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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR STOREY COUNTY**
8

9 **LANCE GILMAN, an individual,**
10 **Plaintiff,**

CASE NO. 18 TRT 00001 1E
DEPT. 2

11 **vs.**

12 **SAM TOLL, an individual; DOES I-V,**
13 **inclusive; and ROE ENTITIES VI-X,**
14 **inclusive,**

15 **Defendants.**
_____ /

16 **ORDER AFTER REMAND**

17 The Supreme Court remanded this matter with instructions to determine whether
18 Toll qualifies for protection under the news shield statute, and to reconsider the decision
19 on the motion to compel in light of the decision on whether Toll qualifies.
20

21 *Does Toll qualify for protection under the news shield statute?*

22 Under Nevada's news media privilege no reporter of any newspaper may be
23 required to disclose in a legal proceeding any information obtained or prepared by the
24 reporter in his professional capacity in gathering, receiving, or processing information
25 for communication to the public, or the source of any information procured or obtained
26 by the reporter. To determine whether Toll qualified for protection under the news
27 shield statute the court must determine whether his blog is a newspaper.

28 The Supreme Court agreed Toll is a reporter. Toll is a reporter because of the
substance of his published articles, namely, reports of facts or alleged facts, opinions,

1
2 commentary, and/or satire.

3 Gilman alleged that from February into December 2017 Toll libeled him in 11
4 articles. There is no question Toll targeted Gilman for criticism, accusations, and satire.
5 Toll began publishing articles on his blog in February 2017. For the five plus months
6 from February 24, 2017 to August 2, 2017, Toll published, in addition to the Gilman
7 articles, fifteen articles on a variety of local current events. A report of recent or current
8 events is news. <https://www.merriam-webster.com/dictionary/news>. Toll published at
9 least one current-event-article every month from February 2017 through August 2017,
10 and multiple articles during some months. Joint Trial Stmt., Exs. g, h, and l-z. Toll
11 regularly, at least monthly, and consistently, every month from February 2017 until at
12 least August 2017, published both Gilman and current-event-articles.

13 The topics of the current-event-articles Toll published include: the arts, sports,
14 elections, an Easter egg hunt, arrests, a criminal preliminary hearing, Lockwood, a life
15 memorial, a musical group, a new sheriff's office car, a county employee's retirement, a
16 wild horse conference, a county job opening, and National Night Out. These articles
17 reported current events and activities—the kind of current events and activities one
18 would expect to see in a small town newspaper. The articles on Toll's blog provided news
19 and other information local readers and others might find useful, interesting, and/or
20 humorous.

21 To prepare to write all 26 articles Toll obtained, gathered, and received
22 information. Some of the information Toll procured and received about Gilman came
23 from unnamed sources. Toll obtained, gathered, received, procured, and processed
24 information, including the information from unnamed sources for the purpose of
25 writing the articles, in other words, in his professional capacity as a reporter. He wrote
26 the articles for communication to the public by publishing them on his blog.

27 Because (1) Toll is a reporter; (2) he regularly and consistently published current-
28 event-articles; (3) the articles published on his blog provided information regarding
current events—news; (4) Toll obtained, gathered, received, procured, and processed

1 information, including the information from unnamed sources, in his professional
2 capacity as a reporter; (5) he wrote the articles for communication to the public by
3 publishing them on his blog; and (6) he did communicate the articles to the public by
4 publishing them on his blog; the Court finds and concludes Toll's blog was the
5 functional equivalent of a traditional printed newspaper and therefore is a newspaper.

6 Based upon the facts in the preceding paragraph, and because the blog is a
7 newspaper, the court further concludes Toll qualified for protection under the news
8 shield statute at the time the allegedly libelous articles were published.

9
10 *Should Gilman be allowed to depose the experts that provided affidavits for Toll's*
11 *motion?*

12 The Court did not find the affidavits submitted by Toll to be helpful in deciding
13 whether Toll qualified for the news media privilege and did not rely on any information
14 contained in the affidavits. Because the Court did not rely on the affidavits submitted by
15 Toll in making its decision, Gilman's request to depose the affiants is denied.

16
17 *Should the decision on the motion to compel be changed?*

18 Because the court concluded Toll qualified for protection under the news shield
19 statute at the time the allegedly libelous articles were published Gilman's motion to
20 compel must be denied.

21
22 *What is the next step?*

23 In the order granting Gilman's request for discovery the court limited the scope of
24 the discovery to information relevant on the issue of whether Toll knew the "resident
25 communications" were false, or whether he acted with a high degree of awareness of the
26 probable falsity of the statement, or had serious doubts as to the publication's truth. The
27 court delayed decision on the Anti-SLAPP special motion to dismiss until Gilman
28 completed his discovery. Gilman deposed Toll. Gilman will not be allowed to receive

1 information about Toll's unnamed sources. The special motion to dismiss is ripe for
2 decision.

3
4 **THE COURT ORDERS:**

5 Gilman's motion to compel is denied.

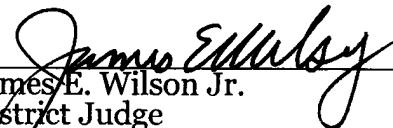
6 Gilman's motion to conduct discovery is denied.

7 Gilman may file by **April 8, 2020**, a supplemental points and authorities on the
8 special motion to dismiss. The purpose of the supplemental points and authorities is to
9 give the parties an opportunity to provide the court with any facts gleaned during Toll's
10 deposition that are relevant to the issue of whether Toll knew the "resident
11 communications" were false, or whether he acted with a high degree of awareness of the
12 probable falsity of the statement, or had serious doubts as to the publication's truth. The
13 content of the points and authorities must address only the issue stated above. If Gilman
14 does not file a points and authorities the court will consider the special motion to
15 dismiss submitted for decision based on the original points and authorities.

16 Opposing points and authorities must be filed by **April 24, 2020**. A reply may
17 be filed **May 8, 2020**.

18 The parties will comply with FJDCR 3.10 and 3.23 or sanctions will be imposed.

19 March 18, 2020.

20 
21 James E. Wilson Jr.
22 District Judge
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1 **CERTIFICATE OF SERVICE**

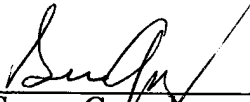
2 I certify that I am an employee of the First Judicial District Court of Nevada; that
3 on March 19, 2020, I faxed and served a copy of this document by placing a true
4 copy in an envelope addressed to:

5 Gus Flangas, Esq.
6 Jessica Peterson, Esq.
7 3275 South Jones Blvd., Suite 105
8 Las Vegas, NV 89146

John Marshall
570 Marsh Ave.
Reno, NV 89509

8 Luke Andrew Busby, LTD
9 316 California Ave., #82
10 Reno, NV 89509

11 the envelope sealed and then deposited in the Court's central mailing basket in the Court
12 Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street,
13 Carson City, Nevada for mailing.

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15 _____
16 Susan Greenburg
17 Judicial Assistant
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