

1 **RPLY**

2 Marc J. Randazza (NV Bar No. 12265)
3 Alex J. Shepard (NV Bar No. 13582)
4 RANDAZZA LEGAL GROUP, PLLC
5 2764 Lake Sahara Drive, Suite 109
6 Las Vegas, NV 89117
7 Telephone: 702-420-2001
8 ecf@randazza.com

9 Attorneys for Defendant
10 *Daphne Williams*

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

13 **CHARLES "RANDY" LAZER,**

14 Plaintiff,

15 vs.

16 **DAPHNE WILLIAMS,**

17 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 UNDER
NRS 41.660

18 Defendant Daphne Williams hereby files her Reply in support of Anti-SLAPP
19 Special Motion to Dismiss Under NRS 41.660.

1 **1.0 INTRODUCTION**

2 The plaintiff sued the defendant for exercising her First Amendment right to
3 petition the government. That smashes headlong into prong one of the Anti-
4 SLAPP statute.

5 Plaintiff is a real estate agent. Ms. Williams filed a complaint with the
6 Nevada Department of Business and Industry, Real Estate Division (the "Division")
7 about Plaintiff's conduct during a real estate transaction. Ms. Williams considered
8 Mr. Lazer's interactions with her and her loan officer to be racist, sexist,
9 unprofessional, and unethical. All of these considerations are subjective. She
10 disclosed the basis for these opinions to the Division, including disclosing numerous
11 written communications between her and Plaintiff. The Division initially chose to
12 take action against the Plaintiff, but ultimately reversed course. Nevertheless, Ms.
13 Williams was entitled to her opinion of his conduct and filing a complaint was
14 absolutely privileged under the law.

15 Ms. Williams did not make any knowingly false statements to the Division.
16 Plaintiff claims that several statements Ms. Williams made to the Division are false,
17 but he provides no evidence that she knew such statements were false when she
18 made them. Plaintiff also fails to create any genuine dispute of material fact
19 regarding the merits of his claims, as Ms. Williams's complaint was absolutely
20 privileged.

21 Plaintiff cannot prevail on any of his claims, and so the Court should dismiss
22 these claims with prejudice and award Ms. Williams her attorneys' fees and costs
23 incurred in defending herself from these claims.

2.0 FACTUAL BACKGROUND

For the sake of brevity, Section 2.0 of the Anti-SLAPP Motion is incorporated herein by reference. Additionally, it is important to respond to some factual allegations made in Plaintiff's Opposition.

1. Plaintiff claims he never told Ms. Williams how he met Rosane Krupp, the seller of the property in question. (See Lazer Decl. at ¶ 29.) This is not Ms. Williams's recollection of events. (See Williams Decl. at ¶ 7.) But even if Lazer is correct that he did not provide this information to Ms. Williams, he provides no evidence that Ms. Williams knew this statement to the Division was false when she made it. Even if it was false (which is disputed) the only thing that can get Plaintiff past the first prong of the Anti-SLAPP statute is for him to provide proof that Ms. Williams knew it was false.

2. Plaintiff claims Ms. Williams was lying regarding her statement to the Division that Plaintiff falsely stated she refused to allow Ms. Krupp to remove property from the real estate in question. (See Lazer Decl. at ¶ 36.) His declaration provides no basis for personal knowledge of this allegation and is thus inadmissible to prove Ms. Williams's conduct. As for Plaintiff's claim that he never made any claim as to Ms. Williams's conduct on this point (see Lazer Decl. at ¶ 37),¹ that is not Ms. Williams's recollection of events and Plaintiff provides no evidence Ms. Williams knew her statement was false when she made it.

3. Plaintiff claims he did actually send Ms. Williams a signed copy of the real estate contract in May 2017. (See Lazer Decl. at ¶¶ 39-40.) The copy

¹ Plaintiff also mischaracterizes the nature of Ms. Williams's complaint to the Division. Ms. Williams asserted Plaintiff falsely claimed Ms. Williams did not allow the removal of property from the condo unit. (See Complaint at Exhibit 3.) She did not allege Plaintiff claimed Ms. Williams "refus[ed] to allow the seller to remove all of her personal property." (See Lazer Decl. at ¶ 38.) As there is no rebuttal of Plaintiff's sworn statement that she did allow third parties to remove property at the request of Ms. Krupp, Plaintiff does not even allege this statement is false.

