

Case No. 18-trt-00001-1c

Dept. No. II

JOHN L. MARSHALL
SBN 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnmarshall@charter.net

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

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

LANCE GILMAN,

Plaintiff(s),

vs.

SAM TOLL,

Defendant(s).

**DEFENDANT'S REPLY TO OPPOSITION TO
ANTI-SLAPP SPECIAL MOTION TO DISMISS**

FILED

2018 FEB 26 PM 4:53

STOREY COUNTY CLERK

BY WB
DEPUTY

COMES NOW, SAM TOLL, ("Plaintiff" or "Toll"), by and through the undersigned counsel, and hereby files the following Reply to the February 21, 2018 Opposition to Anti-SLAPP Special Motion to Dismiss Per NRS 41.660 filed by Plaintiff LANCE GILMAN ("Plaintiff" or "Gilman").

This Reply is based upon the following Memorandum of Points and Authorities, the pleadings and papers filed herein, and any oral argument on this matter the the Court should require.

MEMORANDUM OF POINTS AND AUTHORITIES

I. *Background*

Plaintiff Lance Gilman is suing Defendant Sam Toll to stop him from investigating and reporting critically on, *inter alia*, Mr. Gilman's role as both Storey County Commissioner and principal and an owner of the Tahoe Research and Industrial Center ("TRIC") and the Mustang Ranch brothel, two entities with substantial interactions with the Storey County government. Because Plaintiff's lawsuit is exactly the type of litigation intended to cease public participation, Defendant Toll filed an Anti-SLAPP Special Motion to Dismiss setting forth under NRS 41.660 why dismissal is appropriate given his good faith reporting on matters of public concern concerning a public figure.

Plaintiff has now opposed the Defendant's motion. Gilman's Opposition largely ignores the barrier created by Nevada's Anti-SLAPP statute as the Plaintiff provides no evidence that Toll made any of the statements at issue with knowledge that they were false.

1 The Opposition also provides no defense to the Defendant's argument that many of the
2 statements about which Gilman complains are largely statements of Toll's opinion, and as
3 such cannot be proven false, or are satire, and as such are not intended to be statements of
4 fact. The only substantive evidence presented by the Plaintiff in addition to copies of the
5 Defendant's blog posts is the Affidavit of the Plaintiff, attached to the Opposition as
6 Exhibit 3, which largely describes Gilman's opinion about the issues Storey County issues
7 Toll writes about in his blog and stating that he was defamed by Toll.
8
9
10

11 Nevada's Anti-SLAPP statute sets a high bar to the ability to bring suit for good faith
12 communications in furtherance of the right to petition or the right to free speech in direct
13 connection with an issue of public concern, requiring that a Plaintiff show not only that a
14 complained about statement is false, but that such a statement was made with knowledge of
15 its falsehood. *See* NRS 41.637. Gilman did not in his Opposition, and cannot, make any
16 such showing in this case.
17
18

19 **II. *Argument***

20 In his Opposition, Gilman argues three main points: (1) the issues raised by
21 Defendant Toll are not matters of public interest (Opp at 23 line 19); (2) the statements
22 made by Toll are false and therefore they could not have been made in good faith (Opp at
23 22 line 14); and (3) Toll made the statements with actual malice because he allegedly does
24 not like Gilman (Opp at 43 line 9). Defendant addresses each argument seriatim.
25
26

27 ///
28

1 A. ***The Challenged Statements Concern Matters of Public Interest***

2
3 As described in the Defendant's Motion, this case arises from the Defendant's public
4 criticism of the conflict of interest inherent in Gilman's position as a Storey County
5 Commissioner where he is duty bound to act in the interests of his constituents, and his
6 position as a principal and Director of Marketing for the Tahoe Reno Industrial Center
7 ("TRIC") and the Mustang Ranch Brothel, where he is duty bound to act in the interests of
8 these business owners. This fact is apparent from the Affidavit of Lance Gilman in which
9 Gilman seamlessly changes his voice and perspective between that of an elected official and
10 that of a private businessman as if there is no incompatibility between these two positions,
11 without ever acknowledging that some might reasonably conclude that Gilman uses the
12 powers of government, through his position as a Storey County Commissioner, to the
13 benefit of Gilman and his associates, even where Storey County and TRIC engage in
14 negotiations about infrastructure deals worth millions of dollars. Affidavit of Lance
15 Gilman, Exhibit 3 to the Opposition, at page 5-7, describing a deal for a pipeline to supply
16 water to TRIC.) Gilman even goes so far as to state in his Affidavit that it is "completely
17 false" that a conflict of interest exists. *Id.* at 2:18.

18
19 The Defendant is not the first person to raise concerns or investigate the conflict
20 between Gilman's role as a Storey County Commissioner and his private business interests
21 in Storey County. In April of 2016, Gilman signed a Stipulated Agreement before the
22 Nevada Commission on Ethics in Case No. 14-73 that Third-Party Request for Opinion
23
24
25
26
27
28

1 concerning Gilman in his capacity as a Storey County Commissioner. A copy of the
2
3 Stipulated Agreement is attached hereto as Exhibit 1. The Stipulated Agreement arose from
4
5 allegations from Storey County Sheriff Antinoro that, among other things, Gilman, "Used
6
7 his position as County Commissioner to gain an unwarranted advantage for himself by
8
9 furthering his private business interests (NRS 281A.400(2))" (See Exhibit 1 at 1). The
10
11 Stipulated Agreement contains the following language under Terms of
12
13 Agreement/Conclusions of Law in Section (d) on page 5:

14
15 As a public officer, the conflict of interest provisions of the Ethics Law apply
16
17 to Gilman's conduct. Specifically, Gilman must not use his position in
18
19 government to secure or grant unwarranted privileges, preferences or
20
21 advantages for himself or any business in which he has a significant pecuniary
22
23 interest (NRS 281A.400(2))

24
25 And in Section (g) on page 7:

26
27 Although the Commission finds no violation of the Ethics Law in this matter,
28
the Commission takes this opportunity for outreach and education to advise
Gilman and other similarly situated public officers regarding the implications
of the Ethics Law in the context of public statements made at public meetings.
Public officers should not make statements during the "Board Comment" or
similar agenda item reserved for official business to secure or grant
unwarranted privileges, preferences, exemptions or advantages for themselves,
their business interests, or persons to whom they have a commitment in a
private capacity. Such conduct violates NRS 281A.400(2).

29
30 The Plaintiff argues that the Defendant has failed to show by the preponderance of
31
32 the evidence that the statements at issue were good faith communications in connection
33
34 with an issue of public concern. Opposition at 21:1). The Plaintiff argues that the
35
36 Defendant fails to address the guiding principles set forth in the *Piping Rock* case as adopted
37
38 by the Nevada Supreme Court in *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267,

1 2017 WL 462251 (2017) and that instead, the Defendant merely takes it for granted that his
2
3 communications were issues of public interest. Opposition at 24 :14.

4 The *Shapiro v. Welt* case analyzed whether a conservator for his father's estate whose
5 detractors published a website website that contained several allegations regarding the
6 conservator's past debts, criminal history, and alleged mistreatment of his father, in addition
7 to the conservators personal information, was an issue of public concern. Thus, in *Shapiro*
8 *v. Welt*, there was a genuine issue as to whether the matters addressed were matters of
9 public concern, as the case involved what was essentially a family matter, not a public figure
10 and official such as Gilman. This case involves Toll's political writing about Gilman, who
11 by his own description is a public figure, and his actions in his capacity as a Storey County
12 Commissioner.
13
14
15

16 The Plaintiff claims that the Defendant has done nothing more than assert there is a
17 broad and amorphous public interest in his statements without "one iota" of analysis or
18 evidence. Opposition at 26:6. For each allegedly defamatory statement raised in the
19 Plaintiff's complaint, the Defendant directly and specifically described in the Motion why
20 the statements involve matters of public interest: (1) The "reverse graft" statement involves
21 the public interest because it involved the Storey County Commission's consideration of
22 whether to finance the building of a pipeline to TRIC (Motion at 9:18); (2) the statements
23 about the Plaintiff committing perjury are issues of public interest, i.e. whether Gilman, a
24 public official, told the truth in documents intended to show that he resides in Storey
25
26
27
28

1 County (Motion at 11:1); (3) statements of the Defendant that the Plaintiff represented to
2 the Defendant that the Plaintiff would reimburse the expenses incurred by Storey County,
3 Nevada for the recall election of the Sheriff of Storey County are satirical, i.e. not
4 statements of fact subject to the public interest, but also relate to an issue of public interest,
5 i.e. the recall effort involving the Sheriff of Storey County (Motion at 13:12); (4) The
6 statements of the Defendant that the Plaintiff receives special considerations regarding the
7 rules and regulations are an issue of public concern because whether public officials are
8 being held to the same standards under the law as everyone else is plainly such an issue
9 (Motion at 14:15); (5) The statements of the Defendant that the Plaintiff is receiving land
10 from Storey County with zero consideration, i.e. land deals between Storey County and
11 TRIC are a matter of public interest (Motion at 15:3); (6) The statements of the Defendant
12 that the Plaintiff's trip to Washington, D.C. partly paid for by Storey County, was not work
13 related and not a legitimate, reimbursable trip is also a matter of public concern, i.e. whether
14 government officials are abusing the public's trust by using taxpayer money to fund
15 personal vacations.
16
17
18
19
20
21

22 Applying the *Piping Rock* standard, there is no reasonable question as to whether the
23 statements at issue relate to issues of public concern. The allegedly defamatory statements
24 all relate to subjects that are are not mere curiosity about Gilman; they relate to Gilman's
25 actions as a public official, which inarguably is something of concern to a substantial
26 number of residents of Storey County. The challenged statements and the asserted public
27
28

1 interest are directly related, as the statements are critical of Gilman's actions as a public
2 official. The focus of the Toll's conduct is the public interest alone, and not an effort to
3 gather ammunition for private controversy, as there is no private controversy between Toll
4 and Gilman, i.e. despite the baseless assertions in the Opposition (at 42:19) and Gilman's
5 Affidavit (Exhibit 3 to the Opp. at 2:6) to the contrary. There is no evidence of any private
6 relationship between Gilman and Toll. Again, each allegedly defamatory statement about
7 which Gilman complains is about Gilman's conduct while a Storey County Commissioner,
8 and as such the allegations do not relate to any "private information" about Gilman which
9 Toll made public.
10

11 Also, the fact that Gilman's conduct as a Storey County Commissioner and as a
12 businessman in Storey County has already been the subject of a complaint and
13 investigation by the Ethics Commission, as shown in Exhibit 1, and as discussed above,
14 undermines the Plaintiff's position that the matters about which Toll writes are not issues
15 of public concern. Further, as shown in the Second Declaration of Sam Toll, attached
16 hereto as Exhibit 2, a substantial percentage of the residents of Storey County actually read
17 the Teller. According to Toll, during a normal week the Teller website now receives
18 between 800 and 1000 visitors. Given that there are only about 4500 people in Storey
19 County, it's reasonable to conclude that a large percentage of Storey County residents visit
20 the Teller website and are interested in the issues that he is writing about, and that such
21 issues are of concern to a substantial number of residents of Storey County.
22
23
24
25
26
27
28

B. *Defendant's Statements Were Made In Good Faith*

Nevada has adopted its Anti-SLAPP law for the specific purpose of preserving and protecting the use and expression of rights guaranteed by the First Amendment to openly and freely criticise public officials such as Gilman by engaging in good faith communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern. *See* NRS 41.665. Further, as described in the Defendant's underlying Motion, the communications about which the Plaintiff complains fit squarely in the category of protected communications described in NRS 41.637(1-4).

The Plaintiff argues at length that the Defendant made false and defamatory statements about the Plaintiff (Opp. at 7:2). The Plaintiff further argues, "Because the Defendant cannot show by a preponderance of the Evidence that his statements were truthful, that by itself also ends the inquiry and the Court must deny the Motion." (Opp. at 44:22). Pursuant to NRS 41.637, a good faith communication is one which is "truthful or is made without knowledge of its falsehood." The Plaintiff states in footnote 5 of Opposition:

The Defendant does not assert that he made the statement without knowledge of its falsehood. To the contrary, he asserts that the statements he made were true. [Emphasis in original.]

Although it is unclear which specific statement, described only as "the statement," of Toll is being referred to in footnote 5 of the Opposition quoted above, in paragraph 15 of Exhibit 8 to the Motion Toll very clearly states that he believes that the statements he made

about Gilman are the truth. In Toll's Second Declaration, attached hereto as Exhibit 2, Toll provides further grounds for his belief in the accuracy of the statements in question. By operation of logic, Toll cannot make a statement thinking that statement is the truth and at the same time make the same statement with knowledge of its falsehood: "... the phrase "made without knowledge of its falsehood" has a well-settled and ordinarily understood meaning. The declarant must be unaware that the communication is false at the time it was made." *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267, 2017 WL 462251 (2017) interpreting NRS 41.637, which defines, "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."

For each category of defamatory statement described in the Plaintiff's Complaint, in the Opposition presents the Plaintiff's opinion that the statements are "false and defamatory." (See variously Opp. at 7-18 and the Plaintiff's Affidavit) As described in the Defendant's Motion, the question for the Court is not whether the statements are objectively true, but rather, that the statements are good faith communications made in furtherance of the Defendant's right to petition or the right to free speech in direct connection with an issue of public concern. As indicated in paragraph the Declaration of Sam Toll, in Exhibit 8 to the Motion, with the exception of the satire piece in Attachment 4 and the anonymous submission in Attachment 5, Toll believes that the statements that made about Gilman in Attachments 1, 2, 3, 6, 7, 8, 9, and 10 to the Declaration are the

1 truth. The Plaintiff simply presents no evidence in the Opposition that shows that the
2 Defendant knowingly made any false statement about the Plaintiff because the Plaintiff
3 spends much of its nearly 50 page Opposition arguing the wrong issue, i.e. whether Toll's
4 statements are "the truth." (See Opp. at 10:4, at 36:25) Indeed, as demonstrated below,
5 many of the issues about which Gilman complains are not even issues of fact, but are
6 political issues for which there is no objective "truth," but rather varying opinions and
7 perspectives on political subjects about which reasonable people may (and do) disagree.
8
9
10

11 Attached hereto as Exhibit 2 is the Second Declaration of Sam Toll, which describes
12 in detail numerous factual inaccuracies in the Opposition and in Gilman's Affidavit, and
13 specifically describes the grounds for Toll's belief in the statements he made in the Teller
14 about which Gilman complains.
15

16 C. *The Plaintiff Has Failed to Show A Probability of Merits Success*
17

18 Given that Toll has established his burden by a preponderance of the evidence, that
19 Gilman's claim is based upon Toll's good faith communications in furtherance of the right
20 to petition or the right to free speech in direct connection with an issue of public concern,
21 the burden the shifts to Plaintiff to establish, with prima facie evidence, a probability of
22 prevailing on the claim. NRS 41.660(3)(b). Prima facie means, "the same burden of proof
23 that a plaintiff has been required to meet pursuant to California's Anti-Strategic Lawsuits
24 Against Public Participation laws of the effective date of this act." See NRS 41.665(2). The
25 California authority in question requires significantly more than what Gilman presents in his
26
27
28

Opposition. A plaintiff demonstrates that the complaint is both legally sufficient and supported by sufficient prime facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. *Burrill v. Nair*, 217 Cal. App. 4th 357, 379 (Cal. App. 3d Dist. 2013) (citing *Oasis West Realty, LLC v. Goldman*, 13 Cal. 4th 811, 820). Gilman's Opposition fails at this task.

1. ***The Identified Statements Are Not Actionable***

It is well established that statements of opinion or political hyperbole are not actionable: "... the question is not strictly whether the published statement is fact or opinion ... [r]ather, the dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact." (*Id.* at p. 385, 10 Cal.Rptr.3d 429. *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 10 Cal.Rptr.3d 429 citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

"[S]atirical, hyperbolic, imaginative, or figurative statements are protected because 'the context and tenor of the statements negate the impression that the author seriously is maintaining an assertion of actual fact.' " (*Ibid.*) "Whether a statement declares or implies a provably false assertion of fact is a question of law for the court to decide [citations], unless the statement is susceptible of both an innocent and a libelous meaning, in which case the jury must decide how the statement was understood." *Ruiz v. Harbor View Cmty. Ass'n*, 134 Cal. App. 4th 1456, 1471, 37 Cal. Rptr. 3d 133, 144 (2005), as modified on denial of reh'g (Jan. 11, 2006), as modified (Jan. 13, 2006) quoting *Franklin v. Dynamic Details, Inc.* (2004)

1 116 Cal.App.4th 375, 10 Cal.Rptr.3d 429.

2
3 An opinion or legal conclusion is actionable only “ ‘if it could reasonably be
4 understood as declaring or implying actual facts capable of being proved true or false.’ ”
5 (*Franklin, supra*, 116 Cal.App.4th at p. 386, 10 Cal.Rptr.3d 429.) An opinion is not
6 actionable if it discloses all the statements of fact on which the opinion is based and those
7 statements are true. (*Id.* at p. 387, 10 Cal.Rptr.3d 429.) In determining whether a statement
8 is actionable opinion, Courts examine the totality of the circumstances, starting with the
9 language of the allegedly defamatory statement itself. (*Id.* at p. 385, 10 Cal.Rptr.3d 429.)
10
11

12 “[T]he fact that society may find speech offensive is not a sufficient reason for
13 suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a
14 reason for according it constitutional protection.” *Simon & Schuster, Inc. v. Members of New*
15 *York State Crime Victims Bd.* (1991) 502 U.S. 105, 118, 112 S.Ct. 501, 116 L.Ed.2d 476.
16
17

18 Gilman first identifies a series of statements of Toll stating he believes Gilman does
19 not reside in Storey County. *See* Opp. at 7-9. Toll based his opinion on Gilman residency
20 based on the following facts: (1) Gilman is wealthy and owns at least one residence in
21 Washoe County, (2) his claimed residence is a double-wide trailer, (3) that a friend also
22 claims an adjacent residence in the same building, (3) that is adjacent to a brothel and in
23 close proximity to the pool, (4) that a multifamily dwelling is not permitted under the
24 applicable agricultural land use designation. *See* Exhibit 2, Second Declaration of Sam Toll.
25
26 Based on these facts, Toll stated that his opinion that Gilman actually does not reside in
27
28

Storey County and petitioned state and local authorities to prosecute Gilman for contending otherwise in legal documents submitted to Storey County as part of Gilman's application to run for the Storey County Commission.

Next, Gilman complains of Toll's statement that Gilman and the "TRICsters" received "reverse graft". Opposition at 9-11. Toll labeling of the underlying relationship between TRIC and Storey County as "reverse graft" is non-actionable for a number of reasons. First, Toll's label is opinion as set forth in Toll's Motion (at 20-23). Gilman does not address this argument. Second, the statement, given that context of the overall political battle for financing of development improvements at TRIC, can only be taken as non-actionable hyperbole. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990) (citing *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 53-55, 108 S.Ct. 876, 99 L.Ed.2d 41 (1988)). Indeed, Gilman spends most of his Opposition and Affidavit arguing that these various deals between TRIC and Storey County will be good for Storey County, demonstrating that this is a debate on fiscal policy, about which reasonable minds can (and do) differ but cannot be basis for a defamation action.

Gilman also complains (Opp. at 12-13) of an anonymously submitted piece posted by Toll posing a question: "Why should Lance, the man who's been a virtual Santa Claus (at least he tries to convince people he is) for Storey County, have to follow the law?" See Exhibit 8 to the Motion at Attachment 5. As explained in the Second Declaration of Sam Toll in Exhibit 2 attached hereto, Toll investigated the question of whether Gilman wanted

1 to follow the law by researching the Ethics Commission Stipulated Agreement attached
2
3 hereto as Exhibit 1 and the Nevada Supreme Court's decision in Case No. 65104, in which
4 the Supreme Court affirmed Gilman's loss to a lender and concluded that Gilman breached
5 the covenant of good faith and fair dealing and that Gilman failed to fight the revocation of
6 the license of the Wild Horse, and concluded that the facts show that he did not. See
7 Exhibit 2 at para 11.
8

9
10 Next, Gilman argues that Toll stated that the County transferred to him personally
11 land within TRIC for free which Gilman then turned around to sell at a profit to the State
12 of Nevada (a two mile section of the USA parkway) or other companies (strips of land
13 adjacent to building sites). Opposition at 13-16. Plaintiff argues that this statement is false
14 and then proceeds to vigorously defends the the admittedly free transfers to TRIC by claim
15 an array of otheser benefits the County could receive. *Id.* The statement quoted by
16 Gilman, however, never claims the land went to Gilman personally. Rather, Toll wrote,
17 "repeatedly reconveying Storey County property to **TRIC** with zero consideration or
18 payment that **TRIC** has turned around and included the free property into lucrative land
19 deals" Opposition at 13, quoting Ex. 8 (emphasis added). Since Toll never stated the
20 property went to Gilman personally for free, this statement is not actionable as to Gilman.
21
22
23
24

25 Moreover, Gilman admits in the Opposition the truth of Toll's statement :

26 As part of the [USA Parkway] transaction, Storey County reconveyed a small
27 segment (less than 2 mi) of USA Parkway which TRI transferred in turn
28 transferred [sic] to NDOT. . . . ¶ . . . The concept was that both Storey
County . . . would give up some consideration in order to secure the Telsa
deal. . . . ¶ . . . In order to facilitate a company coming in to TRI who desires

are [sic] pad or site tha slightly encroaches into the drainage area, the county deeds the small encroached area back to to TRI . . . so that TRI can include it in the sale to the incoming company. . . . The economic benefit to the COuntY is far, far in excess of the minimal fair market value of the portion [of the land] transferred to TRI.

Opposition at 14, 16. In other words, Gilman does not contest that the County transferred to TRIC land for “zero consideration or payment.” Because Plaintiff admits Toll’s statement is true, it is by definition, not actionable.

Without quoting the allegedly defaming statement, Gilman argues Toll defamed him when the Defendant posted on his website articles investigating Gilman’s trip to Washington D.C. to participate in President Trump’s inauguration. Opposition at 16-17. Because Gilman fails to specify the allegedly defamatory statement, this argument should be dismissed outright, as Gilman cannot demonstrate with prima facie evidence a probability of prevailing on the claim required by NRS 41.660(3)(b) without specifying the exact statement he alleges is defamatory.

Notwithstanding Gilman’s failure to specify any particular statement contained in Toll’s investigative articles, Toll’s conclusion that the D.C. trip was not work related but rather a private trip to see the inauguration is non-actionable opinion. In the articles, Toll sets forth the facts he discovered, including the labeling of the trip as for the D.C. Inauguration on the actual invoices and the lack of any report or summary of any County business related work conducted, and then opines the trip personal in nature and that expenses should not have been reimbursed. Toll’s ultimate conclusion that the trip was not

1 "work related" is opinion not a statement of fact. As such, it is not actionable.

2
3 Similarly, Gilman claims that Toll's statement that Gilman receives "special
4 consideration" regarding the rules and regulations. *See* Opp. at 17:7. In the Second
5 Declaration of Sam Toll, Toll explains that this opinion is based on the fact that TRIC has
6 received free land from Storey County, and that Storey County modifies, changes, and
7 amends rules and regulations for both the Mustang Ranch and TRIC. Toll also explains that
8 he spelled out what he means when he states that Gilman receives special consideration the
9 the article attached to his first Declaration as Attachment 6, in which Toll describes:
10 "Saddling Storey County Taxpayers with a \$35 Million dollar effluent pipeline connecting
11 TRIC tenants to the "liquid gold" effluent from Sparks. This pipeline will divert a million
12 dollars per year of potential tax revenue from the General Fund for the next 30 years."
13 Toll's opinion that Gilman receives "special consideration" does not contain a provably
14 false factual connotation, and as such, it is entitled to "full constitutional protection."
15 *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990).
16
17
18
19

20 Lastly, Gilman complains about an obviously satirical article written by Toll.
21
22 Opposition at 18-19, referencing Exhibit 6 thereto. The average reader of this article would
23 recognize that the "facts" alleged, e.g., that Gilman graciously repaid Storey County for his
24 failed recall election (funded in part by Gilman) of his self-proclaimed political nemesis
25 Sheriff Antinoro (*See* Gilman's Affidavit at ¶75) is satire, particularly when Gilman is
26 currently suing the Sheriff for defamation. *See San Francisco Bay Guardian, Inc. Superior Court*,
27
28

17 Cal.App.4th 655 (1993). The first comment to Toll's article echoed Mark Twain's sentiment by stating, "I love Satire!" followed by a laugh-out-loud emoji. (*See* Motion, Exhibit 8, at Attachment 4 page 3 of 8).¹

2. *Plaintiff Makes No Showing of Actual Malice*

The Plaintiff states there is "solid proof of actual malice on the part of the Defendant" because the Defendant started the Storey Teller Website as a conduit to express support for Sheriff Gerald Antinoro and allegedly personally dislikes Lance Gilman. (Opp at 38 line 11 and at 41 line 24, which appear to be the same paragraph or set of paragraphs at two locations in the Opposition). The nonmoving part to an Anti-SLAPP motion, "must provide more than general allegations and conclusions; it must submit specific factual evidence." *John v. Douglas County Sch. Dist.*, 125 Nev. 746, 753-54 (Nev. 2009).

Actual malice is defined as, "knowledge that it [the statement] was false or with

¹ In response to the Defendant's argument in the Motion that some of Toll's complained of statements are satirical, the Opposition notes in footnote 114 on page 40 that Defendant's reliance on *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 54 (1998) is misplaced and that, the "fallacy of the Defendant's argument is that in the *Hustler* case, it only involved one article in the magazine. In the instant case, there is a series of false and defamatory statements on a range of subjects that cannot be read in isolation." The Plaintiff's argument on this point is perplexing, because, while seeming to admit that the *Hustler Magazine, Inc. v. Falwell* case categorically defines satire as speech protected from suit by the First Amendment, the Plaintiff argues that this rule may not apply in cases where there are multiple instances of satire. The Defendant has only claimed that his statements in the article in Attachment 4 to the Defendant's first Declaration -- describing that Gilman would reimburse Storey County for the estimated \$30,000 spent on the Recall Election of Sheriff Antinoro and give every resident of Storey County a check for \$7100, "a frozen turkey and a brass ring good for one free ride on the Mustang Ranch Merry-Go-Round" -- are satire.

1 reckless disregard of whether it was false or not.” *New York Times Co. v. Sullivan*, 376 U.S.
2 254, 279–80 (1964). Actual malice must be shown by the Plaintiff with “convincing
3 clarity.” *Id.* at 285-286. Thus, Plaintiff must meet his burden by providing evidence of the
4 probability that he can, with convincing clarity, Toll either knew his statements to false or
5 acted with reckless disregard as to their falsity.
6

7
8 Plaintiff fails to carry his burden. As an initial matter, Defendant has demonstrated
9 with positive evidence hid investigations, the factual basis for his statement (actually
10 opinions), and his resulting good faith belief in the truthfulness of them. *See* generally,
11 *supra*; Second Declaration of Toll, at ¶¶ 10a-c.
12

13
14 In his Opposition, Plaintiff avoids directly addressing Toll’s good faith belief in the
15 truthfulness of his statements. Instead, Defendant interprets “actual malice” as
16 Defendant’s feelings towards Plaintiff, i.e., whether generally Toll hates Gilman, rather than
17 focusing on facts relevant to any particular statement. Opposition at 31-43. Indeed,
18 Plaintiff cuts and pastes the same generic arguments with irrelevant references to support
19 his arguments for each class of statements. *Compare id.*, at 35:16-37:2 with 38:11-39:25 with
20 41:24-43:9.
21

22
23 Even if Plaintiff could establish “actual malice” based solely on the speaker’s relative
24 animus towards the complainer, Plaintiff’s “evidence” here does not withstand scrutiny.
25 For example, the fact that the Defendant started his blog to support the Sheriff does not
26 show in any way that any statement of the Defendant was false or was made with
27
28

knowledge of its falsehood, or actual malice. These are two completely separate questions, and not “solid proof” of actual malice. If anything, this argument shows that the Plaintiff is motivated by revenge for his defeat in his attempt to oust Sheriff Antinoro from office and the Sheriff’s complaint about the Plaintiff to the Ethics Commission described in Exhibit 1, and that this suit against Toll is just a proxy fight in that ongoing war. In paragraph 8 of Gilman’s Affidavit in exhibit 3 to the Opposition, Gilman describes Sheriff Gerald Antinoro as his “longstanding political opponent” and the Opposition tries to make hay from Toll support of the Sheriff. Opposition at 38:19. In fact, Gilman through his counsel in this matter, has also sued Sheriff Antinoro for defamation, which is pending in this Judicial District in Case No. 16-OC-00010E.²

Next, Gilman tries to prove actual malice by him counting up the number of posts on the Storey Teller devoted to Plaintiff’s activities compared to those that are not and therfrom concludes Toll has a private vendetta against Gilman. Opposition at 25, 35-36. However, the the actual count of posts does not support this conclusion as only a small proposition concern Gilman. (See Second Toll Declaration at ¶ 6, 9) Thus, Gilman has not been singled out and, as Toll testified, he “has no personal malice against Lance Gilman.” Motion, Ex. 8 (Declaration of Sam Toll), at ¶ 20. Nor does the fact that Toll has wrote a sharply satirical article regarding Mustang Ranch and its offerings (See e.g., Opposition at

² The Plaintiff also argues at multiple points in the Opposition that Toll’s, “...expressions in the Storeyteller Website suggest that the Defendant knows certain facts to be true or imply that facts exist sufficient to render the message defamatory.” But, the Plaintiff never explains what these “expressions” are. (See Opposition at 31 line 15, 37 at 18)

36) establish actual malice. The Supreme Court in *Hustler Magazine* expressly found that explicitly sexual satire is protected speech, *See id.*, 485 U.S. at 48. Plaintiff tries to undermine *Hustler* by arguing that such satire, because it is highly objectionable, proves actual malice and thus renders the protected speech unprotected. The Court should reject this construction turning *Hustler* on its head. Gilman also tries to establish actual malice by arguing without evidence that Toll conducted no due diligence prior to posting his articles. Opposition at 36, 39, 43. As shown above, this is untrue. For each article, Toll researched and investigated the issue and arrived at fact-based conclusions. (*See* Second Toll Declaration, at ¶¶ 10-11)

In short, Plaintiff provides no evidence, much less with convincing clarity, that Toll made his statements in reckless disregard of the truth.

D. *The Plaintiff failed to follow the Anti-SLAPP statute discovery procedure*

Finally, the Plaintiff argues that should the Court consider that the Defendant's Motion has merit, the Plaintiff should be entitled to conduct discovery Opposition at 43:13). 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 needed to respond to the Anti-SLAPP Motion. 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.

1 NRS 41.660(4) provides a mechanism to request discovery in order that a Plaintiff be
2 able to respond to meet its burden to show prima facie evidence a probability of prevailing
3 on the claim if the court determines that the moving party has met the burden by a
4 preponderance of the evidence, that the claim is based upon a good faith communication in
5 furtherance of the right to petition or the right to free speech in direct connection with an
6 issue of public concern.
7

8
9 The Plaintiff's Opposition does not state what information, "is in the possession of
10 another party or a third party and is not reasonably available without discovery." It only
11 states what general types of discovery the Plaintiff feels is "necessary" and who the Plaintiff
12 would like to conduct discovery on. Opposition at 43:22. Although the Plaintiff states he
13 wants to conduct a litany of discovery on the Defendant, on the Sheriff of Storey County,
14 and various other known and unknown parties, the Defendant never states what
15 information is lacking and is required to respond to the Defendant's Anti-SLAPP Motion.
16 Opposition at 43:27.
17

18 "The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage
19 over one's adversary by increasing litigation costs until the adversary's case is weakened
20 or abandoned." *Metabolic Research, Inc. v. Ferrel*, 693 F.3d 795, 796 n.1 (9th Cir. 2012) The
21 Plaintiff is not seeking limited and reasonable discovery to respond the Anti-SLAPP
22 motion, they Plaintiff describes opening up a discovery free-for-all. The Plaintiff claims,
23 "Nothing whatsoever contained in the Plaintiff's Complaint is designed to chill the
24
25

1 Defendant's exercise of his First Amendment free speech rights nor has it been filed to
2
3 obtain a financial advantage over the Defendant by increasing litigation costs until the
4 Defendant's case is weakened or abandoned." Opposition at 21:15. Yet, the Plaintiff states
5 that the Plaintiff needs to dispose Defendant and submit written discovery to, "ascertain
6 the Defendant's actions in verifying the truth of his statements, how he arrived at making
7 his statements, why he made his statements, etc." Opposition at 43:23. The Plaintiff also
8 states that he would request the Defendant's emails and text messages to "check for any
9 statements he made about the Plaintiff that would go further in proving actual malice."
10 Opposition at 43:25. The purpose of the Anti-SLAPP statute is to require a plaintiff to
11 make an evidentiary showing that his claims have merit before burdening the defendant
12 with discovery, (*see* NRS 41.660(3)(e)) i.e. Gilman may not rely on speculative claims of
13 what he might be able to prove once he deposes Toll or completes other discovery on Toll.
14 Further, Gilman's request for further discovery belies his claims of "solid proof" (Opp. at
15 38:11) of actual malice and that he can show prima facie evidence a probability of prevailing
16 on the claim (Opp. at 44:28).
17
18
19
20
21

22 The Plaintiff's arguments regarding the need for discovery reveal he wants to go on a
23 fishing expedition to waste the Defendant's time and money as punishment for criticising
24 the Plaintiff, which is exactly the type of conduct that Nevada's Anti-SLAPP law was
25 passed to prevent - i.e. immunity from suit, not just immunity from liability. (*See* Senate
26 Committee on Judiciary hearing on Nev. SB 286, at 3 (Mar. 28, 2013) and NRS 41.650:
27
28

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.”) [*Emphasis added*]

As noted in Toll’s Second Declaration attached hereto as Exhibit 2, Gilman’s lawsuit is already having its intended effect, i.e. diverting Toll’s time, attention, and resources towards defending this suit rather than focusing on his reporting in the Teller.

III. *Conclusion*

WHEREFORE, The Defendant respectfully requests that this Court grant the Defendant's Motion, dismiss this suit, award the Defendant attorney’s fees and costs associated with this Motion, and any further action the Court deems appropriate as permitted by NRS 41.670, including \$10,000 in statutory damages to the Defendant per NRS 41.670(3)(a).

