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

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

11 vs.

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

CASE NO.: 18 TRT 00001 1E

DEPT. NO.: 2

**ORDER ON PLAINTIFF'S MOTION
TO COMPEL, FOR SANCTIONS, TO
EXTEND DISCOVERY PERIOD, AND FOR
SUMMARY JUDGMENT
AND
ORDER VACATING HEARING**

16 **PROCEDURAL BACKGROUND**

17 Sam Toll authors articles he publishes on a website under the domain
18 storeyteller.online (the Storey Teller). Lance Gilman sued Toll for defamation based
19 upon several articles Toll published on the Storey Teller. Toll filed an Anti-SLAPP
20 motion to dismiss. The Court entered an order allowing Gilman to conduct discovery
21 limited solely to information as to whether Toll knew the "resident communications,"
22 (specifically described in the Order Granting Anti-SLAPP Special Motion to Dismiss in
23 Part and Allowing Limited Discovery beginning at page 7 of the order), were false or
24 whether Toll acted with a high degree of awareness of the probable falsity of the
25 statement or had serious doubts as to the publication's truth.

26 Before the Court is Plaintiff's Motion to Compel, Motion for Sanctions, Motion to
27 Extend the Time Period for Discovery, and in the Alternative, Motion for Partial
28 Summary Judgment. Toll opposed the motion and Gilman filed a reply. The Court

1 issued an Order for Evidentiary Hearing on Motion to Compel. Upon further review it
2 appears an evidentiary hearing is not necessary as the facts necessary to decide the
3 motion are not contested. The issues for the Court to decide are legal issues.

4 5 **ISSUES**

6 Is Toll a reporter of a newspaper or press association?

7 If Toll is a reporter of a newspaper or press association, should the news media
8 privilege yield to Gilman's need for the sources of information to obtain evidence which
9 is essential to Gilman's ability to prove actual malice.

10 If Toll is not a reporter of a newspaper or press association, should the Court
11 impose sanctions for Toll's refusal to answer the deposition questions?

12 If Toll is not a reporter of a newspaper or press association, should the Court
13 grant Gilman's request to extend the discovery deadline?

14 Has Gilman demonstrated he is entitled to summary judgment?

15 16 **FACTS**

17 Toll publishes articles on his Storey Teller blog.

18 The articles Toll publishes contain facts or alleged facts, opinions, commentary,
19 and/or satire related to events in Storey County.

20 Toll's articles contain reports and comments on events in Storey County.

21 The Storey Teller is published electronically only. The Storey Teller is not printed.

22 The articles at issue were published by Toll on April 7, 2017, April 18, 2017, May
23 20, 2017, October 16, 2017, and December 3, 2017.

24 Toll has been a member of the Nevada Press Association since August of 2017.

25 Gilman deposed Toll and asked questions about Toll's sources of information
26 related to the "resident communications." The deposition questions about sources that
27 Gilman included in his motion did not specify any specific time frame.

1 Toll asserted the news media privilege in response to several questions as set out
2 in Gilman's motion.

3
4 **LEGAL PRINCIPLES**

5 NRS 49.275, the news media privilege, provides in relevant part:

6 No reporter, former reporter or editorial employee of any
7 newspaper, periodical or press association ... may be required to disclose ...
8 the source of any information procured or obtained by such person, in any
9 legal proceedings, trial or investigation:
10 1. Before any court

11 A party asserting a privilege has the burden of proving that the privilege applies.
12 *McNair v. Eighth Judicial Dist. Ct.*, 1285, 1289, 885 P.3d 576, 579 (1994) (the burden is
13 on the party asserting a privilege to establish that the requested information comes
14 within the privilege).

15
16 **ANALYSIS**

17 *Arguments of counsel*

18 Gilman argued there is nothing in the four corners of NRS 49.275 that applies to
19 Toll or his Storey Teller. Gilman pointed out that the "About Section" of the Storey
20 Teller states, "the [Storey Teller] was created to provide a source of irritation to the
21 Good Old Boys who operate The Biggest Little County in the World with selfish impunity
22 forever." Gilman argued "the Storey Teller by its own admission was not created for the
23 purpose of disseminating news to the general public," "the Storey Teller is not news,"
24 and therefore, "the Defendant is not a reporter." Gilman further argued that "there is
25 nothing providing for a blogger such as the Defendant in the statute." Gilman asserted
26 Toll "has never made a showing how he qualifies for the protections afforded by NRS
27 49.275, and therefore, "the Defendant is not entitled to the protections set forth in NRS
28 49.275."