1 attached to Plaintiff's Opposition, however, contains only the seller's signature,
 2 not the signatures of all parties. (See Opposition at Exhibit 6.) Ms. Williams's
 3 allegation is that Plaintiff never gave her a copy of the contract with the
 4 signatures of all parties. (See Declaration of Ms. Williams in support of Reply in
 5 Support of Anti-SLAPP Motion ["Williams Reply Decl."], attached as **Exhibit 1**, at ¶¶
 6 3-7.) Ms. Williams was unable to print the files of the contract with Ms. Krupp's
 7 declaration, and because of this she and Plaintiff met at a Whole Foods, where
 8 she signed a copy of the contract. (See *id.* at ¶¶ 3-4.) This copy that she signed
 9 did not have Ms. Krupp's signature on it and had terms in addition to those
 10 contained in the copy Plaintiff sent her previously. (See *id.* at ¶ 5.) Plaintiff never
 11 sent Ms. Williams a fully executed copy of the contract, and Plaintiff provides no
 12 evidence refuting this. (See Williams Decl. at ¶ 10; Williams Reply Decl. at ¶¶ 6-7;
 13 Anti-SLAPP Motion Exhibit 2 at p. 6.)

14 4. Ms. Krupp claims Ms. Williams refused to allow her to remove personal
 15 property from the property in question. (See Krupp Decl. at ¶ 11.) The "personal
 16 property" Plaintiff refers to consists of a television bracket and shelf mounted to
 17 the walls. (See Williams Reply Decl. at ¶ 8.) It is Ms. Williams's understanding that
 18 these items are fixtures of the property that were sold along with the property itself,
 19 and not personal property that needed to be returned to Ms. Krupp. (See *id.*)

20 5. Ms. Krupp claims she never had a conversation in which she claimed
 21 she was moving in with Plaintiff or that Plaintiff was trying to sabotage the sale of
 22 the real estate in question. (See Krupp Decl. at ¶¶ 12-13.) Ms. Williams contests
 23 this. (See Williams Decl. at ¶ 13.) But even if Ms. Krupp did not make these
 24 statements, she does not deny that she had a phone call with Ms. Williams on
 25
 26
 27

1 June 27, 2017 regarding the sale of the property, and Plaintiff provides no
 2 evidence Ms. Williams knew these claims were false when she made them.

3 **3.0 ARGUMENT**

4 **3.1 Ms. Williams Satisfies the First Prong of the Anti-SLAPP Analysis**

5 The Anti-SLAPP statute protects

- 6 1. Communication[s] that [are] aimed at procuring any
 7 governmental or electoral action, result or outcome;
- 8 2. Communication[s] of information or a complaint to a Legislator,
 9 officer or employee of the Federal Government, this state or a
 10 political subdivision of this state, regarding a matter reasonably
 11 of concern to the respective governmental entity;
- 12 3. Written or oral statement[s] made in direct connection with an
 13 issue under consideration by a legislative, executive or judicial
 14 body, or any other official proceeding authorized by law; or
- 15 4. Communication[s] made in direct connection with an issue of
 16 public interest in a place open to the public or in a public forum,

17 Which [are] truthful or [are] made without knowledge of its
 18 falsehood.

19 NRS 41.637. The merits of a plaintiff's claims, and the legality of the defendant's
 20 actions, are not the focus of the first prong analysis and, if relevant, should only
 21 be considered during the second prong analysis. See *Coretronic v. Cozen*
 22 *O'Connor*, 192 Cal. App. 4th 1381, 1388 (2d Dist. 2011); see also *Taus v. Loftus*, 40
 23 Cal. 4th 683, 706-07, 713, 727-299 (2007). The moving party must make only a
 24 *threshold* showing as to the first prong of the analysis, while questions going to the
 25 merits of the plaintiff's claims are reserved for the second prong. See *John v.*
 26 *Douglas County Sch. Dist.*, 125 Nev. 746, 750 (2009); see also *City of Costa Mesa*
 27 *v. D'Alessio Investments, LLC*, 214 Cal. App. 4th 358, 371 (4th Dist. 2013) (stating

1 that "[t]he merits of [the plaintiff's] claims should play n part in the first step of the
2 anti-SLAPP analysis").

3 **3.1.1 Plaintiff's Claims are Based Upon Protected Conduct**

4 Plaintiff's claims are based primarily upon Ms. Williams's August 2017
5 complaint to the Division.² There is no question that these statements fall under
6 NRS 41.637. The complaint was obviously a statement made in direct connection
7 with an issue under consideration by an executive body, or any other official
8 proceeding. The Division is an executive body, and the Real Estate Commission
9 of the Division, the body responsible for conducting disciplinary hearings, is
10 appointed by the Nevada Governor, which is the chief executive of the state.
11 (See "Real Estate Commission" page of Division web site, attached as **Exhibit 2**.)³
12 "The Nevada State Legislature . . . created the Department of Business and
13 Industry . . . as a State Department included under the State Executive Branch."
14 *White v. Conlon*, 2006 U.S. Dist. LEXIS 43182, *9 (D. Nev. June 6, 2006). The
15 complaint initiated the Division's investigation of Plaintiff, an official proceeding
16 of an executive body, thus satisfying NRS 41.637(3).

