STATE OF MINNESOTA
IN COURT OF APPEALS

Jerry Moore,

Respondent,

v.

John Hoff a/k/a Johnny Northside,

Appellant.

Court of Appeals No. A11-1923

RESPONDENT'S RESPONSE TO SEVERAL ORGANIZATIONS' REQUEST TO SUBMIT AMICUS BRIEF: AFFIDAVIT OF JILL CLARK ("CLARK-APPELLATE AFF.")

Exhibit A is Moore's May 25, 2011 cover letter (showing date of filing), and his 'corrected' memorandum supporting his motion to strike the Society Pro's pleading.

Exhibit B is the Special Verdict form signed by foreperson of jury.

Exhibit C is Moore's memorandum opposing Hoff's post-verdict motions.

Exhibit D is the Society Pro's cover letter and memorandum filed in support of Hoff's case.

Exhibit E is Hoff's April 1 cover letter and memorandum supporting his post-verdict motions.

Exhibit F is a copy of a letter that Moore's attorney sent to the District Court, objecting to the Society Pro's "amicus" memorandum.

Exhibit G is the District Court's order denying Hoff's post-verdict motions.

Exhibit H is Hoff's statement of the case, filed with this Court.

This concludes this affidavit of 2 pages.

Signed and sworn before me this
23rd day of November, 2011.

Notary Public

JEFFREY MARC ROTH
NOTARY PUBLIC
MINNESOTA
My Commission Expires Jan. 31, 2015

Jill Clark, Esq.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

v.

Donald W.R. Allen, individual and as Principal of V-Media Development Corporation, Inc. a Minnesota Non-Profit corporation, John Hoff a/k/a Johnny Northside, and John Does 1-5,

Defendants.

Civil No. **27-cv-09-17778**

Plaintiff's Memorandum of Law filed in Support of his Motion to Strike Pleading of Society

INTRODUCTION

There are only two parties left in this case: Plaintiff Moore, and Defendant Hoff.

For reasons that are unclear, the Society of Professional Journalists ("Society") filed a pleading in this case although it is undisputed it was never served, never a party, and never moved to intervene. The Society then presumed to schedule "oral argument" in Plaintiff's case. Not only did Plaintiff not permit the filing, but Plaintiff began objecting to the pleading on the day the Society filed it.

Plaintiff now moves to strike the Society's pleading pursuant to Minn.R.Civ.P.12.06, because the pleading is: 1) not in Compliance with Minn.R.Civ.P. 11; 2) Redundant; and 3) Immaterial. ***Plaintiff does not seek oral argument on this motion.*** Rather, he seeks a ruling prior to May 31, 2011 striking the pleading and the purported "oral argument" of the Society.

EXHIBIT A

FACTUAL STATEMENT

It is undisputed that Defendant Don Allen settled his dispute with Jerry Moore, and that as of the commencement of trial there were only 2 parties in this case: Plaintiff Jerry Moore and Defendant John Hoff.

On or about March 23, 2011, the Society filed its first pleading in this case entitled a "motion," and "memorandum." (Clark Strike-Aff. Exh. A).

It is undisputed that the "motion" was not styled as a motion to intervene, but instead was styled as a motion "for leave to participate as Amicus Curiae." *Id.* Further, it is undisputed that the "memorandum" filed therewith, did not set forth why the Society may intervene in this matter. *Id.*

Still further, the "memorandum" cited as its "authority" to intervene in this case only a Rule of Appellate procedure, Rule 129. *Id.* at p. 2. The Society's "memorandum" also cited to a 2009 version of *Appellate Rules Annotated, §129.1 and 129.3. Id.*

Because the Society cited this rule and these sections of *Appellate Rules Annotated,* Plaintiff believes he is entitled to presume that they read them. Section 129.1 begins, "Minn.R.Civ.App.P. 129 governs the procedure for obtaining leave of the **appellate courts** to file an amicus curiae brief." (Emphasis added). Two sentences later that very section states, "**An amicus curiae does not participate in oral argument** except with the express permission of the appellate court." (Emphasis added).

Section 129.3 states, "A request to file an amicus curiae brief must be filed with the **appellate** court...." (Emphasis added). That Section continues at paragraph 3,

> The purpose of an amicus curiae brief is to inform the court of facts or matters of law that may have escaped its consideration not to repeat or emphasize arguments already put forth by a party. ... The Seventh Circuit Court of Appeals urges counsel for amicus curiae to ascertain before the amicus brief is written the arguments which will be

made by the party whose position an amicus supports so that unnecessary repetition or restatement of arguments will be avoided.

It is undisputed that the Society filed its pleading in the trial court (not in an appellate court), and that the Society did not cite any law that would make appellate rules applicable to the trial court.

And, instead of awaiting *permission* to file its brief, and instead of seeking or awaiting *permission* to set on oral argument (as are required in Appellate Rule 129, the only authority cited by the Society – see Exh. C to Clark Strik-Aff.), the Society presumptuously filed its brief and set on oral argument.

Further, at the point the Society filed it, Hoff had not yet filed post-verdict motions. This means that Hoff had the Society's brief by the time he filed his own.

On or about March 24, 2011, upon receiving the pleadings of the Society, Plaintiff left a voicemail for the Society's counsel asking for a call back. The Society's attorney never returned the call. (Clark Strike-Aff. ¶2). The voicemail from Plaintiff also indicated that the Society clearly did not know the facts of the case. (Not verbatim but the content.) *Id.*

In response, the Society's Attorney sent an email to Plaintiff stating, "I listened to your voicemail. If there is information you think I should receive, feel free to send me an email." (Clark Strike-Aff. Exh. D, email sent by Attorney Borger at 8:22 a.m.).

Plaintiff wrote back,

> You should have asked me before filing the motion. You have a duty under Rule 11 to investigate the facts – before filing.
>
> There is no legal authority (that I can see) for your "district court amicus" brief. Further, even if this were at the Court of Appeals and your "client" was granted permission to file an amicus brief: a) the permission must precede the brief; and b) the Amicus does not get to argue.
>
> ...

Your "client" has wrongfully insinuated itself into these legal proceedings (you do not represent a party and [] you have no right to schedule argument on anything) and your papers must be withdrawn.

If you think you had some legal authority to do what you did, please provide it by the end of the day. (This is an attempt to resolve this issue without need for Rule 11 proceedings.)

(Clark Strike-Aff. Exh. D, email sent by Attorney Clark at 8:30 a.m.).

Plaintiff never received any email response from the Society – ever. (Clark Strike-Aff. ¶3).

On March 28, 2011, Plaintiff served but did not file a Rule 11 motion. (Clark Strike-Aff. ¶4).

The Society did not withdraw or modify any of its pleadings, except to *add* an oral argument date of May 31, 2011.

Now that Hoff has filed post-verdict motions, it is clear that the Society's brief is redundant and immaterial.

I. SOCIETY'S PLEADING SHOULD BE STRICKEN.

The Society's pleading should be stricken under Minn.R.Civ.P.12.06.

A. Rule 12.06 is appropriate vehicle to strike Society pleadings.

Minnesota Rule of Civil Procedure 12.06 reads,

12.06 Motion to Strike.

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party, or upon its own initiative at any time, **the court may order any pleading not in compliance with Rule 11 stricken** as sham and false, **or may order stricken** from any pleading any insufficient defense or any **redundant, immaterial,** impertinent or scandalous matter.

(Emphasis added).

"Minn. R. Civ. P. 12.06 says a motion to strike may be made on the grounds the pleadings are a sham and false, or constitute an 'insufficient defense,' or contain 'redundant, immaterial, impertinent or scandalous matter.'" *Tarutis v. Commissioner of Revenue*, 393 N.W.2d 667, 669, n. 1 (Minn. 1986). The Society's pleading is not a Complaint or Answer, so it is not the type of pleading to which a responsive pleading is required. Rule 12.06 has been used to strike pleadings other than complaints and answers. *See, e.g., Untiedt v. Schmit*, 2001 Minn. App. LEXIS 129 (Minn. Ct. App. 2001).

Further, prior to the promulgation of the Rules of Civil Procedure, a motion to strike was used to object to the filing of a purported intervenor. *See, e.g., Hoidale v. Cooley*, 143 Minn. 430 (Minn. 1919) (motion to strike intervenor's answer because no basis to intervene); *Regan v. Babcock*, 188 Minn. 192 (Minn. 1933). (Motion to strike intervenor's complaint); *Twin City Milk Producers Ass'n v. Helger*, 199 Minn. 124 (Minn. 1937) (Motion to strike portions of intervenor's complaint). The Society did not specifically move to intervene and has not plead or shown that it can satisfy the criteria set forth in Minnesota Rule of Civil Procedure 24. However, it appears that it desires the rights of an intervenor (to litigate within the case as a party), without having to meet the criteria.

