

1 **MDSM**

2 Joseph C. Reynolds (8630)
3 Ariel C. Johnson (13357)
4 HUTCHISON & STEFFEN, PLLC
5 5371 Kietzke Lane
6 Reno, NV 89511
7 (775) 853-8746 tel
8 (775) 201-9611 fax
9 jreynolds@hutchlegal.com
10 ajohnson@hutchlegal.com

11 *Attorneys for Plaintiffs Greater Las Vegas Short Term Rental*
12 *Association and Jacqueline Flores, President and Director*

13 **EIGHTH JUDICIAL DISTRICT COURT**
14 **STATE OF NEVADA**

15 GREATER LAS VEGAS SHORT TERM
16 RENTAL ASSOCIATION, a non-profit
17 Nevada corporation; JACQUELINE FLORES,
18 President and Director,

19 Plaintiffs,

20 vs.

21 CLARK COUNTY and the BOARD OF
22 CLARK COUNTY COMMISSIONERS, a
23 political subdivision of the State of Nevada;
24 and the STATE OF NEVADA,

Defendants.

Case No. A-22-856311-P
Dept. No. 8

[HEARING REQUESTED]

**ANTI-SLAPP: SPECIAL MOTION TO
DISMISS PURSUANT TO NRS 41.660**

19 The GREATER LAS VEGAS SHORT TERM RENTAL ASSOCIATION, a non-profit
20 Nevada corporation, and JACQUELINE FLORES, President and Director (the “Rental
21 Association”), by and through their legal counsel Joseph C. Reynolds, Esq., and Ariel C. Johnson,
22 Esq., of Hutchison & Steffen, PLLC, hereby file this Anti-Strategic Lawsuit Against Public
23 Participation (Anti-SLAPP) Special Motion to Dismiss pursuant to NRS 41.635-.670, inclusive,
24 due to improper counterclaims being asserted by Clark County in this action.

1 More specifically, Clark County has raised six Counterclaims in its First Amended
2 Counterclaims filed on November 22, 2022, against alleged unnamed persons affiliated with the
3 Rental Association and Director and President Flores.

4 These claims are wholly improper and are either procedurally barred or unsupported by
5 specific factual allegations and offend the democratic rights to speech and assembly under the
6 United States Constitution and the Nevada Constitution. The timing of the Counterclaims, their
7 lack of factual support, and Clark County's pattern of disparagement toward the Rental
8 Association demonstrate an intent by Clark County to both intimidate and chill the exercise of
9 their First Amendment rights and access to the courts.

10 In addition to the grounds raised in the two Motions to Dismiss the Rental Association
11 has filed pursuant to NRCP 12(b) on November 8, 2022, and December 6, 2022, respectively,
12 the Rental Association independently moves to dismiss Clark County's Counterclaims Nos. 1-6
13 pursuant to Nevada's Anti-SLAPP protections. This Motion is supported by the accompanying
14 Memorandum of Points and Authorities, the Affidavits of Jacqueline Flores dated August 1,
15 2022, (Exhibit 1), and December 1, 2022 (Exhibit 2), and the Motions to Dismiss Pursuant to
16 NRCP 12(b), which are incorporated by reference herein.

17 DATED this 12th day of December, 2022.

18 HUTCHISON & STEFFEN, PLLC

19 /s/ Joseph C. Reynolds

20 Joseph C. Reynolds (8630)

21 Ariel C. Johnson (13357)

22 *Attorneys for Plaintiffs*

23 *Greater Las Vegas Short Term Rental Association*
24 *and Jacqueline Flores, President and Director*

1 MEMORANDUM AND POINTS OF AUTHORITY

2 I. INTRODUCTION AND BACKGROUND

3 The ability of a citizen or citizen organization to petition and seek redress from the
4 government is a bedrock principle of both the Nevada and United States Constitutions. Similarly,
5 the right of a citizen or citizen organization to assemble and organize, criticize and disagree with,
6 and request review of laws before a court are also bedrock constitutional principles. These rights
7 are expressly guaranteed in the First Amendment:

8 Congress shall make no law respecting an establishment of religion,
9 or prohibiting the free exercise thereof; or abridging the freedom of
10 speech, or of the press; or the right of the people peaceably to
11 assemble, and *to petition the government for a redress of grievances.*

12 U.S. Const. amend I (emphasis added); *see also* Nev. const. Art. 1, Sec. 10.

13 Here, the Rental Association a/k/a the GLVSTRA is a non-profit organization first
14 incorporated with the Office of the Nevada Secretary of State on December 2, 2020 (Business
15 Id. No. NV20201956358/Entity No. EI0777032020-0).¹ Its members, including its officers, are
16 unpaid volunteers. It is self-described as

17 . . . a grass roots nonprofit organization advocating on behalf of
18 Nevada private property owners and travelers to our State.

19 Our services for our industry members include advocacy,
20 education, training, public relations and government
21 affairs. Together with our members, GLVSTRA seeks to partner
22 and work with organizations, businesses, non-profits, and other
23 groups within the travel industry.

24 ¹ This information is publicly available on the Nevada of the Secretary of State’s “Silver Flume
Nevada Business Portal,” *see* <https://esos.nv.gov/EntitySearch/OnlineEntitySearch>, and is
properly the subject of judicial notice. *See* NRS 47.130.

1 GLVSTRA invests in the community through our involvement and
2 charity events.

3 GLVSTRA represents individual private owners and travelers in
4 front of legislators to advocate for favorable and fair regulations
5 that preserve short-term rentals for the benefit of our local
6 communities and travelers visiting our state.

7 We intend to become a leader in the preservation of private
8 property owners' rights and defend consumer access to affordable
9 lodging.