17 Plaintiff contends NRS 41.637(3) does not apply because the Division is not
18 a "legislative, executive or judicial body." That argument is simply bizarre. The
19 language in this subsection is broad and is meant to encompass essentially any
20 government proceeding; after all, any governmental entity must by definition fit
21 into one of three branches of government. Plaintiff appears to argue that only
22 the individuals or officers identified in the Nevada Constitution may be considered

23 ² Plaintiff's Complaint also premises his claims on a text message Ms.
24 Williams sent to Plaintiff prior to filing her complaint with the Division. His
25 Opposition, however, does not provide any argument as to whether this conduct
26 is protected, thus conceding that it is (at least to the same extent her complaint
is protected). See EDCR 2.20(e).

27 ³ Available at: http://red.nv.gov/Content/Real_Estate/Commission/ (last
accessed Sept. 04, 2019).

1 legislative, executive, or judicial bodies, but provides no support for this extremely
2 restrictive and novel interpretation. Available case law is counter to this
3 interpretation as well. See, e.g., *Carver v. Bonds*, 135 Cal. App. 4th 328, 350 (2005)
4 (noting that “[c]omplaints to regulatory agencies such as the [Board of Podiatric
5 Medicine] are likewise considered to be part of an ‘official proceeding’ under
6 the anti-SLAPP statute”).

7 The Division is an executive body under NRS 41.637(3). But even if it were
8 not, the statute protects communications in direct connection with “any other
9 official proceeding authorized by law,” which term is not limited to those
10 connected with a legislative, executive, or judicial body. Under California’s
11 statute, on which Nevada’s law is based, “other official proceeding authorized
12 by law” is not limited to proceedings before government entities. See *Kibler v.*
13 *Northern Inyo County Local Hospital Dist.*, 39 Cal. 4th 192, 203 (2006). Even a
14 parent’s letter to a school urging that it fire a baseball coach has been found to
15 be part of an “official proceeding” and thus protected. See *Lee v. Fick*, 135 Cal.
16 App. 4th 89, 96 (2005).

17 Plaintiff additionally argues that there is no evidence Ms. Williams’s
18 complaint to the Division was part of an official proceeding under the statute.
19 This makes no sense. The Division is responsible for disciplining real estate agents
20 like Plaintiff. Plaintiff alleges *ad nauseam* in his Complaint that Ms. Williams’s
21 complaint initiated an investigation by the Division in Plaintiff, to which Plaintiff
22 had to respond. Plaintiff cannot now claim the Division did not conduct such an
23 investigation in response to Ms. Williams’s complaint, particularly since the Division
24 informed Ms. Williams that it initially found Plaintiff to have been in violation of
25 statutes and regulations and imposed a fine on him following its investigation.
26 (See Anti-SLAPP Motion Exhibit 3.)

1 But even if NRS 41.637(3) does not apply, Ms. Williams's complaint to the
2 Division was a "[c]ommunication that is aimed at procuring any governmental or
3 electoral action, result or outcome" under NRS 41.637(1). The Division is a
4 governmental entity and part of the executive branch of Nevada's government.
5 Ms. Williams filed her complaint aimed at procuring governmental action, namely
6 disciplining Plaintiff for violations of Nevada statutes and/or ethics codes. Indeed,
7 the Division conducted an investigation and initially determined that Plaintiff
8 violated statutes and codes. (See Anti-SLAPP Motion Exhibit 3.) Ms. Williams thus
9 successfully procured government action as a direct result of filing her complaint,
10 even if that action was later rescinded. NRS 41.637(1) is thus satisfied.

11 Plaintiff sued Ms. Williams for exercising her First Amendment right to petition
12 the government. The Anti-SLAPP Motion functionally alleged this with reference
13 to the language of NRS 41.637. It is apparent from the arguments in the Motion
14 that Ms. Williams was arguing that Plaintiff's suit was filed on account of her
15 seeking discipline of Plaintiff, the procurement of an outcome from the
16 government.⁴

17 **3.1.2 Ms. Williams Made Her Statements in Good Faith**

18 To be protected under the Anti-SLAPP statute, statements must be "truthful
19 or ... made without knowledge of [their] falsehood." NRS 41.637. Therefore, when
20 we are looking at the first prong, falsity is statutorily irrelevant. It is properly
21 described as a standard even higher than that of the Actual Malice standard
22 under *New York Times v. Sullivan*. That standard requires knowing falsity or reckless
23

24 ⁴ Defendant recognizes that this may not have been clear in the absence
25 of a direct citation to 41.637(1), and thus would not object to the filing of a surreply
26 limited to that issue. No matter, as it also meets subsection 3, which was less clear
27 from the face of the complaint and, thus, was more thoroughly discussed in the
Motion.

1 disregard for the truth. Under the first prong of the Anti-SLAPP law, even a
 2 recklessly false statement is insufficient to defeat a prong one showing. the
 3 plaintiff must prove *knowing falsity*.⁵ Even if a statement is false, the defendant
 4 must have made it with *actual knowledge* that it was false; neither negligence
 5 nor even reckless disregard for the truth can defeat a defendant's showing under
 6 prong one.

