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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,

v.

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

Defendants.

Case No. CV22-02015
Dept. No. D15

**ORDER PARTIALLY
GRANTING DEFENDANTS DAVID
MCNEELY AND 5 ALPHA INDUSTRIES,
LLC'S MOTION TO DISMISS, OR
ALTERNATIVELY, MOTION FOR A
MORE DEFINITE STATEMENT**

Defendants David McNeely and 5 Alpha Industries, LLC ("McNeely Defendants") filed a Motion to Dismiss, or Alternatively, Motion for a More Definite Statement ("Motion") on March 9, 2023. Having reviewed the Motion and associated briefing and good cause appearing, the Court hereby partially grants the Motion as set forth below.

1 1. Plaintiffs filed an Amended Complaint, asserting eight causes of action against the
2 McNeely Defendants: (1) invasion of privacy – intrusion upon seclusion; (2) invasion of privacy –
3 public disclosure of private facts; (3) violation of NRS Chapter 200, anti-doxxing; (4) negligence;
4 (5) trespass; (6) civil conspiracy; (7) aiding and abetting; and (8) declaratory relief. Pertinent here,
5 Plaintiffs also sought injunctive relief and attorney fees as special damages.

6 2. The Motion sought dismissal for failure to state a claim of Plaintiffs’ claims for
7 invasion of privacy – public disclosure of private facts; violation of NRS Chapter 200, anti-doxxing;
8 negligence; and declaratory relief and requests for injunctive relief and attorney fees as special
9 damages.

10 3. Nevada is a notice-pleading jurisdiction. *See* NRCP 8(a). Under NRCP 12(b)(5), a
11 party may move to dismiss a cause of action for failure to state a claim. A cause of action should be
12 dismissed for failure to state a claim if it “appears beyond a doubt that [the plaintiff] could prove no
13 set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC v. City of N. Las*
14 *Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). In evaluating a motion to dismiss for
15 failure to state a claim, the court must accept all factual allegations in the complaint as true and
16 draw all reasonable inferences in the plaintiff’s favor. *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev.
17 818, 823, 221 P.3d 1276, 1280 (2009). The court, however, need not accept as true legal
18 conclusions cast in the form of factual allegations. *Nevada Yellow Cab Corp. v. State*, 521 P.3d 418,
19 2022 WL 17367603, Dkt. No. 83014 (Nev. Dec. 1, 2022) (unpublished). The allegations “must be
20 legally sufficient to constitute the elements of the claim asserted.” *Sanchez.*, 125 Nev. at 823, 221
21 P.3d at 1280.

22 **Invasion of Privacy – Public Disclosure of Private Facts**

23 4. To maintain this claim, Plaintiffs must “prove that a public disclosure of private facts
24 has occurred which would be offensive and objectionable to a reasonable person of ordinary
25 sensibilities.” *Montesano v. Donrey Media Grp.*, 99 Nev. 644, 649, 668 P.2d 1081, 1084 (1983).

26 5. The Court finds that the allegations in the Amended Complaint satisfy Nevada’s
27 notice-pleading standards to state a claim for invasion of privacy – public disclosure of private
28 facts. Thus, the Motion’s request to dismiss this claim is denied.

1 **Violation of NRS Chapter 200, Anti-Doxxing**

2 6. Plaintiffs’ third cause of action is for violation of AB 296 (2021), which was enacted
3 as NRS 41.1347. This statute “establishes a civil cause of action against a person who commits
4 certain acts commonly referred to as ‘doxxing.’” *See* Nevada Assembly Bill 296, Legislative
5 Counsel’s Digest (2021). “Doxxing” is understood to mean the “‘use of the Internet to search for
6 and publish identifying information about a particular individual, typically with malicious intent.’”
7 *Friends of Animals v. Bernhardt*, 15 F.4th 1254, 1277 (10th Cir. 2021) (quoting Jeffrey Pittman,
8 *Privacy in the Age of Doxxing*, 10 S.J. of Bus. & Ethics 53, 54 (2018)). Under NRS 41.1347, a
9 plaintiff can maintain a private right of action against a person who “disseminates any personal
10 identifying information or sensitive information” of the plaintiff without their consent and subject to
11 several other requirements. *See* NRS 41.1347(1). “Sensitive information” means information
12 concerning “sexual orientation,” “[w]hether a person is transgender or has undergone a gender
13 transition,” and “[t]he human immunodeficiency virus status of a person.” NRS 41.1347(7)(e).
14 “Personal identifying information” is defined as “any information designed, commonly used or
15 capable of being used, alone or in conjunction with any other information, to identify a living or
16 deceased person or to identify the actions taken, communications made or received by, or other
17 activities or transactions of a living or deceased person.” NRS 205.4617(1). The statute gives
18 examples, including name, driver’s license number, social security number, credit card number, date
19 of birth, fingerprints, facial scan identifiers, personal identification number, alien registration
20 number, professional license number, and other similar forms of identifying information. *See id.*

