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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HILLARY SCHIEVE, an individual, VAUGHN HARTUNG, an individual

Plaintiffs,

vs.

DAVID MCNEELY, an individual, 5 ALPHA INDUSTRIES, LLC, a Nevada limited-liability company, and DOES 1 through X and ROES 1 through X, inclusive,

Defendants.

Case No.: CV22-02015

Dept. No.:15

DEFENDANT JOHN DOE'S MOTION FOR SUMMARY JUDGMENT

Defendant John Doe hereby files this Motion for Summary Judgment. This Motion is based upon the attached Points and Authorities, all papers and pleadings on file, and any oral argument the Court may entertain at any hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

American citizens have a constitutional and statutory right to know about the malfeasance of their elected officials. To investigate that misconduct, citizens have a right to hire a private investigator.

John Doe hired a private investigator to investigate credible allegations of serious misconduct of Plaintiffs, who, at the times relevant in this suit, were elected officials. This case is this simple: Hiring a private investigator to investigate public officials is perfectly legal.

With this meritless suit, Plaintiffs seek solely to punish John Doe for his constitutionally protected conduct and chill future citizen-led investigations into public officials' malfeasance. The Court should not countenance this.

As set forth below, each of Plaintiffs' claims against John Doe fail as a matter of fact and a matter of law. John Doe is thus entitled to summary judgment on each and every one of Plaintiffs' claims.

II. STATEMENT OF UNDISPUTED FACTS

1. Defendant John Doe[1] is a resident of Washoe County who is concerned with potential corruption and malfeasance in local government. [Doe Decl., ¶ 4.]
2. At the time of the events giving rise to this litigation Plaintiffs Hillary Schieve and Vaughn Hartung were elected officials: Schieve is the current Mayor of the City of Reno and, until March 14, 2023, Hartung was a Commissioner with the Washoe County Board of Commissioners.
3. On or about March 13, 2022, John Doe received what he believed to be credible allegations regarding alleged improper conduct by Mayor Schieve, including alleged bribery and other serious allegations. [Doe Decl., ¶5.]
4. On or about that same day, John Doe received credible allegations about then-Commissioner Hartung pertaining to alleged misconduct involving Washoe County employees, along with other serious allegations. [Doe Decl., ¶ 6.]
5. Doe himself has no experience as an investigator, nor is he licensed by Nevada or any other jurisdiction as an investigator. [Doe Decl., ¶ 7.]
6. In light of the serious nature of the allegations against Schieve and Hartung, and because Doe wanted to avoid any potential defamation or libel claims if those allegations turned out to be untrue, Doe legally retained the services of 5 Alpha Industries, a State-licensed private investigation firm owned by licensed private investigator David McNeely, to

[1] John Doe is a pseudonym. John Doe is using a pseudonym because he would like to remain anonymous. [Doe Decl., ¶ 3.]

investigate the allegations against Schieve and Hartung.[2] [Doe Decl., ¶¶ 8, 9.]

7. When Doe hired the Investigator Defendants to investigate the allegations against Schieve and Hartung, Mr. McNeely assured him that his identity would remain confidential. [Doe Decl., ¶ 10.]
8. Absent this guarantee of confidentiality, John Doe would not have hired the Investigator Defendants. [Doe Decl., ¶ 11.]
9. After hiring the Investigator Defendants, John Doe did not direct the Investigator Defendants about *how* to conduct their investigation or any particular investigative techniques to employ. [Doe Decl., ¶ 12.]
10. John Doe did not authorize the Investigator Defendants to track anyone and has never had access to the tracking information the Investigator Defendants obtained. [Doe Decl., ¶¶ 12, 13.]

III. LEGAL STANDARD

Summary judgment is proper when, after reviewing the pleadings and other evidence in the light most favorable to the non-moving party, there remains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* NRCP 56(a) and (c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P. 3d 1026, 1029-30 (2005).

