

JOHN L. MARSHALL
Nevada State Bar No. 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnladuemarshall@gmail.com

Electronically Filed
Mar 18 2019 09:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Luke Andrew Busby, Ltd.
Nevada State Bar No. 10319
316 California Ave #82
Reno, NV 89509
775-453-0112
luke@lukeandrewbusbyltd.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAM TOLL,

Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT COURT FOR
THE STATE OF NEVADA, IN AND FOR
STOREY COUNTY, AND THE HONORABLE
JAMES WILSON JR., DISTRICT JUDGE,

Case No.

D.C. Case No
18-trt-00001

Respondents,

and

LANCE GILMAN,

Real Party in Interest,

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Sam Toll is an individual whose primary place of residence is Storey County, Nevada.
2. Mr. Toll is represented in the District Court and this Court by John L. Marshall, Esq. and Luke A. Busby, Esq.

Dated this 18th Day of March 2019:

By: 
JOHN L. MARSHALL
Nevada State Bar No. 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnladuemarshall@gmail.com

Luke Andrew Busby, Ltd.
Nevada State Bar No. 10319
316 California Ave #82
Reno, NV 89509
775-453-0112
luke@lukeandrewbusbyltd.com

TABLE OF CONTENTS

	Page
Table of Contents	iii
Table of Authorities	iv
I. ROUTING STATEMENT.....	1
II. ISSUES PRESENTED.....	2
III. STATEMENT OF THE CASE.....	3
IV. FACTUAL AND PROCEDURAL BACKGROUND.....	4
V. SUMMARY OF ARGUMENT.....	15
VI. STANDARD OF REVIEW.....	16
VII. ARGUMENT.....	17
A. The News Media Privilege Protects Reporters for Online News Sites.....	17
B. The Identity of Toll’s Confidential Sources Are Unnecessary.....	26
C. Mr. Gilman’s Admission That His Primary Residence Is In Washoe County Precludes Him, As A Matter Of Law, From Maintaining A Defamation Action Against Mr. Toll For Similar Statements.....	29
D. Assertion Of The News Media Privilege Does Not Bar Reliance on Information From Confidential Sources.....	32
VIII. CONCLUSION.....	34
NRAP 28.2 ATTORNEY’S CERTIFICATE.....	35
CERTIFICATE OF SERVICE.....	37
VERIFICATION OF LUKE BUSBY, ESQ.....	38

TABLE OF AUTHORITIES

Statutes	Page
NRS 34.170.....	16
NRS 34.330.....	16
NRS 49.275.....	1, 2, 21, 22, 24, 25
NRS 41.650.....	28
NRS 41.660.....	1, 3, 6, 10, 18, 26, 27
NRS 238.020.....	22
42 Pa.C.S.A. 5942.....	25
Cases	
<i>Aspen Fin. Services v. Dist. Ct.</i>	
128 Nev. 635, 289 P.3d 201 (2012).....	17, 19
<i>Comstock Residents Association v. Lyon County</i>	
134 Nev. Adv. Op. 19 (2018).....	24
<i>Connie Javens et al v. John Does 1-6</i>	
Case No. 10550-2016 Court of Common Pleas of Beaver County, PA...	25
<i>Diaz v. Dist. Ct.</i>	
116 Nev. 88, 993 P.2d 50 (2000).....	15, 17-18, 26, 33, 34
<i>Department of Ins. v. Humana Health Ins., Inc.</i>	
112 Nev. 356, 360 (Nev. 1996).....	19
<i>Double Diamond v. Second Jud. Dist. Ct.</i>	
131 Nev. Adv. Op. 57, 354 P.3d 641 (2015).....	17
<i>Gallagher v. City of Las Vegas</i>	
114 Nev. 595, 959 P.2d 519 (1998).....	22
<i>Jackson v. Groenendyke</i>	
132 Nev. Adv. Op. 25, 369 P.3d 362 (2016).....	16

<i>Las Vegas Sun, Inc. v. Eighth Judicial Dist. Court In & For County of Clark</i>	
104 Nev. 508, 761 P.2d 849 (1988).....	15, 19, 33, 34
<i>Metabolic Research, Inc. v. Ferrel</i>	
693 F.3d 795, 796 n.1 (9th Cir. 2012).....	28
<i>McKay v. Board of Supervisors</i>	
102 Nev. 644, 648 (Nev. 1986).....	19
<i>Moody v. Manny's Auto Repair</i>	
110 Nev. 320, 871 P.2d 935 (1994).....	19
<i>New York Times Co. v. Sullivan</i>	
376 U.S. 254 (1964).....	10
<i>Newton v. National Broadcasting Co.</i>	
109 F.R.D. 522, 529 (1985).....	18
<i>O'Grady v. Superior Court</i>	
139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d 72 (2006).....	24
<i>Shoen v. Shoen</i>	
5 F.3d 1289 (9th Cir. 1993).....	23
<i>State of Nevada v. Michael Winters</i>	
March 24, 2014 Order on Motions to Quash Criminal Subpoenas	
Duces Tecum and Motion for Order to Produce. Case No. C265475....	24
<i>State v. Quinn</i>	
117 Nev. 709, 30 P.3d 1117 (2001).....	22
<i>Smith v. School Dist. of Philadelphia</i>	
112 F.Supp.2d 417 (E.D.Pa. 2000).....	32
<i>Too Much Media, LLC v. Hale</i>	
206 N.J. 209, 20 A.3d 364 (2011).....	25

<i>Van Buskirk v. Cable News Channel, Inc.</i>	
284 F.3d 977 (9th Cir. 2002).....	31
<i>Valley Health Sys., LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark</i>	
127 Nev. 167, 252 P.3d 676 (2011).....	17
<i>Virgin Valley Water Dist. v. Johnson et al.</i>	
March 24, 2014 Order on Motions For Civil Subpoena Duces Tecum.	
Case No. A-11-636082. Eighth Judicial Dist. Ct.....	24
<i>Wardleigh v. Second Judicial Dist. Court In & For County of Washoe</i>	
111 Nev. 345, 891 P.2d 1180 (1995).....	17
<i>Welfare Div. v. Washoe Co. Welfare Dep't</i>	
88 Nev. 635, 503 P.2d 457 (1972).....	19
Court Rules	
NRAP 17.....	1, 2
NRCP 37.....	12

I. ROUTING STATEMENT

The Supreme Court should accept this writ petition because it raises issues of first impression and statewide importance in applying the Nevada News Media privilege, NRS 49.275, to reporters for online news sites in the context of an NRS 41.660 Anti-SLAPP Special Motion to Dismiss. In NRS 49.275, the Nevada Legislature gives journalists, working in a wide range of media, protection from disclosing their confidential sources. The District Court correctly found that Petitioner Sam Toll is a reporter and his online news site published news of regional and local interest. Nevertheless, the District Court held the News Media privilege inapplicable because the news site in question was online only and not a printed publication. The District Court's Order at issue in this case (Appx. Vol. 12 at 2480) conflicts directly with District Court rulings from the Eighth Judicial District holding that the News Media statute protected a reporter of similar online-only news site: Appx. Vo. 10 at 2247, 2253. This Court needs to act to prevent discovery that would cause privileged information to irretrievably lose its confidential nature making a later appeal ineffective.