10 See <https://www.glvstra.org/about>. The Rental Association has approximately 700 members,
11 who are interested stakeholders in the development of polices and laws that govern short-term
12 rentals in Clark County and throughout Nevada. See Exhibit 1 (Affidavit of Jacqueline Flores,
13 August 1, 2022). They come from 'all walks of life.' Some members have young families;
14 others are retired. Some members have college degrees; others do not. Some are interested in
15 supplemental income from a short-term rental to allow them to afford retirement, care for a sick
16 loved one, or to manage economic downturns from the COVID-19 pandemic, inflation, and the
17 prospect of traditional job loss. *Id.* What they have in common is their commitment to ensuring
18 that the emerging and modern business models surrounding short-term rentals are regulated by
19 reasonable and constitutional policies and laws, and that it is allowed a meaningful opportunity
20 to exist and thrive in the greater Las Vegas area.

21 The primary purpose of the Rental Association is to represent the interests of owners and
22 patrons of short-term rental homes in Clark County. *Id.*; see www.glvstra.org/about. Since its
23 inception, the Association has advocated for owners at the local, county and state level for the
24 enactment of reasonable policies and laws that permit short term rentals to operate throughout
Nevada, including Clark County.

1 The Rental Association has a lobbyist registered with the Nevada Legislature, and who
2 interfaced with legislatures during the 2021 Legislative Session regarding the passing of
3 Assembly Bill (AB) 363—a new Nevada law governing short term rentals and providing a
4 mandate and direction to Clark County. The Rental Association has also advocated for owners
5 and patrons at hearings before the Clark County Board of Commissioners County level before
6 whenever it debated the merits of changes to Clark County polices and laws.

7 As a grass-roots organization, the Rental Association has members with diverse social,
8 educational, family, and career backgrounds who are at a variety of stages of life—many of
9 which are interested in supplementing their income to simply ‘make ends meet’ during life
10 challenges. It communicates with the public and elected officials to procure governmental action
11 that is favorable for short term rental owners. It communicates information and complaints to
12 legislators and political subdivisions on issues that are within those respective governments’
13 scopes. It makes statements and petitions legislative, executive, and judicial bodies. And it does
14 all of this over the timely issue of short-term rentals, as Nevada, like many states and jurisdictions
15 throughout the country, debate on how to best regulate the industry, as untraditional lodging and
16 consumer demand connect with twenty-first century technology.

17 Only after Clark County approved new regulations set forth in Title 7, Chapter 7.100 of
18 the Clark County Code on June 21, 2022, did the Rental Association initiate the instant legal
19 action, seeking review of first-impression issues in Nevada of public importance and
20 constitutional significance, as well as protection from ongoing and future harm. The Rental
21 Association sought no monetary damages. It asserted no personalized or individual claims on
22 behalf of any member. It only asked for legal review. Yet, Clark County responded with six
23 Counterclaims against the Rental Association and its President and Director Ms. Flores, and
24 contended, among other things, that they had engaged in a civil conspiracy and aiding and

1 abetting underlying criminal conduct in violation of civil RICO. *See* Clark County’s Answer
2 and Counterclaims, at 17-19 (October 18, 2022).

3 Upon later being served with the Rental Association’s first Motion to Dismiss pursuant
4 to NRCP 12(b) on November 8, 2022, Clark County chose to ‘double down’ on its specious
5 assertions and file First Amended Counterclaims on November 22, 2022, where it not only
6 reasserted its prior civil conspiracy and civil RICO allegations against the Rental Association,
7 but added a separate counterclaim accusing the Rental Association of aiding and abetting
8 unlawful acts. These claims are currently alleged as Clark County’s Counterclaims Nos. 4, 5,
9 and 6. *See* Clark County’s First Amended Counterclaims, at 9-14 (November 22, 2022).

10 Yet, as discussed below in more detail, no cognizable or specific facts underly or support
11 these harsh and disparaging Counterclaims by Clark County. Other than naming Ms. Flores,
12 who volunteered to be a named plaintiff in the litigation because she is the President and Director
13 of the Rental Association, Clark County has failed to name any individual who allegedly
14 participated in a criminal conspiracy or knowingly and substantially aided and abetted others to
15 do so. No specific facts were alleged support the allegation of underlying criminal conduct. No
16 specific facts were alleged identifying exactly what conspiracy occurred, when it occurred,
17 where it occurred, how it occurred, and who were the conspirators. No specific facts were
18 alleged identifying any conversations or other communications. Rather, Clark County responded
19 to a good-faith petition filed by the Rental Association in this Court with bald counterclaims,
20 bare-bones pleadings, and unsupported and conclusory allegations.

21 Clark County’s chosen method of response to the litigation is disappointing and reckless.
22 It is an abusive government action that seeks to chill, silence, and retaliate against the Rental
23 Association, a duly licensed Nevada non-profit grassroots organization, and its members, for
24 engaging in good-faith speech; organizing, assembling and gathering, and petitioning this

1 Court—all protected First Amendment activities. Clark County, a taxpayer funded entity, either
2 fails to appreciate the disparity in power and resources between itself and the Rental Association
3 or it has chosen to act so with malice, knowledge, and intent. Either way, Clark County’s
4 unsupported attack on the Rental Association for exercising its First Amendment rights is exactly
5 the type of practice that Nevada’s anti-SLAPP laws are intended to protect. It must be asked:
6 But for the Rental Association challenging the new short-term rental ordinance set forth in Title
7 7, Chapter 7.100 of the Clark County Code, which was enacted by the Clark County Board of
8 Commissioners on June 21, 2022, would Clark County be filing these Counterclaims against the
9 Rental Association and its members? The answer is ‘no.’ Indeed, as set forth in the Rental
10 Association’s Motion to Dismiss filed on November 6, 2022, the only specific date or timeframe
11 alleged by Clark County in its Counterclaims is February 1, 2019. Its Counterclaims are over 3
12 years old. They are barred and untimely. But why did Clark County wait until this case to assert
13 them—it is to silence, threaten, and intimidate the Rental Association’s members and others who
14 dare to speak out.

