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| <p>DISTRICT COURT<br/>Larimer County, Colorado<br/>201 LaPorte Avenue<br/>Fort Collins, Colorado 80521</p>  | <p>2019 JAN 25 PM 4: 21</p> <p></p> <p>▲ COURT USE ONLY ▲</p> |
| <p><b>PLAINTIFF:</b> Stacy Lynne</p> <p>v.</p> <p><b>DEFENDANTS:</b></p> <p>Noah Beals, Senior Planner, City of Fort Collins:<br/>in his individual and official capacity</p> <p>Jeremy Call, Senior Associate – Logan Simpson<br/>Design, Contractor for the City of Fort Collins:<br/>in his individual and official capacity</p> | <p>Case Number:<br/>18CV220</p> <p>Division:                      Courtroom:<br/>3C                                      Jouard</p>              |
| <p><b>PLAINTIFF'S OBJECTION TO DEFENDANT NOAH BEALS' MOTION TO DISMISS</b></p>  |  |

Defendant Noah Beals' attorney, Kimberly Schutt, says that Mr. Beals is above the law because he works for the government.<sup>1</sup> And, Ms. Schutt makes it clear that she dislikes Plaintiff Lynne's personal writing style,<sup>2</sup> so this next part will probably upset Ms. Schutt as well.

<sup>1</sup> Defendant Beals' Motion to Dismiss and Request for Award of Attorney's Fees.

<sup>2</sup> Id. "Verbose" "Rambling". As relevant side note, Ms. Schutt misuses both words. The literal definitions (using more words than are needed; confused or inconsequential) are not accurate descriptions of Ms. Lynne's Complaint.

The four pillars of the rule of law include the maxim that no one is above the law. Stacy Lynne is enchanted by the Ralph L. Carr Colorado Judicial Center. She visits the Center when she wants to be inspired because the law is one of her deepest passions. The Ralph L. Carr Colorado Judicial Learning Center is filled with bold professions that “No one is above the law”, and “Our courts ensure a fair and equal application of the law to all”. The four pillars of the rule of law take center stage there. Stacy Lynne understands the breadth of the importance of the rule of law. The rule of law feeds her mentally-driven quest for justice because of the logical principles the law holds, but it is what those principles mean to our society – for all people – that is what is deeply rooted in her heart.

A government actor who intentionally and knowingly commits a crime and/or civil wrongs is not immune from civil or criminal prosecution. If it *were* true that government employees, judges, police officers and prosecutors are absolutely immune from prosecution for tortious actions and criminal behavior, then all of the government employees, judges, prosecutors, and police officers who have been charged and convicted of crimes...and those who were successfully sued for civil wrongs must have been bogus...and that would mean that all of the judges who allowed those cases to proceed through to resolution must have been wrong to let them proceed. But we all know that is not what happens. Government actors, judges, police officers, and prosecutors are never absolutely immune. Nobody is above the law.

Without due process of law, there is no justice. That is why due process of law is one of the four pillars of the rule of law. If one of the four pillars is knocked down, the other three pillars are crippled. And then, all of the collateral laws that rely on those four *intact* pillars become meaningless. If that happens – if due process of law, or any of the other three pillars is

cut out – then no other issue can be logically resolved or legally reconciled. That all makes sense, and fortunately for all of us, it is a well-settled matter.

The *Colorado Constitution, Article II, Section 25* uses this case to illustrate the importance of due process of law:

“LAW” in the expression “due process of law” does not mean that whatever process is provided by the general assembly shall be the measure of the protection provided by the due process clause. Such a construction would render the guaranty mere nonsense for it would then mean no state shall deprive a person of life, liberty, or property, unless the state shall choose to do so. *People ex rel. Luhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968)*.

Oh, how deep the admiration for law! Do you feel the fiery, triumphant “yes!” when you read about cases like *Luhan v. District Court*? Stacy Lynne feels it. She feels the rock-solid protections that are clearly displayed in language like “... ‘due process of law’ does not mean that whatever process is provided by the general assembly...” and “Such a construction would render the guaranty mere nonsense...”.

The defendants’ attorneys try to be convincing in their motions to dismiss that certain people *are* above the law; they want you to believe that there is no remedy for intentional torts because the wrongdoer has a special title. If it *is* true, that certain people are immune to liability for their wrongs...and if it *is* true that the legislative intent of the Colorado Governmental Immunity Act is to cover for powerful people who are committing crimes and civil wrongs, then due process of law is a disturbing hallucination. But we know otherwise: CGIA is not an illusion or hallucination. CGIA is written with the loud and clear exception that when a government actor intentionally commits a civil wrong or a crime, immunity is waived.