Pursuant to NRAP 17(a)(11), this writ petition involves issues of first

impression of statewide importance for which the District Courts have reached opposite conclusions. The Court should determine that significant overriding public policy issues overcome the presumption in NRAP 17(b)(14) that the Court of Appeals typically considers pre-trial writ proceedings challenging discovery orders and accept this Petition.

II. ISSUES PRESENTED

Did the District Court err by finding the Nevada News Media privilege, NRS 49.275, inapplicable to reporters for online-only news sites and order Mr. Toll to disclose his confidential news sources when:

(A) Neither the Nevada News Media privilege nor the policy it implements differentiates between reporters whose news stories disseminated in print or online;

(B) Discovery was inappropriately granted and exceeded the authority under Nevada's Anti-SLAPP statute because no finding of necessity for the identity of Toll's confidential sources was made;

(C) Real Party in Interest (and SLAPP Plaintiff below) admits his primary residence is in Washoe County and therefore cannot, as a matter of law, maintain a defamation claim regarding Mr. Toll's good faith belief in Mr.

Gilman's lack of residency in Storey County; and

(D) Finally, does Petitioner's assertion of the News Media privilege bar reliance on information derived from confidential sources to counter a claim of actual malice?

III. STATEMENT OF THE CASE

This is an original petition for writ of prohibition or mandamus challenging the District Court's Order (Appx. Vol. 12 at 2480) compelling a reporter for an online news site to disclose his confidential sources. Before the First Judicial District Court, Storey County; Honorable James E. Wilson, Jr., District Judge, Case No. 18-trt-00001.

IV. RELIEF REQUESTED

Petitioner Sam Toll requests that the Supreme Court accept this Petition and issue a writ of prohibition or mandamus commanding the District Court to (1) reverse its Order compelling Mr. Toll to reveal his confidential news sources, and (2) either dismiss this action or rule on Mr. Toll's submitted NRS 41.660 Anti-SLAPP Special Motion to Dismiss.

///

///

IV. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Sam Toll is a reporter and editor for the online news site thestoreyteller.online (hereinafter “Storey Teller”). The Storey Teller is a thorn in the side of, among others, Real Party in Interest Mr. Lance Gilman, who owns the Mustang Ranch brothel, is a principal in the Tahoe Research and Industrial Center (“TRIC”), and an elected member of the County Commission for Storey County, the locale of both the brothel and TRIC. *See* Affidavit of Lance Gilman, Appx. Vol 2 at 291 describing his background and experience, generally.

The Storey Teller publishes a wide range of news articles about a variety of topics of interest to Storey County residents and others, including news articles, editorials, and satirical stories about the conflicts of interests posed by Mr. Gilman’s multiple ownership interests and his governmental position. *See* Appx. at Vol. 10 from 2166 to 2229 for an index of Storey Teller articles by title and date. The Storey Teller also provides information about arts and culture, the weather, and events in Virginia City in addition to a podcast where Mr. Toll interviews local figures on topical issues.

According to Mr. Toll, he gathers information for his news stories as

follows:

I conduct research for the pieces I write in the Teller by gathering information from a variety of sources. This includes using the internet to access places like the Storey County Website, Las Vegas Sun, RGJ, the Nevada Revised Statutes, Nevada Appeal, Transparent Nevada and others. I attend and actively participate in the Storey County Commissioner meetings regularly as well as the Storey County Planning Department and the Virginia City Tourism Commission meetings. I was selected as a public witness during the effort to recall the Sheriff. I attend many many other public gatherings that generate public interest stories. I filed over 50 public records requests in 2017 and set up a database on January 1, 2018 to manage them. As of January 18th, 2018, I have filed 9 public records requests in that database. I have a working relationship with almost every elected official in Storey County and receive anonymous tips from employees of the County and other residents. I also conduct interviews with folks in the field with my "podcast in a backpack" equipment.

While Gilman is a frequent topic of my writing in the Teller, this is the case because of his stature in the County and his frequent participation in newsworthy events. I often write about other topics and other public figures in Storey County.

Declaration of Sam Toll, Appx. Vol. at 79.

Stung by Mr. Toll's criticism, Mr. Gilman sued alleging a single count of defamation *per se*. Appx. Vol. 1 at 4. Mr. Gilman filed his Complaint in Washoe County District Court on December 2, 2017 (an interesting venue choice given Petitioner Defendant Toll resides in Storey County and Mr. Gilman claims to). Mr. Gilman alleged eight categories of defamatory statements about Mr. Gilman in the Storey Teller: (1) that Mr. Gilman engaged in "reverse graft;" (2) that Mr.

Gilman committed perjury when he filled out official paperwork pertaining to his residency; (3) that Mr. Gilman lied about his residency in Storey County; (4) that Mr. Gilman did not follow the law when the Mustang Ranch was licensed; (5) that Mr. Gilman would reimburse Storey County for the recall election of the Sheriff; (6) that Mr. Gilman receives special consideration regarding rules and regulations; (7) that Mr. Gilman received land from Storey County for zero consideration; and (8) that a trip Mr. Gilman took to Washington D.C. was not work related and was illegitimate. See Appx. Vol. 1 at 4-9.

Mr. Toll filed his Answer on December 28, 2017, denying that the alleged statements were defamatory or reported with actual malice. Appx. Vol. 1 at 11. After Mr. Toll moved to transfer venue, the case was assigned to the Honorable Judge James Wilson Jr. in Storey County District Court. See Appx. Vol. 3 at 19.