15 As a direct consequence and result of the Rental Association initiating an action in this
16 Court for equitable relief and requesting no monetary damages, Clark County has responded by
17 a threatening civil RICO allegation in Counterclaim No. 6 seeking treble monetary damages and
18 alleging criminality. It alleged that the Rental Association’s interest in this case “is only about
19 money and it is only brought under the guise of constitutional protections.” *See* Clark County
20 Opposition to Motion for Preliminary Injunction (November 4, 2022), at 9. Clark County alleges
21 that the Rental Association makes money “by violating the law, annoying their neighbors and
22 turning their residential properties into hotels and party houses.” *Id.* Clark County further
23 implies that the Rental Association “couldn’t care less” about their community, *id.* at 1, and that
24 it advocates for a remedy that will cause “chaos and increase party shootings and domestic

1 disputes throughout many neighborhoods.” *Id.* at 10.

2 Clark County also alleges that members of the Rental Association expose members of
3 the public to such things as “the risk of shootings, fires, carbon monoxide poisonings, [and] the
4 spread of disease.” *See* Clark County’s First Amended Counterclaims (November 22, 2022), at
5 8. Isolated incidents may exist in a population area with millions of residents and visitors, but
6 the broad and inflammatory hyperbole used by Clark County is irresponsible and misplaced.

7 Ironically, Clark County asserts that the Rental Association cannot demonstrate standing
8 to bring its action because members have not alleged an injury-in-fact (which the Rental
9 Association disputes); yet, members of the Rental Association who have come forward to speak,
10 such as Ms. Flores, are personally attacked and sued by Clark County. The situation is untenable.
11 The Rental Association occasionally holds gatherings and fundraising events to support its efforts
12 and disseminate information. It has initiated signature petitions. *See, e.g.,*
13 [https://www.change.org/p/clark-county-commissioners-legalize-airbnb-and-support-struggling-](https://www.change.org/p/clark-county-commissioners-legalize-airbnb-and-support-struggling-nevadan-families-not-the-greedy-resort-hotels)
14 [nevadan-families-not-the-greedy-resort-hotels](https://www.change.org/p/clark-county-commissioners-legalize-airbnb-and-support-struggling-nevadan-families-not-the-greedy-resort-hotels). Yet, the operative word in its petition activities
15 is “change.” Nowhere does it advocate for unlawfulness. In fact, the Rental Association has a
16 portion of its website dedicated to informing the public about the applicable laws throughout the
17 Clark County area, *i.e.*, unincorporated Clark County, the City of Las Vegas, the City of North
18 Las Vegas, and the City of Henderson. *See* <https://www.glvstra.org/regulations>. Providing
19 information. Organizing support. Expressing opinions. Sharing experiences. Advocating for
20 new policies and good faith changes in existing laws, whether it be for short-term rentals or other
21 issues of public concern. None of these are crimes.

22 Now, speech within the Rental Association has been chilled. *See* Exhibit 2 (Affidavit of
23 Jacqueline Flores, December 1, 2022). Members of the Rental Association now fear what may
24 happen if they challenge Clark County, *i.e.*, our government, in a court of law. This is wrong.

1 It is not how a robust democracy should behave, and the situation at hand is exactly why anti-
2 SLAPP protections are available for citizens in Nevada.

3 Granting the Rental Association’s anti-SLAPP motion is appropriate and necessary under
4 the unique facts of this case. Clark County’s Counterclaims include the following: Counterclaim
5 No. 1 (money judgment—failure to pay taxes); Counterclaim No. 2 (nuisance); Counterclaim
6 No. 3 (money judgment—failure to pay penalty); Counterclaim No. 4 (civil conspiracy),
7 Counterclaim No. 5 (aiding and abetting), and Counterclaim No. 6 (civil RICO) are only being
8 asserted in this action against the Rental Association, Ms. Flores, or both, because they have
9 participated in First Amendment activities, *i.e.*, the right to peaceably assemble, the right to
10 freely speak, the right to petition the government to change policies and laws, and the right to
11 petition the courts. Respectfully, the Rental Association requests that this Court grant its anti-
12 SLAPP motion.

13 II. THIS MOTION IS TIMELY

14 NRS 41.660(2) provides that an anti-SLAPP motion may be filed within 60 days of the
15 claims be asserted by the opposing party. It is independent of any other motion that may be filed.
16 Here, Clark County filed its original Counterclaims on October 18, 2022, and its amended
17 Counterclaims on November 22, 2022. Thus, this anti-SLAPP motion is timely.

18 III. STANDARD OF REVIEW

19 The Nevada Supreme Court has held that “[a] SLAPP suit is a meritless lawsuit that a
20 party initiates primarily to chill a defendant’s exercise of his or her First Amendment free speech
21 rights.” *Stubbs v. Strickland*, 129 Nev. 146, 150, 297 P.3d 326, 329 (2013). “Nevada’s anti-
22 SLAPP statutes provide defendants with a procedural mechanism whereby they may file a special
23 motion to dismiss the meritless lawsuit before incurring significant costs of litigation.” *Stark v.*
24 *Lackey*, 136 Nev. 38, 40, 458 P.3d 342, 345 (2020).

1 Under Nevada’s anti-SLAPP statute, NRS 41.635 et seq., if a claim is brought against a
2 party based upon the exercise of its First Amendment rights, the party may file a special motion
3 to dismiss.

4 Once a special motion to dismiss under NRS 41.660 has been filed, a district court must
5 “treat the special motion to dismiss as a motion for summary judgment, and its granting the
6 motion is an adjudication upon the merits.” *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 753,
7 219 P.3d 1276, 1281 (2009). The Nevada Supreme Court has set forth a two-prong analysis when
8 reviewing an anti-SLAPP motion: “[a] court must grant an anti-SLAPP special motion to dismiss
9 where (1) the defendant shows, by a preponderance of the evidence, that the claim is based on a
10 ‘good faith communication in furtherance of... the right to free speech in direct connection with
11 an issue of public concern’ and (2) the plaintiff fails to show, with prima facie evidence, a
12 probability of prevailing on the claim.” *Williams v. Lazar*, 137 Nev. Adv. Op. 44, ___, 495 P.3d
13 93, 97 (2021) (reversing a district court order denying an anti-SLAPP motion where the defendant
14 was being sued due to her expression of her opinions and her communications were based on
15 litigation privileged communication).

