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SUPERSEDING MEMORANDUM* OPINION, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 25, 2026)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC, *Defendants-Appellees,*

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Argued and Submitted December 9, 2025
San Francisco, California

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.**

MEMORANDUM

Dale Buczkowski and his company Wealthy, Inc. (together, "Plaintiffs") appeal from the district court's dismissal for lack of personal jurisdiction of their claims against John Mulvehill and John Anthony Lifestyle, LLC (together, "*Mulvehill* Defendants"); summary judgment rulings for Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (together, "*Cornelia* Defendants"); and award of costs for the *Cornelia* Defendants. The *Cornelia* Defendants appeal from the district court's denial of their Special Motion to Dismiss Pursuant to Nevada Revised Statute § 41.660.

As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for lack of personal jurisdiction, grant of summary judgment, and denial of an anti-SLAPP motion that challenges the factual sufficiency of a claim. *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011)); *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 343

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

(2021); *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 923–24 (9th Cir. 2022). We reverse the district court's dismissal of the claims against the *Mulvehill* Defendants, affirm the district court's summary judgment rulings for the *Cornelia* Defendants, and reverse the district court's denial of the *Cornelia* Defendants' Special Motion to Dismiss Pursuant to Nevada Revised Statute § 41.660 ("anti-SLAPP motion").[1]

1. Because the Mulvehill Defendants' motion to dismiss was based on written materials—specifically, interrogatory responses and deposition testimony regarding Buczkowski's state of residence—Plaintiffs "need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citation omitted). "'[W]e may not assume the truth of allegations in a pleading which are contradicted by affidavit,' but we resolve factual disputes in the plaintiff's favor." *Id.* (citations omitted).

To determine whether a defendant has sufficient minimum contacts with the forum state to warrant the court's exercise of specific personal jurisdiction, we conduct a three-part inquiry: (1) the non-resident defendant "must purposefully direct his activities" towards the forum state or "purposefully avail[] himself of the privilege of conducting activities in the forum[;]" (2) the claim must arise out of or relate to the defendant's forum-related contacts; and (3) "the exercise

[1] This last issue is not moot. When a movant prevails on a Nevada anti-SLAPP motion, they have the right to mandatory fee shifting, additional discretionary awards, and filing of a separate action for compensatory and punitive damages. Nev. Rev. Stat. § 41.670(1)(a)-(b). This is relief beyond what a grant of summary judgment under Fed. R. Civ. P. 56 provides.

of jurisdiction . . . must be reasonable." *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.,* 905 F.3d 597, 603 (9th Cir. 2018).

A. Purposeful Direction

"For claims sounding in tort," like those brought by Plaintiffs, "we most often employ a purposeful direction analysis." *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2023) (en banc). Purposeful direction requires satisfaction of the three-factor test derived from *Calder v. Jones*, 465 U.S. 783, 789 (1984): the defendant must "have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citations omitted).

Here, Plaintiffs have satisfied the *Calder* effects test. The parties agree that the first factor is satisfied. As for the second factor, Plaintiffs plausibly allege that Mulvehill made defamatory comments implicating Buczkowski and his company Larson Consulting, registered and domiciled in Nevada, in arrests, money laundering, and other controversial events that allegedly occurred in Nevada. They also plausibly allege that Mulvehill did so with the express intent that the comments would be published on a Nevada-based influencer's YouTube channel and disseminated to worldwide audiences, including those in Nevada. As "differential targeting" of Nevadans is not required, this is a sufficient prima facie showing of jurisdictional facts to satisfy the second *Calder* factor.[2] *See Briskin*, 135 F.4th at 757.

Turning to the third *Calder* factor, the parties dispute whether Buczkowski is a Nevada resident. However, "defamation causes harm to 'the subject of the falsehood' in the state where the defamatory material circulates, whether the subject of the statement resides there or not." *Burri L. PA v. Skurla*, 35 F.4th 1207, 1215 (9th Cir. 2022) (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776-77 (1984)). Furthermore, while the district court considered the evidence and found that Buczkowski was not a resident of Nevada, it is undisputed that Buczkowski spent at least "several months" in Nevada in 2021 and that Larson Consulting is a Nevada-based business. Accordingly, Plaintiffs have made a prima facie showing that the *Mulvehill* Defendants knew or should have known that their alleged conduct would cause harm in Nevada.

B. Arising Out of or Relating to

Plaintiffs' claims arise out of the *Mulvehill* Defendants' purposeful direction of activities toward Nevada, *i.e.*, their statements about Nevada-based events and a Nevada-based business on a Nevada-based influencer's YouTube channel.

C. Reasonableness

When the first two minimum contacts prongs are met, the burden shifts to the defendant to "'present a

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[2] The *Mulvehill* Defendants' evidentiary showing does not contradict these allegations, and in this posture, "uncontroverted allegations in the complaint must be taken as true." *See Mavrix Photo*, 647 F.3d at 1223.

compelling case' that the exercise of jurisdiction is not reasonable." *Briskin*, 135 F.4th at 761 (citation omitted). Seven factors are considered when determining whether jurisdiction is reasonable. *Id.* While the *Mulvehill* Defendants argue that alternative fora may exist, they have not shown that any other factors render jurisdiction unreasonable. They therefore have not "carried [their] heavy burden of rebutting the strong presumption in favor of jurisdiction." *See Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Accordingly, we reverse the district court's dismissal of the claims against the *Mulvehill* Defendants for lack of personal jurisdiction and remand to the district court.

