WRITING SAMPLE

This is a portion of my final appellate brief for the second semester of my first year legal writing course (LAWS II). For this assignment, I was instructed to write a brief supporting the court's granting of the appellee's previous motion for summary judgment on the plaintiff/appellant's claim for public disclosure of private facts.

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TABLE OF CONTENTS

QUESTION PRESENTED

Did the trial court correctly determine as a matter of law that Manet Company's publication was newsworthy based on the factors of social value, intrusiveness, and the extent to which the Appellant voluntarily assented to a position of public notoriety, when the Appellant published an article including the Appellant's name in conjunction with limited information regarding her battle with depression and the tremendous achievements she has accomplished despite having the condition?

STATEMENT OF THE CASE

The Appellant, Ashanti Perlman, filed a claim against Manet Company (Manet) alleging the tort of public disclosure of private facts. (R. at 59.) The claim arose out of an article published by Manet that briefly mentioned the Appellant's name and her battle with depression. Manet filed a motion for summary judgment on the grounds that the Appellant failed to satisfy her burden of proof as a matter of law. (R. at 21.) The trial court granted Manet's motion for summary judgment on the basis that the Appellant failed to prove that Manet's publication lacked newsworthiness. (R. at 59.) On December 30, 2011, the Appellant filed for an appeal. (R. at 67.) The request for an appeal was granted. (R. at 69.) Following the grant of appeal, Perlman filed for substitution of counsel (R. at 73.)

On May 20, 2010, Manet published an article that appeared in the Century City Lawyer entitled "Century City's Law firms: A Woman's Place?" (R. at 9, 60.) Ms. Ariel Ryan (Ryan), the author of the article, stated that the article's purpose was to examine the pressures that female attorneys face when trying to balance work and life in the law firm setting. (R. at 49.) The article included the Appellant's name along with minimal information regarding her battle with depression. (R. at 14-15.) Depression is prevalent in the legal community; 19% of lawyers in top firms experience depression in their careers. (R. at 15.) The purpose of Ryan's article was to shed light on the prevalence of depression in the law firm setting and encourage law firm managers to address the problem and offer hope to attorneys like Ms. Jane Evans (Evans), the

Appellant's mentee, who are currently dealing with this common condition. (R. at 52-53.) Along with a quote from Evans stating that the Appellant told her there were some days that she would not get out of bed if her five-year-old did not beg her for something to eat, the article highlights the Appellant's position as President of the Women's Law Association of Century City and her excellent reputation in the legal community for being a "hardworking, effective, ethical attorney." (R. at 14-15.) Furthermore, Evans stated that the Appellant's senior partner mentioned that she was on track to become a managing partner one day. (R. at 14-15). Evans also expressed her amazement with the Appellant's ability to balance work and family life as a single mother. (R. at 15.) The Appellant stated that the article embarrassed her in front of her colleagues and clients. (R. at 34.) None the less, Evans expressed her admiration and gratitude for the Appellant in the article and stated that she looked up to her and hoped that she does not let the Appellant down. (R. at 15.) Furthermore, Evans explained that knowing the Appellant had struggled with the same feelings that she had experienced played an important role in reassuring her. (R. at 15.) Evans's statements were circulated to approximately 50,000 people including lawyers, corporate executives, and business persons in Century City and the surrounding areas. (R. at 6.)

Prior to the publication of the article in the Century City Lawyer, several of the Appellant's clients and colleagues, as well as close family and friends, knew about her battle with depression. (R. at 36.) Additionally, Evans knew of the Appellant's battle with depression, although the Appellant did not consider Evans a close friend or colleague. (R. at 36.) The Appellant did not expressly ask Evans to keep conversations regarding her depression private; she only assumed it would be held private. (R. at 37.) Ryan learned of the Appellant's depression during an interview she conducted with Evans in connection with gathering information for the article. (R. at 50.) Although Evans asked Ryan not to use the Appellant's information in the

article, she willingly answered Ryan's specific questions regarding the Appellant's position at the law firm and her community involvement. (R. at 54.) From these limited inquiries, Ryan was easily able to ascertain the Appellant's identity. (R. at 54.)

