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LINDA F. BURLEIGH
WHITE PINE COUNTY CLERK

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Case No. CV-1308115

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OCT 30 2013
White Pine County Clerk

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WHITE PINE

John Lampros,

Plaintiff,

vs.

Cheryl Noriega, James Adams, and Timothy
McGowan, Ely Jet Center, Does I through 10,
And Does Inc., 1 through 10,

Defendants.

ORDER GRANTING SPECIAL MOTION TO DISMISS

This matter comes before the court on Defendant's special motion to dismiss based on Nevada's anti-SLAPP¹ statute in a defamation action. The Nevada Supreme Court defined a SLAPP lawsuit as "a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." *John v. Douglas County School District*, 125 Nev. 746, 752, 219 P.3d 1276, 1281 (2009) (quoting *Dickens v. Provident Life and Acc. Ins. Co.*, 117 Cal. App. 4th 705, 11 Cal. Rptr. 3d 877, 882 (Ct. App. 2004)). An anti-SLAPP motion strikes at "malicious prosecution" and protects constitutionally ordained freedom of speech. *Id.*

A special motion to dismiss under the anti-SLAPP statute is treated as a motion for summary judgment. NRS 41.660(3)(a). Thus, this court may only grant the special motion to

¹ "SLAPP" is an acronym for strategic lawsuits against public participation.

1 dismiss if there is no genuine issue of material fact and the moving party is entitled to judgment
2 as a matter of law. *John* (setting forth the summary judgment standard and explaining that “the
3 nonmoving party cannot overcome the special motion to dismiss ‘on the gossamer threads of
4 whimsy, speculation and conjecture’ ”) (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121
5 P.3d 1026, 1030 (2005)). To avoid summary judgment once the movant has properly supported
6 the motion, the nonmoving party may not rest upon general allegations and conclusions, but must
7 instead set forth by affidavit or otherwise specific facts demonstrating the existence of a genuine
8 issue of material fact for trial. NRCPP 56(e); *Wood*, 121 Nev. at 731, 121 P.3d at 1030–31.

9 Under the Nevada anti-SLAPP statute,² three types of good-faith communications made in
10 furtherance of the right to petition remain protected:

- 11 1. Communication that is aimed at procuring any governmental or electoral action, result
or outcome;
- 12 2. Communication of information or a complaint to a Legislator, officer or employee of
13 the Federal Government, this state or a political subdivision of this state, regarding a
matter reasonably of concern to the respective governmental entity; or
- 14 3. Written or oral statement made in direct connection with an issue under consideration
15 by a legislative, executive or judicial body, or any other official proceeding authorized by
law, which is truthful or is made without knowledge of its falsehood.

16 Further, “Nevada’s anti-SLAPP statute protects good-faith communications if those
17 communications were truthful or made without knowledge of falsehood and regard a matter of
18 reasonable concern....” *John*, 125 Nev. at 761, 219 P.3d at 1286. See NRS 41.637(2).

19 In Plaintiff’s Amended Complaint, he alleged that Cheryl Noriega, James Adams,
20 Timothy McGowan, and Ely Jet Center (“Defendants”) made oral and written defamatory
21 statements, which resulted in harm to his reputation in the community.³ “Defendants published
22 defamatory statements about John – by filing a notice of intent to recall him from his elected
23 office as County Commissioner that contained demonstrably false statements of fact, intending to
24 impute criminal acts to him.” Plaintiff alleges the following statements were false and
25 defamatory: (1) Plaintiff committed acts “exploding” county spending, (2) his acts led to a current

26
27 ² NRS 41.637.

28 ³ On August 29, 2013, Plaintiff dismissed all claims against Ely Jet Center.

1 budget that had a “1.4+ million short fall not including... building commitments,” (3) he was
2 responsible for a “reckless and completely unplanned attempt at replacing the County annex
3 building, with known problems, possibly with as much age and probably with as many problems
4 as the current structure, and again unknown cost to make the building useable, coupled together
5 with other unbudgeted, unplanned expenditures...” and (4) Plaintiff was the “leader of acts
6 forcing the county into insolvency through his mismanagement.”