2. Clear and convincing evidence of actual malice —a statement made with knowledge of falsity or reckless disregard for the truth—is required to survive summary judgment on defamation and intentional infliction of emotional distress claims regarding limited-purpose public figures. *See New York Times Co. v. Sullivan,* 376 U.S. 254, 279-280 (1964) (defamation); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (intentional infliction of emotional distress); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (limited-purpose public figures). A showing of malice is also required to establish business disparagement under Nevada law, by proving that the defendant published with knowledge of falsity, reckless disregard for the truth, or intent to harm the plaintiff's pecuniary interests. *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 504-05 (Nev. 2009).

Plaintiffs become limited-purpose public figures when they voluntarily inject themselves into a public controversy which predates their conduct for the purpose of influencing the controversy's resolution. *Planet Aid, Inc.*, 44 F.4th at 925.

Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020. Plaintiffs have not made the requisite clear and convincing showing that the *Cornelia* Defendants had actual knowledge that their comments were false or acted with reckless disregard as to their falsity. Similarly, Plaintiffs have not made the requisite showing that the *Cornelia* Defendants acted with intent to harm Plaintiffs' pecuniary interests. Accordingly, we affirm the district court's dismissal of the defamation, intentional infliction of emotional distress, and business disparagement claims against the *Cornelia* Defendants.

3. The Lanham Act prohibits misrepresentations in "commercial advertising or promotion." 15 U.S.C. § 1125(a)(1)(B). Because none of the videos at issue advertise or promote the *Cornelia* Defendants' products or services, the videos are not commercial speech as a matter of law. We affirm the district court's dismissal of the Lanham Act claims.

4. Finally, there is no evidence that the district court abused its discretion in awarding costs. Accordingly, we affirm the district court's award of costs to the *Cornelia* Defendants.

5. Nevada's anti-SLAPP law presents a two-prong analytical framework. First, movants must show by a preponderance of the evidence that the statements were "based upon 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[.]" Nev. Rev. Stat. § 41.660(3)(a); *see also Shapiro v. Welt*, 389 P.3d 262, 267 (Nev. 2017). Next, it is the plaintiffs' burden to show "with prima facie evidence a probability of prevailing on the claim," and, if they cannot, the anti-SLAPP motion is granted. Nev. Rev. Stat. § 41.660(3)(b); *see also Shapiro*, 389 P.3d at 267.

A. Prong One

As discussed, the *Cornelia* Defendants' statements address the legitimacy and quality of Plaintiffs' coaching services, thus connecting directly to an issue of public concern or interest under the first prong of Nevada's anti-SLAPP analysis. To satisfy the good faith requirement under the same prong, a movant must show by a preponderance of the evidence that the statements were true or made without knowledge of their falsity. Nev. Rev. Stat. § 41.660(3)(a). This is "essentially the same" standard as that for actual malice "only differing in the party with whom the burden of proof lies[.]" *Rosen v. Tarkanian*, 453 P.3d 1220, 1224 (Nev. 2019). As discussed, the record does not show that Cornelia made his statements with knowledge of their falsity. Rather, it shows he reasonably researched and corroborated the statements and testified that he found the sources to be credible and the statements consistent with patterns of behavior engaged in by other influencers and wealth coaches. Accordingly, the *Cornelia* Defendants have satisfied the good faith requirements of Nev. Rev. Stat. § 41.660(3)(a), and the district court erred when it found otherwise.

B. Prong Two

The second prong of Nevada's anti-SLAPP analysis is simply "collapsed" into the summary judgment standard under Fed. R. Civ. P. 56 when an anti-SLAPP motion challenges the factual sufficiency of a complaint as it does here. *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir.), *amended*, 897 F.3d 1224 (9th Cir. 2018) (discussing California anti-SLAPP law which is substantially similar to that of Nevada).[3] Since, for the reasons discussed, this panel affirms the district court's grant of summary judgment for the *Cornelia* Defendants, the second prong is satisfied. Accordingly, the *Cornelia* Defendants satisfy their burden as to their anti-SLAPP motion, and we reverse the district court's denial and remand to the district court.

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.

In Appeal No. 23-3227, Appeal No. 24-159, and Appeal No. 23-3390, the *Cornelia* Defendants shall recover their costs.

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[3] Nevada's and California's anti-SLAPP statutes are similar in structure, purpose, and language and "share a near-identical structure for anti-SLAPP review." *See Coker v. Sassone*, 432 P.3d 746, 749, 749 n.3 (Nev. 2019). *Compare* Nev. Rev. Stat. §§ 41.660, 41.670 (regarding claims based upon a communication in furtherance of the right to petition or free speech in direct connection with an issue of public concern, allowing for special motions to strike and award of attorneys' fees upon prevailing on that motion), *with* Cal. Civ. Proc. Code §§ 425.16(b), 425.16(c) (same). In fact, the Nevada legislature specifically states in its declaration regarding the plaintiff's burden of proof for anti-SLAPP special motions that the standard is the same standard required by California's statute. Nev. Rev. Stat. § 41.665.

In Appeal No. 23-16132, Plaintiffs shall recover their costs.

MEMORANDUM* OPINION, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (DECEMBER 30, 2025)

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

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D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted December 9, 2025
San Francisco, California

Before: PAEZ and OWENS, Circuit Judges, and
SEEBORG, Chief District Judge.**

MEMORANDUM

Dale Buczkowski and his company Wealthy, Inc. (together, "Plaintiffs") appeal from the district court's dismissal for lack of personal jurisdiction of their claims against John Mulvehill and John Anthony Lifestyle, LLC (together, "*Mulvehill* Defendants"); summary judgment rulings for Spencer Cornelia, Cornelia Media, LLC, and Cornelia Education, LLC (together, "*Cornelia* Defendants"); and award of costs for the *Cornelia* Defendants. The *Cornelia* Defendants appeal from the district court's denial of their Special Motion to Dismiss Pursuant to Nevada Revised Statute 41.660.