For the reasons detailed below, each of Plaintiffs' claims fails as both a matter of law and a matter of fact. Summary judgment is thus proper in this instance.

IV. ARGUMENT

A. John Doe is Entitled to Summary Judgment on Plaintiffs' First Cause of Action (Invasion of Privacy – Intrusion Upon Seclusion).

To prevail on a claim for invasion of privacy by intrusion upon the seclusion of another, a plaintiff must come forward with evidence of: (1) an intentional intrusion (physical or otherwise), (2) on the solitude or seclusion of another, (3) that would be highly offensive to a reasonable person. *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 615, 630, 895 P.2d 1269, 1279 (1995). Here, the undisputed

[2] For the purposes of this motion, Defendants McNeely and 5 Alpha Industries shall be referred to collectively as the "Investigator Defendants."

facts demonstrate that Plaintiffs cannot prove any of these elements.

1. There is No Evidence John Doe Committed Any Sort of Intrusion.

This claim is doomed because Plaintiffs have no evidence that ***John Doe*** committed any sort of intrusion—physical or otherwise. Plaintiffs have no evidence that John Doe personally placed any trackers on Plaintiffs' vehicles. Plaintiffs have no evidence that John Doe requested the Investigator Defendants place tracking devices on Plaintiffs' vehicles. [Doe Decl., ¶ 12.] Thus, Plaintiffs' claim for intrusion upon seclusion cannot get past the first element of the claim.

2. John Doe Did Not Intrude on Plaintiffs' Seclusion

Plaintiffs' claim also fails because John Doe did not directly or proximately intrude on Plaintiffs' seclusion. As discussed above, John Doe neither placed any tracking devices on either Plaintiffs' cars nor instructed the Investigator Defendants to do so.

Moreover, Plaintiffs' assertion of an objective and subjective expectation of privacy in their movements on public streets rests on shaky grounds. To support their claim, Plaintiffs cite primarily to the United States Supreme Court's decision in *United States v. Jones*, 565 U.S. 400, 404 (2012), for the proposition that the "***Government's installation*** of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a 'search'." [Am. Comp., ¶ 27] (emphasis added).

That is fatal distinction for Plaintiffs' claim. This case ***does not*** implicate the constitutional ill the *Jones* Court sought to correct; i.e., warrantless ***governmental*** intrusions on property to aid in the investigation of criminal charges. Rather, this is a case where a private citizen lawfully retained the services of a licensed investigator after receiving credible information that Schieve and/or Hartung had engaged in misconduct that would be of extreme interest to the general public, and then the investigator used tracking devices to aid in the investigation of possible malfeasance by these elected officials.

Plaintiffs double down on their reliance on *Jones* by alleging that the District of Nevada "explicitly held" that the installation of a GPS tracker implicates an invasion of privacy. [Am. Comp., ¶ 29 (citing *Ringelberg v. Vanguard Integrity Pros.-Nevada, Inc.*, No. 217CV01788JADPAL, 2018 WL 6308737, at *8–9 (D. Nev. Dec. 3, 2018).] Plaintiffs overstate the district court's holding in that

matter. What the court *actually* held was that "the United States Supreme Court's decision in *United States v. Jones* . . . ***suggests*** that Ringelberg had a reasonable expectation of privacy in his daily movements in his car. *Ringelberg*, 2018 WL 6308737 at *9 (emphasis added). Thus, at best, the district court allowed the plaintiffs' claim for intrusion upon seclusion to proceed but did not take the definitive position Plaintiffs allege in their Amended Complaint.

As a final point, *Ringelberg* is distinguishable because unlike the Plaintiffs here, Ringelberg was not a public figure being investigated based on allegations that would be of importance to the voting public. As the Ninth Circuit Court of Appeals has held in the context of a FOIA case addressing the privacy interests of public law enforcement officers, although "individuals do not waive all privacy interests in information relating to them simply by taking an oath of public office . . . their privacy interests are somewhat reduced." *Lissner v. U.S. Customs Serv.*, 241 F.3d 1220, 1223 (9th Cir. 2001) (citations omitted); *see also Dobronski v. Fed. Communications Comm'n,* 17 F.3d 275, 279 (9th Cir.1994) (finding that, in balancing the plaintiff's and public's interest in disclosure against the degree of invasion of personal privacy, "Dobronski, or any other citizen, has a right to investigate whether government officials abuse their offices and the public fisc").