29 In opposition Toll argued he is a reporter because he started the Storey Teller as
30 an alternative to the Comstock Chronicle, a newspaper published in Virginia City; the

1 articles Toll published “relate to news events and/or opinion and/or satire about news
2 events in Storey County.” Toll points out he is and has been a member of the Nevada
3 Press Association since August of 2017, and that Association lists on its website the
4 Storey Teller as a “specialized publication.” Toll also has a Nevada Legislative Counsel
5 Bureau (LCB) identification. The Court received no evidence of when Toll received the
6 LCB identification. Toll provided a dictionary definition of “reporter” that includes a
7 person who is employed by a newspaper, magazine, or television company to gather and
8 report news, and a person who broadcasts news. Toll cites to a Ninth Circuit decision
9 that indicated “with the advent of the Internet and the decline of print and broadcast
10 media ... the line between the media and others who wish to comment on political and
11 social issues become far more blurred.”

12 In reply Gilman essentially repeated arguments he made in his motion.

13
14 *Is Toll a reporter of a newspaper or press association?*

15 Under NRS 49.275, as applicable to this case, a reporter of any newspaper,
16 periodical or press association has a privilege refuse to disclose any source of
17 information procured or obtained by such person in any legal proceeding before a court.

18 A party asserting a privilege has the burden of proving that the privilege applies.
19 Because Toll is asserting the news media privilege he has the burden of proving the
20 privilege applies. Toll did not provide facts, legal authority, or argument that the Storey
21 Teller is a periodical and therefore the Court will not address whether the Storey Teller
22 is a periodical. Therefore, Toll has the burden of proving he is a reporter of a newspaper,
23 or of a press association.

24 The Court will first address whether Toll is a reporter.

25 Toll’s articles at issue contain reports of facts or alleged facts, opinions,
26 commentary, and/or satire related to events in Storey County. A “reporter” is defined as
27 one that reports; one who reports news events; a commentator. Webster’s Third New
28 International Dictionary 1926 (2002). Because Tolls’ articles at issue contain reports of

1 facts or alleged facts, opinions, commentary, and/or satire related to events in Storey
2 County, Toll fits the definition of a reporter. The Court concludes Toll is a reporter.

3 The Court next turns to whether the Storey Teller is a newspaper.

4 Toll publishes his articles on the internet and not in any other format. He does
5 not print his articles. The Legislature did not define "Newspaper" in NRS 49.275 or
6 elsewhere in Chapter 49. The Legislature has defined "newspaper" in several other
7 chapters of the NRS. It appears that under all of the statutory definitions a newspaper
8 must be printed. For example, NRS Chapter 238, which relates to legal notices and
9 advertisements, in 238.020, defines daily, triweekly, semiweekly, weekly and
10 semimonthly newspapers. All of the definitions in NRS 238.020, and apparently
11 throughout the Nevada Revised Statutes, include that a newspaper is printed. The
12 Legislature's definition of "newspaper" in NRS 238.020 is particularly relevant and
13 significant because if a blog is a newspaper, then legal notices "or other written matter
14 whatsoever, required to be published in a newspaper by any law of this State, or by the
15 order of any court of record in this state" (NRS 238.010) could be published on a blog.

16 The statutory definitions are consistent with the usual and natural meaning of
17 "newspaper." Webster defined "newspaper" as a paper that is printed and distributed.
18 Webster's Third New International Dictionary 1524 (2002). Toll did not offer any
19 definition of "newspaper" that would cover a blog. Whether a blog should be covered by
20 the news media privilege is a matter for the legislature, not the courts.

21 Toll argued the Nevada Press Association's website includes the Storey Teller as a
22 "specialized publication." That is true. The website also contains information regarding
23 "daily newspapers." That heading includes the Las Vegas Review Journal, the Reno
24 Gazette Journal, the Elko Daily Free Press, the Nevada Appeal, and Nevada Legal News.
25 The Court takes judicial notice that all of those publications are printed. The website
26 also contains information concerning "non-daily newspapers." The Court is not familiar
27 with the publications listed as non-daily newspapers. The point is, the Nevada Press
28 Association recognizes a number of publications as newspapers, but the Storey Teller is

1 not one of them. Toll submitted an affidavit of Barry Smith, Executive Director of the
2 Nevada Press Association. Mr. Smith did not say the Storey Teller is a newspaper. In fact
3 he distinguishes between daily and weekly news publications on the one hand and
4 online news services, magazines, and others, on the other hand.

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

8 The Court turns now to whether Toll is a reporter of a of a press association. Toll
9 is and has been a member of the Nevada Press Association since August of 2017. Gilman
10 did not present any facts, legal authority, or argument that the Nevada Press Association
11 is not a press association. The Court finds and concludes the Nevada Press Association is
12 a press association. Because Toll is a member of a press association the Court concludes
13 he is reporter of a press association and therefore the news media privilege may apply.

14 Because Toll has been a reporter of a press association since August of 2017 he is
15 and has been covered by the NRS 49.275 news media privilege since August of 2017.
16 But, because he was not a reporter for a newspaper or press association before August of
17 2017 he was not covered by the news media privilege before August of 2017. Therefore,
18 the news media privilege does not cover sources of any information procured or
19 obtained by Toll before August of 2017, and therefore, the motion to compel must be
20 granted as to any sources of information procured or obtained by Toll for the articles at
21 issue before August of 2017.