7 In the Special Motion to Dismiss defendants contend that all statements contained in the
8 Recall Petition are true or, if false, were grounded upon good-faith. Defendants assert that the
9 purchase of the Ely Times Building came before a proper estimate had been obtained , which
10 increased the project budget from \$135,000 to \$350,000. Defendants also assert that the White
11 Pine Aquatic Center encountered planning issues (lack of emergency vehicle access, insufficient
12 parking, ingress and egress to U.S. Highway 6) that resulted in final cost estimates ranging from
13 \$385,000 to \$512,000. Lastly, defendants state that White Pine County suffered from a \$1.3
14 million shortfall as of April 2013.

15 NRS 41.637 defines good-faith communication as that “which is truthful or made without
16 knowledge of its falsehood.” Defendants showed through affidavits, County Commission
17 meetings, architect meeting notes, budget meeting notes, and newspaper articles, that they made
18 the communications at issue believing them to be true or without knowledge of their falsehood. It
19 appears that Defendants’ communications fall within the purview of NRS 41.660, as good-faith
20 communications in furtherance of their right to petition. As such, Defendants met their initial
21 burden of production and persuasion that their communication was in good faith and in
22 furtherance of their right to petition. Thus, the burden of production then shifted to the Plaintiff.

23 Plaintiff provides a letter by Finance Director Elizabeth Francis to counter Defendants’
24 claim that White Pine County has a 1.4 million plus shortfall. The letter exemplifies how
25 misinformation can be corrected through public debate on public matters. Even though Plaintiff
26 admits that Defendants rely on the minutes from public meetings which discuss the county budget
27 with the department heads, he alleges that they failed to verify their claim with a phone call to the
28

1 County Finance Director's office. In sum, Plaintiff asserts that Defendants failed to "correct the
2 lies" disseminated to the public. While Defendants could have called the County Finance
3 Director's office, the statute does not require the moving party to rely on the best source of
4 evidence to support their speech. This court agrees with Finance Director Elizabeth Frances'
5 rebuttal to the recall petition as an appropriate response to correcting good-faith and misconstrued
6 public information, rather than filing a lawsuit.

7 Plaintiff relies on Defendant McGowan's letter to Ely Times to demonstrate that at least
8 one of the Defendants knew that the Notice of Intent to Recall contained false statements. Yet,
9 Defendant McGowan never admits to intentionally and maliciously publishing false information,
10 instead he states: "The recall statement that appeared in the paper was a rough draft that was
11 inadvertently released to the media before it could be checked for mistakes and refined. This
12 error was correction in the final version that is on the recall petition." As such, Defendant
13 McGowan does not admit to any intentional disregard for the truth, and he corrected any
14 misinformation disseminated after receiving knowledge of the incorrect publication of the rough
15 draft recall.

16 Plaintiff relies upon Scott Gilles' email sent to the County Clerk upon receipt of the
17 Notice of Intent to Recall, which he advised the clerk that it possibly contained false statements of
18 fact. In this email he asks the clerk: "has the petition with the statement (with the alleged
19 incorrect statements) been circulated yet? If yes, then NRS 306.025 could POTENTIALLY be
20 triggered." However it is clear that the release of the earlier draft of the petition was
21 "inadvertent," and that does not rise to the level of knowledge of falsehood.

22 Persons who engage in a good faith communication in furtherance of the right to petition
23 the government are immune from civil liability for claims based upon those communications. See
24 NRS 41.650. In the opinion of this court, the anti-SLAPP statute applies to the Defendant's
25 communications, which were good-faith communications in furtherance of the right to free speech
26 as defined by NRS 41.637. Plaintiff failed to meet his burden of production and persuasion.

