RPLY

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES "RANDY" LAZER, Plaintiff, vs. **DAPHNE WILLIAMS,** Defendants.	Case No. A-19-797156-C Dept. XV HEARING REQUESTED **REPLY IN SUPPORT OF DEFENDANT DAPHNE WILLIAMS'S ANTI-SLAPP SPECIAL MOTION TO DISMISS FIRST AMENDED COMPLAINT UNDER NRS 41.660**

Defendant Daphne Williams hereby files her Reply in support of Anti-SLAPP Special Motion to Dismiss the First Amended Complaint of Plaintiff Charles "Randy" Lazer Under NRS 41.660.

1.0 INTRODUCTION

Ms. Williams filed a complaint with the Nevada Real Estate Division ("NRED") recounting instances of Plaintiff's behavior during the course of the sale of real estate that she subjectively considered to be racist, sexist, unprofessional, and unethical. She believed every statement in the complaint to be true when she filed it, and even reviewing Plaintiff's document dump and ranting to the contrary, she still believes every statement to be true.

Plaintiff sued her based on her statements in the complaint. The complaint is protected under multiple subsections of Nevada's Anti-SLAPP statute, Ms. Williams made her statements in good faith, and all of Plaintiff's claims are barred by Nevada's litigation privilege. The case is not more complicated than that. However, Plaintiff wants to make it more complicated than that. The court should not be misled by these attempts.

In his Opposition, Plaintiff invents additional implausible facts in an attempt to manufacture a dispute of material facts, **but still fails to provide any evidence that Ms. Williams made any statement with knowledge of its falsity**. He also fails to provide any evidence of damages, dooming each of his claims for relief. In the process of liberally copying and pasting his opposition to Ms. Williams's prior Anti-SLAPP Motion, Plaintiff continues to make legal arguments that he knows are baseless, which this Court should sanction. The Court should grant Ms. Williams's Anti-SLAPP Motion, award Ms. Williams her reasonable attorneys' fees, and award damages of $10,000 under NRS 41.670(1)(b).

2.0 FACTUAL BACKGROUND

The factual background of this case is laid out in Ms. Williams's Statement of Facts filed with her Anti-SLAPP Motion, which is incorporated herein by reference. In addition to attaching previously-filed declarations and evidence,

Plaintiff makes several new and false representations in his supplemental declaration that must be addressed.

2.1 Delivery of the Executed RPA

Plaintiff admits that he met with Ms. Williams at a Whole Foods store on May 21, 2017, and Ms. Williams made revisions to the Residential Purchase Agreement ("RPA") for the condo unit she was purchasing at this time. (Supplemental Declaration of Charles Lazer ["Supp. Lazer Decl."] at ¶3(c).)[1] He claims that he had authorization from the seller of the condo unit, Rosane Cardoso Ferreira (f/k/a Rosane Krupp) (the "Seller"), to accept changes that Ms. Williams made "and use her already-existing signature as the binding signature." (*Id*. at ¶ 3(d).) Plaintiff does not claim he told Ms. Williams of this alleged authorization, however, and she was not aware of it. (Supplemental Declaration of Daphne Williams ["Supp. Williams Decl."], attached as **Exhibit 1**, at ¶ 5.) Plaintiff claims Ms. Williams called him on May 22, 2017 and instructed him to send the fully-executed RPA to her lender, but this conversation never happened and Ms. Williams never gave this instruction. (*Id*. at ¶ 6.) Ms. Williams told Plaintiff to send *her*, not her lender, the fully executed RPA, and Plaintiff never did so. (Declaration of Daphne Williams ["Williams Decl."], Anti-SLAPP Motion Exhibit 1, at ¶¶ 20-21.)

2.2 Delays in Closing Escrow

Plaintiff, for the first time, claims that the delays in closing escrow were caused by Ms. Williams making a 5% down payment on the condo instead of a 20% down payment. (Supp. Lazer Decl. at ¶¶ 4-7.) This statement is inadmissible, as Plaintiff provides no basis for his personal knowledge of it and no documents

[1] This admission is significant because Plaintiff's basis for claiming Ms. Williams lied in her NRED Complaint about not receiving a signed version of the RPA is that he emailed her a copy with the Seller's signature on May 18, 2017. He now admits that this was not the final version.

showing there was ever this understanding. He also provides no explanation of how this could have or in fact did cause any delays.

Ms. Williams was never obligated to make a 20% down payment. The RPA is silent as to the down payment amount, and this amount was not decided until after June 9, 2017, when Ms. Williams asked Mr. Jolly how much she needed for a down payment. (Supp. Williams Decl. at ¶ 8; June 9, 2017 email from Ms. Williams to Mr. Jolly, attached as **Exhibit 2**.) Mr. Jolly, the single best person to testify as to what caused delays in the close of escrow, testified that these delays were the result of manpower shortfalls at Alterra due to holidays and vacations, and not because of Ms. Williams's conduct. (Declaration of Bryan Jolly ["Jolly Decl."], Anti-SLAPP Motion Exhibit 8, at ¶ 14; Williams Decl. at ¶¶ 27-28.) The Court should disregard Plaintiff's claim that escrow was delayed due to a change in the down payment amount.

3.0 ARGUMENT

3.1 Ms. Williams Satisfies the First Prong of the Anti-SLAPP Analysis

The Anti-SLAPP statute protects

> 1. Communication[s] that [are] aimed at procuring any governmental or electoral action, result or outcome;
>
> 2. Communication[s] of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
>
> 3. Written or oral statement[s] made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
>
> 4. Communication[s] made in direct connection with an issue of public interest in a place open to the public or in a public forum,
>
> Which [are] truthful or [are] made without knowledge of [their] falsehood.

NRS 41.637. The merits of a plaintiff's claims, and the legality of the defendant's actions, are not the focus of the first prong analysis and, if relevant, should only be considered during the second prong analysis. *See Coretronic v. Cozen O'Connor*, 192 Cal. App. 4th 1381, 1388 (2d Dist. 2011); *see also Taus v. Loftus*, 40 Cal. 4th 683, 706-07, 713, 727-299 (2007). **The moving party must make only a *threshold* showing as to the first prong of the analysis, while questions going to the merits of the plaintiff's claims are reserved for the second prong**. *See John v. Douglas County Sch. Dist.*, 125 Nev. 746, 750 (2009); *see also City of Costa Mesa v. D'Alessio Investments, LLC*, 214 Cal. App. 4th 358, 371 (4th Dist. 2013) (stating that "[t]he merits of [the plaintiff's] claims should play no part in the first step of the anti-SLAPP analysis").

3.1.1 Plaintiff's Claims are Based Upon Protected Conduct

Plaintiff's claims are based upon Ms. Williams's NRED Complaint. There is no question that the statements in her complaint fall under NRS 41.637. First, the Complaint was aimed at procuring governmental action, namely the NRED taking action against Plaintiff for conduct which Ms. Williams subjectively believed was racist, sexist, unprofessional, and unethical. This government action took the form of imposing discipline and/or fines. NRS 41.637(1) is thus satisfied.[3] Plaintiff does not contest that the complaint is protected under NRS 41.637(2), and it is protected under that subsection as well.

