accusations of racism by the Defendant..

Yet, Randazza wrote "A white man responding to allegations of racism by saying how much he likes black culture or has black friends is a stereotypically racist response. "I can't be racist because I play jazz" is so shockingly racist that if "racist" is capable of being objectively true or false, it is proven by this record".

Mr. Randazza from reading the email, knew that never did the Plaintiff make such a statement, and had lived his life helping minorities and standing against hate. Yet, Mr. Randazza knowingly falsely slandered the Plaintiff to the Nevada Supreme Court by portraying the Plaintiff as being racist, and in fact, provably racist, without any evidence. That merits sanctioning of the Defense Attorney.

Mr. Lazer requests the court deny the request for attorney's fees for the Defense for the following reasons;

1) This was a $13,230 litigation filed pro se, and that if anybody was seeking compensation for damages from a fraudulent or malicious act, if they had to defend against two motions to dismiss, an appeal to the Supreme Court, and then respond to a Petition, which thus far has been $56,500 of attorneys fees, and then be exposed to the risk of having to pay $250,000 for attorneys fees if they lost, then all but only the very wealthy would be shut out of the Justice system.

This would certainly seem to be a violation of Rule 11 (B) 1 of needlessly increasing costs, particularly for a litigation of this size, where this is no landmark case of Freedom of Speech, as quite simply this case should have advanced to Discovery without the filing of a motion to dismiss, as the motion and the litigation were focused on the same point, of the Defendant's actions if they were in good faith.

Then after having the motion to dismiss denied, instead of advancing to discovery, a very similar motion to dismiss was filed, which was also denied. That would seem to be another violation of rule 11 (B) 1. Then after that motion was denied, in which the facts had not changed, and the litigation was based upon the Defendant's written words, instead of going to Discovery, an appeal to the Supreme Court was submitted. That too was denied, for which the case yet again should have advanced to Discovery.

Again....both motions to dismiss and the appeal to the Supreme Court, and the Petition all cited the statute requiring the Defendant act in good faith, which is what the litigation was about. So there wasn't any conflict of the litigation with the motions to dismiss and the appeal, and petition regarding the legal standard.

2) It seems horrific that a Plaintiff with great documentation of proof that the Defendant failed to act in good faith, including a Declaration from the Seller, the email and text record, along with the behavior of the Defendant which belied her accusations, and the findings of NRED, for which this would appear to be as strong a case of Defamation as one could have, with a governmental agency not upholding one claim of the Defendant.

3) As this was not any case of Freedom of Speech, as the Defendant is free to submit any complaint to NRED that she desires, it was wholly improper given the evidence contained in the 32 page litigation to file two motions to dismiss, an appeal to the Supreme Court, and a petition, as again this case should have gone to Discovery and been resolved over two years ago.

Discovery would allow for the determination if the Defendant had acted in good faith, for which there was no dispute from the litigation of that being the legal standard.

In short, this case should have immediately advanced to Discovery, and with the filing of two motions to dismiss, an appeal, and a petition, that served to cause unnecessary delay in violation of rule 11 (B) 1, particularly for a case of $13,230, as that caused at least two additional years for resolution, and great delay that was wholly unnecessary.

4) As Judge Hardy had denied attorneys fees for the Plaintiff, even though he prevailed with two motions to dismiss and an appeal to the Supreme Court, it would be requested of consistent treatment that attorneys for the Defense be denied as an act of consistency. Moreover, it given if the case would have advanced to Discovery, the Plaintiff would have continued pro se, and even if he had lost, he likely would have paid less than half of what he has already paid, with the denial of discovery, for a tremendously well substantiated case.

It just doesn't seem right that for a $13,230 litigation, that a Plaintiff would pay $56,500 in attorneys fees because the Defense chose not to go to Discovery, and to seek to financially exhaust the Plaintiff. Again, both motions to dismiss, the appeal, and petition submitted by the Defense all cited the same legal standard of proof that was of what the litigation had cited, of the Defendant failing to act in good faith, and of proving that she had made knowingly false statements under penalty of perjury.

5) The Defense Attorney made many knowingly false statements that are in violation of NRCP 11 (B), and NRPC 8.4 (if I recall). This includes placing into quotations words that the Plaintiff did not state from an email he had sent, for which Mr. Randazza put into quotations, "I can't be racist because I play jazz", and then adding lines that state this was provably racist. This was detailed in point 8 of Exhibit 3.

Other knowingly false statements were that the Plaintiff had agreed with what the Defendant stated, and that he had not contested what she had stated, and that he had not provided any evidence to refute this, these are detailed in Exhibit 3.