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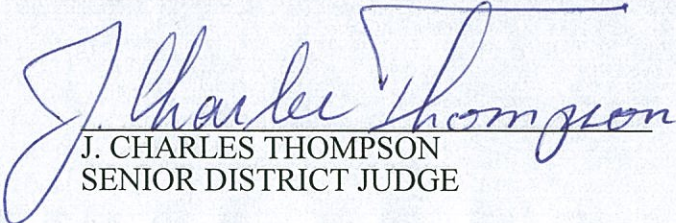
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Accordingly, it is

ORDERED that the Special Motion to Dismiss be and the same is hereby GRANTED.

Dated this 14 day of October, 2013.


J. CHARLES THOMPSON
SENIOR DISTRICT JUDGE

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Case No. CV-1307113

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LINDA F. BURLEIGH
WHITE PINE COUNTY CLERK
BY LP
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WHITE PINE

Michael Lemich,

Plaintiff,

vs.

Cheryl Noriega, James Adams,
and Timothy McGowan, Does I
through 10, and Does Inc., 1 through 10,

Defendants.

DECISION ON SPECIAL MOTION TO DISMISS

This matter comes before the court on Defendant’s special motion to dismiss based on Nevada’s anti-SLAPP¹ statute in a defamation action. The Nevada Supreme Court defined a SLAPP lawsuit as “a meritless suit filed primarily to chill the defendant’s exercise of First Amendment rights.” *John v. Douglas County School District*, 125 Nev. 746, 752, 219 P.3d 1276, 1281 (2009) (quoting *Dickens v. Provident Life and Acc. Ins. Co.*, 117 Cal. App. 4th 705, 11 Cal. Rptr. 3d 877, 882 (Ct. App. 2004)). An anti-SLAPP motion strikes at “malicious prosecution” and protects constitutionally ordained freedom of speech. *Id.*

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1 dismiss if there is no genuine issue of material fact and the moving party is entitled to judgment
2 as a matter of law. *John* (setting forth the summary judgment standard and explaining that “the
3 nonmoving party cannot overcome the special motion to dismiss ‘on the gossamer threads of
4 whimsy, speculation and conjecture’ ”) (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121
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6 the motion, the nonmoving party may not rest upon general allegations and conclusions, but must
7 instead set forth by affidavit or otherwise specific facts demonstrating the existence of a genuine
8 issue of material fact for trial. NRCPP 56(e); *Wood*, 121 Nev. at 731, 121 P.3d at 1030–31.

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10 furtherance of the right to petition remain protected:

- 11 1. Communication that is aimed at procuring any governmental or electoral action, result
or outcome;
- 12 2. Communication of information or a complaint to a Legislator, officer or employee of
13 the Federal Government, this state or a political subdivision of this state, regarding a
matter reasonably of concern to the respective governmental entity; or
- 14 3. Written or oral statement made in direct connection with an issue under consideration
15 by a legislative, executive or judicial body, or any other official proceeding authorized by
law, which is truthful or is made without knowledge of its falsehood.

16 Further, “Nevada’s anti-SLAPP statute protects good-faith communications if those
17 communications were truthful or made without knowledge of falsehood and regard a matter of
18 reasonable concern...” *John*, 125 Nev. at 761, 219 P.3d at 1286. See NRS 41.637(2).

19 In Plaintiff’s Amended Complaint, he alleged that Cheryl Noriega, James Adams, and
20 Timothy McGowan made oral and written defamatory statements, which resulted in harm to his
21 reputation in the community. “Defendants published defamatory statements about Plaintiff filing
22 a notice of intent to recall Mike from his elected office as County Commissioner that contained
23 demonstrably false statements of fact, intending to impute criminal acts to Mike.”

24 ...

25 ...

26
27 ²NRS 41.637.