The complaint was obviously a statement made in direct connection with an issue under consideration by an executive body, or any other official proceeding. The Division is an executive body, and the Real Estate Commission

[3] Plaintiff falsely claims in his Opposition that Ms. Williams does not argue the NRED Complaint is protected under NRS 41.637(1). (Opposition at 9.) The Anti-SLAPP Motion argues that it is protected under this subsection. (Anti-SLAPP Motion at 5.) With no countervailing argument on this point, Plaintiff should be held to concede that the complaint is protected under this subsection.

of the Division, the body responsible for conducting disciplinary hearings, is appointed by the Nevada Governor, which is the chief executive of the state. (Anti-SLAPP Motion Exhibit 15.) "The Nevada State Legislature . . . created the Department of Business and Industry . . . as a State Department included under the State Executive Branch." *White v. Conlon*, 2006 U.S. Dist. LEXIS 43182, *9 (D. Nev. June 6, 2006). The complaint initiated the Division's investigation of Plaintiff, an official proceeding of an executive body, thus satisfying NRS 41.637(3).

Plaintiff contends NRS 41.637(3) does not apply because this subsection applies only to official proceedings that are already underway, and not to actions that initiate such proceedings. This is simply wrong. *See, e.g., Carver v. Bonds*, 135 Cal. App. 4th 328, 350 (2005) (noting that "[c]omplaints to regulatory agencies such as the [Board of Podiatric Medicine] are likewise considered to be part of an 'official proceeding' under the anti-SLAPP statute").[4] Even a parent's letter to a school urging that it fire a baseball coach has been found to be part of an "official proceeding" and thus protected. *See Lee v. Fick*, 135 Cal. App. 4th 89, 96 (2005). If a letter asking a school to fire a coach, when there was no pre-existing proceeding prior to sending the letter, is part of an "official proceeding," then surely a formal complaint to the NRED is as well. The U.S. District Court for the District of Nevada has agreed that Nevada's Anti-SLAPP statute "has no temporal

[4] Nevada courts look to case law applying California's Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, which shares many similarities with Nevada's law. *See John*, 125 Nev. at 756 (stating that "we consider California case law because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute"); *see also Shapiro v. Welt*, 389 P.3d 262, 268 (Nev. 2017) (same); *Sassone*, 432 P.3d at 749 n.3 (finding that "California's and Nevada's statutes share a near-identical structure for anti-SLAPP review … Given the similarity in structure, language, and the legislative mandate to adopt California's standard for the requisite burden of proof, reliance on California case law is warranted"); *and see* NRS 41.665(2) (defining the plaintiff's *prima facie* evidentiary burden in terms of California law).

requirement that only communications that come after the filing of a complaint are protected, and demand letters, settlement negotiations, and declarations are clearly 'made in direct connection' with a complaint, which is 'under consideration by a . . . judicial body."' *LHF Prods., Inc. v. Kabala*, 2018 U.S. Dist. LEXIS 148256, *8 (D. Nev. Aug. 24, 2018). Under Plaintiff's reading of the statute, his own complaint that initiated this action would not be protected under the Anti-SLAPP statute, which is plainly incorrect.

Plaintiff additionally argues that there is no evidence Ms. Williams's complaint to the Division was part of an official proceeding under the statute. This makes no sense. The Division is responsible for disciplining real estate agents like Plaintiff; Plaintiff admits this. (*See* Lazer Decl. at ¶ 51.) Plaintiff alleges in his FAC that the NRED initiated an investigation by the Division because of the NRED Complaint, to which Plaintiff spent dozens of hours responding. The NRED in fact initially found that Plaintiff was in violation of Nevada statutes and ethical standards and imposed a monetary fine on Plaintiff, which he appealed. (*See* Anti-SLAPP Motion Exhibits 13-14.) Plaintiff cannot now claim the Division did not conduct such an investigation in response to Ms. Williams's complaint.[5] Plaintiff's claim that these protections are only afforded to complaints to a government agency that result in a formal hearing or adjudication finds no support in the statute or case law. It is incorrect as a matter of logic, as well, as it would make the statute's protections contingent on future events. For example, a complaint filed with a government agency would be unprotected upon filing it, allowing a

[5] Plaintiff's argument that the scope of NRS 41.637(3) is coterminous with Nevada's "fair report" privilege is equally misguided. Plaintiff provides no authority supporting this argument, and it is obvious that the policy reasons for the Anti-SLAPP statute's protections and this privilege are distinct. NRS 41.637(3) is much more similar in purpose and language to Nevada's litigation privilege, which does apply here, as explained in Section 3.2.1, *infra*.

plaintiff to bring suit on it, only for the government agency to later issue a formal adjudication after discovery in the lawsuit had proceeded and the time to file an Anti-SLAPP motion had elapsed. There is no authority that suggests this is how the statute operates. The NRED Complaint is protected under NRS 41.637(3) as well.

3.1.2 Ms. Williams Made Her Statements in Good Faith

Plaintiff tries to argue that "Good Faith" means something it does not. Good faith is defined, in this context, by the statute. Good Faith means "truthful or … made without knowledge of [their] falsehood." NRS 41.637. Therefore, when we are looking at the first prong, falsity is statutorily irrelevant. It is properly described as a standard even higher than that of the Actual Malice standard under *New York Times v. Sullivan*. That standard requires knowing falsity *or* reckless disregard for the truth. Under the first prong of the Anti-SLAPP law, even a recklessly false statement is insufficient to defeat a prong one showing. the plaintiff must prove ***knowing*** *falsity* to rebut a defendant's initial showing of good faith.[6] Even if a statement is false, the defendant must have made it with *actual knowledge* that it was false; neither negligence nor even reckless or wanton disregard for the truth can defeat a defendant's showing under prong one. The fundamental inquiry is whether the defendant knowingly lied; "[t]he test is subjective, with the focus on what the defendant *believed* and *intended to convey*, not what a reasonable person would have understood the message to be." *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 415 (1983) (emphasis in original). The term "good faith" in the Anti-SLAPP statute does not have any independent significance from its definition in the statute. The Nevada Supreme Court in *Welt* clarified that this simply means "[t]he declarant must be unaware that the communication is false at the time it was made." 389 P.3d at 267.

[6] Certainly, once past prong one – "recklessness" can come into play in the Prong Two analysis – if falsity matters at that point.

Despite Ms. Williams instructing Plaintiff as to this standard three separate times in writing (the initial Anti-SLAPP Motion and Reply, and the instant Motion), and instructing him on the standard at the hearing on the initial Motion, Plaintiff once again falsely claims that Ms. Williams's motives are relevant to the "good faith" analysis. (Opposition at 11-12.) Ms. Williams explicitly warned Plaintiff in the instant Motion that she would request sanctions against Plaintiff if he reiterated this objectively baseless argument in his Opposition. (Anti-SLAPP Motion at 6.) Ms. Williams now formally requests that the Court impose sanctions on Plaintiff for repeating an argument he knows has no legal basis.

The only question as to "good faith" under the Anti-SLAPP statute is whether the moving party's statements were true or made without knowledge of falsity. That is it. There are no other questions. There is no inquiry into motives. There is no inquiry into whether the moving party should have known otherwise or had subjective doubts, or should have investigated the truth of their statements. Plaintiff can only defeat Ms. Williams's showing of good faith on the first prong if he can show that Ms. Williams actually, with 100% certainty, *knew* that her statements were false. There is no record evidence showing this.

