GODFREAD LAW FIRM, P.C.
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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:

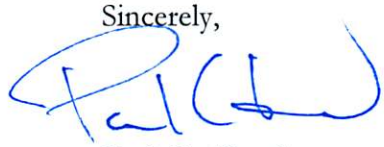
1. Notice of Motion and Motion for Judgment as a Matter of Law or New Trial

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

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | 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 Notice of Motion and Motion for Judgment as a Matter of Law or in the Alternative for A New Trial**

TO: Plaintiff Jerry L. Moore and his attorney of record Jill Clark, 2005 Aquila Avenue North, Golden Valley, Minnesota 55427 and Minnesota Pro Chapter, Society of Professional Journalists' attorney John Borger.

Defendant Hoff through his attorney hereby moves this Court pursuant to Rule 50.02 of the Minnesota Rules of Civil Procedure to enter judgment in favor of Defendant Hoff on all counts as a matter of law as the factual findings of the jury verdict do not support recovery. In the alternative, Defendant Hoff requests a new trial pursuant to Rule 59.01 of the Minnesota Rules of Civil Procedure.

This motion will be heard at a time and place to be set by the Court.

This motion is supported by the accompanying Memorandum of Law.

Dated: April 1, 2011

GODFREAD LAW FIRM, PC

By: _____

Paul Godfread (389316)
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(612) 284-7325

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

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | 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: _____

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(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 | DISTRICT COURT

COUNTY OF HENNEPIN | 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

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