1 In the General Allegation section of the complaint, Plaintiff alleges the following
2 statements were false and defamatory:

3 ¶ 14: Plaintiff was “responsible for a financial disaster in the White Pine County budget;”

4 ¶ 15: Plaintiff “intimidated and threatened citizens which would be a crime if true;”

5 ¶ 16: Plaintiff was “under investigation by law enforcement for physical assault of a
6 citizen;”

7 ¶ 17: Plaintiff was “under investigation by law enforcement for theft...several state and
8 local investigations;”

9 ¶ 18: Plaintiff’s mismanagement was responsible for White Pine County’s financial
10 difficulties;

11 ¶ 19: Plaintiff “has taken upon himself to dismantle the County Fire and EMS services,
12 violating and/or subjecting the County to NRS violations and placing outlying
13 communities in grave risks due to lack of timely services, while simultaneously
14 negotiating land exchanges for the county;” and

15 ¶ 20: Plaintiff “has taken very combative [sic] and pushed personal vendettas against the
16 private operator at the Airport and members of the Airport Board. Accusations,
17 intimidations, lies and outright threats against both the operator and their customers have
18 far crossed the line of ethics.”

19 Plaintiff generally repeats the allegations in two counts of defamation and then alleges the
20 Defendants have committed the tort of civil conspiracy in a third count.

21 In the Special Motion to Dismiss Defendants contend that all statements contained in the
22 Recall Petition are true and grounded upon good-faith.³

23 Paragraphs 14 & 18: Economic disaster & White Pine County’s financial difficulties.

24 Defendants assert that the purchase of the Ely Times Building came before a proper
25

26 ³ On July 10, 2013, the Ely Times published an article titled, “Notices of Intent to Recall Commissioners Lampros and
27 Lemich Filed.” On or about July 25, 2013, Defendants filed the Recall Petition. Defendants’ motion argues that the court
28 should review the Recall Petition. Plaintiff’s opposition addresses the Intent to Recall communications made in the Ely
Times. The difference is extremely minute and does not affect this decision.

1 estimate had been obtained, which increased the project budget from \$135,000 to \$350,000.
2 Defendants also assert that the White Pine Aquatic Center encountered planning issues (lack of
3 emergency vehicle access, insufficient parking, ingress and egress to U.S. Highway 6) that
4 resulted in final cost estimates ranging from \$385,000 to \$512,000. Lastly, Defendants state that
5 White Pine County suffers from a \$1.3 million shortfall as of April 2013.

6 NRS 41.637 defines good-faith communication as that “which is truthful or made without
7 knowledge of its falsehood.” Defendants showed through affidavits, County Commission
8 meetings, architect meeting notes, budget meeting notes, and newspaper articles, that they made
9 the communications at issue believing them to be true or without knowledge of their falsehood. It
10 appears that Defendants’ communications fall within the purview of NRS 41.660, as good-faith
11 communications in furtherance of their right to petition. As such, Defendants met their initial
12 burden of production and persuasion that their communication was in good faith and in
13 furtherance of their right to petition. Thus, the burden of production then shifted to the Plaintiff.

14 Plaintiff provides a letter by Finance Director Elizabeth Francis to counter Defendants’
15 claim that White Pine County has a 1.4 million plus shortfall. The letter explains that the county
16 does not have a 1.4 plus million dollar shortfall but, rather, has a projected \$13,584,469 general
17 fund balance for the 2013 fiscal year. The letter exemplifies how misinformation can be
18 corrected through public debate on public matters. Even though Plaintiff admits that Defendants
19 relied on the minutes from public meetings which discuss the county budget with the department
20 heads, he alleges that they failed to verify their claim with a phone call to the County Finance
21 Director’s office. In sum, Plaintiff asserts that Defendants failed to “correct the lies”
22 disseminated to the public. While Defendants could have called the County Finance Director’s
23 office, the statutes do not require the moving party to rely on the best source of evidence to
24 support their speech. This court agrees with Finance Director Elizabeth Frances’ rebuttal to the
25 recall petition as an appropriate response to correcting good-faith and misconstrued public
26 information, rather than filing a lawsuit.

27 Plaintiff relies on Defendant McGowan’s letter to Ely Times to demonstrate that at least
28

1 one of the Defendants knew that the Notice of Intent to Recall contained false statements. Yet,
2 Defendant McGowan never admits to intentionally and maliciously publishing false information,
3 instead he states: “The recall statement that appeared in the paper was a rough draft that was
4 inadvertently released to the media before it could be checked for mistakes and refined. This
5 error was correction in the final version that is on the recall petition.” As such, Defendant
6 McGowan does not admit to any intentional disregard for the truth, and he corrected any
7 misinformation disseminated after receiving knowledge of the incorrect publication of the rough
8 draft recall.