As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We review de novo both a district court's dismissal for lack of personal jurisdiction and grant of summary judgment. *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066,

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

1073 (9th Cir. 2011)); *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 343 (2021). We reverse the district court's dismissal of the claims against the *Mulvehill* Defendants and affirm the district court's summary judgment rulings for the *Cornelia* Defendants. In light of that result, we need not reach the *Cornelia* Defendants' appeal.

1. Because the Mulvehill Defendants' motion to dismiss was based on written materials—specifically, interrogatory responses and deposition testimony regarding Buczkowski's state of residence—Plaintiffs "need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citation omitted). "'[W]e may not assume the truth of allegations in a pleading which are contradicted by affidavit,' but we resolve factual disputes in the plaintiff's favor." *Id.* (citations omitted).

To determine whether a defendant has sufficient minimum contacts with the forum state to warrant the court's exercise of specific personal jurisdiction, we conduct a three-part inquiry: (1) the non-resident defendant "must purposefully direct his activities" towards the forum state or "purposefully avail[] himself of the privilege of conducting activities in the forum[;]" (2) the claim must arise out of or relate to the defendant's forum-related contacts; and (3) "the exercise of jurisdiction . . . must be reasonable." *Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp.,* 905 F.3d 597, 603 (9th Cir. 2018).

A. Purposeful Direction

"For claims sounding in tort," like those brought by Plaintiffs, "we most often employ a purposeful direction analysis." *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2023) (en banc). Purposeful direction requires satisfaction of the three-factor test derived from *Calder v. Jones*, 465 U.S. 783, 789 (1984): the defendant must "have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citations omitted).

Here, Plaintiffs have satisfied the *Calder* effects test. The parties agree that the first factor is satisfied. As for the second factor, Plaintiffs plausibly allege that Mulvehill made defamatory comments implicating Buczkowski and his company Larson Consulting, registered and domiciled in Nevada, in arrests, money laundering, and other controversial events that allegedly occurred in Nevada. They also plausibly allege that Mulvehill did so with the express intent that the comments would be published on a Nevada-based influencer's YouTube channel and disseminated to worldwide audiences, including those in Nevada. As "differential targeting" of Nevadans is not required, this is a sufficient prima facie showing of jurisdictional facts to satisfy the second *Calder* factor.[1] *See Briskin*, 135 F.4th at 757.

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[1] The *Mulvehill* Defendants' evidentiary showing does not contradict these allegations, and in this posture, "uncontroverted allegations in the complaint must be taken as true." *See Mavrix Photo*, 647 F.3d at 1223.

Turning to the third *Calder* factor, the parties dispute whether Buczkowski is a Nevada resident. However, "defamation causes harm to 'the subject of the falsehood' in the state where the defamatory material circulates, whether the subject of the statement resides there or not." *Burri L. PA v. Skurla*, 35 F.4th 1207, 1215 (9th Cir. 2022) (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776-77 (1984)). Furthermore, while the district court considered the evidence and found that Buczkowski was not a resident of Nevada, it is undisputed that Buczkowski spent at least "several months" in Nevada in 2021 and that Larson Consulting is a Nevada-based business. Accordingly, Plaintiffs have made a prima facie showing that the *Mulvehill* Defendants knew or should have known that their alleged conduct would cause harm in Nevada.

B. Arising Out of or Relating to

Plaintiffs' claims arise out of the *Mulvehill* Defendants' purposeful direction of activities toward Nevada, *i.e.*, their statements about Nevada-based events and a Nevada-based business on a Nevada-based influencer's YouTube channel.

C. Reasonableness

When the first two minimum contacts prongs are met, the burden shifts to the defendant to "'present a compelling case' that the exercise of jurisdiction is not reasonable." *Briskin*, 135 F.4th at 761 (citation omitted). Seven factors are considered when determining whether jurisdiction is reasonable. *Id.* While the *Mulvehill* Defendants argue that alternative fora may exist, they have not shown that any other factors render jurisdiction unreasonable. They therefore have not "carried [their] heavy burden of rebutting the strong presumption in favor of jurisdiction." *See Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Accordingly, we reverse the district court's dismissal of the claims against the *Mulvehill* Defendants for lack of personal jurisdiction and remand to the district court.

2. Clear and convincing evidence of actual malice—a statement made with knowledge of falsity or reckless disregard for the truth—is required to survive summary judgment on defamation and intentional infliction of emotional distress claims regarding limited-purpose public figures. *See New York Times Co. v. Sullivan,* 376 U.S. 254, 279-280 (1964) (defamation); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988) (intentional infliction of emotional distress); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (limited-purpose public figures). A showing of malice is also required to establish business disparagement under Nevada law, by proving that the defendant published with knowledge of falsity, reckless disregard for the truth, or intent to harm the plaintiff's pecuniary interests. *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 504-05 (Nev. 2009).

Plaintiffs become limited-purpose public figures when they voluntarily inject themselves into a public controversy which predates their conduct for the purpose of influencing the controversy's resolution. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022).

Here, Plaintiffs are limited-purpose public figures, having voluntarily injected themselves into the public controversy regarding the legitimacy and quality of Plaintiffs' coaching services, which evidence in the record suggests existed at least before December 2020. Plaintiffs have not made the requisite clear and convincing showing that the *Cornelia* Defendants had actual knowledge that their comments were false or acted with reckless disregard as to their falsity. Similarly, Plaintiffs have not made the requisite showing that the *Cornelia* Defendants acted with intent to harm Plaintiffs' pecuniary interests. Accordingly, we affirm the district court's dismissal of the defamation, intentional infliction of emotional distress, and business disparagement claims against the *Cornelia* Defendants.

3. The Lanham Act prohibits misrepresentations in "commercial advertising or promotion." 15 U.S.C. § 1125(a)(1)(B). Because none of the videos at issue advertise or promote the *Cornelia* Defendants' products or services, the videos are not commercial speech as a matter of law. We affirm the district court's dismissal of the Lanham Act claims.