Plaintiff tries to rebut Ms. Williams's showing of good faith by attempting to fabricate disputes of fact as to a few of the statements contained in the NRED Complaint. But the first prong is not meant to require a granular analysis of each facet of each individual statement, and is not meant to allow a plaintiff to defeat an Anti-SLAPP motion simply by claiming that a statement is false. It is merely a *threshold* requirement where the Court is not supposed to inquire as to the merits of a plaintiff's claims.[7] *See John*, 125 Nev. at 750 (2009); *see also D'Alessio*, 214

[7] Plaintiff's claims are all speech-related torts which require him to show falsity and at least negligence. Plaintiff's arguments regarding "good faith" under prong one are not restricted to knowing falsity, but rather include assertions that

Cal. App. 4th at 371; *Coretronic*, 192 Cal. App. 4th at 1388; *Loftus*, 40 Cal. 4th at 706-07, 713, 727-299. The U.S. District Court for the District of Nevada has a recent, illustrative case where the Court did the prong one analysis properly, and it found that declarations are sufficient to satisfy a defendant's burden on the first prong. *Kabala*, 2018 U.S. Dist. LEXIS 148256 at *8 (stating that "because LHF offers two signed declarations – one from its counsel and another from a witness – that declare that the communications were truthful or made without knowledge of their falsehood, I find that LHF has made the requisite showing that its communications are protected").

A statement must include a false assertion of fact to be defamatory. Even if there is doubt as to whether some of the statements in the NRED Complaint are completely, 100% true, this level of veracity is not required. The doctrine of substantial truth bars a court from imposing defamation liability[8] based on a statement's immaterial inaccuracies, so long as the gist of the statement is truthful or made without knowledge of falsity. *See PETA v. Bobby Berosini, Ltd.*, 11 Nev. 615, 627-28 (1995) (finding allegation that trainer beat orangutans with steel rods was not defamatory where trainer actually beat them with wooden rods) (overruled on unrelated grounds in *City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644 (1997)). "[M]inor inaccuracies do not amount to falsity unless the inaccuracies 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Pegasus*, 118 Nev. at 715 n.17. If the "gist" or "sting" of a story is true, it is not defamatory even

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Ms. Williams should have known her statements were false or should have conducted a more thorough investigation. The Court should not entertain this impermissible attempt to shift the burden on Ms. Williams to show that her statements were not defamatory.

[8] There is no authority to suggest a court should distinguish between what is considered true under the First Amendment and what is considered true under the Anti-SLAPP statute.

if some details are incorrect. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991). None of the nits in the FAC rise to a level of actionability.

Furthermore, a statement of opinion cannot be false or defamatory, as the First Amendment recognizes that there is no such thing as a "false" idea. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714 (Nev. 2002); *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). An "evaluative opinion" cannot be false or defamatory, either. *See Bobby Berosini*, 11 Nev. at 624-25 (finding that claiming depictions of violence towards animals shown in video amounted to "abuse" was protected as opinion). Such an opinion is one that "convey[s] the publisher's judgment as to the quality of another's behavior, and as such, it is not a statement of fact." *Id*. at 624. To determine whether a statement is one of protected opinion or an actionable factual assertion, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715 (Nev. 2002).

3.1.2.1 Statements of Opinion

While the FAC tries to hide the fact that Plaintiff's claims are premised primarily on Ms. Williams's statements of opinion, Plaintiff's Opposition effectively concedes this point. The Opposition makes it clear Plaintiff is primarily concerned with the statements in the NRED Complaint that he was racist, sexist, unprofessional, and unethical. These are statements of opinion which cannot support a defamation claim. Plaintiff does not challenge that these are statements of opinion incapable of being false, but instead merely claims that Ms. Williams's opinion is unreasonable. He thus concedes that these are statements of opinion, and were thus made in good faith.

Even without this concession, it hardly requires explaining that "racist," "sexist," and "unprofessional" are extremely vague terms that lack a precise

meaning, and which any number of readers could interpret in any different number of ways. Merely accusing someone of being racist or discriminatory "is no more than meaningless name calling" and is not defamatory. *See Overhill Farms, Inc. v. Lopez*, 190 Cal. App. 4th 1248, 1262 (2010) (citing *Stevens v. Tillman*, 855 F.2d 394, 402 (7th Cir. 1988)). Calling someone "sexist" is likewise purely a statement of opinion. *See Hanson v. County of Kitsap*, 2014 U.S. Dist. LEXIS 89036, *15-16 (W.D. Wash. June 30, 2014) (finding statement that plaintiff made a "sexist response" was expression of non-actionable opinion). So too is the term "unprofessional." *See Moldea v. New York Times Co.*, 22 F.3d 310 (D.C. Cir. 1994) (finding that criticisms of a journalist's "sloppy journalism" and unprofessional techniques were not defamatory).

"Unethical" is arguably susceptible to a defamatory meaning if it implies false, undisclosed facts. But that is not what happened here. The NRED Complaint lays out precisely what conduct Ms. Williams alleged was unethical, and Plaintiff does not dispute he engaged in any such conduct. Plaintiff disagrees that his conduct was unethical, but Ms. Williams's evaluative opinion of it is non-actionable because she disclosed the facts on which she based her opinion. *See Bobby Berosini*, 11 Nev. at 624-25. Even the NRED initially agreed with her. The facts here are similar to those in *IQTAXX, LLC v. Boling*, 44 Med.L.Rptr. 1561 (Nev. Dist. Ct. 2016), where an individual published a review of a tax preparation company containing undisputed facts and then concluding that the company's conduct constituted "MALPRACTICE!" The court found that this constituted an opinion based on disclosed facts and was thus not defamatory. *See id*. at 1565. To the extent "racist," "sexist," or "unprofessional" are not statements of pure opinion, they are also expressions of evaluative opinion based on disclosed facts.

This leaves a number of factual statements in the NRED Complaint. Plaintiff, however, either concedes that most of these are true or provides no evidence that Ms. Williams made the statements with knowledge of their falsity.

3.1.2.2 Plaintiff's May 13, 2017 Statements

Plaintiff does not contest that he said to Ms. Williams on May 13, 2017 "Daphne, I think you are going to be successful. When you become successful and you want to buy a bigger house and if your brother is retired by then, I'd be glad to be your realtor." (Williams Decl. at ¶ 5; FAC at ¶ 24.)[9] Ms. Williams subjectively felt that this statement was sexist because Plaintiff did not know Ms. Williams or her brother, and yet he apparently assumed that she was not successful and needed to rely on her brother. (*See* Williams Decl. at ¶ 6; Supp. Williams Decl. at ¶ 4.) Plaintiff does not allege any part of this statement is false, but rather that "[n]o reasonable person could believe, in good faith, that" the above statement "could possibly re [sic] sexist, unprofessional, or unethical." (FAC at ¶ 24; Opposition at 12-13.) The implication that Ms. Williams was not already "successful" is certainly insulting, as is the implication that she mooches off her brother. It is not beyond the pale to believe that Ms. Williams could at least subjectively extrapolate that it was a bias-driven statement.