9 Plaintiff relies upon Scott Gilles’ email sent to the County Clerk upon receipt of the
10 Notice of Intent to Recall, which he advised the clerk that it possibly contained false statements of
11 fact. In this email he asks the clerk: “has the petition with the statement (with the alleged
12 incorrect statements) been circulated yet? If yes, then NRS 306.025 could POTENTIALLY be
13 triggered.” However it is clear that the release of the earlier draft of the petition was
14 “inadvertent,” and that does not rise to the level of knowledge of falsehood.

15 In the opinion of this court, the anti-SLAPP statute applies to these communications,
16 which were good-faith communications in furtherance of the right to free speech as defined by
17 NRS 41.637. Plaintiff failed to meet his burden of production and the Special Motion to Dismiss
18 should be granted for the communications in paragraphs 14 & 18.

19 Paragraphs 15 & 16: Intimidation, threatening citizens & being under investigation for assault.

20 Defendants showed through their individual affidavits and Mr. Chachas’s statement
21 submitted to the White Pine County Sherriff’s Department, that they made the communications at
22 issue believing them to be true or without knowledge of their falsehood. Plaintiff’s opposition
23 motion fails to address a general intimidation statement. Mr. Chachas informed Defendant
24 McGowan that he had filed a complaint with the city and was contemplating filing with the
25 Attorney General’s Office. Further, Mr. Chachas’s statement to the Sheriff’s Department details
26 a potential assault and/or battery. The statement, which in pertinent part states: “Commissioner
27 Lemich then grabbed my camera and tried to rip it out of my hands and off my tripod. I struggled
28

1 to get it back and then he punched me in the chest with his finger and stated, 'I'll bust your
2 fucking head.'" While Defendants' evidence does not clearly prove that there is currently a
3 pending assault investigation, it does rise to the level of a communication made without
4 knowledge of its falsehood. It is reasonable for Defendants to believe that based on Mr.
5 Chachas's statements to the Sherriff's Department and Defendants that a pending assault
6 investigation existed.

7 Plaintiff argues that Defendants' accusation is defamatory *per se*. Plaintiff is correct that
8 false statements involving the imputation of a crime are defamatory *per se*. However, Plaintiff
9 has failed to provide any evidence that a genuine factual issue exists regarding the incident with
10 Mr. Chachas. Therefore, Plaintiff has failed to meet his burden of production.

11 In the opinion of this court, the anti-SLAPP statute applies to these communications,
12 which were good-faith communications in furtherance of the right to free speech as defined by
13 NRS 41.637. Plaintiff failed to meet his burden of persuasion and production and the Special
14 Motion to Dismiss should be granted for the communications in paragraphs 15 & 16.

15 Paragraph 17: Plaintiff was under investigation theft...several state and local investigations

16 Defendants failed to provide any evidence that Plaintiff was subject of several State and
17 local investigations. Furthermore, neither Defendants' special motion to dismiss nor the reply to
18 the motion address the communication at issue. Defendants' affidavits generally declare that all
19 their statements were made without knowledge of falsehood. Assuming *arguendo* that
20 Defendants' affidavits alone satisfy their burden, the burden shifts to Plaintiff, who must prove
21 through specific factual evidence that a genuine factual issue exists.

22 Plaintiff's affidavit states that he has not been the subject of investigations by State and
23 local authorities. Plaintiff does concede that two claims have been filed against him: (1) the
24 claim by Mr. Chachas; and (2) a claim filed "years ago" that was "never pursued." The record
25 contains no evidence that "several investigations" have been conducted. Thus, the Special
26 Motion to Dismiss as to this communication should be denied.

27 ...

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1 Paragraph 17: Plaintiff has taken upon himself to dismantle the County Fire and EMS services,
2 violating and/or subjecting the County to NRS violations and placing outlying communities in
3 grave risks due to the lack of timely services, while simultaneously negotiating land exchanges
4 for the county.

