

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

LANCE GILMAN, AN INDIVIDUAL,
Appellant
vs.
SAM TOLL, AN INDIVIDUAL,
Respondent

No. 81874

Electronically Filed
Nov 09 2020 05:44 p.m.

DOCKETING STATEMENT
CIVIL APPEALS

Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

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 attach requested documents, 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.

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.

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

2. Attorney filing this docketing statement:

Attorney Gus W. Flangas Telephone 702-971-2252

Firm Flangas Law Group

Address

3275 S. Jones Blvd Suite 105
LAS Vegas, NV 89146

Client(s) LANCE GILMAN

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 respondent(s):

Attorney Luke Busby, Esq Telephone 775-453-0112

Firm Luke Andrew Busby Ltd.

Address

316 California Ave.,
Reno Nevada 89509

Client(s) Sam Toll

Attorney John L. Marshall Telephone 775-303-4882

Firm _____

Address

570 Marsh Avenue
Reno, Nevada 89509

Client(s) Sam Toll

(List additional counsel on separate sheet if necessary)

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination

- ☒ Dismissal:
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☐ Other (specify): _____
- ☐ Divorce decree:
 - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Order on Fees

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

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/Denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

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 First Judicial District Court and Lance Gilman Case No. 78333

Gilman v Toll Case No. 81583

Gilman v. Toll Case No. 81726

Gilman v. Toll Case No. 81874

81583, 81726 and 81874 have been consolidated by Order of the Court dated October 21, 2020.

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 District Court in and for Storey County, is the pending SLAPP - back proceeding which arises out of the action that is subject to the appeal in Case No. 81583

8. Nature of the action. Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Gilman filed a Complaint against Toll asserting one cause of action for Defamation Per Se. The Complaint listed several false and defamatory statements made by Toll against Gilman, including that Gilman committed perjury, a felony, by lying about his residency in Storey County when he filled out official paperwork in filing for election to the office of County Commissioner. Toll filed an Anti-SLAPP Special Motion to Dismiss which was granted by the Court on the grounds that Gilman failed to show sufficient evidence that Toll acted with actual malice. The Court then granted Toll statutory damages pursuant to NRS 41.670(b)(1). The Court then granted an award of attorney fees that was exorbitant in light of the work performed and did not relate to the Special Motion to Dismiss.

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

1. Did the District Court err in awarding \$188,840.00 in attorney fees because the fees did not relate directly to the anti-SLAPP Special Motion to Dismiss.
2. Did the District Court err in awarding \$188,840 in attorney fees when the the time spent by the attorneys was duplicative or unreasonable in light of the work performed.
3. Was the Court's award of attorney fees excessive in light of the work performed.
4. Did the Court err in awarding attorneys fees for hours spent where it was impossible to tell what work was performed because the invoice was redacted.

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

Not applicable

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 (on an attachment, 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:

Attorneys fees should not be awarded where the fees are duplicative of other attorneys work, do not adequately state what task was performed and do not specifically relate to the anti-SLAPP Special Motion to Dismiss.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

14. **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?

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appeal from** September 24, 2020.
Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which this appeal is taken.

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

16. **Date written notice of entry of judgment or order served** September 26, 2020.
Attach a copy, including proof of service, for each order or judgment appealed from.

Was service by:

- ☐ Delivery
- ☒ Mail

17. 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 served _____ By delivery ☐ or by mail ☐ Date of filing _____
- ☐ NRCP 52(b) Date served _____ By delivery ☐ or by mail ☐ Date of filing _____
- ☐ NRCP 59 Date served _____ By delivery ☐ or by mail ☐ Date of filing _____

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion _____.

Attach a copy.

(c) Date written notice of entry of order resolving tolling motion served _____.

Attach a copy, including proof of service.

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed October 1, 2020.

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:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

- ☐ NRAP 3A(b)(1) ☐ NRS 155.190 (specify subsection) _____
☐ NRAP 3A(b)(2) ☐ NRS 38.205 (specify subsection) _____
☐ NRAP 3A(b)(3) ☐ NRS 703.376 _____
☒ Other (specify) NRAP 3A(b)(8) _____

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 and is therefore considered a special order entered after final judgment.

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION.

Attach separate sheets as necessary.

21. List all parties involved in the action in the district court:

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:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.

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 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

If "Yes", attach a copy of the certification or order, including any notice of entry and proof of service.

(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)):

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.

Lance Gilman

Name of appellant

11/9/2020

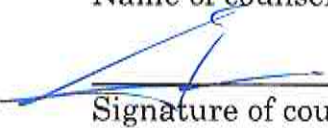
Date

Clark County, Nevada

State and county where signed

Gus W. Flangas

Name of counsel of record



Signature of counsel record

CERTIFICATE OF SERVICE

I certify that on the 9th 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.)

John L. Marshall
570 Marsh Avenue
Reno, NV 89509

David Wasick

P.O. BOX 568

Glenbrook, NV 89413

Luke A. Busby
Luke Andrew Busby, Ltd.
316 California Ave. Ste. 82
Reno, NV 89509

Dated this 9th day of November, 2020.