B. Society's pleadings are Redundant and Immaterial.

Now that Hoff has filed his post-verdict motions, it is clear that the Society's pleadings are redundant and immaterial. Beginning at page 2 of Hoff's pleadings, he makes the same argument made by the Society: that if a statement was true, then it cannot form the basis of a tortuous interference claim. Plaintiff does not agree with that argument, and does oppose it. But for purposes of this memorandum Plaintiff merely points out that it is the same argument

made by the Society. The Society's pleadings, therefore, are redundant and immaterial to oral argument, and to this Court's determination.

II. To the Extent Necessary, the Society's Pleadings Violate Rule 11.

Plaintiff first sought informal disclosure by the Society of law that supports this *trial court* request to act as Amicus. None was forthcoming. Then, Plaintiff served but did not file a Rule 11 motion, in compliance with the 'safe harbor' provisions of Rule 11. (Rule 11 at Clark Strike-Aff. Exh. E). The Society did not withdraw its pleadings. The Society did not modify its pleadings or at any time add or provide Plaintiff with any *law* supporting: i) filing an amicus motion at the *trial court level;* ii) filing a brief on the merits without awaiting *permission* of the trial court on the issue; and/or iii) scheduling oral argument without specific permission of the trial court.

The Society's pleadings violate Rule 11 (either as a free-standing Rule or as referenced inside Rule 12.06) because:

> (b) the [] legal contentions therein are [**not**] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law....

See Rule 11.01(b); and because:

> (c) the allegations and other factual contentions [**do not**] have evidentiary support ....

See Rule 11.01(c). The Society did not include *any* facts in its memorandum. Nor is there any reasonable basis to assume it knows the facts of *this* trial or will learn them in the near future. Plaintiff does not see any evidence that the Society purchased a transcript of the trial. Further, based on the knowledge of Plaintiff counsel, no member of the Society attended the trial on any regular basis such that they could have known what fact were adduced at trial. (Clark Strike-Aff. ¶5).

Plaintiff timely served a Rule 11 motion on the Society and more than 21 days have passed since that service. The Society has not withdrawn or modified its pleadings to deal with the problems identified by Plaintiff. (Clark Strike-Aff. ¶4).

III. Moore is Prejudiced by having to respond to Multiple Briefs.

Allowing the Society to insinuate itself into this proceeding without having to file and having granted a motion to intervene sets a bad precedent. Coverage of this trial went national. Imagine if societies all across the country had sought to file amicus briefs? Or, the multiple blogs whose personnel clogged the hallways outside the trial on certain days sought to file amicus? No party who has worked diligently to try an efficient case should be beleaguered by multiple briefs, particularly not from non-parties. Plaintiff counsel has already expended around $1,000 of legal work on the Society's papers – which should not have had to occur. (Clark Strike-Aff. ¶6).

Finally, as a practical matter, it appears the Society's work is done. The Society may well have sought to "coach" Hoff and his attorney as to this argument. If so, then that coaching has occurred (see Hoff's memorandum).[1] Moore should not have to respond to a non-party's brief which is not even on point to this case. And, Hoff should not be allowed an "additional" lawyer on this argument at oral argument.

IV. No Monetary Sanctions Sought at this Time.

Plaintiff seeks the timely relief of striking the Society's pleadings and striking their oral argument. If that occurs, Plaintiff will not seek any monetary sanction. If the Society withdraws its pleadings and request to speak in this case at a non-party at oral argument, Plaintiff will not seek any fees. This position is taken in large part to allow a speedy resolution

[1] More's the pity, as the Society did *not* know this case or this trial, and its argument may have misled Hoff. But that was Hoff's decision.

to this issue without having to set *this* matter on for hearing (Plaintiff is not requesting oral argument), full briefing by the Society, etc.

However, if the Society continues to pursue this matter, Plaintiff does reserve the right to seek attorney fees, which will be higher by that point.

CONCLUSION

For all of the above reasons, Plaintiff Jerry Moore respectfully requests that this Court strike the pleadings of the Society and strike the Society's counsel's appearance from the oral argument.

Dated: May 16, 2011

ATTORNEY FOR PLAINTIFF

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

STATE OF MINNESOTA

COUNTY OF HENNEPIN

FILED
2011 MAR 11 AM 11:08
HENNEPIN COUNTY DISTRICT COURT

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

SPECIAL VERDICT FORM

Court File No. 27-CV-09-17778

We, THE JURY, in the above-entitled action, for our special verdict, answer the question submitted to us as follows:

1. Was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." false?

NO
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Did the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." convey a defamatory meaning as to Jerry Moore?

_____
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* By clear and convincing evidence, was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." made by John Hoff with actual malice?

_____
Yes or No

[If your answer to Question 3 was "Yes", then answer Questions 4 and 5.]

4. What amount of money will fairly and adequately compensate Jerry Moore for damages directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." up to the time of this verdict, for:

a. Past harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Past economic loss? $_____

EXHIBIT B

5. What amount of money will fairly and adequately compensate Jerry Moore for damages reasonably certain to occur in the future, directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." for:

a. Future harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Loss of future earning capacity? $_____

[Answer Questions 6 and 7 regardless of your answers to Questions 1-5.]

6. Did John Hoff intentionally interfere with Jerry Moore's employment contract?

Yes
Yes or No

7. Did John Hoff interfere with Jerry Moore's prospective employment advantage?

Yes
Yes or No

[If your answer to Questions 6 and/or 7 were "Yes," then answer Question 8.]

8. What amount of money will fairly and adequately compensate Jerry Moore for damages caused by interference with a contractual relationship and/or prospective advantage for:

a. Loss of benefits of the contract or the prospective relationship? $ 35,000

b. Other losses directly caused by the interference? $ 0

c. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference? $ 25,000

Foreperson

Jurors concurring sign here:

1._____ 4._____

2._____ 5._____

3._____ 6._____

Dated: _____ at _____ o'clock ___ m. at Minneapolis, Minnesota.

May 25, 2011

VIA HAND DELIVERY

Court Administrator
Civil Filing
300 S. 6th Street
Minneapolis, MN 55487

Re: Moore v. Hoff *et al* (**27-CV-09-17778**)

Dear Court Administrator:

Enclosed for filing please find Plaintiff's Memorandum of Law in Opposition to Defendant Hoff's post-verdict motions.

Sincerely,

COPY

Peggy M. Katch

PMK/slf
Enclosure
c: Client; Opposing counsel

EXHIBIT C

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

v.

John Hoff, a/k/a Johnny Northside,

Defendants.

Civil No. 27-cv-09-17778

Plaintiff's Memorandum of Law in Opposition to Defendant Hoff's post-verdict motions: CORRECTED

INTRODUCTION

Defendant Hoff's "post-verdict" motions read like a list of things he wish he had done during the litigation. Without exception, for each of the issues that Hoff now raises, he had over a year to raise them in the litigation, and did not. Even as we neared trial, and the Court graciously gave his new, incoming counsel additional time to file trial pleadings, Hoff failed to: a) file requested jury instructions; b) brief or even raise First Amendment issues; or c) seek to submit evidence that could have helped him dispute Moore's evidence.

Now, Hoff wants a 'do over.'

For the reasons stated below, all of Hoff's motions should be denied.

PROCEDURAL POSTURE AT TIME OF HEARING

Following several days of trial, the jury returned the special verdict form ("SVF" at **Att. A**).

Hoff did not file any "affidavits" with his post-verdict motions. He made legal argument that judgment should be entered in favor of Hoff.

Hoff made several legal arguments without discussing any facts, and Plaintiff contends that Hoff cannot, in some type of "reply" brief, expand arguments that were not briefed fully enough for Moore to be able to defend, or file affidavit(s).

Judgment was entered in favor of Moore.

Hoff sought and received permission to have his motions heard on May 31, 2011.

FACTUAL STATEMENT

Hoff did not allege or submit any new "facts" not already in the transcript-record.

The SVF asked the jury whether one specific statement was false, "**Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Av. N.**" Att. A, p.1 (the "falsity sentence"). That is the sole statement that the jury was asked to decide whether it was false.[1]

The SVF awarded $35,000 for the intentional interference with contract and/or interference with prospective employment advantage. Att. A, p. 2. Thirty-five thousand for "loss of benefits of the contract of the prospective relationship" and twenty-five thousand for "emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference." *Id.*

The SVF did not award anything for "future" damages. *Id.*

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1 False here means that plaintiff did not show by a preponderance of evidence that the statement was false. That is not the same as a finding by the jury that the statement was 'true.'

ARGUMENT

I. HOFF'S MOTIONS SHOULD BE DENIED.

Hoff contends that the jury's verdict was "inconsistent," because a "true" statement cannot form the basis for a claim of tortious interference with contract. Hoff does not directly address it, but may be implying that a claim of interference with prospective employment advantage is also subject to this analysis. Moore here asserts that Hoff's failure to apply his argument to both "interference" claims means he has waived the one.