21 7. The Court finds that the information that the Amended Complaint alleges was
22 “disseminated,” including the location of Plaintiffs’ vehicles and photographs of Schieve does not
23 constitute “personal identifying information” or “sensitive information” under the statutory
24 definitions. Plaintiffs’ arguments to the contrary would expand the statutorily defined terms of
25 “personal identifying information” and “sensitive information” beyond what the Legislature
26 prescribed. Thus, this claim is dismissed without prejudice.

1 **Negligence**

2 8. Negligence requires a showing of duty, breach of duty, legal causation, and damages.
3 *Sanchez*, 125 Nev. at 824, 221 P.3d at 1280. The existence of a duty is a question of law. *Scialabba*
4 *v. Brandise Const. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996). Plaintiffs premise their claim
5 for negligence on allegations that the McNeely Defendants violated a duty to protect Plaintiffs from
6 harm from third parties and violated a duty to exercise reasonable care in acting as a private
7 investigator. In their opposition, Plaintiffs clarified that they are not pursuing relief pursuant to a
8 theory of negligence per se.

9 9. As a general rule, a person does not have a duty to protect another from harm by a
10 third party. *Scialabba*, 112 Nev. at 968, 921 P.2d at 930. A duty to prevent harm by a third party
11 arises only where a “special relationship” exists between the parties, such as in the case of a
12 landowner-invitee, businessman-patron, employer-employee, school district-pupil, hospital-patient,
13 and carrier-passenger. *Id.* The rationale behind the imposition of such liability is that the “ability of
14 one of the parties to provide for [their] own protection has been limited in some way by [their]
15 submission to the control of the other.” *Id.* In the “absence of this degree of control, there is no
16 special relationship giving rise to a duty of reasonable care.” *Sparks v. Alpha Tau Omega*
17 *Fraternity, Inc.*, 127 Nev. 287, 297, 255 P.3d 238, 245 (2011).

18 10. The Court finds that here there is no special relationship between the McNeely
19 Defendants and Plaintiffs, *i.e.*, a private investigator and the subject of an investigation, giving rise
20 to a duty of care. Plaintiffs allege that a special relationship exists. (*See Am. Compl.* at ¶ 61). But
21 that is merely a legal conclusion, which is not entitled to the assumption of truth. *See Nevada*
22 *Yellow Cab Corp.*, 521 P.3d at 418. Nevada has not recognized the existence of a special
23 relationship between a private investigator and the subject of the investigation. And, unlike the
24 relationships where Nevada law has recognized a special relationship, such as those identified
25 above, a private investigator-subject of an investigation relationship does not feature any of the
26 elements of control necessary to support the finding of a special relationship.

27 11. Next, as to Plaintiffs’ theory that the McNeely Defendants violated a duty to exercise
28 reasonable care in acting as a private investigator, Plaintiffs rely on *Nakamoto v. Kawauchi*, 418

1 P.3d 600, 617 (Haw. 2018) for the proposition that private investigators owe a duty of care to the
2 subjects of their investigations based on the state’s licensing statute, which in Nevada is NRS
3 Chapter 648. The Amended Complaint, however, does not allege that the McNeely Defendants
4 violated any obligations imposed by NRS Chapter 648. More to the point, *Nakamoto* only supports
5 the legal conclusion that, under a state’s licensing regime of a private investigator, the only duty a
6 private investigator owes to the subject of the investigation is to “conduct an investigation honestly,
7 truthfully, with fair dealing, and to report the results of the investigation accurately, without
8 misrepresenting any facts.” *Nakamoto*, 418 P.3d at 619. This duty arises because the “subjects of
9 the surveillance . . . lives [can be] materially and adversely affected by the defendant’s allegedly
10 false report of their activities.” *Id.* at 618-19 (quoting *Devlin*, 371 A.2d at 394) (“This is particularly
11 so where it is alleged that the intentional rendering of false information actually induced” a divorce
12 lawsuit). Here, there is no allegation that the McNeely Defendants provided false information to
13 their client(s); thus, Plaintiffs’ general negligence theory fails. For these reasons, Plaintiffs’ claim
14 for negligence is dismissed without prejudice. The Court acknowledges Plaintiffs’ argument that
15 discovery may reveal factual predicates to establish a duty and may seek to amend if they have an
16 adequate factual basis to establish a negligence duty in the future.