4. Finally, there is no evidence that the district court abused its discretion in awarding costs. Accordingly, we affirm the district court's award of costs to the *Cornelia* Defendants.

5. Because we affirm the district court's summary judgment rulings, entry of judgment, and award of costs for the *Cornelia* Defendants, there is no need to address their Special Motion to Dismiss. Accordingly, we dismiss that appeal as moot.

REVERSED IN PART, DISMISSED IN PART, AFFIRMED IN PART, AND REMANDED.

In Appeal No. 23-3227, Appeal No. 24-159, and Appeal No. 23-3390, the *Cornelia* Defendants shall recover their costs.

In Appeal No. 23-16132, Plaintiffs shall recover their costs.

ORDER, U.S. DISTRICT COURT FOR THE DISTRICT OF NEVADA (SEPTEMBER 29, 2023)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WEALTHY, INC., ET AL.,

Plaintiff(s),

v.

SPENCER CORNELIA, ET AL.,

Defendant(s).

Case No. 2:21-CV-1173 JCM (EJY)

Before: James C. MAHAN, U.S. District Judge.

ORDER

Presently before the court is plaintiffs Wealthy, Inc. ("Wealthy") and Dale Buczkowski ("Buczkowski") (collectively "plaintiffs")' motion for partial summary judgment. (ECF No. 60). Defendants Spencer Cornelia ("Cornelia"), Cornelia Media, LLC, and Cornelia Education, LLC (collectively "defendants") filed a response (ECF No. 162), to which plaintiffs replied (ECF No. 172).

Also before the court is defendants' special motion to dismiss pursuant to NRS 41.660 (ECF No. 61) consolidated with their motion for summary judgment (ECF No. 62). Plaintiffs filed responses to these motions (ECF Nos. 78 and 79), to which defendants replied (ECF No. 182).

I. Background

This action arises out of a series of interviews published on YouTube and conducted by Cornelia that plaintiffs perceive as defamatory. Buczkowski is the owner and operator of Wealthy, described in the complaint as a "leading entrepreneurship, finance, business, real-estate and self-improvement company." (ECF No. 1 at 3). Buczkowski operates Wealthy under the name Derek Moneyberg, a federally registered trademark. (*Id.*). Buczkowski has amassed a following of 23,700 subscribers on YouTube, and his videos have garnered over 1.2 million views on the platform. (*Id.*).

Cornelia also maintains a strong social media presence, operating an eponymous YouTube channel with approximately 150,000 subscribers and publishing videos on investing, business, and fitness that have received over 13.8 million views. (*Id.* at 4). Pertinent to this case, Cornelia also published a series of videos entitled "Authentic or Charlatan" in which he claims to expose "fake gurus on social media." (*Id.*).

Between December 2020 and February 2021, defendants produced multiple interviews with another internet personality, John Mulvehill ("Mulvehill"), a dating and self-improvement coach. (*Id.* at 6-7). The statements in the videos, most of which are from Mulvehill, form the basis of plaintiffs' lawsuit. In the videos, plaintiffs allege that Cornelia and Mulvihill published five false assertions about Buczkowski. These assertions are that Buczkowski (1) lied about his educational achievement; (2) laundered money; (3) manufactured and/or sold illegal drugs; (4) framed Mulvehill for his 2013 arrest in Las Vegas, leading to four felony and four misdemeanor charges; and (5) was involved in the death of a 28-year-old woman who was the alleged victim in the arrest of Mulvehill. (*Id.* at 8, 12).

Plaintiffs' complaint includes causes of action for (1) unfair competition and false advertising under the Lanham Act, (2) defamation, (3) intentional infliction of emotional distress, and (4) business disparagement. (*Id.* at 19-22).

Plaintiffs now move the court for partial summary judgment on their defamation claim. (ECF No. 60). Defendants filed a special motion to dismiss under Nevada Revised Statute ("NRS") 41.660, Nevada's statute for strategic lawsuits against public participation ("anti-SLAPP statute"). (ECF No. 61). In conjunction with their anti-SLAPP motion, defendants filed a motion for summary judgment. (ECF No. 62).

While defendants do not satisfy each individual criterion under Nevada's anti-SLAPP statute, there is no genuine dispute of material fact as to any of plaintiffs' four causes of action. The court denies defendants' special motion to dismiss but grants their motion for summary judgment in its entirety. Such action thereby renders plaintiffs' motion for partial summary judgment on the defamation claim as moot and the court hereby dismisses the case.

II. Legal Standard

A. Special Motions to Dismiss Under NRS 41.660

An analysis involving a special motion to dismiss under Nevada's anti-SLAPP statute consists of a two-pronged approach. *See Rosen v. Tarkanian*, 453 P.3d 1220, 1223 (2019). To prevail on an anti-SLAPP motion to dismiss, a defendant must satisfy the first prong through showing "by a preponderance of the evidence that the claim is based upon 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." *Id.*; NRS 41.660(1)(a).

The "good faith communication" must be either "truthful" or "made without knowledge of its falsehood" and it must have a "direct connection with an issue of public interest." NRS 41.637(4). If the defendant satisfies this prong, the plaintiff has the burden of satisfying the second prong by demonstrating with *prima facie* evidence a probability of prevailing on his or her claims. *See Rosen*, 453 P.3d at 1223.

B. Motions for Summary Judgment

The Federal Rules of Civil Procedure allow summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims. . . ." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

For purposes of summary judgment, disputed factual issues should be construed in favor of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be entitled to a denial of summary judgment, the non-moving party must "set forth specific facts showing that there is a genuine issue for trial." *Id.*

In determining summary judgment, the court applies a burden-shifting analysis. "When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). Moreover, "[i]n such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *Id.*

By contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the non-moving party's case; or (2) by demonstrating that the non-moving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If the moving party fails to meet its initial burden, summary judgment must be denied, and the court need not consider the non-moving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60 (1970).