Attorney Randazza knew that the many statements he made in his two motions to dismiss, the appeal, and the petition, that the Plaintiff agreed, or did not contest, or did not present evidence refuting the

Defendant's statements were knowingly 100% false. Again, Mr. Randazza's knowledge of this came from the actual litigation, and every response the Plaintiff had filed, along with not only from the litigation, but from an email the Plaintiff had sent to Randazza when he was pro se, on August 11, 2019, refuting 7 different statements the Defendant had made, while providing the evidence supporting his refutation of those statements.

When one considers that the Defendant first committed extortion, and then instead of settling in small claims court for $1351, she sought to stop that litigation by filing a career jeopardizing real estate complaint, that required 52 hours of the Plaintiff's time to defend his career, reputation, and livelihood over 8 stressful months, that in itself is horrific.

Then upon being sued, the Defendant completely fabricated her Declarations to the Court, in which the Plaintiff has proof of approximately 36 counts of perjury in both declarations, along with 16 counts of perjury in her complaint to NRED. Yet, the Plaintiff was denied Discovery while having to pay $56,500 of attorneys fees in seeking justice, in standing up for his career, his reputation, and the life he has led.

It is apparent there are obvious violations of rule 11 of causing unnecessary delay and needless expense, along with many knowingly false statements to the court, in the attempt to mislead the court, including claiming that the Plaintiff was a racist, and a white privileged attorney (the Plaintiff is a real estate agent, who didn't know that white privilege entailed working at 7-11 after college, making $23,000 a year as a teacher, and driving a $600 car) while knowingly falsely claiming the Plaintiff agreed with the statements of the Defendant, and failed to contest them or present evidence, which constitutes further violations of rule 11 of the NRCP, and rule 8 of the Nevada Rules of Professional Conduct.

In conclusion, it is requested that no attorney's fees be awarded to the Defense. First, the Defense attorney had stated to the Plaintiff that he would collect fees from the Plaintiff, and not from the Defendant. The actions of the Defense attorney and Defendant were instead of proceeding to Discovery for this $13,230 litigation, that had nothing to do with denying the Defendant's Freedom of Speech. Yet, the Defense attorney filed two motions to dismiss and then an appeal to the supreme court, all of which were denied, and then a Petition to the Supreme court. That delayed resolution of this case by two years, for which the statute the Defense cited in their motions to dismiss, appeal, and petition were the same standard of what was in the Plaintiff's litigation, of the Defendant failing to act in good faith.

Again, this was no case of Freedom of Speech, as there was no denial of the Defendant's right to submit any complaint to the Nevada Real Estate Division she desired, nor to restrict her speech. This was a case of the Defendant failing to act in good faith with her filing of a career ending complaint to the Nevada Real Estate Division, should any wrongful findings have occurred.

Additionally the Defense made many knowingly false statements in their filings, stating to the Supreme Court that the Plaintiff was provably a racist, while knowing the Plaintiff has given years of his life in volunteering to help minorities from the email of the Plaintiff they had cited. Moreover, the

Defense lied to the court many times by stating the Plaintiff either agreed with the Defendant's statements, or did not contest them, or failed to present evidence to refute them.

As the Plaintiff never sought to deny the Defendant's speech, this case should have simply proceeded to Discovery. If that had occurred, and the Plaintiff would have lost, then the Plaintiff would have likely incurred less than half of the attorney's fees that he has already spent, again, $56,500 for a pro se litigation of $13,320, which occurred after he spent 52 hours defending his career and reputation with the Nevada Real Estate Division from the Defendant's complaint that not one accusation was upheld.

If spending $56,500 for attorney's fees on a pro se litigation of $13,230 is not sufficient, more than 4 times the amount of the litigation, then this truly is a horrific circumstance. The Defense attorney was not to the very best of the Plaintiff's understanding, receiving funds from the Defendant, but merely seeking to incur incredible attorney's fees for the defense of a $13,230 litigation.

The Supreme Court made factually false statements in their findings, and apparently placed uncorroborated statements of the Defendant above the corroborated statements of the Plaintiff, that includes a Declaration of the Seller, and the entire written record of communications.

Again....if this were to happen to everybody who filed a lawsuit, that they would have to defend against two motions to dismiss, an appeal to the Supreme Court, and then a petition, as opposed to advancing to Discovery, and then be at risk for huge sums of attorney's fees, this would shut out everybody from the justice system, aside from the wealthy.

It is requested that no attorney's fees be awarded, as this case should have gone to Discovery without the filing of any motions to Dismiss or appeals, as the legal statute the Defense cited of acting in good faith, is exactly what the litigation was about. Combined with the amount of the litigation being $13,230, and with the Plaintiff having incurred $56,500, this would seem to be far in excess of what should have occurred, even if the case went to Discovery, and the Plaintiff lost.

/s/ *Charles "Randy" Lazer*_____
CHARLES "RANDY" LAZER