On February 1, 2018 Mr. Toll filed an Anti-SLAPP Special Motion to Dismiss pursuant to NRS 41.660, arguing that Mr. Gilman's case is based upon Toll's good faith communications in furtherance of his right to petition or the right to free speech in direct connection with an issue of public interest. Appx. Vol. 1 at 21. On February 21, 2018, Mr. Gilman filed his Opposition to Anti-SLAPP Special Motion to Dismiss Per NRS 41.660. See Appx. Vol. 2 at 220.

On February 26, 2018, Mr. Toll filed his Defendant's Reply to Opposition to Anti-SLAPP Special Motion to Dismiss. *See* Appx. Vol 3 at 462. Pursuant to NRS 41.660(3)(f), a Court must rule on an Anti-SLAPP Motion within 20 judicial days after the motion is served upon a plaintiff.

On April 9, 2018, sixty-seven days after Mr. Toll served the Anti-SLAPP Motion on Mr. Gilman, the Court entered an Order Granting Anti-SLAPP Special Motion to Dismiss in Part, Allowing Limited Discovery, and Staying Further Proceedings (hereinafter "Dismissal Order"). Appx. Vol. 3 at 514. The District Court dismissed all categories of statements, except one that related to statements regarding whether Mr. Gilman actually resided in Storey County. Appx. Vol. 3 at 514. As to the dismissed categories of statements, the District Court found them to be either non-defamatory statements, actually true statements, clearly satirical statements, or non-actionable statements that could not be proven true or false. *Id.*, generally.

The remaining "resident communications" revolve around statements made by Mr. Toll in news stories in the Storey Teller asserting or inferring his opinion that Mr. Gilman does not reside where Mr. Gilman claims to reside. In an October 16, 2018 post on the Storey Teller entitled, "*Teller Filed Criminal*

Complaint with Storey DA, Sheriff” (Appx. Vol. 1 at 108-125), Mr. Toll details his investigation and the evidence for his opinion that Mr. Gilman’s claim to reside in a double-wide trailer behind the Mustang Ranch Brothel “stretches credulity.” See Appx. at Vol. 1 at 109. Mr. Toll also asserted his basis for his opinion that Mr. Gilman cannot legally live at the Mustang Ranch:

Nowhere on Mustang property is it zoned residential. So nobody can live there. And nobody can claim they live there. In order to live there, the property must be zoned..... Residential.

Appx. Vol. 1 at 110.

In the October 16, 2018 criminal complaint attached to Mr. Toll’s October 16, 2018 article, Mr. Toll states:

It is my **contention** that by supplying this address, both Mr. Thompson and Mr. Gilman **appear** to be guilty of perjury. Further, as they do not reside in Storey County, they are exempt and prohibited from holding office of any kind in Storey County.

Appx. Vol. 1 at 111 (emphasis added).

It is common knowledge to anyone paying attention that Lance Gilman, who has multiple residence properties in Washoe county and is extremely wealthy, does not bunk with Kris Thompson in a doublewide trailer.

Id.

In the Second Declaration of Sam Toll (Appx. Vol. 3 at 503), Mr. Toll further detailed the basis for his opinion that Mr. Gilman does not reside at the

Mustang Ranch Brothel:

My opinion that Gilman does not live in Storey County is a result of my investigation into the matter, including: reports from a confidential informant that states that Gilman leaves the Mustang Ranch and heads towards Reno every evening around 8:00 pm, the fact that where Gilman claims to live is not zoned for multi-family residences, the fact that the double wide in which Gilman claims to live is right behind a brothel, and the fact that it just doesn't make sense that Gilman, one of the richest people in the State, lives in a double wide (as defined in a response by the Storey County Assessor to a public records request I made inquiring about the structure) trailer with two bunk mates, Kris Thompson and Jennifer Barnes-Milsap, who I discovered list the same address as their residence in a response to a public records request on registered voting addresses I made with the Storey County Clerk.

Appx. Vol. 3 at 504.

Analyzing Mr. Gilman's remaining resident communications claim, the Court concluded in its Dismissal Order that: (1) Mr. Toll's statements regarding Mr. Gilman not residing in Storey County were made to procure an electoral action, result, or outcome; (2) were made in direct connection with an issue of public concern; (3) were made in a place open to the public or on a public forum; and (4) were made in furtherance of the right to free speech in direct connection with an issue of public concern. Appx. Vol 3 at 527-8.

The Court then found that Mr. Toll had investigated Mr. Gilman's claimed place of residence and "proved by a preponderance of the evidence that

he did not knowingly make a false statement when he published the resident communications.” *Id.*

The District Court next reviewed the evidence presented by Mr. Gilman regarding the elements of Mr. Gilman’s remaining defamation claim.¹ The District Court concluded:

Gilman has not produced prima facie evidence that Toll knew any of his resident communications were false or acted with a high degree of awareness of the probable falsity of the statement or had serious doubts as to the publication's truth. The Court concludes Gilman failed to produce prima facie evidence that Toll published the resident communications with actual malice.

Id. at 533.

Notwithstanding its finding that the extensive proffer by Mr. Gilman already presented failed to meet his burden of proof, the Court stayed the matter pending discovery under NRS 41.660(4). The District Court found that Mr. Gilman needed additional information to meet his burden “that is not reasonably available without discovery.” *Id.* at 533-534. The District Court thus, just over eleven months ago, stayed consideration of Toll’s Anti-SLAPP Special Motion to Dismiss, provided Mr. Gilman with 30 days to conduct discovery and

¹ Gilman admits he is a general public figure under *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Appx. Vol. 2 at 222: “The Plaintiff is well aware he is public official and public figure...”

ordered the parties thereafter to file supplemental briefs opposing and supporting Mr. Toll's Motion to Dismiss. *Id.*

Mr. Gilman thereafter noticed the deposition of Mr. Toll and deposed him on May 4, 2018. Appx. Vol. 3 at 598. Mr. Gilman's attorney questioned Mr. Toll extensively regarding his background; the origins, purposes, and the news, opinion and satirical pieces that make up the Storey Teller; his relationship to the County Sheriff; his attitude towards Mr. Gilman; his investigations into the location of Mr. Gilman's claimed residence, its type, its location, the applicable zoning and bunkmates, and interviews with Mr. Toll's confidential sources (see *Id.* at 598 to 688); i.e., the basis for Mr. Toll's good faith belief that Mr. Gilman does not live where he claims to live, i.e. in a double-wide behind the Mustang Ranch brothel in Storey County. *Id.* at 640, 679.