17 **Declaratory Relief**

18 12. The Amended Complaint appears to seek a declaration that the McNeely
19 Defendants’ conduct violated AB 296 (2021), NRS 200.575, and NRS 199.300.

20 13. Plaintiffs cannot premise their declaratory relief claim on NRS 199.300 or NRS
21 200.575 because neither statute provides for a private right of action. Under Nevada law,
22 declaratory relief is not available to remedy an alleged statutory violation when no private right of
23 action under the statute exists. *See Richardson Constr., Inc. v. Clark Cty. Sch. Dist.*, 123 Nev. 61,
24 65, 156 P.3d 21, 23 (2007) (explaining “that when a statute does not expressly provide for a private
25 cause of action, the absence of such a provision suggests that the Legislature did not intend for the
26 statute to be enforced through a private cause of action”); *Builders Ass’n of N. Nev. v. City of Reno*,
27 105 Nev. 368, 369, 776 P.2d 1234, 1234 (1989) (explaining that the Uniform Declaratory
28 Judgments Act—codified in NRS Chapter 30—“does not establish a new cause of action or grant

1 jurisdiction to the court when it would not otherwise exist”); *Cabral v. Caesars Ent. Corp.*, 467
2 P.3d 638 (Nev. 2020) (unpublished) (“This court will not allow a party to overcome the lack of a
3 private right of action by repackaging an alleged statutory violation as a declaratory relief action.”)
4 (citing *Builders Association*, 105 Nev. at 369-70, 776 P.2d at 1234-35).

5 14. Plaintiffs’ claim for declaratory relief based on AB 296 (2021) fails for the same
6 reasons that Plaintiffs’ claim for violation of AB 296 (2021) fails. Further, to the extent the claim
7 for violation of AB 296 (2021) survived dismissal, the claim for declaratory relief would warrant
8 dismissal as being duplicative and unnecessary. *See El Capitan Club v. Fireman’s Fund Ins. Co.*, 89
9 Nev. 65, 70, 506 P.2d 426, 429 (1973) (providing that a court may “properly exercise its discretion
10 to refuse declaratory relief on the ground that other remedies are available”); Restatement (Second)
11 of Judgments § 33, cmt. c (1982) (“The court should lean toward declining the action if another
12 remedy, such as a coercive action on an existing claim, is plainly available and would have wider
13 res judicata effects.”); *Boca Park Marketplace Syndications Grp., LLC v. Higo, Inc.*, 133 Nev.
14 923, 926, 407 P.3d 761, 764 (2017) (relying on this treatise); *AmSouth Bank v. Dale*, 386 F.3d 763,
15 787 (6th Cir. 2004) (“Where a pending coercive action, filed by the natural plaintiff, would
16 encompass all the issues in the declaratory judgment action, the policy reasons underlying the
17 creation of the extraordinary remedy of declaratory judgment are not present, and the use of that
18 remedy is unjustified.”). For these reasons, Plaintiffs’ claim for declaratory relief is dismissed
19 without prejudice.

20 **Injunctive Relief and Attorney Fees as Special Damages**

21 15. NRCP 12(b)(5) only authorizes a motion for “failure to state a claim upon which
22 relief can be granted.” Because Plaintiffs’ request for injunctive relief and attorney fees as special
23 damages are remedies, not claims, there is no basis to dismiss either under NRCP 12(b)(5). Thus,
24 the Motion’s request to dismiss these forms of relief is denied. The relief sought may be visited
25 after discovery or other motion practice is commenced.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe that on the 13 day of July, 2023, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- STEPHANIE GLANTZ, ESQ.
- JANE SUSSKIND, ESQ.
- BRITTANY LLEWELLYN, ESQ.
- ADAM HOSMER-HENNER, ESQ.
- PHILIP MANNELLY, ESQ.
- RYAN GORMLEY, ESQ.
- CHELSEA LATINO, ESQ.
- ALINA SHELL, ESQ.
- JEFFREY BARR, ESQ.


Carrie Lipparelli
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