The law is made to protect us all. Equally. Without exclusion.

“It is recognized by the general assembly that the doctrine of sovereign immunity, whereunder the state and its political subdivisions are often immune from suit for injury suffered by private persons, **is, in some instances, an inequitable doctrine.**” Colorado Governmental Immunity Act. *C.R.S. 24-10-102*. Declaration of policy.

And, *C.R.S. 24-10-105*. Prior waiver of immunity - effect - indirect claims not separate

(1) It is the intent of this article to cover all actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant. No public entity shall be liable for such actions except as provided in this article, and no public employee shall be liable for injuries arising out of an act or omission occurring during the performance of his or her duties and within the scope of his or her employment, **unless such act or omission was willful and wanton**, except as provided in this article. Nothing in this section shall be construed to allow any action which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant to be brought against a public employee except in compliance with the requirements of this article.

City Manager Darin Atteberry, Mayor Pro Tem Gerry Horak, and Planning-Development-Transportation Director Laurie Kadrich, admitted at various times and dates that Defendant Noah Beals’ false statements about Plaintiff Stacy Lynne required remedy.<sup>3</sup> Those city leaders conceded because the facts and evidence that Ms. Lynne presented to them did not leave them any options except to admit there was a serious problem with city staff lying about Ms. Lynne and the sign code update process. How serious is defamation? “Defamatory statements are so egregious and intolerable because the statement destroys an individual’s reputation: a characteristic which cannot be bought, and one that, once lost, is extremely difficult to restore.” *Zueger v. Goss*, 2014, in *Koehane v. Stewart*, 882 P. 2d 1293, Colo: Supreme Court 1994. Mr. Beals and Mr. Call told business people and community members that

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<sup>3</sup> Complaint, page 12, 13, 14, 23, 24.

Stacy Lynne was lying about the sign code update process. There is absolutely no truth to Mr. Beals' and Mr. Call's defamatory statements. City leaders, including Noah Beals' supervisors, his supervisor's supervisors, and City of Fort Collins' elected officials, all know that Stacy Lynne at all times told business owners and community the truth.

Defendant Noah Beals waived his governmental immunity when he repeatedly and knowingly lied to business owners and community members about the information that Plaintiff Stacy Lynne presented. Mr. Beals didn't accidentally say the wrong thing about Ms. Lynne. Beals intentionally told the business owners lies so that he could deflect attention from his substantial botching of the sign code update process. In fact, Beals was constantly chastised and re-directed by elected officials and boards/commissions members for his failures with the sign code process. "Because the CGIA is in derogation of Colorado's common law, the grant of immunity is to be strictly construed against the public entity, and the waiver provisions are to be deferentially construed in favor of victims." *Kahland v. Villarreal*, 2006, in *Walton v. State*, 968 P. 2d 636, Colo: Supreme Court 1998. And, "Because the GIA derogates the common law, its grant of immunity must be strictly construed, and its waiver provisions are interpreted broadly." *Lin v. City of Golden*, 2004, in *Corsentino v. Cordova*, 4 P 3d 1082, Colo: Supreme Court, 2000.

Immunity exceptions makes logical sense, right? If government employees were allowed to commit civil wrongs and crimes willy-nilly, then there would be no need for the Colorado Governmental Immunity Act at all. "One of the basic purposes of the GIA is to permit a person to seek redress for personal injuries caused by a public entity." *Hallam v. City of Colorado Springs*, 1995, in *State v. Moldovan*, 842 P. 2d 220, Colo: Supreme Court, 1992.

Can a plaintiff prove that immunity has been waived if the defendants' motions to dismiss are granted prematurely, even before an evidentiary hearing is conducted? Of course

not. **Complaints are not intended to contain every piece of proof that the plaintiff is correct and that the government actor has waived immunity—that can only occur during an evidentiary hearing complete with witnesses and exhibits.** “Under the CGIA, the plaintiff has the burden of establishing that the public entity is not immune and this, the trial court has jurisdiction over his or her tort claim.” *Henderson v. City and County of Denver*, 2012, in *Padilla v. School Distr. No. 1*, 25 P. 3d 1176, Colo: Supreme Court, 2001. “Under CRCP 12(b)(1), the trial court may allow for limited discovery and conduct an evidentiary hearing to resolve any factual questions the implicate the court’s jurisdiction.” *Young v. Brighton School District 27J*, 2014, in, *Trinity Broadcasting v. Westminster*, 848 P. 2d 916, Colo: Supreme Court, 1993.

