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LARIMER COUNTY, COLORADO

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<p>DISTRICT COURT Larimer County, Colorado 201 LaPorte Avenue Fort Collins, Colorado 80521</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PLAINTIFF: Stacy Lynne</p> <p>v.</p> <p>DEFENDANTS:</p> <p>Noah Beals, Senior Planner, City of Fort Collins: in his individual and official capacity</p> <p>Jeremy Call, Senior Associate – Logan Simpson Design, Contractor for the City of Fort Collins: in his individual and official capacity</p>	
<p>Stacy Lynne 305 West Magnolia Street #282 Fort Collins, Colorado 80521 970-402-1582 stacy_lynne@comcast.net</p>	<p>Case Number: 18CV220</p> <p>Division: Courtroom: 3C Jouard</p>
<p>PLAINTIFF'S OBJECTION TO DEFENDANT JEREMY CALL'S MOTION TO DISMISS</p>	

On December 6, 2018, two days after Defendant Jeremy Call was served his summons and complaint in this case, Jamie from Traveler's Insurance (phone number 720-963-7341) called Plaintiff Stacy Lynne and left a voicemail message that said Logan Simpson Design is their client. In that voicemail message, Jamie referenced claim number referenced claim number FEQ 3037.

This is the first phone conversation:

Jamie: Traveler's, this is Jamie.

Stacy Lynne: Hi. My name is Stacy Lynne. I am returning a phone call.

Jamie: Yeah, hey Stacy, how's it goin'?

Stacy Lynne: Good. How are you?

Jamie: Good. Um. We're the insurance company for Logan Simpson Design and I wanted to touch base with you regards the lawsuit that you filed. Do you have a couple minutes to speak?

Stacy Lynne: Well, I have a question. Are you representing them as legal counsel?

Jamie: No. I'm not an attorney. I'm an insurance adjuster.

Stacy Lynne: And so before we go any further, what is the purpose of your call?

Jamie: Well, I wanted to touch base with you um just to get an idea of you know why you filed the suit and wonder you know what you're looking for in terms of damages.

Stacy Lynne: Did you read the claim?

Jamie: Yeah, I read the 30-page complaint.

Stacy Lynne: Okay. Good, so....

Jamie: What is it that you're looking for....

Stacy Lynne: ...that should answer most of your questions. So, well...my...I'm really curious because you're kind of out of protocol I guess for an insurance company to call me instead of an attorney.

Jamie: Are you there?

Stacy Lynne: Yeah, can you hear me? Hello?

Jamie: Stacy, are you there?

Stacy Lynne: I am. Can you hear me? I'm here. Can you hear me?

Jamie: Yeah. I can hear you barely.

Stacy Lynne: So, I'm not sure what the problem is. I can hear you fine.

Jamie: Hello?

Stacy Lynne: Maybe we should try to reconnect.

Jamie: Alright Stacy. I can't hear you. I'm going to go ahead and disconnect.

This is the second phone call:

Jamie: Traveler's, this is Jamie.

Stacy Lynne: Hi. This is Stacy. Can you hear me better now?

Jamie: Yeah, I can hear you better.

Stacy Lynne: Yeah. Okay, so...

Jamie: Yeah, I read the complaint, um. What is it that you're looking for? Are you looking for some sort of financial compensation...um, an apology?

Stacy Lynne: Well, I'm...I'm sure you can understand that I can't talk to you. I mean, you're not an attorney. So I have no reason to talk to you. Do you understand? Does that make sense?

Jamie: Sure. I'm the one controlling all of the money flow, so...

Stacy Lynne: Right, but...

Jamie: So I suggest you'd want to talk to me.

Stacy Lynne: Well, considering that Jeremy Call, he testified prior that he was covered by the City of Fort Collins insurance...I'm not sure, is he jumping out of that relationship, or what is his position on that?

Jamie: I have no idea about any City of Fort Collins insurance. We insure Logan Simpson Design.

Stacy Lynne: Okay, I guess we're going to have to sort out the whole attorney thing before I can talk to you at all. Does that make sense? Because this is just completely out of order as far as the legal system goes unless Jeremy is not covered by the City of Fort Collins and then we have a whole different situation.

Jamie: Yeah, that's fine. So, have you been contacted by an attorney from the City on behalf of Jeremy?