Schieve and Hartung were both public officials at all times relevant to their claims and thus had a diminished expectation of privacy in their movements to and from locations accessible to the public.

John Doe is therefore entitled to summary judgment.

B. John Doe is Entitled to Summary Judgment on Plaintiffs' Second Cause of Action (Invasion of Privacy – Public Disclosure of Private Facts).

As with their other claims, Plaintiffs' cause of action for invasion of privacy by public disclosure of private facts fails because they come forth with no evidence that John Doe disclosed any private facts about them. To prevail on this cause of action against John Doe, Plaintiffs are required to provide that (1) John Doe disclosed private facts about Schieve and/or Hartung, and (2) the disclosure of those facts would be offensive and objectionable to a reasonable person of ordinary sensibilities. *State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 118 Nev. 140, 150, 42 P.3d 233, 240 (2002) (citing Restatement (Second) of Torts § 652(G) (1977)).

As with their other causes of action, this claim fails from the outset because Plaintiffs have

provided no evidence that ***John Doe*** disclosed *any* facts about them, much less "private facts." John Doe is therefore entitled to summary judgment on this cause of action. Given that Plaintiffs cannot establish that John Doe disclosed any private facts, they also cannot prove that he made any disclosure that would be offensive or objectionable to a reasonable person.

C. John Doe is Entitled to Summary Judgment on Plaintiffs' Third Cause of Action (Violation of NRS Chapter 200, Anti-Doxxing).

John Doe is also entitled to summary judgment on Plaintiffs' inchoate third cause of action. Plaintiffs allege (after a fashion) that John Doe and the Investigator Defendants' actions violate "NRS Chapter 200." But which particular provision of Chapter 200? Chapter 200 of the NRS outlines 28 general categories of "Crimes Against the Person." One would therefore expect that Plaintiffs would identify the precise provision(s) of NRS Chapter 200 violated by John Doe's alleged actions. But they do not—and a reasonable person might conclude that's because Plaintiffs do not have sufficient facts to allege a violation of any one of the many, many offenses enumerated in Chapter 200.

Moving beyond that utter lack of notice or detail, the undisputed facts, and the plain language of Nevada's anti-doxxing statute so belie Plaintiffs' allegations that John Doe is entitled to summary judgment on this claim.

John Doe did not "obtain[] and disseminate[] personal identifying information" about either Schieve or Hartung. [Am. Comp., ¶ 49.] Notably, "personal identifying information" is defined by NRS 205.4617 as "any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a living or deceased person or to identify the actions taken, communications made or received by, or other activities or transactions of a living or deceased person," including but not limited to a driver license number, Social Security number, checking or savings account number, credit card number, date of birth, place of employment, mother's maiden name, biometric identifiers, the electronic signature, unique electronic identification number, address or routing code, telecommunication identifying information or access device of a person, the personal identification number or password of a person, alien registration number, passport number, employer identification number, taxpayer identification number, Medicaid account number, food stamp account number, medical identification number, utility account number, and other unique personal identifiers. *See* NRS 205.4617(1)(a) – (h).

There is not a whisper, however, anywhere in Plaintiffs' Amended Complaint that John Doe—or any other person—disseminated such "personal identifying information" as defined by NRS 205.4617. Indeed, Plaintiffs' allegations in this cause of action reveal their complete misapprehension of what qualifies as "personal identifying information" under Nevada law. Plaintiffs allege that "personal identifying information" John Doe "disseminated" includes "information concerning Plaintiffs' lives, their activities, their transactions[3], and their trips to locations . . . ." [Am. Comp., ¶ 50.] None of that information qualifies as "personal identifying information" as it is expressly defined by NRS 205.4617(1). John Doe is therefore entitled to summary judgment on any claims that he violated "NRS Chapter 200."