7 Plaintiff's claims are premised primarily on the argument that Ms. Williams's
 8 statements that Plaintiff engaged in racist, sexist, unprofessional, and unethical
 9 behavior are actionable. But these are statements of opinion, not fact. To be
 10 false, a statement must include an assertion of fact that can be proven true or
 11 false. As explained in Section 4.2.2 of the Anti-SLAPP Motion, the statements
 12 Plaintiff claims are defamatory are not factual statements. It is thus logically
 13 impossible for her to have made them with knowledge of their falsity. Plaintiff
 14 does not address the non-factual nature of these statements at all in his
 15 Opposition – and this is of no surprise, as how can he? Under the First Amendment
 16 there is no such thing as a false idea. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323,
 17 339 (1974); see also *Nevada Indep. Broadcasting Corp. v. Allen*, 664 P.2d 337, 341
 18 (Nev. 1983) (holding that “statements of opinion as opposed to statements of fact
 19 are not actionable”).

20 This leaves multiple factual statements in Ms. Williams's complaint. Plaintiff's
 21 complaint does not dispute the majority of these.⁶ He admits the content of the
 22 statement he made to Ms. Williams on May 13, 2017 which she considered (in her

23 ⁵ Certainly, once past prong one – “recklessness” can come into play in the
 24 Prong Two analysis – if falsity matters at that point.

25 ⁶ Plaintiff's Opposition claims that some statements in Ms. Williams's
 26 complaint that are not addressed in his Complaint are false. Plaintiff, however,
 27 does not premise any of his claims on statements not included in the Complaint,
 and so the truth or falsity of such statements is irrelevant to the first prong analysis.

1 opinion) to be sexist. (See Williams Decl. at ¶ 5; Complaint Exhibit 3 at pg. 1;
 2 Complaint at 11.)⁷ He disputes that he told Ms. Williams how he met Ms. Krupp,
 3 but provides no evidence that Ms. Williams made this statement with knowledge
 4 of falsity. He does not dispute that he told Ms. Williams the commission he was
 5 earning on the sale of Ms. Krupp's property.⁸

6 Plaintiff admits that he provides real estate appraisers prior to them
 7 conducting their appraisal of property for transactions where he acts as a real
 8 estate agent, making this statement true. (See Lazer Decl. at ¶¶ 33-34).⁹ He
 9 disputes statements in Ms. Williams's complaint regarding the removal of Ms.
 10 Krupp's personal property at the condo unit but, as explained in Section 2.0, this
 11 argument is based on a mischaracterization of Ms. Williams's complaint and he
 12 provides no evidence that Ms. Williams knew her statements were false.

13 Plaintiff does not dispute that he did not provide Ms. Williams a fully
 14 executed copy of the sale contract or a receipt for earnest money paid¹⁰

15 ⁷ Plaintiff claims that no one could consider these statements to be sexist,
 16 but Ms. Williams's declaration provides her basis for considering this statement
 17 sexist. (See Williams Decl. at ¶¶ 5-6.) **Plaintiff only disagrees with Ms. Williams's**
 18 **opinion, not the facts on which she bases her opinion, and thus does not rebut**
 19 **that she made this statement in good faith.** Plaintiff's assertions as to Ms. Williams's
 subjective state of mind are not based on personal knowledge and are thus
 inadmissible.

20 ⁸ Plaintiff instead claims that there was nothing unethical about disclosing
 this information because he had authorization to do so. (See Lazer Decl. at ¶ 31.)
 21 Ms. Williams did not know this, however, and Plaintiff provides no evidence that
 she did. (See Williams Decl. at ¶ 7.) Whether she would have learned this with
 22 follow-up questions is irrelevant, as good faith under the Anti-SLAPP statute does
 23 not require a reasonable investigation.

24 ⁹ Plaintiff claims, without support, that there is nothing unethical about this
 practice. He does not dispute, however, that Ms. Williams believed this practice
 25 to be unethical or that a Division employee told her it was. There is thus no
 question Ms. Williams made this statement in good faith.

26 ¹⁰ Plaintiff admits he did not provide a receipt for earnest money paid,
 27 ending the inquiry as to this statement. (See Lazer Decl. at ¶¶ 43-46). Whether

1 pursuant to the contract. (See Williams Decl. at ¶ 10; Complaint Exhibit 3 at pg. 2;
 2 Anti-SLAPP Motion Exhibit 3 at p. 6.) Rather, Plaintiff sent her a copy of the
 3 contract with Ms. Krupp's signature which Ms. Williams was unable to download.
 4 (See Williams Reply Decl. at ¶ 3.) Plaintiff and Ms. Williams then met in person,
 5 where she signed a copy of the contract that did not have Ms. Krupp's signature,
 6 and Plaintiff did not provide her a copy of the contract with all signatures. (See
 7 *id.* at ¶¶ 4-7.) This statement is thus true.