(signature on following page)

///

///

///

///

///

///

///

///

NRS 239B.030(4) AFFIRMATION

I certify that the attached filing includes no social security numbers or other personal information.

Respectfully submitted this Feb 26, 2018:

By: 
JOHN L. MARSHALL

SBN 6733

570 Marsh Avenue

Reno, Nevada 89509

Telephone: (775) 303-4882

johnmarshall@charter.net

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

I certify that on the date indicated below I served the foregoing document on the following parties via US Mail, postage prepaid, and/or electronic service.

GUS W. FLANGAS
JESSICA K. PETERSON
Flangas Dalacas Law Group
3275 South Jones Blvd. Suite 105
Las Vegas, NV 89164
702-307-9500
F - 702-382-9452

By:


Luke Busby

Dated:

2-26-18

Exhibit List

1. April 20, 2016 Stipulated Agreement in In the Matter of the Third-Party Request for Opinion Concerning the Conduct of Leonard Lance Gilman, Member, Board of County Commissioners, Storey County, State of Nevada, resolving Third-Party Request for Opinion ("RFO") No. 14-73C before the Nevada Commission on Ethics.
2. Second Declaration of Sam Toll
 - a. Attachment 1 - Weekly Status Report for the Storey Teller website from December 11, 2017 to December 17, 2017.
 - b. Attachment 2 - Nevada Supreme Court's Order in Case No. 65104.

Exhibit 1

Exhibit 1



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Leonard Lance Gilman, Member,
Board of County Commissioners,
Storey County, State of Nevada,

Request for Opinion No. **14-73C**

Public Officer. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 14-73C before the Nevada Commission on Ethics ("Commission") concerning Leonard Lance Gilman ("Gilman"), Storey County Commissioner, and serves as the final opinion in this matter.
2. **JURISDICTION:** At all material times, Gilman served as a member of the Storey County Board of Commissioners ("Board"). As such, Gilman is an elected public officer, as defined in NRS 281A.160. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Gilman in this matter.
3. **PROCEDURAL HISTORY BEFORE COMMISSION:**
 - a. On or about October 23, 2014, the Commission received this RFO from Gerald Antinoro, the Sheriff of Storey County, alleging that Gilman:
 - 1) Failed to avoid conflicts of interest between his public and private interests by using his office to favor his private business interests (NRS 281A.020(1));
 - 2) Used his position as County Commissioner to gain an unwarranted advantage for himself by furthering his private business interests (NRS 281A.400(2));

- 3) Used governmental time and resources in his capacity as County Commissioner to further his private business interests (NRS 281A.400(7)); and
 - 4) Caused a governmental entity to incur an expense to oppose a candidate (NRS 281A.520).¹
- b. As required by NAC 281A.410, the Commission sent notice of the RFO to Gilman on November 4, 2014.
 - c. Gilman submitted his response to the RFO on November 24, 2014. After retaining legal counsel, Gilman submitted a supplemental response to the RFO on April 1, 2015.
 - d. Pursuant to NRS 281A.440, on July 15, 2015, a two-member Investigatory Panel of the Commission reviewed the RFO, Gilman's responses, the Executive Director's recommendation, and other evidence.
 - e. A Panel Determination issued on July 20, 2015 concluded that:
 - i. Just and sufficient cause existed for the Commission to conduct a public hearing and render an opinion regarding the allegations implicating NRS 281A.020(1) and 281A.400(2).
 - ii. Just and sufficient cause did not exist for the Commission to conduct a public hearing and render an opinion regarding the alleged violation of NRS 281A.400(7). Accordingly, this allegation was dismissed.
 - f. Gilman filed a Motion to Dismiss on October 1, 2015, seeking dismissal of all allegations.
 - g. In lieu of a hearing on the Motion to Dismiss, Gilman and the Commission now enter into this Stipulated Agreement finding no violation of NRS 281A.020(1) or NRS 281A.400(2).
 - h. This RFO presented a case of first impression for the Commission with respect to a public official providing public comment on a private matter and this Stipulated Agreement provides an opportunity for the Commission to promote

¹ Pursuant to NAC 281A.405, the Commission Counsel and Executive Director determined that the Commission did not have jurisdiction to consider allegations implicating NRS 281A.520 for lack of sufficient evidence to support the allegations.

and clarify the goals of the Ethics Law and to educate all public officers similarly situated to Gilman.

4. **STIPULATED FACTS:** At all material times, the following stipulated facts² were relevant to this matter:

- a. Leonard Lance Gilman ("Gilman"), as one of three elected members of the Storey County Board of Commissioners, is a public officer as defined in NRS 281A.160.
- b. The Storey County Board of Commissioners ("Board") is a political subdivision as defined in NRS 281A.145.
- c. Gerald Antinoro ("Antinoro") is the elected Storey County Sheriff, a public officer as defined in NRS 281A.160.
- d. Storey County is a rural county with a population of approximately 3,942 people.
- e. The Mustang Ranch is a brothel and private business entity owned by Gilman and located in Storey County.³
- f. Sheriff Antinoro was quoted in the Lockwood Area Blog ("Blog") on Monday June 2, 2014. The Blog included the following statement:

There had been an incident at the Mustang Ranch brothel near Patrick that we also talked about. Two sex workers were working without the necessary medical clearance the law demands. Sheriff Antinoro fined the brothel even though it is owned by a highly placed County official who seems to have expected special considerations that were not forthcoming. Sheriff Antinoro summed this up by saying, "I enforce the law

² Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

³ Brothels are a heavily regulated industry pursuant to state and local law. Brothels in Storey County are regulated by a Brothel Licensing Board, which consists of the Board of County Commissioners and the Sheriff of Storey County, and has the power to issue and revoke a brothel license. Storey County Code, Chapter 5.16. All applicants for a brothel license must file the application with the sheriff's office and pay a non-refundable three thousand dollar (\$3,000.00) investigation fee. Brothel licenses must be renewed annually. As a condition of the brothel license, licensed operations must provide the sheriff access at any time for the purposes of inspection to ensure compliance with Storey County Ordinance. Every prostitute working at a licensed brothel must obtain a work card and have a weekly medical exam to maintain her work card, which is issued by the Storey County Sheriff.

evenly as possible to everyone. No exceptions." The other candidates have also said as much; favoritism is root cause of past misdeeds in our county[.]

(Hereinafter "Mustang Ranch Statement")

- g. Most readers of the Blog would have known that Sheriff Antinoro's reference to the County official owning the Mustang Ranch was a reference to County Commissioner Gilman.
- h. After learning about the Mustang Ranch Statement, Gilman addressed his belief that the statement falsely impugned him as an elected Board member and businessman and negatively reflected on Storey County government as a whole in a public meeting of the Board.
- i. At the October 21, 2014 Storey County Commission Meeting ("Meeting"), during Agenda Item 14 entitled "BOARD COMMENT (No Action – No Public Comment)," Gilman read the following written statement into the record from his Commissioner's seat rather than utilizing the agenda item for public comment:

I am addressing the Commission today as a Storey County resident, a Storey County business owner with approximately (10) ten business licenses county wide, and as the Storey County Commissioner representing District 3 including Lockwood, TRI, Painted Rock, and Mark Twain.

I am hereby requesting that an item be entered into the next Storey County Commission meeting agenda for a vote of censure against Sheriff Antinoro, as the Storey County Sheriff, and a county department head, for making knowingly false statements which reflect negatively in a significant way on Storey County.

My complaint stems from a Lockwood area blog report dated June 2, 2014, entitled "Conversation with our Sheriff's Office and update." The report contains the following quote from an interview with Sheriff Gerald Antinoro. I quote: "There had been an incident at the Mustang Ranch brothel near Patrick that we also talked about. Two sex workers were working without the necessary medical clearance the law demands. Sheriff Antinoro fined the brothel even though it is owned by a highly placed County official who seems to have

expected special considerations that were not forthcoming. Sheriff Antinoro summed this up by saying, "I enforce the law evenly as possible to everyone. No exceptions." The other candidates have also said as much; favoritism is the root cause of past misdeeds in our county."

Several statements in this quote are complete fabrications. The incidents never happened.

- 1) There was no incident where Sheriff Antinoro or his deputies found a "sex worker" working without necessary medical clearance.
- 2) There was no incident where Sheriff Antinoro fined the brothel. Furthermore the Sheriff has no legal authority to fine a brothel.
- 3) The third statement implies that I, as a highly placed county official, expected special consideration on complying with medical clearance laws. This is just plain false. I have never even discussed medical clearance records with Sheriff Antinoro.

I request that a neutral investigator, outside the chain of command of the Sheriff, be commissioned to interview Sheriff Antinoro and Deputy Mendoza, who was reportedly present at the time of these statements, to determine whether these specific statements are true or not true. If they are found to be not true I request a vote be taken to censure the Sheriff for these statements. Censure is called for and proper in this circumstance as his statements specifically refer to me in my capacity as a County Official, and reflect poorly on the County Government as a whole.

That concludes my official statement. Let me just add a personal comment if I might. The senior law enforcement official in the county made this cavalier, false statement about a business that has been a great corporate citizen in paying taxes and has a long track record of giving and charitable contributions in this county.

More importantly, this business employs around 80 people, many of whom have been there many years. A good number of these 80 people have families. These workers depend on this business for their income, so they can pay rent, make their car payment, and buy Christmas presents for their kids. In my personal view, this conduct and attempt to seriously injure my business is inexcusable.

- j. Board Comment was not designated as an action item on the agenda and the Board did not take any action with regard to Gilman's comments at the Meeting. Nor did the Board ever place this matter on a future agenda or authorize an investigation of the truth or falsity of the Sheriff's statements.
- k. Gilman did not receive any private financial or pecuniary gain as the result of his statements made at the Meeting.

5. TERMS OF AGREEMENT / CONCLUSIONS OF LAW: Based on the foregoing, Gilman and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in section 4 of this Stipulated Agreement is deemed to be true and correct.
- b. Gilman holds public office, which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada, in particular, the people of Storey County.
- c. Gilman and all other public officers must commit themselves to avoid conflicts between their personal interests and their public duties (NRS 281A.020). This commitment extends to any statements made by public officers in their official capacity while participating in public meetings.
- d. As a public officer, the conflict of interest provisions of the Ethics Law apply to Gilman's conduct. Specifically, Gilman must not use his position in government to secure or grant unwarranted privileges, preferences or advantages for himself or any business in which he has a significant pecuniary interest (NRS 281A.400(2)).
- e. Gilman made a statement during the Board Comment portion of the agenda which included a personal statement regarding his private business interests implicating concerns regarding NRS 281A.400(2). However, this is a case of first impression and, therefore, the Commission reviews for the first time the implications of NRS Chapter 281A to a public officer's public comment on private matters during a public meeting. Gilman stated that he was addressing the Commission as both a Storey County resident and a Storey County Commissioner. Gilman contends that all his comments preceding the sentence,

“that concludes my official statement,” were official in nature to bring attention to alleged false statements by the Sheriff which specifically referred to him in his “capacity as a County Official, and reflect poorly on the County Government as a whole.”

- f. Nevertheless, statements made in a private capacity should be separated from statements made in a public capacity to avoid an appearance of impropriety or possible conflict, and the rural and casual nature of the Board’s meetings may have led to an unintentional lapse in protocol associated with a public official providing public comment on a private matter. However, based on the foregoing and the absence of any evidence of Board or public action responding to Gilman’s public statement or any financial or pecuniary gain to him resulting therefrom, the allegations implicating NRS 281A.020(1) and NRS 281A.400(2) lack sufficient evidence to support a violation by a preponderance of the evidence and therefore are dismissed through this Stipulated Agreement.
- g. Although the Commission finds no violation of the Ethics Law in this matter, the Commission takes this opportunity for outreach and education to advise Gilman and other similarly situated public officers regarding the implications of the Ethics Law in the context of public statements made at public meetings. Public officers should not make statements during the “Board Comment” or similar agenda item reserved for official business to secure or grant unwarranted privileges, preferences, exemptions or advantages for themselves, their business interests, or persons to whom they have a commitment in a private capacity. Such conduct violates NRS 281A.400(2). The clear intent of this statute is to prohibit a public officer from acting in a manner which creates unwarranted privileges, preferences or advantages for a personal interest. (*In re Public Officer*, Comm’n Opinion No. 12-15A (2012)). Comments by public officials about personal matters or private business during agenda items devoted to board business or Board Comment directly implicate NRS 281A.400(2) because such comments may be afforded greater significance or weight when they are delivered by a public official, especially when referencing his public position or acting in an official capacity. Public officials should be

vigilant to avoid an appearance of impropriety and should utilize the Public Comment portion of a public meeting to make statements concerning personal or private matters. Further, public officials should make public comment of a private matter from the location at the meeting that is designated for members of the public, not from the public official's seat of authority. Moreover, to avoid any appearance of impropriety, a public official should refrain from using his authority as a public official to seek or facilitate any action by the Board to benefit his private interests and comply with applicable requirements of the Ethics Law. Finally, the Commission's First-Party Opinion process is available to public officials to provide guidance on such matters.

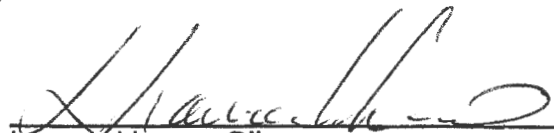
- h. This Stipulated Agreement applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- i. This Stipulated Agreement applies only to these matters before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Gilman.

6. WAIVER:

- a. Gilman knowingly and voluntarily waives his right to a hearing before the Commission on the allegations in this RFO (No. 14-73C) and any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B), and any other applicable provisions of law.
- b. Gilman knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

7. **ACCEPTANCE**: We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of Commission on April 20, 2016.


DATED this 22 day of April, 2016.


Leonard Lance Gilman

The above Stipulated Agreement is approved by:

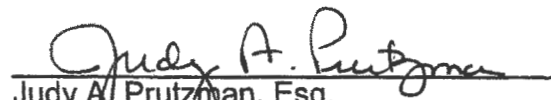
FOR LEONARD LANCE GILMAN, Subject

DATED this 22d day of April, 2016.


Rick R. Hsu, Esq.

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

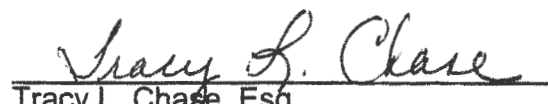
DATED this 27th day of April, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 26th day of April, 2016.


Tracy L. Chase, Esq.
Commission Counsel

///

///

///

The above Stipulated Agreement is accepted by the Commission.⁴

DATED April 20, 2016.

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

⁴ Vice-Chair Weaver and Commissioner Groover participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4). Commissioner Carpenter recused himself from participation in Panel Proceedings. Therefore, pursuant to NRS 281A.220, the necessary quorum to act on this matter is reduced.

Exhibit 2

Exhibit 2

SECOND DECLARATION OF SAM TOLL

1. I am the declarant and I am competent to make this testimony;
2. I have personal knowledge of each and every fact attested to herein;
3. I have been named as the Defendant in Case No. 18-trt-00001-1e in the First Judicial District Court in Storey County;
4. I have reviewed the February 21, 2018 Opposition to Anti-SLAPP Special Motion to Dismiss ("Opposition") filed by Lance Gilman's attorneys. I have also reviewed the Affidavit of Lance Gilman which is attached to the Opposition as Exhibit 3. Both the Opposition and the Affidavit contain statements of fact that are not accurate;
5. On Page 3 Line 11 of the Opposition it claims that I have published post after post "over a period of two years" defaming Gilman on the Storey Teller Website. I started the Teller in February of 2017, just over a year ago, so this statement is not accurate;
6. Also on Page 3 at Line 12 of the Opposition it claims that almost every single one of one of my posts on the Teller has defamed Gilman. This is not accurate. I have published approximately 247 posts on the Teller since its inception. The Opposition states on Page 25 Line 11 that "in excess of 40" posts on the Teller are about Gilman. So by Gilman's own number about 16% of my postings are about Gilman. Gilman's claims that I started the Teller just to target him or that in virtually every post I insult Gilman is not supported by the facts. I write about Gilman because some of the newsworthy business conducted in Storey County or by the Storey County Commission involves the Tahoe Reno Industrial Complex ("TRIC") and/or the Mustang Ranch;
7. Page 14 lines 1-2 of the Opposition it states that Gilman has never received title to land from Storey County in any transaction. Throughout my articles, I use Lance Gilman and TRIC interchangeably. I understand that Gilman has an ownership stake in TRIC, and that he presents himself to the world as the face of TRIC, it is accurate to describe Gilman as representing TRIC. TRIC has received title to land from Storey County;
8. During a normal week the Teller website now receives between 800 and 1000 visitors. These basic numbers are confirmed by the Attachment 1 to this Declaration, which is a true and correct copy of a printout of the statcounter.com Weekly Status Report for my website from December 11, 2017 to December 17, 2017, and which shows I had 888 unique visits to the site that week. Given that I write about news in Storey County, and there are only about 4500 people in Storey County, it's reasonable to conclude that a large percentage of Storey County residents visit the Teller website and are interested in the issues that I am writing about, including Gilman, the Storey County Commission, TRIC, and the Mustang Ranch, among other topics.


9. Gilman's statement that we are involved in a "private and quixotic fight" is not accurate. Everything I write about Gilman relates to his status as a Storey County Commissioner, as a principal of TRIC, or as owner of the Mustang Ranch. Even my statements about Gilman's residence are of interest to the public because as a Storey County Commissioner Gilman is supposed to reside in his district and represent the interests of his constituents, not just those of TRIC or the Mustang Ranch. If Gilman does not live in Storey County, he is much less likely to represent the interests of Storey County residents. I also routinely criticize other Storey County officials, such as the County Manager Pat Whitten and Community Development Director Gary Hames, among others.
10. At various points in the Opposition, such as on Page 43 line 1, it states that I did little or no diligence before making false statements about Gilman. This is untrue as well. As described below, for each statement I made that Gilman claims is defamatory, I investigated the facts before making the statement:
 - a. 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;
 - b. My opinion that Gilman engaged in Reverse Graft is set out in the article attached to my first Declaration as Attachment 1, Storey County has been strapped with debt to pay for infrastructure for TRIC developer expenses which should have been paid for by TRIC and the debt for which not assumed by Storey County. The proposed "pipeline deal" that Gilman discusses in this Affidavit is just one example. The article explains that the pipeline deal would divert taxes to pay for a pipeline that will benefit TRIC and TRIC occupants only, and that TRIC and the occupants should pay for such infrastructure;
 - c. My opinion that Gilman receives special consideration regarding rules and regulations is based on the fact, in the big picture, TRIC has received free land from Storey County, that Storey County modifies, changes, and amends rules and regulations for both the Mustang Ranch and TRIC. In the article attached to my first Declaration as Attachment 6, I specifically spell out what I mean when I say that Gilman receives special consideration regarding rules and regulations;

- d. My opinion that Gilman received land for free from Storey County is supported by the fact that as part of the USA Parkway/Tesla deal, Storey County gave TRIC a portion of the parkway for free. Although Gilman claims in his Affidavit that this benefits the County because it decreases maintenance costs and the entire Tesla deal will result in increased tax revenue to the County in the future, it doesn't change the fact that Storey County gave land to TRIC for free, which TRIC then sold to the State at a huge profit. While the USA Parkway giveaway is the most egregious, reconveyance of land from Storey County to TRIC for no consideration is a frequent occurrence on the public record at Storey County Commission Meetings;
 - e. My opinion that Gilman's trip to Washington DC was a personal trip is supported by my investigation into the matter. Before I wrote the article in Attachment 10 to my first Declaration, I called the Storey County Manager Pat Whitten regarding any documentation of lobbying efforts during the trip in question, and he responded that there was none. I also made a public records request. The documents I obtained as a result of this public records request stated that the trip was for Trump's inauguration - a personal purpose; the documents are reproduced in the article itself. There was no evidence that the DC trip involved any public business at all when I published my article.
11. The statement that Gilman did not want follow the law when relicensing the Mustang Ranch brothel was not made by me, but I believed the statement was a true expression of Gilman's attitude at the time it was published and that the statement represented the author's opinion, not a statement of fact about whether Gilman actually followed the law. Gilman was involved in an ongoing dispute with a lender over licensing issues related to the Wild Horse brothel, as he describes in his own Affidavit. Before publishing the article, I read reports in the Comstock Chronicle about the lawsuit between Gilman and the lender. I also researched and obtained the investigation into Gilman by the Ethics Commission (attached to the underlying Motion as Exhibit 1) and the the Nevada Supreme Court's decision in Case No. 65104, in which the Supreme Court affirming Gilman's loss to the lender (Attached hereto as Attachment 2) and concluded that Gilman breached the covenant of good faith and fair dealing and that Gilman failed to fight the revocation of the license of the Wild Horse. Based on my research, I believe that Gilman's act of merging the two properties in combination with the revocation of the Wild Horse shows that he did not want to follow the law by obtaining a new license for the Wild Horse or "expanding" the license for the Mustang Ranch brothel, he wanted special rules and consideration from Storey County to justify his actions;
12. My statement in the article in Attachment 4 to my first Declaration that Gilman would reimburse Storey County for the estimated \$30,000 spent on the Recall Election of Sheriff Antinoro was satire, as it is humorous given the circumstances the piece describes. The article very clearly says this at the bottom of the piece. No

reasonable person could construe the contents of the article as being factual statements. The first comment at the bottom of the article made on May 20, 2017 states, "I love Satire." along with a laugh-out-loud emoji.

13. As a result of Gilman's lawsuit against me, I have had to amend the appeal for funds to support the Teller to a go fund me page asking for help to pay to defend this suit. Before I collected money to keep the Teller ad-free by stating, "support the Teller and keep fact-based news about Storey County Ad Free," but the money I collect from the site now goes to pay to defend this suit. I also have been spending considerable of my time aiding in the defense of Gilman's lawsuit; time I would have otherwise spent investigating and reporting on the political affairs of Storey County, which I believe is the whole point of Gilman's suing me.
14. If I were to give testimony in open court, it would be substantively the same as that set forth herein above.

Pursuant to the provisions of NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

By:  _____ Dated: 2/26/18
Sam Toll

Attachment 1

Attachment 1

From: StatCounter.com Reports reports@statcounter.com
Subject: Storey Teller - Weekly Stats Report 11 Dec - 17 Dec 2017 [samtoll]
Date: December 18, 2017 at 2:32 AM
To: Sam Toll editor@thestoreyteller.online

Hi Sam Toll,

Weekly Stats Report: 11 Dec - 17 Dec 2017

Project: Storey Teller

URL: <http://www.thestoreyteller.online>

Summary

	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total	Avg
Pageloads	104	276	105	840	332	123	211	1,991	284
Unique Visits	64	129	55	328	151	52	109	888	127
First Time Visits	26	81	23	137	64	18	25	374	53
Returning Visits	38	48	32	191	87	34	84	514	73



If you find that you have "No data available", you may want to consider increasing your StatCounter log quota by upgrading your account. Simply [login to your StatCounter account now!](#)

The email report stats have just a fraction of the information that is available to you. To view your real-time stats reports simply [login to your StatCounter account now!](#)

If you wish to disable email reports please [click here](#).

Kind regards,

Aodhan and the StatCounter Team

Attachment 2

Attachment 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASH ASSET MANAGEMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; LLG HOLDINGS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; MUSTANG MEMORIES,
LLC, A NEVADA LIMITED LIABILITY
COMPANY; CASH PROCESSING
SERVICES, LLC; AND NORTHERN
NEVADA FUNDING, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellants,
vs.
TG INVESTMENTS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.

No. 65104

FILED

APR 15 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment after a jury verdict in a contract and real property action. First Judicial District Court, Storey County; James E. Wilson, Judge.

Respondent TG Investments, LLC (TGI) loaned appellant Cash Asset Management, LLC (CAM) \$2,250,000 so that CAM could open and operate a brothel in Storey County. The loan was secured by a deed of trust on the real property where the brothel was located and required CAM to maintain a license for the brothel, fight any revocation of the license, and pay TGI interest including a percentage of the gross revenues. CAM stopped paying TGI the interest, and TGI filed the underlying action. While the action was pending, a Storey County ordinance

governing brothels was amended and the Storey County Brothel Licensing Board revoked the brothel's license. A jury found that CAM breached the contract and the covenant of good faith and fair dealing. Based on the jury's verdict, the district court entered a judgment against CAM finding that it owed TGI \$1,909,378.67 and ordered the encumbered real property sold with the proceeds to be applied to CAM's debt to TGI. CAM filed motions for judgment as a matter of law, a new trial, and to alter or amend the judgment, which were all denied. This appeal followed.

Having considered the parties' arguments and the record on appeal, we conclude that the district court properly denied CAM's original and renewed motions for judgment as a matter of law. *See Nelson v. Heer*, 123 Nev. 217, 222-23, 163 P.3d 420, 424 (2007) (explaining that this court views the evidence and all inferences in favor of the nonmoving party and reviews de novo an order denying a motion for judgment as a matter of law). CAM admitted that it breached the contract by acknowledging that it owed TGI \$26,861 in underpaid interest and by conceding at trial that it failed to appeal the license revocation. Further, the jury could draw reasonable inferences from the evidence offered that CAM failed to fight the revocation of the license and that CAM influenced the amendment of the brothel ordinance and sought the revocation of the license in an effort to void its obligations to TGI. Thus, there was sufficient evidence supporting the jury's verdict that CAM breached the contract and the covenant of good faith and fair dealing.

Additionally, the district court did not abuse its discretion in denying CAM's motion for a new trial because there was no irregularity in the proceedings, the jury did not manifestly disregard the jury

instructions, and the damages were not excessive. *See Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 133, 252 P.3d 649, 657 (2011) (explaining that this court reviews the denial of a motion for a new trial for an abuse of discretion). While TGI elicited testimony concerning the appropriateness of the brothel license revocation, because such testimony was relevant to show arguments that CAM could have made if it had challenged the revocation, TGI did not make collateral attacks on the brothel ordinance or the Storey County Brothel Licensing Board's revocation of the license. Further, because there was no evidence that if TGI had applied for a brothel license, the brothel's license would not have been revoked, it was possible for the jury to reach its verdict while applying the jury instruction concerning mitigation of damages. *See Price v. Sinnott*, 85 Nev. 600, 606, 460 P.2d 837, 840 (1969) (providing that a new trial is unwarranted when it is possible for the jurors to reach the verdict that they reached after properly applying all jury instructions to the evidence presented at trial). Also, the damages awarded were not excessive as they were less than the amount of damages presented by one of the expert accountants.

Lastly, the district court did not abuse its discretion in denying CAM's motion to alter or amend the judgment's order for the sale of the property securing the debt. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (explaining that this court reviews an order denying a motion to alter or amend a judgment for an abuse of discretion). TGI only pursued one action, the underlying action, to recover the debts owed to it by CAM. And after the jury found that CAM had breached the contract and the covenant of good

faith and fair dealing and established the amount of CAM's debt, the court properly ordered the property sold under NRS 40.430 (2013) to satisfy the debt. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Debbie Leonard, Settlement Judge
Gunderson Law Firm
Law Offices of Mark Wray
Storey County Clerk

FILED

APR - 9 2018

Storey Co. Clerk

S. GREENBURG Deputy

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

-o0o-

LANCE GILMAN, an individual,

CASE NO. 18 TRT 00001 1E

Plaintiff

DEPT. 2

vs.

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

**ORDER GRANTING ANTI-SLAPP
SPECIAL MOTION TO DISMISS IN
PART, ALLOWING LIMITED
DISCOVERY, AND STAYING
FURTHER PROCEEDINGS**

Defendant

I. PROCEDURAL BACKGROUND

Lance Gilman filed lawsuit against Sam Toll. He alleged a single claim for relief, defamation per se. Toll filed an Anti-SLAPP special motion to dismiss which Gilman opposed.

II. FINDINGS OF FACT

The following facts were either uncontested or proved by a preponderance of the evidence.

Gilman was elected to the Storey County Commission in 2012, took office in 2013 and has served as a county commissioner continuously since 2013. He

/////

1 admits he is a public official and a public figure. Opp. to Anti-Slapp Mot.
2 (Opp.), p. 2.

3 Gilman is a financially successful businessman. His company, Lance Gilman
4 Commercial Real Estate Services, is and has been the exclusive broker for the
5 Tahoe Reno Industrial Center (TRI) an 80,000 acre industrial park that
6 encompasses a 30,000 acre industrial complex. TRI has over 16,000,000
7 square feet of industrial space in use by over 130 companies. Each year he and
8 his businesses make over \$100,000 in food donations and labor to needy Storey
9 County seniors and to a school “food in a backpack” program. Gilman Aff. ¶ 20,
10 21, and 28.

11 The Court takes judicial knowledge of the fact that the Mustang Ranch is in
12 Storey County.

13 Toll established a website, the “Teller,” in February 2017. The website is
14 open to the public. Toll posts stories on the website and invites and posts
15 reader’s comments.

16 Toll admits publishing on the Teller website the articles which contain the
17 statements alleged by Gilman to be defamatory. Anti-Slapp Special Mot. to
18 Dismiss (Mot.), p. 5-6.

19 The initial focus of the Teller “was to provide a local news source where
20 people in Storey County could obtain the facts surrounding information
21 contained in pieces criticizing the Storey County Sheriff Gerald Antinoro
22 published by the proponents of the effort to recall the sheriff that was ongoing
23 at the time.” Toll Aff., Mot. Ex. 8, ¶ 7. Toll believes Gilman was behind the recall
24 effort. Toll opposed the recall effort.

25 Additional facts will be included in the sections regarding the allegedly
26 defamatory statements. When the Court uses the phrase “the Court finds” it
27 means the Court finds the stated facts have been proved by a preponderance of
28 the evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

28

1 A “probability” in an anti-SLAPP context does not mean more probable than
2 not— only a cause of action that lacks even minimal merit constitutes a SLAPP.
3 *Healthsmart Pacific, Inc. v. Kabateck*, 7 Cal. App. 5th 416, 212 Cal. Rptr. 3d
4 589 (2016). Courts do not resolve the merits of the overall dispute on a special
5 motion to dismiss, but rather identify whether the pleaded facts fall within the
6 statutory purpose, which is to prevent and deter lawsuits brought primarily to
7 chill the valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances. *Wilson v. Cable News Network, Inc.*, 6
9 Cal. App. 5th 822, 211 Cal. Rptr. 3d 724 (2016); see also *Cross v. Facebook, Inc.*,
10 14 Cal. App. 5th 190, 222 Cal. Rptr. 3d 250 (2017).

11 Courts do not pass on the weight of evidence, including the credibility of
12 witnesses in this analysis. Instead, courts accept as true the evidence favorable
13 to the plaintiff and evaluate the defendant’s evidence only to determine if it has
14 defeated the plaintiff’s evidence as a matter of law. *Cruz v. City of Culver City*, 2
15 Cal. App. 5th 239, 205 Cal. Rptr. 3d 736 (2016), citing *Soukup v. Law Offices of*
16 *Herbert Hafif*, 39 Cal.4th 260, 269, fn. 3, 46 Cal. Rptr. 3d 638, 139 P.3d 30
17 (2006).

18 The guiding principles for what distinguishes a public concern from a
19 private one are:

- 20 (1) “Public interest” does not equate with mere curiosity;
- 21 (2) A matter of public interest should be something of concern to a
22 substantial number of people; a matter of concern to a speaker and a
23 relatively small specific audience is not a matter of public interest;
- 24 (3) There should be some degree of closeness between the challenged
25 statements and the asserted public interest; the assertion of a broad
26 and amorphous public interest is not sufficient;

27 /////

28 /////

1 (4) The focus of the speaker's conduct should be the public interest
2 rather than a mere effort to gather ammunition for another round of
3 private controversy; and

4 (5) A person cannot turn otherwise private information into a matter of
5 public interest simply by communicating it to a large number of
6 people.

7 *Shapiro v. Welt*, 133 Nev. A.O. 6, 389 P.3d 262, 268 (2017).

8 Under NRS 41.637 a "good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public
10 concern" means any:

11 (1) Communication that is aimed at procuring any governmental or
12 electoral action, result or outcome;

13 (2) Communication of information or a complaint to a Legislator, officer
14 or employee of the Federal Government, this state or a political
15 subdivision of this state, regarding a matter reasonably of concern to
16 the respective governmental entity;

17 (3) Written or oral statement made in direct connection with an issue
18 under consideration by a legislative, executive or judicial body, or any
19 other official proceeding authorized by law; or

20 (4) Communication made in direct connection with an issue of public
21 interest in a place open to the public or in a public forum; and

22 which is truthful or is made without knowledge of its falsehood.
23

24 **B. Defamation per se**

25 Defamation per se of a public official or public officer consists of four
26 elements: (1) a false statement; (2) that is defamatory; (3) an unprivileged
27 publication to a third person; and (4) actual malice. *Clark Co. Sch. Dist. v.*
28 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82 (2002).

1 A statement is defamatory when, under any reasonable definition, such
2 statement would tend to lower the subject in the estimation of the community,
3 excite derogatory opinions about the subject, and hold the subject up to
4 contempt. *Las Vegas Sun v. Franklin*, 74 Nev. 282, 287, 329 P.2d 867, 869
5 (1958). ; see *Posadas* at 453.

6 In reviewing an allegedly defamatory statement, the words must be reviewed
7 in their entirety and in context to determine whether they are susceptible of a
8 defamatory meaning. *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001). If a
9 statement is susceptible of different constructions, one of which is defamatory,
10 resolution of the ambiguity is a question of fact for the jury. *Posadas v. City of*
11 *Reno*, 109 Nev. 448, 851 P.2d 438 (1993).

12 False statements that accuse a plaintiff of criminal conduct are defamatory
13 on their face. Statements cannot form the basis of a defamation action if they
14 cannot be reasonably interpreted as stating actual facts about an individual.
15 Thus, rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions
16 of contempt and language used in a loose, figurative sense will not support a
17 defamation action. *Grenier v. Taylor*, 234 Cal. App. 4th 471, 183 Cal. Rptr. 3d
18 867 (2015)(and cases cited therein).

19 To promote free criticism of public officials, and avoid any chilling effect
20 from the threat of a defamation action, a defendant cannot be held liable for
21 damages in a defamation action involving a public official or public figure
22 unless “actual malice” is alleged and proven by clear and convincing evidence.
23 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 8 (2002).