After the publication of the article, the Appellant claimed that people stopped interacting with her. (R. at 34.) However, the Appellant admitted that she stopped corresponding with people in the legal community and had encountered the same avoidance as a result of her own unwillingness to engage. (R. at 34.) No one other than the Appellant's closest friends even mentioned the article to her. (R. at 34.) The Appellant expressed that the embarrassment she felt as a result of her depression was due to misguided notions about characteristics of depression and the way in which people cope with the condition. (R. at 35.) The Appellant believes that depression is viewed as a character flaw, which causes people to be unable to make rational decisions. (R. at 35.) However, Ryan explained that the Appellant's ability to manage single motherhood, community involvement, and a law firm partnership, while combatting depression, offered a very different story, a story of tremendous hope for others dealing with the stress of a law firm environment. (R. at 52.)

STANDARD OF REVIEW

The trial court's decision to grant summary judgment will be reviewed de novo. (R. at 69.)

ARGUMENT

The Summary Judgment Was Proper Because The Social Value Of The Article Extends To The Publication Of The Appellant's Name And Outweighs Its Intrusiveness, Especially When Considering That The Appellant Is A Voluntary Public Figure.

In analyzing a claim for public disclosure of private facts, the supreme mandate of the Constitution's First Amendment, which declares the right of the press to be free, is in tension

with the individual's right to privacy. See Shulman v. Group W Productions, Inc., 955 P.2d 469, 478 (Cal. 1998) (plurality opinion). Although personal privacy is important, "the right to privacy is not absolute." Diaz v. Oakland Tribune, Inc., 188 Cal. Rptr. 762, 767 (Ct. App. 1983); see Cox Broad. Corp. v. Cohn, 420 U.S. 469, 489 (1975). In order to avoid impeding on First Amendment rights, it is important for judges who are deciding a public disclosure of private facts case to closely scrutinize the evidence and resolve the case through summary judgment whenever possible. See Virgil v. Time, Inc., 527 F.2d 1122, 1130 (9th Cir. 1975), remanded sub nom. Virgil v. Sports Illustrated, 424 F. Supp. 1286 (S.D. Cal. 1976). Courts require a showing of high probability of success by the plaintiff in order to overcome a motion for summary judgment. Times-Mirror Co. v. Superior Court, 244 Cal. Rptr. 556, 564 (Ct. App. 1988); Sipple v. Chronicle Publ'g Co., 201 Cal. Rptr. 665, 668 (Ct. App. 1984). The appellant has the burden of proving that the published information the appellant seeks to protect is not newsworthy. Michaels v. Internet Entm't Grp., Inc., 5 F. Supp. 2d 823, 841 (C.D. Cal. 1998) relying on Diaz, 188 Cal. Rptr. at 769. One element of public disclosure of private facts tort is lack of newsworthiness. Shulman, 955 P.2d at 478 (plurality opinion); Restatement (Second) of Torts § 652D cmt. h (1977). The Diaz court stressed the importance of noting that an embarrassing article may be newsworthy. 188 Cal. Rptr. at 770.

If the publication of private facts is truthful and newsworthy, even a tortious invasion of an individual's privacy "is exempt from liability." See Sipple, 201 Cal. Rptr. at 668. Newsworthiness balances the competing interests of the "the public's right to know" and the "individual's right to keep private." Diaz, 188 Cal. Rptr. at 771-72; see Kapellas v. Kofman, 459 P.2d 912, 924 (Cal. 1969). When the public is reasonably expected to have a legitimate interest in the publication, newsworthiness extends to include names and the individual's identifying

information when doing so would educate and enlighten the public. Shulman, 955 P.2d at 485-86 (plurality opinion), citing Restatement (Second) of Torts § 652D cmt. j (1977). Although the subject of a publication may be newsworthy, not all information published on the subject is necessarily newsworthy. Times-Mirror Co., 244 Cal. Rptr. at 562 (reasoning that the story of a recent murder was newsworthy but the name of the witness who found the victim was not considering that it put the witness in danger because the suspect was still at large); see Virgil v. Time, Inc., 527 F.2d at 1131. On the other hand, "when the legitimate public interest in the published information is substantial, a much greater intrusion into an individual's private life will be sanctioned, especially if the individual willingly entered into the public sphere." Kapellas, 459 P.2d at 922. Courts have used a three factor balancing test in determining the newsworthiness of the private facts published: (1) social value of the facts published, (2) intrusiveness of the publication into ostensibly private affairs, and (3) extent to which the individual voluntarily rose to a position of public notoriety. Shulman, 955 P.2d at 482 (plurality opinion); Kapellas, 459 P.2d at 922.