Ms. Williams's conclusion regarding the nature of Plaintiff's statement is an opinion. She disclosed the facts on which she based her opinion to the NRED. The statement is thus incapable of being a statement of fact, and Ms. Williams could not have made it with knowledge of falsity. Even if this were a statement that

[9] Plaintiff claims he did not use these exact words, but does not claim that Ms. Williams's recollection is materially inaccurate, does not offer another recollection of this conversation, and does not claim Ms. Williams knew this recollection was inaccurate when she relayed it to the NRED.

could potentially have been made in bad faith, Plaintiff does not allege this. Ms. Williams made this statement in good faith, as the law defines that term.

In his Opposition, Plaintiff provides no further argument here than what it is in the FAC, thus effectively conceding this statement was made in good faith.

3.1.2.3 Plaintiff Shared Information Ms. Williams Thought Was Confidential

Plaintiff denies only that he told Ms. Williams that he and the Seller met on an online dating web site. He admits that he told Ms. Williams the commission he was set to earn on the sale of the condo, and does not deny that he told her further information on how he and the Seller met. As explained in Section 2.0 of the Anti-SLAPP Motion's Statement of Facts, Plaintiff admitted to the NRED in 2017 that he told Ms. Williams personal information about the Seller and the nature of their alleged "friendship," but claimed he was authorized to do so. Ms. Williams was not aware of any authorization either to tell her about the Seller's personal life or Plaintiff's commission, and Plaintiff does not allege Ms. Williams was aware of such authorization.[10] (*See* Williams Decl. at ¶ 9.)

Ms. Williams was thus, in August 2017, in a position where she believed Plaintiff told her information about the Seller's personal life and his commission without authorization from the Seller. (*See id*.) Ms. Williams believed that sharing this information without authorization from the Seller was unethical. (*See id*.) It does not matter whether someone else allegedly already told Ms. Williams this information; Ms. Williams did not tell Plaintiff she was already aware of it, and she

[10] Plaintiff claims that Ms. Williams would have known about this alleged authorization if she asked the Seller about it. (*See* FAC at ¶ 25; Opposition at 13.) But that is not an allegation of knowing falsity, and Ms. Williams was not required to perform a reasonable investigation to have made her statements in good faith.

had no reason to believe Plaintiff was aware she already knew it. (*See id*.)[11] Whether Plaintiff actually did commit a legally recognizable ethical violation is irrelevant. The only thing that matters is whether Ms. Williams subjectively believed he was acting unethically, from her layperson's perspective, based on this information, which she affirmatively did. (*See id*.) She made these statements in good faith as the statute defines that term.

In his Opposition, Plaintiff provides no further argument here than what it is in the FAC, thus effectively conceding this statement was made in good faith.

3.1.2.4 Plaintiff's Contact with the Appraiser

Plaintiff admits that he has a practice of communicating with appraisers prior to their appraisal of real estate where he is acting as a realtor. (*See* FAC at ¶ 26; Opposition at 13.) He claims there is nothing unethical about this practice, but he does not allege that Ms. Williams knew this practice was permissible. He also provides no evidence supporting his assertion that this practice is ethical or that Ms. Williams's statement is false. On the contrary, Ms. Williams spoke with an NRED employee prior to filing the NRED Complaint, and the employee told her realtors are not supposed to do this. (*See* Williams Decl. at ¶ 12.)[12] Ms. Williams thus subjectively believed that Plaintiff's practice was unethical – bolstered by an

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[11] Plaintiff does not argue that, if Ms. Williams had removed any mention of meeting on an online dating web site, the "gist" or "sting" of the NRED Complaint would be different. This is thus at best an immaterial dispute.

[12] Plaintiff claims that he finds it unlikely an NRED employee told Ms. Williams his practice was unethical. (Opposition at 6.) There is no evidence supporting this opinion, as it is not contained in any declaration or document. Even if Plaintiff did claim this in a declaration, he is not an expert and has no personal knowledge of what the employee told Ms. Williams, making the statement in admissible. There is no evidence to suggest Ms. Williams did not have this conversation, and so Plaintiff only disputes the reasonableness of Ms. Williams's opinion. This is not an allegation of knowing falsity.

NRED employee's opinion. (*See id.*) She made this statement in good faith as defined by the statute.

3.1.2.5 Ms. Williams Allowed Removal of Property at the Condo

Ms. Williams stated in the NRED Complaint that Plaintiff falsely claimed she "didn't let the seller's 'movers' get into the house to access her [the Seller's] property." As explained in Section 4.0 of the Anti-SLAPP Motion's Statement of Facts, Plaintiff's claim to this extent is a false statement of fact. Ms. Williams allowed people with the Seller's authorization into the condo to remove the Seller's property. Plaintiff admitted this in his response to the NRED and his Initial Complaint. (*See* Anti-SLAPP Motion Exhibit 5 at 11, 17, 22-23.)

Ms. Williams did not agree to the Seller's proposed contractual addendum on this issue, which would have required her to give strangers ill-defined "reasonable access" to her residence; this was not acceptable to her. (*See* Williams Decl. at ¶¶ 14-15.) The only remaining items in the condo are a wall-mounted shelf and a television bracket, which Ms. Williams believes are fixtures that, per the terms of the RPA, were sold along with the condo. (*See* Williams Decl. at ¶ 16; Anti-SLAPP Motion Exhibit 2 at p. 2 of 10, ¶ 4; Anti-SLAPP Motion Exhibit 5 at 11, 17, 22-23.)

Plaintiff's assertion that Ms. Williams did not allow the Seller's "movers," into the condo to remove the Seller's property was thus factually false, meaning Ms. Williams's statement in the NRED Complaint is true. Even if there is some possible ambiguity in the meaning of the words in the NRED Complaint, she made this statement without knowing it to be false. At most, there is a legal disagreement over whether the property in question can properly categorized as "fixtures," but

there is no dispute that Ms. Williams actually believes that they are fixtures. She thus made this statement in good faith as defined by the statute.

In his Opposition, Plaintiff provides no further argument as to this statement than what it is in the FAC, and provides no evidence rebutting Ms. Williams's assertion that she believed the items in question were fixtures, thus effectively conceding this statement was made in good faith.

3.1.2.6 Plaintiff Did Not Send Ms. Williams a Fully Executed Copy of the RPA[13]

Plaintiff claims Ms. Williams lied when she told the NRED that he did not provide her a signed copy of the RPA because he sent her a version with the Seller's signature on May 18, 2017. (*See* FAC at ¶ 28.)[14] However, Ms. Williams's statement is provably true. The version he sent was not the final version, as Ms. Williams made revisions to the terms of the RPA during a May 21, 2017 meeting at a Whole Foods. (*See* Anti-SLAPP Motion Statement of Facts at § 5.0.) Plaintiff now admits that the May 18, 2017 version he sent was not the final version. (Supp. Lazer Decl. at ¶ 3(c).) As the Seller needed to approve these additional terms, Ms. Williams asked Plaintiff to send her a fully executed copy once the Seller signed it. (Williams Decl. at ¶¶ 17-20.) He did not, and Ms. Williams did not receive a copy until after the close of escrow. (*Id*. at ¶¶ 20-21.)

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[13] Relatedly, Plaintiff admits he did not provide a receipt for earnest money paid pursuant to the RPA, thus showing that Ms. Williams's statement that he did not provide a receipt is true. (Lazer Decl. at ¶¶ 43-46.) Whether the statement is "misleading" is irrelevant, but regardless Plaintiff does not claim Ms. Williams knew this was misleading and he provides no evidence showing that it is misleading.