24 “Actual malice” means knowledge that the statement was false or with
25 reckless disregard of whether it was false or not. *Id.* “Reckless disregard” means
26 the publisher of the statement acted with a high degree of awareness of the
27 probable falsity of the statement or had serious doubts as to the publication’s
28 truth. *Id.*

1
2
3
4
5 **IV. ANALYSIS**

6 The Court now turns to the statements Gilman alleged are defamatory in the
7 order Gilman addressed them in his brief.
8

9
10 **A. Residence and perjury**

11
12 *1. "Resident" communications*

13 In his Complaint Gilman simply alleged that Toll made statements that
14 Gilman is not a resident of Storey County and that Gilman lied and committed
15 perjury regarding his being a resident of Storey County. In his opposition,
16 Gilman pointed to five statements published by Toll about Gilman being a
17 resident of Storey County; in one of those communications Toll alleged Gilman
18 committed perjury regarding his address. The analysis for these
19 communications is the same and the Court will address them together and refer
20 to them as the "resident communications."
21

22 (a) Washoe County resident

23 Toll published the first resident communication, "Washoe County resident,"
24 on April 7, 2017. A copy of the communication is attached to Gilman's
25 Opposition as Exhibit 4. The specific statement is found in the last paragraph
26 on the second page of the exhibit:
27

28 Team Gilman would have never subjected the citizens to the
polarizing effect of the recall effort had it not been for the Washoe
County resident who thinks he knows what is best for the
taxpayers who shoulder the tax burden of Don Norman, Lance
Gilman and the rest of the tax escapers at the Center.

(b) If you believe he actually lives at 5 Wildhorse Canyon

Toll published the second resident communication on April 18, 2017. A copy
of the communication is attached to Gilman's Opposition as Exhibit 5. The

/////

1 specific statement is found in the paragraph below the text box on the third
2 page of the exhibit:

3 The debacle we emerged from a week ago today is not the kind of
4 thing our County should be making the news with. Sadly, the most
5 equal member of Storey County (if you believe he actually lives at
6 5 Wildhorse Canyon) cares more about himself than the County
7 he represents.

8 (c) Don't actually live here

9 Toll published the third resident communication on May 20, 2017. A copy of
10 the communication is attached to Gilman's Opposition as Exhibit 6. The specific
11 statement is found in the first full paragraph on the third page of the exhibit:

12 "I want the people of Storey County to know that I am a man of
13 integrity and my word is more valuable than gold. This County
14 has been very, very good to me and I want to deliver on promises I
15 made over and over to the good people of Storey County regarding
16 the cash that would be gushing around here. I want to thank them
17 along with the entire Team Storey Team for helping Mr. Norman
18 and me becoming the wealthiest people who do business in Storey
19 County but don't actually live here" said Mr. Gilman.

20 (d) Since they don't actually live at Wildhorse Canyon Drive (or
21 anywhere else in the county for that matter)

22 Toll published the fourth resident communication on October 16, 2017. A
23 copy of the communication is attached to Gilman's Opposition as Exhibit 7. The
24 specific statement is found in the fourth paragraph on the fourth page of the
25 exhibit:

26 The purpose of this complaint is to hold accountable County
27 Commissioner Gilman and Planning Commissioner Thompson for
28 committing perjury when they filed paperwork claiming to live
somewhere it is illegal to live. Since they took office illegally and
since they don't actually live at Wildhorse Canyon Drive (or
anywhere else in the county for that matter) and can't legally
reside where they claimed they did, we conclude and insist they be
prosecuted for perjury and removal from office.

(e) Failing to require Mr. Gilman to reside in the district he
represents within Storey County

Toll published the fifth and final resident communication on December 3,
2017. A copy of the communication is attached to Gilman's Opposition as

1 Exhibit 8. The specific statement is found on the third page of the exhibit under
2 the heading "Special Interests:"

3 The Commissioner Lance Gilman –TRIC Special Interest merry-
4 go-round that gives Mr. Gilman and TRIC access to the Storey
County checkbook, tax coffers, real property and special
consideration regarding rules and regulations.

5 ...

6 Failing to require Mr. Gilman to reside in the district he
7 represents within Storey County.

8 Gilman argued "[t]he clear inference" from each of these communications is
9 that Gilman is not a Storey County resident. Toll used a different word or
10 phrase in each of his resident communications: "resident," "lives at," "live here,"
11 "live," and "reside." The resident issue is potentially more significant than either
12 party presented. "Residence" has a specific meaning for purposes of eligibility
13 for public office. NRS 281.050. But neither side cited any law or made any
14 argument on the meaning of "residence" under the elections statutes or case
15 law, and therefore the Court will address the issue on the level presented by the
16 parties which is the every day meaning of "resident," "lives at," "live here,"
17 "live," and "reside."

18 The every day meaning of "resident" is dwelling or having an abode for a
19 continued length of time. Webster's Third New International Dictionary 1931
20 (2002). The every day meaning of "live" is to occupy a home. Id. 1323. The every
21 day meaning of "reside" is to settle oneself into a place, to dwell permanently or
22 continuously; have a settled abode for a time; have one's residence or domicile.
23 Id. 1931.

24
25 *2. Good faith communication*

26 The first issue is whether the resident communications are good faith
27 communications in furtherance of the right to petition or the right to free
28 speech in direct connection with an issue of public concern. NRS 41.660(3)(a).

1 To decide this issue the Court must determine whether the communication
2 falls within any of the four-part definition of “a good faith communication in
3 furtherance of the right to petition or the right to free speech in direct
4 connection with an issue of public concern” set out in NRS 41.637(1)-(4).

5
6 a. NRS 41.637(1): If the communication is aimed at procuring any
7 governmental or electoral action, result or outcome

8 A communication is “a good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public
10 concern” if the communication is aimed at procuring any governmental or
11 electoral action, result or outcome. NRS 41.637(1)

12 Toll published his first resident” communication on April 7, 2017. That
13 communication included the “Washoe County resident” statement. Toll
14 published that communication four days before the April 11, 2017 sheriff recall
15 vote. The aim of the communication was to blunt Gilman’s political influence in
16 the effort to recall the sheriff by undermining Gilman’s standing and credibility
17 in Storey County by claiming Gilman is a Washoe County resident. The Court
18 concludes the aim of the “Washoe County resident” communication was to
19 procure an electoral action, result or outcome, i.e., to weaken and defeat the
20 sheriff recall effort by undermining public and voter support for Storey County
21 Commissioner Gilman.

22 Toll’s aim in the four resident communications after the April 7, 2017
23 communication was to keep Storey County voters’ attention focused on
24 Gilman’s alleged part in the sheriff recall “debacle” and undermine Gilman’s
25 standing and credibility in Storey County by questioning where Gilman resided
26 or lived. The Court concludes the aim of the four resident communications after
27 the April 7, 2017 communication was to procure an electoral action, result or
28 outcome, i.e., undermining public and voter support for Storey County
Commissioner Gilman.

- 1 b. NRS 41.637(2): The communication is to a Legislator, officer or
2 employee of the Federal Government, this state or a political
3 subdivision of the state, regarding a matter reasonably of concern
 to the respective governmental entity.

4 Toll did not produce a preponderance of evidence that any of the "resident"
5 communications were to a Legislator, officer or employee of the Federal
6 Government, this state or a political subdivision of the state, regarding a matter
7 reasonably of concern to the respective governmental entity. Gilman did not
8 allege the communications to the Storey County Sheriff and District Attorney,
9 and the Attorney General were defamatory. The Court concludes NRS 41.637(2)
10 has no application to the resident communications.

- 11 c. NRS 41.637(3): Written or oral statement made in direct
12 connection with an issue under consideration by a legislative,
13 executive or judicial body, or any other official proceeding
 authorized by law.

14 The Court finds Toll made a report to the Storey County Sheriff and District
15 Attorney, and the Attorney General regarding Gilman's residence. Toll
16 published a story about his making the reports in the October 16, 2017
17 communication. The sheriff's office, district attorney's office, and attorney
18 general's office are executive bodies. The Court concludes the October 16, 2017
19 communication was made in direct connection with an issue under
20 consideration by an executive body.

21 The Court finds Toll did not produce evidence that any of the other resident
22 communications were made in direct connection with an issue under
23 consideration by a legislative, executive or judicial body, or any other official
24 proceeding authorized by law. The Court concludes NRS 41.637(3) does not
25 apply to the other resident communications.

26 /////

27 /////

28 /////

1 d. NRS 41.637(4): Communication made in direct connection with
2 an issue of public interest in a place open to the public or in a
3 public forum.

4 (I) Public interest

5 To determine whether the resident communications were made in direct
6 connection with an issue of public interest the court looks to the guiding
7 principles in *Shapiro*.

8 The first guiding principle is that “public interest” does not equate with
9 mere curiosity. The Court finds that whether Storey County Commissioner
10 Gilman lives or resides in Storey County is not a matter of mere curiosity. The
11 Court concludes this guiding principle weighs in favor of finding the resident
12 communications were made in direct connection with an issue of public
13 interest.

14 The second guiding principle is that a matter of public interest should be
15 something of concern to a substantial number of people; a matter of concern to
16 a speaker and a relatively small specific audience is not a matter of public
17 interest. The Court finds that whether Storey County Commissioner Gilman
18 lives or resides in Storey County is something of concern to the residents of
19 Storey County, a substantial number of people, and not simply a matter of
20 concern to Toll and a relatively small specific audience. The Court concludes
21 this guiding principle weighs in favor of finding the resident communications
22 were made in direct connection with an issue of public interest.

23 The third guiding principle is that there should be some degree of closeness
24 between the challenged statements and the asserted public interest – the
25 assertion of a broad and amorphous public interest is not sufficient. The Court
26 finds the resident communications have some degree of closeness to the
27 asserted public interest of whether Storey County Commissioner Gilman resides
28 in Storey County. The Court concludes this guiding principle weighs in favor of

1 finding the resident communications were made in direct connection with an
2 issue of public interest.

3 The fourth guiding principle is the focus of the speaker's conduct should be
4 the public interest rather than a mere effort to gather ammunition for another
5 round of private controversy. The Court finds the focus of Toll's resident
6 communications was the public interest in whether Storey County
7 Commissioner Gilman lives or resides in Storey County, and was not a mere
8 effort to gather ammunition for another round of private controversy. The
9 Court concludes this guiding principle weighs in favor of finding the
10 communications were made in direct connection with an issue of public
11 interest.

12 The fifth and final guiding principle is that a person cannot turn otherwise
13 private information into a matter of public interest simply by communicating it
14 to a large number of people. The Court finds that where Storey County
15 Commissioner Gilman lives or resides was not private information but a matter
16 of public interest because a county commissioner should reside in the county he
17 represents. The Court concludes this guiding principle weighs in favor of
18 finding the communications were made in direct connection with an issue of
19 public interest.

20 The Court has weighed the *Shapiro* guidelines and concludes the resident
21 communications were made in direct connection with an issue of public
22 interest.

23
24 (ii) Public forum

25 Gilman did not appear to contest that Toll's website is a public forum.
26 Even if Gilman did contest it, most if not all California courts that have
27 considered the issue have concluded a public website is a public forum. *Vogel v.*
28 *Felice*, 127 Cal. App. 4th 1006, 26 Cal. Rptr. 3d 350 (2005); *Wilbanks v. Wolk*

1 121 Cal.App.4th 883, 897, 17 Cal. Rptr. 3d 497 (2004); *ComputerXpress, Inc. v.*
2 *Jackson* 93 Cal.App.4th 993, 1007, 113 Cal. Rptr. 2d 625 (2001). The Nevada
3 Supreme Court has looked to California law for guidance on anti-SLAPP issues
4 because California's and Nevada's anti-SLAPP statutes are similar in purpose
5 and language. *Shapiro*, 268.

6 The Court finds Toll's is a website open to the public, on which he posts
7 political information, and receives and posts reader's comments. The Court
8 concludes Toll's website is a public forum for the purposes of NRS 41.637(4).

9 The Court concludes the resident communications were made in direct
10 connection with an issue of public interest in a place open to the public or in a
11 public forum.

12
13 3. *Truthful communications or made without knowledge of falsehood*

14 The last issue on the question of whether the communications were good
15 faith communications is whether the communications were truthful or made
16 without knowledge of its falsehood. In his first affidavit Toll testified that he
17 conducts research for the pieces he writes. Mot. Ex. 11, ¶ 18. In his second
18 affidavit Toll testified more directly and fully regarding his due diligence. He
19 testified "that for each statement I made that Gilman claims is defamatory, I
20 investigated the facts before making the statement." Reply Ex. 2, ¶ 10(a). The
21 Court finds Attachment 3 to Toll's affidavit is a true and correct copy of his
22 October 16, 2017 website communication. In his first affidavit paragraph 15 Toll
23 testified he believes the contents of his stories, including the October 16, 2017
24 communication, were true. In the October 16, 2017 communication Toll stated
25 he made a public records request to the Storey County Assistant Manager
26 requesting the zoning of the Mustang Ranch compound. Toll alleged the
27 Assistant County Manager failed to provide the requested information for six
28 months. Toll also stated in the communication that he made a request of the

1 Storey County Clerk before his first resident communication requesting proof of
2 Gilman's resident and received a response that Gilman resides at 5B Wildhorse
3 Canyon Drive. Toll asked the Storey County Assessor where 5B Wildhorse
4 Canyon Drive was physically located and was informed that Gilman resides in a
5 double wide mobile home located behind the swimming pool at the Mustang
6 Ranch. The statements of the Storey County Clerk and Assessor are not
7 considered here as proof of the matter asserted but only to show what
8 knowledge Toll had when he made the communication. Based upon the
9 information he had, Toll did not believe that "Lance Gilman, one of the
10 wealthiest men in Northern Nevada, lives in a mobile home behind the
11 swimming pool with his employee and roommate Kris Thompson."

12 Toll did not prove that Gilman is a resident of Washoe County or that
13 Gilman is not a resident of Storey County, but he, Toll, did not have to prove
14 either. Based upon the information Toll had regarding Gilman's residence, the
15 Court concludes Toll proved by a preponderance of evidence that he did not
16 knowingly make a false statement when he published the resident
17 communications.

18 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
19 Court concludes the communications were made in furtherance of the right to
20 free speech in direct connection with an issue of public concern.
21

22 4. *Burden of proof shifts to Gilman*

23 Because Toll met the burden of proof under NRS 41.660(3)(a) the burden
24 shifts to Gilman to demonstrate with prima facie evidence a probability of
25 prevailing on his defamation per se claim. The elements of defamation per se of
26 a public official or public officer are: (1) a false statement; (2) that is
27 defamatory; (3) an unprivileged publication to a third person; and (4) actual
28 malice.

1 Gilman need only establish his claim has minimal merit, but he must
2 establish it with competent, admissible evidence. As the *Cross v. Facebook*
3 court stated, “the evidence is what counts.” *Cross* at 209. The Court cannot
4 resolve the merits of the overall dispute on a special motion to dismiss. The
5 Court cannot and therefore does not weigh the evidence, including the
6 credibility of witnesses in its analysis. Instead, the Court accepts as true the
7 evidence favorable to Gilman and evaluates Toll’s evidence only to determine if
8 it has defeated Gilman’s evidence as a matter of law. The Court must accept as
9 true all competent, admissible evidence favorable to Gilman.

10
11 (a) A false statement

12 The first element of defamation per se requires a false statement. To prove
13 the resident communications were false Gilman must produce some minimal
14 evidence that he resides in Storey County. The Court now turns to the evidence
15 produced on the resident issue. Gilman testified in his affidavit:

16 (1) “I have never been officially notified by any law enforcement or
17 governmental organization about any investigation whatsoever
18 challenging my residency in Storey County.” Opp. Ex. 3, ¶ 39.

19 (2) “Contrary to the Defendant’s assertions, I do live in Storey
20 County, Nevada. My address is 5 Wild Horse Canyon, and I have
21 lived there for 12 years or more.” Opp. Ex. 3, ¶ 42.

22 (3) “I certainly never committed perjury as alleged by the Defendant.
23 The Defendant’s statements are not true.” Opp. Ex. 3, ¶ 43.

24 Gilman provided a copy of his driver’s license which shows his address is 5
25 Wild Horse Canyon, Sparks, Nevada. Opp. Ex. 9.

26 Toll testified the Storey County Assessor informed him that 5 Wild Horse
27 Canyon is on the Mustang Ranch property. Although this statement is hearsay if
28 offered for the truth of the matter asserted, Toll did not in any way limit or

1 attempt to limit the use of his testimony. But the Court need not and does not
2 consider the Assessor's statement to decide this issue.

3 The Court concludes Gilman's testimony under oath that he lives in Storey
4 County is sufficient prima facie evidence that he lives in Storey County.

5
6 (b) A defamatory statement

7 The second element of defamation per se is that the false statement was
8 defamatory. "A statement is defamatory when it would tend to lower the subject
9 in the estimation of the community, excite derogatory opinions about the
10 subject, and hold the subject up to contempt. In reviewing an allegedly
11 defamatory statement, 'the words must be reviewed in their entirety and in
12 context to determine whether they are susceptible of a defamatory meaning.'
13 Whether a statement is defamatory is generally a question of law; however,
14 where a statement is 'susceptible of different constructions, one of which is
15 defamatory, resolution of the ambiguity is a question of fact for the jury.'" *Lubin*
16 *v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422 (2001)(internal citations omitted).

17 The Court finds the resident communications were intended to and
18 would tend to cause Storey County residents to question or doubt whether
19 Storey County Commissioner Gilman lives in Storey County. Voters generally
20 and reasonably want their elected officials to live in the area the elected official
21 represents. The Court finds that Toll's statements suggesting, implying, or
22 outright accusing Storey County Commissioner Gilman of not residing or living
23 in Storey County and lying and perjuring himself about it would tend to lower
24 Gilman in the estimation of the community, excite derogatory opinions about
25 Gilman, and hold Gilman up to contempt. The Court concludes the resident
26 statements were defamatory.

27 /////

28 /////

1 (c) An unprivileged publication to a third person

2 The third element of defamation per se is an unprivileged publication to a
3 third person. Toll argued that insofar as the alleged defamatory statements
4 relate to media reporting on judicial proceedings the fair report privilege
5 applies. Toll failed to produce evidence of judicial proceedings. There cannot be
6 media reporting on judicial proceedings without judicial proceedings. Toll's
7 argument lacks factual or legal support.

8 The Court concludes the resident statements were unprivileged publications
9 to third persons.

10
11 (d) Actual malice

12 The fourth element of defamation per se of a public official or public figure
13 is actual malice. "Actual malice" means knowledge that the statement was false
14 or with reckless disregard of whether it was false or not. "Reckless disregard"
15 means the publisher of the statement acted with a high degree of awareness of
16 the probable falsity of the statement or had serious doubts as to the
17 publication's truth. "This test is a subjective one, relying as it does on 'what the
18 defendant believed and intended to convey, and not what a reasonable person
19 would have understood the message to be.'" *Pegasus* at 722.

20 Gilman's points and authorities in support of his opposition to Toll's anti-
21 SLAPP motion offers little of substance on the actual malice element. Beginning
22 on page 35 of Gilman's points and authorities at line 16 Gilman asserts there is
23 solid proof of actual malice. He then talks about Toll being unhappy about
24 Gilman opposing the sheriff; that Toll has continuously criticized and impugned
25 Gilman in the website communications; that Toll has a deep dislike of Gilman;
26 and that Toll has a private vendetta against Gilman. Gilman argued these
27 "facts" show Toll's negligence, motive and intent. The *Pegasus* court noted that

28 /////

1 recklessness or malice may be established through cumulative evidence of
2 negligence, motive, and intent.

3 On page 36 of his opposition, beginning at line 20, Gilman argued Toll did
4 little or no due diligence before making the statements; and made up the
5 assertions out of thin air through an overwrought imagination. Gilman did not
6 support these assertions with competent, admissible evidence.

7 Toll testified he investigated the facts before making the statements Gilman
8 alleged are defamatory, and that he believes the contents of his stories were
9 true, including his October 16, 2017 communication. In his October 16, 2017
10 communication, which was made nearly two months before Gilman filed this
11 action, Toll stated:

- 12 (1) He made a public records request to the Storey County Assistant
13 Manager requesting the zoning of the Mustang Ranch compound and
14 that the Assistant County Manager failed to provide the requested
15 information for six months;
- 16 (2) He made a request of the Storey County Clerk before his first resident
17 communication requesting proof of Gilman's residence and received a
18 response that Gilman resides at 5B Wild Horse Canyon Drive;
- 19 (3) He asked the Storey County Assessor where 5B Wild Horse Canyon
20 was physically located and was informed that Gilman resides in a
21 double wide mobile home located behind the swimming pool at the
22 Mustang Ranch.

23 Again, the statements of the Storey County Clerk and Assessor are not
24 considered here as proof of the truth of the matter asserted but only to show
25 what knowledge Toll had when he made the communications.

26 Toll included as part of his October 16, 2017 a letter he sent to the Storey
27 County District Attorney and Nevada Attorney General. In the letter Toll relates
28 that he received information from the Storey County Community Development

1 Department that none of the property on which the Mustang Ranch sits is
2 zoned residential. Toll continued, "In other words neither 5 nor 56 Wild Horse
3 Canyon Drive are legal residences; nobody can legally reside there or claim
4 either address as their legal residence." Opp. Ex. 9.

5 Toll also knew, as any informed Northern Nevadan would, that Gilman is a
6 financially successful businessman.

7 Based upon the information he had, Toll did not believe Gilman the-
8 successful-businessman lives in a trailer. Toll stated in his October 16, 2017
9 communication: "Lance Gilman, one of the wealthiest men in Northern Nevada,
10 lives in a mobile home behind the swimming pool with his employee and
11 roommate Kris Thompson."

12 The Court finds Toll did conduct some research on Gilman's residence
13 before he published the resident communications and that the information he
14 received as a result of that research caused him to disbelieve that Gilman lives
15 in a trailer behind the Mustang Ranch pool.

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

22
23 *5. Discovery request*

24 Gilman requested an opportunity to conduct discovery under NRS 41.660(4)
25 which requires a court to allow limited discovery upon a showing that
26 information necessary to meet or oppose the burden under NRS 41.660(3)(b) is
27 in the possession of another party or a third party and is not reasonably
28 available without discovery. Gilman failed to make the showing required by

1 NRS 41.660(3)(b) on the issue of actual malice. The Court concludes that here,
2 information as to whether Toll knew the resident statements were false or
3 whether he acted with a high degree of awareness of the probable falsity of the
4 statement or had serious doubts as to the publication's truth, is necessary for
5 Gilman to meet or oppose the burden under NRS 41.660(3)(b), and that
6 information is in the possession of Toll or a third party and is not reasonably
7 available without discovery. Therefore Gilman's request to conduct discovery is
8 granted. Gilman will be allowed to conduct discovery limited solely to
9 information as to whether Toll knew the resident statements were false or
10 whether he acted with a high degree of awareness of the probable falsity of the
11 statement or had serious doubts as to the publication's truth.

12
13 **B. Reverse graft**

14
15 *1. Reverse graft communication*

16 The reverse graft statements come from a communication published on
17 August 6, 2017. A copy of the communication is attached to Gilman's
18 Opposition as Exhibit 10. The specific statement quoted by Gilman is found in
19 the first paragraph on the fifth page of the exhibit:

20 When this deal is approved by Marshall McBride and Jack McGuffey,
21 TRIC will have accomplished another spectacular job of bamboozling
22 Storey County officials. It will mean that Storey County and Nevada
23 taxpayers have dumped \$100 million dollars of what can only be
24 described as "reverse graft" directly into the pockets of the band of merry
25 TRICsters.

26 Gilman argued there was no reverse graft and explained that there is no
27 payment of \$100 million going into Gilman's pockets.

28 *2. Good faith communication*

The first issue is whether the statement is a good faith communication in
furtherance of the right to petition or the right to free speech in direct

1 connection with an issue of public concern. NRS 41.660(3)(a). The Court turns
2 to the definition set out in NRS 41.637.

3
4 (a) Communication aimed at procuring any governmental or electoral
5 action, result or outcome

6 NRS 41.637(1) requires the communication be aimed at procuring any
7 governmental or electoral action, result or outcome. The aim of Toll's
8 hyperbolic communication including his use of the term "reverse graft" is that
9 the multimillion dollar pipeline deal is bad for Storey County residents but good
10 for Gilman, and therefore Storey County residents should take political action
11 and oust Gilman. Specifically, Toll stated on page 8 of the communication:

12 This pipeline "deal" is the latest effort to benefit TRIC at the
13 expense of every person in Storey County and should make
14 everyone stand up and voice outrage.

15 If our current County Leadership fail to recognize this for what it
16 is and approve it, it's time to demand a change of those leaders.

17 Marshall McBride is our only hope to shoot this hustle down. If
18 you think Lance should finance his own projects, call or email
19 Marshall and let him know.

20 After these calls to political action Toll included an email address and
21 telephone number for Commissioner McBride.

22 The Court concludes this communication and the use of "reverse graft" was
23 aimed at procuring an electoral action, result or outcome – voicing outrage over
24 the deal that would allegedly hurt Storey County residents and benefit Gilman,
25 demanding a change of leaders if they approved the deal, and encouraging
26 residents to call or email Commissioner McBride to encourage him to shoot
27 down the deal.

28 (b) Directed to a government officer

NRS 41.637(2) requires the communication be directed to a government
officer. The reverse graft communication was directed at all Storey County

1 residents but not to a specific government officer so the communication did not
2 fit within this part of the definition.

3
4 (c) Direct connection with an issue under consideration by a
5 legislative body

6 NRS 41.637(3) requires the statement be made in direct connection with an
7 issue under consideration by a legislative body. The instant statement was made
8 in direct connection with the pipeline deal which was under consideration by
9 the Storey County Commission, a legislative body. The Court concludes the
10 statement was made in direct connection with an issue under consideration by a
11 legislative body.

12 (d) Direct connection with an issue of public interest

13 NRS 41.637(4) requires the communication be made in direct connection
14 with an issue of public interest. To determine whether the communication was
15 made in direct connection with an issue of public interest the court looks to the
16 guiding principles set forth in *Shapiro*.

17
18 (i) Public interest

19 The first guiding principle is that “public interest” does not equate with
20 mere curiosity. The Court concludes that the multimillion dollar pipeline deal
21 had potential effects on all Storey County residents and was not a matter of
22 mere curiosity. This guiding principle weighs in favor of finding the
23 communication and the reverse graft statement were made in direct connection
24 with an issue of public interest.

25 The second guiding principle is that a matter of public interest should be
26 something of concern to a substantial number of people; a matter of concern to
27 a speaker and a relatively small specific audience is not a matter of public
28 interest. The pipeline deal had potential effects on every Storey County resident

1 and was not just a matter of concern to Toll and a relatively small specific
2 audience. This guiding principle weighs in favor of finding the communication
3 and the reverse graft statement were made in direct connection with an issue of
4 public interest.

5 The third guiding principle is that there should be some degree of closeness
6 between the challenged statement and the asserted public interest – the
7 assertion of a broad and amorphous public interest is not sufficient. The instant
8 communication was made before the Storey County Commission voted on the
9 pipeline deal. The communication criticized Gilman's part in the deal including
10 the use of the "reverse graft" phrase, and expressed outrage at the use of Storey
11 County tax dollars for the project. The Court concludes there is a degree of time
12 and subject matter closeness between the challenged statement and the
13 asserted public interest, and that the communication is not an assertion of a
14 broad and amorphous public interest. This guiding principle weighs in favor of
15 finding the communication and the statement were made in direct connection
16 with an issue of public interest.

17 The fourth guiding principle is the focus of the speaker's conduct should be
18 the public interest rather than a mere effort to gather ammunition for another
19 round of private controversy. The focus of Toll's communication was killing the
20 pipeline deal and the reverse graft statement was intended to criticize Gilman
21 for his part in the deal. Toll published the communication before the
22 Commission voted on the deal. The Court concludes Toll's statement was in the
23 public interest and not a mere effort to gather ammunition for another round of
24 private controversy. This guiding principle weighs in favor of finding the
25 communication and the statement were made in direct connection with an issue
26 of public interest.

27 The fifth and final guiding principle is that a person cannot turn otherwise
28 private information into a matter of public interest simply by communicating it

1 to a large number of people. The Court concludes the information regarding the
2 pipeline deal and Gilman's involvement in the deal was not private information
3 but a matter of public interest. This guiding principle weighs in favor of finding
4 the communication and the statement were made in direct connection with an
5 issue of public interest.

6 The Court concludes the communication and the statement were made in
7 direct connection with an issue of public interest.

8
9 (ii) Public forum

10 The Court concluded above that Toll's website is a public forum.

11
12 (3) *Truthful statement or made without knowledge of its falsehood*

13 The last issue on the question of whether the communication was a good
14 faith communication is whether the communication was truthful or made
15 without knowledge of its falsehood. The Court concludes Toll did not prove the
16 statement was truthful.

17 The Court looks to the facts to see if Toll proved the statement was made
18 without knowledge of its falsehood. Toll referenced in his communication, a
19 communication prepared and published by Nicole Barde on her blog about the
20 August 1, 2017 Commissioner meeting. Toll stated in his communication:

21 Nicole Barde has been the Lone Ranger in her reporting of County
22 Commissioner Meetings since she started in 2015. In her
23 breakdown of the August 1st meeting (**which I encourage you**
24 **to read here** ([http://www.bardeblog.com/so-what's-going-on/](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting)
25 [212-summary-of-the-august-1-2017-storey-county-commission-](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting)
26 [meeting](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting))), she delivers a lengthy in-depth and dead on point
dissection of the latest effort of Brothel Owner, TRIC Executive
and self-serving crony County Commissioner Lance Gilman to
once again have Storey County Taxpayers forfeit \$35 Million
Dollars of future tax revenue from a "special tax area" so he and
Don Norman can make even more money.

27 (Emphasis in original.) Opp. Ex. 10, p. 2-3.

28 /////

1 Toll stated "Ms. Barde accurately called this Corporate Welfare, I call it
2 reverse graft. In the alternate reality call [sic] that exists in the Courthouse, it's
3 a 'public-private partnership-investment thingy.'" Opp. Ex. 10, p. 3.

4 Neither party included Barde's communication as an exhibit and so the
5 Court has not reviewed it. Gilman did not testify or argue that Barde's
6 communication was false, incorrect, incomplete, or defamatory.

7 Toll's communication contains many extravagant exaggerations including:

- 8 – We [Storey County residents] and our pocketbooks serve at the pleasure
9 and plunder of Lance Gilman
- 10 – Storey County Taxpayers gleefully divert tax revenue directly into the
11 band of merry TRICsters pockets.
- 12 – ... you have to admire the ginormity of the brass balls these hucksters
13 clang around in broad daylight.
- 14 – [Referring to charts contained in the communication] I call these
15 projections speculative fantasy mindful that we are one Orange Tweet or
16 North Korean Missile into Seoul away from a major deviation from the
17 ice cream and lollypops [sic] shown in the charts above.
- 18 – The last point I want to make is to remind sober minded residents of
19 Storey County that encumbering us with this debt takes the cream off the
20 top of the annual flood of mythical revenue from the Oceans of Cash in
21 the Sea of TRIC.

22 No reasonable person would believe any of these statements is true.

23 With this context the Court turns to the phrase "reverse graft," a phrase Toll
24 apparently made up. The phrase has no relevant defined meaning. Looking at
25 the words individually, the adjective "reverse" means opposite or contrary to a
26 specified thing; operating in opposite or contrary fashion to what is usual.
27 Webster's Third New International Dictionary 1943 (2002). One meaning of
28 "graft" is the acquisition of money or property by dishonest or questionable
means, as by taking advantage of a public office to obtain profit; or illegal or
unfair practice for profit or personal gain. Id. 985. Using the dictionary
definitions "reverse graft" means operating in an opposite or contrary fashion to
what is the usual acquisition of money or property by dishonest or questionable
means, as by taking advantage of a public office to obtain profit; or illegal or

1 unfair practice for profit or personal gain. The Court is unable to make sense of
2 the term “reverse graft.” “Graft” sounds bad, but Toll used the term “reverse
3 graft” and the words have to be taken together. In *Greenbelt Cooperative*
4 *Publishing Assn., Inc. v. Bresler*, 398 U.S. 6, 26 L. Ed. 2d 6, 90 S. Ct. 1537
5 (1970) a real estate developer had engaged in negotiations with a city for a
6 zoning variance on land he owned, while simultaneously negotiating with the
7 city on other land the city wanted to buy from him. A local newspaper published
8 articles that included statements that some people had characterized the
9 developer’s negotiating position as “blackmail.” The developer sued for libel.
10 The court rejected a contention that liability could be premised on the notion
11 that the word “blackmail” implied the developer had committed the actual
12 crime of blackmail and held that “the imposition of liability on such a basis was
13 constitutionally impermissible – that as a matter of constitutional law, the word
14 ‘blackmail’ in those circumstances” was not defamation, but just rhetorical
15 hyperbole, a vigorous epithet used by those who considered the developer’s
16 negotiating position extremely unreasonable. *Id.* 12-13.

17 The facts in the instant case have some similarity to the *Greenbelt* facts.
18 Gilman is the exclusive broker for, a principal in and marketing director for
19 TRI. TRI sought a multi-million dollar deal with the Storey County Commission
20 for a pipeline. Gilman is also a Storey County Commissioner. Toll considered
21 Gilman’s position with TRI and his position with Storey County to be extremely
22 unreasonable. As a result Toll lashed out with a communication that included
23 the meaningless phrase “reverse graft,” which he intended as a vigorous epithet,
24 and what is in fact rhetorical hyperbole. The Court concludes the term, taken in
25 the context of the full communication, is nonsensical and not reasonably
26 susceptible to a defamatory construction.

27 /////

28 /////

1 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
2 Court concludes the communication and statement were made in furtherance of
3 the right to free speech in direct connection with a issue of public concern.
4

5 *4. Burden shifts to Gilman*

6 Because Toll met the burden under NRS 41.660(3)(a) the Court must
7 determine whether Gilman has demonstrated with prima facie evidence a
8 probability of prevailing on the his defamation per se claim. Gilman
9 acknowledges he must prove the allegedly defamatory statement was made with
10 actual malice, that is, with knowledge that it was false or with reckless disregard
11 of whether it was false or not.

