

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

Lance Gilman,  
Appellant,

vs.

Sam Toll,  
Respondent.

No. 81874

Electronically Filed  
Nov 03 2020 03:01 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
**DOCKETING STATEMENT**  
**CIVIL APPEALS**

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District First Department II  
County Storey Judge Hon. James E. Wilson  
District Ct. Case No. 18-TRT-00001

**2. Attorney filing this docketing statement:**

Attorney Luke Busby Telephone 775-453-0112  
Firm Luke Andrew Busby, Ltd.  
Address 316 California Ave.  
Reno, NV 89509

Client(s) Sam Toll

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Gus W. Flangas Telephone 702-307-9500  
Firm Flangas Law Group  
Address 3275 South Jones Blvd  
Suite 105  
Las Vegas, NV 89146

Client(s) Lance Gilman

Attorney Jessica Peterson Telephone 702-307-9500  
Firm Flangas Law Group  
Address 3275 South Jones Blvd  
Suite 105  
Las Vegas, NV 89146

Client(s) Lance Gilman

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |                                                             |                                                                                            |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                                        |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                                              |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                          |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                              |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                                            |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                                   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                    |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>Order on Fees/Cost</u> |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Toll v. Dist. Ct., Sc. No. 78333  
Gilman v. Toll, Sc. No. 81583  
Gilman v. Toll, Sc. No. 81726  
Gilman v. Toll, Sc. No. 81874

On October 21, 2020, the Supreme Court issued an Order consolidating this Docket No. 81874 with Docket Nos. 81583 and 81726.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Toll v. Gilman - Case No. 20-TRT-000021-E, First Judicial Dist. Court in Storey County.  
This is the pending SLAPP-back proceeding resulting from the dismissal of the matter that is subject to the appeal in this case.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiff below Lance Gilman brought a defamation action against defendant journalist Sam Toll. The District Court dismissed the action pursuant to defendant Sam Toll's Special Motion to Dismiss pursuant to NRS 41.660 and subsequently awarded Toll \$10,000 in statutory damages. The District Court granted the Special Motion to Dismiss, awarded attorney's fees, and statutory damages.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court incorrectly denied costs to prevailing defendant Sam Toll even though Toll supplied an attorney-of-record declaration justifying all costs and providing receipts therefor. Whether the District Court incorrectly denied prevailing defendant Toll's necessary attorneys fees solely on the basis that they were incurred prior to the filing of the NRS Special Motion to Dismiss. Whether the District Court incorrectly reduced defendant's Toll's legitimately incurred attorneys fees.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Whether recoverable costs may be denied where a prevailing party provided the necessary supporting documentation such costs were necessarily incurred. Whether a statutory award of attorneys fees may be curtailed to specific litigation stages in Anti-SLAPP proceedings without express or reasonable authorization.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal should be presumptively retained by the Supreme Court as it raises an issue of statewide importance within NRAP 17(a)(12). The Supreme Court's decision will give the District Courts guidance in awarding costs and applying the attorneys fees provisions of NRS 41.670.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** September 24, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** September 26, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** October 21, 2020

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
Plaintiff Gilman; October 2, 2020  
Defendant Toll; October 21, 2020

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |                                                                          |                                       |
|--------------------------------------------------------------------------|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court's September 24, 2020 Order on Attorney's Fees and Costs is a post-judgment order awarding attorney's fees and costs is considered a special order entered after final judgment and as such it is substantively appealable under NRAP 3A(b)(8). *Winston Products Co. v. DeBoer*, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Sam Toll (Defendant/Cross-Appellant)

Lance Gilman (Plaintiff/Appellant)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff Gilman sued Defendant Toll for defamation. Gilman's claim was dismissed and an Order Awarding Toll \$10,000 in Statutory Damages was issued by the District Court on July 29, 2020.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Sam Toll  
Name of appellant

Luke Busby  
Name of counsel of record

November 3, 2020  
Date

  
Signature of counsel of record

Washoe County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 3rd day of November, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

GUS W. FLANGAS  
JESSICA K. PETERSON  
Flangas Dalacas Law Group  
3275 South Jones Blvd. Suite 105  
Las Vegas, NV 89146

David Wasick  
P.O. Box 568  
Glenbrook, NV 89413

Dated this 3rd day of November, 2020

  
Signature

## Exhibit List

1. Gilman's December 7, 2017 Complaint
2. September 24, 2020 Order Granting Attorney's Fees and Costs
3. July 29, 2020 Order Awarding Toll \$10,000 in Statutory Damages
4. September 26, 2020 Notice of Entry of Order of Order Granting Attorney's Fees and Costs. (File Stamped September 28, 2020).