16 To satisfy the first prong of the anti-SLAPP motion, the movant must demonstrate that the
17 claim or lawsuit brought against it is based upon “a good faith communication in furtherance of
18 the right to petition or the right to free speech in direct connection with an issue of public concern,”
19 *see* NRS 41.660(3)(a), by demonstrating that the communication at issue fits within one of four
20 distinct definitions:

21 1. ***Communication that is aimed at procuring any governmental or***
22 ***electoral action, result or outcome;***

23 2. ***Communication of information or a complaint to a Legislator,***
24 ***officer or employee of the Federal Government, this state or a***
political subdivision of this state, regarding a matter reasonably of
concern to the respective governmental entity;

1 3. ***Written or oral statement made in direct connection with an***
2 ***issue under consideration by*** a legislative, executive or judicial
 body, or any other official proceeding authorized by law; or

3 4. ***Communication made in direct connection with an issue of***
4 ***public interest*** in a place open to the public or in a public forum,
5 which is truthful or is made without knowledge of its falsehood.

6 *See* NRS 41.637 (emphases added).

7 With respect to the above factors, the Nevada Supreme Court has held that the expression
8 of a personal opinion, a truthful statement, or a statement made without knowledge of its
9 falsehood constitutes a good faith communication. *See Williams*, 137 Nev. Adv. Op. 44, ___, 495
10 P.3d at 97; *Abrams v. Sanson*, 136 Nev. 83, 89, 458 P.2d 1062, 1068 (2020) (recognizing that
11 opinions are incapable of being false because “there is no such thing as a false idea”).

12 If the moving party can demonstrate that its alleged actions that are the subject of the
13 claim (or counterclaim) constitute good faith communication, the burden shifts under the second
14 prong to the plaintiffs and/or counterclaimants to prove “with prima facie evidence a *probability*
15 *of prevailing* on the claim.” NRS 41.660(3)(b) (emphasis added). Because an anti-SLAPP
16 motion is treated like one for summary judgment, plaintiffs and/or counterclaimants may not
17 “build a case on gossamer threads of whimsy, speculation, and conjecture.” *Wood v. Safeway,*
18 *Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005). Likewise, plaintiffs and/or
19 counterclaimants cannot rely upon the slightest doubt standard to avoid a dispositive ruling
20 against them. *Id.* at 727, 121 P.3d at 1031.

21 IV. ARGUMENT

22 This case presents a *prima facie* example of why an anti-SLAPP remedy and dismissal of
23 Clark County’s counterclaims is appropriate. Each of the two prongs relevant to an anti-SLAPP
24 analysis will be discussed separately below.

1 **A. First Prong: Clark County is Retaliating for Engaging in Good Faith**
2 **Communications and Conduct Protected by the First Amendment**

3 By filing Counterclaims against the Rental Association, and Ms. Flores, Clark County is
4 retaliating and attempting to silence their good faith communications in three distinct ways:
5 accessing and/or petitioning the courts for legal review; chilling their freedom of speech; and
6 chilling their right to organize and assemble.

7 The First Amendment guarantees the right to petition the government. Thus, at the heart
8 of an anti-SLAPP motion is the protection of speech, which, by definition, includes a written
9 statement “made in direct connection with an issue under consideration . . . by a judicial body.”
10 *See* NRS 41.637(3); *see also Coker v. Sassone*, 135 Nev. 8, 12, 432 P.3d 746, 749 (2019) (stating
11 that an anti-SLAPP motion is appropriate where an “action is filed in retaliation to the exercise
12 of free speech”). This is because “Nevada’s anti-SLAPP statute is predicated on protecting
13 ‘well-meaning citizens who petition the government and then find themselves hit with retaliatory
14 suits known as SLAPP suits.’” *John v. Douglas County School District*, 125 Nev. 746, 760, 219
15 P.3d 1276, 1286-1287 (2009) (superseded on other grounds by 2013 Nev. State, ch. 176, § 3, at
16 623-24). Thus, Nevada’s anti-SLAPP statutes were enacted to prevent “SLAPP lawsuits [that]
17 abuse the judicial process *by chilling, intimidating, and punishing individuals* for their
18 involvement in public affairs.” *Id.* at 752, 219 P.3d at 1281 (emphasis added) (quoting 1997
19 Nev. Stat., ch. 387, preamble, at 1364).

20 Additionally, “allegations related to the filing and funding of the lawsuit . . . aris[e]
21 from . . . free speech.” *See Sheley v. Harrop*, 9 Cal.App.5th 1147, 1166 (Cal. Ct. App. 2017); *see*
22 *also Tichinin v. City of Morgan Hill*, 177 Cal.App.4th 1049, 1068 (Cal. Ct. App. 2009) (holding
23 that conduct falls within the constitutional right to petition if it is “(1) incidental or reasonably
24 related to the actual petition or actual litigation or to a claim that could ripen into a petition or

1 litigation and (2) the petition, litigation, or claim is not a sham”). The Nevada Supreme Court
2 routinely looks to California caselaw when deciding anti-SLAPP questions because Nevada and
3 California have highly analogous anti-SLAPP statutes. *See Shapiro v. Welt*, 133 Nev. 35, 39,
4 389 P.3d 262, 268 (2017) (stating that because “California’s and Nevada’s anti-SLAPP statutes
5 are similar in purpose and language, [the court] looks to California law for guidance” (internal
6 quotation marks and citations omitted)).