However, Plaintiff argues in the alternative that even if Hoff had made the argument against both "interference" claims, the argument must fail.

Hoff avoids the evidence adduced at trial

There are various impediments to Hoff's argument, but the most glaring is that Hoff studiously avoids most of the evidence that supports the "interference" claims. The jury heard several days of evidence. Hoff only analyzes the falsity sentence. At no time did Moore ever contend that the falsity sentence was the basis for his interference claims against Hoff.[2]

Although it will be further addressed below, Hoff has an erroneous view of the First Amendment. The principal purpose of the First Amendment is to protect the citizenry *from*

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[2] Because Hoff's memorandum section I focuses on the falsity sentence and whether its lack of falsity finding can be the basis of the interference claims, and because there was significant evidence that the jury could consider that was *not* the falsity sentence, most of Hoff's citations are irrelevant. The interference claims were not based on the same conduct or statements as the claim for defamation. Note that *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991) permitted a promissory estoppels claim against a media defendant to forward, because it was supported by evidence that the newspaper had published a confidential informant's name, and was therefore not based on the same conduct as a defamation claim. *NAACP* is not on point here. In that case, the hardware store argued that nearby boycotters should be liable for the assaults perpetrated by other people. The boycott was deemed First Amendment activity. Whether a boycott is protected by the First Amendment is an issue of fact in each particular case. Numerous boycotts (meaning pressure on someone else to do or not do something) have been found *not* to be protected by the First Amendment.

government. Hoff seems to assert that every single word he says is protected by the First Amendment, *no matter how it is used.* Hoff ignores thousands of years of British and American law, in which words of a defendant have been the basis of liability, either as an admission of conduct, or as an expression of intent.

Moore's use of Hoff's words as evidence of *intent* was completely proper.

Hoff was aware of, but studiously avoided evidence such as:

- Hoff blogged in his June 21, 2009 blog, "In fact my reason for delaying this post about this matter was because I was prevailed upon to avoid airing this dirty laundry until there was a chance, behind the scenes, to call some leaders at U of M and fix this mess." (Exh. 1).
- Don Allen testified that the goal was to get Moore fired, that he sent an email at Hoff's behest, the email threatened a public relations nightmare campaign (and Allen confirmed that was true, that was the intent of it), and that Allen blind-copied Hoff on the email ("Email"); (Exh. 1).
- That Email stated that Allen would wait a short time;
- Within one day[3] of the Email, Dr. McLaurin (who the U of M witness confirmed made the firing decision) sent Moore the termination letter at Exh. 3.
- Then, in his June 23, 2009 blog, Hoff bragged about getting Moore fired. (Exh. 2). Indeed, he posted, "I say that merely 'letting go' of Moore isn't good enough." Hoff's contemporaneous description was *not* that Moore had finished some assignment. Hoff, claiming to be 'in the know,' stated that Moore was "let go."

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3 Close timing is evidence of causation. *See, e.g., Clark County Sch. Dist. v. Breeden,* 532 U.S. 268, 273 (2001).

This is not an entire recitation of trial evidence, but the above facts are sufficient to show: a) Hoff took *actions* over and above his claimed "journalistic" diatribe to get Moore fired; b) that he intended to get Moore fired; and c) that there was a connection between his actions and Moore's termination.

Although Hoff suggested that there was insufficient circumstantial evidence – that is not accurate. One day between action and result is the strongest possible circumstantial evidence. Of course, in this case, there was also direct evidence (in the form of Don Allen's testimony and documentation).

Further, intent is nearly always proven by circumstantial evidence. Here, the jury had more than circumstantial evidence of intent: the jury could read Hoff's blogging of his mental attitude – which confirmed he intended to get Moore fired and then was proud of it when he did.

The Email from Don Allen is in evidence (as part of Exh. 1) and not one of those statements were determined by the jury not to be false. Indeed, *Hoff requested that any statement made by Don Allen be affirmatively removed from the statements that the jury would consider.*

Further, the Email is contained within Exhibit 1 (June 21 post), and Hoff bragged in Exhibit 2 (June 23 post) that pages from his blog were "waved around" at the U of M just before Moore was fired. There was plenty of evidence of "wrongful behavior" by Hoff – Hoff just refuses to deal with it in his post-verdict motions.

This is not a discussion of all of the evidence adduced at trial that the jury could reasonably consider in reaching its verdict on the interference claims, but it is sufficient.

Finally, defamation law does not trump all other torts. As Hoff concedes, the other torts must be based on the allegedly defamatory statements. Hoff memo page 4. Here, they were not.

Hoff did not ask for relief from the Court

At no point did Hoff ask the Court to have the jury find malice. At no point did Hoff ask, before or during the trial, to dismiss the interference claims based on the theories he now espouses. At no point did Hoff make any legal motions to the Court to clarify any of these issues. Yet Hoff had ample opportunity to do so. His incoming attorney was given additional time to file trial pleadings, but Hoff still did not file jury instructions. Later, the Court required that Hoff at least list the jury instructions from CivJIG by number, which Hoff did. It is too late, now, for Hoff to claim that the trial went forward without his theory being acknowledged.

Indeed, it was the *Court* who raised the issue of public figure status, and put on an evidentiary hearing. At that hearing, Hoff never contended that this was an "issue of public concern" case. That was his time to contend that, not now, after the jury verdict.

Hoff contends that the U.S. Supreme Court just held March 2, 2011 that the First Amendment can serve as a defense in state torts. The *Snyder case* (131 S. Ct. 1207) was a picketing case. And the state tort was intentional infliction of emotional distress. *Snyder* was *not* the first time a state tort had been subjected to a First Amendment analysis. (Indeed, see other cases cited by Hoff.) The issue is that for the defamation analysis to apply, the plaintiff needs to be seeking relief *based on the allegedly defamatory statements*. That is simply not the case here.

Hoff's argument about "cause" is misplaced

Hoff argues at page 5 of his memorandum that Moore did not prove that Hoff was the "cause" of his termination. The jury instruction read:

1. There was a contract
2. John Hoff knew about the contract
3. John Hoff intentionally caused the breach of the contract
4. John Hoff's actions were not justified.

Moore proved all of those elements, and there is sufficient evidence to establish those elements. It is simply not accurate that Zulu-Gillispie testified that Hoff was not a factor. And, the U of M witness did establish that the work was not done (it was ongoing when Moore was let go) and that even if that leg of the project finished, that there were other sections of the project that Moore would have been considered for. This was evidence that Dr. McLaurin's termination letter was *not accurate,* that there was no "change in [the] need for assistance" (meaning, it was not the true reason for the discharge). (This is what Moore argued, not that the U could not "readily disclose" the true reasons.)

No evidence jury was swayed by emotion

The irony of Hoff's argument that the jury was swayed by emotion, is that Moore has a right to discuss his "emotional distress" damages. The fact that the jury agreed he had incurred emotional distress is not the same as a runaway jury losing its head to passion. Twenty-five thousand dollars cannot, by any stretch, be deemed an out-of-proportion amount. Emotional distress damage amounts much higher than this one have been sustained.

Hoff has not put on one fact in support of this argument, nor cited any applicable law.

Lost wages were calculated nearly exactly (Hoff had a chance to show lack of mitigation or other defenses to damages and did not do anything) and 25k emotional distress does not show passion.

No problems with damages evidence

Hoff's argument re character evidence not briefed

Hoff has stated that the Court failed to allow "character" evidence. Moore cannot defend against this argument, which has not been explained. Hoff has not stated which evidence the Court allegedly excluded. For a court to 'exclude' evidence, Hoff must first try to offer it.

The jury calculated lost wages were calculated from Moore's testimony. *Hoff waived his right to put on evidence that Moore did not mitigate his damages, and he did not even cross examine Moore about his wage earnings.* He clearly waived the right to now complain.

CONCLUSION

For all of the above reasons, Plaintiff Jerry Moore respectfully requests that Hoff's post-verdict motions be denied in their entirety.

Dated: May 24, 2011

ATTORNEY FOR PLAINTIFF

By: Jill Clark, Esq. (#196988)
2005 Aquila Avenue North
Minneapolis, MN 55427
(763) 417-9102

STATE OF MINNESOTA

COUNTY OF HENNEPIN

FILED
2011 MAR 11 AM 11:08
HENNEPIN COUNTY COURT ADMINISTRATOR

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

SPECIAL VERDICT FORM

Court File No. 27-CV-09-17778

We, THE JURY, in the above-entitled action, for our special verdict, answer the question submitted to us as follows:

1. Was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." false?

NO
Yes or No

2. *If your answer to Question 1 was "Yes," then answer this question:* Did the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." convey a defamatory meaning as to Jerry Moore?

_____
Yes or No

3. *If your answer to Question 2 was "Yes," then answer this question:* By clear and convincing evidence, was the statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." made by John Hoff with actual malice?