# Exhibit 1

# Exhibit 1

1 GUS W. FLANGAS, ESQ.,  
Nevada Bar No. 004989  
2 Email: [gwf@fdlawlv.com](mailto:gwf@fdlawlv.com)  
JESSICA K. PETERSON, ESQ.  
3 Nevada Bar No. 10670  
Email: [jkp@fdlawlv.com](mailto:jkp@fdlawlv.com)  
4 FLANGAS DALACAS LAW GROUP  
3275 South Jones Boulevard, Suite 105  
5 Las Vegas, Nevada 89146  
Telephone: (702) 307-9500  
6 Facsimile: (702) 382-9452  
*Attorneys for Plaintiff*  
7

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF WASHOE  
10

11 LANCE GILMAN, an individual,	)	Case No.:
12 Plaintiff,	)	Dept No.:
13 vs.	)	
14 SAM TOLL, an individual; DOES I-V,	)	
15 inclusive; and ROE ENTITIES VI-X,	)	
16 inclusive,	)	
Defendants.	)	

17 **COMPLAINT**

18 COMES NOW the Plaintiff, LANCE GILMAN, by and through his attorneys, GUS W.  
19 FLANGAS, ESQ. and JESSICA K. PETERSON, ESQ., of the FLANGAS DALACAS LAW  
20 GROUP, and for his causes of action against the Defendants, alleges as follows

21 **FIRST CLAIM FOR RELIEF**  
22 (Defamation Per Se)

- 23 1. At all times material hereto, the Plaintiff, LANCE GILMAN (hereinafter referred to as  
24 the "Plaintiff"), was and is a resident of Storey County, State of Nevada.
- 25 2. At all times material hereto, the Defendant, SAM TOLL, (hereinafter referred to as the  
26 "Defendant"), was and is a resident of Storey County, Nevada.
- 27 3. The true names and capacities of the Defendants named herein as DOES I-X, inclusive,  
28 and ROE ENTITIES VI-X, inclusive, whether individual, corporate, associate or otherwise, are

1 presently unknown to the Plaintiff who therefore sues the said Defendants by such fictitious names;  
2 and when the true names and capacities of such DOES I through X, inclusive, and ROE ENTITIES  
3 VI-X, inclusive, are discovered, the Plaintiff will ask leave to amend this Complaint to substitute the  
4 true names of the said Defendants. The Plaintiff is informed, believes and therefore alleges that the  
5 Defendants so designated herein are responsible in some manner for the events and occurrences  
6 contained in this action.

7 4. At all times material hereto, the Defendant published and publishes a blog online under  
8 the website address of <http://thestorevteller.online> (hereinafter the "Storeyteller Website").

9 5. The Home page of the Storeyteller Website and every other section contained therein,  
10 including the "News," "Editorial," "Letters to the Editor," "About the Storey Teller," and  
11 "Community News," sections, all contain the statement: "Support the Teller and Keep **Fact Based**  
12 **News** about Storey County Ad Free." (Emphasis added).

13 6. At all times material hereto, the Plaintiff was and is member of the Board of  
14 Commissioners for Storey County, Nevada, an elected position.

15 7. The Plaintiff is a principal in and the Director of Marketing for the Tahoe Reno Industrial  
16 Center (hereinafter "TRI"). Plaintiff's company, Lance Gilman Commercial Real Estate Services,  
17 is and has been since the inception of TRI, the exclusive broker for this industrial park. TRI is a  
18 massive 80,000 acre park that encompasses a 30,000 acre industrial complex approximately nine  
19 miles east of Reno, Nevada in Storey County, Nevada, and is the largest industrial park of its kind  
20 in the United States. TRI presently has over 16 million Square Feet of Industrial space in use by over  
21 130 different companies, with over 6,000 permanent and temporary jobs created in 15 years.

22 8. The Plaintiff has been instrumental in attracting to TRI, such nationally recognized firms  
23 as Tesla/Panasonic, who is building a "gigafactory," a massive 6 million square foot manufacturing  
24 facility, SWITCH, who is building a huge data storage co-location campus comprised of a number  
25 of buildings totaling 7 million square feet under roof, GOOGLE, who just purchased 1200 acres  
26 earlier in 2017, as well as other global companies such as eBay, Wal-Mart, Tire Rack, Jet.com,  
27 Petsmart, and US Ordinance, to name a few.

28 9. TRI has provided thousands of jobs for Northern Nevada and it is anticipated that

1 Tesla/Panasonic and SWITCH, alone will together generate 10,000 more jobs for Northern Nevada  
2 and over \$400 million in payroll annually at full build out.

3 10. The Plaintiff's proven ability to attract nationally recognized firms to TRI was mainly  
4 due to his business experience, his business acumen and his reputation in the business community  
5 for honesty and his straight forward approach. He is the face of TRI and deals personally with all  
6 incoming buyers from the time they first express interest in TRI up and through the close of escrow.