As for the alleged violation of Nevada's "anti-doxxing" law, John Doe is also entitled to summary judgment because, yet again, the "personal identifying information" Plaintiffs allege John Doe disseminated is not actually "personally identifying information" under Nevada law.

The "anti-doxxing" law Plaintiffs refer to is actually a new provision to NRS Chapter 41 added by the Nevada Legislature in 2021—NRS 41.1347. Pursuant to NRS 41.1347(1), a person may bring a civil action against another person if they disseminate the "personal identifying information or sensitive information of the person without the consent of the person, knowing that the person could be identified by such information."

NRS 41.1347(7)(d) specifies that "'[p]ersonal identifying information' ***has the meaning ascribed to it in NRS 205.4617***." (emphasis added). For the reasons discussed above, Plaintiffs have not alleged—and have no evidence—that John Doe disseminated "personal identifying information" as defined by NRS 205.4617.

NRS 41.1347(7)(e) also provides a very narrow definition of sensitive information:

> (e) "Sensitive information" means information concerning:
> (1) The sexual orientation of a person;
> (2) Whether a person is transgender or has undergone a gender transition; or
> (3) The human immunodeficiency virus status of a person.

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[3] What "transactions" Plaintiffs are referring to is an open question because Plaintiffs don't identify what they mean by "transactions," nor do they provide any details about how, when, or where John Doe (or any of the Defendants) alleged disseminated information about their "transactions."

NRS 41.1347(7)(e). None of the information Plaintiffs allege John Doe disseminated fall within this narrow definition of "sensitive information."

In fact, this Court expressly held that Plaintiffs had failed to allege a cause of action under NRS 41.1347 in its May 4, 2023 Order Denying Objection and Partially Granting Motion to Dismiss. As the Court held in granting the Investigator Defendants request to dismiss this claim, "Plaintiffs expand the statutorily defined terms of 'personal identifying information' and 'sensitive information' beyond what the legislature prescribed." [May 4, 2023 Order, p. 4:11-13.]

John Doe is thus entitled to summary judgment on this errant "doxxing" claim.

D. John Doe is Entitled to Summary Judgment on Plaintiffs' Fourth Cause of Action (Negligence).

To prevail on a claim for negligence, Plaintiffs are required to prove that (1) John Doe owed them a duty of care, (2) John Doe breached that duty, (3) the breach was the cause of their injuries, and (4) they suffered damages.

As with the first and second causes of action, John Doe is entitled to summary judgment on this claim because there is simply no evidence to support the elements of negligence. John Doe had no duty "to exercise reasonable care in acting as a private investigator" [Am. Comp., ¶ 59] because he is not a private investigator.

Because John Doe has no duty to exercise reasonable care in acting as a private investigator, he had no duty to breach. John Doe also did not place tracking devices on Plaintiffs' vehicles [Am. Comp., ¶ 60], nor did he direct or request the Investigator Defendants do so. [Doe Decl., ¶ 12.] And as noted above, and as Plaintiffs are well aware, there is no Nevada law prohibiting persons from utilizing tracking devices. Hence, John Doe did not breach any duty to Plaintiffs.

Plaintiffs also have no evidence—or even allegations—that they were injured and suffered damages as a result of this alleged negligence. While Plaintiffs allege that the failure to exercise reasonable care "was the actual and proximate cause of Plaintiffs' injuries, damages, and losses" [Am. Comp., ¶ 66], Plaintiffs ***never actually allege that they were injured or suffered damages***. [*See generally* Am. Comp., ¶¶ 58-67.]