If the moving party satisfies its initial burden, the burden then shifts to the opposing party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

At summary judgment, a court's function is not to weigh the evidence and determine the truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249-50.

The Ninth Circuit has held that information contained in an inadmissible form may still be considered for summary judgment if the information itself would be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (citing *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir.

2001)) ("[t]o survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rule of Civil Procedure 56.").

III. Dicussion

A. Special Motion to Dismiss and Nevada's Anti-SLAPP Statute

Defendants seek dismissal of plaintiffs' claims based on Nevada's anti-SLAPP statue, but they fail to satisfy the first prong of statutory analysis. *See Rosen*, 453 P.3d at 1223. Defendants must show, by a preponderance of the evidence, that the claim is based upon 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." *Id.*; NRS 41.660(1)(a) (emphasis added).

The court agrees with defendants that their speech is directly connected to an issue of public concern or interest. Buczkowski is a public figure, as discussed in the court's defamation analysis, *infra*. By its own admission, Wealthy actively markets its courses on various social media channels, including YouTube, Instagram, Facebook, Twitter, LinkedIn, Spotify, and Apple Podcasts. (ECF No. 1 at 3). Wealthy also offers individual training sessions with Buczkowski, with prices starting at $60,000 and often exceeding $75,000. (*Id.*).

Given the amount of money individuals are paying for these services and Buczkowski's growing ubiquity on social media, prospective clients have the right to know about Buczkowski's background and form their own opinions on him, especially if they have qualms about a lack of his altruistic intent. There is no doubt that the public would be interested in Buczkowski's character. *See Nygard, Inc. v. Uusi-Kerttula*, 72 Cal. Rptr. 3d. 210, 220 (Cal. Ct. App. 2008) (defining an "issue of public interest" as "any issue in which the public is interested.").[1]

Despite defendants' speech directly connecting to an issue of public concern or interest, they fail to meet the preponderance of the evidence standard that their claim is based on a good-faith communication. Under *Rosen*, defendants must demonstrate that "the statements were made in good faith . . . because the gist or sting of the statements were substantively true." 453 P.3d at 440. Defendants fail to do so.

Instead, defendants state that "Cornelia did not know or believe any statement in any of the videos at issue, whether uttered by him or Mulvehill, was false." (ECF No. 61 at 30). Although there is evidence that Cornelia researched Mulvehill's claims and sources, which is sufficient to show there was no actual malice on his part, Cornelia does not provide sufficient proof that he was unaware such statements by Mulvehill concerning Buczkowski could be false.

Defendants thus fail to meet their requisite burden in satisfying the first prong of Nevada's anti-

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[1] Defendants are correct in stating that Nevada courts have often looked to case law applying California's anti-SLAPP statute, as the statutes are almost identical. (ECF No. 61 at 21); *see Coker v. Sassone*, 432 P.3d 746, 749 n.3 (Nev. 2019) ("California's and Nevada's statutes share a near-identical structure for anti-SLAPP review. Both statutes posit a two-step process for determining how to rule on an anti-SLAPP motion.").

SLAPP statute, and the court must deny their special motion to dismiss. (ECF No. 61). The court now must analyze their motion for summary judgment on each of plaintiffs' four causes of action.

B. Unfair Competition and False Advertising Under the Lanham Act

Defendants move the court to enter summary judgment on plaintiffs' claim for unfair competition and false advertising under the Lanham Act. Under the Lanham Act, a person or business is liable for using promotion and advertising to disparage another entity to obtain business and profit. 15 U.S.C. § 1125. This circuit has defined "promotion" and "advertising" as constituting: (1) commercial speech, (2) by a defendant who is in commercial competition with a plaintiff, (3) for the purpose of influencing consumers to buy defendant's goods or services, that (4) is sufficiently disseminated to the relevant purchasing public. *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021).

The court need only analyze the commercial speech element of plaintiff's claim under the Lanham Act. The Ninth Circuit characterizes commercial speech as meeting three criteria: (1) speech that is an advertisement, (2) speech that refers to a particular product, and (3) speech in which the speaker has an economic motivation. *Id.* at 1115-16.

Plaintiffs fail to satisfy the Ninth Circuit's first guidepost regarding commercial speech, as none of the subject videos are advertisements. Plaintiffs aver that defendants utilized their platform on YouTube to advertise their products and services. (ECF No. 79 at 11-12). Specifically, they argue that there was promotion of Cornelia's "house hack expert book" and a "first 1,000 subscribers mentoring program." (*Id.* at 12). Plaintiffs commit a flaw fatal in their argument by citing Cornelia's biographical YouTube information, *not* any of the videos themselves. (ECF No. 79-6 at 2) (emphasis added). Nowhere in the videos with Cornelia and Mulvehill is there any mention of the "house hack expert" mentorship program. The subject of this action is the YouTube videos themselves, not the YouTube channel as a whole.

Moreover, plaintiffs misinterpret the evidence by claiming Cornelia's real estate business was referenced in the first video. (ECF No. 79 at 12). This statement is an exaggeration. It was Mulvehill who, during the interview and unprompted by Cornelia, said to him, "you do have some real estate stuff on the side." (*Id.*). Cornelia simply responded to the statement by saying, "right." (*Id.*).

Cornelia never expounded upon his real estate portfolio in the video when Mulvehill raised the issue, and plaintiffs fail to point to any timestamp in any video in which Cornelia advertised his own services. Plaintiffs cannot cite to a timestamp in which Cornelia advertises his services because he never did so. Cornelia's speech was thus not an advertisement and therefore not commercial speech. There is no genuine issue of material fact, and the court grants defendants' motion for summary judgment as to plaintiffs' claim for unfair competition and false advertising under the Lanham Act.