7 Here, in response to the Rental Associations Complaint seeking declaratory and
8 injunctive relief from this Court, Clark County filed its Counterclaims against the Rental
9 Association, and Ms. Flores in particular, *only after* they exercised their right to seek good faith
10 legal review of an issue of constitutional and public importance. Certainly, the Rental
11 Association is not contending that the act of filing a counterclaim in itself rises to the level of a
12 *per se* SLAPP claim. However, it does rise to this level under the unique context of this case.

13 It must be asked: But for the Rental Association filing a lawsuit, and Ms. Flores being
14 listed as an individual representative plaintiff, would Clark County have filed an action against
15 it? The reasonable answer is ‘no.’ According to Clark County’s own assertions, its purported
16 counterclaims against Ms. Flores arise out of matters that date back to 2019—well over three
17 years ago. By signing an affidavit Ms. Flores became a potential witness in the case. *See Exhibit*
18 **1** (Affidavit of Jaqueline Flores, dated August 1, 2022). She also volunteered to be a
19 representative plaintiff on behalf of the Rental Association. Clark County chose to single her
20 out and make an example: its Counterclaims are intended to intimidate and silence her voice on
21 a matter of public importance and in the context of a legal challenge. *See Exhibit 2* (Affidavit
22 of Jacqueline Flores, dated December 1, 2022). By alleging that unnamed and unidentified
23 members of the Rental Association engaged in criminal activity, Clark County has instilled fear
24 and intimidation on other members of the Rental Association. *Id.*

1 As set forth below, Counterclaims Nos. 1-6 alleged by Clark County are SLAPP claims
2 and prohibited by Nevada law. They should be summarily dismissed in this case. The most
3 egregious Counterclaims will be discussed first.

4 **1. The Civil RICO Counterclaim is a *Prima Facie* SLAPP Action.**

5 Clark County's Civil RICO claim (Counterclaim no. 6) fails to allege any specific and
6 supporting facts whatsoever to support its allegation of criminal conduct against the Rental
7 Association and its members. The allegation asserts in part:

8 **SIXTH CLAIM FOR RELIEF**
9 **(Civil RICO)**

10 77. Counterdefendants violated a predicate racketeering act.

11 78. CLARK COUNTY and the public suffered injury and damages
12 in its business or property be reason of Counterdefendants'
13 violations of the predicate racketeering acts.

14 79. Counterdefendants' violations proximately caused CLARK
15 COUNTY's injury.

16 80. CLARK COUNTY did not participate in the racketeering
17 violation.

18 81. Therefore, under NRS 207.470, CLARK COUNTY is
19 entitled to damages from Counterdefendants for three times actual
20 damages sustained.

21 82. NRS 207.360 provides what crimes can constitute the
22 underlying criminal conduct for a civil RICO claim.

23 *See* Clark County's First Amended Counterclaims (November 22, 2022), at 11.

24 When a RICO claim is alleged, the Nevada Supreme Court has specifically admonished
that it must be pleaded with specificity due to the "very serious consequences attached to the
allegations of criminal conduct that are the essence of this kind of lawsuit." *See Hale v.*
Burkhardt, 104 Nev. 632, 638, 764 P.2d 866, 869 (1988). Here, Clark County has alleged no
specific facts supporting its civil RICO counterclaim. None. Other than Ms. Flores (who

1 volunteered to be a named plaintiff), Clark County has identified no individual who is a member
2 of the Rental Association and who violated RICO. Clark County has provided no dates, times,
3 locations, or other specific information to support its allegations of criminal conduct. Thus, this
4 claim has not been pleaded with specificity.

5 Clark County nevertheless asserts that the Rental Association and Ms. Flores “worked
6 together” or “educated each other” to engage in purported crimes. Yet, as previously discussed,
7 the Rental Association is a grassroots Nevada non-profit organization that is incorporated by the
8 Nevada Secretary of State with Nevada Business ID No. NV20201956358. Its mission includes
9 educating and advocating for policies and changes in the law regarding short term rental
10 operators and patrons in Nevada. *See Exhibit 1* (Affidavit of Jacqueline Flores, August 1, 2022).
11 It engages in fundraising to support advocacy before local, county and state public bodies, as
12 well as litigation efforts. It has engaged in signature collecting efforts. It has held events.
13 However, it does not advocate that any law be broken. *Id.* In fact, its own website provides
14 information to the public on current short term rental laws in Clark County, *i.e.*, unincorporated
15 Clark County, the City of Las Vegas, the City of North Las Vegas, and the City of Henderson.
16 *See* <https://www.glvstra.org/regulations>. This is hardly the conduct of a criminal enterprise.
17 Rather, it is quintessential grassroots civil engagement that is necessary in a free and democratic
18 society. Clark County seeks to punish it.

19 The basis of Clark County’s Civil RICO Counterclaim is that activities of the Rental
20 Association are criminal. However, the Rental Association engages in fundraising, obtaining
21 signatures, lobbies the Nevada Legislature and other policy making bodies, challenging the law,
22 and general advocacy for short term rentals. The Rental Association was incorporated in 2020.
23 Neither the Rental Association nor Ms. Flores, as the Rental Associations President and Director,
24 advocate for or encourage violation of the law. *See Exhibit 2* (Affidavit of Jacquelin Flores,

1 December 1, 2022). Moreover, Clark County has not pleaded specific facts to show when the
2 alleged racketeering occurred. The activities of the Rental Association are either directly or
3 reasonably related to good faith communication set forth in NRS 41.637. Accordingly, they are
4 protected against a SLAPP claim.

5 **2. The Civil Conspiracy Counterclaim is an Unsupported SLAPP Action.**

6 Similarly, Clark County’s Civil Conspiracy claim (Counterclaim no. 4) fails. It alleges
7 the following:

8 **FOURTH CLAIM FOR RELIEF**
9 **(Civil Conspiracy)**

10 63. CLARK COUNTY repeats and re-alleges Paragraphs 1 through
62 of this Counterclaim.