Mr. Gilman's attorney asked Mr. Toll hundreds of questions, approximately seven of which asked him to disclose the names and or identities of his news sources. In response to these questions, Mr. Toll asserted the News Media privilege and refused to answer. *Id.* at 598 *et seq.* generally.

After taking the deposition of a Storey County zoning official, Mr. Gilman thereafter filed a 30-page Supplemental Opposition pursuant to the District Court's Dismissal Order, that focused exclusively on his burden to establish

prima facie evidence of Mr. Toll's alleged actual malice regarding the residency statements. Appx. Vol. 5 at 920. The brief contained 31 points that allegedly established Mr. Toll's bad faith, citing extensively to Mr. Toll's deposition and the deposition of the Storey County official. *Id.* Mr. Toll filed a Supplemental Reply demonstrating that Mr. Gilman's proffer did not constitute the necessary evidentiary showing to defeat Toll's Anti-SLAPP Special Motion to Dismiss. Moreover, Mr. Toll's filing included Mr. Gilman's admission that his primary residence was in fact in Washoe County. Appx. Vol 5 at 930.

Without making any effort to satisfy mandatory meet and confer requirements under NRCP 37(a)(2)(B), Mr. Gilman filed a Motion to Compel Mr. vToll to disclose his sources, arguing that the News Media privilege did not apply. Appx. Vol. 4 at 690. Toll opposed.² Appx. at Vol. 4 at 740. Without ruling on the necessity of this request by Mr. Gilman for even more discovery, the District Court denied Toll's "Request for Submission of the Supplemental Opposition and Reply" pending resolution of Gilman's "Motion to Compel" (Appx. Vol. 7 at 1261), issued an "Order for Evidentiary Hearing," and required

² Mr. Toll argued the Motion to Compel should be denied because Gilman's attorney failed to meet and confer with opposing counsel regarding this discovery motion as required by NRCP 37(a)(2)(B) and First Judicial District Court Rule 15(11). The District Court never addressed this argument.

a mini-trial on the applicability of the assertion of News Media privilege (Appx. Vol. 7 at 1263).

At the District Court's request, the parties prepared and filed a voluminous "Joint Hearing Statement" on July 13, 2018 with witness and exhibit lists, attached exhibits, and supplemental points and authorities. Appx. Vols. 7, 8, 9, 10, and 11 at 1265-2413. Mr. Toll retained and prepared several expert witnesses to testify as to his status as a reporter and the newspaper function performed by the online Storey Teller. *See* Appx. at Vol. 7 at 1270.

On August 8, 2018, the District Court issued an "Order Re Evidentiary Hearing on Motion to Compel" (Appx. Vol. 7 at 2414) providing a schedule for the hearing and finding that Mr. Gillman would not be permitted to call any witnesses at the evidentiary hearing because he failed to include a description of the testimony of the witnesses expected to testify. *Id.* at 2414-2415.

After the evidentiary hears was rescheduled twice at Mr. Gilman request, Mr. Toll filed a "Motion to Submit Motion to Dismiss and Termination of Proceedings" based on Mr. Gilman's admission that his primary residence was in Washoe County. Appx. Vol. 12 at 2444. On March 4, 2018, eleven days before the evidentiary hearing was to take place, the District Court vacated the

evidentiary hearing order and issued an “Order on Plaintiff’s Motion to Compel, for Sanctions, to Extend Discovery Period, and for Summary Judgment and Order Vacating Hearing”, granting in part Gilman’s Motion to Compel. Appx. Vol. 12 at 2480. Notice of entry of the Court’s “Order on the Motion to Compel” was filed on March 11, 2019. Appx. Vol. 12 at 2454. As of the date of filing of this Petition, the District Court has not ruled on Mr. Toll’s “Motion to Submit Motion to Dismiss and Termination of Proceedings.”

In granting Mr. Gilman’s Motion to Compel, the District Court found the following: Mr. Toll is a reporter and the Storey Teller publishes news articles of local and regional concern. The Storey Teller is not printed and therefore not a newspaper as referenced in the News Media privilege statute. Appx. Vol. 12 at 2480. The Court held that Mr. Toll was not covered by the News Media privilege for the source of any statement Mr. Toll published before he joined the Nevada Press Association in August 2017. *Id.* at 2487.

The Court concludes that because Toll does not print the Storey Teller the Storey Teller is not a newspaper and, therefore the news media privilege is not available to Toll under the “reporter of a newspaper” provision of NRS 49.275.

Appx. Vol. 12 at 2485

Apparently because the District Court found Mr. Toll to be at least

partially covered by the privilege, the District Court's Order on the Motion to Compel states: "Toll will not be allowed to rely on the privileged information as a defense under *Diaz v. Dist. Ct.*, 116 Nev. 88, 101, 993 P.2d 50 (2000), citing *Las Vegas Sun*, 104 Nev. 13 08, 514, 761 P.2d at 853-54 (1988)" Appx. Vol. 12 at 2488. The District Court did not provide an analysis of this issue in the Order on the Motion to Compel, so it is unclear what "privileged information" the Court refers to above.

Mr. Gilman thereafter noticed a second deposition of Mr. Toll for March 25, 2019, to force disclosure of Toll's confidential news sources. Mr. Toll then filed a "Motion for Stay" with the District Court requesting a stay of discovery pending review by this Court. *See* Appx. at Vol. 12 at 2560 and 2572. As of the time of filing this Petition, the District Court has granted a request for order shortening time but has not ruled on Toll's Motion to Stay Discovery.

V. SUMMARY OF ARGUMENT

This Court should reverse the District Court's Order compelling Mr. Toll to disclose his confidential sources. The language and intent of the Nevada Media privilege applies to Mr. Toll's reporting and online dissemination of news. The District Court's requirement that the news on an online news site be

physically printed to qualify as a “newspaper” is inconsistent with this Court’s formulations of the privilege’s purpose and the inclusive language of the statute.

This Court should also reverse the District Court’s Order because no demonstration of need as to the identity of those sources has been made to qualify for discovery under the Anti-SLAPP statute.

This Court should reverse the District Court’s Order because the underlying claim for defamation fails as a matter of law. Mr. Toll’s statements mirror those made by Real Party in Interest himself, Mr. Gilman.