12 In his affidavit, Opp. Ex. 3, ¶ 47-64, Gilman denied reverse graft and
13 explained the pipeline and infrastructure deals. Because “reverse graft” is a
14 nonsensical phrase Gilman did not and cannot prove it was false or made with
15 reckless disregard of whether it was false or not.
16

17 *5. Discovery request*

18 Gilman requested an opportunity to conduct discovery under NRS 41.660(4)
19 which requires a court to allow limited discovery upon a showing that
20 information necessary to meet or oppose the burden under NRS 41.660(3)(b) is
21 in the possession of another party or a third party and is not reasonably
22 available without discovery. Gilman failed to make the showing required by
23 NRS 41.660(3)(b). He made no showing that any information regarding reverse
24 graft is in the possession of another party or a third party *and* is not reasonably
25 available without discovery. Therefore the request to conduct discovery is
26 denied.

27 Based upon the foregoing the special motion to dismiss must be granted as
28 to the “reverse graft” statement.

1 **C. Re-licensing Mustang Ranch**

2 The statements regarding re-licensing the Mustang Ranch come from a
3 communication Toll published on February 26, 2017. Toll says the
4 communication was submitted by a Storey County resident who wanted to
5 remain anonymous. A copy of the communication is attached to Gilman's
6 Opposition as Exhibit 11. The specific statement quoted by Gilman is found in
7 the last paragraph on the second page of the exhibit.

8 Funny thing is, the courts didn't agree and the investor won. But,
9 in the meantime, because Lance had shut down the Wildhorse and
10 reopened it as the Mustang, he thought he didn't need to go
11 through the investigation that the Nevada Revised Statutes
12 require for the opening of a new brothel. He didn't want to follow
13 the law. The County Commissioners even agreed with him. Why
14 should Lance, the man who's been a virtual Santa Claus (at least
15 he tries to convince people he is) for Storey County, have to follow
16 the law? Sheriff Antinoro said the law had to be followed and that
17 the Mustang had to be closed for the required number of days, per
18 state statute, for the investigation with which ALL brothels must
19 comply. King Lance was furious. He secretly plotted pay back.

20 Gilman's Complaint (p. 5, ¶ 18(e), the heading for this section of his brief
21 (Opp. p. 12, sec. B(2)©, and his argument regarding the quoted language is that
22 the communication said Gilman didn't follow the law when re-licensing the
23 Mustang Ranch. Opp. p. 12. Toll's communication does not say Gilman did not
24 follow the law. The communication says Gilman "thought he didn't need to go
25 through the investigation that the Nevada Revised Statutes require for the
26 opening of a new brothel," and that "[h]e didn't want to follow the law." Opp.
27 Ex. 11, p. 2-3.

28 Gilman failed to set forth any facts, cite any law, or argue that the actual
statements made in the communication were defamatory or that the statements
were made with actual malice. The Court concludes the actual statements are
not defamatory and will dismiss this portion of Gilman's claim.

//////

//////

1 **D. Receiving land with zero consideration**

2 The statements regarding special consideration regarding rules and
3 regulations come from a communication Toll published on December 3, 2017. A
4 copy of the communication is Exhibit 8 to Gilman's opposition. The language at
5 issue is:

6 Special Interests

7 The Commissioner Lance Gilman – TRIC Special Interest merry-
8 go-round that gives Mr. Gilman and TRIC access to the Storey
9 County checkbook, tax coffers, real property and special
10 consideration regarding rules and regulations.

11 ...

12 • Repeatedly reconvening Storey County property to TRIC with
13 zero consideration or payment that TRIC has turned around and
14 included the free property into lucrative land deals, including the
15 one that gave a portion of the USA Parkway to TRIC (for free)
16 which Mr. Gilman and TRIC turned around and sold to NDOT for
17 \$43 Million Dollars (without giving us a single penny or paying
18 down the \$47 Million Dollars Storey County credit card balance).

19 Gilman admitted under oath that Storey County reconveyed land to TRI as
20 part of the NDOT extension right of way, and TRI did not get all of the USA
21 Parkway back from the County for free. Gilman Aff. p. 8, ¶ 81 and 85. It is clear
22 from Gilman's testimony that Storey County did reconvey land to TRI for which
23 TRI did not pay Storey County. The Court concludes Gilman's own testimony
24 proves that Toll's statement is true and therefore not defamatory, and therefore
25 this portion of Gilman's claim will be dismissed on that ground.

26 **D. Washington, D.C. trip**

27 1. *Washington, D.C. trip communication*

28 The statements regarding Gilman traveling to Washington, D.C. come from
communications Toll published on April 29, 2017 and May 2, 2017. A copy of
the April 29, 2017 communication is Exhibit 12 to Gilman's opposition, and the
May 2, 2017 communication is Exhibit 13. Gilman did not quote specific

1 language related to this portion of his claim, or refer the Court to any particular
2 page of the 41 pages that make up Exhibits 12 and 13.

3 On the first page of the April 29, 2017 communication Toll reported that
4 Storey County sent Gilman and a Storey County lobbyist to Washington, D.C.
5 from January 17 to 22, 2017. Toll stated the purpose of the trip was to lobby for
6 a zip code bill to prevent Storey County from losing out on substantial sales tax
7 revenue. Toll opined that it is a good idea to get the zip code issue resolved.

8 Toll continued his communication by relating he realized Donald Trump
9 was inaugurated on January 21, 2017. After he realized this, Toll, on February
10 16, 2017, made a records request for receipts from the trip. On March 7, 2017
11 the Storey County lobbyist that had accompanied Gilman to Washington, D.C.
12 addressed the Storey County Commission and provided information about
13 lobbying for Storey County. At this point in his communication Toll provided a
14 link that would take a reader to the Commission recording of the lobbyist's
15 report. Toll then stated: "To recap, we paid \$,7611.50 for them to attend Donald
16 Trump's Inauguration." Opp., Ex. 12, p. 3.

17 Toll continued, "I have been to D.C. several times, but never on
18 Inauguration Week. My sources tell me it is pretty much like the week that
19 precedes Super Bowl; business as unusual. If you want to schedule meaningful
20 work, you're in Fantasyland." Toll suggests the lobbying could have been done
21 by Skype. He pointed out that government spending is all about priorities; that
22 \$7,611.50 represents just under one quarter of the annual salary of a new
23 deputy or a new patrol vehicle. He then asks, "What are the priorities in Storey
24 County? "

25 The next pages are Gilman's and the lobbyist's Marriott receipts from the
26 trip. Each receipt includes a hand written statement: "DC trip to Trump
27 inauguration." Documentation of airfare is also posted to the website.

28 The website then has pages of chat posts.

1 Exhibit 13 appears to consist of a series chat posts between Toll and a person
2 he describes as a Gilman spokesman.

3
4 *2. Good faith communication*

5 The first issue is whether the statement is a good faith communication in
6 furtherance of the right to petition or the right to free speech in direct
7 connection with an issue of public concern. NRS 41.660(3)(a). To determine
8 that, the Court must determine whether the statement falls within any of the
9 four definitions set out in NRS 41.637.

10
11 (a) Communication aimed at procuring any governmental or
12 electoral action, result or outcome

13 NRS 41.637(1) requires the communication be aimed at procuring any
14 governmental or electoral action, result or outcome. The primary focus of Toll's
15 communication is accountability for Storey County spending – the legitimacy of
16 Storey County paying Gilman's room and airfare expenses to lobby in
17 Washington D.C. during the week of the U.S. presidential inauguration. The
18 Court concludes these stories and the specific statements were aimed at
19 procuring an electoral action, result, or outcome regarding Storey County's use
20 of tax funds and Gilman's continuing as a Storey County Commissioner.

21
22 (b) Communication directed to a government officer or in
23 direct connection with with an issue under consideration
by a government body or official

24 NRS 41.637(2) requires the communication be directed to a government
25 officer, and subsection (3) requires the statement be made in direct connection
26 with an issue under consideration by a government body or official. The instant
27 statements do not meet either of these requirements.

1 (c) Direct connection with an issue of public interest

2 NRS 41.637(4) requires the communication be made in direct connection
3 with an issue of public interest. To determine whether the communication was
4 made in direct connection with an issue of public interest the court looks to the
5 guiding principles for set forth in *Shapiro*.

6 The first guiding principle is that “public interest” does not equate with
7 mere curiosity. The Court concludes the public has an interest in how tax
8 dollars are spent. The effort to inform the public about Storey County’s
9 spending for the Washington, D.C. trip was not a matter of mere curiosity. This
10 guiding principle weighs in favor of finding the communication and the
11 statement were made in direct connection with an issue of public interest.

12 The second guiding principle is that a matter of public interest should be
13 something of concern to a substantial number of people; a matter of concern to
14 a speaker and a relatively small specific audience is not a matter of public
15 interest. How Storey County tax dollars are spent is an important matter to all
16 Storey County taxpayers and not just a matter of concern to Toll and a relatively
17 small specific audience. This guiding principle weighs in favor of finding the
18 communication and the statement were made in direct connection with an issue
19 of public interest.

20 The third guiding principle is that there should be some degree of closeness
21 between the challenged statements and the asserted public interest – the
22 assertion of a broad and amorphous public interest is not sufficient. The
23 communication criticized Gilman and other county officials about the spending
24 for the trip. The Court concludes there is a degree of closeness between the
25 asserted public interest – responsible spending of taxpayer dollars – and
26 information regarding the Washington, D.C. trip. The Court concludes these
27 communications are not an assertion of a broad and amorphous public interest.
28 This guiding principle weighs in favor of finding the communication and the

1 statement were made in direct connection with an issue of public interest.

2 The fourth guiding principle is the focus of the speaker's conduct should be
3 the public interest rather than a mere effort to gather ammunition for another
4 round of private controversy. The focus of Toll's communication was whether
5 the use of tax dollars for the trip was legitimate, and in the best interests of
6 Storey County taxpayers. The Court concludes Toll's statement was in the
7 public interest and not a mere effort to gather ammunition for another round of
8 private controversy. This guiding principle weighs in favor of finding the
9 communication and the statement were made in direct connection with an issue
10 of public interest.

11 The fifth and final guiding principle is that a person cannot turn otherwise
12 private information into a matter of public interest simply by communicating it
13 to a large number of people. The Court concludes the information regarding the
14 spending of taxpayer dollars on the Washington, D.C. trip was not private
15 information but a matter of public interest in Storey County. This guiding
16 principle weighs in favor of finding the communication and the statement were
17 made in direct connection with an issue of public interest.

18 The Court concludes the communication and the statement were made in
19 direct connection with an issue of public interest.

20
21 *3. Truthful statement or made without knowledge of falsehood*

22 The last issue on the question of whether the communication was a good
23 faith communication is whether the communication was truthful or made
24 without knowledge of its falsehood. In his first affidavit Toll testified that he
25 conducts research for the pieces he writes. In this communication, Toll related
26 that the Storey County lobbyist reported on the lobbying efforts during the
27 Washington, D.C. trip and Toll provided a link for readers to listen to the
28 lobbyist's report. Toll downplayed the lobbying efforts. He included

1 information that the week of the U.S. presidential inauguration is not the best
2 week to do business in Washington, D.C. Gilman does not deny attending the
3 inauguration. Toll included receipts he received from the County which
4 included the handwritten notation "DC trip to Trump inauguration." Toll
5 suggested an alternative to traveling to Washington to lobby – Skype. This
6 probably should not be taken too seriously. But neither should the statement,
7 "we paid \$7,611.50 for them to attend the inauguration" be taken out of context
8 and understood literally. Read in the context of the full communication, which
9 includes statements about who Gilman and the lobbyist talked to, a link to the
10 lobbyist's report to the County Commission, the receipts indicating "DC trip to
11 Trump inauguration," a reasonable person would read the statement "we paid
12 \$7,611.50 for them to attend the inauguration" to mean that the big event
13 during the lobbying trip was the inauguration, not that nothing was done in
14 connection with the zip code issue. The Court concludes the statement in
15 context is not false or susceptible to a defamatory construction.

16 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
17 Court concludes the communication and statement were made in furtherance of
18 the right to free speech in direct connection with a issue of public concern.

19
20 *4. Burden shifts to Gilman*

21 Because Toll met the burden under NRS 41.660(3)(a) the Court must
22 determine whether Gilman demonstrated with prima facie evidence a
23 probability of prevailing on the his defamation per se claim.

24 Gilman's evidence is his affidavit testimony, Opp. Ex. 3, ¶ 97-98. Gilman
25 testified the trip was on behalf of Storey County and there was significant
26 lobbying. As stated above, a reasonable reader of this communication would not
27 take the statement, "we paid \$7,611.50 for them to attend the inauguration"
28 literally. Read in the context of the full communication, which includes

1 statements about who Gilman and the lobbyist talked to, a link to the lobbyist's
2 report to the County Commission, the receipts indicating "DC trip to Trump
3 inauguration," a reasonable person would read the statement "we paid
4 \$7,611.50 for them to attend the inauguration" to mean that the big event
5 during the lobbying trip was the inauguration, not that nothing was done in
6 connection with the zip code issue. The Court concludes Gilman failed to
7 produce prima facie evidence that the communication was false or defamatory.
8 The Court concludes Gilman also failed to prove actual malice – that Toll made
9 the communication knowing it was false or the statement acted with a high
10 degree of awareness of the probable falsity of the statement or had serious
11 doubts as to the publication's truth.

12 The Court concludes Gilman failed to demonstrate with prima facie evidence
13 a probability of prevailing on the his defamation per se claim.

14 15 *5. Discovery*

16 Gilman requested an opportunity to conduct discovery under NRS
17 41.660(4). Gilman failed to make the showing required by NRS 41.660(3)(b).
18 The information which allegedly supports Toll's accusations came from the
19 Storey County manager's office and is reasonably available without discovery.
20 Therefore the request to conduct discovery is denied.

21 Based upon the foregoing the special motion to dismiss must be and is
22 granted as to the Washington, D.C. trip communication.

23 24 **E. Special consideration regarding rules and regulations**

25 The statement regarding special consideration regarding rules and
26 regulations come from a communication Toll published on December 3, 2017. A
27 copy of the communication is Exhibit 8 to Gilman's opposition. The language at
28 issue is:

1 Special Interests

2 The Commissioner Lance Gilman – TRIC Special Interest merry-
3 go-round that gives Mr. Gilman and TRIC access to the Storey
4 County checkbook, tax coffers, real property and special
5 consideration regarding rules and regulations.

6 After this opening paragraph Toll lists five examples of the alleged special
7 consideration. Gilman's challenge to the Storey County reconveying land to
8 TRIC without consideration was addressed above. Gilman does not argue any of
9 the other items on the list are defamatory.

10 Taken in context, which is that Gilman receives special consideration and
11 here are five examples of special consideration, one that was addressed above
12 and four that Gilman does not challenge, Gilman has failed to show that the
13 statement is defamatory. Rather the communication is rhetorical hyperbole,
14 vigorous epithets, and lusty and imaginative expressions of contempt and
15 language used in a loose, figurative sense. Such language will not support a
16 defamation action. *Grenier*.

17 The Court concludes the special motion to dismiss must be granted as to this
18 portion of Gilman's claim.

19 **F. Reimbursing the ethics fine and recall expenses**

20 The statement regarding reimbursing the County for recall expenses comes
21 from a communication Toll published on December 3, 2017. A copy of the
22 communication is Exhibit 6 to Gilman's opposition. The language at issue is:

23 Brothel Owner Lance Gilman told thestoryteller.online he will
24 cover the 1000.00 fine incurred by his ethics investigation request
25 filed against Sheriff Gerald Antinoro.

26 In the spirit of moving peacefully and constructively forward, we
27 have pledged to not only pay the \$1,000 fine imposed on the
28 Sheriff as a result of our petty complaint but also reimburse
29 Storey County for the estimated \$30,000 spend on the Recall
30 Election.

31 Gilman argues these statements are not true.

1 Statements cannot form the basis of a defamation action if they cannot be
2 reasonably interpreted as stating actual facts about an individual. Thus,
3 rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of
4 contempt and language used in a loose, figurative sense will not support a
5 defamation action. *Grenier*.

6 The Court concludes this communication and the specific statements are
7 rhetorical hyperbole and cannot be reasonably interpreted as stating actual
8 facts about Gilman. Therefore the Court concludes the special motion to
9 dismiss must be granted as to this portion of Gilman's claim.

10
11 **V. ORDER**

12 **IT IS ORDERED:**

13 Gilman may conduct discovery limited solely to information as to whether
14 Toll knew the resident communications were false or whether he acted with a
15 high degree of awareness of the probable falsity of the statement or had serious
16 doubts as to the publication's truth.

17 Gilman's discovery must be completed by May 11, 2018. Gilman will have
18 until May 25, 2018 to file and serve a supplemental opposition to the anti-
19 SLAPP motion. Toll will have until June 8, 2018 to file a supplemental reply.
20 Toll will file a request to submit the matter for decision on or before June 8,
21 2018.

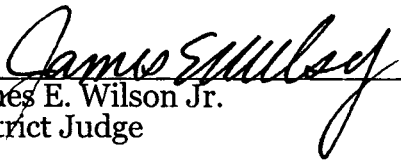
22 The decision on the Anti-SLAPP Special Motion to Dismiss regarding the
23 resident statements and Toll's request for attorney's fees and costs will be
24 delayed until Gilman completes the limited discovery and the parties complete
25 the ordered briefing.

26 Other activity in this case is stayed until the Court rules on the anti-SLAPP
27 motion regarding resident communications.

28 /////

1 The special motion to dismiss is granted as to the statements related to
2 reverse graft, re-licensing Mustang Ranch, receiving land with zero
3 consideration, the Washington, D.C. trip, special consideration regarding rules
4 and regulations, and reimbursing ethics fine and recall expenses.

5 April 9, 2018.

6 
7 James E. Wilson Jr.
8 District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial
3 District Court, and I certify that on April 9, 2018, I served the foregoing
4 Order by:

5 Placing a true and correct copy of it in a sealed, envelope, postage
6 prepaid, and depositing the envelope in the U.S. Post Office mail box at
7 1111 South Roop Street, Carson City, Nevada; or

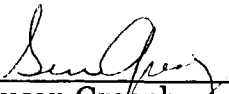
8 X Placing a true and correct copy of it in the pick up box located in the
9 Carson City Court Clerk's office.

10 I used the following addresses:

11 John L. Marshall, Esq.
12 570 Marsh Ave.
13 Reno, NV 89509

Gus W. Flangas, Esq.
Jessica K. Peterson, Esq.
3275 South Jones Blvd., Suite 105
Las Vegas, NV 89146

13 Luke Busby, Esq.
14 316 California Avenue #82
15 Reno, NV 89509

16 
17 Susan Greenburg
18 Judicial Assistant
19
20
21
22
23
24
25
26
27
28

Case No. 18-trt-00001-1e

Dept. No. II

JOHN L. MARSHALL
SBN 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnmarshall@charter.net

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

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

LANCE GILMAN,

Plaintiff(s),

vs.

SAM TOLL,

Defendant(s).

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE: The Court has entered an Order in the above captioned matter.

A true and correct copy of which is attached hereto as Exhibit 1.

FILED

2018 APR 20 PM 12: 51

STOREY COUNTY CLERK

BY

WB
DEPUTY

1
2
3 **NRS 239B.030(4) AFFIRMATION**

4 I certify that the attached filing includes no social security numbers or other personal
5 information.
6

7 Respectfully submitted this April 16, 2018:

8
9 By: 

10 JOHN L. MARSHALL

11 SBN 6733

12 570 Marsh Avenue

13 Reno, Nevada 89509

14 Telephone: (775) 303-4882

15 johnmarshall@charter.net

16 Luke Andrew Busby, Ltd.

17 Nevada State Bar No. 10319

18 316 California Ave #82

19 Reno, NV 89509

20 775-453-0112

21 luke@lukeandrewbusbyltd.com

22 *Attorneys for the Defendant*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the date indicated below I served the foregoing document on the following parties via US Mail, postage prepaid, and/or electronic service.

GUS W. FLANGAS
JESSICA K. PETERSON
Flangas Dalacas Law Group
3275 South Jones Blvd. Suite 105
Las Vegas, NV 89164
702-307-9500
F - 702-382-9452

By: _____

Luke Busby

Dated: _____

4-16-18

Exhibit List

1. Order

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

APR - 9 2018

Storey Co. Clerk

S. GREENBURG Deputy

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

-o0o-

LANCE GILMAN, an individual,

CASE NO. 18 TRT 00001 1E

Plaintiff

DEPT. 2

vs.

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

**ORDER GRANTING ANTI-SLAPP
SPECIAL MOTION TO DISMISS IN
PART, ALLOWING LIMITED
DISCOVERY, AND STAYING
FURTHER PROCEEDINGS**

Defendant

I. PROCEDURAL BACKGROUND

Lance Gilman filed lawsuit against Sam Toll. He alleged a single claim for relief, defamation per se. Toll filed an Anti-SLAPP special motion to dismiss which Gilman opposed.

II. FINDINGS OF FACT

The following facts were either uncontested or proved by a preponderance of the evidence.

Gilman was elected to the Storey County Commission in 2012, took office in 2013 and has served as a county commissioner continuously since 2013. He

/////

1 admits he is a public official and a public figure. Opp. to Anti-Slapp Mot.
2 (Opp.), p. 2.

3 Gilman is a financially successful businessman. His company, Lance Gilman
4 Commercial Real Estate Services, is and has been the exclusive broker for the
5 Tahoe Reno Industrial Center (TRI) an 80,000 acre industrial park that
6 encompasses a 30,000 acre industrial complex. TRI has over 16,000,000
7 square feet of industrial space in use by over 130 companies. Each year he and
8 his businesses make over \$100,000 in food donations and labor to needy Storey
9 County seniors and to a school "food in a backpack" program. Gilman Aff. ¶ 20,
10 21, and 28.

11 The Court takes judicial knowledge of the fact that the Mustang Ranch is in
12 Storey County.

13 Toll established a website, the "Teller," in February 2017. The website is
14 open to the public. Toll posts stories on the website and invites and posts
15 reader's comments.

16 Toll admits publishing on the Teller website the articles which contain the
17 statements alleged by Gilman to be defamatory. Anti-Slapp Special Mot. to
18 Dismiss (Mot.), p. 5-6.

19 The initial focus of the Teller "was to provide a local news source where
20 people in Storey County could obtain the facts surrounding information
21 contained in pieces criticizing the Storey County Sheriff Gerald Antinoro
22 published by the proponents of the effort to recall the sheriff that was ongoing
23 at the time." Toll Aff., Mot. Ex. 8, ¶ 7. Toll believes Gilman was behind the recall
24 effort. Toll opposed the recall effort.

25 Additional facts will be included in the sections regarding the allegedly
26 defamatory statements. When the Court uses the phrase "the Court finds" it
27 means the Court finds the stated facts have been proved by a preponderance of
28 the evidence.

III. APPLICABLE LAW

A. Anti-SLAPP statutes and cases

To decide this special motion to dismiss the Court must:

- (1) Determine whether Toll established, by a preponderance of the evidence, that the defamation claim is based upon 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; and
- (2) If the court determines that Toll has met the burden under paragraph (1), determine whether Gilman has demonstrated with prima facie evidence a probability of prevailing on the claim. NRS 41.660(3).

To demonstrate a probability of prevailing on his claim with prima facie evidence Gilman must meet the same burden of proof that a plaintiff has been required to meet under California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015. NRS 41.665(2). California's anti-SLAPP statutes are found in its Code of Civil Procedure sections 425.16 through 425.18. The statutes do not establish the plaintiff's burden of proof regarding the prima facie evidence of a probability of prevailing on the claim so the Court must look to California case law.

California courts have held that the plaintiff opposing an anti-SLAPP special motion to dismiss must demonstrate that his complaint is legally sufficient, and supported by a prima facie showing of facts through competent, admissible evidence, to support a favorable judgment. "Whatever the complaint may allege, it is not sufficient to defeat an anti-SLAPP motion. The evidence is what counts." *Cross v. Facebook, Inc.*, 14 Cal. App. 5th 190, 209, 222 Cal. Rptr. 3d 250 (2017). The plaintiff need only establish his claim has minimal merit. The Court must accept as true all evidence favorable to the plaintiff.

/////

1 A “probability” in an anti-SLAPP context does not mean more probable than
2 not— only a cause of action that lacks even minimal merit constitutes a SLAPP.
3 *Healthsmart Pacific, Inc. v. Kabateck*, 7 Cal. App. 5th 416, 212 Cal. Rptr. 3d
4 589 (2016). Courts do not resolve the merits of the overall dispute on a special
5 motion to dismiss, but rather identify whether the pleaded facts fall within the
6 statutory purpose, which is to prevent and deter lawsuits brought primarily to
7 chill the valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances. *Wilson v. Cable News Network, Inc.*, 6
9 Cal. App. 5th 822, 211 Cal. Rptr. 3d 724 (2016); see also *Cross v. Facebook, Inc.*,
10 14 Cal. App. 5th 190, 222 Cal. Rptr. 3d 250 (2017).

11 Courts do not pass on the weight of evidence, including the credibility of
12 witnesses in this analysis. Instead, courts accept as true the evidence favorable
13 to the plaintiff and evaluate the defendant’s evidence only to determine if it has
14 defeated the plaintiff’s evidence as a matter of law. *Cruz v. City of Culver City*, 2
15 Cal. App. 5th 239, 205 Cal. Rptr. 3d 736 (2016), citing *Soukup v. Law Offices of*
16 *Herbert Hafif*, 39 Cal.4th 260, 269, fn. 3, 46 Cal. Rptr. 3d 638, 139 P.3d 30
17 (2006).

18 The guiding principles for what distinguishes a public concern from a
19 private one are:

- 20 (1) “Public interest” does not equate with mere curiosity;
- 21 (2) A matter of public interest should be something of concern to a
22 substantial number of people; a matter of concern to a speaker and a
23 relatively small specific audience is not a matter of public interest;
- 24 (3) There should be some degree of closeness between the challenged
25 statements and the asserted public interest; the assertion of a broad
26 and amorphous public interest is not sufficient;

27 /////

28 /////

1 (4) The focus of the speaker's conduct should be the public interest
2 rather than a mere effort to gather ammunition for another round of
3 private controversy; and

4 (5) A person cannot turn otherwise private information into a matter of
5 public interest simply by communicating it to a large number of
6 people.

7 *Shapiro v. Welt*, 133 Nev. A.O. 6, 389 P.3d 262, 268 (2017).

8 Under NRS 41.637 a "good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public
10 concern" means any:

11 (1) Communication that is aimed at procuring any governmental or
12 electoral action, result or outcome;

13 (2) Communication of information or a complaint to a Legislator, officer
14 or employee of the Federal Government, this state or a political
15 subdivision of this state, regarding a matter reasonably of concern to
16 the respective governmental entity;

17 (3) Written or oral statement made in direct connection with an issue
18 under consideration by a legislative, executive or judicial body, or any
19 other official proceeding authorized by law; or

20 (4) Communication made in direct connection with an issue of public
21 interest in a place open to the public or in a public forum; and

22 which is truthful or is made without knowledge of its falsehood.
23

24 **B. Defamation per se**

25 Defamation per se of a public official or public officer consists of four
26 elements: (1) a false statement; (2) that is defamatory; (3) an unprivileged
27 publication to a third person; and (4) actual malice. *Clark Co. Sch. Dist. v.*
28 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82 (2002).

1 A statement is defamatory when, under any reasonable definition, such
2 statement would tend to lower the subject in the estimation of the community,
3 excite derogatory opinions about the subject, and hold the subject up to
4 contempt. *Las Vegas Sun v. Franklin*, 74 Nev. 282, 287, 329 P.2d 867, 869
5 (1958). ; see *Posadas* at 453.

6 In reviewing an allegedly defamatory statement, the words must be reviewed
7 in their entirety and in context to determine whether they are susceptible of a
8 defamatory meaning. *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001). If a
9 statement is susceptible of different constructions, one of which is defamatory,
10 resolution of the ambiguity is a question of fact for the jury. *Posadas v. City of*
11 *Reno*, 109 Nev. 448, 851 P.2d 438 (1993).

12 False statements that accuse a plaintiff of criminal conduct are defamatory
13 on their face. Statements cannot form the basis of a defamation action if they
14 cannot be reasonably interpreted as stating actual facts about an individual.
15 Thus, rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions
16 of contempt and language used in a loose, figurative sense will not support a
17 defamation action. *Grenier v. Taylor*, 234 Cal. App. 4th 471, 183 Cal. Rptr. 3d
18 867 (2015)(and cases cited therein).

19 To promote free criticism of public officials, and avoid any chilling effect
20 from the threat of a defamation action, a defendant cannot be held liable for
21 damages in a defamation action involving a public official or public figure
22 unless “actual malice” is alleged and proven by clear and convincing evidence.
23 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 8 (2002).

24 “Actual malice” means knowledge that the statement was false or with
25 reckless disregard of whether it was false or not. *Id.* “Reckless disregard” means
26 the publisher of the statement acted with a high degree of awareness of the
27 probable falsity of the statement or had serious doubts as to the publication’s
28 truth. *Id.*

IV. ANALYSIS

The Court now turns to the statements Gilman alleged are defamatory in the order Gilman addressed them in his brief.

A. Residence and perjury

1. "Resident" communications

In his Complaint Gilman simply alleged that Toll made statements that Gilman is not a resident of Storey County and that Gilman lied and committed perjury regarding his being a resident of Storey County. In his opposition, Gilman pointed to five statements published by Toll about Gilman being a resident of Storey County; in one of those communications Toll alleged Gilman committed perjury regarding his address. The analysis for these communications is the same and the Court will address them together and refer to them as the "resident communications."

(a) Washoe County resident

Toll published the first resident communication, "Washoe County resident," on April 7, 2017. A copy of the communication is attached to Gilman's Opposition as Exhibit 4. The specific statement is found in the last paragraph on the second page of the exhibit:

Team Gilman would have never subjected the citizens to the polarizing effect of the recall effort had it not been for the Washoe County resident who thinks he knows what is best for the taxpayers who shoulder the tax burden of Don Norman, Lance Gilman and the rest of the tax escapers at the Center.

(b) If you believe he actually lives at 5 Wildhorse Canyon

Toll published the second resident communication on April 18, 2017. A copy of the communication is attached to Gilman's Opposition as Exhibit 5. The

/////

1 specific statement is found in the paragraph below the text box on the third
2 page of the exhibit:

3 The debacle we emerged from a week ago today is not the kind of
4 thing our County should be making the news with. Sadly, the most
5 equal member of Storey County (if you believe he actually lives at
6 5 Wildhorse Canyon) cares more about himself than the County
7 he represents.

8 (c) Don't actually live here

9 Toll published the third resident communication on May 20, 2017. A copy of
10 the communication is attached to Gilman's Opposition as Exhibit 6. The specific
11 statement is found in the first full paragraph on the third page of the exhibit:

12 "I want the people of Storey County to know that I am a man of
13 integrity and my word is more valuable than gold. This County
14 has been very, very good to me and I want to deliver on promises I
15 made over and over to the good people of Storey County regarding
16 the cash that would be gushing around here. I want to thank them
17 along with the entire Team Storey Team for helping Mr. Norman
18 and me becoming the wealthiest people who do business in Storey
19 County but don't actually live here" said Mr. Gilman.

20 (d) Since they don't actually live at Wildhorse Canyon Drive (or
21 anywhere else in the county for that matter)

22 Toll published the fourth resident communication on October 16, 2017. A
23 copy of the communication is attached to Gilman's Opposition as Exhibit 7. The
24 specific statement is found in the fourth paragraph on the fourth page of the
25 exhibit:

26 The purpose of this complaint is to hold accountable County
27 Commissioner Gilman and Planning Commissioner Thompson for
28 committing perjury when they filed paperwork claiming to live
somewhere it is illegal to live. Since they took office illegally and
since they don't actually live at Wildhorse Canyon Drive (or
anywhere else in the county for that matter) and can't legally
reside where they claimed they did, we conclude and insist they be
prosecuted for perjury and removal from office.

(e) Failing to require Mr. Gilman to reside in the district he
represents within Storey County

Toll published the fifth and final resident communication on December 3,
2017. A copy of the communication is attached to Gilman's Opposition as

1 Exhibit 8. The specific statement is found on the third page of the exhibit under
2 the heading "Special Interests:"

3 The Commissioner Lance Gilman –TRIC Special Interest merry-
4 go-round that gives Mr. Gilman and TRIC access to the Storey
County checkbook, tax coffers, real property and special
consideration regarding rules and regulations.

5 ...

6 Failing to require Mr. Gilman to reside in the district he
7 represents within Storey County.

8 Gilman argued "[t]he clear inference" from each of these communications is
9 that Gilman is not a Storey County resident. Toll used a different word or
10 phrase in each of his resident communications: "resident," "lives at," "live here,"
11 "live," and "reside." The resident issue is potentially more significant than either
12 party presented. "Residence" has a specific meaning for purposes of eligibility
13 for public office. NRS 281.050. But neither side cited any law or made any
14 argument on the meaning of "residence" under the elections statutes or case
15 law, and therefore the Court will address the issue on the level presented by the
16 parties which is the every day meaning of "resident," "lives at," "live here,"
17 "live," and "reside."

18 The every day meaning of "resident" is dwelling or having an abode for a
19 continued length of time. Webster's Third New International Dictionary 1931
20 (2002). The every day meaning of "live" is to occupy a home. Id. 1323. The every
21 day meaning of "reside" is to settle oneself into a place, to dwell permanently or
22 continuously; have a settled abode for a time; have one's residence or domicile.
23 Id. 1931.

24
25 *2. Good faith communication*

26 The first issue is whether the resident communications are good faith
27 communications in furtherance of the right to petition or the right to free
28 speech in direct connection with an issue of public concern. NRS 41.660(3)(a).

1 To decide this issue the Court must determine whether the communication
2 falls within any of the four-part definition of “a good faith communication in
3 furtherance of the right to petition or the right to free speech in direct
4 connection with an issue of public concern” set out in NRS 41.637(1)-(4).

5
6 a. NRS 41.637(1): If the communication is aimed at procuring any
7 governmental or electoral action, result or outcome

8 A communication is “a good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public
10 concern” if the communication is aimed at procuring any governmental or
11 electoral action, result or outcome. NRS 41.637(1)

12 Toll published his first resident” communication on April 7, 2017. That
13 communication included the “Washoe County resident” statement. Toll
14 published that communication four days before the April 11, 2017 sheriff recall
15 vote. The aim of the communication was to blunt Gilman’s political influence in
16 the effort to recall the sheriff by undermining Gilman’s standing and credibility
17 in Storey County by claiming Gilman is a Washoe County resident. The Court
18 concludes the aim of the “Washoe County resident” communication was to
19 procure an electoral action, result or outcome, i.e., to weaken and defeat the
20 sheriff recall effort by undermining public and voter support for Storey County
21 Commissioner Gilman.