[14] Elsewhere, Plaintiff mentions that he sent Mr. Jolly a fully executed copy of the RPA. (*See* FAC at ¶ 12.) This is irrelevant because Ms. Williams's claim to the NRED is that Plaintiff did not send *her* a fully executed copy. Furthermore, Plaintiff did not tell Mr. Jolly to forward this copy to Ms. Williams, or tell Ms. Williams to receive it from Mr. Jolly. (*See* Williams Decl. at ¶ 20; Jolly Decl. at ¶ 17.)

Ms. Williams's statement is thus literally true. Even if there is some possible ambiguity in the meaning of the words in the NRED Complaint, she made this statement without knowing it to be false. She thus made this statement in good faith as defined by the statute.

In his Opposition, Plaintiff for the first time refers to an alleged May 22, 2017 phone call in which Ms. Williams told Plaintiff to send the RPA to Mr. Jolly. This conversation never happened, as explained in Section 2.1, *supra*. This last-minute allegation is not credible, as Plaintiff has never at any point previously claimed this happened, whether in his response to the NRED, his demand letters to Ms. Williams, his initial or amended complaints, or in his opposition to Ms. Williams's first Anti-SLAPP Motion. Even the email transmitting the RPA to Ms. Williams's lending agent, Bryan Jolly, makes no mention of Ms. Williams's alleged request, and Mr. Jolly has no recollection of Plaintiff telling him to forward it to Ms. Williams or Ms. Williams asking for a copy. (Opposition at Exhibit 10; Jolly Decl. at ¶ 17.) To believe Plaintiff's statement, the Court would have to believe that Ms. Williams told Plaintiff to send Mr. Jolly the fully-executed RPA, then Plaintiff made no mention of this request when he sent it, then Ms. Williams never asked Mr. Jolly for the RPA despite knowing Plaintiff would have sent it to him instead of her. The claim is nonsensical and not even remotely plausible. Plaintiff's claim is a self-serving, false statement introduced at the 11th hour in a desperate attempt to create a factual dispute. The Court should disregard it.

3.1.2.7 Plaintiff Falsely Claimed Ms. Williams was Responsible for Delays in Closing Escrow

Plaintiff claimed during the sale of the condo that the delays in closing escrow were due to Ms. Williams's negligence and failure to meet due diligence deadlines. (*See, generally*, Jolly Decl. at *Exhibit A*.) Plaintiff's claims were false at the time he made them.

The appraisal of the condo was delayed due to scheduling issues not Ms. Williams's fault (Williams Decl. at ¶¶ 25, 27-28; Jolly Decl. at ¶¶ 10, 12, 14 and *Exhibit A* at 7, 12, 18; Anti-SLAPP Motion Exhibit 9); Ms. Williams did not order the condo questionnaire until after the appraisal report came in because she did not want to pay a non-refundable fee if the condo was not sufficiently valuated (Williams Decl. at ¶ 21; Jolly Decl. at ¶¶ 4-7, 11; Anti-SLAPP Motion Exhibit 2 at p. 1 of 10, ¶ 1(G), and p. 2 of 10, ¶ 2(B)); she made the normal decision of making a standard delivery order for the condo questionnaire, which she was told would take 7 days; (*See* Williams Decl. at ¶ 26; Jolly Decl. at ¶¶ 5-6); she ordered the questionnaire on June 10, 2017 (Williams Decl. at ¶ 25); the RPA did not set a timeline regarding the condo questionnaire (*see* Anti-SLAPP Motion Exhibit 2.); delays in closing escrow were due to Alterra being short-staffed (*see* Williams Decl. at ¶ 27; Jolly Decl. at ¶ 14); and Ms. Williams was always timely in providing documents and information to Alterra (*see* Williams Decl. at ¶ 28; Jolly Decl. at ¶ 17). Plaintiff does not dispute any of these facts in his Opposition.

Plaintiff's claims that Ms. Williams was responsible for delays in closing escrow were thus false at the time he made them. Plaintiff at best claims that Ms. Williams was responsible for the first delay in closing escrow because she made the reasonable choice of not paying a non-refundable fee before knowing whether the sale could proceed on acceptable terms, and because she did not pay for a more expensive rush delivery of the questionnaire. But even this is wrong because the delay in conducting the appraisal and the condo questionnaire arriving later than usual were not Ms. Williams's fault. And there is no question that the delays in July 2017 were due to Alterra being short-staffed, and not because of Ms. Williams. (*See* Williams Decl. at ¶ 27; Jolly Decl. at ¶ 14.)

Regardless of whether Plaintiff believed these delays were due to Ms. Williams's actions, he falsely claimed she was responsible for delays in closing

escrow. Ms. Williams's statement is thus true or made without knowledge of its falsity. She thus made it in good faith as defined by the statute.

In his Opposition, Plaintiff claims that Ms. Williams is not entitled to an analysis by the Court "as to each and every point of contention." (Opposition at 14.) Ms. Williams agrees on this point, to the extent Plaintiff means that disputes as to minor factual issues do not bear on the question of good faith. The contention is plainly false otherwise. Plaintiff claimed throughout the sale of the condo that all delays in closing escrow were Ms. Williams's fault. (*See, generally*, Jolly Decl. at *Exhibit A*.) Ms. Williams has provided declarations and documentary evidence showing that all delays beyond the initial delay were due to staffing issues at Alterra. She has provided evidence that the initial delay was caused by delays in conducting the appraisal and receiving the condo questionnaire[15] that were not her fault. Plaintiff, during the sale, did not qualify his statements by saying that Ms. Williams was one of multiple reasons for these delays, but rather said she alone was the cause for the delays. This is unquestionably false, and Plaintiff provides no evidence rebutting Ms. Williams's evidence that these delays were caused by individuals and factors other than Ms. Williams's conduct.[16] Ms. Williams made this statement in good faith.

3.1.2.8 The June 2017 Call with the Seller

Ms. Williams had a phone call with the Seller on June 27, 2017 during which the Seller said, *inter alia*, that Plaintiff instructed her to tell Ms. Williams to apologize

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[15] Plaintiff claims that Ms. Williams would have received the condo questionnaire within 10 days of ordering it, but his only evidence of this is a passing reference in an email from him to Mr. Jolly. (Opposition at 3 and Exhibit 2 at p. 3.) He provides no basis for personal knowledge of the turnaround time for the HOA or how long the process actually took, and so this statement is inadmissible.

[16] Plaintiff, in his Supplemental Declaration, also claims these delays were caused by Ms. Williams making a 5% down payment instead of a 20% down

to Plaintiff, that Plaintiff was trying to sabotage the sale of the condo, and that Plaintiff had ulterior motives. (*See* Williams Decl. at ¶¶ 29-30.) Ms. Williams contemporaneously told her mother about this conversation. (*See* Declaration of Kathryn Harris ["Harris Decl."], Anti-SLAPP Motion Exhibit 4, at ¶ 7.) The declaration of the Seller, in opposing Ms. Williams's prior Anti-SLAPP motion, did not deny that this conversation took place or that Plaintiff instructed her to tell Ms. Williams to apologize. (*See* Seller Declaration at ¶¶ 12-13.)[17]

While Plaintiff disputes the contents of this conversation, he makes no allegation and provides no evidence that Ms. Williams made her statements regarding this conversation with knowledge they were false. This is particularly unlikely given that she contemporaneously relayed these statements to her mother. She has met her burden of showing she made this statement in good faith as defined by the statute.