Finally, the Court should reverse the District Court’s Order precluding Mr. Toll’s use of information from confidential sources to aid in his defense because it is not supported by this Court’s prior precedents.

VI. STANDARD OF REVIEW

This Court reviews questions of law de novo, including questions of statutory interpretation. *Jackson v. Groenendyke*, 132 Nev. Adv. Op. 25, 369 P.3d 362, 365, 2016 WL 1381495 (2016). Whether the News Media privilege applies to Mr. Toll is a question of law.

Where there is no plain, speedy, and adequate remedy at law, extraordinary writ relief is justified. NRS 34.170 and NRS 34.330. Writ relief is

available to prevent discovery that would cause privileged information to irretrievably lose its confidential nature and thereby render a later appeal ineffective. *Aspen Fin. Services v. Dist. Ct.*, 128 Nev. 635, 639–40, 289 P.3d 201, 204, (2012) citing *Valley Health Sys., LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 127 Nev. 167, 170, 252 P.3d 676, 678, 127 (2011) and *Wardleigh v. Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 345, 349, 891 P.2d 1180, 1183, (1995). If Mr. Toll is forced to reveal his confidential sources for his news stories, then any later appeal will be rendered ineffective.

The Court may consider a petition for a writ when an important issue of law needs clarification. *Double Diamond v. Second Jud. Dist. Ct.*, 131 Nev. Adv. Op. 57, 354 P.3d 641, 643, 2015 WL 4598332 (2015). Whether the News Media privilege applies to online versions of traditional media outlets is an important and heretofore unaddressed issue of law in Nevada.

VII. ARGUMENT

A. The News Media Privilege Protects Reporters for Online News Sites

Nothing in the language or purpose of Nevada’s News Media privilege requires the reporter’s disseminating media to be physically printed to qualify for protection. In *Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev.

88, 99, 993 P.2d 50, 57, this Court declared:

Th[e News Media] privilege arises when a journalist gathers information within his or her professional capacity for the purpose of dissemination. NRS 49.275. The policy rationale behind this privilege is to enhance the newsgathering process and to foster the free flow of information encouraged by the First Amendment to the U.S. Constitution.

Indeed, “[o]f the approximately 26 States that have adopted shield laws, none is more encompassing or more protective to the press than is Nevada’s.” *Newton v. National Broadcasting Co.*, 109 F.R.D. 522, 529 (1985).

The Nevada’s News Media privilege states, in full:

NRS 49.275 **News media.** No reporter, former reporter or editorial employee of **any** newspaper, periodical or press association or employee of any radio or television station may be required to disclose any published or unpublished information obtained or prepared by such person in such person’s professional capacity in gathering, receiving or processing information for communication to the public, or the source of any information procured or obtained by such person, in any legal proceedings, trial or investigation:

1. Before any court, grand jury, coroner’s inquest, jury or any officer thereof.
2. Before the Legislature or any committee thereof.
3. Before any department, agency or commission of the State.
4. Before any local governing body or committee thereof, or any officer of a local government. [Emphasis added.]

Statutes should be interpreted to effectuate the intent of the legislature in enacting them; the interpretation should be reasonable and avoid absurd results.

Las Vegas Sun v. District Court, 104 Nev. 508 (1988) overruled on other grounds by *Aspen Fin. Services, Inc. v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 129 Nev. 878 (2013).

The leading rule for the construction of statutes is to ascertain the intention of the legislature in enacting the statute, and ***the intent, when ascertained will prevail over the literal sense***. The meaning of words used in a statute may be sought by examining the context and by considering the reason or spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and the policy of the law may also be involved to aid in its interpretation, and it should always be construed so as to avoid absurd results.

Department of Ins. v. Humana Health Ins., Inc., 112 Nev. 356, 360 (Nev. 1996) citing *Moody v. Manny's Auto Repair*, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994) (quoting *Welfare Div. v. Washoe Co. Welfare Dep't*, 88 Nev. 635, 637-38, 503 P.2d 457, 458-59 (1972)) (emphasis added). Words in a statute should be given their plain meaning unless this violates the spirit of the act. *McKay v. Board of Supervisors*, 102 Nev. 644, 648 (Nev. 1986).

When Nevada's News Media privilege was first adopted 1969, the Legislature articulated all the then-available mass media news dissemination sources: text (newspapers and periodicals, e.g., magazines, newsletters, journals), video (television), and audio (radio). Since that

time, the internet has dramatically altered the media landscape.³ The internet allows all forms of news dissemination to be combined in one location and distributed to millions.

Indeed, the future of journalism lies not on paper or on airwaves but online. According to the Pew Research Center, as of September of 2017, online news is consumed nearly as much as television news and is the only category of news that is growing in terms of use by U.S. adults.⁴ In 2018, The New York Times had 4 million total subscribers.⁵ Most of them read the paper online. In 2017(the most recent year of data), the New York Times had 3.6 million total subscribers just over 1 million subscribed to its Sunday hard copy edition, and half that number, approximately 540,000 subscribed to its daily hard-copy paper.⁶ Some historically printed newspapers, like the Seattle Post-Intelligencer,

³ See News of the world To survive online, newspapers are seeking a worldwide audience, Mar 17th 2012, at <https://www.economist.com/business/2012/03/17/news-of-the-world>, accessed on March 14, 2019.

⁴ Americans' online news use is closing in on TV news use, Sept. 7, 2017 at <http://www.pewresearch.org/fact-tank/2017/09/07/americans-online-news-use-vs-tv-news-use/>, accessed on March 14, 2019.

⁵ See New York Times Tops 4 Million Mark in Total Subscribers, at <https://www.nytimes.com/2018/11/01/business/media/new-york-times-earnings-subscribers.html>, accessed March 14, 2019.

⁶ See The New York Times Company 2017 Annual Report, at https://s1.q4cdn.com/156149269/files/doc_financials/annual/2017/Final-2017-Annual-Report.pdf, accessed on March 14, 2019.

now exist only online.⁷ Radio stations have websites containing text, visual and audio elements; television stations the same as do cable channels, newspapers, and magazines. For example, NBC Channel 4 in Reno has a News 4 website with text versions of its video stories.⁸ In other words, current online news dissemination meets all of the elements identified in NRS 49.275 – text, visual, and audio – just not necessarily in the same physical manifestation as existed in 1969, i.e., printed paper and television or radio waves vs. online-newspapers, online-TV, or internet-radio that are accessed through wired (co-axial or fiber optic) or wireless technologies all of which use radio frequencies). The question before the Court is whether the practice of journalism in Nevada must conform to the exact same 1969 physical formats available in order to qualify for the protections offered by News Media privilege.