7 11. The Plaintiff first arrived in Reno, Nevada in 1985, and became a principal in and  
8 exclusive broker for the 2,500 acre Double Diamond Ranch now known as the South Meadows  
9 Business Park, which is located in southern portion of Reno, Nevada. The South Meadows Business  
10 Park is an integrated single-family and multi-family residential, industrial, distribution and retail  
11 development, and through the extensive efforts of the Plaintiff, the South Meadows Business Park  
12 landed the government arms contractor, Lockheed Martin as the anchor tenant.

13 12. The Plaintiff has a long list of successes in retail businesses. Before the South Meadows  
14 Business Park, the Plaintiff started his professional career in San Diego, California, operating the San  
15 Diego Boatmart. His accomplishments in that industry included being Chairman of the prestigious  
16 San Diego Boat Show and a member of the National Speaker Circuit for the Boat Show Educational  
17 Series. He then worked as an agent for Grubb and Ellis, a major real estate brokerage in San Diego,  
18 California, where he managed major accounts, including the development of the Murphy Canyon  
19 Business Park, and assisted in the development of major shopping centers in San Diego County. In  
20 1998, the Plaintiff opened the first Harley Davidson motorcycle showroom and maintenance facility  
21 in Carson City, Nevada. The Plaintiff has received a number of awards such as the Reno Small  
22 Business Entrepreneur of the year in 2009, Reno Man of the Year in 2000 and the Development  
23 Award for Environmental Excellence in Development in 1997. In or around 2015, Governor Brian  
24 Sandoval personally presented the Plaintiff and his two TRI partners, the EDawn President's  
25 Award for completing what the Governor called the "The Deal of the Century" in landing and  
26 closing the Tesla deal.

27 13. In the early 2000s, the leaders of Storey County needed to take fast action to bolster  
28 critically lacking tax revenues for the County, which was cash poor at the time. These leaders



1 approached the Plaintiff and requested him to open a brothel, which could immediately generate  
2 greatly needed tax revenues for the County until TRI could begin bringing in more companies and  
3 subsequently growing the tax base. As a result of these requests, the Plaintiff built and opened up  
4 on his property, the Wild Horse brothel, a multimillion dollar facility, which eventually became the  
5 Wild Horse Adult Resort and Spa.

6 14. In or around 2003, to further bolster lagging tax revenues for Storey County, the Plaintiff  
7 purchased the Mustang Ranch brothel buildings and trademark on Ebay from the Federal  
8 Government for \$145,100. Because of its historic value, the Plaintiff spent millions in moving the  
9 buildings to a location adjacent to the Wild Horse, and in upgrading the facility. This move included  
10 contracting a large heavy lift cargo helicopter to airlift a part of one of the Mustang Ranch's  
11 structures. In or around 2012, the Mustang Ranch expanded into the Wild Horse brothel building  
12 and today operates primarily out of that property.

13 15. The Mustang Ranch today sits in a short canyon outside of TRI and is surrounded by tall  
14 iron gates, a berm, and hundreds of trees and shrubs. It is a multifaceted operation, with an award  
15 winning steakhouse, gift shop with trademarked Mustang Ranch products, along with the traditional  
16 Mustang Ranch entertainment. There are vaulted ceilings, a stone fireplace, hundreds of thousands  
17 of dollars' worth of furnishings, decor, equipment, and artwork. It is a thriving business that  
18 contributes significantly to Storey County revenues through taxes, fees and assessments.

19 16. Because of the Mustang Ranch's close proximity to TRI, because of the Plaintiff's  
20 involvement in TRI, and because the Plaintiff highly values his reputation, the Plaintiff has taken  
21 great measures to operate a first class and extremely safe establishment that protects its employees  
22 and customers through thorough modern medical testing, extensive background checks of its  
23 employees, extensive cutting edge security on the premises, and adherence to strict policies and  
24 procedures, including but not limited to, obtaining proper medical clearances for the Mustang's  
25 brothel employees. In addition, the facilities incorporate many modern design and operational  
26 features to ensure a high-quality, professional business operation that provides a safe environment  
27 for its employees and customers. Also, because the Plaintiff is the licensed owner and operator of  
28 the Mustang Ranch, it's operations directly reflect on him, and his license.

1           17. The Mustang Ranch is also a great corporate citizen and annually donates tens of  
2 thousands of dollars in weekly food donations and staff time, to provide for the needy school  
3 children and elderly in Storey County.

4           18. Beginning in early 2017, the Defendant in an effort to embarrass, discredit and impugn  
5 the Plaintiff, published blatantly defamatory statements about the Plaintiff, to wit:

6               a. The Plaintiff has engaged in reverse graft.