_____
Yes or No

[If your answer to Question 3 was "Yes", then answer Questions 4 and 5.]

4. What amount of money will fairly and adequately compensate Jerry Moore for damages directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." up to the time of this verdict, for:

a. Past harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Past economic loss? $_____

ATT. A

5. What amount of money will fairly and adequately compensate Jerry Moore for damages reasonably certain to occur in the future, directly caused by the defamatory statement "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved with a high-profile fraudulent mortgage at 1564 Hillside Ave. N." for:

a. Future harm to his reputation, mental distress, humiliation, and embarrassment? $_____

b. Loss of future earning capacity? $_____

[Answer Questions 6 and 7 regardless of your answers to Questions 1-5.]

6. Did John Hoff intentionally interfere with Jerry Moore's employment contract?

Yes
Yes or No

7. Did John Hoff interfere with Jerry Moore's prospective employment advantage?

Yes
Yes or No

[If your answer to Questions 6 and/or 7 were "Yes," then answer Question 8.]

8. What amount of money will fairly and adequately compensate Jerry Moore for damages caused by interference with a contractual relationship and/or prospective advantage for:

a. Loss of benefits of the contract or the prospective relationship? $ 85,000

b. Other losses directly caused by the interference? $ 0

c. Emotional distress or actual harm to reputation, if these factors can reasonably be expected to result from the interference? $ 25,000

Foreperson

Jurors concurring sign here:

1._____ 4._____

2._____ 5._____

3._____ 6._____

Dated: _____ at _____ o'clock ___.m. at Minneapolis, Minnesota.

FAEGRE & BENSON LLP

JOHN P. BORGER
JBorger@faegre.com
612-766-7501

March 23, 2011

BY U.S. MAIL

Jill Clark
2005 Aquila Avenue North
Golden Valley, MN 55427

Paul Godfread
Godfread Law Firm, P.C.
100 South Fifth Street, Suite 1900
Minneapolis, MN 55402

Re: Jerry L. Moore v. John Hoff (a/k/a "Johnny Northside")
Civil File No. 27-CV-09-17778

Dear Counsel:

Enclosed and served upon you by U.S. Mail in the above-referenced matter please find the following documents:

1. Notice of Motion and Motion of Minnesota Pro Chapter, Society of Professional Journalists For Leave to Participate as *Amicus Curiae*;

2. Memorandum of *Amicus Curiae* Minnesota Pro Chapter of the Society of Professional Journalists; and

3. Affidavit of Service by Mail.

Sincerely,

John P. Borger

BORJP:sab
Enclosures
fb.us.6540448.01

EXHIBIT D

STATE OF MINNESOTA

HENNEPIN COUNTY

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a/ Johnny Northside,

Defendant.

File No. 27-CV-09-17778
The Honorable Denise D. Reilly

MEMORANDUM OF *AMICUS CURIAE* MINNESOTA PRO CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS

Introduction

In this civil lawsuit, a jury returned a special verdict that defendant John Hoff's statement about plaintiff Jerry Moore was not false, but that Hoff nevertheless had intentionally interfered with Moore's employment contract and prospective employment advantage, awarding Moore $35,000 for loss of contractual benefits and $25,000 for "emotional distress or actual harm to reputation."

The dispute involves a statement published on Hoff's online blog. Outside the context of online publications, Minnesota courts long have held that merely providing truthful information cannot provide the basis for an action for tortious interference with contract or with prospective economic advantage, and both federal and state courts have rejected attempts by plaintiffs to evade the requirements of defamation law when the claim essentially is a defamation claim. Because a ruling on this issue could affect its members, the Minnesota Pro Chapter of the Society of Professional Journalists ("MN-SPJ") seeks leave of court to participate as *amicus curiae* in connection with defendant's post-trial motions.[1]

---

[1] No party authored this memorandum in whole or in part. No person other than the *amicus* made a monetary contribution to the preparation or submission of this memorandum.

Argument

I. The Court Should Allow the Minnesota Pro Chapter of the Society of Professional Journalists to Participate as *Amicus Curiae*.

Rule 129 of the Minnesota Rules of Appellate Procedure provides for submission of briefs *amicus curiae*. Such briefs can "broaden the discussion of important points of law" in pending cases, "inform the court of facts or matters of law that may have escaped its consideration," and "point out to the court practical or legal consequences of a particular decision beyond those involved in the case pending before the court." D. Herr & S. Hanson, APPELLATE RULES ANNOTATED §§129.1 & 129.3, p. 650 (2009). Although less common, *amicus* briefs can serve the same purposes in the district courts.

The Society of Professional Journalists, a voluntary, non-profit organization, was founded as Sigma Delta Chi in 1909. It is the largest and oldest organization of journalists in the United States, representing every branch and rank of print and broadcast journalism, and for more than a century has been dedicated to perpetuating a free press. The Minnesota Pro Chapter has become one of the nation's largest and most active professional chapters since its founding in 1956.

The work of the Society's members centers upon written and broadcast journalism, and increasingly appears online. A legal rule that exposes journalists and anyone else who communicates on the internet to risks of liability for tortious interference based on truthful statements or on a different standard than defamation could impair the free flow of information and vigorous debate on public issues. MN-SPJ has a significant continuing interest in ensuring that Minnesota courts at every level do not

apply such a rule. Statements appearing online should have the same level of protection as other means of mass communication. MN-SPJ has a public interest in assisting this court in analyzing the tradition of legal protections for such speech.

Accordingly, MN-SPJ respectfully moves this court to grant it leave to participate in this action as *amicus curiae*.

II. The Court Should Reject Tortious Interference Liability based upon Providing Truthful Information.

In *Glass Service Co., Inc. v. State Farm Mut. Auto. Ins. Co.*, 530 N.W.2d 867, 871 (Minn. App. 1995), the Minnesota Court of Appeals affirmed summary judgment in favor of the defendant, an insurance company that provided truthful information to its insureds, and rejected the tortious interference claims of the plaintiff, a company that repaired windshields. The court expressly invoked the RESTATEMENT (SECOND) OF TORTS, §772 cmt. b (1979) (no liability for interference on part of one who merely gives truthful information to another). The Eighth Circuit has applied *Glass Service* as settled Minnesota law. *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.3d 329, 337 (8th Cir. 2003.) This court should rule the same way – particularly when the alleged tortious interference arises from an allegedly defamatory statement.

III. When the Claim is Essentially a Defamation Claim, the Court Should Apply the Law of Defamation even if the Plaintiff Labels his Claim One for "Tortious Interference."

A. Plaintiff Cannot Recast his Defamation Claim as a Claim for Tortious Interference with Contact or with Prospective Employment Advantage.

Courts do not allow plaintiffs to evade the requirements of libel law by presenting their claims under a different legal label. Injuries to reputation are defamation-type damages, for which plaintiffs must prove the elements of a defamation claim regardless of

how the claim is labeled. *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 57 (1988); *Mt. Hood Polaris, Inc. v. Martino (In re Gardner)*, 563 F.3d 981, 992 (9th Cir. 2009) ("[W]hen a claim of tortious interference with business relationships is brought as a result of constitutionally-protected speech, the claim is subject to the same First Amendment requirements that govern actions for defamation."); *Beverly Hills Foodland, Inc. v. United Food and Commercial Workers Union, Local 655*, 39 F.3d 191, 196 (8th Cir. 1994) ("At the outset we note the malice standard required for actionable defamation claims during labor disputes must equally be met for a tortious interference claim based on the same conduct or statements. This is only logical as *a plaintiff may not avoid the protection afforded by the Constitution* and federal labor law *merely by the use of creative pleading*." (emphasis added)); *Johnson v. Columbia Broadcasting System, Inc.*, Court File No. CIV-3-95-624, Order filed June 24, 1997, at 4 (D. Minn. 1997) (plaintiff "must satisfy the defamation standard to establish his claim for tortious interference") (copy attached as Exhibit A); *see also NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (First Amendment applies to claims for tortious interference with business relations).

The same result applies as a matter of state common law, as the Minnesota Supreme Court established decades ago:

> It seems to us that, regardless of what the suit is labeled, the thing done to cause any damage to [plaintiff] eventually stems from and grew out of the defamation. Business interests may be impaired by false statements about the plaintiff which, because they adversely affect his reputation in the community, induce third persons not to enter into business relationships with him. We feel that this phase of the matter has crystallized into the law of defamation and is governed by the special rules which have developed in that field.

Wild v. Rarig, 302 Minn. 419, 447, 234 N.W.2d 775, 793 (1975). That court and others have applied the principle repeatedly in the following years.[2] No reason exists for this court to depart from that established precedent.

B. This Plaintiff Cannot Recover for Tortious Interference, because the Jury Determined that the Statement was not False.