8 Plaintiff does not contest the contents or authenticity of any of the written
 9 correspondence Ms. Williams attached to her complaint to the Division. (See
 10 Williams Decl. at ¶ 16; Anti-SLAPP Motion at Exhibit 3.) And while he disputes the
 11 contents of the conversation Ms. Williams and Ms. Krupp had on June 27, 2017,
 12 this is irrelevant because he does not base any claims on this statement in Ms.
 13 Williams's complaint.

14 Ms. Williams's factual statements in her complaint to the Division are thus
 15 either true or were made without knowledge of falsity. Plaintiff provides a few
 16 blanket denials regarding these statements, but he provides no evidence that Ms.
 17 Williams knew these statements were false. This is insufficient to rebut Ms. Williams's
 18 threshold showing of good faith under prong one. Otherwise, a plaintiff would be
 19 able to defeat an Anti-SLAPP motion at the outset merely by saying "nuh uh" and
 20 speculating that the movant was lying. Allowing such insubstantial evidence to
 21 defeat an Anti-SLAPP motion would run counter to the purpose of the statute, and
 22 Plaintiff provides no authority establishing that his speculation as to Ms. Williams's
 23 state of mind rebuts her prong one showing. His argument as to how Ms. Williams
 24 should have known her statements were false or misleading just shows that Plaintiff

25 _____
 26 the statement is "misleading" is irrelevant, and in any event Plaintiff no basis for
 27 any claim that Ms. Williams knew this statement was allegedly misleading.

1 is really trying to argue the merits of his claims, which is inappropriate at this stage
2 of the analysis. See *D'Alessio Investments*, 214 Cal. App. 4th at 371.

3 Even if Plaintiff could rebut Ms. Williams's showing of good faith as to some
4 of her statements at issue, he has not done so as to all of them. In particular,
5 Plaintiff's claims rest primarily on expressions of Ms. Williams's opinion, which
6 cannot be false for Anti-SLAPP purposes. This makes Plaintiff's claims "mixed"
7 causes of action. These "mixed cause[s] of action [are] subject to the Anti-SLAPP
8 statute if **at least one of the underlying acts is protected conduct**, unless the
9 allegations of protected conduct are merely incidental to the unprotected
10 activity." *Lauter v. Anoufrieva*, 642 F. Supp. 2d 1060, 1109 (C.D. Cal. 2008)
11 (emphasis added); see also *Salma v. Capon*, 161 Cal. App. 4th 1275, 1287 (2008)
12 (holding that a cause of action based on both protected and unprotected
13 activity under California's Anti-SLAPP statute is subject to an Anti-SLAPP motion);
14 *Peregrine Funding, Inc. v. Sheppard Mullin*, 133 Cal. App. 4th 658, 675 (2005)
15 (finding that because plaintiffs' claims "are based in significant part on
16 [defendant's] protected petitioning activity," the first anti-SLAPP prong was
17 satisfied"). Ms. Williams's statements of opinion to the Division are unquestionably
18 protected under the Anti-SLAPP statute, and all factual statements in her
19 complaint are inextricably intertwined with these protected statements.
20 Accordingly, all of Plaintiff's statements in her complaint to the Division are
21 protected.

22 Ms. Williams satisfies her burden under the first prong of the Anti-SLAPP law,
23 and now the burden shifts to Plaintiff to show a probability of prevailing on his
24 claims. He cannot do so.

25 **3.1.3 NRS 41.650 Does Not Impose Additional Requirements**

26 Plaintiff makes the puzzling argument that NRS 41.650 imposes an additional
27 burden on a defendant to satisfy the five-element analysis laid out in *Shapiro*. This

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

11 The citation to *Shapiro* is simply out of left field. That case discussed what
12 an “issue of public interest” is under NRS 41.637(4). See *Shapiro*, 389 P.3d at 268.
13 It does not even cite NRS 41.650. Ms. Williams does not rely on NRS 41.637(4) as
14 the basis for the instant Motion, instead relying on subsections (1) and (3), which
15 are focused on petitioning activity. California case law, from which the test in
16 *Shapiro* is derived, makes it clear that *all* petitioning activity (like Ms. Williams's) is
17 protected under the Anti-SLAPP statute, whether or not it involves a public issue.
18 See *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1116 (1999).
19 The analysis in *Shapiro* thus has no relevance here except to bolster Ms. Williams's
20 claim that this conduct fits Prong One.