5 This paragraph really contains three separate statements which require separate treatment.

6 a. Dismantling the County Fire and EMS services.

7 Defendants showed through Findings of Fact and Conclusions of Law from the Attorney
8 General's Office, Plaintiff's public statement regarding his position on not consolidating the
9 County Fire and EMS services, and County Commission minutes, that they made the
10 communications at issue believing them to be true or without knowledge of their falsehood. The
11 Findings of Fact from the Attorney General's Office and the County Commission minutes address
12 Plaintiff's position of consolidating the services. Plaintiff contends that the record fails to
13 "demonstrate any actions" by Plaintiff to dismantle the services. While the record does not
14 address specific actions by Plaintiff, it does provide enough support that Defendants' statement in
15 the petition was made without knowledge of its falsehood that Plaintiff participated at some level
16 in the consolidation of the services. Plaintiff's opposition fails to provide specific factual
17 evidence that a genuine factual issue exists. Therefore, the Special Motion to Dismiss should be
18 granted for this communication.

19 b. Subjecting White Pine County to numerous NRS violations and placing outlying
20 communities in grave risks due to lack of timely services.

21 Defendants rely solely on Exhibit F for the communication that Plaintiff "subject[ed] the
22 County to numerous NRS violations and placing outlying communities in grave risk." Exhibit F
23 is the Finding of Facts and Conclusions of Law issued by the Attorney General's Office regarding
24 an investigation pertaining to an Open Meeting Law complaint. In it, the Attorney General's
25 Office concluded that the Ely City Council and White Pine County Commission violated NRS
26 241.020 and NRS 241.015(1) by holding an unnoticed meeting of a quorum on March 21, 2012,
27 but the open meeting on April 6, 2012 "cured" those violations. Further, the Attorney General's
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1 Office concluded that it would not take action under NRS 241.040 because there was conflicting
2 evidence as to whether the team members “acted willfully and with knowledge that they were
3 violating the” Open Meeting Law. Defendants do not rely on any other evidence regarding this
4 communication. Plaintiff’s opposition motion fails to address this evidence supporting this
5 communication.

6 Nonetheless, Defendants have failed to meet their burden that the communication was
7 truthful or made without knowledge of its falsehood. Defendants made the communication in
8 regard to Plaintiff’s involvement in the dismantling of the County Fire and EMS services, which
9 allegedly subjected the County to numerous NRS violations. Exhibit F demonstrates that the
10 potential NRS violations were not a result of consolidating or dismantling Fire and EMS services.
11 Rather, the alleged NRS violations resulted specifically from NRS 241.040, the Open Meeting
12 Law. Granted, the Attorney General’s Office discovered that the quorum made decisions about
13 the consolidation of the Fire and EMS services. However, the NRS violations were not derived
14 from the quorum’s discussion and decision, but the fact that the quorum allegedly violated the
15 Open Meeting Law. Therefore, Defendants have failed to meet their burden and the Special
16 Motion to Dismiss for this communication must be denied.

17 c. Negotiating land exchanges for the County [when Plaintiff had a conflict].

18 Defendants argue that through affidavits, County Commission minutes, and employee
19 newsletters, they made the communications at issue believing them to be true or without
20 knowledge of their falsehood. Exhibit G shows that Plaintiff revealed during a County
21 Commission meeting that he had an “association with Midway Gold” and that there would be a
22 future hearing regarding the project. The remainder of Exhibit G’s documents demonstrates that
23 Plaintiff was present during County Commissioner meetings and participated in discussion of the
24 Midway Gold Pan Project. Defendants rely on District Attorney Kelly Brown’s statement that
25 “when someone makes a public disclosure [that they have an association with an applicant before
26 the commission], they shouldn’t also make recommendations.” Defendants have failed to meet
27 their burden because supporting permit applications is not equivalent to negotiating land
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1 exchanges for the County. Assuming arguendo that Defendants did meet their burden, the Special
2 Motion to Dismiss for this communication should be denied because Plaintiff demonstrated that a
3 genuine factual issue exists.