7               b. The Plaintiff committed perjury when he filled out official paperwork pertaining  
8 to his residency.

9               c. The Plaintiff has lied about his residency in Storey County, Nevada.

10              d. The Plaintiff represented to the Defendant that the Plaintiff would reimburse the  
11 expenses incurred by Storey County, Nevada for the recall election of the Sheriff of Storey County,  
12 held in 2017, and other expenses incurred by Storey County, Nevada for the ethics investigation into  
13 the Sheriff of Storey County.

14              e. The Plaintiff didn't follow the law when the Mustang Ranch was relicensed after  
15 a related brothel was closed and then reopened as the Mustang Ranch.

16              f. The Plaintiff receives special considerations regarding the rules and regulations.

17              g. The Plaintiff is receiving land from Storey County with zero consideration.

18              h. The Plaintiff's trip to Washington, D.C. partly paid for by Storey County was not  
19 work related and not a legitimate trip.

20           19. The Defendant's malicious and false statements were and are publications of false  
21 statements of facts concerning the Plaintiff.

22           20. The Defendant's malicious and false statements were and are assertions of facts or  
23 expressions of opinions that suggest that the Defendant knew certain facts to be true or implied that  
24 certain facts existed, about the Plaintiff sufficient to render the Defendant's false statements  
25 defamatory.

26           21. The statements by the Defendant were and are blatantly defamatory because they tend  
27 to lower the Plaintiff in the estimation of the community, excite derogatory opinions about him, and  
28 hold him up to contempt.

1           22. The Defendant's defamatory statements about the Plaintiff were and are unprivileged  
2 publications to third parties.

3           23. The Defendant's defamatory statements were made with actual malice in that they were  
4 made with the knowledge that they were false or made with reckless disregard of whether they were  
5 false or not.

6           24. The Defendant's defamatory statements individually and or collectively falsely impute  
7 that the Plaintiff engaged in criminal behavior, falsely imputes the Plaintiffs' lack of fitness for trade,  
8 business or profession, falsely imputes the Plaintiffs' dishonesty, lack of fair dealing, want of  
9 fidelity, integrity or business ability, and or tend to injure the Plaintiff in his trade, business or  
10 profession.

11           25. The Defendant's defamatory statements individually and or collectively falsely impute  
12 the recipient that the Plaintiff is unethical and or criminally predisposed.

13           26. The Defendant's malicious and false statements about the Plaintiff are so likely to cause  
14 serious injury to reputation and pecuniary loss that they constitute defamation per se.

15           27. The Defendant's malicious and false statements are of certain classes of defamatory  
16 statements that they are considered so likely to cause serious injury to reputation and pecuniary loss  
17 that these statements are actionable without proof of damages.

18           28. As a direct result of the Defendant's improper actions, the Plaintiff has suffered damage  
19 to his reputation and has suffered harm which normally results from such a defamation.

20           29. As a direct result of the Defendant's improper actions, the Plaintiff has been damaged  
21 in amount in excess of \$15,000.

22           30. The Defendant is guilty of oppression, fraud or malice, express or implied; therefore, the  
23 Plaintiff is entitled to recover damages for the sake of example and by way of punishing the  
24 Defendant in an amount in excess of \$15,000.

25           31. It has become necessary for the Plaintiff to engage the services of an attorney to  
26 ....  
27 ....  
28 .....

1 commence this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs as  
2 damages.

3 WHEREFORE, the Plaintiff prays for judgment as follows:

- 4 1. For damages in an amount in excess of \$15,000;  
5 2. For punitive damages in an amount in excess of \$15,000;  
6 3. For reasonable attorney's fees and costs of suit; and  
7 4. For such other and further relief as the Court may deem just and proper in the premises.

8 **AFFIRMATION**  
9 Pursuant to NRS 239B.030

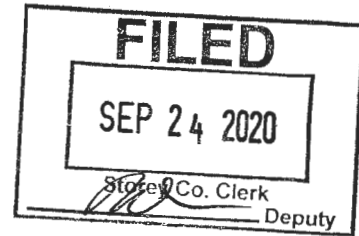
10 The undersigned hereby affirms that this document does not contain the social security  
11 number of any person.

12 DATED this 7<sup>th</sup> day of December, 2017.

13  
14   
15 GUS W. FLANGAS, ESQ.  
16 Nevada Bar No. 004989  
17 Email: [gwf@fdlawlv.com](mailto:gwf@fdlawlv.com)  
18 JESSICA K. PETERSON, ESQ.  
19 Nevada Bar NO. 10670  
20 Email: [jkp@fdlawlv.com](mailto:jkp@fdlawlv.com)  
21 **FLANGAS DALACAS LAW GROUP**  
22 3275 South Jones Blvd., Suite 105  
23 Las Vegas, Nevada 89146  
24 Telephone: (702) 307-9500  
25 Facsimile: (702) 382-9452  
26 Attorneys for Plaintiff  
27  
28

# Exhibit 2

# Exhibit 2



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

-oOo-

LANCE GILMAN,

Plaintiff,

v.