21 **3.2 Plaintiff Cannot Show a Probability of Prevailing on His Claims**

22 NRS 41.660 defines a plaintiff's burden of proof as “the same burden of
23 proof that a plaintiff has been required to meet pursuant to California's anti-
24 Strategic Lawsuit Against Public Participation law as of the effective date of this
25 act.” NRS 41.665(2). Plaintiff cannot simply make vague accusations or provide
26 a mere scintilla of evidence to defeat Ms. Williams's Motion. Rather, to satisfy his
27 evidentiary burden under the second prong of the Anti-SLAPP statute, Plaintiff

1 must present “substantial evidence that would support a judgment of relief made
 2 in the plaintiff’s favor.” *S. Sutter, LLC v. LJ Sutter Partners, L.P.*, 193 Cal. App. 4th
 3 634, 670 (2011); see also *Mendoza v. Wichmann*, 194 Cal. App. 4th 1430, 1449
 4 (2011) (holding that “substantial evidence” of lack of probable cause was
 5 required to withstand Anti-SLAPP motion on malicious prosecution claim). Plaintiff
 6 cannot make this showing as to any of his claims.¹¹

7 **3.2.1 Ms. Williams’s Statements are Absolutely Privileged**

8 Statements made in quasi-judicial proceedings, such as those before
 9 administrative bodies, are absolutely privileged. See *Sahara Gaming Corp. v.*
 10 *Culinary Workers Union Local 226*, 115 Nev. 212, 217 (1999);¹² see also *Lewis v.*
 11 *Benson*, 101 Nev. 300, 301 (1985) (applying absolute privilege to citizen complaint
 12 to internal affairs bureau against police officer). This privilege completely bars
 13 any liability for statements made in the course of these proceedings, even if they
 14 are made maliciously and with knowledge of their falsity. See *Sahara Gaming*,
 15 115 Nev. at 219. It is not “limited to the courtroom, but encompasses actions by
 16 administrative bodies and quasi-judicial proceedings. The privilege extends
 17 beyond statements made in the proceedings, and includes statements made to
 18 initiate official action.” *Wise v. Thrifty Payless, Inc.*, 83 Cal. app. 4th 1296, 1303
 19 (2000) (holding absolute privilege applied to husband’s report to the Department
 20 of Motor Vehicles regarding wife’s drug use and its possible impact on her ability
 21 to drive). “[The] absolute privilege exists to protect citizens from the threat of

22
 23 ¹¹ Plaintiff tries to redefine this standard with a citation to Black’s Law
 24 Dictionary. This is unavailing, as the statute defines this standard with reference
 to California law, which is controlling.

25 ¹² Plaintiff argues this case is inapposite because it did not deal with facts
 26 identical to those here. But there is no real doubt that a complaint filed with an
 27 executive agency, which then conducts a months-long investigation and finds
 statutory violations, is a quasi-judicial proceeding before an administrative body,
 which is absolutely privileged.

1 litigation for communications to government agencies whose function it is to
2 investigate and remedy wrongdoing.” *Id.*

3 Though the Nevada Supreme Court apparently has not yet dealt with a
4 case applying the absolute privilege to claims against a realtor, California has
5 recognized that its similar absolute privilege applies to such circumstances. See
6 *King v. Borges*, 28 Cal. App. 3d 27, 34 (1972) (finding that state department’s
7 interest in citizens reporting professional misconduct would be undermined if
8 reporting citizens had to fear defamation suits, and extending absolute privilege
9 to complaint against realtor filed with state division of real estate); see also
10 *Vultaggio v. Yasko*, 215 Wis. 2d 326, 334 (Wis. 1998) (noting Wisconsin extending
11 absolute privilege to “statements made to a real estate broker’s board”).

12 Plaintiff provides no contrary authority, instead trying only to distinguish a
13 few of the cases showing that an absolute privilege applies here. He also cites
14 *Jacobs v. Adelson*, 325 P.3d 1282, 1285 (Nev. 2014) for the argument that the
15 privilege does not apply because Ms. Williams did not contemplate the quasi-
16 judicial proceeding in good faith.

17 “Good faith” here is a low bar because the privilege applies “even when
18 the motives behind [the statements] are malicious and they are made with
19 knowledge of the communications’ falsity.” *Id.* This condition of the absolute
20 privilege, then, is satisfied if the speaker makes a statement while seriously
21 considering litigation or a quasi-judicial proceeding, regardless of their actual
22 motives.¹³ The facts of Plaintiff’s Complaint show this to be the case. Ms. Williams
23 told Plaintiff in June 2017 she planned to file a complaint against him, then did so

24 _____
25 ¹³ This requirement of the privilege is meant to prevent parties from abusing
26 the privilege by, for example, making defamatory statements in a demand letter
27 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.

1 two months later. To bolster the strength of her complaint, at least initially, the
2 Division found cause to discipline the Plaintiff – albeit they later reversed course.
3 (See Anti-SLAPP Motion Exhibit 3.) The privilege thus applies even if every
4 statement in the complaint was false and Ms. Williams knew every statement to
5 be false.