A defamation plaintiff bears the burden of proving that the allegedly harmful statement was not true. *Philadelphia Newspapers, Inc. v. Hepps,* 475 U.S. 767 (1986); *Ferrell v. Cross*, 557 N.W.2d 560, 565 (Minn. 1997) (defamation plaintiff must establish that the alleged statement was false). This plaintiff did not meet that burden; the jury determined that the statement as issue was not false. For the same reasons that plaintiff Moore could not prevail on his defamation claim, he cannot prevail on his claims for tortious

---

[2] *See, e.g., MSK EyES Ltd. v. Wells Fargo Bank*, 546 F.3d 533, 544 (8th Cir. 2008) ("Claims arising out of purported defamatory statements, such as tortious interference, are properly analyzed under the law of defamation."); *European Roasterie, Inc. v. Dale*, Civ. No. 10-53 (DWF/JJG), 2010 WL 1782239, at *5 (D. Minn. May 4, 2010) ("Tortious interference claims that are duplicative of a claim for defamation are properly dismissed."); *ACLU v. Tarek Ibn Ziyad Acad.*, Civ. No. 09-138 (DWF/JJG), 2009 WL 4823378, at *5 (D. Minn. Dec. 9, 2009) (same); *Guzhagin v. State Farm Mut. Auto. Ins. Co.*, 566 F.Supp.2d 962, 969 (D. Minn. 2008) (dismissing tortious interference claim with prejudice because "a Minnesota plaintiff is not permitted to avoid defenses to a defamation claim by challenging the defamatory statements under another doctrine"); *Pinto v. Internationale Set, Inc.*, 650 F. Supp. 306, 309 (D. Minn. 1986) ("[I]n Minnesota, a plaintiff cannot elude the absolute privilege by relabeling a claim that sounds in defamation."); *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 310 (Minn. 2007) ("Regardless of the label, appellant's claims are in essence defamation claims . . . , and we find that absolute privilege operates to bar all of the claims at issue on this appeal."); *Pham v. Le*, Nos. A06-1127, A06-1189, 2007 WL 2363853, at *7-8 (Minn. App. Aug. 21, 2007) (unpublished; copy attached as Exhibit B) (applying *Wild v. Rarig* and *NAACP v. Clairborne Hardware*, dismissing tortious interference claim arising from same statements as unsuccessful defamation claim); *Zagaros v. Erickson*, 558 N.W.2d 516, 523 (Minn. App. 1997) (plaintiff asserted claim of "negligent trial testimony"; court followed *Wild* and held that defamation standards and privileges apply to any "claim [that] is essentially relabeling a defamation claim"); *McGaa v. Glumack*, 441 N.W.2d 823, 827 (Minn. App. 1989) ("In Minnesota, one 'cannot evade the absolute privilege by relabeling a claim that sounds in defamation'") (citations omitted).

interference with employment contract and with prospective employment advantage, to the extent that those claims are based upon an allegedly defamatory statement.

* * *

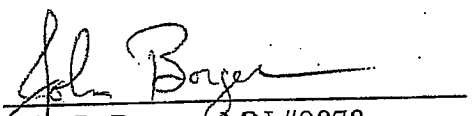
This court should follow the foregoing clear state and federal precedents and reject the plaintiff's attempt to recover under a theory of tortious interference when that claim is based upon the same statement as his failed claim for defamation.

Conclusion

The court should allow the Minnesota Pro Chapter of the Society of Professional Journalists to participate in this action as an *amicus curiae*. In considering defendant's post-trial motions, the court should apply the same rules to publicly accessible online statements that it would to a print version of the same material.

Dated: March 23, 2011

FAEGRE & BENSON LLP



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Attorneys for the Minnesota Pro Chapter of the Society of Professional Journalists

fb.us.6505845.05

GODFREAD LAW FIRM, P.C.
100 South Fifth Street, Suite 1900, Minneapolis, MN 55402

April 1, 2011

Via Facsimile
District Court Administrator
Hennepin County District Court
Hennepin County Government Center
200 Courts Tower
300 South Sixth Street
Minneapolis, MN 55487

Re: Jerry L. Moore v. John Hoff
Civil File No. 27-CV-09-17778

Dear Court Administrator,

Enclosed for filing in the above-referenced matter please find the following documents:

1. Notice of Motion and Motion for Judgment as a Matter of Law or New Trial
2. Memorandum of Law in Support of Motion for Judgment as a Matter of Law or New Trial.
3. Certificate of Service

Defendant Hoff has been granted *in forma pauperis* status in this matter.

Sincerely,

Paul Godfread

Enclosures

cc: Judge D. Reilly
Jill Clark
John Borger

EXHIBIT E

paul@godfreadlaw.com
www.godfreadlaw.com

phone 612-284-7325
fax 612-465-3609

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendants	Court File No.: 27-CV-09-17778 **DEFENDANT HOFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT AS A MATTER OF LAW OR ALTERNATIVELY FOR A NEW TRIAL**

INTRODUCTION

Plaintiff Moore brought this action for defamation and tortious interference with contract and prospective advantage. A jury returned a verdict stating that Defendant Hoff's statements were not false and therefore not defamatory but Hoff had nonetheless tortiously interfered with Moore's employment contract and expectation of continued work with the University of Minnesota. This verdict is inconsistent and contrary to established law in Minnesota where liability for tortious interference claims cannot be based upon true statements.

Because the law and evidence can only lead to a ruling for Defendant, judgement as a matter of law is appropriate. In the alternative, a new trial is appropriate for the following reasons: (1) that the jury's award was swayed by emotion, (2) certain character evidence was improperly excluded, (3) the jury instructions include a plain error which caused the inconsistent verdict, and (4) that the verdict is contrary to law and unsupported by evidence.

I. HOFF IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW BECAUSE TRUE STATEMENTS CANNOT BE THE BASIS OF TORTIOUS INTERFERENCE.

The verdict returned by the jury was inconsistent. While the jury found that Hoff's statements were not false (a factual finding), it incorrectly concluded that Hoff had interfered with Moore's contract and prospective advantage. Whether a statement is true or false is a question of pure fact and the jury's finding on that issue should not be disturbed. However, without evidence of some behavior other than communicating a true message, Plaintiff's tortious interference claims fail as a matter of law.

A. Judgment for Hoff as a Matter of Law is Appropriate Under Rule 50.01 of the Minnesota Rules of Civil Procedure.

A motion for judgment as a matter of law raises a purely legal question, *Lamb v. Jordan*, 333 N.W.2d 852, 855 (Minn. 1983) the motion must be granted where, as here, "there is no legally sufficient evidentiary basis for a reasonable jury to find for that [non-moving] party. . . ." Minn. R. Civ. P. 50.01(a). Rule 50.02 calls for judgment as a matter of law when "a jury verdict...is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007); *see also Kidwell v. Sybaritic, Inc.*, 749 N.W.2d 855, 869-70 (Minn. App. 2008) (reversing denial of judgment as a matter of law). In ruling on the motion, the Court may: (1) allow the verdict to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law. Minn. R. Civ. P. 52.02.

B. Plaintiff's Tortious Interference Claims Cannot Succeed Because the Jury Found That Hoff's Statements Were True.

In order for a tortious interference claim to be successful, a plaintiff must show that the interference alleged was improper. *R.A., Inc. v. Anheuser-Busch, Inc.*, 556 N.W. 2d 567, 571 (Minn. App. 1996). Minnesota courts have consistently held that truthful statements cannot constitute *improper* interference, and have adopted the Restatement

(Second) of Torts § 772 (1979) in regards to tortious interference claims and the use of truthful statements. *Glass Service Co. Inc. v. State Farm Mut. Auto Ins. Co.*, 530 N.W. 2d 867, 871 (Minn. App. 1995); *Fox Sports Net North, LLC v. Minnesota Twins Partnership*, 319 F.2d 329, 337 (8th Cir. 2003). Section 772(a) states in relevant part:

> "One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third person ... truthful information."

Plaintiff had the burden to show that Hoff's alleged interference was improper or wrongful. Because the Jury returned its verdict stating that Hoff's statements were not false, the element of wrongfulness in the tortious interference claim cannot be met as a matter of law. Plaintiff failed to produce any evidence of wrongful behavior or any evidence of actions taken by Hoff other than communicating true statements or opinions. In fact, Plaintiff failed to show that Hoff's actions were in any sense the cause for the University of Minnesota to take any adverse employment action against the Plaintiff.

Without evidence of wrongful behavior, Plaintiff's tortious interference claims are essentially an attempt to take another bite at the defamation claim. Minnesota courts have held that the law of defamation controls where other tort claims are based on allegedly defamatory statements. *See Wild v. Rarig*, 302 Minn. 419, 447, 234 N.W.2d 775, 793 (1975). Here Plaintiff is attempting to reframe the same behavior as different torts. Plaintiff had opportunity to provide evidence of other behavior that was wrongful, but did not. Under *Wild*, if Plaintiff cannot successfully prove defamation, he cannot as a matter of law succeed under a theory of tortious interference.