SAM TOLL,

Defendant.

CASE NO. 18 TRT 00001 1E

DEPT. 2

**ORDER ON MOTION FOR ATTORNEY'S FEES AND COSTS**

Before the Court is Sam Toll's Motion for Attorney's Fees and Costs and all papers filed regarding that motion.

Under NRS 41.670(1)(a), if the court grants a special motion to dismiss filed under NRS 41.660 the court shall award reasonable costs and attorney's fees to the person against whom the action was brought.

**ATTORNEY FEES**

**Hourly Rate**

John Marshall, Esq. seeks approval for an hourly rate of \$450 an hour, and Luke Busby, Esq. seeks approval for an hourly rate of \$350 an hour.

1 To determine a reasonable hourly rate, the Court must consider the following  
2 factors: (1) the qualities of the advocate: their ability, training, education, experience,  
3 professional standing and skill; (2) the character of the work done: its difficulty,  
4 intricacy, importance, the time and skill required, the responsibility imposed and the  
5 prominence and character of the parties when they affect the importance of the  
6 litigation; (3) the work actually performed by the lawyers: the skill, time and attention  
7 given to the work; and (4) the result: whether the attorney was successful and what  
8 benefits were derived. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d  
9 31. The Court will also consider whether the requested hourly rates are in-line with  
10 local attorney hourly rates. The Court will address each of these factors in order.

11  
12 *(1) The qualities of the advocate; their ability, training, education, experience,*  
13 *professional standing and skill*

14 Toll's counsels' qualifications and experience are established in the resumes  
15 they attached to their motion. Both attorneys have extensive legal experience, including  
16 in complex litigation and matters affecting the public interest, they have good legal  
17 ability and skill, and the professional standing of each is good.

18  
19 *(2) The character of the work done: its difficulty, intricacy, importance, the*  
20 *time and skill required, the responsibility imposed and the prominence and*  
21 *character of the parties when they affect the importance of the litigation*

22 Litigating an Anti-SLAPP special motion to dismiss is difficult and intricate  
23 because of the number of issues that need to be addressed. The Court's order granting  
24 in part and denying in part the special motion to dismiss was 41 pages.

25 Viable special motions to dismiss in Anti-SLAPP cases are important because  
26 they protect "[g]ood faith communication in furtherance of the right to petition or the  
27 right to free speech in direct connection with an issue of public concern ...." NRS 41.637.

1 Properly prepared special motions to dismiss in Anti-SLAPP cases, require  
2 considerable time and skill. The special motion in this case was properly prepared.

3 This case involves a high profile businessman who is also a county commissioner  
4 suing a small town blogger to stop the blogger's criticism of the commissioner. The  
5 prominence and character of the parties affect the importance of this litigation.

6  
7 *(3) The work actually performed by the lawyers: the skill, time and attention*  
8 *given to the work*

9 Toll's counsel successfully litigated the special motion to dismiss. The filed anti-  
10 SLAPP papers are voluminous. The Court's file consists of nine volumes. Toll's counsel  
11 displayed good skill and attention to the work in their filed papers.

12  
13 *(4) The result: whether the attorney was successful and what benefits were*  
14 *derived*

15 Toll's counsel were successful, the special motion was granted. The benefits are  
16 preserving Toll's right to generate good faith communications in furtherance of his  
17 rights to petition and free speech, and specific and general deterrence to those who  
18 consider interfering with a reporter's right to generate good faith communications in  
19 furtherance of his rights to petition and free speech.

20  
21 *(5) Whether the requested hourly rates are in-line with local attorney hourly*  
22 *rates*

23 Toll's counsel attached to their motion declarations of Reno attorneys that attest  
24 that the hourly rates sought are reasonable and customary. Based upon that evidence  
25 and the Court's experience in handling motions for attorney fees, the Court concludes  
26 the requested hourly rates are in-line with local attorney hourly rates.



1           *Conclusion on hourly rates*

2           Having considered the factors, facts, and circumstances the Court concludes  
3 John Marshall, Esq.'s hourly rate of \$450 an hour, and Luke Busby, Esq.'s hourly rate  
4 of \$350 an hour are reasonable and justified.