11 64. Counterdefendants, acting in concert and for their own
12 individual personal and corporate advantage, did conspire and agree
13 with one another with the intent to accomplish an unlawful objective,
to wit: the operation of transient lodging establishments in violation
14 of Clark County Code and/or the evasion of payment of the
combined transient lodging tax.

15 65. Counterdefendants did so for the purpose of harming CLARK
COUNTY.

16 66. Each Counterdefendant worked together to operate transient
17 lodging establishments in the residential and miscellaneous zoning
18 districts of Clark County in violation of Clark County Code and/or
to evade payment of the combined transient lodging tax as discussed
herein.

19 67. CLARK COUNTY sustained damages as a result of
20 Counterdefendants’ actions, including but not limited to the loss of
receipt of combined transient lodging taxes and the costs of
21 abatement of the nuisances operated by Counterdefendants at the
encouragement or with the assistance of other Counterdefendants.

22 68. CLARK COUNTY is entitled to a money judgment against
23 Counterdefendants for its damages in excess of the amount of
\$15,000.00.

24 *See Clark County’s First Amended Counterclaims, at 9-10.*

1 Here, Clark County alleges that the Rental Association, including Ms. Flores, conspired
2 and agreed with unnamed others “for their own individual personal and corporate advantage” to
3 break the law. The claim fails to specifically identify who conspired, how they conspired, what
4 they conspired about, when they conspired, and/or where they conspired. Once again, the Rental
5 Association is a non-profit advocacy organization that encourages the adoption of reasonable
6 policies and laws regarding short term rental operators and patrons. It also advocates for changes
7 in laws. Importantly, it does not own property to even rent. Its members are unpaid volunteers.
8 What the Rental Association has done, however, is advocate and file a legal challenge on issues
9 of public interest that are aimed at procuring a governmental outcome. This is protected
10 speech—it is not a conspiracy. It qualifies as good faith communication pursuant to NRS 41.637.
11 Neither the Rental Association nor Ms. Flores knowingly advocate or encourage anyone to
12 violate the law, let alone conspire with others to do so. *See Exhibit 2* (Affidavit of Jacqueline
13 Flores, December 1, 2022). Accordingly, Clark County’s unsupported Civil Conspiracy
14 counterclaim is intended to chill and silence public discourse and advocacy on these issues. The
15 Rental Association and Ms. Flores deserve anti-SLAPP protection.

16 **3. The Aiding and Abetting Counterclaim is an Unsupported SLAPP Action.**

17 As with the other two Counterclaims, Clark County’s Aiding and Abetting claim
18 (Counterclaim no. 5) also fails.

19 **FIFTH CLAIM FOR RELIEF**
20 **(Aiding and Abetting)**

21 69. CLARK COUNTY repeats and re-alleges Paragraphs 1
22 through 68 of this Counterclaim.

23 70. Counterdefendants know that owners and occupants of
24 properties in the residential zoning districts of Clark County have a

1 duty to CLARK COUNTY to use their property in conformity with
2 the County ordinances and not as a nuisance is a breach of that duty.

3 71. Counterdefendants know that operators of transient lodging
4 establishments in the unincorporated area of Clark County have a
5 duty to pay combined transient lodging tax, and that failure to pay
6 the tax is a breach of that duty.

7 72. Counterdefendants substantially assisted or encouraged
8 other Counterdefendants to operate properties in the residential or
9 miscellaneous zoning districts of Clark County as transient lodging
10 establishments in violation of the Clark County Code prohibiting
11 such uses, and that such operation constitutes a nuisance under Clark
12 County Code, by conducting trainings, providing helpful
13 information, and teaching other Counterdefendants how to operate
14 transient lodging establishments and how to avoid detention and
15 fines.

16 73. Counterdefendants also substantially assisted or encouraged
17 other Counterdefendants to avoid payment of the combined transient
18 lodging tax to CLARK COUNTY, by conducting trainings,
19 providing helpful information, and teaching other
20 Counterdefendants how to avoid paying transient lodging tax and
21 avoid detection.

22 74. CLARK COUNTY sustained damages as a result of
23 Counterdefendants' actions, including but not limited to the loss of
24 receipt of combined transient lodging taxes and the costs of
abatement of the nuisances operated by Counterdefendants at the
encouragement or with the assistance of other Counterdefendants.

75. CLARK COUNTY is entitled to a money judgment against
Counterdefendants for its damages in excess of the amount of
\$15,000.00.

18 *See Clark County's First Amended Counterclaims, at 10-11.*

19 Like the other Counterclaims, Clark County is alleging that the Rental Association, and
20 Ms. Flores, have "aided and encouraged" unnamed others to violate the law by allegedly
21 "conducting trainings" or "providing helpful information" or "teaching." This claim fails to
22 specifically identify who provided unlawful assistance, how they assisted, what they assisted,
23
24

1 when they assisted, and/or where they assisted. In a free society, and standing alone, associating
2 with others and providing ‘helpful information’ or ‘teaching’ are not crimes.

3 **4. Other Counterclaims**

4 Counterclaims Nos. 1-3 singularly target the Rental Association’s President and Director
5 Ms. Flores by contending that she owes unpaid taxes, unpaid citation fines, and that her property
6 was a nuisance. *See* Clark County’s First Amended Counterclaims, at 6-9. However, these
7 matters allegedly date back to the year 2019. Again, it must be asked: But for Ms. Flores being
8 a volunteer Plaintiff in this case, would Clark County be asserting civil causes of action against
9 her in district court? The answer is ‘no.’ Clark County has waited over 3 years to bring any
10 action regarding these matters. They are retaliatory and aimed at silencing her participation.