Stacy Lynne: No, because they have 21 days to reply so this is really an early phone call I'm receiving, so I guess it's premature in a number of ways. But if it turns out that Jeremy Call is not covered by the City of Fort Collins insurance or attorney/client relationship, then it's a different matter. But none of that has been sorted out yet as far as in writing or legally, so I guess we're going to have to wait until that's kind of settled.

Jamie: Alright, well I appreciate the call Stacy. You have a good one.

Stacy Lynne: You too.

Jamie: Bye-bye.

Stacy Lynne: Bye.

Now, to make the point clear about why this replay of phone conversations between the defendant's insurance company and the plaintiff is relevant to Defendant Call's motion to dismiss, consider this scenario: a woman is driving her large sport utility vehicle on a sunny day. She enters the intersection on a green light. And then she hears the explosion. Her head slams against the window and for a split-second, she blacks out. When she comes to, she feels her car is spinning, flipping and rolling and she can't make it stop. Her seat belt caught on impact and that presses her hard into the seat. When her vehicle stops rolling in somebody's front yard, she is hanging upside down. People who saw the crash run from their own vehicles to help the woman. Men rip off the windshield with their bare hands and tell the woman not to move. She feels her brain push out against her skull. Witnesses tell police that the driver of the other car accelerated through the intersection, ran a red light, and hit the woman at a high rate of speed. Law enforcement officers say it was a classic pit maneuver technique. The other driver was ticketed and found to be 100% at fault. Shortly after the rollover crash, the at-fault driver's insurance company called the woman and provided her with a claim number. That's what insurance companies do when their clients are at fault, and that is what Defendant Jeremy Call's insurance company did – a mere two days after Mr. Call was served this lawsuit. Insurance companies don't call to settle with the opposing party unless there is a valid claim against their client.

Bizarrely, Jeremy Call's attorney, Theresa Corrada, filed a motion to dismiss where she claimed that Plaintiff Stacy Lynne did not plead actual malice.¹ Of course the Complaint

¹ Defendant Call's Motion to Dismiss Pursuant to C.R.C.P. 12(B)(5), page 6.

includes actual malice.² The Complaint *in toto* demonstrates unequivocal actual malice and defamation per se.

Further, throwing down the defense of substantial truth, Ms. Corrada says that the “gist of Call’s words was true”, referring to Call’s claims that “Lynne was on a ‘misinformation campaign’”.³ Surely Ms. Corrada jests. The Complaint demonstrates, using the exact written and spoken words of city officials, that Plaintiff Stacy Lynne is explicitly meticulous in the accurate dissemination of information. At no point, and in no logical or rational way, can a reader deduce that Plaintiff Stacy Lynne made any mistakes with information, with processes, or with methods. To the contrary, even rudimentary readers can understand that Defendant Jeremy Call was on a mission to destroy Plaintiff Stacy Lynne’s credibility because Call and Co-Defendant Noah Beals were caught in unsavory positions...including and not limited to abusing the public’s trust.

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.

² Complaint, page 6, page 26.

³ Defendant Call’s Motion to Dismiss, page 6.

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.⁴ 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 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

⁴ Complaint, page 12, 13, 14, 23, 24.

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 Kadrach 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 Jeremy Call was motivated to defame Plaintiff Stacy Lynne to cover his own personal and professional shortcomings and to cover for Co-Defendant Noah Beals problems.

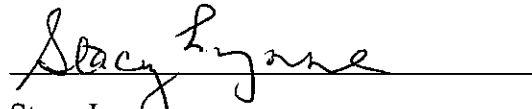
Jeremy Call’s lies about Stacy Lynne were intentional. Call’s lies about Stacy Lynne were malicious. Call knew he was lying and he did it anyway. He doesn’t get to defame somebody just because he works for the government.

And so, Plaintiff Stacy Lynne requests that the Court:

- a. Deny Defendant Jeremy Calls’ 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.

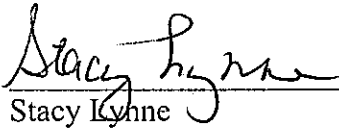

Stacy Lynne

CERTIFICATE OF SERVICE

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

Theresa Corrada
Benezra & Culver, P.C.
633 17th Street, Suite 1450
Denver, Colorado 80202

Kimberly Schutt
Wick & Trautwein, LLC
PO Box 2166
Fort Collins, Colorado 80522



Stacy Lynne