Because the jury concluded that Hoff's statement was true and there was no evidence of any other supposed interference, there can be only one legal conclusion: that there was no tortious interference with contracts or prospective advantage when the

University of Minnesota discontinued its working relationship with the Plaintiff.

C. Plaintiff's Tortious Interference Claims Are Barred By the First Amendment

Even if this Court were to disagree with the view from the Restatement of Torts that truthful statements cannot form the basis of tortious interference claims, the First Amendment would bar Plaintiff's recovery. "Speech does not lose its protected character. . . simply because it may embarrass others or coerce them into action." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 910 (1982). Moore's past involvement with mortgage fraud was an issue of concern in his neighborhood of North Minneapolis because of his role as the former Executive Director of the affected neighborhood's community council as well as his involvement in the local scene. This is exactly what Hoff's blog posts highlighted. This Honoroble Court declared that Moore was a limited purpose public figure. The jury found that Hoff's statements were true, and therefore they are protected by the First Amendment.

Recently, the Supreme Court of the United States stated: "The Free Speech Clause of the First Amendment— 'Congress shall make no law . . . abridging the freedom of speech'— can serve as a defense in state tort suits." *Snyder v. Phelps*, __U.S. ___ (2011) (No. 09-751, Decided March 2, 2011); *See also Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46 (1988) (no liability for intentional infliction of emotional distress for statements about a public figure without proving elements of defamation). Were this Court to allow the verdict to stand, Hoff would be punished for exercising his right to truthfully discuss issues of public concern, public figures and the use public funds. Hoff's speech is Constitutionally protected because it contains true statements and opinions about a limited purpose public figure in regards to topics that are of public concern (i.e., mortgage fraud). Moore had been employed by the University, a government institution, to

investigate mortgage fraud, Hoff and others in the neighborhood were rightly concerned. Hoff had a right to write about these issues and therefore, Plaintiff's tortious interference claims must therefore fail as a matter of law.

D. The Evidence Cannot Support a Finding of Tortious Interference as there Was No Evidence Showing Hoff's Statements Were the Cause of Moore's Termination.

Even though Plaintiff's claims must fail as a matter of law because Hoff's statements were found to be true by a jury, they must also fail because Plaintiff did not produce sufficient evidence to show that Hoff's statements were the cause of Plaintiff's termination. It was undisputed that Moore's position was temporary. All of the evidence from Moore's former employer, the University of Minnesota, indicates that Moore's held a temporary position and was no longer needed. There was no testimony or documentary evidence indicating that Hoff's writing was the cause of the Moore's employer to discontinue its employment relationship with Moore. On the contrary, both Moore's termination letter (Ex. 103) and credible testimony from Makeda Zulu-Gilespie indicate that Hoff was not a factor that caused the relationship between Moore and the University of Minnesota to end.

In Plaintiff's closing argument he suggested that it was possible that the University of Minnesota would not readily disclose the true reasons for Moore's termination. Plaintiff concedes that the timing of Hoff's blog post may be coincidental. Minnesota appellate courts have overturned verdicts based on inadequate circumstantial evidence. *See e.g. Cokley v. City of Otsego*, 623 N.W.2d 625, 633 (Minn. App. 2001). If the evidence offered could support two inconsistent theories equally, then Plaintiff has failed to prove its theory by circumstantial evidence. *Republic Nat. Life Ins. Co. v. Marquette Bank*, 251 N.W.2d 120, 124 (Minn. 1977) (citations omitted). Here, the evidence supports a finding that Moore's temporary position was simply finished. In fact all the

evidence from the University supports this interpretation. While plaintiff's theory is possible, it was not sufficiently demonstrated by the evidence. It was Plaintiff's burden to show that Hoff actually caused harm to Moore. Because Plaintiff failed to prove the essential elements of tortious interference of contractual relations and prospective advantage, judgment as a matter of law is appropriate.

II. HOFF IS ENTITLED TO A NEW TRIAL BECAUSE THE JURY WAS IMPROPERLY SWAYED BY EMOTION, THE JURY INSTRUCTIONS CONTAINED PLAIN ERROR AND THE VERDICT WAS CONTRARY TO LAW AND UNSUPPORTED BY EVIDENCE.

A. Rule 59.01 Of The Minnesota Rules Of Civil Procedure States The Grounds For Obtaining A New Trial.

A new trial is required where (1) an error identified in Rule 59.01 has occurred (2) resulting in prejudice to the moving party. *See Meagher v. Kavli*, 256 Minn. 54, 62, 97 N.W.2d 370, 376 (1959). Errors listed in Rule 59.01 that are applicable here include the following:

> (e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
>
> (f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;
>
> (g) The verdict, decision, or report is not justified by the evidence, or is contrary to law....

Minn. R. Civ. P. 59.0166. A new trial may be granted on "all or part of the issues" raised by the motion. *Meagher*, 256 Minn. at 62, 97 N.W.2d at 376. Here a new trial is justified for any one of the following reasons.

B. Jury Instructions Contained a Plain Error

The jury instructions contained an plain error that allowed an inconsistent verdict

to be returned. "A court may consider a plain error in the instructions affecting substantial rights that has not been preserved" Minn. Rule Civ. P. 51.04(b). In order to determine whether plain error exists, "[T]here must be (1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn.1998).

Here, the error allowed the jury to return a verdict that is contrary to established law by allowing the jury to conclude that Hoff's statements were true, but that he nonetheless interfered with Moore's contracts and prospective advantage. As discussed above in this Memorandum, Minnesota law does not allow for tortious interference claims to succeed based upon true statements. *See Glass Service*, 530 N.W.2d 867, 871. The error in jury instructions would have the effect of imposing tort liability upon speech that is protected by the First Amendment and would be a substantial impact upon Hoff's rights.

C. The Court Erred in Excluding Character Evidence

The Court erred in excluding documentary evidence relating to Moore's past . The bad character of a plaintiff in a libel action may be shown in mitigation of damages" by presenting evidence of the plaintiff's "general reputation in that respect in the community in which he lives." *Lydiard v. Daily News Co.*, 110 Minn. 140, 145, 124 N.W.2d 985, 987 (1910). Moore's testimony included an emotional response to how Hoff's writing had affected him and his family. Moore's testimony most likely gained the sympathy of the jurors who were unable to assess the full picture of Moore's actual familial situation. Because evidence of Moore's reputation and character was directly relevant, it should not have been excluded. Because it was excluded, Hoff was unfairly prejudiced by the incomplete picture of Plaintiff's reputation presented to the jury.

D. The Jury's Award Is Excessive and the Result of Being Improperly Swayed by Emotion

The award given to Plaintiff by the jury is far in excess of any reasonable damages suffered by the Plaintiff. A Jury award must be based upon evidence of harm and not mere speculation. *Sievert v. First Nat'l Bank in Lakefield*, 358 N.W.2d 409, 414 (Minn. App. 1984). For an award of damages to be "excessive" under Minnesota law, it "must so greatly exceed what is adequate as to be accountable on no other basis than passion and prejudice." *Kinikin v. Heupel*, 305 N.W.2d 589, 596 (Minn. 1981). Moore's contract was temporary and there was little, if any, evidence demonstrating his average earnings or what future earnings he might reasonably expect. Additionally, the University of Minnesota maintained that Moore's contracted services were simply at an end and therefore his likely future earnings from this particular employer was zero. The verdict was the result of an emotional response as there was insufficient evidence to support an award with emotional damages.

* * *

CONCLUSION

This Court must enter judgment as a matter of law in favor of Defendant Hoff on all counts as the jury's factual findings cannot support a judgment for the Plaintiff. Because the jury found Hoff's statement to be true, Minnesota law bars recovery for tortious interference. In the alternative, this Court must order a new trial as there was plain error in the instructions and special verdict form utilized by the jury, character evidence was improperly excluded, the award of damages was the result of an improper appeal to emotion rather than evidence and the verdict is not justified by evidence or law.

Respectfully submitted,

Dated: April 1, 2011

GODFREAD LAW FIRM, PC

By: _____

Paul Godfread (389316)
100 South Fifth Street, Suite 1900
Minneapolis, MN 55402
(612) 284-7325

Attorney for Defendant
John Hoff, a/k/a "Johnny Northside"

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

Dated April 1, 2011

By: _____

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendants	Court File No.: 27-CV-09-17778 Certificate of Service

I, Paul Godfread, hereby certify that on April 1, 2011 I served the following documents upon Plaintiff's attorney, Jill Clark, and Minnesota Pro Chapter, Society of Professional Journalists' attorney John Borger via fax:

1. Notice of Motion and Motion for Judgment as a Matter of Law or New Trial

2. Memorandum of Law in Support of Motion for Judgment as a Matter of Law or New Trial.

Dated: April 1, 2011

GODFREAD LAW FIRM, PC

By: _____

Paul Godfread (389316)
100 South Fifth Street, Suite 1900
Minneapolis, MN 55402
(612) 284-7325

Attorney for Defendant
John Hoff, a/k/a "Johnny Northside"

March 30, 2010

The Honorable Denise D. Reilly
Hennepin County District Court
300 S. 6th Street
Minneapolis, MN 55487

Re: Moore v. Hoff *et al* (**27-CV-09-17778**)

Dear Judge Reilly:

Plaintiff has submitted proposed order(s) for judgment (one for Mr. Hoff and one relating to Mr. Allen and his company) for the Court's consideration, via email to your Clerk.