C. Defamation

Defendants seek dismissal of plaintiffs' cause of action for defamation. To establish a cause of action for defamation in Nevada, a plaintiff must allege: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *Wynn v. Smith*, 16 P.3d 424, 427 (Nev. 2001); *see Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 90 (Nev. 2002).

For public figures, there is an additional requirement to bring a defamation claim. Public figures must prove that the alleged defamer acted with actual malice. *See generally New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). A court may find that a defendant acted with actual malice when the defendant made the statement with falsity or *reckless disregard* for the truth. *Id.* at 279-80 (emphasis added).

The central question before the court is whether plaintiffs are public figures. Defendants claim plaintiffs are limited-purpose public figures, defined as people or groups who voluntarily inject themselves or are drawn into a particular public controversy and thereby become public figures for a limited range of issues. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974).

The court has no apprehension in determining that plaintiffs are, at the very least, limited-purpose public figures. Plaintiffs counter defendants' contention that they plaintiffs are limited-purpose public figures because they claim defendants only cite documents evidencing plaintiffs' pervasive fame notoriety <u>after</u> defendants filed their motion for summary judgment. (ECF No. 79 at 3-4).

Plaintiffs' contention that they are not public figures because defendants cites only to evidence filed after the videos were submitted is irrelevant. In their complaint, plaintiffs describe Buczkowski as a public figure. He is the owner and operator of Wealthy, described as a "leading entrepreneurship, finance, business, real-estate and self-improvement company." (ECF No. 1 at 3). Buczkowski also owns a federally registered trademark. (*Id.*). He has amassed a following of 23,700 subscribers on YouTube, and his videos have garnered over 1.2 million views on the platform. (*Id.*).

Plaintiffs cannot "have it both ways." Either they are public figures as they claim in describing the reach of their YouTube channel, or their claims about viewership are mere puffery designed to mislead the court. Taking plaintiffs at their word in their complaint, the court finds that they are public figures.

The court need not analyze each individual element of defamation and can instead determine if plaintiffs acted with actual malice. As stated, *supra*, actual malice may be found only when a statement is made with falsity or reckless disregard for the truth. *Sullivan*, 376 U.S. 254 at 279-80. Reckless disregard requires that a publisher "entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). A publisher does not have to investigate personally, but may rely on the investigation and conclusions of reputable sources. *Reader's Digest Ass'n v. Sup. Ct. of Marin Cnty.*, 690 P.2d 610, 617-18 (Cal. 1984).

Here, all of the allegedly defamatory statements were uttered by Mulvehill, not Cornelia. Cornelia was simply interviewing Mulvehill. Thus, plaintiffs' claim is more appropriately directed at Mulvehill. Regardless of this fact, the evidence in the record shows that Cornelia did not act with reckless disregard in conducting his interview with Mulvehill. As described, *infra*, Cornelia published his videos based on reasonable information he received from reliable sources.

For example, in his deposition, Cornelia testified that he received information from Mulvehill, prior to publishing the first or second videos, about the plaintiffs' allegedly unscrupulous business practices, such as not authoring their own content in the self-help videos. (ECF No. 62-3 at 34-35). This information included a video from a former employee of plaintiffs who corroborated claims about plaintiffs' unethical business practices and their using young, unqualified people to write the instructional and promotional material for plaintiffs' courses. (*Id.* at 34-35, 114). Additionally, Cornelia received numerous emails about plaintiffs' character. (*Id.* at 34-35). He never had any information contradicting negative claims about plaintiffs when the videos were published. (*Id.* at 116). Even if Cornelia were mistaken, his conduct is not remotely close to constituting reckless disregard. Thus, defendants did not act with actual malice, and the court grants their motion for summary judgment as plaintiffs' claim for defamation.

By granting this portion of defendants' motion for summary judgment, plaintiffs' motion for partial summary judgment (ECF No. 60) is denied as moot.

D. Intentional Infliction of Emotional Distress

Defendants move the court to grant summary judgment on plaintiffs' claim for intentional infliction of emotional distress. To establish this cause of action for intentional infliction of emotional distress under Nevada law, a plaintiff must establish that: (1) the defendant's conduct was extreme and outrageous; (2)

the defendant either intended or recklessly disregarded the causing of emotional distress; (3) the plaintiff actually suffered severe or extreme emotional distress; and (4) the defendant's conduct actually or proximately caused the distress. *Olivero v. Lowe*, 995 P.2d 1023, 1025 (Nev. 2000). "Extreme and outrageous conduct is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998).

Public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication such as the one at issue without showing, in addition to the four elements of the claim listed above, that the publication contains a false statement of fact which was made with actual malice. *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 56 (1988).

In its analysis of plaintiffs' defamation claim, the court has already shown that the statements made in the YouTube videos between Cornelia and Mulvehill were not done so with actual malice. Plaintiffs fail to demonstrate any evidence that they suffered severe emotional distress.

In defendants' interrogatories to plaintiffs, defendants ask them to identify all facts that support the contention that they have suffered damages, including in the form of emotional distress. (ECF No. 62-4 at 21). Plaintiffs answer this interrogatory by claiming they received "reports from their clients and potential clients that they have been contacted on Instagram by accounts with zero posts or followers that repeat the false and defamatory statements." (*Id.* at 22). The answer to this interrogatory does not contain any specific evidence that plaintiffs suffered emotional distress. There is no genuine issue of material fact, and the court grants defendants' motion for summary judgment as to plaintiffs' claim for intentional infliction of emotional distress.