Finally, granting John Doe summary judgment on Plaintiffs' negligence claim is proper because, as the Court held in its May 4, 2023 Order, "Plaintiffs have not sufficiently alleged a 'special

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relationship' between them and Mr. McNeely that would give rise to duty." [May 4, 2023 Order, p. 4:18-19.] If no "special relationship" exists between Plaintiffs and the direct alleged tortfeasors (i.e., the Investigator Defendants), there cannot be a "special relationship" between Plaintiffs and John Doe.

John Doe is thus entitled to summary judgment on this claim.

E. John Doe is Entitled to Summary Judgment on Plaintiffs' Fifth Cause of Action (Trespass).

To maintain a trespass action, Plaintiffs must demonstrate that John Doe invaded a property right. *Lied v. Clark County*, 94 Nev. 275, 279, 579 P.2d 171, 173-74 (1978); *accord Iliescu, Tr. of John Iliescu, Jr. & Sonnia Iliescu 1992 Fam. Tr. v. Reg'l Transportation Comm'n of Washoe Cnty.*, 138 Nev. Adv. Op. 72, 522 P.3d 453, 460 (Nev. App. 2022). Plaintiffs cannot do that. John Doe did not personally place tracking devices on Plaintiffs' vehicles. Furthermore, as set forth in John Doe's affidavit, John Doe did not direct the Investigator Defendants to track anyone. Using a GPS tracking device [Doe Decl., ¶ 12.] Thus, John Doe is neither directly nor proximately liable for any alleged trespass on Plaintiffs' property. The Court should therefore grant John Doe summary judgment on this claim.

F. John Doe is Entitled to Summary Judgment on Plaintiffs' Sixth Cause of Action (Civil Conspiracy).

A claim for civil conspiracy requires evidence of two elements: (1) two or more persons or entities who, by some concerted action, intended to accomplish an unlawful objective for the purposes of harming plaintiff, and (2) plaintiff suffered damages as a result of this act or acts. *Hilton Hotels v. Butch Lewis Productions*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993); *see also* Nevada Jury Instruction 6.9 (citations omitted).

1. Plaintiffs' Civil Conspiracy Claim Lacks Particularity

Under NRCP 9(b), it is not enough to generally allege the elements of civil conspiracy, because "a plaintiff must plead with particular specificity as to 'the manner in which a defendant joined in the conspiracy and how he participated in it.'" *Century Sur. Co. v. Prince*, 265 F. Supp. 3d 1182, 1194 (D. Nev. 2017), *aff'd*, 782 F. App'x 553 (9th Cir. 2019) (quoting *Arroyo v. Wheat*, 591 F. Supp. 141, 144 (D. Nev. 1984)).

/ / /

1 Plaintiffs' claim for civil conspiracy comes nowhere close to satisfying NRCP 9(b)'s particularity requirement. Plaintiffs offer no evidence particularly describing the formation of the conspiracy, and no evidence describing each alleged conspirator's actions. Plaintiffs baldly state that Defendants "acted in concert with each other . . . to invade the privacy of Plaintiffs" [Am. Comp. ¶ 75] without providing any information about when, where, or how each Defendant joined the alleged conspiracy. First, no such evidence exists. It is indisputably legal to hire a licensed private investigator. A licensed[4] private investigator may legally conduct an investigation into the "identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person" or to obtain "evidence to be used before any court, board, officer, or investigating committed"— even when that person happens to be an elected official. NRS 648.012(1)(a) and (e).

In addition, it is undisputed that there is no Nevada law prohibiting the use tracking devices to monitor movements of vehicles and other chattels.[5]

Finally, as John Doe states in his affidavit attached to this Motion, he did not direct the Investigator Defendants to use tracking devices.

Thus, Plaintiffs have not satisfied the particularity requirement of NRCP 9(b).