3.1.3 The Entire NRED Complaint is Protected if at Least One Statement is Protected

Even if Plaintiff could rebut Ms. Williams's showing of good faith as to some of her statements at issue, he has not done so as to all of them. In particular, Plaintiff's claims rest primarily on expressions of Ms. Williams's opinion, which cannot be false for Anti-SLAPP purposes. This makes Plaintiff's claims "mixed" causes of action. These "mixed cause[s] of action [are] subject to the Anti-SLAPP

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payment. (Supp. Lazer Decl. at ¶¶ 5-7.) The Opposition's substantive argument makes no reference to this allegation, however, and so he does not claim it is relevant to the first prong analysis. To the extent this claim needs rebuttal, it is addressed in Section 2.2, *supra*.

[17] Plaintiff also claims he rebuts Ms. Williams's account of this conversation in his own declaration (Opposition at 7), but neither of his declarations claim he has personal knowledge of what either Ms. Williams or the Seller said during the call, and he provides no foundation for such knowledge, making this statement inadmissible.

statute if **at least one of the underlying acts is protected conduct**, unless the allegations of protected conduct are merely incidental to the unprotected activity." *Lauter v. Anoufrieva*, 642 F. Supp. 2d 1060, 1109 (C.D. Cal. 2008) (emphasis added); *see Salma v. Capon*, 161 Cal. App. 4th 1275, 1287 (2008) (finding cause of action based on both protected and unprotected activity under California's Anti-SLAPP statute is subject to an Anti-SLAPP motion); *Peregrine Funding, Inc. v. Sheppard Mullin*, 133 Cal. App. 4th 658, 675 (2005) (finding that because plaintiffs' claims "are based in significant part on [defendant's] protected petitioning activity," the first anti-SLAPP prong was satisfied").

Ms. Williams's statements of opinion to the Division are unquestionably protected under the Anti-SLAPP statute, and all factual statements in her complaint are inextricably intertwined with these protected statements. The majority of the factual statements in the NRED Complaint are also either admittedly true or there is no evidence whatsoever to suggest knowing falsity.[18] At best, Plaintiff has *possibly* raised some question as to whether Ms. Williams received a signed copy of the RPA prior to July 2017 and what the Seller told her in the June 27, 2017 phone conversation. These statements are inextricably intertwined with the indisputably protected statements in the NRED Complaint. Accordingly, all of Plaintiff's statements in the NRED Complaint are protected.

3.1.4 NRS 41.650 Does Not Impose Additional Requirements

Plaintiff makes the puzzling argument that NRS 41.650 imposes an additional burden on a defendant to satisfy the five-element analysis laid out in *Shapiro*. Ms. Williams already explained in her prior Reply that this is wrong and based on a

[18] It is important to note that the NRED Complaint contains several statements other than those at issue in the FAC, meaning Plaintiff does not claim that these other statements are false. The statements at issue are thus a small subset of the protected NRED Complaint.

flagrant misreading of *Shapiro*. (*See* initial Anti-SLAPP Reply at 12-13.) Despite this instruction, Plaintiff repeats this baseless argument in his Opposition without any change. (*Compare* initial Opposition at 13-14 and Opposition at 16.) This is another example of sanctionable conduct.

NRS 41.650 merely states that "[a] person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication." It explicitly creates a substantive immunity to particular kinds of claims, thus allowing the protections of the statute to apply in federal court. It does not impose any additional burdens on the moving party, and no court has interpreted it as doing such. There is no ambiguity in its language, either, as the term "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" is defined in NRS 41.637.

The citation to *Shapiro* is simply out of left field. That case discussed what an "issue of public interest" is under NRS 41.637(4). *See Shapiro*, 389 P.3d at 268. It does not even cite NRS 41.650. Ms. Williams does not rely on NRS 41.637(4) as the basis for the instant Motion, instead relying on subsections (1), (2), and (3), which are focused on petitioning activity. California case law, from which the test in *Shapiro* is derived, makes it clear that *all* petitioning activity (like Ms. Williams's) is protected under the Anti-SLAPP statute, whether or not it involves a public issue. *See Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106,

1116 (1999). The analysis in *Shapiro* thus has no relevance here except to bolster Ms. Williams's claim that this conduct fits Prong One.

Ms. Williams has satisfied her burden under the first prong of the Anti-SLAPP analysis. The burden now shifts to Plaintiff to show a probability of prevailing on his claims. He has failed to make this showing.

3.2 Plaintiff Cannot Show a Probability of Prevailing on His Claims

NRS 41.660 defines a plaintiff's burden of proof as "the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuit Against Public Participation law as of the effective date of this act." NRS 41.665(2). Plaintiff cannot simply make vague accusations or provide a mere scintilla of evidence to defeat Ms. Williams's Motion. Rather, to satisfy his evidentiary burden under the second prong of the Anti-SLAPP statute, Plaintiff must present "substantial evidence that would support a judgment of relief made in the plaintiff's favor." *S. Sutter, LLC v. LJ Sutter Partners, L.P.*, 193 Cal. App. 4th 634, 670 (2011); *see also Mendoza v. Wichmann*, 194 Cal. App. 4th 1430, 1449 (2011) (holding that "substantial evidence" of lack of probable cause was required to withstand Anti-SLAPP motion on malicious prosecution claim). Plaintiff cannot make this showing as to any of his claims.[19]

3.2.1 Ms. Williams's Statements are Absolutely Privileged

Ms. Williams's statements to the NRED are absolutely protected under the litigation privilege. Statements made in quasi-judicial proceedings, such as those before administrative bodies, are absolutely privileged. *See Sahara Gaming*

[19] Plaintiff tries to redefine this standard with a citation to Black's Law Dictionary. This is unavailing, as the statute defines this standard with reference to California law, which is controlling. This is yet another instance of sanctionable conduct, as he made the argument in his earlier Opposition and Ms. Williams already explained that this is the wrong standard. (*See* initial Opposition at 14-15; initial Anti-SLAPP Reply at 14 n.11; Opposition at 17.)

Corp. v. Culinary Workers Union Local 226, 115 Nev. 212, 217 (1999); *see also Lewis v. Benson*, 101 Nev. 300, 301 (1985) (applying absolute privilege to citizen complaint to internal affairs bureau against police officer). This privilege completely bars any liability for statements made in the course of these proceedings, **even if they are made maliciously and with knowledge of their falsity**. *See Sahara Gaming*, 115 Nev. at 219. It is not "limited to the courtroom, but encompasses actions by administrative bodies and quasi-judicial proceedings. The privilege extends beyond statements made in the proceedings, and includes statements **made to initiate official action**." *Wise v. Thrifty Payless, Inc.*, 83 Cal. App. 4th 1296, 1303 (2000) (emphasis added) (holding absolute privilege applied to husband's report to the Department of Motor Vehicles regarding wife's drug use and its possible impact on her ability to drive); *see also Fink v. Oshins*, 118 Nev. 428, 433-34 (2002) (holding that "the privilege applies not only to communications made during actual judicial proceedings, but also to '**communications preliminary to a proposed judicial proceeding**"') (emphasis added).