E. Business Disparagement

Finally, defendants move the court for summary judgment on plaintiffs' claim for business disparagement. The court can analyze this claim succinctly. Nevada courts have consistently held that a claim for business disparagement requires falsity and a higher malice requirement that incorporates the actual malice standard and proof of special damages. *See Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 503-04 (Nev. 2009).

Yet again, the crux of this claim hinges on whether defendants acted with actual malice. The court has already concluded that they did not. Plaintiffs further fail to show any proof of special damages. No reasonable jury could find that defendants committed business disparagement towards plaintiffs, and the court thus grants defendants' motion for summary judgment as to this cause of action.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs' motion for partial summary judgment (ECF No. 60) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that defendants' special motion to dismiss (ECF No. 61) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (ECF No. 62) be, and the same hereby is, GRANTED.

The clerk is instructed to enter judgment and close the case.

An order from the court regarding defendant Optimized Lifestyle, LLC's, motion for attorneys' fees (ECF No. 236) is forthcoming.[2]

/s/ James C. Mahan
United States District Judge

DATED September 29, 2023.

[2] Optimized Lifestyle, LLC is a defendant in a consolidated case.

ORDER DENYING APPELLANTS' WEALTHY ET AL. PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 3, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, JOHN MULVEHILL, JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees,

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; CORNELIA MEDIA, LLC; CORNELIA EDUCATION LLC,

Defendants-Appellees.

No. 24-159

D.C. Nos.
2:21-cv-01173-JCM-EJY

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Before: PAEZ and OWENS, Circuit Judges, and
SEEBORG, Chief District Judge.*

The panel has voted to deny Appellants' petition for panel rehearing, Dkt. No. 76.

Appellants' petition for panel rehearing is DENIED.

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* The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

ORDER ENTERING SUPERSEDING OPINION AND APPELLEE DENYING CORNELIA PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 25, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

JOHN MULVEHILL;
JOHN ANTHONY LIFESTYLE, LLC,

Defendants-Appellees,

and

SPENCER CORNELIA; CORNELIA MEDIA, LLC;
CORNELIA EDUCATION LLC;
OPTIMIZED LIFESTYLE LLC,

Defendants.

No. 23-16132

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, ET AL.,

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

JOHN MULVEHILL,
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC.; DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees.

No. 24-159

D.C. No. 2:21-cv-01173-JCM-EJY

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.**

The Memorandum Disposition filed on December 30, 2025, is withdrawn and replaced with a superseding Memorandum Disposition filed concurrently with this order. With this superseding disposition, the panel unanimously voted to deny the Petition for Rehearing.

** The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

The Petition for Rehearing/En Banc by Appellee Spencer Cornelia, et al., filed January 8, 2026, is DENIED. No future petitions for rehearing or rehearing en banc will be entertained.

ORDER DENYING APPELLANTS' ET AL. MOTION FOR LEAVE TO FILE PETITION FOR REHEARING EN BANC, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT (MARCH 16, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA, ET AL.,

Defendants-Appellees,

and

OPTIMIZED LIFESTYLE LLC, ET AL.

Defendants.

No. 23-3227

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY
District of Nevada, Las Vegas

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees,

and

JOHN MULVEHILL and
JOHN ANTHONY LIFESTYLE, LLC,

Defendants.

No. 23-3390

D.C. Nos.
2:21-cv-01173-JCM-EJY
2:22-cv-00740-JCM-EJY

WEALTHY, INC. and DALE BUCZKOWSKI,

Plaintiffs-Appellants,

v.

SPENCER CORNELIA; ET AL.,

Defendants-Appellees.

No. 24-159

D.C. No. 2:21-cv-01173-JCM-EJY

Before: PAEZ and OWENS, Circuit Judges, and SEEBORG, Chief District Judge.*

The panel has voted to deny Appellants' motion for leave to file petition for rehearing en banc, Dkt. No. 86.

Appellants' motion is DENIED.

* The Honorable Richard Seeborg, United States Chief District Judge for the Northern District of California, sitting by designation.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment I

Congress shall make no law . . . abridging the freedom of speech, or of the press. . . .

FEDERAL STATUTES

15 U.S.C. § 1121
Jurisdiction of Federal courts; State and Local Requirements that Registered Trademarks be Altered or Displayed Differently; Prohibition

(a) The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

15 U.S.C. § 1125
False designations of origin, false descriptions, and dilution forbidden

(a) Civil Action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

28 U.S.C. § 1652
State Laws as Rules of Decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. § 2072
Rules of Procedure and Evidence; Power to Prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

FEDERAL PROCEDURAL RULES

Fed. R. Civ. P. 8(a)
General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 12
Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

[. . .]

(6) failure to state a claim upon which relief can be granted;

[. . .]

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Fed. R. Civ. P. 56
Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

[. . .]

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

STATE STATUTES

Nev. Rev. Stat. § 41.660

1. If an action is brought against a person based upon 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:

(a) The person against whom the action is brought may file a special motion to dismiss; and

[. . .]

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon 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;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

[. . .]

(e) Except as otherwise provided in subsection 4, stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within 20 judicial days after the motion is served upon the plaintiff.

4. Upon a showing by a party that information necessary to meet or oppose the burden pursuant

to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice.

7. As used in this section:

(a) "Complaint" means any action brought against a person based upon 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, including, without limitation, a counterclaim or crossclaim.

(b) "Plaintiff" means any person asserting a claim, including, without limitation, a counterclaim or crossclaim.

Nev. Rev. Stat. § 41.665

The Legislature finds and declares that:

1. NRS 41.660 provides certain protections to a person against whom an action is brought, if the action is based upon 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.

2. When a plaintiff must demonstrate a probability of success of prevailing on a claim pursuant to NRS 41.660, the Legislature intends that in determining whether the plaintiff "has demonstrated with prima facie evidence a probability of prevailing on the claim" the plaintiff must meet the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015.