Plaintiff has reviewed the defense motion for "stay." We can only assume this means stay entry of judgment – apparently for some indefinite amount of time. Under modern law, there appears no reason for this rule (or motion). Therefore, Plaintiff opposes the motion (which was not supported by any facts or even argument and certainly not a showing of prejudice). Defendant Hoff had had plenty of time to prepare post verdict motions should he desire to do so. Therefore, Plaintiff requests that judgment be entered forthwith.

Further, Plaintiff has reviewed the motion and memorandum filed by Mr. Borger at Faegre & Benson. We find no mention of any rule, statute or case that would permit an "amicus" brief to be filed (even upon obtaining prior permission) in the district court. Plaintiff opposes any notion that Mr. Borger can file a motion or memorandum in a case where he is not counsel for one of the *parties*. Plaintiff opposes any oral argument for a non-party being set on this purported "amicus" issue. Imagine if each of the bloggers or media associations across the country wanted to file a motion/memorandum in this case? The result would be a waste of judicial resources, and prejudice and undue costs for Moore.

Sincerely,

Jill Clark

JEC/PMK
Enclosure
c: Original to civil filing; Client; Paul Godfread

EXHIBIT F

STATE OF MINNESOTA	FILED DISTRICT COURT
COUNTY OF HENNEPIN	2011 AUG 22 FOURTH JUDICIAL DISTRICT

BY HENN CO. DISTRICT COURT ADMINISTRATOR DEPUTY

Jerry L. Moore,

Plaintiff,

vs.

John Hoff a/k/a Johnny Northside,

Defendant.

ORDER

Ct. File No. 27-CV-09-17778

The above-entitled matter came on for hearing before the Honorable Denise D. Reilly, Judge of District Court on May 31, 2011 on Defendant's motion for judgment as a matter of law or in the alternative for a new trial. Counsel noted their appearances on the record. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

ORDER

1. Defendant's motion for judgment as a matter of law or in the alternative for a new trial is denied in its entirety.
2. Any other relief not specifically ordered herein is denied.
3. The Court's Memorandum, filed herewith, is incorporated herein.

IT IS SO ORDERED.

Dated this 22nd day of August, 2011.

BY THE COURT:

The Honorable Denise D. Reilly
Judge of District Court

EXHIBIT G

MEMORANDUM

I. Factual and Procedural Background

The above-entitled case came before the Court on Plaintiff Jerry L. Moore's ("Plaintiff") claims for defamation, interference with contractual relationships, and interference with prospective advantage against Defendant John Hoff ("Defendant"). A jury trial was held in this matter from March 7, 2011 to March 11, 2011, during which time the Court heard testimony from several witnesses, including the parties, and received numerous exhibits into evidence. On March 11, 2011, the jury returned a unanimous special verdict. The jury returned a verdict in favor of Defendant on Plaintiff's defamation claim, and in favor of Plaintiff on the remaining two claims. Specifically, the jury found Defendant intentionally interfered with Plaintiff's employment contract and interfered with Plaintiff's prospective employment advantage. Judgment was entered in favor of Plaintiff and against Defendant on April 13, 2011. On April 1, 2011, Defendant filed a notice of motion and motion for judgment as a matter of law or for a new trial. Plaintiff submitted a memorandum in opposition to the motion on May 24, 2011. Defendant filed a reply brief in further support of his motion on May 26, 2011. The parties appeared before the Court on May 31, 2011 on Defendant's contested motion for relief.

II. Defendant's Motion is Denied

a. Standard of Review

When considering a motion for judgment as a matter of law, the district court must take into account all of the evidence in the case, view that evidence in a light most favorable to the jury verdict, and not weigh the evidence or judge the credibility of the witnesses. *Lamb v.*

Jordan, 333 N.W.2d 852, 855 (Minn. 1983).[1] The standard that applies to such a motion is "that the evidence must be 'so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.'" *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006) (quoting *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004)); *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998) (providing motions should be granted when, "viewing the evidence in the light most favorable to the nonmoving party, the verdict is manifestly against the entire evidence or when, despite the jury's findings of fact, the moving party is entitled to judgment as a matter of law"). A jury's answer to special verdict questions shall not be disturbed if it can be sustained on any reasonable theory of the evidence. *Pouliot*, 582 N.W.2d at 224. The Court should defer to a jury's reasonable inferences from the evidence presented. *See Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999) (recognizing that a reviewing Court is to "give great deference to the jury's verdict" and uphold it if it "can be reconciled with the evidence in the record and the fair inferences from that evidence"). Thus, judgment as a matter of law under Rule 50 may only be granted "when a jury verdict has no reasonable support in fact or is contrary to law." *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007). If a jury verdict has any reasonable evidentiary support, both the district court and the appellate court must accept it as final. *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680, 683 (Minn. Ct. App. 1987), *review denied* (Minn. Jan. 28, 1988).

Under Rule 59, the Court may grant a request for a new trial when the jury's verdict "is not justified by the evidence." Minn. R. Civ. P. 59.01(g). In order to grant a motion for new trial on the grounds that the evidence does not justify the verdict, "the verdict [must be] so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the

[1] The 2006 amendments to the Minnesota Rules of Civil Procedure changed this type of post-trial motion to one for judgment as a matter of law rather than a motion for JNOV. This change did not alter the substantive practice relating to such a motion. *See Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. Ct. App. 2007).

evidence, or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." *Clifford v. Geritom Med., Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (quoting *LaValle v. Aqualand Pool Co.*, 257 N.W.2d 324, 328 (Minn. 1977)). A motion for a new trial should be "granted cautiously and used sparingly." *Patton v. Minneapolis Street Ry. Co.*, 77 N.W.2d 433, 438-39 (Minn. 1956). A decision to grant a new trial rests in the sound discretion of the district court and will be reversed only upon a clear abuse of that discretion. *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 334 (Minn. Ct. App. 2004).

b. The Jury's Findings on Plaintiff's Tortious Interference Claims Had Reasonable Support in the Factual Record

Defendant attacks the jury's verdict on the grounds that it was not supported by the evidence. Defendant argues, in essence, that there was no reasonable basis in the evidence presented to the jury to support the jury's finding of liability on Plaintiff's tortious interference claims. Upon review of the trial record as a whole, the Court finds Defendant's argument fails.

Plaintiff's Complaint alleged that Defendant intentionally interfered with his contractual rights by actively working to get Plaintiff fired from his position at the University of Minnesota by, among other things, contacting individuals at the University of Minnesota, making disparaging remarks about Plaintiff, and encouraging others to do the same. To establish a claim for tortious interference of contract, a plaintiff must show: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of the contract's breach; (4) absence of justification; and (5) damages caused by the breach. *Bebo v. Delander*, 632 N.W.2d 732, 738 (Minn. Ct. App. 2001). Similarly, a claim for tortious interference with prospective advantage requires a showing that: (1) the defendant intentionally and improperly interfered with the prospective contractual relation, (2) causing pecuniary harm resulting from loss of the

benefits of the relation, and (3) the interference either induced or otherwise caused a third person not to enter into or continue the prospective relation or prevented the continuance of the prospective relation. *United Wild Rice, Inc. v. Nelson*, 313 N.W.2d 628, 633 (Minn. 1982).

Defendant argues that the record before the jury did not contain sufficient evidence regarding Plaintiff's interference claims. On the contrary, the Court heard direct testimony regarding Defendant's active involvement in getting Plaintiff fired by contacting leaders at the University of Minnesota and threatening to launch a negative public relations campaign if Plaintiff remained in their employment. By way of example, Don Allen testified that he sent an email to the University of Minnesota, at Defendant's behest, threatening negative publicity and lobbying to get Plaintiff fired.[2] In addition to Mr. Allen's direct testimony, the jury also heard circumstantial evidence supporting the jury's verdict. The Court heard testimony that Plaintiff was terminated from his position at the University of Minnesota one day after transmission of the email from Mr. Allen. Furthermore, during this same time period, Defendant acknowledged that it was his goal to get Plaintiff fired and that he was working "behind the scenes" to do so. After the fact, Defendant took personal responsibility for Plaintiff's termination and announced his ongoing, active involvement in the University's actions.[3] The direct evidence, combined with the inferences drawn from the circumstantial evidence presented, supports the jury's verdict. *See, e.g., Rochester Wood Specialties, Inc. v. Rions*, 176 N.W.2d 548, 552 (Minn. 1970) (stating that juries are entitled to draw inferences from circumstantial evidence, as long as those inferences are reasonably supported by the available evidence). Plaintiff set forth sufficient

[2] The Court presents this as just one example of the type of testimony elicited at trial regarding Defendant's interference claims.