"[The] absolute privilege exists to protect citizens from the threat of litigation for communications to government agencies whose function it is to investigate and remedy wrongdoing." *Wise*, 83 Cal. App. 4th at 1303. "[C]ourts should apply the absolute privilege liberally, resolving any doubt 'in favor of its relevancy or pertinency,"' and district courts should "resolve[] any doubt in favor of a broad application of the absolute privilege." *Oshins*, 118 Nev. at 434. Finally, the privilege applies to all claims based on the same set of facts: "[i]f a statement is protected, either because it is true or because it is privileged, that 'protection does not depend on the label given the cause of action."' *Francis v. Dun & Bradstreet, Inc.*, 3 Cal. App. 4th 535, 540 (1992) (quoting *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 265 (1984)). "Though the privilege originally formed

as a defense to defamation, it has been expanded to cover a variety of torts."' *Allstate Ins. Co. v. Belsky*, 2018 U.S. Dist. LEXIS 162318, *8 (D. Nev. Sept. 21, 2018); *Lebbos v. State Bar*, 165 Cal. App. 3d 656, 667 (1985) (noting that litigation privilege applies to claims including, *inter alia*, intentional infliction of emotional distress and negligence).

Though the Nevada Supreme Court apparently has not yet dealt with a case applying the absolute privilege to claims against a realtor, California has recognized that its similar absolute privilege applies to such circumstances. *See King v. Borges*, 28 Cal. App. 3d 27, 34 (1972) (extending absolute privilege to complaint against realtor filed with state division of real estate); *see also Vultaggio v. Yasko*, 215 Wis. 2d 326, 334 (Wis. 1998) (noting Wisconsin extending absolute privilege to "statements made to a real estate broker's board"). Ms. Williams's complaint to the NRED is comparable to a complaint filed with a state bar against an attorney, which is considered an official proceeding under California's similar absolute privilege. *See Lebbos*, 165 Cal. App. 3d at 667 (finding that "[i]nformal complaints to the State Bar are part of 'official proceedings' protected by" California's privilege); *see also Katz v. Rosen*, 48 Cal. App. 3d 1032, 1036-37 (1975) (stating that "[i]nformal complaints received by a bar association which is empowered by law to initiate disciplinary procedures are as privileged as statements made during the course of formal disciplinary proceedings").

Nevada has found that establishing this absolute privilege requires two elements to be satisfied: "(1) a judicial [or quasi-judicial] proceeding must be contemplated in good faith and under serious consideration, and (2) the communication must be related to the litigation." *Jacobs v. Adelson*, 325 P.3d 1282, 1285 (Nev. 2014).[20] "Good faith" here is a low bar because the privilege

[20] This privilege applies equally to lawyers and non-lawyers alike. *See Clark Cty. Sch. Dist. V. Virtual Educ. Software, Inc.*, 125 Nev. 374, 383 (2009) ("VESI").

applies "even when the motives behind [the statements] are malicious and they are made with knowledge of the communications' falsity." *Id*. Plaintiff only contests the first element of this privilege, and this element is satisfied if the speaker makes a statement while seriously considering litigation or a quasi-judicial proceeding, regardless of their motives.[21]

The FAC show this to be the case. Ms. Williams told Plaintiff in June 2017 she planned to file a complaint against him, then did so two months later.[22] To bolster the strength of her complaint, at least initially, **the NRED found cause to discipline Plaintiff** – albeit they later reversed course after Plaintiff **appealed** its decision. (*See* Anti-SLAPP Motion Exhibits 13-14.) The NRED had the ability to initiate an investigation, which it did, and impose discipline, which it also initially did.[23] The NRED investigation, including the NRED Complaint which initiated it, is thus an "official proceeding" for purposes of the litigation privilege. The privilege thus applies even if every statement in the NRED Complaint was false and Ms. Williams knew every statement to be false. *See Fitzgerald v. Mobile Billboards, Ltd. Liab. Co.*, 416 P.3d 209, 211 (Nev. 2018) (noting that "the common law absolute privilege bars any civil litigation for defamatory statements even when the defamatory statements were published with malicious intent").

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[21] This requirement of the privilege is meant to prevent parties from abusing the privilege by, for example, making defamatory statements in a demand letter with no intention of initiating litigation, then distributing these statements to media outlets and claiming an absolute privilege. The facts here are the exact opposite of this scenario.

[22] Plaintiff's self-contradictory claim of "anticipatory retaliation" has the facts backwards. Ms. Williams first told Plaintiff she would file a complaint if he didn't stop his unprofessional and unethical behavior. *Then*, in retaliation, Plaintiff began threatening to sue Ms. Williams.

[23] Plaintiff agrees that the NRED has these duties and powers. (Lazer Decl. at ¶ 51.)

The NRED Complaint is unquestionably absolutely privileged, even if Ms. Williams knew that every statement in it was false.[25] All of Plaintiff's claims must fail and he cannot show a probability of prevailing on them. But even if the absolute privilege did not apply, Plaintiff's claims fail on the merits.

Plaintiff provides no contrary authority, instead trying only to distinguish a few of the cases showing that an absolute privilege applies here.[26] These arguments are identical to the ones made in his initial Opposition and fail for the same reasons. He has no response to the majority of cases showing that the privilege is intended to apply broadly and courts should resolve any ambiguities in favor of its application. *Oshins*, 118 Nev. at 434. He also again falsely claims that the privilege does not apply to statements made to initiate a judicial or quasi-judicial proceeding, completely ignoring Ms. Williams's authority to the contrary and providing no authority in support of this position. *See Wise*, 83 Cal. App. 4th at 1303; *see also Oshins*, 118 Nev. at 433-34. And Plaintiff continues to insist that the privilege does not apply because Ms. Williams allegedly had impure motives, again ignoring case after case cited in the instant Motion that *this does not matter* and providing no supporting authority. This dogged persistence in repeating groundless legal arguments despite being informed repeatedly that they are groundless is yet another basis for imposing sanctions.

Plaintiff also repeats the argument that there are questions as to whether the NRED seriously considered taking action in response to Ms. Williams's complaint. First, that is not the standard; the inquiry is focused on whether Ms.

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[25] This, of course, is not the case, as Ms. Williams believed every statement in the complaint to be true. (*See* Williams Decl. at ¶ 36.)

[26] Plaintiff attempts to distinguish *Sahara Gaming Corp.* and *Benson* by claiming that they dealt with motions for summary judgment instead of motions to dismiss, seemingly oblivious to the fact that Anti-SLAPP motions are treated as motions for summary judgment.

Williams, not the NRED, seriously considered initiating a quasi-judicial proceeding. Second, this argument is contradicted by the FAC and Plaintiff's declarations, which discuss the months-long NRED investigation initiated by Ms. Williams's complaint that allegedly required so much time and effort to respond to. Ms. Williams also provided evidence showing that the NRED seriously considered her complaint and initially imposed discipline on Plaintiff. (Anti-SLAPP Motion Exhibits 13-14.) Ms. Williams's statements are thus absolutely privileged.