11 Unfortunately, they are beginning to have their intended negative impact. *See Exhibit 2*
12 (Affidavit of Jacqueline Flores, dated December 1, 2022). Even by its own provisions,
13 Assembly Bill (AB) 363 provides that an individual’s past citation history cannot impact their
14 ability to apply for a short-term rental license. *See* Section 26.5 of AB 363. Yet, Clark County
15 has chosen to make Ms. Flores past alleged conduct an issue in this case by asserting these
16 Counterclaims. This is meant to send a message to all members of the Rental Association or
17 anyone who may seek to challenge the constitutionality of Title 7, Chapter 7.100 of the Clark
18 County Code (or any other Code provision) that Clark County may sue you if you do so. Paying
19 all monies that may be owed to Clark County for any reason should not be a prerequisite for a
20 citizen to seek equitable relief from this Court. Clark County, as a taxpayer funded entity, has
21 virtually unlimited resources. Individual citizens, and grassroots organizations, do not. It is
22 unfair. The democratic process will suffer if this is the standard. Clark County’s actions are
23 exactly the type of chilling and aggressive behavior and power imbalance that anti-SLAPP laws
24 are intended to protect against.

1 **B. Second Prong 2: Clark County Has No Likelihood of Success on the Merits.**

2 As set forth above under the first prong of the anti-SLAPP analysis, the Counterclaims
3 alleged by Clark County against the Rental Association and Ms. Flores are based on protected
4 First Amendment conduct and good faith communications pursuant to NRS 41.637. Therefore,
5 the burden shifts to Clark County under the second prong of the analysis. Under the second
6 prong, Clark County must show a reasonable likelihood of success on the merits of its allegations.
7 It cannot.

8 Here, all of Clark County’s Counterclaims (Counterclaims nos. 1-6) lack merit.
9 Accordingly, the Rental Association has filed a NRCP 12(b) Motion to Dismiss them, which is
10 pending for this Court and incorporated by reference herein. *See* Motion to Dismiss
11 Counterclaims, filed December 6, 2022. Of Clark County’s Counterclaims, the most egregious
12 warranting anti-SLAPP protection are those alleging violations of Civil RICO, Civil Conspiracy,
13 and Aiding and Abetting. ***None of these Counterclaims allege any specific supporting facts—***
14 ***only conclusory allegations.*** No underlying crime of fraud or deceit was committed to support
15 the Civil RICO claim—engaging in First Amendment activities of assembling, speaking, and
16 petitioning the government is not a crime. The Civil Conspiracy and Aiding and Abetting claims
17 fail as a matter of law because an officer of a non-profit organization, such as Ms. Flores, who
18 is the President and Director of the Rental Association, cannot legally conspire with itself. *See*
19 *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

20 Importantly, the only date alleged in Clark County’s Counterclaims is February 1, 2019.
21 However, the Rental Association did not exist as an incorporated entity until 2020. *See, supra*
22 *at 3 n.1.* Thus, what allegedly occurred prior to its incorporation cannot be imputed to it. It also
23 owns no property and is a legal entity that exists on paper and, therefore, it logically cannot
24

1 create any type of nuisance (let alone conspiracy, aiding and abetting, or racketeering).
2 Moreover, as set forth in the pending Motion to Dismiss, Clark County’s claims are time-barred.

3 The Rental Association’s President and Director Ms. Flores has not encouraged anyone
4 to break the law. Neither has the Rental Association. **See Exhibit 2** (Affidavit of Jacqueline
5 Flores, dated December 1, 2020). Ms. Flores has allegedly been cited by Clark County for
6 engaging in personal conduct. But what she does in her personal capacity regarding any matter
7 is very different than what she says or does as President and Director of the Rental Association—
8 a non-profit organization—and in her official capacity as a representative of the organization.
9 What any individual members of the Rental Association may do in their personal capacity cannot
10 reasonably be imputed to the organization as a whole. Indeed, laws can only “constitutionally
11 impose criminal liability upon a business entity for acts or omissions of its agents within the
12 scope of their employment.” *United States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1004 (9th Cir.
13 1972).

14 Clark County has not demonstrated a likelihood of success on its Counterclaims. Instead,
15 they are intended to intimidate and silence its opponents.

16 Ironically, it is Clark County under Nevada law who have a duty to defend and protect
17 the Rental Association’s First Amendment rights against a SLAPP action. *See* NRS 41.660(1)(b).
18 Unfortunately, it has not only failed to do so in this case but it has intentionally filed SLAPP
19 claims against the Rental Association. Accordingly, the Rental Association respectfully requests
20 anti-SLAPP protection and relief from this Court.

21 V. CONCLUSION

22 The Rental Association is a non-profit grassroots Nevada organization engaging in core
23 democratic activity protected by both the First Amendment and Nevada’s anti-SLAPP laws as
24 set forth in NRS 41.635-.670, inclusive. It has petitioned this Court to review of a new law under

1 the Nevada and United States Constitutions. It is seeking declaratory and injunctive relief *only*,
2 not monetary damages. Yet, Clark County's hostile response, request for monetary damages,
3 and its assertion of six Counterclaims, and civil RICO, Aiding and Abetting, and Civil
4 Conspiracy in particular, is chilling, oppressive, and retaliatory. This is exactly the type of
5 scenario that Nevada's anti-SLAPP laws were intended to remedy. Accordingly, the Rental
6 Association respectfully requests that this Court grant in whole, or in part, its special anti-SLAPP
7 motion to dismiss Clark County's Counterclaims pending against it and award damages,
8 including attorney fees and costs, that this Court determines are appropriate.