In this case, the court should affirm the trial court's granting of summary judgment because the decision was correct under the newsworthiness factors. The publication of the Appellant's name in conjunction with limited information regarding her depression is newsworthy and holding otherwise would greatly restrict the freedom of the press guaranteed by the First Amendment. Specifically, the social value of the article extends to the publication of the Appellant's name because the name added authenticity to the article. Lastly, the Appellant is a public figure because of her position as a successful partner at a Century City law firm and President of the Women's Law Association of Century City.

A. The Social Value Of The Publication Extends To the Inclusion Of The Appellant's Name Because Her Name Added Authenticity To The Article.

The publication of the Appellant's name was of social value because it added authenticity to the article. For example, the Wilkins court reasoned that publishing names, likenesses, voices, and occupations are of social value when doing so adds authenticity to the publication and serves a "legitimate descriptive and narrative purpose." Wilkins v. NBC, 84 Cal. Rptr. 2d 329, 341 (Ct. App. 1999) (finding the broadcasting of plaintiffs' names, faces, and voices for purposes of scheming unsuspecting "800" number callers newsworthy). In further defining newsworthiness, courts have rejected the assertion that necessity or compelling need to include a name in an article is the standard of newsworthiness. Virgil v. Sports Illustrated, 424 F. Supp. 1286, 1290 (S.D. Cal. 1976) (holding body surfer's name along with bizarre facts about his life unrelated to his body surfing newsworthy); see also Shulman, 955 P.2d at 488 (plurality opinion) (reasoning broadcast recording of plaintiff being pulled from a serious collision and airlifted to the hospital to show challenges faced by emergency medical workers newsworthy). The social value factor of newsworthiness is also applied through a logical relationship test; the test requires a logical connection between the event that brought the plaintiff to a position of public notoriety and the particular information disclosed about the plaintiff. See Four Navy Seals v. Associated Press, 413 F. Supp. 2d 1136, 1146 (S.D. Cal. 2005); see Shulman, 955 P.2d at 484-85 (plurality opinion).

Similar to the addition of the plaintiffs' names in Wilkins, the inclusion of the Appellant's name added authenticity to the article because it gives readers a concrete point of reference. The court in Wilkins explained that the plaintiffs' facial expressions were important and inseparable from the broadcast. See 84 Cal. Rptr. at 341. Although the publication in this case was in a different medium, the Appellant's name, like the plaintiffs' facial expressions in

Wilkins, was vital to the publication. The inclusion of the Appellant's name allowed readers to readily identify with her because, at the time, she was a prominent legal figure in her community and her reputation as "hardworking, effective, and ethical" lent weight to Ryan's claim that a person is capable of balancing a time consuming, stressful and hectic lifestyle efficiently and successfully. (R. at 52.) This claim is logically related to the article, the purpose of which was to summarize the work-life balance among female attorneys. (R. at 49.) Furthermore, the Appellant's name and reputation lent force to Ryan's message of hope when leaving the name out might have left readers wondering if the nameless person was really able to balance work in a law firm with life outside of work. (R. at 52.)

Moreover, the Appellant's name was socially valuable because the article and the inclusion of the Appellant's name was meant to enlighten and educate readers. In Shulman, the court held that the broadcasting of a video depicting the plaintiff after being pulled from a severe automobile accident bore a logical relationship to the newsworthy subject of the broadcast. 955 P.2d at 488 (plurality opinion). The court reasoned that broadcasting the plaintiff in despair was essential to depicting the challenges faced by emergency workers because traumatized patients and their reactions is one of the distinct challenges faced by emergency workers. Id. at 488 (plurality opinion). In this case, the purpose of the article is similar to that of the broadcast in Shulman – to depict a challenge faced by individuals, particularly women, in a specific profession. Here, Ryan explained that the purpose of the piece in which the Appellant was included was to address the problem of depression currently faced by female attorneys in the law firm setting. (R. at 52-53.) Furthermore, the inclusion of the Appellant's name in the segment informed readers that depression is a challenge faced by female attorneys at all levels. Therefore, the inclusion of the Appellant's name lent weight to Ryan's desire to encourage law firm

managers to address the problem of depression and ease the conditions impact on female attorneys. Id.