[3] Defendant did not object to the introduction of this evidence during trial. *Poppler v. O'Connor*, 235 N.W.2d 617, 619, n. 1 (Minn. 1975) (prohibiting party from enlarging objection for first time on a motion for a new trial where party failed to object to the admission of testimony during trial).

evidence of intentional interference to support the jury's verdict. *See Potthoff v. Jefferson Lines, Inc.*, 363 N.W.2d 771, 777 (Minn. Ct. App. 1985).

Moreover, Defendant failed to show that the evidence was "contradicted by logic and other evidence." *Border State Bank of Greenbush v. Bagley Livestock Exchange, Inc.*, 690 N.W.2d 326, 335 (Minn. Ct. App. 2004). The jury, in its capacity as fact-finder, was entitled to judge the credibility of the witnesses and determine what weight to give the testimony and exhibits presented during the course of the week-long trial. *See, e.g., Carlson v. Sala Architects, Inc.*, 732 N.W.2d 324, 329 (Minn. Ct. App. 2007) (holding that "selecting certain evidence over conflicting countervailing evidence," judging believability and reasonableness of evidence, and "giving more weight to some evidence than other evidence" remain the "precise functions reserved to the jury under our system of jurisprudence"); *Lee v. Metropolitan Airport Com'n*, 428 N.W.2d 815, 822 (Minn. Ct. App. 1988). Here, the jury found Plaintiff's witnesses credible with respect to the facts supporting Plaintiff's tortious interference claims. *See Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (stating that factfinder is in the best position to judge credibility of witnesses).

c. The Jury's Findings on the Special Verdict Form Are Reconcilable

During the course of the trial, the jury was asked to consider whether a particular statement was true or false for the purposes of assessing Plaintiff's defamation claim.[4] The jury determined that the statement was not false. With his current motion, Defendant argues that the jury's award in favor of Plaintiff on the tortious interference claims were premised solely upon the same statement that formed the basis of Plaintiff's defamation claim. Defendant does not

[4] The statement is: "Repeated and specific evidence in Hennepin County District Court shows that Jerry Moore was involved in a high-profile fraudulent mortgage at 1564 Hillside Ave. N." This is the sole statement undergirding Plaintiff's defamation claim.

present any evidence in support of this argument, nor does the Court find it necessary to invade the province of the jury.

It is not the Court's function to determine on what theory the jury arrived at its verdict. *Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971). Instead, it is the Court's responsibility to interpret the special verdict form "and harmonize the jury's responses where possible." *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 441-442 (Minn. Ct. App. 2001) (citing *Bartosch v. Lewison,* 413 N.W.2d 530, 532 (Minn. Ct. App. 1987)). Thus, the Court must sustain the verdict "on any reasonable theory of evidence." *Shepherd of the Valley Lutheran Church of Hastings*, 626 N.W.2d at 441-442; *see also Nihart v. Kruger*, 190 N.W.2d 776, 778 (Minn. 1971) (stating that upon review of findings, court "need only examine the record to decide whether the verdicts are consistent on any theory"); *Blatz v. Allina Health System*, 622 N.W.2d 376 (Minn. Ct. App. 2001); *Harman v. Heartland Food Co.*, 614 N.W.2d 236 (Minn. Ct. App. 2000); *Russell v. Johnson,* 608 N.W.2d 895 (Minn. Ct. App. 2000); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997); *Tsudek v. Target Stores, Inc.*, 414 N.W.2d 466, 470 (Minn. Ct. App. 1987), *review denied* (Minn. Dec. 13, 1987) (affirming an appellate court will not disturb a trial court's decision to uphold a verdict where there is a reasonable theory to reconcile the verdict).

The Court may only set aside a jury's findings when it is clear that they "cannot be reconciled." *Nihart*, 190 N.W.2d at 778. By special verdict, the jury found Defendant's statement was not false, but that his conduct, taken as a whole, amounted to an intentional interference with Plaintiff's employment contract and prospective employment advantage. Despite Defendant's argument to the contrary, Plaintiff provided direct and circumstantial evidence in support of his tortious interference claims, independent of and distinct from his

defamation claim. These findings are not "palpably contrary to the evidence," nor is the evidence "so clear as to leave no room for differences among reasonable people." *St. Paul Fire and Marine Ins. Co. v. A.P.I., Inc.*, 738 N.W.2d 401, 410 (Minn. Ct. App. 2007).

The Court defers to the jury's reasonable inferences of the evidence presented and views the evidence in the light most favorable to the jury verdict. *See Raze*, 587 N.W.2d at 648 (recognizing that a reviewing Court is to "give great deference to the jury's verdict" and uphold it if it "can be reconciled with the evidence in the record and the fair inferences from that evidence"); *St. Paul Fire and Marine Ins. Co.*, 738 N.W.2d at 410. The Court finds the direct and circumstantial evidence adduced at trial "supports the findings of the jury and can be reconciled." *Nihart*, 190 N.W.2d at 779. The evidence supports the jury's determination of fact issues relating to Defendant's liability on Plaintiff's tortious interference claims. Accordingly, Defendant's motion for judgment as a matter of law under Rule 50.02 or for a new trial under Rule 59 is denied in its entirety.

III. Conclusion

For the reasons set forth above, the Court upholds the jury's findings. Accordingly, Defendant's motion for judgment as a matter of law is denied.[5] The Court also denies Defendant's alternative motion for a new trial. The jury's verdict of March 11, 2011 is hereby affirmed. Any other relief not specifically ordered herein is denied.

[5] Defendant's memorandum further seeks to overturn the jury's verdict on the grounds that (1) the jury was swayed by emotion, and (2) the Court failed to allow in certain character evidence. Defendant failed to put in any evidence in support of these assertions and there is nothing in the record to support these contentions.

STATE OF MINNESOTA

IN COURT OF APPEALS

Jerry L. Moore Plaintiff v. John Hoff a/k/a Johnny Northside Defendant	STATEMENT OF THE CASE OF APPELLANTS TRIAL COURT CASE NUMBER: 27-CV-09-17778 APPELLATE COURT CASE NUMBER:

1. *Court or agency of case origination and name of presiding judge or hearing officer.*

Denise D. Reilly, Hennepin County District Court

2. *Jurisdictional statement*

(A) Appeal from district court.

Statute, rule or other authority authorizing appeal: **Minn. R. Civ. App. Proc. 103.03**

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: **August 29, 2011**

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): **Minn. R. Civ. App. P. 104.01**

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? **YES**

If yes, provide date of order: **August 22, 2011**

EXHIBIT H

3. *State type of litigation and designate any statutes at issue.*

This is an action for defamation and tortious interference. Respondent contends that he was defamed by postings on a blog written by Appellant and that Appellant tortiously interfered with his employment.

4. *Brief description of claims, defenses, issues litigated and result below.*

Truth is an absolute defense to defamation. A jury found that Appellant had written truthfully about Respondent. The jury however found that Appellant had nonetheless tortiously interfered with Respondent's contractual relations and prospective advantage. The Supreme Court has held the First Amendment protects speakers from a variety of tort claims including tortious interference. The trial record will show that there is no evidence of unprotected speech made by Appellant that could have withstood First Amendment challenges raised by Appellant. Additionally, Minnesota's tortious interference case law would indicate that true statements cannot be the basis of a tortious interference claim. In Appellant's post-trial motion for judgment as a matter of law or new trial, these issues were raised, but the First Amendment challenges in particular were not addressed by the court.

5. *List specific issues proposed to be raised on appeal.*

Is there any record of unprotected speech or actions that could have supported the jury's verdict without violating Appellant's First Amendment rights?

Does a verdict violate the First Amendment, if a jury relied, even in part, on protected speech as evidence?

Is there sufficient evidence of actual interference by Appellant to support the verdict?

6. *Related appeals.*

List all prior or pending appeals arising from the same action as this appeal. **None.**

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state. **None**

7. *Contents of record.*

Is a transcript necessary to review the issues on appeal? **Yes**

If yes, full or partial transcript? **Full**

Has the transcript already been delivered to the parties and filed with the trial court administrator? **No**

If not, has it been ordered from the court reporter? **Yes**

8. *Is oral argument requested?* **Yes**

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? **No**

If yes, state where argument is requested:

9. *Identify the type of brief to be filed.*

Formal brief under Rule 128.02.

10. *Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.*

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Dated: October 26, 2011