The District Court answered this question in the affirmative. It held that reporters for printed newspapers could receive protection, but not their counterpart reporters who publish the news exclusively online. The District

⁷ “The newspaper was founded in 1863 as the weekly Seattle Gazette, and was later published daily in broadsheet format. It was long one of the city's two daily newspapers, along with The Seattle Times, until it became an online-only publication on March 18, 2009.” from https://en.wikipedia.org/wiki/Seattle_Post-Intelligencer, accessed March 19, 2019.

⁸ See <https://mynews4.com/>, accessed on March 16, 2019.

Court ignored the Legislature’s use of the all-encompassing pronoun “**any**” newspaper in NRS 49.275. The District Court relied instead upon a dictionary definition of newspaper from 2002, before the widespread advent of widespread online newspapers as described above (Appx. Vol. 12 at 2484), and upon a false analogy to NRS 238.020. NRS 238.020 specifies requirements that legal notices must be in newspapers that are “printed and published” on defined schedules. *Id.* The statute does not define what a newspaper is, it only sets forth minimum requirements for publishing legal notices.

The News Media privilege does not require that newspapers be printed as well as published. Rather than resolve any ambiguity in the language of the News Media statute in accordance with the intent of the legislature, the District Court deemed the matter of interpreting the News Media privilege to be a legislative issue and reached an untenable result: because Mr. Toll does not print the Storey Teller, the Storey Teller is not a newspaper and therefore the news media privilege is not available.⁹ Appx. Vol 12 at 2485.

The District Court’s cramped construction fails to give meaning to the

⁹ A Court’s interpretation of a statute should be in line with what reason and public policy would indicate the legislature intended and should avoid absurd results. *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120, 2001 WL 1082507 (2001) citing *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599–600, 959 P.2d 519, 521 (1998).

language and purpose of the statute. The Legislature use of the pronoun “any” covers the maximum extent possible all types of newspapers, periodicals, press associations, and radio and television stations. Whether a newspaper or periodical is read online or in print, it still is a newspaper or periodical. Because we read Upton Sinclair’s *The Jungle* on an e-reader does not make the work less a book or a work of investigative reporting¹⁰; because we listen to National Public Radio via an online stream on our computers or smart phones should not disqualify its reporters from protection under the News Media privilege. “What makes journalism journalism is not the format but its content.” *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993).

Of equal importance, the purpose of the News Media privilege, “to enhance the newsgathering process and to foster the free flow of information,” will not be served by artificially limiting its reach only to news modes available 40 years ago. The Legislature has already provided the policy: broadly protect journalists’ who work in the news media from disclosing their confidential sources. Disqualifying the majority of news gathering and dissemination simply because it exists online directly contradicts and hinders that objective. See

¹⁰ “*The Jungle*” was first published in serial form in a newspaper in 1905 before being published as a novel in 1906. See *The Fictitious Suppression of Upton Sinclair’s The Jungle*, Christopher Phelps, available at the History News Network at <http://hnn.us/articles/27227.html>, accessed on March 16, 2019.

Comstock Residents Association v. Lyon County, 134 Nev. Adv. Op. 19 (2018) (applying the basic policy set by the Legislature in the Nevada Public Records Act to new communication technologies).

Indeed, two Eighth Judicial District Court cases have decided this same issue contrary to the District Court. These courts held that the Mesquite Citizen, an online-only news source, similar to the Storey Teller, and its reporter Barbara Ellestad, qualified for the protections in NRS 49.275 in seeking to quash a subpoena that sought to reveal confidential sources for news stories. *See Virgin Valley Water Dist. v. Johnson et al*, March 24, 2014 Order on Motions For Civil Subpoena Duces Tecum. Case No. A-11-636082. Eighth Judicial Dist. Ct.; and *State of Nevada v. Michael Winters*, March 24, 2014 Order on Motions to Quash Criminal Subpoenas Duces Tecum and Motion for Order to Produce. Case No. C265475. Eighth Judicial Dist. Ct. at Appx. Vo. 10 at 2247 and at 2253, respectively.

Court of other jurisdictions also reject the District Court's approach. In *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d 72, 79 (2006), the Court held that under California's shield law, the phrase "newspaper, magazine, or other periodical publication," was applicable to a news-oriented website that gathered news. Such sites differ from traditional periodicals only in their tendency, which flows directly from the advanced technology they

employ, to continuously update their content. “[T]here is no apparent link between the core purpose of the law, which is to shield the gathering of news for dissemination to the public, and the characteristic of appearing in traditional print, on traditional paper.” *Id.* at 101. See also *Too Much Media, LLC v. Hale*, 206 N.J. 209, 20 A.3d 364 (2011) (finding online news sites can qualify for protection under New Jersey’s News Media privilege).

In *Connie Javens et al v. John Does 1-6*, Case No. 10550-2016 Court of Common Pleas of Beaver County, PA, a trial court quashed a subpoena served on a web-only news source under Pennsylvania’s shield law. Pennsylvania’s shield law, codified in 42 Pa.C.S.A. 5942, is substantially similar to Nevada’s shield law codified in NRS 49.275. See the *Connie Javens et al v. John Does 1-6* order at Appx. Vol. 12 at 2425.

The District Court correctly found that Mr. Toll is indeed a reporter based on his articles containing, “reports of facts or alleged facts, opinions, commentary, and/or satire related to events in Storey County.” *Id.* at 2483. The District Court erred in finding that Toll was not covered by the News Media privilege until he joined the Nevada Press Association in August of 2017 simply because Toll publishes his articles in an online format instead of in a traditional printed newspaper. The District Court’s finding is based on a reading of the term “newspaper” in the statute that is directly contrary to the

intent of the legislature in passing its News Media privilege law, “to foster the free flow of information encouraged by the First Amendment to the U.S. Constitution.” *Diaz*, 116 Nev. at 99.