5  
6       **Time**

7           In deciding what constitutes a "reasonable fee" in the context of anti-SLAPP  
8 litigation it has been said:

9  
10           "[a] reasonable [attorney's] fee is one that is not excessive or extreme, but rather  
11 moderate or fair. The mere fact that a party and a lawyer contracted for or  
12 incurred a particular amount of attorney's fees does not conclusively prove that  
13 a fee paid by the lawyer's client is reasonable. When a party seeks to shift fees  
14 from its client to the opposing party, the party seeking fees must prove that the  
15 amount of the fees it is requesting is reasonable. That said, when awarding  
16 attorney's fees, the factfinder should exclude "[c]harges for duplicative,  
excessive, or inadequately documented work[.]" See *Toledo v. KBMT Operating*  
*Co., LLC*, 581 S.W.3d 324, 329-31 (Tex. App. 2019); *In re Leonard Jed Co.*, 118  
B.R. 339, 347 (Bankr.D.Md. 1990) ("excessive use of office conferences and  
unnecessary duplication of effort will result in reduction of fees when they are  
unreasonable").

17           Toll cited *Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014) for the  
18 proposition that it is appropriate to award all attorneys fees incurred in connection with  
19 the entire case even if some work is not directly related to the anti-SLAPP Motion.  
20 *Graham* recognized the general rule is that the anti-SLAPP attorney fee provision  
21 applies only to the anti-SLAPP motion and not to the entire action. *Id.* Toll has not  
22 provided evidence or argument that justify deviating from the general rule.

23  
24           In *569 E. Cty. Blvd. LLC v. Backcountry Against The Dump, Inc.*, 6 Cal.App.5th  
25 426, 212 Cal. Rptr. 3d 304, (2016). The California Court of Appeals held that "a fee  
26 award under the anti-SLAPP statute may not include matters unrelated to the anti-  
27

1 SLAPP motion, such as . . . summary judgment research, “because such matters are not  
2 “incurred in connection with the anti-SLAPP motion.” *Backcountry*, supra at 310-11.  
3 The Ninth Circuit cited favorably to *Backcountry* in the case of *Century Sur. Co. v.*  
4 *Prince*, 782 F. App’x 553, 558 (9th Cir. 2019) and denied attorneys fees for work that  
5 was not related to the anti-SLAPP Motion (only attorneys’ fees and costs directly  
6 attributable to the anti-SLAPP motion(s) are recoverable). Just recently, the United  
7 States District Court for the State of Nevada required the attorneys seeking their fees to  
8 revise their billing statements to remove any entries not directly related to the anti-  
9 SLAPP motion. *Walker v. Intelli-heart Servs., Inc.*, No. 318CV00132MMDCLB, 2020  
10 WL 1694771, at \*2 (D. Nev. Apr. 7, 2020).  
11

12 Based on the foregoing, the fees that can be awarded to Defendant must be  
13 reasonable, adequately documented, and relate directly to the anti-SLAPP motion, and  
14 not be excessive or duplicative.

15 Having carefully considered the pleadings and papers filed by the parties, the  
16 quality of the legal product, the importance of the issue, and the result obtained, the  
17 Court concludes the hours claimed by Toll included matters not related to the special  
18 motion to dismiss, and some claimed hours were excessive and not reasonable. Toll  
19 will be awarded fees for all time claimed by Toll and not objected to by Gilman plus the  
20 time set forth in the following table which addresses each entry objected to by Gilman.  
21

22

Date	Description of Work	Time Keeper	Hours Awarded	Objection/ Court’s Decision
12/18/17	Email client	JLM	Ø	Not related to anti-SLAPP motion/ agree

23  
24  
25  
26  
27

12/22/17	Mtg with client	JLM	Ø	Not related to anti-SLAPP motion/ agree
12/27/17	Draft and revise Answer + Motion to Change Venue	JLM	Ø	Not related to anti-SLAPP motion/ agree
12/22/17	Initial meeting with Toll	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/28/17	Draft and revise Answer + Motion to Change Venue	JLM	Ø	Not related to anti-SLAPP motion/ agree
12/23/17	Research and draft of Motion to Change Venue	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/23/17	Draft Affidavit of Sam Toll re: Motion to Change Venue	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/23/17	Draft Answer to Complaint	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/26/17	Meeting with Toll and retainer agreement	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/28/17	Finalize and file answer	LAB	Ø	Not related to anti-SLAPP motion/ agree
1/12/18	Request to submit venue motion	LAB	Ø	Not related to anti-SLAPP motion/ agree
12/31/17-2/1/18	Draft Special Motion to Dismiss	LAB JLM	40.0 15.0	Excessive time; duplicative/ Toll failed to show 60+ hours is reasonable; 55 hours is reasonable