3.2.2 Plaintiff's Defamation Claims Fail on the Merits

None of Plaintiff's individual claims for relief need to be addressed because they are all barred by the absolute litigation privilege. Even without it, however, they each fail.[27]

The defamation claims fail because, as explained in Section 3.1.2, *supra*, each of the statements at issue are either statements of opinion, are true, or were made without any degree of fault. Furthermore, Plaintiff provides absolutely no evidence that he has suffered any damages whatsoever. He simply claims he has spent time responding to the NRED, which is not reputational harm recoverable in a defamation claim.[28] He provides no authority establishing this constitutes reputational harm recoverable in a defamation action (it is not) and

[27] Plaintiff insists his allegations in the FAC are sufficient to satisfy his burden on prong two. He even claims that "[t]his court must take plaintiff's allegations as true in a motion to dismiss." (Opposition at 21.) This is a sanctionable misrepresentation to the Court, as Ms. Williams has repeatedly explained that an Anti-SLAPP motion is treated as a motion for summary judgment, and the plaintiff must provide admissible evidence to satisfy his burden. He fails to do so for any of his claims.

[28] Plaintiff also makes a passing reference to "damage to my professional reputation" in his declaration ("Lazer Decl. at ¶ 51), but provides no evidence that the NRED Complaint damages his reputation. Such harm should be impossible, as the NRED ultimately decided not to enforce its initial disciplinary decision and Ms. Williams did not publish her statements to anyone other than the NRED.

provides no documentation or other evidence showing he has suffered actual damages. There is thus no probability of prevailing on his defamation claims.

The Anti-SLAPP Motion explains that Plaintiff's business disparagement claim fails because it cannot co-exist alongside the defamation claims. Plaintiff does not address this issue, thus conceding it. Furthermore, Plaintiff provides no evidence, and does not even claim in his declarations, that he suffered any loss of business or similar damages as a result of the NRED Complaint. There is thus no evidence of damages, and the claim fails.

The intentional infliction of emotional distress claim similarly fails for lack of evidence of damages. There are no documents and no declarations even claiming, much less specifying or quantifying, any kind of emotional distress caused by the NRED Complaint. There is likewise no evidence that Ms. Williams intended to inflict any kind of emotional distress when she filed the NRED Complaint. This claim thus fails.

The negligence claim, as with all other claims, likewise fails due to lack of evidence of damages. Plaintiff has not demonstrated a probability of prevailing on any of his claims, and the Court should grant Ms. Williams's Anti-SLAPP Motion.[29]

4.0 CONCLUSION

For the foregoing reasons, the Court should dismiss all of Plaintiff's claims with prejudice and award both Ms. Williams's costs and reasonable attorneys' fees, as well as award her $10,000, to be sought by separate motion.

[29] As a miscellaneous matter, Plaintiff argues the Court should strike the Anti-SLAPP Motion because it allegedly exceeds the page limit for a motion. However, Plaintiff apparently included the case caption pages, attorney signature blocks, and certificates of service in its calculation. These are non-substantive pages that are typically excluded from the page limit. In any event, Plaintiff provides no authority for the proposition that striking the entirety of a dispositive motion is an appropriate remedy for exceeding the page limit.

DATED November 26, 2019.

Respectfully submitted,

/s/ Marc J. Randazza

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Attorneys for Defendant
Daphne Williams

Case No. A-19-797156-C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November 2019, I served a true and correct copy of the foregoing document via the Eighth Judicial District Court's Odyssey electronic filing system and via U.S. Mail and email upon Plaintiff at:

Adam R. Trippiedi, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Cir, Suite 480
Henderson, Nevada 89074

/s/ Crystal Sabala
Employee,
Randazza Legal Group

EXHIBIT 1

Supplemental Declaration of Daphne Williams

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHARLES "RANDY" LAZER, Plaintiff, vs. **DAPHNE WILLIAMS,** Defendants.	Case No. A-19-797156-C Dept. XV HEARING REQUESTED **SUPPLEMENTAL DECLARATION OF DAPHNE WILLIAMS IN SUPPORT OF ANTI-SLAPP SPECIAL MOTION TO DISMISS FIRST AMENDED COMPLAINT UNDER NRS 41.660**

I, Daphne Williams, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty. I have first-hand knowledge of the facts set forth herein, and if called as a witness, could and would testify competently thereto.

2. I am the defendant in this matter. I provide this declaration in support of the Reply in support of my Anti-SLAPP Special Motion to Dismiss Plaintiff Charles "Randy" Lazer's First Amended Complaint Under NRS 41.660 (the "Anti-SLAPP Motion").

3. On May 21, 2017, I met Plaintiff in person at a Whole Foods store. During this meeting, I made revisions to the Real Estate Purchase Agreement ("RPA") for the sale of a condo unit.

4. To my knowledge, Plaintiff had never met my brother prior to May 2017, and did not know him personally.

5. The version of the RPA I signed while at the Whole Foods on May 21, 2017 did not have the signature of the Seller affixed to it. I understood that, since it contained additional terms that were not found in the version Plaintiff sent me on May 18, 2017, the Seller needed to review this version of the RPA and sign it. Plaintiff did not inform me at any point during, prior to, or after this meeting that he had authorization from the Seller to accept the changes I made to the RPA. I had no reason to believe he had been given such authority, as I did not observe any communications he had with the Seller regarding this issue.

6. I never called Plaintiff, either on May 22, 2017 or at any other time, to request that he send a fully-executed version of the RPA to Bryan Jolly. I never told Plaintiff to send the RPA to Mr. Jolly; rather, I told Plaintiff on May 21, 2017 to send the fully-executed RPA to me directly. He agreed to do so after discussing the changes I made to the RPA with the Seller.

7. To my knowledge, Plaintiff has never at any point prior to filing his Opposition to my Anti-SLAPP Motion, claimed that I called him on May 22 and instructed him to send the RPA to Mr. Jolly.

8. Contrary to Plaintiff's assertion, I was never required to make a 20% down payment on the condo I was purchasing from the Seller. The RPA is silent as to the down payment amount, and I am not aware of any way in which making a 5% down payment instead of a 20% down payment could have delayed the close of escrow. The down payment amount was not decided until after June 9, 2017, when I asked Mr. Jolly what the amount of the down payment should be.

Under the laws of the State of Nevada, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on 11/25/2019.

DocuSigned by:
Daphne Williams
1DFFFAC9588E43A...

Daphne Williams

EXHIBIT 2

June 9, 2017 email from Ms. Williams to Mr. Jolly

RANDAZZA
LEGAL GROUP

Alex Shepard <ajs@randazza.com>

Fwd: Down payment

Daphne W <dlwilliams123@gmail.com> Sun, Nov 17, 2019 at 8:54 PM
To: Alex Shepard <ajs@randazza.com>, Marc Randazza <mjr@randazza.com>, Ron Green <rdg@randazza.com>

[redacted]

---------- Forwarded message ---------
From: **Daphne Williams** <dlwilliams123@gmail.com>
Date: Fri, Jun 9, 2017 at 7:51 AM
Subject: Down payment
To: Bryan A. Jolly <bjolly@goalterra.com>

Hi Bryan,
I hope you are well.
Roughly, how much do I need for my down payment?

When do you think I'll need to pay it?

Sent from my iPhone