B. The Identity of Toll’s Confidential Sources Are Unnecessary

Even if the Court finds the News Media privilege inapplicable, discovery of Toll’s confidential sources did not meet statutory requirements. Nevada’s Anti-SLAPP statute specifically provides a mechanism for requesting discovery after an Anti-SLAPP motion has been filed, but only if such information is necessary to respond to the Anti-SLAPP Motion itself. NRS 41.660(4) states:

Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

Under NRS 41.660(4), a plaintiff may only conduct discovery to be able to respond to an Anti-SLAPP special motion and meet its burden to show *prima facie* evidence of a probability of prevailing on the claim. Here, the District Court first held that Mr. Gilman’s proffered evidence failed to meet his burden. Rather than dismiss the claim, however, the District Court permitted Mr. Gilman to have another shot, to engage in discovery where (1) Mr. Gilman had already filed a response to the Mr. Toll’s Anti-SLAPP Motion, and (2) a prior

finding that Mr. Gilman did not support with any “competent, admissible evidence” his theories of Mr. Toll’s actual malice. (Mr. Gilman had argued that the Mr. Toll’s reporting was not supported by facts but was instead inspired by alleged ill motives, made-up assertions, and overwrought imagination.) See Appx. Vol. 3 at 533-534.

The purpose of the Anti-SLAPP statute is to require a plaintiff who sues a person for a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern to make an evidentiary showing that his claims have merit *before* burdening the defendant with discovery and trial. *See* NRS 41.660(3)(e)) The Court should not have permitted Mr. Gilman conduct to conduct discovery in the first place because Mr. Gilman failed to make his required *prima facie* evidentiary showing in his opposition to Mr. Toll’s Anti-SLAPP Motion to Dismiss. Following discovery, the District Court then failed to determine whether additional discovery was actually necessary, notwithstanding Mr. Toll’s assertion of the News Media privilege at his deposition.

Mr. Gilman’s claim to entitlement of even more discovery hangs on speculation about what he might be able to prove once deposes Mr. Toll again

and completes other discovery on Mr. Toll's sources. By forcing Mr. Toll to engage in protracted and expensive litigation, the District Court has thwarted the purpose of Nevada Anti-SLAPP statute: "The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over one's adversary by increasing litigation costs until the adversary's case is weakened or abandoned." *Metabolic Research, Inc. v. Ferrel*, 693 F.3d 795, 796 n.1 (9th Cir. 2012).

In dismissing the vast majority of Gilman's defamation claim, the District Court's Dismissal Order laid bare the purpose behind Mr. Gilman's lawsuit against Mr. Toll: to punish Mr. Toll for criticizing Mr. Gilman and to deter Mr. Toll and other journalists from publicly criticizing Mr. Gilman, which is exactly the type of vexatious litigation that Nevada's Anti-SLAPP law is intended to prevent. *See* Appx. at Vol. 2 at 262-263.

Moreover, Nevada's Anti-SLAPP statute grants *immunity from suit*, not just immunity from liability after extensive and oppressive discovery.

A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern *is immune from any civil action* for claims based upon the communication.

NRS 41.650 [*emphasis added*].

Thus, the District Court's failed to properly apply the provisions of Nevada's Anti-SLAPP statute and dismiss Mr. Gilman's lawsuit when it concluded he failed to make a *prima facie* showing of actual malice. Mr. Gilman's lawsuit will have its intended effect: to substantially divert Toll's time, attention, and resources towards defending this law suit rather from his reporting about happenings in Storey County.

C. Mr. Gilman's Admission That His Primary Residence Is In Washoe County Precludes Him, As A Matter Of Law, From Maintaining A Defamation Action Against Mr. Toll For Similar Statements

In paragraph 42 of his 2018 Affidavit (Appx. Vol 2 at 295), Gilman states:

Contrary to the Defendant's assertions, *I do live in Storey County, Nevada*. My address is 5 Wild Horse Canyon and *I have lived there for around twelve years or more* [*i.e., 2006*]. [*Emphasis added*]

Gilman, however, has represented the opposite to Washoe County tax officials. The Washoe County Assessor's webpage for a property located at 199 Steptoe Lane in Washoe Valley, APN No. 055-282-02, dated May 17, 2018, indicates that this Washoe County property is owned by L. Lance Gilman and that 199 Steptoe Lane is also Mr. Gilman's mailing address. Appx. Vol 12 at 2470. Under the "Tax Cap Status" box in the document, it states that the property is a "Low Cap Qualified Primary Residence."

Appx. Vol 12 at 2476 is a certified copy of the July 1, 2008 Tax Cap statement for 199 Steptoe Lane in Washoe Valley, APN No. 055-282-02 from the Washoe County Assessor, which was executed by Mr. Gilman. That document is a property tax declaration from Washoe County that contain a filled-in bubble that states, “This property will be occupied as my **primary residence** on July 1, 2008.” [*Emphasis added*] The signature box in the document in Appx. Vol 12 at 2476, which is signed by Mr. Mr. Gilman, states that Mr. Gilman affirms under penalties pursuant to law that the information in the document is true and accurate and that Mr. Gilman will notify the Washoe County Assessor if the property is no longer to be used as Mr. Gilman’s primary residence. Mr. Gilman has not done so. *See* Appx. Vol. 5 at 1059, fn 4.¹¹

Thus, during the time Mr. Gilman alleges that he was living in Storey

¹¹ Other public records from Washoe County show that Gilman has at least as of 2016 affirmatively claim the 199 Steptoe Ln. property as his primary residence. Appx. Vol 12 at 2478 is a certified copy of a June 15, 2016 Grant, Bargain, and Sale Deed for APN No. 055-282-02 from the Washoe County Recorder, where Gilman transferred ownership of the 199 Steptoe Ln. property from a family trust into his own name. The document at Appx. Vol 12 at 2470 indicates that the recording and tax statements are to be mailed to Mr. Gilman at 199 Steptoe Ln. in Washoe Valley, which also shows that Gilman was claiming the Steptoe Ln. property as his residence as late as 2016.

County in his Affidavit (Appx. Vol. 2 at 295), Mr. Gilman executed at least one document (Appx. Vol 12 at 2476) directly claiming that his primary residence was in Washoe County. Furthermore, Mr. Gilman executed a deed in 2016 which lists his mailing and tax address in Washoe County. *See* Appx. Vol 12 at 2478.