Nev. Rev. Stat. § 41.670

1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

(a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to $10,000 to the person against whom the action was brought.

(c) The person against whom the action is brought may bring a separate action to recover:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Attorney's fees and costs of bringing the separate action.

2. If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.

3. In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:

(a) An amount of up to $10,000; and

(b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

4. If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.

D.C. Code § 16-5502
Special Motion to Dismiss

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)

(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

D.C. Code § 16-5504
Fees and Costs

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

O.C.G.A. § 9-11-11.1
Exercise of Rights of Freedom of Speech and to Petition Government for Redress of Grievances; Legislative Findings; Verification of Claims; Definitions; Procedure on Motions; Exception; Fees and Expenses

(a) The General Assembly of Georgia finds and declares that it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance and public interest through the exercise of their constitutional rights of petition and freedom of speech. The General Assembly of Georgia further finds and declares that the valid exercise of the constitutional rights of petition and freedom of speech should not be chilled through abuse of the judicial process. To accomplish the declarations provided for under this subsection, this Code section shall be construed broadly.

(b)

(1) A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the non-moving party has established that there is a

probability that the nonmoving party will prevail on the claim.

(2) In making the determination as provided for in paragraph (1) of this subsection, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based; provided, however, that if there exists a claim that the nonmoving party is a public figure plaintiff, then the nonmoving party shall be entitled to discovery on the sole issue of actual malice whenever actual malice is relevant to the court's determination under paragraph (1) of this subsection.

(3) If the court determines that the nonmoving party under paragraph (1) of this subsection has established a probability that he or she would prevail on the claim, neither that determination nor the fact of such determination shall be admissible in evidence at any later stage of the case or in any subsequent action and no burden of proof or degree of proof otherwise applicable shall be affected by such determination in any later stage of the case or in any subsequent proceeding.

(b.1) In any action subject to subsection (b) of this Code section, a prevailing moving party on a motion to strike shall be granted the recovery of attorney's fees and expenses of litigation related to the action in an amount to be determined by the court based on the facts and circumstances of the case. If the court finds that a motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award attorney's fees and expenses of litigation to the nonmoving party prevailing on the motion for the attorney's fees and expenses of litigation associated with the motion in an amount to be determined by the court based on the facts and circumstances of the case.

(c) As used in this Code section, the term "act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern" shall include:

(1) Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

(2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or

(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

(d) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section until a final decision on the motion. The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection.

(e) An order granting or denying a motion to dismiss or a motion to strike shall be subject to direct appeal in accordance with subsection (a) of Code Section 5-6-34.

(f) Nothing in this Code section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, law, or rule.

(g) This Code section shall not apply to any action brought by the Attorney General or a prosecuting attorney, or a city attorney acting as a prosecutor, to enforce laws aimed at public protection.

(h) Attorney's fees and expenses of litigation under this Code section shall be requested by motion at any time during the course of the action but not later than 45 days after the final disposition, including but not limited to dismissal by the plaintiff, of the action.

Tex. Civ. Prac. & Rem. Code Ann. § 27.003 (LexisNexis 2017)—Motion to Dismiss

(a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Tex. Civ. Prac. & Rem. Code Ann. § 27.005 (LexisNexis 2017)—Ruling

(a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

(1) the right of free speech;

(2) the right to petition;

(3) or the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Tex. Civ. Prac. & Rem. Code Ann. § 27.008 (LexisNexis 2017)—Appeal

(a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) [Repealed by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5, effective June 14, 2013.]

Tex. Civ. Prac. & Rem. Code Ann. § 27.009 (LexisNexis 2017)—Damages and Costs

(a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient

to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

Cal Code Civ Proc § 425.16 (LexisNexis 2026) Legislative Findings; Special Motion to Strike Action Arising from "Act in Furtherance of Person's Right of Petition or Free Speech Under United States or California Constitution in Connection with a Public Issue"

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)

(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that

the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)

(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant's attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 11130, 11130.3, 54960,

or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title 1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to Section 7923.115, 11130.5, or 54960.5 of the Government Code.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

Me. Rev. Stat. tit. 14, § 556
Act Protecting a Citizen's Right of Petition under the Constitution

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. The court shall advance the special motion so that it may be heard and determined with as little delay as possible. The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on the special motion.

All discovery proceedings are stayed upon the filing of the special motion under this section, except that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery remains in effect until notice of entry of the order ruling on the special motion.

The special motion to dismiss may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms the court determines proper.

If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. This section does not affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, "a party's exercise of its right of petition" means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Nev. Rev. Stat. Ann. § 41.660 (LexisNexis 2007)—Attorney General or Chief Legal Officer of Political Subdivision May Defend or Provide Support to Person Sued for Engaging in Right to Petition; Special Counsel; Filing Special Motion to Dismiss; Stay of Discovery; Adjudication Upon Merits

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition:

(a) The person against whom the action is brought may file a special motion to dismiss; and

[. . .]

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Treat the motion as a motion for summary judgment;

(b) Stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(c) Rule on the motion within 30 days after the motion is filed.

4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

N.M. Stat. Ann. § 38-2-9.1
Special Motion to Dismiss Unwarranted or Specious Lawsuits; Procedures; Sanctions; Severability

A. Any action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Fla. Stat. § 768.295
Strategic Lawsuits Against Public Participation (SLAPP) Prohibited

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to

petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

NY CLS Civ R § 70-a (LexisNexis 2026)—Actions Involving Public Petition and Participation; Recovery of Damages

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and attorney's fees shall be recovered upon a demonstration, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

(c) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

2. The right to bring an action under this section can be waived only if it is waived specifically.

3. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.