22 Toll’s aim in the four resident communications after the April 7, 2017
23 communication was to keep Storey County voters’ attention focused on
24 Gilman’s alleged part in the sheriff recall “debacle” and undermine Gilman’s
25 standing and credibility in Storey County by questioning where Gilman resided
26 or lived. The Court concludes the aim of the four resident communications after
27 the April 7, 2017 communication was to procure an electoral action, result or
28 outcome, i.e., undermining public and voter support for Storey County
Commissioner Gilman.

- 1 b. NRS 41.637(2): The communication is to a Legislator, officer or
2 employee of the Federal Government, this state or a political
3 subdivision of the state, regarding a matter reasonably of concern
 to the respective governmental entity.

4 Toll did not produce a preponderance of evidence that any of the "resident"
5 communications were to a Legislator, officer or employee of the Federal
6 Government, this state or a political subdivision of the state, regarding a matter
7 reasonably of concern to the respective governmental entity. Gilman did not
8 allege the communications to the Storey County Sheriff and District Attorney,
9 and the Attorney General were defamatory. The Court concludes NRS 41.637(2)
10 has no application to the resident communications.

- 11 c. NRS 41.637(3): Written or oral statement made in direct
12 connection with an issue under consideration by a legislative,
13 executive or judicial body, or any other official proceeding
 authorized by law.

14 The Court finds Toll made a report to the Storey County Sheriff and District
15 Attorney, and the Attorney General regarding Gilman's residence. Toll
16 published a story about his making the reports in the October 16, 2017
17 communication. The sheriff's office, district attorney's office, and attorney
18 general's office are executive bodies. The Court concludes the October 16, 2017
19 communication was made in direct connection with an issue under
20 consideration by an executive body.

21 The Court finds Toll did not produce evidence that any of the other resident
22 communications were made in direct connection with an issue under
23 consideration by a legislative, executive or judicial body, or any other official
24 proceeding authorized by law. The Court concludes NRS 41.637(3) does not
25 apply to the other resident communications.

26 /////

27 /////

28 /////

1 d. NRS 41.637(4): Communication made in direct connection with
2 an issue of public interest in a place open to the public or in a
3 public forum.

4 (I) Public interest

5 To determine whether the resident communications were made in direct
6 connection with an issue of public interest the court looks to the guiding
7 principles in *Shapiro*.

8 The first guiding principle is that “public interest” does not equate with
9 mere curiosity. The Court finds that whether Storey County Commissioner
10 Gilman lives or resides in Storey County is not a matter of mere curiosity. The
11 Court concludes this guiding principle weighs in favor of finding the resident
12 communications were made in direct connection with an issue of public
13 interest.

14 The second guiding principle is that a matter of public interest should be
15 something of concern to a substantial number of people; a matter of concern to
16 a speaker and a relatively small specific audience is not a matter of public
17 interest. The Court finds that whether Storey County Commissioner Gilman
18 lives or resides in Storey County is something of concern to the residents of
19 Storey County, a substantial number of people, and not simply a matter of
20 concern to Toll and a relatively small specific audience. The Court concludes
21 this guiding principle weighs in favor of finding the resident communications
22 were made in direct connection with an issue of public interest.

23 The third guiding principle is that there should be some degree of closeness
24 between the challenged statements and the asserted public interest – the
25 assertion of a broad and amorphous public interest is not sufficient. The Court
26 finds the resident communications have some degree of closeness to the
27 asserted public interest of whether Storey County Commissioner Gilman resides
28 in Storey County. The Court concludes this guiding principle weighs in favor of

1 finding the resident communications were made in direct connection with an
2 issue of public interest.

3 The fourth guiding principle is the focus of the speaker's conduct should be
4 the public interest rather than a mere effort to gather ammunition for another
5 round of private controversy. The Court finds the focus of Toll's resident
6 communications was the public interest in whether Storey County
7 Commissioner Gilman lives or resides in Storey County, and was not a mere
8 effort to gather ammunition for another round of private controversy. The
9 Court concludes this guiding principle weighs in favor of finding the
10 communications were made in direct connection with an issue of public
11 interest.

12 The fifth and final guiding principle is that a person cannot turn otherwise
13 private information into a matter of public interest simply by communicating it
14 to a large number of people. The Court finds that where Storey County
15 Commissioner Gilman lives or resides was not private information but a matter
16 of public interest because a county commissioner should reside in the county he
17 represents. The Court concludes this guiding principle weighs in favor of
18 finding the communications were made in direct connection with an issue of
19 public interest.

20 The Court has weighed the *Shapiro* guidelines and concludes the resident
21 communications were made in direct connection with an issue of public
22 interest.

23
24 (ii) Public forum

25 Gilman did not appear to contest that Toll's website is a public forum.
26 Even if Gilman did contest it, most if not all California courts that have
27 considered the issue have concluded a public website is a public forum. *Vogel v.*
28 *Felice*, 127 Cal. App. 4th 1006, 26 Cal. Rptr. 3d 350 (2005); *Wilbanks v. Wolk*

1 121 Cal.App.4th 883, 897, 17 Cal. Rptr. 3d 497 (2004); *ComputerXpress, Inc. v.*
2 *Jackson* 93 Cal.App.4th 993, 1007, 113 Cal. Rptr. 2d 625 (2001). The Nevada
3 Supreme Court has looked to California law for guidance on anti-SLAPP issues
4 because California's and Nevada's anti-SLAPP statutes are similar in purpose
5 and language. *Shapiro*, 268.

6 The Court finds Toll's is a website open to the public, on which he posts
7 political information, and receives and posts reader's comments. The Court
8 concludes Toll's website is a public forum for the purposes of NRS 41.637(4).

9 The Court concludes the resident communications were made in direct
10 connection with an issue of public interest in a place open to the public or in a
11 public forum.

12
13 3. *Truthful communications or made without knowledge of falsehood*

14 The last issue on the question of whether the communications were good
15 faith communications is whether the communications were truthful or made
16 without knowledge of its falsehood. In his first affidavit Toll testified that he
17 conducts research for the pieces he writes. Mot. Ex. 11, ¶ 18. In his second
18 affidavit Toll testified more directly and fully regarding his due diligence. He
19 testified "that for each statement I made that Gilman claims is defamatory, I
20 investigated the facts before making the statement." Reply Ex. 2, ¶ 10(a). The
21 Court finds Attachment 3 to Toll's affidavit is a true and correct copy of his
22 October 16, 2017 website communication. In his first affidavit paragraph 15 Toll
23 testified he believes the contents of his stories, including the October 16, 2017
24 communication, were true. In the October 16, 2017 communication Toll stated
25 he made a public records request to the Storey County Assistant Manager
26 requesting the zoning of the Mustang Ranch compound. Toll alleged the
27 Assistant County Manager failed to provide the requested information for six
28 months. Toll also stated in the communication that he made a request of the

1 Storey County Clerk before his first resident communication requesting proof of
2 Gilman's resident and received a response that Gilman resides at 5B Wildhorse
3 Canyon Drive. Toll asked the Storey County Assessor where 5B Wildhorse
4 Canyon Drive was physically located and was informed that Gilman resides in a
5 double wide mobile home located behind the swimming pool at the Mustang
6 Ranch. The statements of the Storey County Clerk and Assessor are not
7 considered here as proof of the matter asserted but only to show what
8 knowledge Toll had when he made the communication. Based upon the
9 information he had, Toll did not believe that "Lance Gilman, one of the
10 wealthiest men in Northern Nevada, lives in a mobile home behind the
11 swimming pool with his employee and roommate Kris Thompson."

12 Toll did not prove that Gilman is a resident of Washoe County or that
13 Gilman is not a resident of Storey County, but he, Toll, did not have to prove
14 either. Based upon the information Toll had regarding Gilman's residence, the
15 Court concludes Toll proved by a preponderance of evidence that he did not
16 knowingly make a false statement when he published the resident
17 communications.

18 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
19 Court concludes the communications were made in furtherance of the right to
20 free speech in direct connection with an issue of public concern.

21
22 *4. Burden of proof shifts to Gilman*

23 Because Toll met the burden of proof under NRS 41.660(3)(a) the burden
24 shifts to Gilman to demonstrate with prima facie evidence a probability of
25 prevailing on his defamation per se claim. The elements of defamation per se of
26 a public official or public officer are: (1) a false statement; (2) that is
27 defamatory; (3) an unprivileged publication to a third person; and (4) actual
28 malice.

1 Gilman need only establish his claim has minimal merit, but he must
2 establish it with competent, admissible evidence. As the *Cross v. Facebook*
3 court stated, “the evidence is what counts.” *Cross* at 209. The Court cannot
4 resolve the merits of the overall dispute on a special motion to dismiss. The
5 Court cannot and therefore does not weigh the evidence, including the
6 credibility of witnesses in its analysis. Instead, the Court accepts as true the
7 evidence favorable to Gilman and evaluates Toll’s evidence only to determine if
8 it has defeated Gilman’s evidence as a matter of law. The Court must accept as
9 true all competent, admissible evidence favorable to Gilman.

10
11 (a) A false statement

12 The first element of defamation per se requires a false statement. To prove
13 the resident communications were false Gilman must produce some minimal
14 evidence that he resides in Storey County. The Court now turns to the evidence
15 produced on the resident issue. Gilman testified in his affidavit:

16 (1) “I have never been officially notified by any law enforcement or
17 governmental organization about any investigation whatsoever
18 challenging my residency in Storey County.” Opp. Ex. 3, ¶ 39.

19 (2) “Contrary to the Defendant’s assertions, I do live in Storey
20 County, Nevada. My address is 5 Wild Horse Canyon, and I have
21 lived there for 12 years or more.” Opp. Ex. 3, ¶ 42.

22 (3) “I certainly never committed perjury as alleged by the Defendant.
23 The Defendant’s statements are not true.” Opp. Ex. 3, ¶ 43.

24 Gilman provided a copy of his driver’s license which shows his address is 5
25 Wild Horse Canyon, Sparks, Nevada. Opp. Ex. 9.

26 Toll testified the Storey County Assessor informed him that 5 Wild Horse
27 Canyon is on the Mustang Ranch property. Although this statement is hearsay if
28 offered for the truth of the matter asserted, Toll did not in any way limit or

1 attempt to limit the use of his testimony. But the Court need not and does not
2 consider the Assessor's statement to decide this issue.

3 The Court concludes Gilman's testimony under oath that he lives in Storey
4 County is sufficient prima facie evidence that he lives in Storey County.

5
6 (b) A defamatory statement

7 The second element of defamation per se is that the false statement was
8 defamatory. "A statement is defamatory when it would tend to lower the subject
9 in the estimation of the community, excite derogatory opinions about the
10 subject, and hold the subject up to contempt. In reviewing an allegedly
11 defamatory statement, 'the words must be reviewed in their entirety and in
12 context to determine whether they are susceptible of a defamatory meaning.'
13 Whether a statement is defamatory is generally a question of law; however,
14 where a statement is 'susceptible of different constructions, one of which is
15 defamatory, resolution of the ambiguity is a question of fact for the jury.'" *Lubin*
16 *v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422 (2001)(internal citations omitted).

17 The Court finds the resident communications were intended to and
18 would tend to cause Storey County residents to question or doubt whether
19 Storey County Commissioner Gilman lives in Storey County. Voters generally
20 and reasonably want their elected officials to live in the area the elected official
21 represents. The Court finds that Toll's statements suggesting, implying, or
22 outright accusing Storey County Commissioner Gilman of not residing or living
23 in Storey County and lying and perjuring himself about it would tend to lower
24 Gilman in the estimation of the community, excite derogatory opinions about
25 Gilman, and hold Gilman up to contempt. The Court concludes the resident
26 statements were defamatory.

27 /////

28 /////

1 (c) An unprivileged publication to a third person

2 The third element of defamation per se is an unprivileged publication to a
3 third person. Toll argued that insofar as the alleged defamatory statements
4 relate to media reporting on judicial proceedings the fair report privilege
5 applies. Toll failed to produce evidence of judicial proceedings. There cannot be
6 media reporting on judicial proceedings without judicial proceedings. Toll's
7 argument lacks factual or legal support.

8 The Court concludes the resident statements were unprivileged publications
9 to third persons.

10
11 (d) Actual malice

12 The fourth element of defamation per se of a public official or public figure
13 is actual malice. "Actual malice" means knowledge that the statement was false
14 or with reckless disregard of whether it was false or not. "Reckless disregard"
15 means the publisher of the statement acted with a high degree of awareness of
16 the probable falsity of the statement or had serious doubts as to the
17 publication's truth. "This test is a subjective one, relying as it does on 'what the
18 defendant believed and intended to convey, and not what a reasonable person
19 would have understood the message to be.'" *Pegasus* at 722.

20 Gilman's points and authorities in support of his opposition to Toll's anti-
21 SLAPP motion offers little of substance on the actual malice element. Beginning
22 on page 35 of Gilman's points and authorities at line 16 Gilman asserts there is
23 solid proof of actual malice. He then talks about Toll being unhappy about
24 Gilman opposing the sheriff; that Toll has continuously criticized and impugned
25 Gilman in the website communications; that Toll has a deep dislike of Gilman;
26 and that Toll has a private vendetta against Gilman. Gilman argued these
27 "facts" show Toll's negligence, motive and intent. The *Pegasus* court noted that

28 /////

1 recklessness or malice may be established through cumulative evidence of
2 negligence, motive, and intent.

3 On page 36 of his opposition, beginning at line 20, Gilman argued Toll did
4 little or no due diligence before making the statements; and made up the
5 assertions out of thin air through an overwrought imagination. Gilman did not
6 support these assertions with competent, admissible evidence.

7 Toll testified he investigated the facts before making the statements Gilman
8 alleged are defamatory, and that he believes the contents of his stories were
9 true, including his October 16, 2017 communication. In his October 16, 2017
10 communication, which was made nearly two months before Gilman filed this
11 action, Toll stated:

- 12 (1) He made a public records request to the Storey County Assistant
13 Manager requesting the zoning of the Mustang Ranch compound and
14 that the Assistant County Manager failed to provide the requested
15 information for six months;
- 16 (2) He made a request of the Storey County Clerk before his first resident
17 communication requesting proof of Gilman's residence and received a
18 response that Gilman resides at 5B Wild Horse Canyon Drive;
- 19 (3) He asked the Storey County Assessor where 5B Wild Horse Canyon
20 was physically located and was informed that Gilman resides in a
21 double wide mobile home located behind the swimming pool at the
22 Mustang Ranch.

23 Again, the statements of the Storey County Clerk and Assessor are not
24 considered here as proof of the truth of the matter asserted but only to show
25 what knowledge Toll had when he made the communications.

26 Toll included as part of his October 16, 2017 a letter he sent to the Storey
27 County District Attorney and Nevada Attorney General. In the letter Toll relates
28 that he received information from the Storey County Community Development

1 Department that none of the property on which the Mustang Ranch sits is
2 zoned residential. Toll continued, "In other words neither 5 nor 56 Wild Horse
3 Canyon Drive are legal residences; nobody can legally reside there or claim
4 either address as their legal residence." Opp. Ex. 9.

5 Toll also knew, as any informed Northern Nevadan would, that Gilman is a
6 financially successful businessman.

7 Based upon the information he had, Toll did not believe Gilman the-
8 successful-businessman lives in a trailer. Toll stated in his October 16, 2017
9 communication: "Lance Gilman, one of the wealthiest men in Northern Nevada,
10 lives in a mobile home behind the swimming pool with his employee and
11 roommate Kris Thompson."

12 The Court finds Toll did conduct some research on Gilman's residence
13 before he published the resident communications and that the information he
14 received as a result of that research caused him to disbelieve that Gilman lives
15 in a trailer behind the Mustang Ranch pool.

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

22
23 *5. Discovery request*

24 Gilman requested an opportunity to conduct discovery under NRS 41.660(4)
25 which requires a court to allow limited discovery upon a showing that
26 information necessary to meet or oppose the burden under NRS 41.660(3)(b) is
27 in the possession of another party or a third party and is not reasonably
28 available without discovery. Gilman failed to make the showing required by

1 NRS 41.660(3)(b) on the issue of actual malice. The Court concludes that here,
2 information as to whether Toll knew the resident statements were false or
3 whether he acted with a high degree of awareness of the probable falsity of the
4 statement or had serious doubts as to the publication's truth, is necessary for
5 Gilman to meet or oppose the burden under NRS 41.660(3)(b), and that
6 information is in the possession of Toll or a third party and is not reasonably
7 available without discovery. Therefore Gilman's request to conduct discovery is
8 granted. Gilman will be allowed to conduct discovery limited solely to
9 information as to whether Toll knew the resident statements were false or
10 whether he acted with a high degree of awareness of the probable falsity of the
11 statement or had serious doubts as to the publication's truth.

12
13 **B. Reverse graft**

14
15 *1. Reverse graft communication*

16 The reverse graft statements come from a communication published on
17 August 6, 2017. A copy of the communication is attached to Gilman's
18 Opposition as Exhibit 10. The specific statement quoted by Gilman is found in
19 the first paragraph on the fifth page of the exhibit:

20 When this deal is approved by Marshall McBride and Jack McGuffey,
21 TRIC will have accomplished another spectacular job of bamboozling
22 Storey County officials. It will mean that Storey County and Nevada
23 taxpayers have dumped \$100 million dollars of what can only be
24 described as "reverse graft" directly into the pockets of the band of merry
25 TRICsters.

26 Gilman argued there was no reverse graft and explained that there is no
27 payment of \$100 million going into Gilman's pockets.

28 *2. Good faith communication*

The first issue is whether the statement is a good faith communication in
furtherance of the right to petition or the right to free speech in direct

1 connection with an issue of public concern. NRS 41.660(3)(a). The Court turns
2 to the definition set out in NRS 41.637.

3
4 (a) Communication aimed at procuring any governmental or electoral
5 action, result or outcome

6 NRS 41.637(1) requires the communication be aimed at procuring any
7 governmental or electoral action, result or outcome. The aim of Toll's
8 hyperbolic communication including his use of the term "reverse graft" is that
9 the multimillion dollar pipeline deal is bad for Storey County residents but good
10 for Gilman, and therefore Storey County residents should take political action
11 and oust Gilman. Specifically, Toll stated on page 8 of the communication:

12 This pipeline "deal" is the latest effort to benefit TRIC at the
13 expense of every person in Storey County and should make
14 everyone stand up and voice outrage.

15 If our current County Leadership fail to recognize this for what it
16 is and approve it, it's time to demand a change of those leaders.

17 Marshall McBride is our only hope to shoot this hustle down. If
18 you think Lance should finance his own projects, call or email
19 Marshall and let him know.

20 After these calls to political action Toll included an email address and
21 telephone number for Commissioner McBride.

22 The Court concludes this communication and the use of "reverse graft" was
23 aimed at procuring an electoral action, result or outcome – voicing outrage over
24 the deal that would allegedly hurt Storey County residents and benefit Gilman,
25 demanding a change of leaders if they approved the deal, and encouraging
26 residents to call or email Commissioner McBride to encourage him to shoot
27 down the deal.

28 (b) Directed to a government officer

NRS 41.637(2) requires the communication be directed to a government
officer. The reverse graft communication was directed at all Storey County

1 residents but not to a specific government officer so the communication did not
2 fit within this part of the definition.

3
4 (c) Direct connection with an issue under consideration by a
5 legislative body

6 NRS 41.637(3) requires the statement be made in direct connection with an
7 issue under consideration by a legislative body. The instant statement was made
8 in direct connection with the pipeline deal which was under consideration by
9 the Storey County Commission, a legislative body. The Court concludes the
10 statement was made in direct connection with an issue under consideration by a
11 legislative body.

12 (d) Direct connection with an issue of public interest

13 NRS 41.637(4) requires the communication be made in direct connection
14 with an issue of public interest. To determine whether the communication was
15 made in direct connection with an issue of public interest the court looks to the
16 guiding principles set forth in *Shapiro*.

17
18 (i) Public interest

19 The first guiding principle is that "public interest" does not equate with
20 mere curiosity. The Court concludes that the multimillion dollar pipeline deal
21 had potential effects on all Storey County residents and was not a matter of
22 mere curiosity. This guiding principle weighs in favor of finding the
23 communication and the reverse graft statement were made in direct connection
24 with an issue of public interest.

25 The second guiding principle is that a matter of public interest should be
26 something of concern to a substantial number of people; a matter of concern to
27 a speaker and a relatively small specific audience is not a matter of public
28 interest. The pipeline deal had potential effects on every Storey County resident

1 and was not just a matter of concern to Toll and a relatively small specific
2 audience. This guiding principle weighs in favor of finding the communication
3 and the reverse graft statement were made in direct connection with an issue of
4 public interest.

5 The third guiding principle is that there should be some degree of closeness
6 between the challenged statement and the asserted public interest – the
7 assertion of a broad and amorphous public interest is not sufficient. The instant
8 communication was made before the Storey County Commission voted on the
9 pipeline deal. The communication criticized Gilman's part in the deal including
10 the use of the "reverse graft" phrase, and expressed outrage at the use of Storey
11 County tax dollars for the project. The Court concludes there is a degree of time
12 and subject matter closeness between the challenged statement and the
13 asserted public interest, and that the communication is not an assertion of a
14 broad and amorphous public interest. This guiding principle weighs in favor of
15 finding the communication and the statement were made in direct connection
16 with an issue of public interest.

17 The fourth guiding principle is the focus of the speaker's conduct should be
18 the public interest rather than a mere effort to gather ammunition for another
19 round of private controversy. The focus of Toll's communication was killing the
20 pipeline deal and the reverse graft statement was intended to criticize Gilman
21 for his part in the deal. Toll published the communication before the
22 Commission voted on the deal. The Court concludes Toll's statement was in the
23 public interest and not a mere effort to gather ammunition for another round of
24 private controversy. This guiding principle weighs in favor of finding the
25 communication and the statement were made in direct connection with an issue
26 of public interest.

27 The fifth and final guiding principle is that a person cannot turn otherwise
28 private information into a matter of public interest simply by communicating it

1 to a large number of people. The Court concludes the information regarding the
2 pipeline deal and Gilman's involvement in the deal was not private information
3 but a matter of public interest. This guiding principle weighs in favor of finding
4 the communication and the statement were made in direct connection with an
5 issue of public interest.

6 The Court concludes the communication and the statement were made in
7 direct connection with an issue of public interest.

8
9 (ii) Public forum

10 The Court concluded above that Toll's website is a public forum.

11
12 (3) *Truthful statement or made without knowledge of its falsehood*

13 The last issue on the question of whether the communication was a good
14 faith communication is whether the communication was truthful or made
15 without knowledge of its falsehood. The Court concludes Toll did not prove the
16 statement was truthful.

17 The Court looks to the facts to see if Toll proved the statement was made
18 without knowledge of its falsehood. Toll referenced in his communication, a
19 communication prepared and published by Nicole Barde on her blog about the
20 August 1, 2017 Commissioner meeting. Toll stated in his communication:

21 Nicole Barde has been the Lone Ranger in her reporting of County
22 Commissioner Meetings since she started in 2015. In her
23 breakdown of the August 1st meeting (**which I encourage you**
24 **to read here** ([http://www.bardeblog.com/so-what's-going-on/](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting)
25 [212-summary-of-the-august-1-2017-storey-county-commission-](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting)
26 [meeting](http://www.bardeblog.com/so-what's-going-on/212-summary-of-the-august-1-2017-storey-county-commission-meeting))), she delivers a lengthy in-depth and dead on point
dissection of the latest effort of Brothel Owner, TRIC Executive
and self-serving crony County Commissioner Lance Gilman to
once again have Storey County Taxpayers forfeit \$35 Million
Dollars of future tax revenue from a "special tax area" so he and
Don Norman can make even more money.

27 (Emphasis in original.) Opp. Ex. 10, p. 2-3.

28 /////

1 Toll stated "Ms. Barde accurately called this Corporate Welfare, I call it
2 reverse graft. In the alternate reality call [sic] that exists in the Courthouse, it's
3 a 'public-private partnership-investment thingy.'" Opp. Ex. 10, p. 3.

4 Neither party included Barde's communication as an exhibit and so the
5 Court has not reviewed it. Gilman did not testify or argue that Barde's
6 communication was false, incorrect, incomplete, or defamatory.

7 Toll's communication contains many extravagant exaggerations including:

- 8 - We [Storey County residents] and our pocketbooks serve at the pleasure
9 and plunder of Lance Gilman
- 10 - Storey County Taxpayers gleefully divert tax revenue directly into the
11 band of merry TRICsters pockets.
- 12 - ... you have to admire the ginormity of the brass balls these hucksters
13 clang around in broad daylight.
- 14 - [Referring to charts contained in the communication] I call these
15 projections speculative fantasy mindful that we are one Orange Tweet or
16 North Korean Missile into Seoul away from a major deviation from the
17 ice cream and lollypops [sic] shown in the charts above.
- 18 - The last point I want to make is to remind sober minded residents of
19 Storey County that encumbering us with this debt takes the cream off the
20 top of the annual flood of mythical revenue from the Oceans of Cash in
21 the Sea of TRIC.

22 No reasonable person would believe any of these statements is true.

23 With this context the Court turns to the phrase "reverse graft," a phrase Toll
24 apparently made up. The phrase has no relevant defined meaning. Looking at
25 the words individually, the adjective "reverse" means opposite or contrary to a
26 specified thing; operating in opposite or contrary fashion to what is usual.
27 Webster's Third New International Dictionary 1943 (2002). One meaning of
28 "graft" is the acquisition of money or property by dishonest or questionable
means, as by taking advantage of a public office to obtain profit; or illegal or
unfair practice for profit or personal gain. Id. 985. Using the dictionary
definitions "reverse graft" means operating in an opposite or contrary fashion to
what is the usual acquisition of money or property by dishonest or questionable
means, as by taking advantage of a public office to obtain profit; or illegal or

1 unfair practice for profit or personal gain. The Court is unable to make sense of
2 the term "reverse graft." "Graft" sounds bad, but Toll used the term "reverse
3 graft" and the words have to be taken together. In *Greenbelt Cooperative*
4 *Publishing Assn., Inc. v. Bresler*, 398 U.S. 6, 26 L. Ed. 2d 6, 90 S. Ct. 1537
5 (1970) a real estate developer had engaged in negotiations with a city for a
6 zoning variance on land he owned, while simultaneously negotiating with the
7 city on other land the city wanted to buy from him. A local newspaper published
8 articles that included statements that some people had characterized the
9 developer's negotiating position as "blackmail." The developer sued for libel.
10 The court rejected a contention that liability could be premised on the notion
11 that the word "blackmail" implied the developer had committed the actual
12 crime of blackmail and held that "the imposition of liability on such a basis was
13 constitutionally impermissible – that as a matter of constitutional law, the word
14 'blackmail' in those circumstances" was not defamation, but just rhetorical
15 hyperbole, a vigorous epithet used by those who considered the developer's
16 negotiating position extremely unreasonable. *Id.* 12-13.

17 The facts in the instant case have some similarity to the *Greenbelt* facts.
18 Gilman is the exclusive broker for, a principal in and marketing director for
19 TRI. TRI sought a multi-million dollar deal with the Storey County Commission
20 for a pipeline. Gilman is also a Storey County Commissioner. Toll considered
21 Gilman's position with TRI and his position with Storey County to be extremely
22 unreasonable. As a result Toll lashed out with a communication that included
23 the meaningless phrase "reverse graft," which he intended as a vigorous epithet,
24 and what is in fact rhetorical hyperbole. The Court concludes the term, taken in
25 the context of the full communication, is nonsensical and not reasonably
26 susceptible to a defamatory construction.

27 /////

28 /////

1 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
2 Court concludes the communication and statement were made in furtherance of
3 the right to free speech in direct connection with a issue of public concern.
4

5 *4. Burden shifts to Gilman*

6 Because Toll met the burden under NRS 41.660(3)(a) the Court must
7 determine whether Gilman has demonstrated with prima facie evidence a
8 probability of prevailing on the his defamation per se claim. Gilman
9 acknowledges he must prove the allegedly defamatory statement was made with
10 actual malice, that is, with knowledge that it was false or with reckless disregard
11 of whether it was false or not.

12 In his affidavit, Opp. Ex. 3, ¶ 47-64, Gilman denied reverse graft and
13 explained the pipeline and infrastructure deals. Because “reverse graft” is a
14 nonsensical phrase Gilman did not and cannot prove it was false or made with
15 reckless disregard of whether it was false or not.
16

17 *5. Discovery request*

18 Gilman requested an opportunity to conduct discovery under NRS 41.660(4)
19 which requires a court to allow limited discovery upon a showing that
20 information necessary to meet or oppose the burden under NRS 41.660(3)(b) is
21 in the possession of another party or a third party and is not reasonably
22 available without discovery. Gilman failed to make the showing required by
23 NRS 41.660(3)(b). He made no showing that any information regarding reverse
24 graft is in the possession of another party or a third party *and* is not reasonably
25 available without discovery. Therefore the request to conduct discovery is
26 denied.

27 Based upon the foregoing the special motion to dismiss must be granted as
28 to the “reverse graft” statement.

1 **C. Re-licensing Mustang Ranch**

2 The statements regarding re-licensing the Mustang Ranch come from a
3 communication Toll published on February 26, 2017. Toll says the
4 communication was submitted by a Storey County resident who wanted to
5 remain anonymous. A copy of the communication is attached to Gilman's
6 Opposition as Exhibit 11. The specific statement quoted by Gilman is found in
7 the last paragraph on the second page of the exhibit.

8 Funny thing is, the courts didn't agree and the investor won. But,
9 in the meantime, because Lance had shut down the Wildhorse and
10 reopened it as the Mustang, he thought he didn't need to go
11 through the investigation that the Nevada Revised Statutes
12 require for the opening of a new brothel. He didn't want to follow
13 the law. The County Commissioners even agreed with him. Why
14 should Lance, the man who's been a virtual Santa Claus (at least
15 he tries to convince people he is) for Storey County, have to follow
16 the law? Sheriff Antinoro said the law had to be followed and that
17 the Mustang had to be closed for the required number of days, per
18 state statute, for the investigation with which ALL brothels must
19 comply. King Lance was furious. He secretly plotted pay back.

20 Gilman's Complaint (p. 5, ¶ 18(e), the heading for this section of his brief
21 (Opp. p. 12, sec. B(2)©, and his argument regarding the quoted language is that
22 the communication said Gilman didn't follow the law when re-licensing the
23 Mustang Ranch. Opp. p. 12. Toll's communication does not say Gilman did not
24 follow the law. The communication says Gilman "thought he didn't need to go
25 through the investigation that the Nevada Revised Statutes require for the
26 opening of a new brothel," and that "[h]e didn't want to follow the law." Opp.
27 Ex. 11, p. 2-3.

28 Gilman failed to set forth any facts, cite any law, or argue that the actual
statements made in the communication were defamatory or that the statements
were made with actual malice. The Court concludes the actual statements are
not defamatory and will dismiss this portion of Gilman's claim.

//////

//////

1 **D. Receiving land with zero consideration**

2 The statements regarding special consideration regarding rules and
3 regulations come from a communication Toll published on December 3, 2017. A
4 copy of the communication is Exhibit 8 to Gilman's opposition. The language at
5 issue is:

6 **Special Interests**

7 The Commissioner Lance Gilman – TRIC Special Interest merry-
8 go-round that gives Mr. Gilman and TRIC access to the Storey
9 County checkbook, tax coffers, real property and special
10 consideration regarding rules and regulations.

11 ...

12 • Repeatedly reconvening Storey County property to TRIC with
13 zero consideration or payment that TRIC has turned around and
14 included the free property into lucrative land deals, including the
15 one that gave a portion of the USA Parkway to TRIC (for free)
16 which Mr. Gilman and TRIC turned around and sold to NDOT for
17 \$43 Million Dollars (without giving us a single penny or paying
18 down the \$47 Million Dollars Storey County credit card balance).

19 Gilman admitted under oath that Storey County reconveyed land to TRI as
20 part of the NDOT extension right of way, and TRI did not get all of the USA
21 Parkway back from the County for free. Gilman Aff. p. 8, ¶ 81 and 85. It is clear
22 from Gilman's testimony that Storey County did reconvey land to TRI for which
23 TRI did not pay Storey County. The Court concludes Gilman's own testimony
24 proves that Toll's statement is true and therefore not defamatory, and therefore
25 this portion of Gilman's claim will be dismissed on that ground.

26 **D. Washington, D.C. trip**

27 *1. Washington, D.C. trip communication*

28 The statements regarding Gilman traveling to Washington, D.C. come from
communications Toll published on April 29, 2017 and May 2, 2017. A copy of
the April 29, 2017 communication is Exhibit 12 to Gilman's opposition, and the
May 2, 2017 communication is Exhibit 13. Gilman did not quote specific

1 language related to this portion of his claim, or refer the Court to any particular
2 page of the 41 pages that make up Exhibits 12 and 13.

3 On the first page of the April 29, 2017 communication Toll reported that
4 Storey County sent Gilman and a Storey County lobbyist to Washington, D.C.
5 from January 17 to 22, 2017. Toll stated the purpose of the trip was to lobby for
6 a zip code bill to prevent Storey County from losing out on substantial sales tax
7 revenue. Toll opined that it is a good idea to get the zip code issue resolved.

8 Toll continued his communication by relating he realized Donald Trump
9 was inaugurated on January 21, 2017. After he realized this, Toll, on February
10 16, 2017, made a records request for receipts from the trip. On March 7, 2017
11 the Storey County lobbyist that had accompanied Gilman to Washington, D.C.
12 addressed the Storey County Commission and provided information about
13 lobbying for Storey County. At this point in his communication Toll provided a
14 link that would take a reader to the Commission recording of the lobbyist's
15 report. Toll then stated: "To recap, we paid \$,7611.50 for them to attend Donald
16 Trump's Inauguration." Opp., Ex. 12, p. 3.