6 Plaintiff's claims to the contrary are unavailing, as the truth or falsity of Ms.
7 Williams's statements is immaterial. Whether Ms. Williams was "frustrated" with
8 Plaintiff's conduct she found to be unprofessional and unethical is likewise
9 immaterial; Plaintiff cannot seriously contend that the litigation privilege applies
10 only to emotionless automatons. Plaintiff's claim of bad faith "retaliation" is also
11 (1) irrelevant, as the privilege applies regardless of a party's motives; and (2)
12 unsupported by anything other than attorney argument. Plaintiff finally argues
13 there are questions as to whether the Division was seriously considering taking
14 action in response to Ms. Williams's. First, that is not the standard; the inquiry is
15 focused on whether Ms. Williams, not the Division, seriously considered initiating a
16 quasi-judicial proceeding. Second, this argument is contradicted by Plaintiff's
17 Complaint and Declaration, which discuss the months-long Division investigation
18 initiated by Ms. Williams's complaint that allegedly required a significant
19 expenditure of time and effort to respond to. Ms. Williams's statements are thus
20 absolutely privileged.

21 **3.2.2 Plaintiff's Claims Fail on the Merits**

22 Plaintiff provides no real argument that any of his claims have merit. In fact,
23 he does not even address his fraud and extortion claims in his Opposition, thereby
24 conceding they are meritless. As for his defamation claim, Plaintiff merely states
25 that he has alleged the necessary elements of a defamation claim. This an Anti-
26 SLAPP Motion, not a motion to dismiss under NRC 12(b)(5), and so mere
27 allegations are insufficient. In particular, Plaintiff provides no rebuttal to the

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substantial argument in Section 4.2 of the Anti-SLAPP Motion that the statements at issue cannot be defamatory. Plaintiff thus effectively concedes that his defamation claim is meritless as well.

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.

DATED September 4, 2019.

Respectfully submitted,

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar No. 12265)
 Alex J. Shepard (NV Bar No. 13582)
 RANDAZZA LEGAL GROUP, PLLC
 2764 Lake Sahara Drive, Suite 109
 Las Vegas, NV 89117

Attorneys for Defendant
Daphne Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September 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

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EXHIBIT 1

Declaration of Ms. Williams in support of Reply in Support of
Anti-SLAPP Motion

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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

**DECLARATION OF DAPHNE
WILLIAMS IN SUPPORT OF REPLY IN
SUPPORT OF ANTI-SLAPP SPECIAL
MOTION TO DISMISS 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 my Reply in Support of my Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 (the "Anti-SLAPP Reply").

3. In my August 23, 2017 complaint to the State of Nevada Department of Business and Industry, Real Estate Division (the "Division"), I asserted that Plaintiff did not send me a

1 signed copy of the real estate contract for the sale of property at 1404 Kilimanjaro Lane, Unit 202,
2 Las Vegas, Nevada 89128. This statement is true. While Plaintiff did email me a series of .jpg
3 files containing images of separate pages of the contract with the signature of the seller, Rosane
4 Krupp, I was unable to print these pages and sign them.

5 4. I informed Plaintiff of these technical difficulties and we agreed to meet at a Whole
6 Foods store, where he would bring a copy of the contract so that I could sign it. We met at the
7 store and I signed a copy of the contract. The copy I signed, however, did not have Ms. Krupp's
8 signature on it.

9 5. The copy of the contract I signed included additional terms not present in the copy
10 Plaintiff sent me via email in May 2017. For example, the copy I signed included handwritten
11 descriptions of personal property sold along with the condo unit and the date by which I was
12 required to accept the offer of sale. A review of, for example, Section 4 and the "Buyer's
13 Acknowledgement of Offer" of Exhibits 1 and 6 to Plaintiff's Opposition to the Anti-SLAPP
14 Motion show that the fully executed contract and what Plaintiff sent me in May 2017 are not the
15 same.

16 6. Due to the fact that we were in a Whole Foods store and Ms. Krupp needed to
17 approve of these new terms to the contract, Plaintiff did not make a copy of this version of the
18 contract with my signature. He told me during this meeting that he would make a copy of this
19 contract later and send it to me, but he never did.

20 7. I only received a signed copy of the contract after the close of escrow and after
21 requesting these documents from Ticor Title Insurance, which sent me a copy on July 31, 2017.


22 8. The "personal property" allegedly belonging to Ms. Krupp referred to in Plaintiff's
23 Opposition the Anti-SLAPP Motion and Ms. Krupp's declaration in support consists of a television
24 bracket and shelf mounted to the walls of the condo unit I purchased from Ms. Krupp. My
25 understanding as of August 23, 2017, and as of today, is that these items are fixtures of property
26 that were sold along with the condo unit itself, and not personal property that needed to be returned
27 to Ms. Krupp.