Signature

1 JOHN L. MARSHALL
2 SBN 6733
3 570 Marsh Avenue
4 Reno, Nevada 89509
5 Telephone: (775) 303-4882
6 johnmarshall@charter.net

7 Luke Andrew Busby, Ltd.
8 Nevada State Bar No. 10319
9 316 California Ave #82
10 Reno, NV 89509
11 775-453-0112
12 luke@lukeandrewbusbyltd.com

13 *Attorneys for the Defendant*

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

LANCE GILMAN,

Plaintiff,

vs.

SAM TOLL,

Defendant.

Case No. 18-trt-00001-1c

Dept. No. II

NOTICE OF ENTRY OF ORDER

Please Take Notice: On September 24, 2020 the Court entered an Order on Motion for Attorney's Fees and Costs in the above captioned matter, a true and correct copy of which is attached hereto as Exhibit 1.

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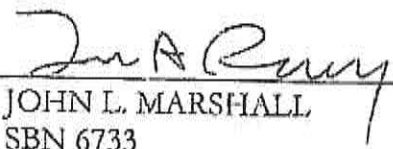
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NRS 239B.030(4) AFFIRMATION

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

4
5 Respectfully submitted this Saturday, September 26, 2020:

6 By:


7 JOHN L. MARSHALL

8 SBN 6733

9 570 Marsh Avenue

10 Reno, Nevada 89509

11 Telephone: (775) 303-4882

12 johnmarshall@charter.net

13 Luke Andrew Busby, Ltd.

14 Nevada State Bar No. 10319

15 316 California Ave #82

16 Reno, NV 89509

17 775-453-0112

18 luke@lukeandrewbusbyltd.com

19 Attorneys for the Defendant

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Exhibit List

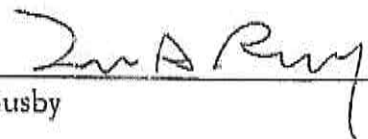
1. Order on Motion for Attorney's Fees and Costs

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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.

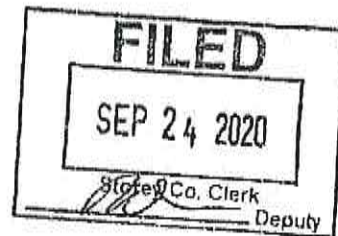
GUS W. FLANGAS
JESSICA K. PETERSON
Flangas Dalacas Law Group
3275 South Jones Blvd. Suite 105
Las Vegas, NV 89146
702-307-9500
F - 702-382-9452

By: 
Luke Busby

Dated: 9-26-20

Exhibit 1

Exhibit 1



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.
27

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 Serus., Inc.*, No. 318CV00132MMDCLB, 2020
10 WL 1694771, at *2 (D. Nev. Apr. 7, 2020).

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

Date	Description of Work	Time Keeper	Hours Awarded	Objection/ Court's Decision
12/18/17	Email client	JLM	0	Not related to anti-SLAPP motion/ agree

1	12/22/17	Mtg with client	JLM	Ø	Not related to anti-SLAPP motion/ agree
2					
3	12/27/17	Draft and revise Answer + Motion to Change Venue	JLM	Ø	Not related to anti-SLAPP motion/ agree
4					
5	12/22/17	Initial meeting with Toll	LAB	Ø	Not related to anti-SLAPP motion/ agree
6					
7	12/28/17	Draft and revise Answer + Motion to Change Venue	JLM	Ø	Not related to anti-SLAPP motion/ agree
8					
9					
10	12/23/17	Research and draft of Motion to Change Venue	LAB	Ø	Not related to anti-SLAPP motion/ agree
11					
12	12/23/17	Draft Affidavit of Sam Toll re: Motion to Change Venue	LAB	Ø	Not related to anti-SLAPP motion/ agree
13					
14	12/23/17	Draft Answer to Complaint	LAB	Ø	Not related to anti-SLAPP motion/ agree
15					
16					
17	12/26/17	Meeting with Toll and retainer agreement	LAB	Ø	Not related to anti-SLAPP motion/ agree
18					
19	12/28/17	Finalize and file answer	LAB	Ø	Not related to anti-SLAPP motion/ agree
20					
21	1/12/18	Request to submit venue motion	LAB	Ø	Not related to anti-SLAPP motion/ agree
22					
23					
24	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
25					
26					
27					

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					
11	4/19/18	Meet client re order and discovery	LAB	1.2	Not related to anti-SLAPP motion/ disagree
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.

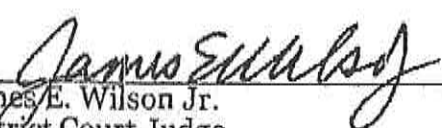
3 Toll's receipts and affidavit that indicating the costs were necessarily incurred
4 did not establish that the claimed costs were reasonable, necessary, and actually
5 incurred. Toll's request for costs will be denied.

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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1 CERTIFICATE OF SERVICE


2 I certify that I am an employee of the First Judicial District Court of Nevada;
3 that on the 24 day of September 2020, I served a copy of this document by placing
4 a true copy in an envelope addressed to:

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

John L. Marshall, Esquire
570 Marsh Avenue
Reno, NV 89509

Luke Andrew Busby, Esq.
316 California Avenue
Reno, NV 85909

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

13 
14 Billie Shadron
15 Judicial Assistant
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