17 Toll continued, "I have been to D.C. several times, but never on
18 Inauguration Week. My sources tell me it is pretty much like the week that
19 precedes Super Bowl; business as unusual. If you want to schedule meaningful
20 work, you're in Fantasyland." Toll suggests the lobbying could have been done
21 by Skype. He pointed out that government spending is all about priorities; that
22 \$7,611.50 represents just under one quarter of the annual salary of a new
23 deputy or a new patrol vehicle. He then asks, "What are the priorities in Storey
24 County? "

25 The next pages are Gilman's and the lobbyist's Marriott receipts from the
26 trip. Each receipt includes a hand written statement: "DC trip to Trump
27 inauguration." Documentation of airfare is also posted to the website.

28 The website then has pages of chat posts.

1 Exhibit 13 appears to consist of a series chat posts between Toll and a person
2 he describes as a Gilman spokesman.
3

4 *2. Good faith communication*

5 The first issue is whether the statement is a good faith communication in
6 furtherance of the right to petition or the right to free speech in direct
7 connection with an issue of public concern. NRS 41.660(3)(a). To determine
8 that, the Court must determine whether the statement falls within any of the
9 four definitions set out in NRS 41.637.
10

- 11 (a) Communication aimed at procuring any governmental or
12 electoral action, result or outcome

13 NRS 41.637(1) requires the communication be aimed at procuring any
14 governmental or electoral action, result or outcome. The primary focus of Toll's
15 communication is accountability for Storey County spending – the legitimacy of
16 Storey County paying Gilman's room and airfare expenses to lobby in
17 Washington D.C. during the week of the U.S. presidential inauguration. The
18 Court concludes these stories and the specific statements were aimed at
19 procuring an electoral action, result, or outcome regarding Storey County's use
20 of tax funds and Gilman's continuing as a Storey County Commissioner.
21

- 22 (b) Communication directed to a government officer or in
23 direct connection with with an issue under consideration
by a government body or official

24 NRS 41.637(2) requires the communication be directed to a government
25 officer, and subsection (3) requires the statement be made in direct connection
26 with an issue under consideration by a government body or official. The instant
27 statements do not meet either of these requirements.
28

1 (c) Direct connection with an issue of public interest

2 NRS 41.637(4) requires the communication be made in direct connection
3 with an issue of public interest. To determine whether the communication was
4 made in direct connection with an issue of public interest the court looks to the
5 guiding principles for set forth in *Shapiro*.

6 The first guiding principle is that “public interest” does not equate with
7 mere curiosity. The Court concludes the public has an interest in how tax
8 dollars are spent. The effort to inform the public about Storey County’s
9 spending for the Washington, D.C. trip was not a matter of mere curiosity. This
10 guiding principle weighs in favor of finding the communication and the
11 statement were made in direct connection with an issue of public interest.

12 The second guiding principle is that a matter of public interest should be
13 something of concern to a substantial number of people; a matter of concern to
14 a speaker and a relatively small specific audience is not a matter of public
15 interest. How Storey County tax dollars are spent is an important matter to all
16 Storey County taxpayers and not just a matter of concern to Toll and a relatively
17 small specific audience. This guiding principle weighs in favor of finding the
18 communication and the statement were made in direct connection with an issue
19 of public interest.

20 The third guiding principle is that there should be some degree of closeness
21 between the challenged statements and the asserted public interest – the
22 assertion of a broad and amorphous public interest is not sufficient. The
23 communication criticized Gilman and other county officials about the spending
24 for the trip. The Court concludes there is a degree of closeness between the
25 asserted public interest – responsible spending of taxpayer dollars – and
26 information regarding the Washington, D.C. trip. The Court concludes these
27 communications are not an assertion of a broad and amorphous public interest.
28 This guiding principle weighs in favor of finding the communication and the

1 statement were made in direct connection with an issue of public interest.

2 The fourth guiding principle is the focus of the speaker's conduct should be
3 the public interest rather than a mere effort to gather ammunition for another
4 round of private controversy. The focus of Toll's communication was whether
5 the use of tax dollars for the trip was legitimate, and in the best interests of
6 Storey County taxpayers. The Court concludes Toll's statement was in the
7 public interest and not a mere effort to gather ammunition for another round of
8 private controversy. This guiding principle weighs in favor of finding the
9 communication and the statement were made in direct connection with an issue
10 of public interest.

11 The fifth and final guiding principle is that a person cannot turn otherwise
12 private information into a matter of public interest simply by communicating it
13 to a large number of people. The Court concludes the information regarding the
14 spending of taxpayer dollars on the Washington, D.C. trip was not private
15 information but a matter of public interest in Storey County. This guiding
16 principle weighs in favor of finding the communication and the statement were
17 made in direct connection with an issue of public interest.

18 The Court concludes the communication and the statement were made in
19 direct connection with an issue of public interest.

20
21 *3. Truthful statement or made without knowledge of falsehood*

22 The last issue on the question of whether the communication was a good
23 faith communication is whether the communication was truthful or made
24 without knowledge of its falsehood. In his first affidavit Toll testified that he
25 conducts research for the pieces he writes. In this communication, Toll related
26 that the Storey County lobbyist reported on the lobbying efforts during the
27 Washington, D.C. trip and Toll provided a link for readers to listen to the
28 lobbyist's report. Toll downplayed the lobbying efforts. He included

1 information that the week of the U.S. presidential inauguration is not the best
2 week to do business in Washington, D.C. Gilman does not deny attending the
3 inauguration. Toll included receipts he received from the County which
4 included the handwritten notation "DC trip to Trump inauguration." Toll
5 suggested an alternative to traveling to Washington to lobby – Skype. This
6 probably should not be taken too seriously. But neither should the statement,
7 "we paid \$7,611.50 for them to attend the inauguration" be taken out of context
8 and understood literally. Read in the context of the full communication, which
9 includes statements about who Gilman and the lobbyist talked to, a link to the
10 lobbyist's report to the County Commission, the receipts indicating "DC trip to
11 Trump inauguration," a reasonable person would read the statement "we paid
12 \$7,611.50 for them to attend the inauguration" to mean that the big event
13 during the lobbying trip was the inauguration, not that nothing was done in
14 connection with the zip code issue. The Court concludes the statement in
15 context is not false or susceptible to a defamatory construction.

16 The Court concludes Toll met the burden under NRS 41.660(3)(a). The
17 Court concludes the communication and statement were made in furtherance of
18 the right to free speech in direct connection with a issue of public concern.

19
20 *4. Burden shifts to Gilman*

21 Because Toll met the burden under NRS 41.660(3)(a) the Court must
22 determine whether Gilman demonstrated with prima facie evidence a
23 probability of prevailing on the his defamation per se claim.

24 Gilman's evidence is his affidavit testimony, Opp. Ex. 3, ¶ 97-98. Gilman
25 testified the trip was on behalf of Storey County and there was significant
26 lobbying. As stated above, a reasonable reader of this communication would not
27 take the statement, "we paid \$7,611.50 for them to attend the inauguration"
28 literally. Read in the context of the full communication, which includes

1 statements about who Gilman and the lobbyist talked to, a link to the lobbyist's
2 report to the County Commission, the receipts indicating "DC trip to Trump
3 inauguration," a reasonable person would read the statement "we paid
4 \$7,611.50 for them to attend the inauguration" to mean that the big event
5 during the lobbying trip was the inauguration, not that nothing was done in
6 connection with the zip code issue. The Court concludes Gilman failed to
7 produce prima facie evidence that the communication was false or defamatory.
8 The Court concludes Gilman also failed to prove actual malice – that Toll made
9 the communication knowing it was false or the statement acted with a high
10 degree of awareness of the probable falsity of the statement or had serious
11 doubts as to the publication's truth.

12 The Court concludes Gilman failed to demonstrate with prima facie evidence
13 a probability of prevailing on the his defamation per se claim.

14 15 *5. Discovery*

16 Gilman requested an opportunity to conduct discovery under NRS
17 41.660(4). Gilman failed to make the showing required by NRS 41.660(3)(b).
18 The information which allegedly supports Toll's accusations came from the
19 Storey County manager's office and is reasonably available without discovery.
20 Therefore the request to conduct discovery is denied.

21 Based upon the foregoing the special motion to dismiss must be and is
22 granted as to the Washington, D.C. trip communication.

23 24 **E. Special consideration regarding rules and regulations**

25 The statement regarding special consideration regarding rules and
26 regulations come from a communication Toll published on December 3, 2017. A
27 copy of the communication is Exhibit 8 to Gilman's opposition. The language at
28 issue is:

1 Special Interests

2 The Commissioner Lance Gilman – TRIC Special Interest merry-
3 go-round that gives Mr. Gilman and TRIC access to the Storey
4 County checkbook, tax coffers, real property and special
5 consideration regarding rules and regulations.

6 After this opening paragraph Toll lists five examples of the alleged special
7 consideration. Gilman's challenge to the Storey County reconveying land to
8 TRIC without consideration was addressed above. Gilman does not argue any of
9 the other items on the list are defamatory.

10 Taken in context, which is that Gilman receives special consideration and
11 here are five examples of special consideration, one that was addressed above
12 and four that Gilman does not challenge, Gilman has failed to show that the
13 statement is defamatory. Rather the communication is rhetorical hyperbole,
14 vigorous epithets, and lusty and imaginative expressions of contempt and
15 language used in a loose, figurative sense. Such language will not support a
16 defamation action. *Grenier*.

17 The Court concludes the special motion to dismiss must be granted as to this
18 portion of Gilman's claim.

19 **F. Reimbursing the ethics fine and recall expenses**

20 The statement regarding reimbursing the County for recall expenses comes
21 from a communication Toll published on December 3, 2017. A copy of the
22 communication is Exhibit 6 to Gilman's opposition. The language at issue is:

23 Brothel Owner Lance Gilman told thestoryteller.online he will
24 cover the 1000.00 fine incurred by his ethics investigation request
25 filed against Sheriff Gerald Antinoro.

26 In the spirit of moving peacefully and constructively forward, we
27 have pledged to not only pay the \$1,000 fine imposed on the
28 Sheriff as a result of our petty complaint but also reimburse
29 Storey County for the estimated \$30,000 spend on the Recall
30 Election.

31 Gilman argues these statements are not true.

1 Statements cannot form the basis of a defamation action if they cannot be
2 reasonably interpreted as stating actual facts about an individual. Thus,
3 rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of
4 contempt and language used in a loose, figurative sense will not support a
5 defamation action. *Grenier*.

6 The Court concludes this communication and the specific statements are
7 rhetorical hyperbole and cannot be reasonably interpreted as stating actual
8 facts about Gilman. Therefore the Court concludes the special motion to
9 dismiss must be granted as to this portion of Gilman's claim.

10 11 **V. ORDER**

12 **IT IS ORDERED:**

13 Gilman may conduct discovery limited solely to information as to whether
14 Toll knew the resident communications were false or whether he acted with a
15 high degree of awareness of the probable falsity of the statement or had serious
16 doubts as to the publication's truth.

17 Gilman's discovery must be completed by May 11, 2018. Gilman will have
18 until May 25, 2018 to file and serve a supplemental opposition to the anti-
19 SLAPP motion. Toll will have until June 8, 2018 to file a supplemental reply.
20 Toll will file a request to submit the matter for decision on or before June 8,
21 2018.

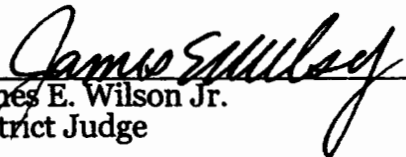
22 The decision on the Anti-SLAPP Special Motion to Dismiss regarding the
23 resident statements and Toll's request for attorney's fees and costs will be
24 delayed until Gilman completes the limited discovery and the parties complete
25 the ordered briefing.

26 Other activity in this case is stayed until the Court rules on the anti-SLAPP
27 motion regarding resident communications.

28 /////

1 The special motion to dismiss is granted as to the statements related to
2 reverse graft, re-licensing Mustang Ranch, receiving land with zero
3 consideration, the Washington, D.C. trip, special consideration regarding rules
4 and regulations, and reimbursing ethics fine and recall expenses.

5 April 9, 2018.

6 
7 James E. Wilson Jr.
8 District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial
3 District Court, and I certify that on April 9, 2018, I served the foregoing
4 Order by:

5 _____ Placing a true and correct copy of it in a sealed, envelope, postage
6 prepaid, and depositing the envelope in the U.S. Post Office mail box at
7 1111 South Roop Street, Carson City, Nevada; or

8 ☒ Placing a true and correct copy of it in the pick up box located in the
9 Carson City Court Clerk's office.

10 I used the following addresses:

11 John L. Marshall, Esq.
12 570 Marsh Ave.
13 Reno, NV 89509

Gus W. Flangas, Esq.
Jessica K. Peterson, Esq.
3275 South Jones Blvd., Suite 105
Las Vegas, NV 89146

13 Luke Busby, Esq.
14 316 California Avenue #82
15 Reno, NV 89509

16 
17 Susan Greenburg
18 Judicial Assistant
19
20
21
22
23
24
25
26
27
28

1 IN THE FIRST JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF STOREY, NEVADA

4 -oOo-

5
6 LANCE GILMAN, an individual, :
7 :
8 Plaintiff, :
9 :
10 vs. : Case No. 18-TRT-00001-1e
11 : Dept. No. II
12 SAM TOLL, an individual; DOES :
13 I-V, and ROE ENTITIES VI-X, :
14 inclusive, :
15 :
16 Defendant. :
17 :

18 =====

19 DEPOSITION OF SAMUEL TOLL

20 Friday, May 4, 2018

21 Virginia City, Nevada

22
23
24
25 REPORTED BY: SUSAN E. BELINGHERI, CCR #655

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Plaintiff:

FLANGAS DALACAS LAW GROUP
Attorneys at Law
By: GUS W. FLANGAS, ESQ.
3275 South Jones Blvd., Suite 105
Las Vegas, Nevada 89146
gwf@fdlawlv.com

For the Defendant:

LUKE ANDREW BUSBY, LTD
Attorneys at Law
By: LUKE A. BUSBY, ESQ.
316 California Avenue, #82
Reno, Nevada 89509
luke@lukeandrewbusbyltd.com

I N D E X

EXAMINATION:

PAGE

By Mr. Flangas

4

EXHIBITS:

DESCRIPTION:

PAGE

Exhibit 1	Declaration of Sam Toll.....	23
Exhibit 2	Blog by Mr. Toll, dated February 26	29
Exhibit 3	Blog by Mr. Toll, dated December 14	33
Exhibit 4	Blog by Mr. Toll, dated April 7....	36
Exhibit 5	Blog by Mr. Toll, dated April 18...	38
Exhibit 6	Blog by Mr. Toll, dated May 20.....	40
Exhibit 7	Blog by Mr. Toll, dated October 16.	44

1 PURSUANT TO NOTICE, and on Friday, the 4th
2 day of May, 2018, at the hour of 10:05 a.m. of said day,
3 at the offices of Community Chest, 175 E. Carson Street,
4 Virginia City, Nevada, before me, Susan E. Belingheri, a
5 notary public, personally appeared SAMUEL TOLL.

6 -oOo-

7
8 SAMUEL TOLL,
9 having been duly sworn,
10 was examined and testified as follows:

11
12 EXAMINATION

13 BY MR. FLANGAS:

14 Q. Good morning, sir. We've already met. I'm Gus
15 Flangas. I represent the plaintiff in this action,
16 Lance Gilman.

17 Could you please state your name and spell it for
18 the record.

19 A. My name is Samuel Clover Toll. S-a-m-u-e-l,
20 C-l-o-v-e-r, T-o-l-l, just like the bridge.

21 Q. Mr. Toll, you just took an oath; correct?

22 A. I did, yes.

23 Q. You understand that that oath has the same
24 ramifications and solemnity as though you took it in a
25 court of law?

1 A. I do.

2 Q. When I say "ramifications," what I mean is the
3 same ramifications for perjury as though you took it in
4 a court of law. Do you understand that?

5 A. I do.

6 Q. Have you ever had your deposition taken before?

7 A. No, sir.

8 Q. I'm going to go over some ground rules to do this
9 deposition, which will make it easier for everybody
10 here.

11 First of all, I want you to notice to your
12 immediate left is the court reporter. She is taking
13 down everything that's being said here today. And I
14 want you to notice, she's doing that with her fingers.
15 And the reason I point that out is because it's
16 virtually impossible for her to record both of us
17 speaking at the same time. So what that means for you
18 and I is you need to wait until I finish my question
19 before you give me your answer. Okay?

20 A. Understood.

21 Q. And I'll do the same, hopefully try to abide by
22 the same rule and wait until you finish your answer
23 before I start my next question. Okay?

24 A. Thank you.

25 Q. During the course of my questioning, some of the

1 answers may call for a yes or no answer, and you need to
2 audibilize it by saying "yes" or "no," because a nod, a
3 shake of the head, an "uh-huh" or an "uh-uh" will not
4 come out on the deposition transcript. Do you
5 understand that?

6 A. I do.

7 Q. Today I'm not here to try and trick you with my
8 questions; however, if you do answer my question it will
9 be assumed that you understood the question. Okay?

10 A. Yes.

11 Q. If you don't understand my question, tell me you
12 don't understand it, I'll say it again, I'll rephrase
13 it, I'll try to break it down to facilitate your
14 understanding. Okay?

15 A. Excellent. Thank you.

16 Q. During the course of this deposition, your
17 attorney -- who I'm assuming this is your attorney to
18 your immediate, to your immediate right -- may interject
19 an objection to one of the questions, or more than one
20 of the questions, I may answer. That's for the record,
21 and you'll still have to answer the question unless you
22 get further instructions from your attorney. Do you
23 understand that?

24 A. Yes, I do.

25 Q. During the course of this deposition, if you need

1 to take a break, need to use the facilities, or get a
2 drink or whatever, let me know and we'll, you know,
3 we'll help you out on that. The only thing I ask is if
4 there's a question pending, that you finish the answer
5 to that question. Okay?

6 A. Of course.

7 Q. At the conclusion of this deposition, the court
8 reporter is going to take everything that's been said
9 here today and she's going to transcribe it and she's
10 going to put it into a booklet. That booklet is called
11 a transcript. Are you following me so far?

12 A. I am.

13 Q. You're going to be given an opportunity to review
14 this transcript, should you so desire. Do you
15 understand that?

16 A. I do.

17 Q. You will also be given the opportunity to make
18 changes to that transcript if you desire. Do you
19 understand that?

20 A. I do.

21 Q. I need to caution you, though, if you do make
22 changes to that transcript of a substantive amount, I
23 will be able to comment upon that at any trial,
24 evidentiary hearing, or as the case may be. Do you
25 understand that?

1 A. I do.

2 Q. What I mean by "comment," so that you fully
3 understand this, is that I will be able to bring your
4 credibility into question. Do you understand that?

5 A. I do.

6 Q. We call it impeachment in the legal field. I
7 don't know if you've ever heard that term or not.

8 A. I think I remember it when we had a president in
9 the late '90s.

10 Q. Okay. Now, also if you testify differently at a,
11 at an evidentiary hearing or a trial, as the case may
12 be, than you do today, as well I'll be able to comment
13 upon that. Do you understand that?

14 A. Yes, I do.

15 Q. And again, when I say "comment," I'll be able to
16 bring your credibility into question. Do you understand
17 that?

18 A. Yes, I do.

19 Q. And I've got to go through a couple questions
20 that I hate asking people, but I'm going to ask it
21 because I need to.

22 First of all, are you on any type of medication
23 today that would affect your ability to understand my
24 questions or answer them accurately?

25 A. No, sir.

1 Q. Have you ever been convicted of a felony?

2 A. No, sir.

3 Q. Have you ever been convicted of a misdemeanor
4 that involved theft, dishonesty, or fraud?

5 A. No, sir.

6 Q. Now, I'm going to go into your background a
7 little bit. First of all, what's your level of
8 education?

9 A. Formal education in school?

10 Q. Yes.

11 A. I've got 60 units of college credits.

12 Q. From where?

13 A. Sierra College in, in Rocklin, California.

14 Q. When did you get these credits, from when to
15 when?

16 A. Most of them were obtained in the early '80s;
17 however, I've obtained a few more in the last 18 to --
18 oh, no. Actually, it was earlier than that. Within the
19 last three or four years.

20 Q. What, what -- did you get any type of degree,
21 associate's degree or anything --

22 A. No.

23 Q. -- like that? Any certificates?

24 A. Nope.

25 Q. Primarily, what was your area of study?

1 A. General education, English, and science.
2 Political science as well.

3 Q. I'm assuming you graduated high school.

4 A. Yes, I did.

5 Q. When and where?

6 A. Carson City, 1980.

7 Q. I don't need your address, just the town. Where
8 do you presently live?

9 A. Gold Hill.

10 Q. Where is that located?

11 A. It's approximately a mile and a quarter from
12 where we're sitting. To the south.

13 Q. How long have you lived there?

14 A. I've lived in Gold Hill, in the current house,
15 since 2016. I, of course, was born and raised here,
16 being raised in the house that my great,
17 great-granduncle occupied from about 19 -- 1870 through
18 1903 when he was serving Nevada as the state senator.

19 Q. Federal senate or state senate?

20 A. United States Senate.

21 Q. His name? Just out of curiosity.

22 A. John Percival Jones.

23 Q. And you said you were born and raised "here."
24 You mean right here in Virginia City?

25 A. Gold Hill.

1 Q. Have you lived anywhere else?

2 A. Yes. Thirty years in the Sacramento Valley,
3 south Placer County, town of Loomis.

4 Q. All 30 years in Loomis?

5 A. Approximately, yes.

6 Q. What years was that?

7 A. 1982 through 2016.

8 Q. And you moved back -- obviously, moved back here
9 in 2016?

10 A. That's correct.

11 Q. What did you do for a living while you were in
12 Loomis?

13 A. I was an entrepreneur. I managed -- I owned a
14 company that had up to 75 employees, did five million a
15 year in business. We were in the communications
16 business.

17 Q. Were you the owner or the manager?

18 A. I was the owner.

19 Q. What's the name of the business?

20 A. The Electric Page.

21 Q. V-E as in Victor echo?

22 A. T-h-e, as in "the."

23 Q. Oh. The -- I'm sorry. Go ahead.

24 A. That's okay. The Electric Page.

25 Q. And that was in Loomis?

1 A. No, it was downtown Sacramento.

2 Q. What happened to the business?

3 A. I shut 'er down.

4 Q. When?

5 A. The air quality control district of Sacramento
6 Valley insisted that I install a \$180,000 ventilation
7 system over a printing press that I owned, and the
8 reason for that was because I did a job that required
9 the use of ethyl alcohol. We did that job once a
10 quarter. I made about \$500 on the purchase -- or on the
11 transaction. And after 25 years of dealing with
12 increasingly onerous California regulation, I gave them
13 the fine finger of happiness and closed the business.

14 Q. What year did you close it?

15 A. That's a good question. 2006.

16 Q. What did you do for the other ten years you were
17 in Loomis?

18 A. I've basically been a consultant, I've done
19 print, what we call print brokering, and have enjoyed
20 free time.

21 Q. A lot less time when you don't own the company,
22 huh?

23 A. That's right.

24 Q. What type of consultant were you?

25 A. Communications consultant. Public relations,

1 marketing.

2 Q. From when to when?

3 A. From 2006 to present.

4 Q. Do you have a name of your -- do you have a
5 company as a consultant, or do you do it as an
6 individual?

7 A. There's been a number of different businesses.
8 Today I'm operating as Battle Born Digital Media &
9 Marketing.

10 Q. Is that a corporation, or --

11 A. Sole proprietorship.

12 Q. How long have you been operating as Battle Born
13 Digital Media?

14 A. I purchased a business license from Storey County
15 in -- on or about the first quarter of 2017.

16 Q. As a consultant, have you operated under any
17 other names?

18 A. No.

19 Q. Do you have any employees for Battle Born Digital
20 Media?

21 A. No, sir.

22 Q. What type -- you do communications consulting.
23 Can you go over that a little bit more for me as to what
24 that is?

25 A. Well, social media marketing, print, direct mail,

1 and other types of communication. You want a set of
2 business cards? I can bust those out for you. If you
3 want to put a banner up, put a billboard up, I can help
4 you with that.

5 Q. Do you have a printing press?

6 A. I do not.

7 Q. How do you get the, how do you get the things
8 printed up?

9 A. I have a 30-year network of professional
10 relationships with companies in California, and operate
11 with them on a wholesale basis.

12 Q. Now, you said you do print -- before you go into
13 that, have you operated under any other names as a
14 consultant?

15 A. No, sir.

16 Q. What's that?

17 A. No, sir.

18 Q. How about print brokering, when were you doing
19 that?

20 A. I've been doing it since -- well, I mean, you can
21 argue that I did it since 1986.

22 Q. Still do it now?

23 A. When the time arises, although it's infrequent.

24 Q. Is that -- would that be part of your
25 communications consulting?

1 A. Yes, it would.

2 Q. When you're doing print brokering -- I know you
3 had your company that we've just discussed.

4 A. The Electric Page.

5 Q. The Electric. Other than that company, did you
6 operate under any other names for print brokering?

7 A. No, sir.

8 Q. Now, you told me about your almost 60 credits of
9 college. Do you have any other type of education?

10 A. Well, I think that when you run a business for
11 30 years and you deal with Fortune 500 companies, as
12 well as sole proprietorships, start-ups, single moms
13 working in their house, when you have 75 employees, I
14 think you could suggest that that is an educational
15 experience in the school of hard knocks that no college
16 is capable of providing.

17 Q. So the answer to my question is -- I understand
18 you got the hard knocks education, but any other type of
19 education?

20 A. Sure. Yes. For example, I went through Apple's
21 authorized service program. I became an authorized
22 Apple service technician in 1983. I went through Adobe
23 corporation's certified trainer program -- honestly, I
24 can't remember when I did that. I went through
25 Heidelberg's digital imaging qualifications. I've

1 probably got a dozen more professional educational
2 opportunities that I couldn't name off the top of my
3 head.

4 Q. These courses, like the Apple authorized service,
5 how long was that course?

6 A. The course itself I believe was two weeks.

7 Q. The Adobe?

8 A. The Adobe class was two weeks.

9 Q. Same with Heidelberg?

10 A. Heidelberg, it was about a week, in New York
11 City, yeah.

12 Q. Did you -- you mentioned New York City. You
13 didn't live there, you just went there --

14 A. No. Went there for the training.

15 Q. Okay. What do you do for a living today?

16 A. I've already described what I do.

17 Q. Strictly the communications consulting?

18 A. That's correct.

19 Q. Do you have any other sources -- do you have any
20 other sources of income other than the communications
21 consulting business?

22 A. None that are substantial or worth mentioning.

23 Q. I don't mean to bicker with you. You may not
24 think they're worth mentioning, but I do. Do you have
25 any sources of income that derive from any type of

1 employment or business dealings other than your
2 communications business?

3 A. No, sir. And I assume you're excluding hobbies
4 from that list of information.

5 Q. Yeah. Well, hobbies are -- you know, there's a
6 definite -- hobbies are different than employment.

7 A. Correct.

8 Q. So what I'm really looking for is your
9 employment.

10 A. That's correct. No. The answer to that question
11 then is no.

12 Q. So what are your hobbies that you just referred
13 to?

14 A. I like to work on cars.

15 Q. Any others?

16 A. I like to play golf; however, I'm not very
17 successful at winning money at that.

18 Q. Now, you author a blog; right?

19 A. I do.

20 Q. What's the name of the blog?

21 A. The blog, as I'm sure you're aware, is The Storey
22 Teller Online. And that's,
23 t-h-e-s-t-o-r-e-y-t-e-l-l-e-r.o-n-l-i-n-e.

24 Q. Dot what?

25 A. O-n-l-i-n-e.

1 Q. And just for going forward in the depo --

2 MR. FLANGAS: Let's go off record on that.

3 (An off the record discussion was held at this time.)

4 MR. FLANGAS: All right. Back online.

5 BY MR. FLANGAS:

6 Q. How long have you been publishing The Storey
7 Teller online blog?

8 A. I bought the URL in February of 2017, and posted
9 my first post shortly thereafter.

10 Q. What was the purpose of your blog?

11 A. The purpose of the blog was to provide
12 communications on political activities that occur in
13 Storey County.

14 Q. What type of political activities?

15 A. Any and all. The families, the five families
16 that think they run this place since they were beating
17 me up as a little kid, are the same ones that are --
18 that think they're in power today, and I like to provide
19 an alternative voice to the, the messaging and the
20 communications that they put forth.

21 Q. Who are the five families you're referring to?

22 A. They've changed over the years, but there are
23 five prominent families here in Virginia City.

24 Q. And they are?

25 A. Well, let's see. A couple of them have moved

1 off. You could refer to the Hess family, you could
2 refer to the Nevin family, you could refer to the Bacus
3 family. There are other families that have changed and
4 morphed over the years. The Adams family back when I
5 was a kid. But -- yeah. Oh, yeah.

6 So, yeah, there's a collection of those, those
7 folks and their offspring that are -- continue to be
8 employed in county politics and that own properties here
9 on C Street.

10 Q. These families, you gave me four: Hess, Nevin,
11 Bacus, and Adams. Who is the fifth one?

12 A. You could insert a half dozen different family
13 names. Curtis might be -- you might insert Curtis
14 there, you can insert Gallagher there. You can insert a
15 number of smaller players.

16 Q. Was there any other reason why you started your
17 blog other than to report and provide an alternative
18 voice against these five families that you just
19 mentioned?

20 MR. BUSBY: Objection, asked and answered.
21 Go ahead.

22 THE WITNESS: So -- I'm sorry. Being a
23 novice, so answer this?

24 MR. BUSBY: Yes. Go ahead.

25 THE WITNESS: Okay.

1 MR. BUSBY: I'll either direct you to answer
2 or not.

3 THE WITNESS: Oh, okay.

4 MR. BUSBY: Go ahead and answer.

5 BY MR. FLANGAS:

6 Q. If you remember -- and I'll ask that question
7 again to get us back on track. If you remember, during
8 the admonition phase I told you your attorney is going
9 to register an objection from time to time, and you do
10 need to answer the question --

11 A. Oh, okay.

12 Q. -- unless you receive further instruction from
13 him not to.

14 A. Thank you. So, yes.

15 Q. Let me go ahead and ask the question again --

16 A. Please.

17 Q. -- so that way we've got a cleaner transcript.

18 So you said the, the purpose of the blog was to
19 provide an alternative voice against the five families
20 that we just talked about. My question: Was there any
21 other purpose for your, for your blog?

22 MR. BUSBY: Objection, mischaracterizes
23 earlier testimony, asked and answered. Go ahead.

24 THE WITNESS: So the -- there were a number
25 of purposes. There's no primary purpose to starting the

1 blog. To answer your question directly, I started it
2 because I'm an activist, and when I see shenanigans,
3 when I see waste, when I abuse, when I see fraud, when I
4 see monkey business, I'm one of few people who has
5 enough courage up here to stand up, paint a target on my
6 shirt, and voice opposition. Because I don't have a job
7 for the county, because my kids don't go to school here,
8 because there's no method of intimidation.

9 Because the sheriff, who's duly elected,
10 coming up for re-election, and was in the midst of a
11 recall, a very ugly and divisive recall effort, is not
12 in the pockets of any of those five families or any of
13 the employees of the County, I don't have to worry about
14 the fear of intimidation of a no knock raid and planted
15 evidence, as was customary in days gone by.

16 BY MR. FLANGAS:

17 Q. Okay. Let's talk about, first of all, the
18 sheriff. You're referring to Sheriff Jerry Antinoro?

19 A. That is correct.

20 Q. Are you friends with Mr. Antinoro?

21 A. Am I friends with him?

22 Q. Yes.

23 A. He's an, an acquaintance of mine, yes.

24 Q. Do you socialize with him?

25 A. Infrequently. I do so in public.

1 Q. When you say "in public," you mean like at a bar
2 or a restaurant or something?

3 A. At his office, at public functions, public
4 events.

5 Q. Safe to say you're a supporter of Mr. Antinoro?

6 A. It is.

7 Q. How frequently do you speak with Mr. Antinoro?

8 A. Well, I ran into him at the coffee house while we
9 were waiting for the court reporter this morning.

10 MR. BUSBY: For the record, I'd like to
11 lodge a continuing objection to any questions about
12 Sheriff Antinoro. The Court has already dismissed all
13 of the claims in this matter related to the sheriff, and
14 directed the discovery be limited solely to information
15 as to whether Mr. Toll knew the residence statements he
16 made about Mr. Gilman were false, or whether he acted
17 with a high degree of awareness of the probable falsity
18 of the statement, or had serious doubts as to the
19 publication's truth. Therefore, the questions, any
20 questions about Sheriff Antinoro have nothing to do with
21 that limited scope of discovery, and I object.

22 MR. FLANGAS: Thank you.

23 MR. BUSBY: Go ahead.

24 BY MR. FLANGAS:

25 Q. How frequently do you interact -- and you said

1 you just saw him at coffee, but my question is how
2 frequently do you interact with Mr. Antinoro.

3 A. I would characterize the frequency as perhaps two
4 or three times a month.

5 Q. Do you and Mr. Antinoro have this -- some type of
6 video things that you all do, or TV thing or broadcast
7 thing that you do together?

8 A. There's no video involved, no. I have recorded
9 interviews with Mr. Antinoro which have been published
10 on The Storey Teller. The term folks are using today is
11 podcast, for audio.

12 Q. And in one of your affidavits -- I want to just
13 kind of read it into the record. I can give you a copy.
14 If you want to follow along with me, that's fine.

15 MR. FLANGAS: As a matter of fact, I'll go
16 ahead and give you each a copy so you don't have to --
17 let's go ahead and just have this marked as Plaintiff's
18 Exhibit 1.

19 (Exhibit 1 marked at this time.)

20 BY MR. FLANGAS:

21 Q. Okay. What I'm going to do is I'm going to be
22 looking at -- first of all, this is a declaration you
23 did? Or a copy of one, I should --

24 A. That's correct. My signature is on page three.

25 Q. All right. And you read everything in this

1 affidavit?

2 A. I did.

3 Q. You fully understood what you wrote?

4 A. I do.

5 Q. And let me rephrase that. You fully understand
6 what you signed; right?

7 A. I do and did, yes.

8 Q. I want to just start with 18, which is paragraph
9 18. Now, you talk here that you conduct research for
10 pieces you write in the Teller by gathering information
11 from a variety of sources.