4 Plaintiff contends that the record fails to demonstrate that he was “self-dealing” in any
5 land negotiations or transfers with Midway Gold. Furthermore, Defendants’ communication in
6 the recall petition was “never tied to Midway Gold” in the petition. Plaintiff concedes that he
7 “advised citizens of the steps to take in order to support Midway Gold in its permitting
8 applications to the BLM.” Plaintiff argues, however, that his support did not create a conflict of
9 interest or further his personal interest because of his “association” with Midway Gold. Plaintiff
10 has provided no evidence to show that his “association” with Midway Gold was not benefited by
11 his support for Midway Gold’s permit applications to the BLM. Nonetheless, Plaintiff has met
12 his burden because there is a genuine issue of how his “association” with Midway Gold and
13 supporting their permit applications is equivalent to “negotiating land exchanges for the County.”
14 Accordingly, the Special Motion to Dismiss should be denied for this communication.

15 Paragraph 20: Personal vendetta against the private operator at the Airport and members of the
16 Airport Board, and engaging in accusations, intimidation, lies, and threats against both the
17 operator and their customers.

18 Defendants reference their personal affidavits and Exhibit E. None of Defendants’
19 affidavits specifically address a personal vendetta or accusations, intimidation, lies, or threats
20 against the airport operator. In addition, Exhibit E is an article published by the Ely Times on
21 July 19, 2013. In the article, Plaintiff responded to the public criticism regarding the County’s
22 position on permitting camping by glider pilots at the Ely Airport. Plaintiff stated, “My problem
23 is with the county and its liability.” Throughout the article Plaintiff addresses the County’s
24 potential liabilities if the County allowed for the camping to continue. Additionally, the article
25 states that Plaintiff said “he’s not against the gliders but the county can’t afford to put itself at risk
26 from an insurance standpoint or put itself in competition with area businesses and deny potential
27 room tax revenue used for various projects.” Plaintiff asserts that Defendants failed to meet their
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1 burden because Plaintiff's comments do not demonstrate a personal vendetta against an unnamed
2 private operator at the airport. Plaintiff is correct. In the article, Plaintiff only makes one
3 questionable comment, "The first issue backing up a long ways is, 'I don't fly an airplane or
4 anything like that.'" The record lacks any support for Defendants' communication, except for
5 their affidavits, that the communications was truthful or made without knowledge of falsehood.
6 Thus, the Special Motion to Dismiss must be denied for this communication.

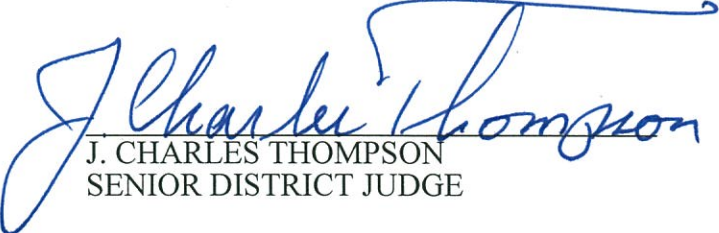
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8 **DIRECTIONS TO COUNSEL**

9 Defendants' counsel is directed to prepare an appropriate order consistent with this
10 decision. After it is reviewed by Plaintiff's counsel, it is to be submitted to this Court for
11 signature and filing.

12 Because of this decision, it will be difficult for the Defendants to plead to the existing
13 Amended Complaint after the order is filed. Accordingly, if Plaintiff wishes to continue with the
14 action, Plaintiff will have twenty (20) days after receiving a copy of the filed order to file a
15 Second Amended Complaint with allegations consistent with this decision.

16 If Plaintiff files a Second Amended Complaint, Defendants will have twenty (20) days to
17 file an Answer. The parties are directed to forthwith comply with NRCP 16.1(b) after the answer
18 is filed.

19
20 Dated this 18 day of October, 2013.

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23 J. CHARLES THOMPSON
24 SENIOR DISTRICT JUDGE
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