Further, in addition to the basic due process protections that are covered by evidentiary hearings and other legal proceedings, and in light of the fact that the entire case cannot possibly be tried in the introductory Complaint, this also makes perfect sense: “In assessing a CRCP 12(b)(5) motion, a court must “accept all matters of material fact in the complaint as true and view the allegations in the light most favorable to the plaintiff.” *Asphalt Specialties, Co., Inc. v. City of Commerce City*, 2009, in, *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P. 3d 66, Colo: Supreme Court, 2004.

This case, an investigative journalist suing government actors for defamation, is the opposite situation of most cases involving these topics. Case law typically shows that the Defendant in defamation cases is the media—in this case, it is the Plaintiff who is a journalist. “Interestingly, Colorado and Indiana—two of the handful of states that, like New Jersey, have imposed the actual-malice standard for speech about a private individual that touches on a matter of public concern—did so on the basis of the need to protect the news media from defamation

lawsuits.” *Senna v. Florimont*, 2008, in *Walker v. Colorado Springs Sun, Inc.*, 538 P. 2d 450, Colo: Supreme Court, 1975.

It is logical to extrapolate that the importance of actual-malice defamation claims is even greater when it is a journalist who is falsely accused of lying about an investigative story...especially because trust issues with news reporters are so troubling at this stage in America’s history. “We hold that, when a defamatory statement has been published concerning one who is not a public official or a public figure, but the matter involved is of public or general concern, the publisher of the statement will be liable to the person defamed if, and only if, he knew the statement to be false or made the statement with reckless disregard for whether it was true or not.” *Ogden Bus Lines v. KSL, Inc.*, 197, in *Walker v. Colorado Springs Sun, Inc.*, 538 P. 2d 450, Colo: Supreme Court, 1975. We know for sure in this case that the matter involved concerned the public interest. We know for sure that Mayor Pro Tem Gerry Horak, City Manager Darin Atteberry, and Director Laurie Kadrich each admitted Noah Beals and Jeremy Call intentionally lied about Stacy Lynne. There was no accidental spewing of their statements: they conspired and planned it all out... as evidenced in their texts, phone calls, and emails.

“‘Actual malice’ means that the defamatory statement was known to be false or made with reckless disregard of whether it was true or false.” *Brooks v. Paige*, 1988, in *DiLeo v. Koltnow*, 613 P. 2d 318, Colo: Supreme Court, 1980.

For obvious reasons in the interest of serving justice, motions to dismiss are viewed unpleasantly. What is a plaintiff to do if her lawsuit is dismissed before she even gets to prove her claim is justified? “A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle him or her to relief.” *Burke v. Green*, 1998, in *Davidson v. Dill*, 503 P. 2d 157,

Colo: Supreme Court, 1972. The set of facts that form the basis of this lawsuit are undisputed, and even more powerfully, multiple city leaders have already conceded.

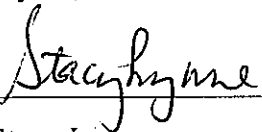
Defendant Noah Beals was motivated to defame Plaintiff Stacy Lynne to cover his personal and professional shortcomings. His personnel file shows that he repeatedly fails to meet deadlines and is reprimanded by city staff for various missteps in the performance of his duties. Defendant Beals' employment file and his public interactions with elected officials shows that he consistently struggles with his duties as related to the sign code update process.

Beals' lies about Stacy Lynne were intentional. Beals' lies about Stacy Lynne were malicious. Beals' knew he was lying and he did it anyway. He doesn't get to defame somebody just because he works for the government.

And so, Plaintiff Stacy Lynne requests that the Court:

- a. Deny Defendant Noah Beals' motion to dismiss;
- b. Order Plaintiff Stacy Lynne to correct any clerical/formatting issues if needed, and;
- c. Conduct an evidentiary hearing related to any questions of subject matter jurisdiction regarding waiver of immunity

Respectfully filed on Friday, January 25, 2019.

  
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Stacy Lynne



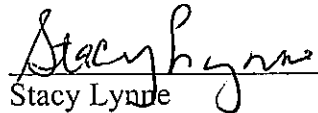
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**CERTIFICATE OF SERVICE**

I certify that on Friday, January 25, 2019, a true and accurate copy of the foregoing **PLAINTIFF'S OBJECTION TO DEFENDANT NOAH BEALS' MOTION TO DISMISS** was filed with the clerk and served via USPS to:

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Stacy Lynne