12 "This includes using the internet to access
13 places like the Storey County Website, Las Vegas Sun,
14 RGJ, the Nevada Revised Statutes, Nevada Appeal,
15 Transparent Nevada, and others. I attend and actively
16 participate in the Storey County commissioner meetings
17 regularly, as well as the Storey County Planning
18 Department and the Virginia City Tourism Commission
19 meetings. I was selected as a public witness during the
20 effort to recall the sheriff?"

21 I read that correctly so far?

22 A. That is an accurate representation of what was
23 written.

24 Q. Before I go into the questions I wanted to do,
25 what is -- when you say you were a public witness during

1 the effort to recall the sheriff, what does that mean?

2 MR. BUSBY: I'm going to object for the
3 record. Mr. Flangas, this question is beyond the scope
4 of the discovery permitted by the Court and its order.
5 You're asking questions about the sheriff. The sheriff
6 has nothing to do with the scope of discovery that's
7 been delineated by the Court. It's clear, in my mind,
8 that you're directly disobeying the Court's order. Can
9 you please explain how your question is relevant to Mr.
10 Toll's questioning Mr. Gilman's residence?

11 MR. FLANGAS: I will get there shortly, but
12 I'm laying background information first because -- and I
13 disagree with you. I'm not disobeying the Court's order
14 by any stretch of the imagination. I will just tell
15 you, if you look at the Posadas case -- and I can give
16 you an exact site if you want it, on it. But it says --
17 the Posadas case, which has been cited by both parties
18 pretty, pretty, pretty frequently in this case, says,
19 "Recklessness or actual malice may be established
20 through cumulative evidence of negligence, motive, and
21 intent." So I think, based on the Posadas case, I'm
22 within the realm to ask about his motive and his intent
23 on what he's doing.

24 MR. BUSBY: You haven't asked any questions
25 related to his motive and intents of the issue with

1 Lance Gilman's residence.

2 MR. FLANGAS: I will get there.

3 MR. BUSBY: Okay. I just want to lodge that
4 objection for the record.

5 BY MR. FLANGAS:

6 Q. Okay. First of all --

7 MR. BUSBY: Go ahead, Mr. Toll.

8 BY MR. FLANGAS:

9 Q. First of all, what is a public record?

10 A. I'm sorry. What is --

11 Q. Excuse me.

12 A. Yeah. Yeah.

13 Q. I'm sorry.

14 A. That's okay.

15 Q. You mentioned a -- you were a public witness. So
16 what did you mean by that?

17 A. A public witness is a person who is selected and
18 identified as a witness to an event. In this case, the
19 event was the recall signature verification process
20 conducted by county clerk/treasurer, Vanessa Stephens
21 and her staff.

22 Q. And you were selected by who?

23 A. I was selected by Sheriff Antinoro.

24 Q. As his representative to oversee the counting of
25 signatures?

1 A. Not as his representative. As a member of the
2 public witnessing the event.

3 Q. Who else had opportunities to select witness --
4 public witnesses?

5 A. Commissioner Gilman let Kris Thompson and the
6 group -- and Don Norman, who paid for, funded, and were
7 the driving force behind the recall.

8 Q. They got to observe, too?

9 A. Mr. Kris Thompson and Mr. Gilman's counsel were
10 also there.

11 Q. You're not referring to me, by Mr. --

12 A. No, sir. No, sir.

13 Q. Okay.

14 A. It was an attorney from Carson City, whose name
15 escapes me.

16 Q. I just want to make sure for the record on that.

17 All right. So based on kind of -- I'm going to
18 go now to the questions when I read number 18 in the
19 record. It appears you're very familiar with the
20 government here in Storey County?

21 A. I'm familiar with the government in Storey
22 County, I'm familiar with the state government, I'm
23 familiar with the federal government, as well as the
24 government in California.

25 Q. Now, you're obviously familiar with the county

1 commission; right?

2 A. I am.

3 Q. You're also familiar with the brothel boards?

4 A. Yes, I am.

5 Q. And that's comprised of who?

6 A. There's two commissioners and the sheriff.

7 Q. It's actually three commissioners, but one has to
8 abstain; right?

9 A. Well, practically speaking -- I've attended
10 county commission meetings. Only two of the
11 commissioners have been able to have participated in the
12 board, and the sheriff as well. So from my practical
13 experience, there are only two commissioners that
14 participate on the brothel board.

15 Q. And who are they?

16 A. They would be Chair Marshall McBride, and
17 Commissioner Jack McGuffey, and of course the
18 aforementioned Sheriff Gerald Antinoro.

19 Q. Now, the sheriff's office regulates the brothels?

20 A. Yes, that's correct. My father wrote Joe
21 Conforte's biography, and Sheriff Bob Del Carlo was
22 overseeing Joe Conforte's operation in the mid '70s.

23 Q. Now, you said that there was some certain things,
24 you know -- well, let's stop for a second, here. Let's
25 kind of go through a few things first, just for

1 identification purposes.

2 MR. FLANGAS: If I could have this marked as
3 No. 2, please.

4 (Exhibit 2 marked at this time.)

5 MR. BUSBY: I'm going to --

6 MR. FLANGAS: I'm showing --

7 MR. BUSBY: Can I have a minute to review
8 this, please?

9 MR. FLANGAS: Oh, absolutely. Just so you
10 know, those are the exhibits that were attached to my
11 opposition to your SLAPP -- anti-SLAPP suit.

12 MR. BUSBY: Okay. Just one second.

13 I don't believe this exhibit contains any
14 content related to the scope of discovery as delineated
15 by the Court; therefore, I will object to its use at the
16 deposition. Go ahead, please.

17 MR. FLANGAS: Okay.

18 BY MR. FLANGAS:

19 Q. Now, I'm showing you what's marked as Exhibit
20 No. 2. Do you recognize the content of this exhibit?

21 A. I do.

22 Q. That's one of your blogs?

23 A. That's correct.

24 Q. Now, if you'll turn to the, what appears to be
25 the third page of the exhibit, not including the cover

1 page. Actually, it's the fourth page. I'm sorry.
2 Fourth page, not including the -- it says, at the top it
3 says, "Leave a Reply."

4 A. Yes, sir.

5 Q. It says, "Your email address will not be
6 published." And it says, "Required fields are marked."
7 Right?

8 A. Yes, sir.

9 Q. Now, down below it says, "Support the Teller and
10 keep fact based news about Storey County ad free." Is
11 that correct?

12 A. That's what it says, yes.

13 Q. So you hold yourself out as a facts-based type of
14 news; correct?

15 A. That's correct, yes. For example, yesterday I
16 posted a piece on Storey County's budget provided --
17 with numbers provided by the Storey County comptroller.
18 Two days before that I posted a piece that was
19 conducted -- that was the synopsis of data collected
20 from the Nevada Department of Taxation. So yes, I do
21 collect facts and I present them to the readers to make
22 their own opinion. I do also create editorials and
23 satire as part of what I do.

24 Q. And with that that I just read, "Support the
25 Teller and keep fact based news about Storey County ad

1 free," your intent is to let everybody know, that reads
2 your blog, that this is based on fact; right?

3 MR. BUSBY: Objection, asked and answered.
4 Objection, mischaracterizes earlier testimony, and
5 compound question, confusing. And go ahead.

6 THE WITNESS: As I just explained to you in
7 an earlier answer to your question, yes, what I write is
8 facts based. However, satire is not facts based. I
9 write that. Opinion is also not facts based, and I
10 write that as well.

11 BY MR. FLANGAS:

12 Q. Okay.

13 A. Just like The New York Times.

14 Q. Now, when you first started writing your blog,
15 what was your intent? You mentioned several things,
16 too, but were you expecting a lot of people to read it?

17 MR. BUSBY: Objection, compound question,
18 confusing, mischaracterizes earlier testimony, and asked
19 and answered. Go ahead.

20 THE WITNESS: You're asking what my intent
21 was?

22 BY MR. FLANGAS:

23 Q. Well, let me rephrase the question, here.

24 Did you intend for a lot of people to read your
25 blog?

1 A. I had hoped for a lot of people to read my blog,
2 yes.

3 Q. What were you expecting in the way of people to
4 read your blog?

5 A. I had no idea.

6 Q. How many people are reading your blog?

7 A. How many people are reading it today?

8 Q. Yes.

9 A. We filed a, a printout of a stat report, which
10 I'm sure you're familiar with in papers that you've
11 received. Our current readership stats are between
12 eight hundred and a thousand readers a week. They
13 certainly were not that when I started.

14 Q. Now, how do you know they're readers? Are you
15 able to get a stat that said people are actually reading
16 this, or --

17 A. That's correct. If you're --

18 Q. -- or visiting it? Or what -- how does that
19 work?

20 MR. BUSBY: Objection, compound question.
21 Go ahead.

22 THE WITNESS: If you're familiar with
23 internet statistic software packages, they're capable of
24 some very sophisticated things. You can find out how
25 many seconds people are on your page, you can find out

1 the incoming and outgoing buckets on which they travel,
2 their navigational habits, what page they come in on,
3 what page they exit on, how much time they spend on each
4 page. And from those data points, you can create a very
5 clear case as to who, what, where, when, and why people
6 are on your, on your website.

7 MR. FLANGAS: Okay. I'm going to have this
8 next one marked as Exhibit No. 3.

9 (Exhibit 3 marked at this time.)

10 MR. BUSBY: I need a moment to review this.

11 MR. FLANGAS: Just let me know when you're
12 ready, counsel.

13 MR. BUSBY: Okay. It seems to be missing
14 some pages. All I'm seeing here is a --

15 MR. FLANGAS: I think --

16 MR. BUSBY: -- summons. Page numbers are
17 not printed out. I'm not sure if this is the entire
18 document, but --

19 MR. FLANGAS: Let me see what you have for a
20 moment.

21 MR. BUSBY: I'm going to lodge an objection
22 anyway, based on the fact that there's nothing in this
23 document about Mr. Gilman's residency or Mr. Toll's
24 allegations about Mr. Gilman's residency. So therefore,
25 it's beyond the scope of the discovery permitted by the

1 Court in this matter.

2 MR. FLANGAS: I think this is the full
3 document, personally --

4 MR. BUSBY: Okay.

5 MR. FLANGAS: -- but that's for you to...
6 BY MR. FLANGAS:

7 Q. Okay. I'm showing you what's been marked as
8 Exhibit No. 3. Do you recognize that?

9 A. I do.

10 Q. Is that your blog?

11 MR. BUSBY: Just for the record, the page
12 numbers aren't visible on the copy you provided to
13 counsel or the copy provided to the witness, so...

14 MR. FLANGAS: I will agree with counsel. On
15 there it just seems to show "of 12." It doesn't have
16 the number.

17 BY MR. FLANGAS:

18 Q. But do you recognize the document?

19 A. I do, yes.

20 Q. And that's your blog?

21 A. Yes, it is.

22 Q. All right. Let's look at -- if you go to the
23 third page in where it says at the top, "After all, who
24 really cares about Storey County politics?" Are you
25 there?

1 A. I am.

2 Q. Okay. Down at the bottom it says:

3 "Most of all, they mentioned the conflict of
4 interest that Commissioner Gilman enjoys as he wears" --
5 gosh, it's -- "h on both sides of the negotiating table.
6 A conflict of interest that places the self-interest of
7 the mark manager and exclusive real estate broker above
8 the interests of Storey County taxpayers and voters."

9 Is that what it says?

10 A. Actually, what it should read is:

11 -- "Commissioner Gilman enjoys, as he wears his
12 hat on both sides of the negotiating table. A conflict
13 of interest that places the self-interest of marketing
14 manager and exclusive real estate broker of TRIC above
15 the interests of Storey County taxpayers and voters."

16 Q. Do you like Mr. Gilman?

17 A. I, I have no personal opinion of Mr. Gilman,
18 personally, on a personal level, one way or another. I
19 have shaken his hand two or three times in public. I
20 have no knowledge of him on a personal level.

21 Q. Do you dislike him, though?

22 A. I have no opinion of his character.

23 MR. BUSBY: Objection, asked and answered.

24 Go ahead.

25 THE WITNESS: I have no opinion of him

1 personally.

2 MR. FLANGAS: If I could have this one
3 marked as No. 4, please.

4 (Exhibit 4 marked at this time.)

5 MR. FLANGAS: Let me know when you're ready,
6 counsel.

7 MR. BUSBY: Okay. All right. I'm going to
8 object to the use of this document, which I believe is
9 the affidavit of Lance Gilman, insofar as it's used for
10 any purpose beyond the scope of the very limited
11 discovery which the Court has granted the defendant
12 leave to participate in in this case.

13 MR. FLANGAS: This is embarrassing. I meant
14 the other one. Sorry about that. If you want to hand
15 that back, we will withdraw it.

16 This is the one that was supposed to be
17 next.

18 (Exhibit 4 re-marked at this time.)

19 MR. BUSBY: Just a moment, please.

20 MR. FLANGAS: Just tell me when you're
21 ready.

22 MR. BUSBY: Same objection. I don't see
23 where this document, how or where it relates to Mr.
24 Gilman's residency in any way, which is what the Court
25 permitted the defendants leave to effect discovery upon.

1 Therefore, we object to its use at this deposition.

2 MR. FLANGAS: Okay.

3 BY MR. FLANGAS:

4 Q. Now, sir, if you will turn -- first of all, would
5 you identify this as your blog?

6 A. Yes, sir. This is an article on my website.

7 Q. Not counting the cover page which says Exhibit 4
8 on it, if you go to the page where it's got, "Don Norman
9 promises not to interfere in the sheriff selection." Do
10 you see that page?

11 A. Yes, sir, I do.

12 Q. In a big box? Yes?

13 A. Yes, sir, I do.

14 Q. At the bottom it says:

15 "Team Gilman would have never subjected the
16 citizens to the polarizing effect of the recall effort
17 had it not been for the Washoe County resident who
18 thinks he knows what is best for the taxpayers who
19 should shoulder the taxpayer burden of Don Norman, Lance
20 Gilman, and the rest of the tax escapers at the center."

21 You wrote that, right?

22 A. Yes, I did.

23 Q. Who was the Washoe County resident you were
24 referring to?

25 A. It's well-known that Mr. Norman lives in Washoe

1 County.

2 Q. You weren't referring to Mr. Gilman there?

3 A. No. The story is about Don Norman.

4 Q. Now, you feel that Mr. Gilman is not a resident
5 of Storey County. Is that a correct statement?

6 A. You know, I might have been born at night, but I
7 wasn't born last night.

8 Q. So you think that -- I understand you weren't
9 born last night. So the question asks for a yes or no
10 answer. Do you believe that Mr. Gilman is not a
11 resident of Storey County?

12 A. That is correct.

13 Q. And you have published that in your blogs; is
14 that a correct statement?

15 A. Yes. That's why we're here today.

16 Q. All right.

17 MR. FLANGAS: Have this marked as Exhibit 5,
18 please.

19 (Exhibit 5 marked at this time.)

20 MR. BUSBY: May I have a copy? If I may
21 have a moment.

22 MR. FLANGAS: Sure.

23 MR. BUSBY: All right. Insofar as this
24 exhibit contains information not related to Mr. Gilman's
25 residence, which is the subject upon which the Court

1 granted leave for the defendants to conduct discovery on
2 this matter, I'll object to it's use.

3 BY MR. FLANGAS:

4 Q. Okay. I'm showing you, sir, what's been marked
5 as Exhibit No. 5. Do you recognize the document?

6 A. Yes, sir, I do.

7 Q. Is this your blog?

8 A. Yes, it is.

9 Q. Written on April 18th?

10 A. I couldn't confirm the date.

11 Q. If you go to the very first page, does that help
12 you?

13 A. Yes.

14 Q. That says, "Muth's Truths and the Department of
15 Good News"?

16 A. That's correct, yes.

17 Q. All right. Go to -- then you go to the next
18 page, it says "Muth's Truths" in big, in big -- in a
19 big, gray box?

20 A. Yes, sir.

21 Q. And then the next page after that it's got
22 another box that says "Department of Good News"?

23 A. Yes, sir.

24 Q. And then under that box it's got the words that
25 says:

1 "The debacle we emerged from a week ago today is
2 not the kind of thing out county should be making the
3 news with. Sadly, the most equal member of Storey
4 County (if you believe he actually lives at 5 Wild Horse
5 Canyon) cares more about himself than the county he
6 represents."

7 Who are you referring to there?

8 A. I'm clearly referring to Commissioner Lance
9 Gilman.

10 Q. And you wrote that; correct?

11 A. Yes, I did.

12 Q. You can put it up.

13 MR. FLANGAS: I'd like to have this marked
14 as No. 6.

15 (Exhibit 6 marked at this time.)

16 MR. FLANGAS: Let me know when you're ready,
17 counsel.

18 MR. BUSBY: All right. I'm going to object
19 to use of this exhibit insofar as it lists information
20 not within the scope of the limited discovery granted by
21 the Court to the defendants in this matter related to
22 Mr. Gilman's residency. Go ahead.

23 BY MR. FLANGAS:

24 Q. Sir, if you'll look at Exhibit 6. Do you
25 recognize the document?

1 A. Yes, sir, I do.

2 Q. This is a blog you wrote?

3 A. Yes, sir, it is.

4 Q. And what was the date of this blog?

5 A. The second page reflects May 20th, 2017.

6 Q. All right. If you'll go to the next page, there

7 appears to be a picture. And who is that picture of?

8 A. That's a picture of Commissioner Lance Gilman.

9 Q. And then the next page, if you go to that, it
10 says at the top, page 3 of 10.

11 A. Yes, sir.

12 Q. Now, there's a second paragraph. It says, in
13 quotes: "'I want the people of Storey County to know
14 that I am a man of integrity,'" and it goes on and on;
15 right?

16 A. Yes, sir. That is what the second paragraph
17 reads.

18 Q. And I'm assuming this was meant to be satire on
19 your part?

20 A. Yes, sir. It's clearly is indicated as satire by
21 the closing paragraph at the end of the piece.

22 Q. Okay. And in that same paragraph that I just
23 mentioned, the last full sentence says:

24 "'I want to thank them, along with the entire
25 Team Storey team for helping Mr. Norman and me becoming

1 the wealthiest people who do business in Storey County
2 but don't actually live here,' said Mr. Gilman."

3 You wrote that, right?

4 A. Yes, I did.

5 Q. And the intent, again, is to convey the message
6 that Mr. Gilman doesn't live in Storey County --

7 MR. BUSBY: Objection.

8 BY MR. FLANGAS:

9 Q. -- is that a correct statement?

10 MR. BUSBY: Objection, asked and answered.

11 Go ahead.

12 THE WITNESS: Well, as I've already
13 described, this is a satire piece, and therefore nothing
14 in this piece should be taken literally.

15 BY MR. FLANGAS:

16 Q. Well, I understand, but I've asked you what is --

17 MR. BUSBY: I would ask you to let my
18 witness finish answering the question, please.

19 THE WITNESS: As you may recall, in the mid
20 '80s Jerry Falwell sued Larry Flynt for character
21 defamation in very similar circumstances to what
22 we're -- what's being done here. And in fact, the
23 supreme court ruled in Mr. Flynt's favor. Satire is --
24 you know, you can sue someone, but you can't sue them
25 for having your feelings hurt. And so satire is

1 consistent with free speech. And so, you know, this,
2 this piece, nothing in it can be characterized as actual
3 fact or an actual quote from Mr. Gilman.

4 BY MR. FLANGAS:

5 Q. Okay. Well, I appreciate the law lesson, but I
6 had a specific question. On that sentence, again, it
7 says:

8 " 'I want to thank them, along with the entire
9 Team Storey team, for helping Mr. Norman and me becoming
10 the wealthiest people who do business in Storey County
11 that don't actually live here,' said Mr. Gilman."

12 Was your intent to further convey the message to
13 your reading public that Mr. Gilman does not live in
14 Storey County?

15 MR. BUSBY: Objection, asked and answered.
16 Go ahead.

17 THE WITNESS: So -- so I don't believe that
18 Mr. Gilman -- I didn't believe that Mr. Gilman lives in
19 a double-wide trailer behind the brothel, Mustang Ranch,
20 when I wrote this piece, I didn't believe it when I was
21 sued, I don't believe it today.

22 BY MR. FLANGAS:

23 Q. All right.

24 A. So the answer to your question is yes, it
25 absolutely was to convey the message that Mr. Gilman, in

1 my opinion, in my belief, and from what I've gathered,
2 does not live at the Mustang Ranch.

3 MR. FLANGAS: Okay. If we could have that
4 marked as No. 7, please.

5 (Exhibit 7 marked at this time.)

6 MR. BUSBY: No objection. Go ahead.

7 MR. FLANGAS: Well, that's a first.

8 BY MR. FLANGAS:

9 Q. Okay. I'm showing you what's been marked as
10 Exhibit No. 7. Do you recognize the document?

11 A. Yes, sir, I do.

12 Q. And this is one of your blogs?

13 A. That is an article that I posted on my website,
14 yes.

15 Q. And this is dated October 16th; is that a correct
16 statement?

17 A. Let's take a look. Yes, it is.

18 Q. And that would be what year, 2016?

19 A. 2017.

20 Q. 2017? Okay. Now, let's look at your -- the
21 second page of the document has got a picture of Lance
22 Gilman and two ladies; right?

23 A. That's correct.

24 Q. In its upper right-hand corner it says "page 2 of
25 21;" is that a correct statement?

1 A. That's what it says here, yes.

2 Q. All right. We're going to come back to that. I
3 just wanted to make sure we got it identified. And I
4 want you to go to page 4 of 21, it's listed in the upper
5 right-hand corner, of Exhibit 7.

6 A. Okay.

7 Q. Are you there?

8 A. I am, yes.

9 Q. All right. And it's got in the bold language
10 there, "Six months later;" right?

11 A. That's correct.

12 Q. Did you write this?

13 A. Yes, I did.

14 Q. And it says:

15 "On the sixth-month anniversary of the initial,
16 unfilled public record request The Teller filed a
17 criminal complaint with Storey County District Attorney
18 Anne Langer, and Nevada Attorney General Adam Laxalt.
19 DA Langer advised me that since I was making a criminal
20 complaint, I needed to file the complaint with the
21 sheriff's office" once before -- excuse me -- "sheriff's
22 office before she could proceed."

23 You wrote that; right?

24 A. I did.

25 Q. And it says:

1 "The purpose of this complaint is to hold
2 accountable County Commissioner Gilman and Planning
3 Commissioner Thompson for committing perjury when they
4 filed paperwork claiming to live somewhere it is illegal
5 to live. Since they took office illegally and since
6 they don't actually live at Wild Horse Canyon Drive (or
7 anywhere else in the county for that matter) and can't
8 legally reside where they claim they did, we conclude
9 and insist they be prosecuted for perjury and removed
10 from office."

11 You wrote that?

12 A. Yes, I did.

13 Q. Was your intent to convey the message that Mr.
14 Gilman committed perjury?

15 A. My content was to --

16 Q. Do you mean your intent, or -- you said
17 "content."

18 A. Thank you for clarifying that.

19 So my intent in writing this paragraph, and in
20 fact my intent in writing this entire piece, was to
21 illustrate the fact that Mr. Gilman enjoys a different
22 set of rules, under which he conducts his personal and
23 business activities, than the rest of us. You may
24 remember, George Orwell wrote in Animal Farm, "All
25 animals are created equal, but some are more equal than

1 others" as a criticism of the communists in the mid
2 '50s. I believe that's very applicable here.

3 So my intent was to illustrate that the county
4 holds two sets of rules for special people and, and the
5 rest of us.

6 Q. Okay. Now I want you to answer the question I
7 asked. Was your intent to convey to your reading public
8 that Mr. Gilman committed perjury?

9 MR. BUSBY: Objection, asked and answered.

10 MR. FLANGAS: It has not been answered,
11 counsel, and those are improper objections.

12 MR. BUSBY: You just asked the question
13 saying, "I'm going to ask you again." He answered your
14 first question. Objection, asked and answered.

15 MR. FLANGAS: The objection for asked and
16 answered requires a question and an answer. He did not
17 answer. He gave me a, he gave me a, a diversion off to
18 George Orwell, and my question was very specific.

19 MR. BUSBY: Dissatisfaction with the
20 witness' answer is not grounds for asking the same
21 question over and over.

22 Go ahead, Mr. Toll.

23 THE WITNESS: So can you repeat the question
24 for me, please.

25

1 BY MR. FLANGAS:

2 Q. Certainly. Was your intent here to convey to
3 your reading public that, that Mr. Gilman committed
4 perjury?

5 A. My intent --

6 MR. BUSBY: Same objection. Go ahead, Mr.
7 Toll.

8 THE WITNESS: My intent was to, to
9 communicate my opinion as to Mr. Gilman's capacity.
10 I -- again, I don't believe he lives there. And since
11 he doesn't live there, in my opinion, when he filled out
12 paperwork suggesting that he does, he committed perjury.
13 Because filling that paperwork out requires a, a --
14 requires telling the truth. And in fact, you are
15 compelled by law to tell the truth, with suffering the
16 consequences of perjury if you don't.

17 BY MR. FLANGAS:

18 Q. So you wanted your reading -- your readers to
19 believe that Mr. Gilman created -- committed perjury;
20 right?

21 A. I wanted --

22 MR. BUSBY: Objection, asked and answered.
23 Go ahead.

24 THE WITNESS: I wanted them to believe that
25 it's my opinion that he doesn't live there. What they

1 conclude is something that only they can -- I have no
2 control over.

3 For example, it's very interesting that what
4 I'm being charged of is defamation, because what it
5 predicts and concludes and projects is that I am
6 capable, through my words, of, of forcing people, or
7 creating thoughts in their head that they may not have
8 otherwise had. I have no control over what people
9 think.

10 BY MR. FLANGAS:

11 Q. So why did you use the word "perjury," then?

12 A. Because it's an appropriate use of the word.
13 When you sign the paperwork stating that that's where
14 you live under penalty of perjury, penalty of lying is
15 perjury. That's the consequence.

16 Q. And that's what you wanted your readers to
17 believe; correct?

18 MR. BUSBY: Objection, asked and answered --

19 THE WITNESS: I don't care what my
20 readers -- I'm sorry.

21 MR. BUSBY: Hang on.

22 Objection asked and answered. I believe
23 it's the third or fourth time that question has been
24 asked. Go ahead, Mr. Toll.

25 THE WITNESS: I don't care what my -- who

1 reads this, and I don't care what they believe. It's --

2 BY MR. FLANGAS:

3 Q. You hold yourself as facts-based --

4 MR. BUSBY: Mr. Flangas --

5 BY MR. FLANGAS:

6 Q. -- as a facts-based publication; right?

7 MR. BUSBY: Mr. Flangas, I would ask that
8 you allow the witness to finish his answer before you
9 move on.

10 Mr. Toll, please.

11 THE WITNESS: So it is a fact that when you
12 sign a document, as I did when I signed the paperwork to
13 run as -- for school board, that I attest under the
14 penalty of perjury that I live where I live; therefore,
15 if I believe he doesn't live there, then I believe he's
16 committing perjury when he signed that document.

17 BY MR. FLANGAS:

18 Q. So you're accusing Mr. Gilman of committing
19 perjury; right?

20 THE WITNESS: That's --

21 MR. BUSBY: Objection, asked and answered.
22 I believe that's four or five. Go ahead, Mr. Toll.

23 THE WITNESS: That's correct.

24 BY MR. FLANGAS:

25 Q. Now, under that same part where it says, "Six

1 months later," it says:

2 "On the six-month anniversary of the initial,
3 unfilled public record request, The Teller filed a
4 criminal complaint with Storey County District Attorney
5 Anne Langer and Nevada Attorney General Adam Laxalt. DA
6 Langer advised me that since I was making a criminal
7 complaint I needed to file the complaint with the
8 sheriff's office before she could proceed."

9 First of all, let's talk about your public record
10 request. What public record request are you referring
11 to?

12 A. So we have -- I believe that Mr. Busby has
13 provided to you some attachments. This document
14 contains those attachments. If you look at --

15 THE WITNESS: Do you have, do you have those
16 printouts of the attachments that we've provided?

17 MR. BUSBY: So I'm not allowed to
18 participate in the deposition.

19 THE WITNESS: I'm sorry.

20 MR. BUSBY: Just answer the question --

21 THE WITNESS: Thank you.

22 MR. BUSBY: -- to the best of your
23 knowledge.

24 THE WITNESS: Can you repeat your question,
25 please?

1 BY MR. FLANGAS:

2 Q. Yeah. The question is: What was the public
3 records request that The Teller filed?

4 A. The initial public records request was for the
5 zoning -- what's the word I'm looking for? -- the zoning
6 of a specific parcel that the Mustang Ranch exists upon.

7 Q. And who did you file this public record request
8 to?

9 A. With Mr. Austin Osborne.

10 Q. What did Mr. Osborne tell you?

11 A. We're busy. We're super busy. We'll look into
12 it. As you can see, from page 7 of 21, his response
13 was -- actually, I'm sorry. I'm looking right at this
14 page.

15 My initial public records request is page 7 of 21
16 in the document you've provided me, which we're calling
17 Exhibit 7.

18 Q. And that's to Mr. Osborne; right?

19 A. That's correct, sir.

20 Q. And he said we'll get back to you?

21 A. "Lyndi will look into this and get back to you on
22 zoning within the NRS period."

23 Q. All right. So let's kind of stop right there.
24 We're looking at page 7 of 21. These appear to be two
25 emails; right?

1 A. It is my -- yes, it is. Yes.

2 Q. All right. So my question for you is: You sent
3 this email to Austin Osborne; is that correct?

4 A. That is correct, yes.

5 Q. And then on -- you sent that on Wednesday,
6 March 29th, 2017; correct?

7 A. That is correct.

8 Q. Then you received a response from Mr. Osborne the
9 same day; is that a correct statement?

10 A. That is correct.

11 Q. And what's depicted on this document is the
12 response you received from Mr. Osborne; right?

13 A. That is correct.

14 Q. So your initial, unfilled public request was this
15 that we just went over, that you -- where you sent an
16 email to Mr. Osborne; is that correct?

17 A. Yes. I've answered that to you, yes.

18 Q. All right. Did you file any other public request
19 pertaining to zoning?

20 A. Sure.

21 Q. Who did you file it with?

22 A. I've sent a number of them to Gary Hames.

23 Q. Okay. Can you spell Gary's last name?

24 A. H-a-m-e-s.

25 Q. And who is Gary Hames?

1 A. Gary Hames is the retired fire chief who was
2 appointed as community development director in a no bid,
3 sole source contract with the county.

4 Q. So what was the result of your public records
5 request to Mr. Hames?

6 A. He said, "Not my job, mate," and referred me back
7 to Mr. Osborne.

8 Q. When you used this funny accent that you just
9 used right now, are you making fun of his accent or are
10 you just using satire?

11 A. That's satire. That is, I meant to say, "It's
12 not my job, Mr. Toll. The community development
13 department does not deal with any zoning ordinances. In
14 fact, I'm referring you back to Mr. Osborne."

15 Q. Now, this request to Mr. Hames, was that in
16 writing, by email? How did that --

17 A. I made several requests to Mr. Hames, yes. Via
18 email.

19 Q. Are they attached to this article?

20 A. Probably not.

21 Q. Well, take a look. I don't want you to guess on
22 that. I just want you to just look and see if they're
23 attached to your article.

24 A. No, they are not.

25 Q. Any other public request that you did pertaining

1 to the zoning?

2 A. No. I mean, the bottom line is that this zoning
3 request remains open here a year and two months later.
4 As, as Mr. Osborne points out on page 7 of 21, he will
5 get back to me within the NRS period. NRS states you've
6 got five days. We're a little over that now. Now --

7 Q. So -- go ahead.

8 A. I was going to say, we provided you with exhibits
9 that fully illustrate the email train -- or thread, I
10 should say --

11 MR. BUSBY: Just for clarity of the record,
12 do you mind if I interject?

13 MR. FLANGAS: No. Really, he just goes --

14 MR. BUSBY: Okay. Go ahead.

15 THE WITNESS: Where the, the communications
16 exist.

17 BY MR. FLANGAS:

18 Q. All right. So did you ever verify the zoning on
19 the property of which Mr. Gilman lives?

20 A. Sure.

21 Q. When and how?

22 A. When and how. So interestingly, when I filed
23 this complaint and received a stonewall lack of response
24 from Mr. Osborne -- I'm answering your question.

25 Q. I know. I just need to --

1 A. I'm sorry.

2 Q. -- interrupt you --

3 A. Please.

4 Q. -- because you mentioned when you filed this
5 complaint. So I --

6 A. I'm sorry.

7 Q. -- hadn't heard what complaint you're referring
8 to.

9 A. I'm --

10 MR. BUSBY: Mr. Flangas, I'd ask that you
11 allow the witness to answer the question in full before
12 you interrupt and ask another question. Go ahead.

13 MR. FLANGAS: With all due respect, counsel,
14 he just mentioned something that we hadn't been talking
15 about. I just wanted clarification so I could follow
16 along with his story.

17 MR. BUSBY: Mr. Flangas, I understand. I
18 just ask that you allow the witness to complete his
19 answer to the questions before you ask another question.
20 BY MR. FLANGAS:

21 Q. The question is what complaint were you referring
22 to.

23 A. We're talking about a story that talks about The
24 Teller filing a criminal complaint.

25 Q. I was, right now, I think I was talking more

1 about did you verify the zoning.

2 A. Yes, I did verify the zoning.

3 Q. Okay. And then I asked you how, and you
4 mentioned a complaint, and I just asked you to tell me
5 what complaint you're referring to.

6 A. I'm sorry I mischaracterized what it is that
7 we're talking about.

8 So basically what I did was, independently of my
9 request from Mr. Austin Osborne, I went to the community
10 development department and asked them what the zoning
11 was.

12 Q. And what did they tell you?

13 A. Rather than taking six months to not answer me,
14 in five minutes I walked out with a printout telling me
15 that the property is zoned agriculture/industrial 2.

16 Q. And so who gave you that information?

17 A. One of the clerks at the, at the community
18 development department.

19 Q. What was the name of the clerk?

20 A. I don't recall.

21 Q. Is that clerk still there today?

22 A. I don't believe so.

23 Q. And so you believe it was agriculture and
24 industrial?

25 A. Yes, sir.

1 Q. So did you do anything else?

2 MR. BUSBY: Objection, mischaracterizes
3 testimony. Go ahead and answer.

4 THE WITNESS: Can you repeat the question?
5 BY MR. FLANGAS:

6 Q. You said that you received information that the
7 property was zoned agriculture/industrial; right?

8 A. That is correct.

9 Q. All right. What else did you do to verify
10 zoning?

11 A. There's no need to continue searching, from my
12 perspective, because the property is zoned what it's
13 zoned.

14 Q. All right. Are you a zoning expert?

15 A. Absolutely not, that's why I relied upon the
16 expertise and the computer printout from the county
17 representative, who actually is the zoning expert.