1 9. I reiterate the statements in my prior declaration submitted in support of the Anti-
 2 SLAPP Motion that, to the best of my knowledge and recollection, every statement in my
 3 complaint to the Division is true or accurately reflects my subjective opinions regarding Plaintiff
 4 and his conduct. However, even if my recollection is not perfect as to the contents of some
 5 conversations I had with Ms. Krupp or Plaintiff, I believed every statement I made in the complaint
 6 to be true.

7 10. At this time, even upon review, I have no doubt as to the veracity of the statements
 8 I made.

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

11
 12 Executed on 9/3/2019.

13 DocuSigned by:

 14 Daphne Williams

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EXHIBIT 2

Real Estate Commission Webpage

Skip



Department of Business and Industry

Nevada Real Estate Division

NV.gov

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REAL ESTATE COMMISSION

The Real Estate Commission is a five-member body, appointed by the governor, that acts in an advisory capacity to the Division, adopts regulations, and conducts disciplinary hearings.

Qualifications and Limitations

- Must be a US citizen.
- Must be a resident of Nevada for at least five (5) years.
- Must have been actively engaged in business as a Nevada real estate broker for at least three (3) years preceding appointment or a Nevada real estate broker/salesman for at least five (5) years preceding appointment.
- Three (3) members must reside in or have a principal place of business located in Clark County; one (1) member must reside in or have a principal place of business in Washoe County; and one (1) member must reside in or have a principal place of business located in Carson City or Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey or White Pine County.
- Commissioners are appointed for a three (3) year term but may not serve more than two consecutive terms.

Ex Parte Communication

An ex parte communication is a communication made to a commission member concerning a pending licensing, disciplinary, rule making proceeding or education course approval. The communication is made outside of the formal proceeding and is not made to the entire commission. Literally, ex parte means one side; by or for one side. The formal definition is: an oral or written communication not on the public record with no prior notice to all parties. Ex parte communications may violate due process and may force a Commissioner to recuse him/herself from participation.

Service of Process

Pursuant to NRS 645.050(4) service of process and other communications upon the Commission may be made at the principal office of the Real Estate Division. The following is the proper routing for service of process and other communication upon the Commission:

Administration Section Manager
State of Nevada, Department of Business & Industry
Real Estate Division
3300 W. Sahara Avenue, Suite 350
Las Vegas, Nevada 89102
Phone (702) 486-4036
Fax (702) 486-4067

Commission Members

LEE K. BARRETT, President Clark County	REAPPOINTED: 11/01/2018 TERM EXPIRES: 10/31/2021
WAYNE CAPURRO, Vice President Washoe County	APPOINTED: 11/07/2016 TERM EXPIRES: 10/31/2019
DEVIN REISS, Secretary Clark County	REAPPOINTED: 11/01/2017 TERM EXPIRES: 10/31/2020
LEE R. GURR, Commissioner Elko County	APPOINTED: 11/01/2018 TERM EXPIRES: 10/31/2021
NEIL SCHWARTZ, Commissioner Clark County	REAPPOINTED: 11/01/2016 TERM EXPIRES: 10/31/2019

Meeting Schedule

Meeting agendas are stacked and the meeting will close upon completion of the agenda.

Licensees can earn continuing education credit by attending Nevada Real Estate Commission meetings. Licensees must be present for at least three (3) hours of an active commission meeting. Up to six (6) hours of Agency, Ethics, Broker Management, or Law and Legislation credits may be earned through meeting attendance during any licensing period.

NOTICE: Meeting agendas are stacked and the meeting will close upon completion of the agenda. For those attending commission meetings for CE credit, please review the agenda! Portions of the meeting may be conducted in closed session. Those portions will not be eligible for continuing education credit.

Commission Meeting schedules are subject to change without notice. We recommend that you call (702) 486-4074 or (702) 486-4036, or check back frequently.

Click [here](#) to view the meeting calendar.

Other Commissions

[CIC Commission](#)

[Appraisal Commission](#)

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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

**DECLARATION OF
CRYSTAL C.S. SABALA**

I Crystal C.S. Sabala, declare:

1. I am over 18 years of age and have never been convicted of a crime involving fraud or dishonesty.
2. I am employed as a Legal Assistant for Randazza Legal Group, PLLC.
3. I am a legal assistant for Randazza Legal Group, PLLC (“RLG”).
4. On September 4, 2019, while at the Las Vegas office of RLG, I accessed the “real estate commission” page of the web site for the Nevada Department of Business and Industry Real Estate Division, located at the URL <http://red.nv.gov/Content/Real_Estate/Commission/> on a MacBook Air work computer using the macOS Sierra operating system and the Google Chrome Internet browser. Immediately after visiting this URL, I saved a true and correct copy of the web page to PDF format, a copy of which is attached to the Reply in Support of Defendant Daphne Williams’s Anti-SLAPP Special Motion to Dismiss Under NRS 41.660 as **Exhibit 2**.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: September 4, 2019.

/s/ Crystal C.S. Sabala

Crystal C.S. Sabala