9 DATED this 12th day of December, 2022.

10 HUTCHISON & STEFFEN, PLLC

11 */s/ Joseph C. Reynolds*

12 Joseph C. Reynolds (8630)

13 Ariel C. Johnson (13357)

14 *Attorneys for Petitioners*

15 *Greater Las Vegas Short Term Rental Association*
16 *and Jacqueline Flores, President and Director*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 12th day of December, 2022, I caused the above and foregoing document, entitled **ANTI-SLAPP: SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660** to be served as follows:

- by placing the same to be deposited for mailing in the Unites States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- to be sent electronically via the Court’s electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail; and/or
- to be served through Formal Service of Process (Proof of Service to follow)

to the parties or attorney(s) listed below at the address and/or facsimile number indicated below:

James B. Gibson, Chair Board of Clark County Commissioners 500 S. Grand Central Pkwy 6 th Floor Las Vegas, NV 89155 DistrictG@clarkcountynv.gov	Yolanda T. King, County Manager Clark County 500 S. Grand Central Parkway 6 th Floor Las Vegas, NV 89155
Aaron D. Ford, Attorney General Office of the Nevada Attorney General 100 N. Carson St Carson City, NV 89701	Jeffrey Rogan, Deputy District Attorney Timothy Allen, Deputy District Attorney Civil Division, Clark County District Attorney Jeffrey.Rogan@clarkcountyda.com Timothy.Allen@clarkcountyda.com

/s/ Madelyn B. Carnate-Peralta

An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

AFFIDAVIT OF JACQUELINE FLORES

Jacqueline Flores, being first duly sworn testifies as follows:

1. I am a resident of unincorporated Clark County, Nevada, and I have lived in Nevada since 2006.

2. I am the President and the Director of the Greater Las Vegas Short Term Rental Association (GLVSTRA), which is a grassroots non-profit organization that is incorporated with the Nevada Secretary of State. The GLVSTRA is an advocacy group that represents the interests of owners and patrons of short-term rental homes in Clark County.

3. Members of the GLVSTRA are from a variety of diverse educational, economic, and career backgrounds, and their interest as to why they desire to offer their property as a short-term rental home vary widely.

4. The GLVSTRA has approximately 700 official members, each of whom are interested stakeholders in the development and implementation of short-term rental home policies and laws in Clark County.

5. Members of the GLVSTRA have expressed to me they are interested in offering their home as a short-term rental in Clark County for reasons that include the need to supplement income during such life events as retirement, job loss/economic downturn, or to care for a young or sick family member.

6. Members of the GLVSTRA have also expressed to me they would find joy and satisfaction in the ability to offer their home to visitors from across the United States and throughout world who come to the greater Las Vegas area. It would be a source of meaningful cultural and social interaction in their lives.

7. As the President and the Director of the GLVSTRA, I have spoken at proceedings before the Board of Clark County Commissioners and the Nevada Legislature regarding the development of the short-term rental home policies and laws in Clark County.

8. In addition to being the President and the Director of the GLVSTRA, I am also a homeowner in unincorporated Clark County.

9. I find the language of the new Ordinance governing short-term rental homes in unincorporated Clark County, which was enacted by the Board of Clark County Commissioners on June 21, 2022, to be unclear and confusing.

10. I intend to submit an application with Clark County to obtain a short-term rental license when the application period opens. But I am intimidated to do so.

11. Under the language of the new Ordinance, applying for a license will require me to consent to the waiver of my rights in my own home.

12. If I obtain a license from Clark County, I will be required to endure an ongoing threat of unfair liability, economic exposure, and intrusion of privacy for using my home, interacting with others, and earning income.

13. If I am denied a license by the County, I will be deprived of the ability to provide for my future economic stability and to use my property to its fullest potential.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.

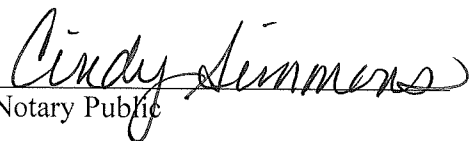
DATED this 1st day of August, 2022.



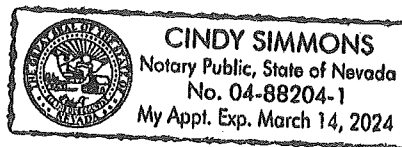
JACQUELINE FLORES

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to
before me this 1st day of August, 2022



Notary Public



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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

AFFIDAVIT OF JACQUELINE FLORES

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

Jacqueline Flores, being first duly sworn testifies as follows:

1. I am a resident of unincorporated Clark County, Nevada, and I have lived in Nevada since 2006.

2. I am the President and the Director of the Greater Las Vegas Short Term Rental Association (GLVSTRA), which is a grassroots non-profit organization that is incorporated with the Nevada Secretary of State. The GLVSTRA is an advocacy group that represents the interests of owners and patrons of short-term rental homes throughout the greater Las Vegas area, including unincorporated Clark County.

3. In my capacity as the President and Director of the GLVSTRA, I do not advocate for or knowingly encourage anyone to violate the law regarding short term rentals in Clark County. However, I do express my opinions and views where I believe that policies and laws regarding short term rentals in Clark County, and in other counties and states, are unreasonable and unfair. I am an advocate for change through the democratic process.

4. The GLVSTRA provides information to the public on short term rental policies and laws in Clark County. The GLVSTRA does not assist, advocate for, or encourage anyone to violate the law regarding short term rentals in Clark County or anywhere in Nevada.

5. The GLVSTRA has engaged in public signature gathering efforts to petition elected policy makers to enact fair and reasonable short term rental policies and laws in Clark County.

6. The GLVSTRA receives financial contributions from its members, the public, and interested stakeholders to assist in funding lobbying and litigation efforts.

7. Clark County's allegations against the GLVSTRA and me in its October 18, 2022, complaint/counterclaims and in its November 22, 2022, amended complaint/counterclaims have caused me to experience stress and fear of retaliation for participating as a plaintiff and affiant in litigation against it.

8. Members of the GLVSTRA have expressed to me they feel increased fear and concerns of retaliation and/or of being targeted for disparate treatment by Clark County if they were to express their personal opinions and views and to share their experiences with short term rental policies and laws due to Clark County's oppressive response and aggressive counterclaims against the GLVSTRA and me in this litigation. Many are now afraid to come forward as witnesses and participate.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.

DATED this 1st day of December, 2022.



JACQUELINE FLORES

SUBSCRIBED and SWORN to
before me this 1st day of December, 2022



Notary Public