2. *There is No Evidence of "Concerted Action" to Accomplish an Unlawful Objections.*

Because it is not illegal to hire a private investigator, and because it is not illegal to use tracking devices to monitor a vehicle's movement, it logically follows that there was no "concerted action" between Doe and the Investigator Defendants to accomplish some" unlawful objective." Plaintiffs have thus failed to allege a civil wrong to underlie their civil conspiracy, something that is required by Nevada law. *Goldman v. Clark Cnty. Sch. Dist.*, 471 P.3d 753 (Nev. 2020) (unpublished) ("Because

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[4] *See generally* NRS 648-060-648.1495 (statutory provisions governing the licensure and registration of private investigators).

[5] *See, e.g.*, Assembly Bill 356, March 20, 2023, available at https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10252/Text (proposed legislation to person from installing, concealing or otherwise placing a mobile tracking device in or on the motor vehicle of another person under certain circumstances) (last accessed May 2, 2023).

Goldman's claims of defamation, false light, and intentional infliction of emotional distress lacked merit and were properly dismissed, we conclude the district court also properly dismissed his civil conspiracy claim.") (citing *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998)).

John Doe is therefore entitled to summary judgment on this cause of action.

G. John Doe is Entitled to Summary Judgment on Plaintiffs' Seventh Cause of Action (Aiding and Abetting).

To prevail on aiding and abetting claim, a plaintiff must allege that (1) the primary violator breached a duty that injured the plaintiff, (2) the alleged aider and abettor was aware of its role in promoting [the breach] at the time it provided assistance, and (3) the alleged aider and abettor knowingly and substantially assisted the primary violator in committing the breach. *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 970 P.2d 98, 112 (1998), *overruled in part on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001); *accord Terrell v. Cent. Washington Asphalt, Inc.,* 168 F. Supp. 3d 1302, 1314 (D. Nev. 2016).

1. John Doe Has No Duty to Plaintiffs.

Turning to the first element of aiding and abetting, the logic underpinning this Court's dismissal of Plaintiffs' claim for negligence based on the lack of any "special relationship" giving rise to a duty dooms Plaintiffs' claim against John Doe.

2. John Doe Was Not Aware of Any Role in Promoting Any Alleged Breach.

The aiding and abetting claim fails because there is no evidence that John Doe was aware of his role in any alleged breach. On the contrary, the undisputed fact is that John Doe was not aware of the Investigator Defendants' conduct. John Doe did not request the Investigator Defendants track anyone's vehicle, was not aware they were doing so, and has not had access to any tracking information. [Doe Decl., ¶¶ 12, 13.]

3. John Doe Did Not Knowingly and Substantially Assist in Any Alleged Violation.

Because John Doe did not request or the Investigator Defendants track any vehicles, there is no evidence he knowingly and substantially assisted the Investigator Defendants (or any other actors) in committing any breach.

Plaintiffs try to tap dance around this failing in their claim by alleging that "Defendants . . . actively or ***passively*** participated in the conduct by aiding one or more of the other unnamed Defendants." [Am. Comp., ¶ 81] (emphasis added). But the law does not allow Plaintiffs to allege aiding and abetting based on "passive" conduct. Quite the contrary. The case law is clear that "liability attaches for civil aiding and abetting if the defendant ***substantially*** assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem C. v. Mahlum*, 114 Nev. at 1490, 970 P.2d at 112; *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983) (holding the defendant must have "knowingly and substantially assist[ed] the principal violation"). "Passive conduct" is not the sort of knowing and substantial assistance required by the law. John Doe is entitled to summary judgment on this claim.

H. John Doe is Entitled to Summary Judgment on Plaintiff's Eighth Cause of Action (Declaratory Relief).

Finally, John Doe is entitled to summary judgment on Plaintiffs' claim for declaratory relief. Plaintiffs seek a declaration from this Court that Defendants' conduct violated "NRS 200.575, NRS 200.610-290, NRS 199.300, and the provisions of AB 296 [that is, NRS 41.1347]." [Am. Comp., ¶¶ 90, 92.] Plaintiffs are not entitled to any declaratory relief because the conducted alleged in their Amended Complaint does not violate any of those statutes.