1	2/21/18	Review opposition to anti-SLAPP motion	JLM	1.0	Duplicative/ disagree
2					
3	2/21/18	Review opposition to anti-SLAPP motion	LAB	2.1	Duplicative/ disagree
4					
5	2/21/18- 2/26/2018	Work on Reply to Opposition to anti-SLAPP motion	LAB JLM	24.0 12.0	Excessive; duplicative/ Toll failed to show 43+ hours is reasonable; 36 hours is reasonable
6					
7					
8					
9	4/9/2018	Review Order	LAB JLM	1.3 1.0	Duplicative/ disagree
10	4/19/18	Meet client re order and discovery	LAB	1.2	Not related to anti-SLAPP motion/ disagree
11					
12					
13	4/23/18	Call with Mike Sullivan re: Gilman v. Antinoro	LAB	Ø	Not related to anti-SLAPP motion/ Toll failed to show related to anti-SLAPP motion
14					
15					
16					
17	4/28/18- 5/4/18	Toll depo prep	LAB	6.1	Not related to anti-SLAPP motion/ disagree
18					
19	4/28/18	Shield law research	LAB	2.3	Not related to anti-SLAPP motion/ disagree
20					
21	5/10/18- 5/17/18	Prep and attend Osborne deposition and review transcripts	JLM	4.3	Not related to anti-SLAPP motion/ disagree
22					
23					
24					
25	5/10/18- 5/22/18	Review of Motion for Sanctions; work on opposition to	LAB	Ø	Not related to anti-SLAPP motion/ agree
26					
27					

	Motion for Sanctions			
5/19/18	Work on opposition to motion to compel	JLM	4.5	Duplicative; not reasonable/ disagree
6/15/18-6/20/18	Review of Motion for Oral Argument and prepare opposition	LAB JLM	1.0 2.0	Excessive hours; unreasonable/ agree in part
6/27/18-2/22/29	Evidentiary hearing prep	LAB	57.5	Not related to anti-SLAPP motion/ disagree
6/27/18	Review court order; conference between counsel	JLM LAB	1.5 2.1	Block billed, duplicative and interoffice conference/ disagree
6/27/18 and 6/29/18	Counsel conference	LAB JLM	0.5 0.5	Interoffice conference, duplicative/ Agree in part 0.4 not allowed
8/17/18	Counsel conference	JLM	0.8	Interoffice conference; block billed/ disagree
11/30/18	Counsel conference re hearing prep and strategy	JLM LAB	2.4 2.4	Duplicative, interoffice conference/ disagree
2/14/19	Counsel conference re hearing prep	JLM LAB	1.0 1.0	Duplicative, interoffice conference/ disagree; LAB billed 0.3 more and that is excluded from award
2/20/19	Counsel conference re hearing prep	JLM LAB	2.0 2.0	Interoffice meeting; duplicative/ LAB billed 0.4 more and that is

				excluded from award
2/21/19	Counsel conference re hearing prep	JLM LAB	1.5 1.5	Duplicative/ disagree
3/8/19- 3/17/19	Draft writ petition	JLM LAB	12.0 48.0	Not directly related to anti- SLAPP motion/disagree  Duplicative/ Disagree  Excessive hours/ Toll failed to show claimed hours are reasonable; 60 hours is reasonable
5/6/19	Review and outline opposition to writ	JLM	2.3	Not directly related to anti- SLAPP motion, duplicative/ disagree
5/9/19	Review writ answer	LAB	2.0	Not directly related to anti- SLAPP motion, duplicative/ disagree
5/28/19- 6/2/19	Draft writ reply brief	JLM	25.9	Not related to anti-SLAPP motion, duplicative/ disagree
5/10/19- 5/29/19	Work on writ reply brief	LAB	15.7	Not related to anti-SLAPP motion, duplicative/ disagree
8/16/19- 9/5/19	Prep for oral argument	JLM	27.3	Not related to anti-SLAPP motion, duplicative/ disagree

8/25/19-9/3/19	Case outline/prep	LAB	14.5	Not related to anti-SLAPP motion, duplicative/disagree
6/21/20	Work on App for Attorney Fees	JLM	2.5	Duplicative/Disagree  Excessive/agree: Toll failed to show hours reasonable; 2.5 hours is reasonable
6/19/20-6/21/20	Work on App for Attorney Fees	LAB	2.5	Duplicative/Disagree  Excessive/agree: Toll failed to show hours reasonable; 2.5 hours is reasonable

Toll will be awarded attorney fees for John Marshall's services at \$450 per hour for 164.1 hours for a total of \$73,340.

Toll will be awarded attorney fees for Luke Busby's services at \$350/hour for 330 hours for a total of \$115,500. The total attorney fee award is \$188,840.