18 Q. So what does agricultural property/industrial
19 property zoning, what does that mean?

20 A. It restricts the use of the property --

21 MR. BUSBY: Just --

22 THE WITNESS: I'm sorry. Go ahead.

23 MR. BUSBY: -- for the record, I'm going to
24 object. It calls for a legal conclusion. The witness
25 is not an attorney. Go ahead.

1 BY MR. FLANGAS:

2 Q. Based on your knowledge, your own personal
3 knowledge, what is, what is agricultural zoning and
4 industrial zoning?

5 A. Well, the, the words "agricultural" and
6 "industrial" are fairly self-explanatory. Nowhere in
7 either of those two words can you extract, condense,
8 distill, or otherwise torture into suggesting
9 residential use.

10 Q. Did you consult any ordinances as what's allowed
11 under agricultural or industrial use?

12 A. Absolutely.

13 Q. What did you locate?

14 A. Single-family dwellings are permitted on
15 agricultural use. The only type of overnight stay that
16 can happen in an industrial center, in I-2, is a
17 watchman's quarters that has to be approved by the
18 county commission.

19 Q. So is the, according to you, is the Gilman
20 property on the agricultural side or on the industrial
21 side?

22 A. It's not my place to decide where and what and
23 how. The ordinance suggests a single-family dwelling
24 can exist there. According to Mr. Gilman's own signed
25 documents, which he filed, again, under the stipulation

1 of perjury, page 12 of 21 he states specifically that:

2 "Kris Thompson resides" at my -- "by my
3 permission on 5B Wild Horse Canyon Drive, Sparks, 89434,
4 as part of an employment agreement he has with Lance
5 Gilman Commercial Real Estate Services Company. He does
6 not pay rent for this living space."

7 5B, as the Storey County assessor advises me, is
8 half of the double-wide trailer that Mr. Thompson and
9 Mr. Gilman claim to live in. Again, anyone with, you
10 know, a functioning set of synapses in their brain would
11 question and consider highly unlikely that one of the
12 richest men in Storey -- in Northern Nevada is roommates
13 with his girlfriend and his employee in a double-wide
14 trailer. It is, it is -- let's just say it stretches
15 the imagination.

16 Q. All right. So let's, let's examine what you've
17 just told us. First of all --

18 A. And then -- I'm sorry. Let me directly answer
19 your question.

20 And that means that, if it's a multi-family
21 dwelling, then it is in direct conflict with the, with
22 the code, the agricultural code, as it relates to
23 single-family dwellings.

24 Q. What's a multi-family dwelling?

25 A. It's a duplex, for example, it's an apartment.

1 It's a place where more than one family lives. Unless
2 Mr. Thompson and Mr. Gilman are married, it's not legal
3 for Mr. Thompson to live there.

4 Q. What do you base that assumption on?

5 A. The definition of, of multi-family dwelling. Not
6 that I'm a lawyer.

7 Q. So if I had a roommate, I'm not allowed -- let me
8 just give you a hypothetical. Well, let me just use the
9 thing in front of us.

10 Is Mr. Gilman allowed to have a roommate --

11 MR. BUSBY: Objection, calls --

12 BY MR. FLANGAS:

13 Q. -- without it being in violation of any
14 ordinance?

15 MR. BUSBY: Objection, calls for a legal
16 conclusion, calls for speculation. Go ahead. Go ahead
17 and answer.

18 THE WITNESS: Not the way I read the
19 ordinance, and not the way that other people in the
20 county read the ordinance. Again, I'm not an attorney,
21 I have no idea, but --

22 BY MR. FLANGAS:

23 Q. Okay. I'm not quite sure that that's going to
24 come out clear on the record.

25 Is Mr. Gilman allowed to have a roommate in his

1 residence without being in violation of the ordinance,
2 per you?

3 A. He's, he's --

4 MR. BUSBY: Mr. -- objection, asked and
5 answered, calls for speculation, calls for a legal
6 conclusion. Go ahead and answer, Mr. Toll.

7 THE WITNESS: Mr. Gilman is already claiming
8 to have a roommate. Her name is Jennifer
9 Barnes-Millsap. And therefore -- now could all three of
10 them be roommates together? Sure. Absolutely. Does
11 that mean that he's living, as stated, in two separate
12 addresses, therefore utilizing a double-wide trailer as
13 a multi-family dwelling? Absolutely, it does.

14 And not only that, let's also take a look
15 at -- which we don't have in front of us but I would be
16 happy to provide you with -- the voter registration
17 rules for Storey County. There are five other people
18 who claim to live at the Mustang Ranch. That is part of
19 this issue.

20 "Single-family" means a, a -- you can have
21 your kids, you can have your girlfriend, you can have
22 your boyfriend, you can have whoever it is, a single
23 significant other. The minute that more than one person
24 lives there, it becomes a multi-family dwelling, or a
25 multi-family address, and it becomes in violation of the

1 Storey County code.

2 BY MR. FLANGAS:

3 Q. You keep mentioning that this is a double-wide
4 trailer. How do you know it's a double-wide?

5 A. Because that's the way that the assessor
6 characterized it. She told me that it is a double-wide
7 trailer that has, actually, interestingly, not even been
8 converted to real property, so that theoretically it
9 still has the wheels on it.

10 Q. Who told you this, now?

11 A. The assessor, Jana Seddon.

12 Q. Spell Janice's last name, please.

13 A. I believe it's S-e-d-d-o-n.

14 Q. Are you aware it's pre-fab house?

15 MR. BUSBY: Objection, asked and answered.

16 THE WITNESS: I've never been to the
17 property, I have no idea what its configuration is, but
18 I do know that it is registered in the county as a
19 non-converted mobile home. And that means that,
20 technically, as far as the county's concerned from a
21 taxation standpoint, it still has its wheel on it and
22 could be rolled off tomorrow if -- obviously they
23 haven't confirmed that. But in order to enjoy a better
24 tax rate, you then consider it to be conveyed, or
25 converted, and then it becomes taxed at a different

1 rate. They still have it as if it's got its wheel on
2 it.

3 MR. BUSBY: I'm sorry. I've got to go to
4 the bathroom. Do you mind if we take a minute?

5 MR. FLANGAS: Let's take a break.

6 (A short break was taken at this time.)

7 BY MR. FLANGAS:

8 Q. Okay. When we left off we were talking about the
9 zoning and stuff of the -- Mr. Gilman's residence, and
10 you started talking about this tax rate. What's your
11 source of information for that?

12 A. I mentioned that information came from the
13 assessor, Jana Seddon.

14 Q. Now, in your article we talked about the perjury.
15 Was the perjury that you're referring to by Mr. Gilman
16 related to where he lives, or the zoning?

17 A. It's completely related to where he lives.

18 Q. Now, you mentioned that it -- and I, if I use
19 your words wrong, you can tell me on your answer -- that
20 it stretches the imagination that somebody like Mr.
21 Gilman, with his wealth, would live in a place that,
22 that he lives in. Why does that stretch the
23 imagination?

24 MR. BUSBY: Objection, mischaracterizes
25 earlier testimony. Go ahead.

1 BY MR. FLANGAS:

2 Q. Or why would that give you any cause for concern,
3 where he lives?

4 MR. BUSBY: Same objection. Go ahead.

5 THE WITNESS: Why would it give me any cause
6 for concern, or why does it stretch the imagination?

7 BY MR. FLANGAS:

8 Q. Both.

9 A. Well, let's use the reasonable man principle. Is
10 it reasonable to suggest that one of the wealthiest men
11 in Northern Nevada lives behind a whore house with his
12 girlfriend, a bunk mate, five other prostitutes, in a
13 double-wide trailer? I think if you were to ask the
14 reasonable man -- and I think that many, many, many
15 reasonable voters in Storey County have raised the same
16 question.

17 Q. What five prostitutes is he living with?

18 A. Do a public records request for the voter
19 registration in, in, I believe it's Precinct 11, and you
20 will find a list of names. I'm assuming they're
21 prostitutes. I could be mistaken. They could be
22 employees.

23 Also, a resident of the person who holds the seat
24 of the TRIGID, the Tahoe Reno Industrial General
25 Improvement District, also has presented a driver's

1 license with 1000 Wild Horse Canyon as her legal address
2 to establish residency to sit on that elected board.

3 Q. 1000 what?

4 A. 1000 Wild Horse Canyon Drive.

5 Q. What is -- and how about those five prostitutes,
6 what's their address?

7 A. They are either 1000, or 1011, 1000 -- 1101.

8 There's a range of addresses that are assigned to that
9 physical parcel, which the Mustang Ranch occupies, that
10 fall in that range. As is 56, 52 -- or 5 and 5B Wild
11 Horse Canyon Drive.

12 Q. So what's Mr. Gilman's residence?

13 A. According to his driver's license, it is 5 Wild
14 Horse Canyon Drive, and I believe --

15 Q. Okay. So --

16 A. -- that that is, that is on page 11 of 21 of
17 Exhibit 7.

18 Q. So the five prostitutes residing at 1000 Wild
19 Horse, how do you make the connection that they reside
20 with Mr. Gilman?

21 A. They're all one -- part of the same property.
22 And in fact, back in the good old days, you know, Joe
23 Conforte had a block of 200 prostitutes that all voted
24 using his address at the brothel.

25 Q. What's the address of the brothel?

1 A. I've just described those to you, to my
2 knowledge. We can check with the assessor. I believe
3 that I've got an email, which we included and attached
4 in one of the attachments that we provided for this
5 deposition, that describes the range of addresses.

6 Q. So is the brothel number 5 Wild Horse, according
7 to you?

8 A. No. According to the assessor -- if you look at
9 page 3 of 21 there's a Google Earth picture with a
10 circle around -- the document is nearly impossible to
11 make out in this printout -- where it says, "Lance
12 Gilman and Kris Thompson are roommates here."

13 Q. Where did that picture come from?

14 A. As I stated, Google Earth.

15 Q. Did you -- were you the one that Googled it?

16 A. I am.

17 Q. You're the one that put it there in that article?

18 A. That's my handiwork.

19 Q. All right. So my question for you: Is the
20 address number 5, where Mr. Gilman resides, the same as
21 the address for the brothel?

22 MR. BUSBY: Objection, asked and answered.
23 Go ahead.

24 THE WITNESS: No, it is not. However,
25 however, the compound, the complex, is all in the same

1 parcel, and that parcel is zoned agricultural/industrial
2 2, which permits only a single-family dwelling. Which I
3 guess we could, you know, go online and look up from
4 Merriam's dictionary what a single family is, but I'm
5 pretty sure, unless you live in Utah, it doesn't consist
6 of two men and a woman as a family.

7 BY MR. FLANGAS:

8 Q. You mentioned a minute ago five prostitutes are
9 residing with him, too, and you told me -- I asked you
10 where are you getting that five prostitutes are residing
11 with him, and then you're telling me that the
12 prostitutes reside at 1000, and Mr. Gilman resides at 5.
13 So I'm trying to see how they're all living under the
14 same roof, here.

15 A. I have no idea who's sleeping with who, but I do
16 know this, if you look at the parcel number -- and I
17 believe it's 001-161-121, although I may be not
18 accurately reflecting the, the lot. There are four lots
19 that actually make up the compound. They're all zoned
20 the same, and they all have the same zoning
21 requirements, which means that only a man and a woman,
22 or their kids, or a man and a man and their kids, or a
23 woman and a woman and their kids, but a single family,
24 and not a multiple family, not a bunch of people, not a
25 commune, not a group of prostitutes and their pimp, can

1 live there.

2 Q. Are you -- you mentioned earlier you're not a
3 zoning expert; right?

4 MR. BUSBY: Objection, asked and answered.

5 THE WITNESS: Yes. As I've already
6 stated --

7 BY MR. FLANGAS:

8 Q. Just a yes or no so I can go on to my next
9 question.

10 A. Yes.

11 Q. Did you consult anybody to make an opinion as to
12 what's right and what's wrong as to the zoning out
13 there?

14 A. Yes.

15 MR. BUSBY: Objection, asked and answered.
16 Go ahead, Mr. Toll.

17 THE WITNESS: Yes.

18 BY MR. FLANGAS:

19 Q. Who did you consult?

20 A. Dozens and dozens of other concerned citizens in
21 the county.

22 Q. Okay. What are the names of some of the folks
23 that you consulted about whether or not the zoning was
24 correct or how they were using the zoning was correct?

25 MR. BUSBY: I'm going to go ahead and object

1 based on the news privilege statute, which --

2 BY MR. FLANGAS:

3 Q. Well, first of all, were any of these people your
4 attorney?

5 MR. BUSBY: Not "first of all." Please let
6 me finish my objection, sir.

7 I'm citing to Nevada's shield law, codified
8 under NRS 49.275, the news media:

9 "No reporter, former reporter or editorial
10 employee of any newspaper, periodical or press
11 association, or any employee of any radio or television
12 station may be required to disclose any published or
13 unpublished information obtained or prepared by such a
14 person in such person's professional capacity in
15 gathering, receiving or processing information for
16 communication to the public, or the source of any
17 information procured or obtained by such a person, in
18 any legal proceeding, trial or investigation."

19 And that includes issues before courts. So
20 Mr. Toll, I'm going to go ahead and invoke the news
21 shield law in response to Mr. Flangas' question, and I'm
22 going to direct you not to answer.

23 BY MR. FLANGAS:

24 Q. Are you going to invoke the news shield?

25 A. Absolutely.

1 Q. Were you looking -- were these consultants, was
2 this in your trying to do this to gather news for a news
3 story?

4 A. Every person who I talked to who provides me
5 information that I later write about is a source.

6 Q. Every single person. So you relied on these
7 so-called news source consultants to arrive at your
8 opinion that what Mr. Gilman -- how he was occupying
9 those premises was incorrect. Am I stating your answer
10 correctly?

11 A. Yes.

12 Q. Now, you said you consulted with many people to
13 arrive at that opinion; right?

14 A. Yes. And let me clarify.

15 Q. Just let's start with that first --

16 MR. BUSBY: Mr. Flangas, please --

17 BY MR. FLANGAS:

18 Q. -- and then you can clarify.

19 MR. BUSBY: -- let the witness answer the
20 question before you move on.

21 MR. FLANGAS: Well, the question, with all
22 due respect, counsel, the question called for a yes or
23 no answer, and then I can go into the next one and he
24 can verify all -- clarify all he wants.

25 MR. BUSBY: Mr. Flangas, I'd like the record

1 to reflect that the witness is not being permitted to
2 fully answer his questions before being interrupted by
3 the examiner, and I object on that basis and I ask that
4 the witness be allowed to answer the question that
5 you're asking before you continue.

6 MR. FLANGAS: With all due respect, counsel,
7 you have been interjecting improper objections
8 throughout this entire deposition. You're using the
9 "asked and answered" when he isn't -- obviously, clearly
10 not answering the questions that I asked. He's gone off
11 on several tangents. You've been coming up with a host
12 of objections that, I think, are completely designed to,
13 you know, to muddle -- muddy up the record. Not only
14 muddy up the record, but to try to -- you know, whatever
15 attempt you're trying do to throw me off, which it's
16 obviously not working.

17 So I would appreciate that the objections be
18 legally valid objections. And, you know, the reason
19 we're having so much trouble getting through this depo
20 is because every single question I've asked, you've
21 interspersed some form of objections.

22 MR. BUSBY: Mr. Flangas, if you continue to
23 ask questions and not allow the deponent to answer them
24 fully before interrupting him, we'll cease the
25 deposition and we'll ask for a conference to -- with the

1 judge to resolve the matter.

2 I've stated the exact basis for every single
3 objection that I've made on the record. They're
4 permitted under law, perfectly proper. So I guess we
5 can either proceed or not.

6 MR. FLANGAS: The record speaks for itself,
7 counsel. I fully intend to proceed on this. If you
8 want to cancel the depo, please, you have whatever
9 rights you want to -- you know, however you want to do
10 it. The bottom line is I asked for a yes or no question
11 and I get -- I start getting quotations to certain
12 things, everything from the Jerry Falwell case to what
13 George Orwell said. So --

14 MR. BUSBY: Mr. Flangas, disagreeing with
15 the substance of the answer of the witness is not
16 grounds for interrupting and proceeding with another
17 question without letting the witness completely answer
18 the question you've asked.

19 BY MR. FLANGAS:

20 Q. Go ahead and answer the question.

21 A. Can you repeat the question, please?

22 MR. FLANGAS: Can you read back the
23 question, please?

24 (Whereupon the reporter read the record.)

25 THE WITNESS: Yes.

1 BY MR. FLANGAS:

2 Q. Did you want to clarify so we can appease your
3 counsel on this one?

4 A. To clarify, as I earlier suggested, I speak to a
5 variety of people, locally, the state level, and people
6 who have professional capacities and people who do not,
7 and all of those people are considered sources.

8 Q. Now, you mentioned that you consulted with a
9 number of people to determine whether or not Mr. Gilman
10 was residing properly, as pertaining to the zoning in
11 his residence; right?

12 MR. BUSBY: Objection, asked and answered.
13 Go ahead.

14 THE WITNESS: In regards to the zoning, yes.
15 As you can see, the, the public records request reflect
16 that.

17 BY MR. FLANGAS:

18 Q. How many people did you consult?

19 A. On the zoning issue?

20 Q. Yes.

21 A. I've only really talked to a half-dozen
22 individuals, and Mr. Osborne, and the -- Lyndi and Kathy
23 in the planning department.

24 Q. The reason you consulted with those folks is
25 because you entertained doubts as to what the zoning

1 was; right?

2 A. I have no doubts as to what the zoning is, and I
3 have no doubts as to what the, what the zoning says and
4 what they allow and what they don't allow. However, the
5 whole purpose of going down the zoning route has
6 absolutely nothing to do with the fact that I absolutely
7 do not believe -- and I indeed understand that I'm under
8 oath -- that Mr. Gilman lives at the double-wide trailer
9 behind the whorehouse. I just don't believe it. In
10 fact, the investigation that I've done prior to even
11 being served, recent investigation, confirms that even
12 more stringently.

13 However, the purpose, since we're talking about
14 zoning, is to illustrate to the gentle readers of The,
15 of The Teller and to the citizens and voters and
16 taxpayers of Storey County, that there are two sets of
17 rules under which we exist. And there's one set of
18 rules for the privileged Mr. Gilman, and there's another
19 set of rules for folks who can't buy a thousand hogs and
20 set them up on their residential property that's not
21 zoned agricultural without seeing the sheriff and
22 getting shut down.

23 Q. Where did you arrive for your definition and
24 what's appropriate for multi-family use?

25 A. From the Storey County ordinance.

1 Q. What ordinance did you look at?

2 A. It's in the Storey County ordinance book. I
3 don't have it -- I can't quote it gospel -- or paragraph
4 and verse.

5 Q. What did it tell you?

6 A. As I've stated on record before, that the only
7 thing that can exist on -- as far as dwellings are
8 concerned on agricultural zoned property, is a
9 single-family dwelling. The, the parcel is also zoned
10 industrial. The only thing that a person can sleep in
11 on an industrial park is a, is a watchman's quarters.

12 Q. Okay. I'm going to go back to my question,
13 because you, again, weren't responsive to my question.
14 You can say "I don't know" if you don't know. That's
15 fine.

16 The question is: What did -- where did you come
17 up with your definition -- and I know I've asked and
18 answered this, but I'm going to ask the follow-on.
19 Where did you come up with your definition of what
20 constitutes a multi-family dwelling? You told me the
21 ordinance. I'm asking you: What does the ordinance say
22 what constitutes a multi-family dwelling?

23 MR. BUSBY: Same objection. Go ahead and
24 answer, Mr. Toll.

25 THE WITNESS: Technically, in my

1 recollection of the ordinance, says that a single-family
2 dwelling is all that is permitted. A multi-family
3 dwellings is not permitted. Using the reasonable man
4 statute that I have inside my brain, a multi-family
5 dwelling is -- could be considered -- you know,
6 obviously we don't live in the day of the nuclear family
7 anymore; however, a family unit consists typically of
8 a -- it's two sets of adults and then any children that
9 may be a result of that union.

10 BY MR. FLANGAS:

11 Q. This reasonable man standard, that's your own
12 reasonable man standard; is that correct?

13 A. Based upon the information that has been given to
14 me by people who I have consulted with, as we've
15 described earlier, those people are also reasonable men
16 and women, and they also have come to the same
17 conclusion. So no, it's not just my conclusion, it's
18 the conclusion of the community.

19 Q. And you're not going to disclose who these -- the
20 members of the community that have this conclusion?

21 A. No, sir.

22 MR. BUSBY: Same objection, news shield
23 statute.

24 MR. FLANGAS: I'll probably have to file a
25 motion on that.

1 BY MR. FLANGAS:

2 Q. Now, you're claiming Mr. Gilman doesn't live at
3 number 5 Wild Horse Drive; right?

4 A. Yes.

5 Q. Now, one of the grounds for you to make that
6 statement is because you find it hard to believe that
7 one of the wealthiest men in Northern Nevada would be
8 residing where he resides; right?

9 A. I'm also basing that opinion upon -- the answer
10 to your question is yes. However, I'm also basing that
11 opinion upon interviews and information that have been
12 given to me by third-party sources.

13 Q. And you're not going to divulge who these
14 third-party sources are?

15 A. No, sir.

16 MR. BUSBY: Objection, news shield statute.

17 MR. FLANGAS: The news shield statute
18 doesn't really shield against official sources and
19 things like that.

20 BY MR. FLANGAS:

21 Q. So the question is to the official sources. Did
22 you consult any official forces?

23 MR. BUSBY: Same objection, news shield
24 statute. Don't answer that.

25

1 BY MR. FLANGAS:

2 Q. Are you not going to answer?

3 A. Based upon the advice of my counsel, I will not
4 answer that question.

5 Q. So we've established one of the reasons you don't
6 believe he lives there is based on -- and it's been
7 asked and answered, I know, but it's to lead into the
8 next question. One of the reasons you're saying this is
9 because you find it hard to believe that Mr. Gilman
10 would live where he does because he's a wealthy man;
11 right?

12 A. Yes.

13 Q. Now, let's, let's talk about what investigation
14 you did to confirm whether or not Mr. Gilman lives where
15 he lives. Okay? First question: Did you ever drive by
16 to see if he was there?

17 A. Can't get into the property without buzzing the
18 gate.

19 Q. All right. So the answer is no, you've never
20 been by to see if he's there or not?

21 A. It's not possible for me to drive by there. It
22 is impossible for me to drive by there.

23 Q. Now, I asked you in the first part of this
24 deposition about your relationship with Mr. Antinoro,
25 and that Mr. Antinoro is on the brothel board, and you,

1 you told me that; right?

2 A. Yes.

3 Q. You also told me that Mr. Antinoro is -- his
4 office also oversees regulation of the brothels; right?

5 A. Per county code, yes, he does.

6 Q. And I think you even gave me an anecdote that one
7 of your family members, or somebody else you knew, did
8 the same years ago; right?

9 A. No. What I was alluding to, to clarify, is that
10 my father wrote Joe Conforte's biography.

11 Q. Okay. There you go.

12 So you meet with Mr. Antinoro about three times a
13 month, you said?

14 A. I do not meet with --

15 MR. BUSBY: Hold on. Objection,
16 mischaracterizes earlier testimony and asked and
17 answered.

18 BY MR. FLANGAS:

19 Q. Well, you interact with him about three times a
20 month; right?

21 A. Virginia City is a small town and I occupy the
22 same space as Mr. Antinoro occasionally.

23 Q. You can go and see him any time you want in the
24 sheriff's department, virtually?

25 A. Just like any other citizen in Storey County.

1 Q. All right. Did you ever ask Mr. Antinoro about
2 Mr. Gilman's residency?

3 MR. BUSBY: Objection, news shield statute.

4 MR. FLANGAS: That's not a shield statute
5 there, counsel.

6 MR. BUSBY: Mr. Flangas, you're welcome to
7 file your motion and disagree, but I'm going to direct
8 my client to not answer that question.

9 THE WITNESS: Based upon my counsel's
10 advice, I am not going to answer that question.

11 BY MR. FLANGAS:

12 Q. Did you ever go to the sheriff's office to verify
13 Mr. Antinoro's -- excuse me -- Mr. Gilman's residency?

14 MR. BUSBY: Same objection. Don't answer
15 that question.

16 MR. FLANGAS: Are you really going to invoke
17 the shield on whether or not somebody went to the
18 sheriff's office to verify residency, counsel?

19 MR. BUSBY: Mr. Flangas, we can argue about
20 this later before the Court. If you have any questions
21 for my witness, please go ahead.

22 BY MR. FLANGAS:

23 Q. So did you -- so you're not going to answer the
24 question on whether or not you went to the sheriff's
25 office to verify the residency of Mr. Gilman?

1 MR. BUSBY: Same objection. Don't answer
2 that.

3 BY MR. FLANGAS:

4 Q. Are you going to take the same tact on virtually
5 every question I ask now as to what you did to verify
6 the residency of Mr. Gilman?

7 MR. BUSBY: Objection, calls for legal
8 opinion. Don't answer that question. Go ahead.

9 BY MR. FLANGAS:

10 Q. You talk in your affidavit about a -- an
11 informant, or somebody, that told you that Mr. Gilman
12 was leaving the premises at 8:00 every evening and going
13 towards Reno. Who was this informant?

14 MR. BUSBY: Objection, news shield statute.
15 Don't answer that question.

16 BY MR. FLANGAS:

17 Q. And so what is it, that if Mr. Gilman goes
18 towards -- if Mr. Gilman is heading towards Reno at
19 8:00 -- scratch that.

20 How many times a week does Mr. Gilman leave and
21 go towards Reno at 8:00, according to your source?

22 A. According to my source, it's virtually every
23 night.

24 Q. And how does your source know this?

25 A. Because of the position that they occupy, they

1 are there.

2 Q. Do they have -- do they follow Mr. Gilman?

3 A. No.

4 Q. Have you ever seen a residence that Mr. Gilman
5 lives in in Reno?

6 A. Have I seen a residence?

7 Q. Yes.

8 A. I have seen multiple properties that are owned by
9 Mr. Gilman that are in Washoe County. I have not seen a
10 residence of Mr. Gilman.

11 Q. Have you ever seen Mr. Gilman in any other
12 residence?

13 A. I don't follow Mr. Gilman around. I have no -- I
14 did not personally pursue Mr. Gilman. I did not do any
15 of that.

16 Q. Well, see, I'm kind of confused, here, because
17 you're telling me about all of this in your second
18 declaration -- let's go with your first declaration. In
19 paragraph 18 you talk about all this diligence you're
20 doing, but you never once went to see whether or not Mr.
21 Gilman lived anywhere else other than number 5 Wild
22 Horse?

23 A. So I did public records requests, I checked the
24 websites of Washoe County to determine ownership of
25 properties. The Mustang Ranch, as you know, is behind a

1 locked gate, which, which prevents casual observers from
2 making any observations. And so the answer to your
3 question is, as phrased, did I drive by, did I go look
4 for Mr. Gilman anywhere in Washoe County, no, I did not.

5 Q. You have no idea where Mr. Gilman lives, do you?

6 A. I have a pretty good idea of where he lives, yes.

7 Q. Why don't you give me that pretty good idea and
8 what your basis for it is.

9 A. I interviewed an individual who told me that Mr.
10 Gilman's toys, his cars, his motorcycles, all his fancy
11 clothes, all his cool stuff, is at a place that is not
12 on the Mustang Ranch property.

13 Q. Who's this interview?

14 MR. BUSBY: News shield statute. Don't
15 answer that.

16 BY MR. FLANGAS:

17 Q. And they told you that Mr. Gilman's got a house,
18 this source?

19 A. Mr. Gilman houses his nice clothes, his
20 motorcycles, his vehicles, his, his rich -- his
21 expensive cars, all his, you know, jewelry and all of
22 his personal effects -- perhaps not all, but certainly a
23 majority of them -- at a place that is not on the
24 Mustang Ranch compound.

25 Q. What's the address of the place?

1 A. He did not reveal.

2 Q. You have no idea what's in his places, do you?

3 A. I sure don't. I've never been there.

4 Q. You don't know what clothes he has.

5 A. So what's interesting is Mr. Gilman could have,
6 at any time, invited me to his place, shown me where he
7 lives, and put an end to this. He could also have, as I
8 requested in one of my -- no, actually, I didn't request
9 this in a piece -- in a conversation with someone, that
10 he could release his cell phone records showing
11 triangulation of where he parked his cell phone from
12 midnight -- or 10:00 p.m. to 6:00 a.m. and shut me up at
13 any time.

14 Q. Why does he have to do that?

15 A. Why doesn't he -- why does he have to sue me for
16 claiming that he doesn't live there.

17 Q. Because you're the one that did it.

18 A. Right. So if he --

19 Q. But why does he have to prove --

20 A. He doesn't.

21 Q. -- anything to you?

22 A. He absolutely doesn't.

23 Q. So my -- so conveniently you're doing all this
24 investigation, but you can't give me a single source
25 other than you're going to invoke this shield.

1 A. I'm not giving you any source, that's correct. I
2 don't have to.

3 Q. Are you aware that Mr. Gilman lists 5 Wild Horse
4 on his brothel application?

5 A. Am I aware that he lifts 5 Wild Horse--

6 Q. Lists. Lists, not lifts.

7 A. -- lists 5 Wild Horse -- yes, I am.

8 MR. BUSBY: Objection, confusing question.
9 Go ahead.

10 BY MR. FLANGAS:

11 Q. Okay. Are you -- do you know that Mr. Gilman has
12 a CCW issued by the sheriff of Storey County?

13 A. I do not know that, no.

14 Q. It lists number 5 Wild Horse.

15 A. So what? I contend still, to this day, that he
16 doesn't live there.

17 Q. Did you ever go check this, or did you --

18 A. As I've stated earlier, I cannot go check it
19 because he resides behind a locked gate.

20 Q. No. Did you ever go check over there, the
21 brothel license applications?

22 A. "Over there"? Where is "over there"?

23 Q. The sheriff's office.

24 A. Yes, I did.

25 Q. And it showed number 5; right?

1 A. I don't recall.

2 Q. You don't recall. Did you ever talk to the
3 sheriff about it?

4 MR. BUSBY: Objection, news shield statute.
5 Don't answer that.

6 BY MR. FLANGAS:

7 Q. Did you ever talk to the sheriff about it?

8 MR. BUSBY: Same objection. Don't answer
9 that.

10 MR. FLANGAS: Counsel, I guess we're done
11 today. I'm going to have to file a motion,
12 because --

13 MR. BUSBY: Okay. I'd like to examine the
14 witness.

15 MR. FLANGAS: No. We will pick this up
16 later.

17 MR. BUSBY: I'd like the record to reflect
18 that counsel for the defendant has refused to allow
19 counsel for the plaintiff to examine the witness.

20 MR. FLANGAS: Let the record reflect that
21 the issue is is you're not letting your client answer
22 any questions, and so I'm going to have to go file a
23 motion with the Court before we go any further in this
24 deposition, because I can't finish my deposition because
25 he's hiding behind this -- you know, improperly hiding

1 behind this shield law.

2 MR. BUSBY: I'm sorry you feel that way.

3 (Deposition concluded at 11:50 p.m.)

4 -oOo-

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-oOo-

I, SAMUEL TOLL, hereby declare under penalty of perjury that I have read the foregoing pages 1 through 88; that any changes made herein were made and initialed by me; that I have hereunto affixed my signature.

Dated: _____

SAMUEL TOLL

1	ERRATA SHEET/CORRECTIONS		
2			
3	PAGE	LINE	
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25	_____	_____	_____

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, SUSAN E. BELINGHERI, a Certified Court
5 Reporter for the State of Nevada, do hereby certify;

6 That on Friday, the 4th day of May, 2018, at the
7 hour of 10:05 a.m. of said day, at the offices of
8 Community Chest, 175 E. Carson Street, Virginia City,
9 Nevada, personally appeared SAMUEL TOLL, who was duly
10 sworn by me, was thereupon was deposed in the matter
11 entitled herein, and that before the proceeding's
12 completion the reading and signing of the deposition has
13 been requested by the deponent or party;

14 That the foregoing transcript, consisting of
15 pages 1 through 92, is a full, true, and correct
16 transcript of my stenotype notes of said deposition to
17 the best of my knowledge, skill, and ability.

18 I further certify that I am not an attorney or
19 counsel for any of the parties, nor a relative or
20 employee of any attorney or counsel connected with the
21 action, nor financially interested in the action.

22 DATED: At Reno, Nevada, this 16th day of May,
23 2018.

24 
25 SUSAN E. BELINGHERI, CCR #655

1 May 16, 2018

2 Luke A. Busby
3 Luke Andrew Busby, Ltd.
4 316 California Avenue
5 Reno, Nevada 89509

6 Re: Gilman v. Toll, et al.

7 Dear Mr. Busby:

8 Please find enclosed the original deposition transcript
9 of Samuel Toll taken in the above-entitled matter on May
10 4, 2018.

11 We have enclosed the transcript in order for your client
12 to review.

13 Thank you for your prompt attention to this matter.

14 Bonanza Reporting & Videoconference Center

15
16
17 cc: Deposition transcript

JOHN L. MARSHALL
SBN 6733
570 Marsh Avenue
Reno, Nevada 89509
Telephone: (775) 303-4882
johnladuemarshall@gmail.com

Electronically Filed
Mar 18 2019 10:23 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,

Respondents,

and

LANCE GILMAN,

Real Party in Interest,

_____ /

Case No. 78333

D.C. Case No.
18-trt-00001

PETITIONER'S APPENDIX

VOLUME 3

1. Reply to Opposition to Anti-SLAPP Motion - 2-26-2018: Nos. 462-513
2. Order Granting Anti-SLAPP Motion in Part and Allowing for Limited Discovery 4-9-2018: Nos. 514-553
3. Notice of Entry of Anti-SLAPP Order - 4-20-2018: Nos. 554-597
4. Deposition of Sam Toll - 5-4-2018: Nos. 598-689

Respectfully submitted March 18, 2019:

By: 
JOHN L. MARSHALL
SBN 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

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused service of the foregoing documents 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