Turning first to the anti-doxxing statute, NRS 41.1347, as discussed in Section IV (C) above, the conduct described in Plaintiffs' Amended Complaint does not qualify as "doxxing" under the plain terms of the statute. Plaintiffs are therefore not entitled to a declaration that John Doe's conduct violated that statute. It simply did not.

The remainder the statutes cited in Plaintiffs' claim for declaratory relief—NRS 200.575, NRS 200.610-200.290, and NRS 199.300—are all criminal statutes which also provide for civil rights of action. When interpreting these sorts of hybrid criminal/civil statutes, the Court must employ the rule of lenity[6] to the extent that there are any ambiguities in the statutes.[7]

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[6] The rule of lenity is "a rule of construction that demands that ambiguities in criminal statutes be liberally interpreted in the accused's favor." *State v. Lucero*, 127 Nev. 92, 99, 249 P.3d 1226, 1230 (2011) (alterations and internal quotation marks omitted).

[7] *WEC Carolina Energy Sols. LLC v. Miller*, 687 F.3d 199, 203–04 (4th Cir. 2012) ("Where . . . our

But there are no real ambiguities because John Doe did not engage in any of the conduct proscribed by the statutes.

NRS 200.575

NRS 200.575 provides that "[a] person who, without lawful authority, willfully or maliciously engages in a course of conduct directed towards a victim that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, commits the crime of stalking." As discussed throughout this Motion, and as Plaintiffs are well aware, there is currently no law in Nevada prohibiting the use of tracking devices. And John Doe neither placed nor authorized the placement of tracking devices on any vehicles or other property. Thus, Plaintiffs have no evidence that John Doe engaged in any particular course of conduct towards them "without lawful authority."

NRS 200.610-690

NRS 200.610-200.690 are the federal analog of the Wiretap Act, 18 U.S.C. § 2510 *et seq.* As the Ninth Circuit very recently explained, both the federal and Nevada Wiretap Acts "prohibit[] in no uncertain terms the interception, disclosure, or use in court of ***oral communications*** obtained in violation" of the law. *Pyankovska v. Abid*, 65 F.4th 1067 (9th Cir. 2023) (emphasis added); *see also Abid v. Abid*, 133 Nev. 770, 771, 406 P.3d 476, 477 (2017) (NRS 200.650 "prohibits the surreptitious recording of nonconsenting individuals' ***private conversations***") (emphasis added).

There are no intercepted or recorded private conversations at issue in this case. And there is nothing in Nevada's Wiretap Act (or any other statute) that criminalizes or otherwise prohibits the use of tracking devices. Plaintiffs simply have no claim arising under the Nevada Wiretap Act.

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analysis involves a statute whose provisions have both civil and criminal application, our task merits special attention because our interpretation applies uniformly in both contexts. Thus, we follow 'the canon of strict construction of criminal statutes, or rule of lenity.'" (citations omitted)); *In re Woolsey*, 696 F.3d 1266, 1277 (10th Cir. 2012) (for hybrid statutes, "the rule of lenity must apply equally to civil litigants to whom lenity would not ordinarily extend"); *Bingham, Ltd. v. United States*, 724 F.2d 921, 924–25 (11th Cir. 1984) (the rule of lenity applies "even though we construe the [statute] in a declaratory judgment action, a civil context").

NRS 199.300

Plaintiffs also have no claim as a matter of law or fact under NRS 199.300. NRS 199.300 provides that:

> A person shall not, directly or indirectly, address any threat or intimidation to a public officer, public employee, juror, referee, arbitrator, appraiser, assessor or any person authorized by law to hear or determine any controversy or matter, with the intent to induce such a person contrary to his or her duty to do, make, omit or delay any act, decision or determination, if the threat or intimidation communicates the intent, either immediately or in the future:
>
> (a) To cause bodily injury to any person;
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> (b) To cause physical damage to the property of any person other than the person addressing the threat or intimidation;
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> (c) To subject any person other than the person addressing the threat or intimidation to physical confinement or restraint; or
>
> (d) To do any other act which is not otherwise authorized by law and is intended to harm substantially any person other than the person addressing the threat or intimidation with respect to the person's health, safety, business, financial condition, or personal relationships.