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23 *Should the news media privilege yield to Gilman's need for the sources of information
24 to obtain evidence which is essential to Gilman's ability to prove actual malice?*

25 The United States District Court for the District of Nevada has addressed this
26 issue. In *Newton v. National Broadcasting Co.*, 109 F.R.D. 522 (1985) the singer and
27 actor, Wayne Newton, sued NBC for defamation allegedly contained in news broadcasts.
28 Newton was a public figure and so, like Gilman, had to prove actual malice to prove

1 defamation. Newton sought discovery of NBC's sources and NBC invoked the NRS
2 49.275 news media privilege. The court acknowledged that the information about
3 sources was critically important to Newton's ability to meet his burden of proof. The
4 court noted the tension between a defamation plaintiff's legitimate interest in
5 attempting to meet his burden of proof on actual malice and the equally legitimate
6 interests of a media defendant's interests in protecting the confidentiality of its sources
7 and thereby presumably promote the viability of a free press. The court came to the
8 "inescapable conclusion" that NBC could not be forced to disclose its sources because of
9 Nevada's statutory news media privilege. The court noted "the Nevada legislature, in
10 granting almost absolute protection to a journalist from disclosure of his confidential
11 sources, has made a decision to favor the public's interest in access to information over
12 an individual's interest in vindicating his reputation in a defamation action." *Id.* 530.

13 For the same reasons the same result is required in this case. This Court
14 acknowledges that the information about sources is critically important to Gilman's
15 ability to meet his burden of proof on the actual malice issue. The Court concludes the
16 news media privilege does not yield to Gilman's need for the sources of information to
17 obtain evidence which is essential to Gilman's ability to prove actual malice. The
18 privilege does not yield because the Nevada Legislature, in granting almost absolute
19 protection to a journalist from disclosure of his confidential sources, has made a
20 decision to favor the public's interest in access to information over an individual's
21 interest in vindicating his reputation in a defamation action and thereby presumably
22 promoting the viability of a free press.

23

24 *Should the Court impose sanctions for Toll's refusal to answer the deposition*
25 *questions?*

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27 Gilman has not, in his points and authorities, shown that any of the deposition
28 questions in issue were about any specific time frame. The Court concludes that because

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1 the deposition questions were not limited to sources of information Toll procured or
2 obtained before August of 2017 the motion for sanctions will be denied.

3
4 *Should the Court grant Gilman's request to extend the discovery deadline?*

5 Because the motion to compel must be granted in part, the Court concludes
6 Gilman's motion to extend the time for discovery must also be granted so he can obtain
7 discovery of sources of information procured or obtained by Toll before August of 2017.

8
9 *Should the Court grant Gilman's motion for partial summary judgment?*

10 The Court concludes Gilman has failed to show that he is entitled to partial
11 summary judgment. Therefore his motion for partial summary judgment must be
12 denied.

13
14 **CONCLUSIONS OF LAW**

15 Because Toll was not a reporter for a newspaper or press association before
16 August of 2017 he was not covered by the news media privilege before August of 2017,
17 and therefore, the motion to compel must be granted as to any source of information
18 obtained or procured by Toll before August of 2017.

19 Because Toll has been and is a reporter of a press association since August of 2017
20 he is and has been covered by the news media privilege since August of 2017, and
21 therefore the motion to compel must be denied as to any source of information procured
22 or obtained by Toll during or after August of 2017.

23 The news media privilege does not yield to Gilman's need for the sources of
24 information to obtain evidence which is essential to Gilman's ability to prove actual
25 malice.

26 Because the deposition questions were not limited to sources of information Toll
27 procured or obtained before August of 2017 the motion for sanctions will be denied.

1 Gilman's motion to extend the time for discovery must be granted so he can
2 obtain discovery of sources of information procured or obtained by Toll during or before
3 August of 2017.

4 Gilman failed to show he is entitled to partial summary judgment.

5
6 **ORDER**

7 Gilman's motion to compel is granted as to sources of information procured or
8 obtained by Toll before August of 2017.

9 Gilman's motion to compel is denied as to sources of information procured or
10 obtained by Toll during and after August of 2017.

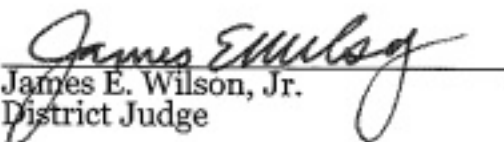
11 Toll will not be allowed to rely on the privileged information as a defense under
12 *Diaz v. Dist. Ct.*, 116 Nev. 88, 101993 P.2d 50 (2000), citing *Las Vegas Sun*, 104 Nev.
13 508, 514, 761 P.2d at 853-54 (1988).

14 Gilman's motion for sanctions is denied.

15 Gilman's motion to extend the time for discovery is granted. Discovery must be
16 completed by April 12, 2019.

17 Gilman's motion for partial summary judgment is denied.

18 March 4, 2019.

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20 James E. Wilson, Jr.
21 District Judge
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