### **COSTS**

Toll failed to file with his memorandum of costs, any substantiating documentation of the claimed costs. Gilman cited *Cadle Company v. Woods & Erickson, LLP*, 131 Nev. 114, 345 P. 3d 1049 (2015), for the proposition that for a court to award costs it must have justifying documentation, which by necessity means more than a memorandum of costs. The Supreme Court in *Cadle* refused to award certain costs because there was no evidence for the Court to determine that the costs were reasonable, necessary, and actually incurred.

1 In four lines in his reply devoted to the costs issue Toll simply offered some  
2 receipts. He failed to address the arguments raised in Gilman's opposition.

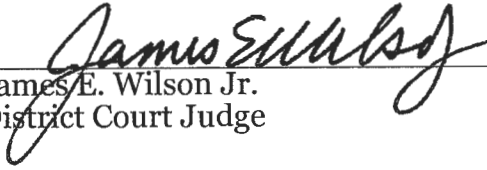
3 Toll's receipts and affidavit that indicating the costs were necessarily incurred  
4 did not establish that the claimed costs were reasonable, necessary, and actually  
5 incurred. Toll's request for costs will be denied.

6  
7 **THE COURT ORDERS:**

8 Toll is awarded \$188,840 in attorney fees.

9 Toll's request for costs is denied.

10 September 24, 2020.

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13 James E. Wilson Jr.  
14 District Court Judge  
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<p>Gus Flangas, Esquire          Jessica K. Peterson, Esquire          3275 South Jones Blvd.,          Suite. 105          Las Vegas, NV 89146</p>	<p>John L. Marshall, Esquire          570 Marsh Avenue          Reno, NV 89509</p> <p>Luke Andrew Busby, Esq.          316 California Avenue          Reno, NV 85909</p>
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Billie Shadron  
Judicial Assistant

# Exhibit 3

# Exhibit 3

REC'D & FILED

2020 JUL 29 AM 10:26

AUDREY HOWLATT

BY

DEPUTY

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

\* \* \*

LANCE GILMAN,

Plaintiff,

vs.

Case No. 18-TRT-00001-1E

SAM TOLL,

Dept. No. II

Defendant.

**ORDER AWARDING TOLL \$10,000 IN STATUTORY DAMAGES**

Before the Court are the briefs of the parties in response to the Court's June 15, 2020 Order requiring Plaintiff LANCE GILMAN to show cause why he should not be ordered to pay \$10,000 in statutory damages to Defendant SAM TOLL.

Pursuant to the provisions of NRS 41.670(1)(b), it is within this Court's discretion to award up to \$10,000 in statutory damages.

Statutory damages are intended to deter the conduct at issue and are calculated based on the statute and not the degree of harm to the victim. The amount of statutory damages should sufficient to deter the targeted conduct. *Int'l Korwin Corp. v. Kowalczyk*, 665 F.Supp. 652 (N.D.Ill.1987).

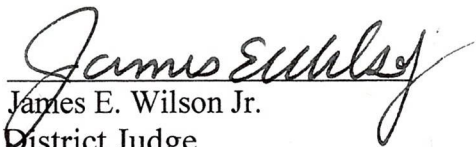
This Court determined in its April 9, 2018 and June 15, 2020 Orders that Gilman's suit lacked minimal merit and Toll's communications for which he was sued were made in good faith and were made in furtherance of the right to petition or the right to free

1 speech in direct connection with an issue of public concern. Pursuant to NRS 41.650 Toll  
2 was immune from suit for exercising his rights under and within the scope protected by  
3 the First Amendment. Gilman and similarly situated persons should be deterred from  
4 bringing suits that lack minimal merit.

5 **THE COURT ORDERS:**

6 Toll is awarded \$10,000 under NRS 41.650(3).

7  
8 Dated this 29 of July, 2020:

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11 James E. Wilson Jr.  
12 District Judge  
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1  
2 **CERTIFICATE OF SERVICE**

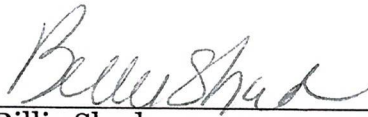
3 I certify that I am an employee of the First Judicial District Court of Nevada; that on  
4 the 29 day of July 2020, I served a copy of this document by placing a true copy in an  
5 envelope addressed to:

6 John Marshall, Esq.  
7 570 Marsh Avenue  
8 Reno, NV 89509

Luke A. Busby  
316 California Ave.  
Reno, NV 89509

8 Gus W. Flangas, Esq,  
9 Jessica K. Peterson, Esq.  
10 3275 South Jones Blvd.  
Suite 105  
Las Vegas, NV 89146

11  
12 the envelope sealed and then deposited in the Court's central mailing basket in the court  
13 clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for  
14 mailing.

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17 Billie Shadron  
18 Judicial Assistant  
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