NRS 199.300(1). Plaintiffs are trying to stick a very square peg into a round hole with this statute, as none of the conduct alleged in their Amended Complaint even comes close to violating NRS 199.300. Here are the predicate acts missing from the Complaint:

- There is no evidence or even allegation in the Amended Complaint that John Doe directly or indirectly addressed any threat to any public officer;
- There is no evidence that John Doe made any such threat "with the intent to induce such a person contrary to his or her duty to do, make, omit or delay any act, decision or determination."
- There is no evidence or allegation in the Amended Complaint that John Doe directly or indirectly communicated an immediate or future intent to cause any bodily injury, damage to property, confine, restraint, or any other unlawful act.

Absent these predicate acts, the allegations Plaintiffs have made don't fit this crime—or any other crime.

Plaintiffs are searching for a way to make John Doe's alleged conduct criminal or tortious under these statutes, but simply cannot because neither the law nor the facts support their effort. John Doe is therefore entitled to summary judgment against Plaintiffs on all of their claims.

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V. CONCLUSION

For these reasons, Defendant John Doe is entitled to summary judgment on each of Plaintiffs' claims.

DATED: May 5, 2023.

ARMSTRONG TEASDALE LLP

By: */s/ Alina M. Shell*

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

DATED: May 5, 2023.

ARMSTRONG TEASDALE LLP

By: */s/ Alina M. Shell*

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Attorneys for Defendant John Doe

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Armstrong Teasdale LLP and that on May 5 , 2023, I electronically filed the foregoing with the Clerk of the Court by using the e-flex filing system which served all parties of record electronically.

/s/ Allie Villarreal
An Employee of Armstrong Teasdale LLP

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Electronically
CV22-02015
2023-05-05 02:28:59 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9652672 : msalazarperez

DECLARATION OF JOHN DOE

I, John Doe, hereby declare:

1. I have personal knowledge of the matters set forth herein, except as to those matters set forth based on information and belief, and as to those matters, I believe them to be true.

2. I am making this declaration in support of my Motion for Summary Judgment.

3. My name is not John Doe; I am using this pseudonym because I would like to remain anonymous.

4. I am a resident of Washoe County. As a resident of the County, I am concerned about potential corruption and malfeasance in local government.

5. On or about March 13, 2022, I received what I believed to be credible allegations regarding alleged improper conduct by Reno City Mayor Hillary Schieve, including alleged bribery and other serious allegations.

6. On or about that same day, I also received what I believed to be credible allegations about then-Washoe County Commissioner Vaughn Hartung pertaining to alleged misconduct involving Washoe County employees, along with other serious allegations.

7. I am not a private investigator.

8. In light of the serious nature of the allegations against Mayor Schieve and Mr. Hartung, and because I wanted to avoid any potential liability for defamation or libel if those allegations turned out to be untrue, I decided to hire a licensed private investigator.

9. I hired David McNeely and 5 Alpha Industries to investigate the allegations against Mayor Schieve and Mr. Hartung.

10. When I hired Mr. McNeely and 5 Alpha Industries, Mr. McNeely assured me that my identity would remain confidential and my name would not be implicated in the investigation.

11. Absent this guarantee of confidentiality, I would not have hired Mr. McNeely and 5 Alpha Industries to investigate the allegations of criminal misconduct by Mayor Schieve and Mr. Hartung.

12. I did not ask or authorize Mr. McNeely and/or 5 Alpha Industries to place a tracking device on Mayor Schieve's vehicle, nor did I ask or authorize them to place a tracking device on Mr.

Hartung's vehicle.

13. I also have never had access to any of the tracking information Mr. McNeely and/or 5 Alpha Industries obtained.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated this 5th day of May, 2023.

/s/ John Doe
John Doe