Nor does Mr. Gilman contest that he claimed and continues to claim his Washoe County address as a primary residence. In his Opposition to Motion to Dismiss and Termination of Proceedings, Mr. Gilman admits that the document he executed under penalty of law, “indicated that the [Washoe County] property would be occupied as his primary residence.” Appx. Vol. 12, at 2495-2496. Nowhere in the brief does Mr. Gilman contest that he has ever informed Washoe County that his primary residence is now in another county.

Thus, Mr. Gilman is in a tight spot. On the one hand, he claims his Washoe County property as his primary residence. On the other hand, he is suing Mr. Toll for allegedly defamatory statements that his primary residence is someplace other than Storey County. No cause of action for defamation lies where the defendant’s statements mirror the plaintiff’s own words. *See Van Buskirk v. Cable News Channel, Inc.*, 284 F.3d 977, 981 (9th Cir. 2002) (a plaintiff

could not maintain defamation action based upon reports that were consistent with plaintiff's own version of events); see also *Smith v. School Dist. of Philadelphia*, 112 F.Supp.2d 417, 429 (E.D.Pa. 2000) (a plaintiff cannot be defamed by the use of his own words).

Mr. Gilman's claim should fail as a matter of law because Mr. Toll's statement that Mr. Gilman does not reside in Storey County mirrors Mr. Gilman's own representations in sworn tax statements.

D. Assertion of The News Media Privilege Does Not Bar Reliance on Information From Confidential Sources

In its Order on Motion to Compel, District Court directed that "Toll will not be allowed to rely on the privileged information as a defense under *Diaz v. Dist. Ct.*, 116 Nev. 88, 101993 P.2d 50 (2000), citing *Las Vegas Sun*, 104 Nev. 1308, 514, 761 P.2d at 853-54 (1988)." Appx. Vol. 12 at 2488. In *Diaz*, this Court stated that once a media litigant has invoked the News Media privilege to resist discovery, a defendant may not later rely on the privileged information as a defense, citing *Las Vegas Sun, Inc. v. Eighth Judicial Dist. Court In & For County of Clark*, 104 Nev. 508, 514, 761 P.2d 849, 853 (1988). In *Las Vegas Sun*, the Court concluded:

When a plaintiff attempts to discover the basis of a news story

which is felt to defame him or her, and the news media defendant relies on the shield law to resist discovery, the defendant will be deemed to have thereby elected to protect the confidentiality of that information. Once the defendant has made such an election, confidentiality may not thereafter be waived whenever it may suit the defendant's convenience; and the defendant may not thereafter rely on it for a defense at trial.
Id. at 514.

Under the *Diaz* and *Las Vegas Sun* decisions, Toll should only be precluded from calling as witnesses in his defense those sources whose identities he chose to withhold from disclosure due to the News Media privilege. He should not be precluded from relying on the disclosed statements of confidential sources as one piece of evidence to support his subjective, good-faith belief in the residency communications about Mr. Gilman, as the Court's Order implies.

///

///

///

///

///

///

///

VIII. CONCLUSION

The District Court's ruling puts at risk of disclosure the confidential sources of journalists who publish their news stories via the internet. For the foregoing reasons, Mr. Toll asks this Court to issue a writ of prohibition or mandamus directing the District Court to vacate the District Court's order requiring disclosure of his confidential sources and dismiss this action outright or order the District Court to rule on Mr. Toll's Motion to Dismiss as submitted.

Respectfully submitted March 18, 2019:

By:  _____
JOHN L. MARSHALL
Nevada State Bar No. 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnladuemarshall@gmail.com

Luke Andrew Busby, Ltd.
Nevada State Bar No. 10319
316 California Ave #82
Reno, NV 89509
775-453-0112
luke@lukeandrewbusbyltd.com
Attorneys for the Defendant

NRAP 28.2 ATTORNEY'S CERTIFICATE

I, Luke Busby, counsel to Sam Toll, do hereby certify that:

(1) I have read the foregoing document;

(2) To the best of my knowledge, information and belief, the foregoing document is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(3) To the best of my knowledge, information and belief, the foregoing document complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion regarding matters in the record be supported by a reference to the page and volume number, if any and if available, of the appendix where the matter relied on is to be found as applicable;

(4) The foregoing document complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page- or type-volume limitations stated in Rule 32(a)(7) as applicable as the document contains 8027 words and 812 lines of text in Garamond 15 pt. font.

///

///

///

(signature of following page)

Respectfully submitted March 18, 2019:

By: 
JOHN L. MARSHALL
Nevada State Bar No. 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnladuemarshall@gmail.com

Luke Andrew Busby, Ltd.
Nevada State Bar No. 10319
316 California Ave #82
Reno, NV 89509
775-453-0112
luke@lukeandrewbusbyltd.com
Attorneys for the Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 25(c), I certify that on the date indicated below, I caused service to be completed by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;

_____ sending via Federal Express (or other overnight delivery service);

xxxx depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

_____ delivery via electronic means (fax, eflex, NEF, etc.)

a true and correct copy of the foregoing pleading addressed to:

GUS W. FLANGAS

JESSICA K. PETERSON

Flangas Dalacas Law Group

3275 South Jones Blvd. Suite 105

Las Vegas, NV 89146

702-307-9500

F - 702-382-9452


The First Jud. Dist. Ct. - Storey County

Honorable James E Wilson Jr.

26 S. B St.

Virginia City, NV 89440

775-847-0969

By: 
Luke Busby

Dated: 3/18/2019

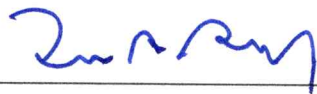
VERIFICATION OF LUKE BUSBY, ESQ.

STATE OF Nevada)
) ss:
COUNTY OF Washoe)

I, Luke Busby, do hereby swear and affirm under penalty of perjury that each and every assertion contained within this Verification are true to the best of my knowledge and belief.

1. I am the affiant and I am competent to make this testimony;
2. I have personal knowledge of each and every fact attested to herein;
3. I, along with John Marshall, Esq., am counsel for Petitioner, Sam Toll;
4. I have read the foregoing Petition;
5. All factual statements in the Petition are either within affiant's personal knowledge and true and correct or supported by citations to the appendix accompanying the Petition; and
6. The exhibits in the appendix to the Petition are true and correct copies of the original documents.

FURTHER AFFIANT SAYETH NAUGHT.

By: 
Luke Busby, Esq.

SUBSCRIBED and SWORN to before me

this 18th day of March, 2019

NOTARY PUBLIC