Conversely, the Diaz court held that the publication of the plaintiff's sex change operation for the purpose of humor at the plaintiff's expense was not newsworthy because viewed in context, the information was not socially valuable and had no connection to her ability to act as student body president. 188 Cal. Rptr. at 773. However, in this case, the purpose of Ryan's article was too inform readers about work-life balance in the law firm setting, (R. at 41.), not purely to humiliate the Appellant. Unlike the author in Diaz who maliciously exposed a fellow student's sex change operation for fun without providing any educational or moral value, Manet Company's inclusion of the Appellant's tremendous achievements in creating a hopeful story for readers, (R. at 52.), contradicts the plaintiff's assertion that the defendant's motivation for writing the article was to humiliate the plaintiff.

B. The Appellant Is A Voluntary Public Figure Because Of Her Position As A Prominent Partner At A Century City Law Firm And President Of The Women's Law Association Of Century City.

The Appellant was a public figure prior to the publication of the article, and the extent to which she became a voluntary public figure by becoming the President of the Women's Law Association of Century City and a prominent partner in a well-known law firm affords her a lesser degree of privacy. "[I]n the case of the voluntary public figure, the authorized publicity is not limited to the event that itself aroused the public interest, and to some reasonable extent includes publicity given to fact about the individual that would otherwise be purely private." Sipple, 201 Cal. Rptr. at 670; Restatement (Second) of Torts § 652D com. f (1977); see also Restatement (Second) of Torts § 652D com. g (1977). When an individual voluntarily enters the public sphere, a greater intrusion in the person's private life will be required in order for the

publication to be actionable. See also Kapellas, 459 P.2d at 922. In the case of individuals who seek elected public positions, courts are reluctant to prevent truthful information that is potentially relevant to a candidate's qualifications for office from being published. 459 P.2d at 923.

In this case, the Appellant was a public figure; she was the President of the Women's Law Association of Century City, a prominent position, and a partner at a well-respected law firm in Century City. (R. at 14.) Similar to the plaintiff in Diaz who the court found voluntarily became a public figure by running for student body, the appellant here voluntarily assumed the status of a public figure by becoming President of the Women's Law Association of Century City and a partner of a well-respected law firm in the area.

Although the Diaz court reversed on a jury instruction error, the court noted that the plaintiff did voluntarily attain a position of public notoriety. See also 188 Cal. Rptr. at 773. A major reason the court held that the public disclosure of private facts claim in Diaz was properly submitted to the jury was due to the sexual nature of the publication. The court stressed that public figures more celebrated than Diaz are entitled to keep some of their sexual relations private. 188 Cal. Rptr. at 773; see Restatement (Second) of Torts § 652D com. h (1977). The Diaz court is not the only court to declare sexual relations among the most private of private affairs. Michaels, 5 F. Supp. 2d at 840 (reasoning that even a member of a famous band might be entitled to keep a video recording of a sexual encounter from being disseminated because exposing such encounters constitutes the deepest possible intrusion into private affairs). Here, the facts of the Appellant's case are distinguishable from the facts in Diaz and Michaels because the information released about the Appellant here was not of a sexual nature.

Additionally, in Kapellas, the court held that conduct of the plaintiff's children was newsworthy despite the information not appearing particularly relevant to the plaintiff's qualifications for city council; additionally, the court stated that the importance or relevance of the published information should normally be determined by the public. 459 P.2d at 923. In this case, the Appellant is the President of the Women's Law Association of Century City. (R. at 14.) Although the Record does not state whether the Appellant was elected to the presidency, the Appellant voluntarily became president of the association, similar to the plaintiff in Kapellas voluntarily running for the position on city council. Furthermore, here, the published information regarding the Appellant's depression is directly related to her qualifications as President of the Women's Law Association of Century City. Ryan's inclusion of the information, along with the Appellant's name and tremendous achievements, shows that the Appellant can fulfill her many obligations despite having depression.

CONCLUSION

For the reasons stated above, the court should affirm the summary judgment. The trial court properly held the Appellant's name in conjunction with information regarding her depression as newsworthy when balancing the factors of newsworthiness.

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Respectfully Submitted,

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